AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Vol. 43—No. 80
4-25-78
PAGES
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federal register

TUESDAY, APRIL 25, 1978

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Monday	Tuesday	Wednesday	Thursday	Friday
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	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

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federal register

Area Code 202 Phone 523-5240

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[3195-01]

Title 3—The President

Executive Order 12054 • **April 21, 1978**

President's Commission on Foreign Language and International Studies

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

SECTION 1. *Establishment.* (a) There is hereby established the President's Commission on Foreign Language and International Studies, hereinafter referred to as the Commission.

(b) The Commission shall consist of not more than twenty-five members to be appointed by the President, one of whom shall be designated by the President to chair the Commission.

SEC. 2. *Functions.* (a) The Commission shall conduct such public hearings, inquiries, and studies as may be necessary to make recommendations to the President and the Secretary of Health, Education, and Welfare in accordance with the objectives of the Commission outlined in subsection (b) of this Section.

(b) The objectives of the Commission shall be to:

(1) Recommend means for directing public attention to the importance of foreign language and international studies for the improvement of communications and understanding with other nations in an increasingly interdependent world;

(2) Assess the need in the United States for foreign language and area specialists, ways in which foreign language and international studies contribute to meeting these needs, and the job market for individuals with these skills.

(3) Recommend what foreign language area studies programs are appropriate at all academic levels and recommend desirable levels and kinds of support for each that should be provided by the public and private sectors.

(4) Review existing legislative authorities and make recommendations for changes needed to carry out most effectively the Commission's recommendations.

SEC. 3. *Administration.* (a) To the extent authorized by law:

(1) All necessary expenses incurred in connection with the work of the Commission shall be paid from funds available to the Department of Health, Education, and Welfare.

(2) The Secretary of Health, Education, and Welfare may provide, or otherwise obtain, appropriate professional, technical, clerical and administrative personnel as may be necessary to enable the Commission to perform its functions.

(3) Executive agencies shall assist or otherwise cooperate with the Commission in the performance of its functions.

(4) Each member of the Commission who is not otherwise employed in the Government may receive compensation at the rate of $100.00 per day for

each day such member is engaged in the work of the commission, and may also receive travel expenses, including per diem in lieu of subsistence (5 U.S.C. 5702 and 5703).

(b) Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Commission, shall be performed by the Secretary of Health, Education, and Welfare in accordance with guidelines and procedures prescribed by the Administrator of General Services.

SEC. 4. *Termination and Final Report.* The Commission shall submit its final report to the President not later than six months after its first meeting and shall terminate thirty days thereafter.

Jimmy Carter

THE WHITE HOUSE,
April 21, 1978.

[FR Doc. 78-11318 Filed 4-21-78; 4:19 pm]

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.

[3410-02]

Title 7—Agriculture

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK), DEPARTMENT OF AGRICULTURE

[Milk Order No. 1; Docket No. AO-14-A56]

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the order based on proposals considered at a public hearing held in November 1976 and January 1977. The amended order changes the definition of a plant, revises the pooling standards for supply plants, establishes the same Class II price at all locations, and increases the maximum marketing services deduction by 2 cents a hundredweight. The amendments reflect changes in the supply structure for the market and the need to continue a viable program of marketing services for producers who are not members of a cooperative association.

EFFECTIVE DATE: June 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing—Issued October 15, 1976; published October 21, 1976 (41 FR 46454).

Recommended decision—Issued December 6, 1977; published December 12, 1977 (42 FR 62444).

Extension of time for filing exceptions—Issued December 29, 1977; published January 4, 1978 (43 FR 779).

Final decision—Issued March 20, 1978; published March 27, 1978 (43 FR 12695).

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* 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), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New England marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that: (1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the New England marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. Section 1001.4 is revised to read as follows:

§ 1001.4 Plant.

"Plant" means the land and buildings, together with their surroundings, facilities, and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, processing, or packaging of milk or milk products. The term "plant" shall not include:

(a) Distribution points (separate premises used primarily for the transfer to vehicles of packaged fluid milk products moved there from processing and packaging plants); or

(b) Bulk reload points (separate premises used for the purpose of transferring bulk milk from one tank truck to another tank truck while en route from dairy farmers' farms to a plant, and at which premises stationary storage tanks are not maintained and used). The cooling of milk, collection or testing of samples, and washing and sanitizing of tank trucks at the premises shall not disqualify it as a bulk reload point under this paragraph.

2. In § 1001.5b, paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 1001.5b Supply plant.

* * * * *

(a) It is a plant at which facilities are maintained and used for washing and sanitizing cans and to which milk is moved from dairy farmers' farms in cans and is there accepted, weighed or measured, sampled, and cooled, or it is a plant to which milk is moved from dairy farmers' farms in tank trucks.

(b) It is a plant from which in any month of August and December at least 15 percent, and in any month of September through November at least 25 percent, of its total receipts of milk from dairy farmers' farms is shipped as fluid milk products, other than as diverted milk, to pool distributing plants.

(c) For any month of August, through December, it is one of a group of plants that meets the conditions specified in this paragraph.

(1) The handler's written request for continuation of pool supply plant status, which the plant held under his operation in the preceding month, is received by the market administrator on or before the 16th day of the month.

(2) The group of plants, considered as a unit, meets the shipping requirements specified in paragraph (b) of this section.

(3) To qualify as a pool supply plant under this paragraph in December of any year, the plant, considered individually, shall have shipped at least 5 percent of its total receipts of milk from dairy farmers' farms as fluid milk products, other than as diverted milk, to pool distributing plants in one of the months of August through December of that year.

(4) In the event of the failure of a group of plants to meet fully the requirements of paragraph (c)(2) of this section, termination of pool supply plant status shall be limited to the least number of plants which will result in the remaining supply plants meeting the requirements of paragraph (c)(2) of this section. If such termination becomes necessary, the handler shall be permitted to designate which plants shall continue to have pool plant status for the month.

(5) For the purposes of this paragraph, any supply plant operated by a cooperative association that is also a handler under § 1001.9(d) may be considered as one of a group of plants. In that event, the group's total receipts of milk from dairy farmers' farms shall be the total of such receipts by the association other than at any of its plants that is not one of the group, and the group's qualifying shipments shall consist of the qualifying shipments from the plants in the group plus the quantity of milk moved by the association in its capacity as a handler under § 1001.9(d) from farms of its members to pool distributing plants.

(d) For any month of January through July, it is a plant from which at least 15 percent of its total receipts of milk from dairy farmers' farms is shipped as fluid milk products, other than as diverted milk, to pool distributing plants or it is a plant that meets the requirements for automatic pool plant status specified in this paragraph. The automatic pool plant status of a plant shall be revoked for any month for which the market administrator has received the handler's written request for revocation on or before the 16th day of that month. In that event, the plant shall not have automatic pool plant status in any subsequent month of the current January through July period.

(1) The plant was a pool supply plant under this order in each of the preceding months of August through December; or

(2) The plant was a pool supply plant under this order in at least two of the preceding months of August through December and would have been such a plant in all other months in that period had it not been a pool plant under the New York-New Jersey Federal order.

* * * * *

3. In § 1001.11, paragraph (c) is revised to read as follows:

§ 1001.11 Dairy farmer for other markets.

* * * * *

(c) The term includes a dairy farmer with respect to milk that is received from him by a handler at a pool plant or that is purchased from him by a cooperative association in its capacity as a handler under § 1001.9(d) during any of the months of January through July, if the handler caused nonpool milk from the same farm to be received during any of the preceding months of August through December at a plant that is not a pool plant under any Federal order in the current month. The term shall not apply to the dairy farmer, however, if all the nonpool milk was a receipt of producer milk under the provisions of another Federal order or represented receipts from own production by a producer-handler under any Federal order, or was excluded from producer milk under § 1001.15.

* * * * *

4. In § 1001.15, the preamble is revised to read as follows:

§ 1001.15 Diverted milk.

"Diverted milk" means milk, other than that excluded under § 1001.12 from being considered as received from a producer, that meets the conditions set forth in paragraph (a) or (b) of this section and is not excluded from diverted milk under paragraph (c) of this section.

* * * * *

5. In § 1001.43, a new paragraph (d) is added as follows:

§ 1001.43 Assignment of receipts to classes in general.

* * * * *

(d) Prior to the assignment of receipts to classes under §§ 1001.44 through 1001.47, there shall be assigned to Class I and Class II milk the quantities of Class I and Class II milk, respectively, which are diverted in accordance with § 1001.15 and classified in accordance with § 1001.42.

6. In § 1001.47, paragraph (a) is revised to read as follows:

§ 1001.47 Additional assignments to Class I and Class II milk.

(a) At pool distributing plants that have received bulk fluid milk products from pool plants located outside the nearby plant zone, assign to Class II milk, a quantity of receipts from producers and cooperative associations in their capacity as handlers under § 1001.9(d) equal to 6 percent of skim milk and 25 percent of butterfat in the plant's Class I route disposition or the remaining Class II milk at the plant, whichever is less.

* * * * *

7. In § 1001.50, the preamble and paragraph (a) are revised to read as follows:

§ 1001.50 Class prices.

Subject to the provisions of § 1001.52, the class prices per hundredweight of milk for the month shall be as follows:

(a) *Class I price.* The Class I price at plants located in zone 21 shall be the basic formula price for the second preceding month plus $2.58.

* * * * *

8. In § 1001.52, the words "The class prices" in the preamble are changed to read "The Class I" and paragraph (e) is revised to read as follows:

§ 1001.52 Plant location adjustments.

* * * * *

(e) The location adjustments for each plant shall be the amounts shown in the following table for the zone in which the plant is located:

Location adjustments for determination of zone price

Distance to Boston (miles)	Plant location zone	Class I and blended price adjustments (cents per hundredweight)
Various	Nearby plant	+40.0
31 to 40	4	+36.4
41 to 50	5	+35.2
51 to 60	6	+34.0
61 to 70	7	+32.8
71 to 80	8	+31.6
81 to 90	9	+30.4
91 to 100	10	+29.2
101 to 110	11	+28.0
111 to 120	12	+26.8
121 to 130	13	+25.6
131 to 140	14	+24.4
141 to 150	15	+ 7.2
151 to 160	16	+ 6.0
161 to 170	17	+ 4.8
171 to 180	18	+3.6
181 to 190	19	+2.4
191 to 200	20	+1.2
201 to 210	21	0
211 to 220	22	−1.0
221 to 230	23	−2.0
231 to 240	24	−3.0
241 to 250	25	−4.0
251 to 260	26	−5.0
261 to 270	27	−6.0
271 to 280	28	−7.0
281 to 290	29	−8.0
291 to 300	30	−9.0
301 to 310	31	−10.0
311 to 320	32	−11.0
321 to 330	33	−12.0
331 to 340	34	−13.0
341 to 350	35	−14.0
351 to 360	36	−15.0
361 to 370	37	−16.0
371 to 380	38	−17.0
381 to 390	39	−18.0
391 to 400	40	−19.0
401 and over	41 and over ...	(1)

[1]Class I and blended price location adjustments applicable to plants located more than 400 miles from Boston shall be obtained by extending the table at the rate of 1 cent for each additional 10 miles except that in no event shall the Class I or blended price at any zone be less than the Class II price for the month.

§ 1001.60 [Amended]

9. In § 1001.60(e), the words "applicable Class II prices" are changed to read "Class II price".

§ 1001.73 [Amended]

10. In § 1001.73(a), the words "zone 21" are deleted.

§ 1001.74 [Amended]

11. In § 1001.74(d)(1), the words "zone 21" are deleted.

§ 1001.86 [Amended]

12. In § 1001.86, the "3 cents" specified in paragraph (a) is changed to "5 cents."

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

Effective date: June 1, 1978.

NOTE.—The Agricultural Marketing Service has determined that this document contains major proposals requiring preparation of an economic impact statement under Executive Order 11821 and OMB Circular A-107 and certifies that such statement has been prepared.

Signed at Washington, D.C., on April 19, 1978.

P. R. "BOBBY" SMITH,
Assistant Secretary.

[FR Doc. 78-11150 Filed 4-24-78; 8:45 am]

[3410-05]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regulations, Grain Reserve Program Supplement]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—Regulations Governing the Grain Reserve Program for 1976 and Subsequent Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule sets forth the provisions under which producers may participate in the grain reserve program. This rule is needed in order to implement the grain reserve program through extended loans.

EFFECTIVE DATE: April 25, 1978.

ADDRESS: Price Support and Loan Division, ASCS, U.S. Department of Agriculture, 3752 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Harold Jamison, ASCS, 202-447-7973.

SUPPLEMENTARY INFORMATION: This program will benefit the producers affected. Since regular loans on 1976 crop commodities are maturing it is essential that these regulations be effective as soon as possible in order to establish and carry out the grain reserve program. It is therefore, found and determined upon good cause that compliance with the notice of proposed rulemaking and public participation procedure would be impracticable and contrary to the public interest. Therefore, these regulations are being issued without compliance with such procedure. Accordingly, 7 CFR Part 1421 is amended by adding 1421.530 through 1421.544 to read as follows:

Subpart—Regulations Governing the Grain Reserve Program for 1976 and Subsequent Crops

Sec.
1421.530 General statement.
1421.531 Eligible commodities and length of loans.
1421.532 Limit on reserve quantity.
1421.533 Program availability.
1421.534 Eligibility requirements.
1421.535 Applicability of the general regulations governing price support for the 1976 and subsequent crops.
1421.536 Warehouse receipts.
1421.537 Quantity eligible for extended loans.
1421.538 Quality of farm stored grain.
1421.539 Storage rates.
1421.540 Storage payments.
1421.541 Interest rate.
1421.542 Commingling and replacement of grain.
1421.543 Release levels, redemption requirements, and early redemption charges.
1421.544 Maturity.

AUTHORITY: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); sec. 110, 63 Stat. 1051, as amended (7 U.S.C. 1445e).

§ 1421.530 General statement.

(a) the regulations in this subpart set forth the terms and conditions for the reserve program which provides for the extension of farm storage and warehouse storage loans (hereinafter called "grain reserve loan(s)") on eligible commodities listed in § 1421.531. Farm storage grain reserve loans will be evidenced by notes and secured by security agreements, grain reserve agreements, and in certain cases, chattel mortgages or financing statements. Warehouse storage grain reserve loans will be evidenced by notes, security agreements, and grain reserve agreements and secured by the pledge of warehouse receipts representing an eligible commodity in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) To participate in the grain reserve program a producer must request a grain reserve loan and enter into a grain reserve agreement with the local county ASCS office. Such agreement shall be for a period of time specified in § 1421.531. Storage payments will be paid to the producer annually during the period of the grain reserve agreement for the time the commodity is eligible to earn storage payments. Producers may redeem commodities under the grain reserve program without repaying earned storage when the national average market price reaches the release level, as determined pursuant to section 1421.543. All wheat loans in the grain reserve and all loans on any feed grain in the reserve will be called when the national average market price of such wheat or feed grain reaches the call level; as determined pursuant to section 1421.543.

§ 1421.531 Eligible commodities and length of loans.

(a) *eligible commodities.* All eligible 1976 and 1977 crop barley, corn, oats,

sorghum, and wheat are eligible for grain reserve loans in accordance with § 1421.532.

(b) *Length of reserve loans.* Loans shall be for a period of three years.

§ 1421.532 Limit on reserve quantity.

The total amount of wheat under the grain reserve program shall not be less than 8.2 million metric tons, nor more than 19.0 million metric tons, and there will be no limit on the total amount of feed grains under the program.

§ 1421.533 Program availability.

Producers with farm or warehouse stored, 1976 or 1977 crop wheat for feed grain loans maturing (hereinafter called "regular loan(s)") may participate in the grain reserve program. A producer desiring to participate in the Grain Reserve Program shall file a request to participate not later than the maturity date of the loan for the grain such producer wishes to place in the program. The producer shall request such grain reserve loan at the county ASCS office which disbursed the regular loan. An approved cooperative marketing association shall request a grain reserve loan at the county ASCS office which disbursed the regular loan or at its servicing agent bank which disbursed the regular loan.

§ 1421.534 Eligibility requirements.

(a) *Producer.* A producer shall be eligible to participate in this program if such producer has an eligible commodity under a regular loan or has an eligible commodity under a purchase agreement which is converted into a regular loan.

(b) *Limits.* Eligibility of producers to place wheat and feed grains into the grain reserve program will be on a first come, first served basis. After the limits established in § 1421.532 have been accomplished, the program will be closed to new applicants.

§ 1421.535 Applicability of the general regulations governing price support for the 1976 and subsequent crops.

Provisions of the General Regulations Governing Price Support for the 1976 and Subsequent Crops, published at 41 FR 22334 and any amendments thereto (hereinafter referred to as "General Regulations") which are not inconsistent with provisions of this subpart shall apply to grain reserve loans.

§ 1421.536 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC under this program must meet all of the requirements of this section and any other requirements contained in the regulations in this subpart, the General Regulations, and the applicable commodity supplement.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank so as to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity which is deemed to be stored commingled. The receipts must be negotiable and must cover the eligible commodity actually in storage in the warehouse of original deposit, except that warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated under a "Reconcentration Agreement and Trust Receipt" approved by CCC. All receipts must be registered or recorded with appropriate State or local officials when required by State law. Warehouse receipts must show that storage charges have been paid or otherwise provided for through the end of the first year of the grain reserve agreement.

(c) *Where a warehouseperson is also owner.* If the receipt is issued for a commodity which is owned by the ware- houseperson, either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseperson on their own commodity is invalid, the warehouseperson may offer such commodity to CCC for loan only if such warehouse is licensed and operating under the U.S. Warehouse Act.

§ 1421.537 Quantity eligible for grain reserve loans.

(a) *Farm stored.* The quantity eligible for grain reserve loan shall be the measured quantity covered by the regular loan, as determined by the county committee.

(b) *Warehouse stored.* The quantity eligible for grain reserve loan shall be the quantity shown on the warehouse receipt or supplemental certificate, if applicable, which secured the regular loan.

§ 1421.538 Quality of farm stored grain.

Prior to approval of a grain reserve farm stored loan, the commodity will be inspected by a representative of the county committee and the agreement will not be approved unless it is determined on the basis of such inspection that the commodity is such that it can reasonably be expected to be stored with safety until maturity of the loan.

§ 1421.539 Storage rates.

Producers will be paid per annum storage payments at the initial rate of 25 cents per bushel for wheat, barley and corn, 19 cents per bushel for oats, and 44.64 cents per hundredweight for sorghum. Such rates may be changed from time to time by announcement in a separate notice published in the FEDERAL REGISTER but will not be less than (1) 25 cents per bushel for wheat, barley, and corn, (2) 44.64 cents per hundredweight for sorghum, and (3) 19 cents per bushel for oats. When storage is computed for less than one year, appropriate daily rates announced in the FEDERAL REGISTER will be used, which will not be less than (1) .0685 cents per bushel for wheat, barley, and corn, (2) .1223 cents per hundredweight for sorghum, and (3) .0521 cents per bushel for oats. Annual storage payments shall be adjusted and paid in accordance with provisions outlined in § 1421.540.

§ 1421.540 Storage payments.

(a) *Time.* Storage payments shall be paid annually in advance on the date the grain reserve agreement is approved and each anniversary date thereafter if the market price on such date is below the release level. If the market price is equal to or exceeds the release level on the date the grain reserve agreement is approved or on the anniversary date, no storage payment will be made at that time. If CCC subsequently announces that the market price is again below the release level, a storage payment will be made for the balance of the year. Second or third year storage payments will not be made to producers having grain reserve warehouse loans until the producers furnish written evidence that at least the next year's storage payment has been paid or provided for. If the producer fails to provide such written evidence within a reasonable period of time, the county office shall call such loan, and if the loan is not repaid according to § 1421.543 or evidence that storage has been paid is not furnished within 10 days after such call, title to the commodity shall vest in CCC on the eleventh day and the producer shall be considered to have voluntarily forfeited his commodity to CCC and shall be subject to the voluntary forfeiture provisions of § 1421.543(b).

(b) *Storage payment units.* Storage payments shall be based on the loan quantity.

(c) *Storage credit.* Storage credit for less than one year will be computed on a daily basis.

(d) *Eligible storage credit.* Storage credit shall be allowed for the duration of the loan except that no storage credit shall be earned between the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the release level and the date of a subsequent announcement by CCC that the market price is again below the release level. Such unearned storage will be subtracted from any future storage pay-

ments or will be collected when the loan is redeemed or forfeited to CCC.

(e) *Unearned storage.* No storage payment shall be earned if the producer (1) has made any false representation in the loan documents in obtaining the loan or in settlement of the loan, (2) makes an unauthorized disposition of the commodity with intent to defraud CCC, (3) abandons the commodity, or (4) negligently or otherwise impairs the commodity.

§ 1421.541 Interest.

Each grain reserve loan shall bear interest during the first year at the rate of 6 percent per annum or such lower rate as may be later announced in a separate notice(s) published in the FEDERAL REGISTER. Loans shall bear interest at such lower rates from the effective dates of such announcements. The loan shall not bear interest thereafter.

§ 1421.542 Commingling and replacement of grain.

(a) *Commingling.* In the case of farm storage, grain in the grain reserve may, with prior written approval of the county committee, be commingled with other eligible or ineligible grain from the same or any other crop year and of the same class if (1) the county committee gives prior written approval of such commingling, and (2) the county ASCS office inspects and measures the grain prior to commingling at the producer's expense.

(b) *Replacement.* Grain in the reserve may, with prior written approval of the county committee, be replaced with other grain of the same class produced by the borrower if (1) the county committee gives prior written approval of such replacement, (2) the grain to be used for replacement is in storage on the farm, unless the county committee authorizes removal of the reserve grain to licensed storage before replacement according to § 1421.542(c), (3) the county committee inspects and measures the grain replacing the reserve grain at the producer's expense before removal of the reserve grain, and (4) the county committee determines that the grain to be used for replacement is of a quality equal to or better than the grain in storage in the grain reserve program. Removal of farm stored grain in the grain reserve program without prior written approval will be considered unauthorized removal.

(c) *Licensed storage.* The producer may be authorized to move the grain in the grain reserve program to licensed warehouse storage before replacement if, (1) prior to the movement of grain, a written request to do so is filed in the county office, (2) approval of the county committee is granted in writing, (3) the county ASCS office inspects and measures the grain at the producer's expense prior to removal, and (4) the grain is moved to licensed storage within 30 days after approval is granted and an endorsed negotiable warehouse receipt is deposited in escrow with the county executive director. The producer shall agree to remain liable for all charges incident to the storage of the grain in the warehouse and the United States in no way shall be liable for such charges. Whenever the grain to replace the grain covered by the warehouse receipt held in escrow is in the farm storage and the county office has determined by inspection and measurement that there is sufficient quantity in storage and the quality is equal to or better than the grain represented on the warehouse receipt, the warehouse receipt shall be returned to the person who deposited it. Whenever a producer does not place grain in acceptable farm storage as provided herein prior to maturity of the grain reserve agreement, the producer's interest in the grain represented by the warehouse receipt, held in escrow by the County Executive Director, shall transfer to Commodity Credit Corporation.

§ 1421.543 Release levels, redemption, requirements, and early redemption charges.

(a) *General.* Commodities under grain reserve loans shall not be eligible for redemption without the producer incurring liability for liquidated damages unless the national average market price as determined and announced by CCC is at least 140 percent of the current national average loan rate in the case of wheat and 125 percent of the current national average loan rate in the case of feed grains (hereinafter called the release level). The national average market price for each feed grain (corn, oats, sorghum, and barley) will be considered by CCC to have reached 125 percent of the national average loan rate for the respective feed grain when (1) the average mid-month price received by farmers as reported by Statistical Reporting Service in Agricultural Prices was 130 percent or more of the national average loan rate for the respective feed grain, or (2) such mid-month price was at least 125 percent but less than 130 percent of the national average loan rate for the respective feed grain and the trend of feed grain prices reported by Agricultural Marketing Service at major feed grain markets for the last ten market days in a month indicates release should be authorized, or (3) the five-day average price for the respective feed grain at major markets published by Agricultural Marketing Service adjusted to reflect prices received by farmers for the respective feed grain by the difference between the mid-month prices published by Statistical Reporting Service for the respective feed grain for the previous month and the average mid-month price at major markets for the respective feed grain published by Agricultural Marketing Service and such adjusted price equals or exceeds 125 percent of the national average loan rate for the respective feed grain unless the trend in such prices is downward and CCC determines that release should not be authorized. The national average market price for wheat will be considered to have reached 140 percent of the national average loan rate for wheat when (1) the average mid-month price received by farmers as reported by Statistical Reporting Service in Agricultural Prices was 145 percent or more of the national average loan rate for wheat, or (2) such mid-month price was at least 140 percent but less than 145 percent of the national average loan rate for wheat and the trend of wheat prices reported by Agricultural Marketing Service at major wheat markets for the last ten market days in a month indicates release should be authorized, or (3) the five-day average price for wheat at major markets published by Agricultural Marketing Service adjusted, to reflect prices received by farmers for wheat, by the difference between the mid-month prices published by Statistical Reporting Service for wheat for the previous month and the average mid-month price at major markets for wheat published by Agricultural Marketing Service and such adjusted price equals or exceeds 140 percent of the national average loan rate unless the trend in such prices is downward and CCC determines that release should not be authorized. Producers will be advised when the market reaches this level for any such commodity and that their loans are eligible for redemption without an early redemption charge. Such determinations shall be made and announced by CCC and shall be applicable until a subsequent announcement is made. If a subsequent announcement shows that the market price is below the applicable release level, the commodity will revert to the original agreement and will not be eligible for redemption without an early redemption charge.

(b) *Redemption or voluntary forfeiture of commodity below release levels.* (i) Conditions other than emergency release. Except as provided in subparagraph (ii) if a producer redeems the commodity prior to CCC announcing that the release level has been met, such producer will be required to repay as liquidated damages the higher of the loan principal, plus interest, plus all storage payments, plus interest or 140 percent of the producer's then current loan rate in case of wheat or 125 percent of the producer's then current loan rate in case of feed

grains. If a producer voluntarily forfeits the commodity prior to CCC announcing that the release level has been met, such producer shall be required to repay all storage, plus interest and, as liquidated damages, the difference between the amount which would otherwise be due on the loan if redeemed at such time and 140 percent in case of wheat or 125 percent in case of feed grain of the producer's then current loan rate.

(ii) *Emergency release.* In case of warehouse loans, if it is determinded by CCC that storage space is no longer available and approved in-line storage cannot be found, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and may retain earned storage payments. In the case of farm storage loans, if it is determined by CCC that there is insect infestation which cannot be controlled, the commodity is subject to damage by flood, or fire, or there is damage to the structure, the producer has lost control of the storage structure or the commodity is going out of condition, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and retain earned storage payments.

(c) *Redemption of commodity when market price is at least 175 percent for wheat or 140 percent for feed grain of national average loan rate.* When CCC determines that the market price is at least 175 percent for wheat or 140 percent for feed grain of the national average loan rate, the loan shall be called. Such call will be determined in the same manner as prescribed for release levels in § 1421.543(a). If the loan is not redeemed within 30 days after notification, CCC may take title to the commodity.

§ 1421.544 Maturity.

Grain reserve loans mature and are due and payable on the last day of the 36th calendar month after the earlier of (1) the regular loan matured, or (2) the last day of the 36th month following the month in which the grain reserve agreement is approved.

Signed at Washington, D.C., on March 2, 1978.

WELDON B. DENNY,
Acting Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 78-11194 Filed 4-24-78; 8:45 am]

[6720-01]

Title 12—Banks and Banking

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER C—RULES AND REGULATIONS FOR THE FEDERAL SAVINGS AND LOAN SYSTEM

SUBCHAPTER D—RULES AND REGULATIONS FOR INSURANCE OF ACCOUNTS

[No. 78-250]

Loans in Excess of 80 Percent of Value; Two-Family Dwellings

APRIL 18, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final amendment.

SUMMARY: These amendments (1) liberalize the Board's regulations regarding loans over 80-percent of value by permitting such loans to be made on the security of two-family dwellings and (2) increase the percent of assets that a Federal association may hold in over-80 percent loans. The Board believes these changes are needed to encourage home ownership, principally in inner-city areas where low and moderate income families may use the rental income from the second units to help make their mortgage payments. The amendments are intended to make home ownership available to such families who may be presently renting their dwelling units because they cannot afford to buy the property.

EFFECTIVE DATE: May 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, 202-377-6440, or the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: By Board Resolution No. 77-552, of September 8, 1977, published in the FEDERAL REGISTER on September 14, 1977 (42 FR 46058-46060), the Federal Home Loan Bank Board proposed to amend Parts 541 and 545 of the Rules and Regulations for the Federal Savings and Loan System (12 CFR Parts 541 and 545) and Part 563 of the Rules and Regulations for Insurance of Accounts (12 CFR Part 563) regarding loans in excess of 80 percent of value on the security of two-family dwellings and the maximum percentage of a Federal association's assets that may consist of loans in excess of 80 percent of value. Forty public responses were received: 19 approved, as proposed; 14 approved and suggested changes; 1 approved, if changes are made; and 6 opposed.

Prior to these amendments, Federal associations were permitted to make over-80-percent-of-value loans on single-family dwellings, subject to certain conditions (§§ 545.6-1(a) (4) and (5)). These amendments define the term "two-family dwelling" and permit such loans thereon if the borrower is occupying, or in good faith intends to occupy, one unit of the property as his principal dwelling. Such loans on two-family dwellings are limited to the maximum amounts allowable in or under section 207(c)(3) of the National Housing Act (12 U.S.C. 1713) governing loan ceilings for purposes of the Department of Housing and Urban Development's rental housing insurance. Also, these amendments increase from 30 percent to 50 percent the percent of its assets that a Federal association may hold in over-80-percent-of-value loans; they increase from 15 percent to 25 percent the percent of assets that a Federal Association may hold in over-90-percent-of-value loans (as part of the limitation on over-80-per-cent-of-value loans). Conforming amendments are made to numerous sections of the regulations.

There have been no "Charter E" associations for some time and the last Federal association operating under a "Charter K" recently converted to another form of Federal Charter. Therefore the following amendments are made: § 545.6-2 (12 CFR 545.6-2) entitled "Lending powers under sections 11 and 12 of Charter E" is deleted; and § 545.6-3 (12 CFR 545.6-3) entitled "Lending powers under other charter provisions" is revised by changing the heading, deleting the reference to "Charter K", and deleting paragraph (a). Additional changes to simplify the regulations will be proposed later to take advantage of the fact that there are now only "Charter K (rev.)", "Charter N", and "Charter S" Federal savings and loan associations.

These final amendments delete excess language contained in the proposal and reflect certain regulatory changes made after the date of the proposal (September 8, 1977) by Board Resolution No. 77-620 and 77-624 (42 FR 56595 and 42 FR 64620) implementing in part the Housing and Community Development Act of 1977 (42 USC 5301, et seq.).

DISCUSSION OF MAJOR COMMENTS

Two Federal associations noted in favoring the proposal that their State-chartered competitors already had power to make over-80-percent loans on two family dwellings.

Several respondents suggested that over-80-percent loans also be permitted on 3-family and 4-family dwellings, stating in substance that in many cases more than one rental unit is required to provide adequate income to the owner-occupant. The Board de-

clines to so amend the regulations at this time. The Board will, however, reconsider its decision on this point in the light of experience with the regulation as hereby amended, and invites further public comment on the matter.

Two respondents questioned continuation of any percent-of-assets limitations on over-80-percent loans. The Board decided to retain the proposal's liberalized limitation, at least until more experience has been obtained.

Five respondents suggested that the Board fix maximum dollar amounts for 2-family loans rather than base the maximum dollar amounts on amounts allowable pursuant to section 207(c)(3) of the National Housing Act. Among other things, that Act requires a room count and distinguishes between buildings based on whether they have passenger elevators. Section 5(c) of the Home Owners' Loan Act of 1933, as amended, requires the tie-in to section 207(c)(3) of the National Housing Act for multi-family loans not subject to percent of assets limitations.

One respondent suggested that the increase in over 80 percent loans from 30 percent to 50 percent of assets only be allowed for financing purchases of existing 1-4 unit homes in low- and moderate-income neighborhoods. This respondent also suggested that action be taken to encourage participation of private mortgage insurance companies at reasonable rates. The Board did not adopt these suggestions, because the credit allocation which they appear intended to bring about is outside the scope of the proposed amendment and involves issues which should be separately considered.

Six respondents opposed the amendments, principally on the basis that high ratio loans in general, and on multi-unit structures in particular, are speculative. The Board believes that such loans may be speculative but that it may be assumed that management of institutions affected by these amendments will generally observe safe and sound lending practices when making high ratio loans permitted by them.

Accordingly, 12 CFR parts 541 and 545 are amended by adding a new § 541.10-5, deleting §§ 545.6-2 and 545.6-3(a) and revising the heading and the text prior to the lettered subdivisions of § 545.6-3, subdivisions (i), (ii), (iv), (vii), and (viii) of § 545.6-1(a)(4), subdivisions (i), (ii), (iii), and (iv) of § 545.6-1(a)(5), § 545.6-1(b)(1)(iii), § 545.6-7(a)(1), § 545.6-7(a)(3), § 545.6-7(b), § 545.6-7(c)(1)(iii)(*a*), § 545.6-7(c)(2)(ii), and § 545.6-7(c)(3)(iii)(*a*) to read as set forth below. Also, 12 CFR part 563 is amended by revising the text prior to the numbered subdivisions of § 563.9-7(a) and all of § 563.9-7(b) to read as set forth below. All of these amendments are effective May 26, 1978.

PART 541—DEFINITIONS

* * * * *

§ 541.10-5 Two-family dwelling.

The term "two-family dwelling" means a structure designed for two dwelling units.

* * * * *

PART 545—OPERATIONS

* * * * *

§ 545.6-1 Lending powers.

Any Federal association may make the following types of loans on the security of first liens on improved real estate:

(a) *Homes or combination of homes and business property—*

(1) *Monthly installment loans; flexibile payment loans.* Subject to the limitations of § 545.6-7, monthly installment loans and flexible payment loans may be made on homes or combination of homes and business property up to 75 percent of the value thereof, repayable monthly within 30 years or, if an insured or guaranteed loan, within the period acceptable to the insuring or guaranteeing agency: *Provided,* That, when so authorized by the members of such an association, such loans may be made up to:

(i) 80 percent of the value, if the loan is not an insured or guaranteed loan;

* * * * *

(4) *Loans in excess of 80 percent of value.* The limitation of 80 percent set forth in (a)(1)(i) of this section shall be 90 percent in the case of any loan meeting the following requirements:

(i) The loan is secured by a single-family or two-family dwelling; the amount of such loan exceeding 80 percent of the value of the improved real estate is not to be disbursed until construction has been completed, and, if such dwelling is being constructed for sale, until the property has been sold and title conveyed to a purchaser who has agreed in writing with the association to assume and to pay the loan;

(ii) The amount of the loan does not exceed the lesser of: (a) for single-family dwellings, $75,000 ($112,500 in Alaska, Guam, and Hawaii) except that such loans exceeding $60,000, or $90,000, respectively, shall conform to the limitations in § 545.6-7 of this part, and, for two-family dwellings, the amount allowable in or under section 207(c)(3) of the National Housing Act, or (b) 90 percent of the value or purchase price of the security, whichever is less;

* * * * *

(iv) The borrower, including a purchaser who assumes the loan, has certified in writing that: (a) No lien or charge upon such property, other than the lien of the association or liens or charges which will be discharged from proceeds of the loan, has been given or agreed to be given by the borrower, and (b) that the borrower is actually occupying at least one of the dwelling units of the property as his principal dwelling or intends to do so;

* * * * *

(vii) The aggregate of the principal amount of any such loan and of the association's investment in the principal amount of all other loans under this subparagraph and subparagraph (5) of this paragraph (exclusive of loans whose unpaid principal balance has been reduced to not over 80 percent of the value or purchase price of the real estate, whichever is less, determined when the loans were made) does not exceed 50 percent of the association's assets; and

(viii) The aggregate principal amount of the association's investment in flexible payment loans under this subparagraph and paragraph (a)(5) of this section (exclusive of loans whose unpaid principal balances have been reduced to not over 80 percent of the values or purchase price of the real estate, whichever is less, determined when the loans were made) does not exceed 5 percent of the association's assets, which 5 percent shall be included in the 50 percent of assets limitation in paragraph (a)(4)(vii) of this section; and

* * * * *

(5) *Loans in excess of 90 percent of value.* The limitation of 80 percent set forth in subdivision (i) of subparagraph (1) of this paragraph shall be 95 percent for any loan meeting the requirements in subdivisions (i), (iii), (iv), (v), (vi), and (viii) of subparagraph (4) of this paragraph and the following requirements:

(i) The amount of the loan does not exceed the lesser of: (a) for single-family dwellings, $60,000 ($90,000 in Alaska, Guam, and Hawaii) and, for two-family dwellings, the amount allowable in or under section 207(c)(3) of the National Housing Act, or (b) 95 percent of the value or purchase price of such security, whichever is less;

(ii) The aggregate of the principal amount of such loan and of the association's investment in the principal amount of all other loans made under this subparagraph (excluding loans whose unpaid principal balances have been reduced to not over 90 percent of the value or purchase price of the real estate, whichever is less, determined when the loans were made) does not

exceed 25 percent of the association's assets;

(iii) The aggregate of the principal amount of any such loan and of the association's investment in the principal amount of all other loans under this subparagraph and subparagraph (4) of this paragraph (excluding loans whose unpaid principal balances have been reduced to not over 80 percent of the value or purchase price of the real estate, whichever is less, determined when the loans were made) does not exceed 50 percent of the association's assets;

(iv) The aggregate of the principal amount of the association's investment in flexible payment loans under this paragraph and paragraph (a)(4) of this section (excluding loans whose unpaid principal balances have been reduced to not over 80 percent of the value or purchase price of the real estate, whichever is less, determined when the loans were made) does not exceed 5 percent of the association's assets, which 5 percent shall be included in the 25 percent of assets limitation in paragraph (a)(5)(ii) of this section and in the 50 percent of assets limitation in paragraph (a)(5)(iii) of this section; and

* * * * *

(b) Other dwelling units; combination of dwelling units, including homes, and business property involving only minor or incidental business use;

(1) *Monthly installment loans.*

* * * * *

(iii) The amounts and repayment periods authorized in paragraphs (a) (4) and (5) of this section in the case of cooperative housing project loans where dwelling units equalling 90 percent of the value or purchase price of the project, whichever is greater, are presold to bona fide purchasers: *Provided,* That all the requirements of such paragraphs are met; and that such cooperative housing projects are required to maintain at least such reserves as are required for comparable cooperative housing projects insured by the Federal Housing Administration. For purposes of this paragraph (b)(1)(iii), the term "single-family or two-family dwelling" in paragraph (a)(4)(i) of this section shall read "cooperative housing project"; the words "borrower is", in paragraph (a)(4)(iv)(*b*) of this section, shall read "members of the cooperative housing project are"; and the loan limits of $75,000, or $112,500 in Alaska, Guam and Hawaii, in paragraph (a)(4)(ii)(*a*) of this section, and $60,000 or $90,000 in Alaska, Guam and Hawaii in paragraph (a)(5)(i)(*a*) of this section shall read "$75,000, or $112,500 with respect to dwelling units in Alaska, Guam, and Hawaii, multiplied by the number of dwelling units" and "$60,000, or $90,000 with respect to dwelling units in Alaska, Guam, and Hawaii, multiplied by the number of dwelling units", respectively: *Provided,* That the amount of the loan applied to any one dwelling unit may not exceed the applicable limitation per dwelling unit.

* * * * *

§ 545.6-2 [Deleted]

§ 545.6-3 Additional lending powers.

Except as otherwise provided in paragraph (c) of this section, any Federal association may, upon authorization by its Board of Directors and without further action by its members, make the following types of loans:

(a) (Deleted, effective 5-26-78.)

* * * * *

§ 545.6-7 Percentage limitations on real estate loan investments.

(a) *Loan investments not subject to percentage limitations.* The following investments by a Federal association in loans on the security of real estate shall not be subject to any percentage-of-assets or percentage-of-savings-accounts limitation:

(1) A loan secured by a single-family or two-family dwelling, or a home or combination of home and business property, except, however, any such loan which is:

(i) Secured by property located beyond the association's regular lending area;

(ii) In excess of $60,000 for any single-family dwelling ($90,000 with respect to such dwellings in Alaska, Guam, or Hawaii, to the extent of such excess);

(iii) In excess of the amount allowable in or under section 207(c)(3) of the National Housing Act for any dwelling unit in a home or combination of home and business property which is not a single-family dwelling, to the extent of such excess;

(iv) A loan made under § 545.6-1(a)(3)(ii) to facilitate trade-in or exchange of homes;

(v) A loan on a single-family or two-family dwelling made under § 545.6(a) (4) or (5), as long as such loan exceeds 80 percent of the value or purchase price of the security, whichever is less, determined when the loan was made;

* * * * *

(3) An insured loan which is purchased (without regard to the location of the security) and which does not exceed: (i) $60,000 on the security of a single-family dwelling, or (ii) the amount allowable in or under section 207(c)(3) of the National Housing Act for any dwelling unit in any home or combination of home and business property which is not a single-family dwelling;

* * * * *

(b) *Percentage limitations for specific types of loans.* Real estate loan investments made under sections which contain specific percentage limitations shall be subject to those limitations. Sections which contain specific limitations are: § 545.6-14 (land acquisition and development loans), § 545.6-16 (loans for housing for the aging), § 545.6-18 (urban renewal loans), § 545.6-20 (Foreign Assistance Act loans), § 545.6-3(c) (developed building lot loans), § 545.6-1(a) (4) and (5) (loans on single-family or two-family dwellings in excess of 80 percent of value), § 545.6-1(a)(3)(ii) (loans to facilitate trade-in or exchange of homes), and § 545.6-26 (non-conforming secured loans). However, whenever the terms of a loan investment under §§ 545.6-16, 545.6-18, or 545.6-26 meet the requirements for a loan under § 545.6-1, the loan may be released from the percentage-limitation category in §§ 545.6-16, 545.6-18, or 545.6-26 and allocated within an applicable percentage-limitation category in paragraph (c) of this section or released from allocation to any percentage-limitation category if it is a loan specified under paragraph (a) of this section. A loan investment under § 545.6-1(a) (4) or (5) (a loan on a single-family or two-family dwelling in excess of 80 percent of value) within the association's regular lending area may be released from its percentage-limitation category when the loan balance has been reduced to not more than 80 percent of value.

A loan investment under § 545.6-1(b)(1)(iii) on a cooperative housing project may be released from the percentage-limitation categories of § 545.6-1(a) (4) or (5) when the loan balance has been reduced to not more than 80 percent of value, but: (1) The amount by which such loan exceeds, for any dwelling unit therein, an amount allowable in or under section 207(c)(3) of the National Housing Act, shall be included in an appropriate percentage-limitation category of paragraph (c) of this section, and (2) such loan shall be entirely included within the percentage limitation specified in paragraph (c)(1) of this section if the security is located outside the association's regular lending area.

(c) *Percentage limitations for other loans.*

* * * * *

(1) *General 20-percent-of-assets category.* The following investments, not to exceed at any one time an amount equal to 20 percent of the association's assets, are allocable to this category:

* * * * *

(iii) Any loan secured by a home or combination of home and business property, or other dwelling units or a combination of other dwelling units, including homes and business property involving only minor or incidental business use—

(*a*) To the extent the amount of such loan exceeds, for any dwelling unit in any such security property which is not a single-family dwelling, an amount allowable in or under section 207(c)(3) of the National Housing Act; or

* * * * *

(3) *Participation 20-percent-of-assets category.* This category includes participation interests in loans described in paragraphs (c)(1) (ii) and (iii) of this section.

* * * * *

PART 563—OPERATIONS

* * * * *

§ 563.9-7 Loans in excess of 90 percent of value.

(a) An insured institution authorized to make loans, other than insured loans or guaranteed loans, on the security of "single-family dwellings" (as defined in § 541.10 of this chapter) or a "two-famiy dwelling" (as defined in § 541.10-5 of this chapter) in excess of 90 percent of value of such real estate may do so only if:

* * * * *

(b) This section does not apply to single-family dwelling or two-family dwelling loans to facilitate the sale of real estate owned described in § 561.15(d) of this subchapter.

* * * * *

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464, secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc. 78-11199 Filed 4-24-78; 8:45 am]

[7535-01]

CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

Final Rule—Implementation of 15 Year Maturity Mobile Home Lending Authority

AGENCY: National Credit Union Administration.

ACTION: Notice of self-implementing authority.

SUMMARY: On August 4, 1977, the Administrator, National Credit Union Administration, stated that § 701.21 would not be applicable to mobile home loans with maturities in excess of 12 years, 42 FR 39369, and that a rule implementing that authority would be proposed at a later date. The Administrator has determined that a regulation implementing the provision of the April 19, 1977, amendments to the Federal Credit Union Act (Pub. L. 95-22, 91 Stat. 49) authorizing Federal credit unions to finance the purchase of mobile homes with maturities not exceeding 15 years is not necessary. Therefore, upon the effective date of this Notice, Federal credit unions are authorized to make such loans pursuant to the requirements and dictates of § 701.21.

EFFECTIVE DATE: May 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Steven R. Bisker, Attorney Advisor, Office of General Counsel, National Credit Union Administration, 2025 M Street NW., Washington, D.C., 20456. Telephone 202-632-4870.

(Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789).)

LAWRENCE CONNELL,
Administrator.

APRIL 19, 1978.

[FR Doc. 78-11171 Filed 4-24-78; 8:45 am]

[6320-01]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER-1047, Amdt. 3, Docket 31728]

PART 223—FREE AND REDUCED RATE TRANSPORTATION

Final Rule

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule allows air carriers to make student fares available to citizens of Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands for travel between the student's home and his school or vocational training program in Alaska, Hawaii, the mainland United States, or one of the other islands covered by this rule. The rulemaking was initiated in response to petitions filed by three carriers.

DATES: Effective: April 19, 1978. Adopted: April 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard Juhnke, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5436.

SUPPLEMENTAL INFORMATION: In response to petitions by Pan American World Airways, Continental Air Lines, and Air Micronesia, the Board issued notice of proposed rulemaking EDR-344, dated February 9, 1978, proposing to allow air carriers to make student fares available to natives of Guam, American Samoa, and the Trust Territory of the Pacific Islands (43 FR 6621, 2-15-78). Comments have been received from the Governor of the Commonwealth of the Northern Mariana Islands, the Legislature of the Northern Marianas Commonwealth, the Guam Chamber of Commerce, the Director of Education of the Trust Territory of the Pacific Islands, and the Acting Chancellor of the College of Micronesia.

While these comments made suggestions for how the proposed rule might be amended, they all expressed support for the proposed rule and the Board has decided to adopt it, with the minor changes discussed below. One of these changes results from comments made by the Guam Chamber of Commerce and the Governor of the Northern Marianas Commonwealth pointing out that the use of the word "native" in the rule might unintentionally exclude some students

who are citizens of the islands and suggesting that that word might also be distasteful to some people. Those comments recommended that the Board substitute "resident" for "native" in the final rule to eliminate these problems.

In drafting its proposed rule, the Board chose to use "native" rather than "resident" to make clear that the proposed fares could be made available only to permanent residents of the islands who have the relationship to the United States and the financial need which prompted us to propose the rule. Our use of that word was certainly not meant to offend anyone. Since we still believe that the use of "resident" would make the rule broader than the circumstances warrant and yet agree that the word "native" would create the problems cited above, we have substituted "citizen" for "native" in the final rule. This change will assure that the fares may be made available to all of the students we intended to include without offending anyone or creating a risk that the fares might be made available to more people than we intended.

A second change we have made also results from comments made by the Guam Chamber of Commerce and the Governor of the Commonwealth of the Northern Mariana Islands. Those point out that the United States has covenanted in Pub. L. 94-241 to establish a Commonwealth of the Northern Mariana Islands and that the proposed rule might have the effect of excluding the Northern Marianas after they cease to be a part of the Trust Territory of the Pacific Islands. Since citizens of the Northern Marianas will be citizens of the United States when the trusteeship ends, we have amended the proposed rule to specifically include the Commonwealth of the Northern Marianas to insure that student fares may be made available to its citizens after the trusteeship ends. The U.S. duty to promote the education of the citizens of the Northern Marianas will be at least as great after they become U.S. citizens as it is under our trusteeship, and so this change is necessary to assure that our duty will be fulfilled after the trusteeship ends.

The final amendment to the proposed rule results from comments made by the Northern Marianas Commonwealth Legislature, the Director of Education of the Trust Territory of the Pacific Islands, and the Acting Chancellor of the College of Micronesia. They recommended that the rule be broadened to include travel between the islands since there are a number of students who attend schools on other islands and many of the islands are separated by great distances. Because the air fare between some of the islands can be nearly as high as the fare from the islands to Hawaii, which is covered by the proposed rule, we have included interisland travel in the final rule's authorization.

We wish to avoid any interruption in the availability of student fares, which we have ordered Continental Air Lines to discontinue by April 29, and thus find good cause for making this authorization effective upon its adoption. Accordingly, the Board amends Part 223 of its economic regulations (14 CFR § 223) as follows:

Amend § 223.2 by adding a new paragraph (g) as follows:

§ 223.2 Persons to whom free and reduced-rate transportation may be furnished.

In addition to the persons specified in subparts B and C of this part:

* * * * *

(g) Any air carrier may, to the extent authorized in its certificate or elsewhere, provide reduced-rate overseas air transportation to students who are citizens of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands: *Provided, however,* That the student must be enrolled in, or en route to or from enrolling in, a college, university, trade school, or similar bona fide educational or vocational program at the time of travel; the student fares may be made available only to students traveling between their homes in Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory and their schools and vocational training programs in Guam, American Samoa, the Northern Mariana Islands, the Trust Territory, Alaska, Hawaii, and the mainland United States; and the carrier shall file with the Board tariffs showing all fares, rates, charges, and applicable rules for air transportation provided under this subsection.

(Sections 102, 204, and 403 of the Federal Aviation Act of 1958, as amended, 72 Stat. 740, 743, and 758; 49 U.S.C. 1302, 1324, and 1373.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-11197 Filed 4-24-78; 8:45 am]

[7905-01]

Title 20—Employees' Benefits

CHAPTER II—RAILROAD RETIREMENT BOARD

PART 200—PROCEDURES AND FORMS

Disclosure of Medical Records

AGENCY: Railroad Retirement Board.

ACTION: Amendment to final rule.

SUMMARY: This amendment to the regulations under the Privacy Act would simplify the procedure for disclosure of medical records to the subject of those records and would significantly reduce the administrative burden on the Board's Bureau of Retirement Claims. Further, the amendment would afford protection to individuals who have requested access to their medical records where the records concern a medical problem which, if disclosed directly to the individual, could have a harmful effect on that individual. The regulation provides that if the system manager determines that disclosure of the record directly to the individual might be harmful to the individual, the individual will be advised that the record may not be disclosed directly to him or her, but that the record could be furnished to a physician selected by the individual. The procedure would comport with the individual access requirement of the Privacy Act while retaining the restrictions imposed under section 12(n) of the Railroad Unemployment Insurance Act, as incorporated into the Railroad Retirement Act by section 7(b)(3) thereof, with regard to the confidentiality of medical records.

EFFECTIVE DATE: April 12, 1978.

FOR FURTHER INFORMATION CONTACT:

R. F. Butler, Secretary, Railroad Retirement Board, 844 Rush Street, Chicago, Ill. 60611, 312-751-4920.

Section 200.4(e) (20 CFR 200.4(e)) is revised to read as follows:

§ 200.4 Protection of privacy of records maintained on individuals.

* * * * *

(e) *Special procedures—medical records.* (1) An individual concerning whom the Railroad Retirement Board maintains medical records in a system of records shall, upon written request, be permitted to review such medical records or be furnished copies of such records if the system manager of the system containing the requested records determines that disclosure of the records or any portion thereof would not be harmful to the individual's mental or physical health.

(2) If, upon review of the medical records requested, the system manger determines that disclosure of such records or any portion thereof might be harmful to the individual's mental or physical health, he shall inform the individual that copies of the records may be furnished to a physician of the individual's own choosing. If the individual should select a physician to conduct such a review and direct the Board to permit the physician to review the records, the system man-

ager shall promptly forward copies of the records in question to that physician. The system manager shall inform the physician that the records are being provided to him or her for the purpose of making an independent determination as to whether release of the records directly to the individual who has requested them might be harmful to that individual. The physician shall also be informed that if, in his or her opinion, direct disclosure of the records would not be harmful to the individual's mental or physical health, he or she may then provide the copies to the individual. The physician shall further be informed that should he or she determine that disclosure of the records in question might be harmful to the individual, such records shall not be disclosed and should be returned to the Board, but the physician may summarize and discuss the contents of the records with the individual.

(3) The special procedure established by paragraph (e) of this section to permit an individual access to medical records pertaining to himself or herself shall not be construed as authorizing the individual to direct the Board to disclose such medical records to any third parties, other than to a physician in accordance with paragraph (e)(2) of this section. Medical records shall not be disclosed by the Board to any entities or persons other than the individual to whom the record pertains or his or her authorized physician regardless of consent, except as permissible under paragraphs (h)(1) (i), (iii), and (viii) of this section and as provided under paragraph (e)(4) of this section.

(4) Notwithstanding the provisions of paragraphs (e) (1), (2), and (3) of this section and of paragraph (d) of this section, if a determination made with respect to an individual's claim for benefits under the Railroad Retirement Act or the Railroad Unemployment Insurance Act is based in whole or in part on medical records, disclosure of or access to such medical records shall be granted to such individual or to such individual's representative when such records are requested for the purpose of contesting such determination either administratively or judicially.

(5) The procedures for access to medical records set forth in paragraph (e) of this section shall not apply with respect to requests for access to an individual's disability decision sheet or similar adjudicatory documents, access to which is governed solely by paragraph (d) of this section.

* * * * *

Dated: April 18, 1978.

By Authority of the Board.

R. F. BUTLER,
Secretary of the Board.

[FR Doc. 78-11172 Filed 4-24-78; 8:45 am]

[4110-03]

Title 21—Food and Drugs

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

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Lasalocid With Bacitracin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a new animal drug application (NADA) submitted by Hoffmann-La-Roche, Inc., providing for use of a medicated chicken feed containing lasalocid and bacitracin to increase the rate of weight gain, improve feed efficiency, and prevent coccidiosis in broilers and fryers.

EFFECTIVE DATE: April 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-147), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: Hoffmann-LaRoche, Inc., Nutley, N.J. 07110, filed NADA 107-996V proposing safe and effective use of lasalocid and bacitracin in medicated chicken feed for broilers and fryers in order to increase the rate of weight gain, improve feed efficiency, and prevent coccidiosis.

Approval of this application does not constitute a reaffirmation of the underlying human safety data for bacitracin methylene disalicylate.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of the safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 558 is amended as follows:

1. In § 558.76, by adding new paragraph (e)(3)(viii) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(e) * * *

(3) * * *

(viii) With lasalocid sodium in accordance with § 558.311.

2. In § 558.311, by adding new item (4) to the table in paragraph (e) to read as follows:

§ 558.311 Lasalocid sodium.

* * * * *

(e) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	* *	* *	* *	
(4) 68 (0.0075 percent)..	Bacitracin 10 to 50.	For prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain and improved feed efficiency.	For broiler or fryer chickens only; feed continuously as the sole ration; withdraw 3 days before slaughter; bacitracin methylene disalicylate provided by No. 046573 in § 510.600(c) of this chapter.	000004

Effective date: This regulation becomes effective April 25, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: April 18, 1978.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-11131 Filed 4-24-78; 8:45 am]

[4410-01]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

PART 2—PAROLE, RELEASE, SUPERVISION, AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS AND JUVENILE DELINQUENTS

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The Commission is eliminating a rule which permitted reconsideration by the entire Commission of any action taken by the Commission's National Appeals Board, upon the petition of any three Commissioners. The rule was originally adopted with the intent of ensuring that differences between the Regional Commissioners and the National Appeals Board in deciding individual cases did not develop into a divergency of general paroling policy within the Commission. Specific criticism of the rule has subsequently persuaded the Commission that any attempt to resolve policy differences in the context of individual cases is overly cumbersome and can appear to cause unfairness, and that the Commission's bimonthly business meetings would be the proper forum to resolve such problems if they arise in the future.

EFFECTIVE DATE: May 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael A. Stover, Office of the General Counsel, United States Parole Commission, 320 First Street NW., Washington, D.C. 20537; telephone 202-724-3092.

SUPPLEMENTARY INFORMATION: In order to prevent any confusion as to the effect of this rule change in individual cases, no further actions under 28 CFR section 2.54(b) will be commenced after April 20, 1978. Actions commenced on or before April 20, 1978, will continue to be processed according to the rule as it presently stands. (The commencement of an action under section 2.54(b) shall be interpreted for this purpose as the signing and dating of a petition to the Chairman for reopening by the Commissioner originating the petition.) Since there is a thirty day limitation on actions under this rule, such actions will be completed by the effective date of this change.

Accordingly, pursuant to 18 U.S.C. § 4203(a)(1) and § 4204(a)(6), Title 28, Code of Federal Regulations, section 2.54 is amended by the deletion of the entire text of subsection (b) as well as the designations "(a)" and "(b)". The text of subsection (a) then becomes the entire text of § 2.54. The title of that section is amended accordingly to read as follows: Reviews pursuant to 18 U.S.C. 4215.

Dated: April 20, 1978.

CECIL C. MCCALL,
Chairman,
U.S. Parole Commission.

[FR Doc. 78-11167 Filed 4-24-78; 8:45 am]

[4510-29]

Title 29—Labor

CHAPTER XXV—PENSION AND WELFARE BENEFIT PROGRAMS, DEPARTMENT OF LABOR

SUBCHAPTER G—ADMINISTRATION AND ENFORCEMENT UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

Regulations Governing Requests by Participants, Beneficiaries, or Fiduciaries for the Secretary of Labor To Exercise Enforcement Authority

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Interim rule.

SUMMARY: This document announces the adoption of an interim rule and solicits public comments on whether the interim rule should be made permanent. This interim rule sets forth the procedure by which participants, beneficiaries, or fiduciaries of certain employee benefit plans may request the Secretary of Labor to exercise his authority to enforce certain provisions of the Employee Retirement Income Security Act of 1974 (the Act). This interim rule will affect participants, beneficiaries and fiduciaries of employee benefit plans subject to title I of the act and qualified under certain provisions of the Internal Revenue Code of 1954.

DATES: Effective date.—Retroactively from January 1, 1975. Comments due on or before June 26, 1978.

ADDRESS: Submit written data, views, or arguments (at least six copies) to: Proposed Civil Enforcement Regulation, Room C-4526, Office of Regulatory Standards and Exceptions, pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216. All written submissions will be open to public inspection at: Public Documents Room, Pension and Welfare Benefit Programs, Department of labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Sherwin Kaplan, Office of the Solicitor, Plan Benefits Security Division, 202-523-8619 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of Labor has adopted interim regulation § 2560.502-1, effective January 1, 1975, and proposes this regulation for permanent adoption. Under the act the Secretary of Labor (the Secretary) has primary responsibility for civil enforcement of title I. However, with regard to a violation of, or the enforcement of, parts 2 and 3 of title I (concerning minimum standards for participation, vesting and benefit accrual, and funding), the Secretary may exercise his civil enforcement authority under section 502(a)(5) of the act with respect to certain employee benefit plans qualified under the Internal Revenue Code of 1954 (or with respect to which an application to so qualify has been filed and has not been finally determined) only if requested by the Secretary of the Treasury or if one or more participants, beneficiaries, or fiduciaries of such plan so request in writing in a manner prescribed by the Secretary. Civil enforcement authority pursuant to ERISA section 502(a)(5) may be exercised by the Secretary pursuant to such requests with respect to such plans only if he determines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries under the plan.

This regulation prescribes the manner in which requests for enforcement pursuant to section 502(b)(2) of the act are to be made and considered. Such requests shall be in writing, shall contain information from which the participant, beneficiary or fiduciary and the plan can be identified, and shall be directed to an office or official within the Department of Labor or referred to such office or official by any party to whom such writing is directed.

The regulation contained in this document is adopted on an interim basis effective retroactively to January 1, 1975, and is proposed for final adoption pursuant to authority provided in sections 502(b)(2) and 505 of the act (29 U.S.C. 1132(b)(2) and 1135). The reason for making this regulation effective immediately on a temporary basis is because of the harm which might result to plans and their participants and beneficiaries if the Secretary delays enforcement actions based on requests previously or hereafter

made pursuant to section 502(b)(2). For the foregoing reason, the undersigned finds that good cause exists for making this regulation temporarily effective without advance publication, as specified in the Administrative Procedure Act (5 U.S.C. 553(d)(3).)

Accordingly, Chapter XXV of Title 29 of the Code of Federal Regulations is amended by adding § 2560.502-1 to read as follows:

§ 2560.502-1 Requests for enforcement pursuant to section 502(b)(2)

(a) *Form, content, and filing.* All requests by participants, beneficiaries, and fiduciaries for the Secretary of Labor to exercise his enforcement authority pursuant to section 502(a)(5), 29 U.S.C. 1132(a)(5), with respect to a violation of, or the enforcement of, Parts 2 and 3 of Title I of the Employee Retirement Income Security Act of 1974 (act) shall be in writing and shall contain information sufficient to form a basis for identifying the participant, beneficiary or fiduciary and the plan involved. All such requests shall be considered filed if they are directed to and received by any office or official of the Department of Labor or referred to and received by any such office or official by any party to whom such writing is directed.

(b) *Consideration.* The Secretary of Labor retains discretion to determine whether any enforcement proceeding should be commenced in the case of any request received pursuant to paragraph (a) of this section, and he may, but shall not be required to, exercise his authority pursuant to section 502(a)(5) of the act only if he determines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries to benefits under the plan.

(Secs. 502(b)(2) and 505, Pub. L. 93-406, 88 Stat. 829, 891, 894 (29 U.S.C. §§ 1132(b)(2) and 1135).)

Effective date: Retroactively from January 1, 1975.

Signed at Washington, D.C., this 18th day of April 1978.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-11028 Filed 4-24-78; 8:45 am]

[4810-25]

Title 31—Money and Finance: Treasury

SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY

PART O—STANDARDS OF CONDUCT

Engagements To Speak, Write, or Teach

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule is an amendment to the Department's minimum standards of conduct. The amendment is concerned with the acceptance of honoraria or reimbursements for expenses relating to teaching, writing, lecturing, and speechmaking, and is intended to clarify the Department's position in this area. Under the amendment, the acceptance of honoraria or other compensation for teaching, writing, lecturing, or speechmaking on matters relating to Treasury business undertaken in an employee's private capacity is discouraged, even though the activity is not performed as an official duty. Prior approval must be obtained before compensation may be accepted. If the activity is undertaken as an official duty, all expenses will be borne by the Treasury Department, and no other compensation may be accepted by the employee. However, an employee may accept reimbursement for actual expenses from organizations determined by the Secretary to be tax exempt, as described in 26 U.S.C. 501(c)(3), if no Government reimbursement is made for the expense, and the acceptance of payment is consistent with the Department's policy of eliminating any conflict of interest or appearance of a conflict of interest with an employee's official duties.

EFFECTIVE DATE: This amendment takes effect on April 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Jordan Luke, Special Assistant to the General Counsel, Office of the General Counsel, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220, 202-566-2914.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 735.104, this amendment has been submitted to, and approved by the Civil Service Commission.

NOTE.—The Department of the Treasury has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

The Department finds that the requirements of 5 U.S.C. 553 (b) and (d) can be dispensed with since the amendment is a matter relating to agency management and personnel within the meaning of 5 U.S.C. 553(a).

Accordingly, 31 CFR Part O is amended as follows:

1. By revising paragraphs (a), (b), and (c) of § 0.735-39 to read as follows:

§ 0.735-39 Teaching, writing, lecturing, and speechmaking.

(a) Employees may teach, write, lecture, or deliver speeches providing such action is not prohibited by law, Executive Order 11222, 5 CFR Part 735, or the regulations in this part. The requirements prescribed in § 0.735-38 also apply to engagements to teach, write, lecture, or deliver speeches. However, an employee shall not, either with or without compensation, engage in teaching, writing, lecturing, or speechmaking (including teaching, writing, lecturing, or speechmaking, for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service) that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when an appropriate approving official gives written authorization for use of nonpublic information on the basis that the use is in the public interest. A formal speech, a lecture, or an article relating to Treasury Department business shall, prior to its release to the public, be submitted to the appropriate approving official and, in the Office of the Secretary, the Assistant Secretary (Public Affairs).

(b)(1) *Determinations by the appropriate approving official.* If the subject matter of any teaching, writing, lecturing, or speechmaking activity is devoted to the responsibilities, programs, or activities of the Department, or draws upon official data or ideas which have not been made public, the appropriate approving official will determine whether the activity may be undertaken, and if so, whether as official duty or in a private capacity. In determining whether the activity is an official duty or private undertaking, the appropriate approving official will consider, among other factors, whether the activity will be performed during official hours, whether Government time or facilities will be utilized, whether the official title of the employee will be used, and whether the activity would justify the expenditure of public funds.

(2) *Activities undertaken as an official duty.* If the activity is undertaken as an official duty, all expenses will be borne by the Treasury Department,

and the employee may not accept any honorarium or other compensation or permit payment of his or her expenses. However, under 5 U.S.C. 4111 and 5 CFR Part 410, an employee on official duty may accept reimbursement for actual travel and reasonable lodging and subsistence expenses from organizations determined by the Secretary to be tax exempt, as described in 26 U.S.C. 501(c)(3), if no Government payment or reimbursement is made for the expense, and the acceptance of the payment is consistent with the Department's policy of eliminating any conflict of interest or appearance of a conflict of interest with his or her official duties and responsibilities.

(3) *Activities undertaken in a private capacity.* (i) The Treasury Department discourages employees from receiving honoraria or other compensation for teaching, writing, lecturing, or speechmaking on matters relating to Treasury business, even though the activity is not performed as an official duty. An employee may not receive any such compensation unless, before engaging in the activity, a written request is submitted to and approved by the appropriate approving official. The request should set forth the facts relating to the amount of compensation, its reasonableness (taking into account the amount of compensation paid to others under similar circumstances), and also indicate why its acceptance would be consistent with the Department's policy to eliminate any conflict of interest or appearance of a conflict of interest with the employee's official duties and responsibilities. Presidential appointees shall obtain the personal written approval of the Secretary before engaging in any such activity for compensation.

(ii) Employees may accept payment from the person or group sponsoring an activity determined not to be an official duty for travel, lodging, and subsistence expenses actually incurred, if the payment is reasonable in amount and otherwise consistent with the Department's policy to eliminate any conflict of interest or appearance of a conflict of interest with the official duties and responsibilities of the employee. Presidential appointees shall obtain the personal written approval of the Deputy Secretary or Secretary before accepting any such payment.

(4) *Excess expenses.* Nothing in subsection (b)(2) or subsection (b)(3)(ii) prohibits an employee from incurring expenses, in connection with the activity, that are not reimbursable under that subsection. However, payment or reimbursement of such excess expenses shall not be accepted or permitted, except by a person who: (i) Is a relative or close personal friend, and (ii) makes such payment solely from personal funds. Any payment or reimbursement under this subsection shall be subject to the rules of this part pertaining to gifts and gratuities.

(5) *Reporting requirements.* All employees receiving compensation or reimbursement for expenses for teaching, writing, lecturing, or speechmaking devoted to the responsibilities, programs or activities of the Department or drawing upon official data or ideas which have not been made public, shall immediately submit a written report to the appropriate approving official stating the amounts paid and by whom, unless this information was previously provided to that official. In addition, the employee may be required by the appropriate approving official to furnish other relevant information concerning these payments.

(6) *Other restrictions.* (i) Under 5 CFR 735.203(c), the Secretary of the Treasury may not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Treasury Department, or which draws substantially on official data or ideas which have not been made public.

(ii) Under 46 Comp. Gen. 689 (1967), no reimbursement or donation may be made to the Treasury Department to cover the expenses of travel and subsistence of an employee on official business, unless specifically authorized by law.

(iii) Under 2 U.S.C. 441i, appointed officials are prohibited from receiving honorariums of more than $2,000 for any appearance, speech, or article, and from receiving honorariums aggregating more than $25,000 in any calendar year.

(c) For purposes of this section, the "appropriate approving official" shall be in the case of employees within a bureau, the bureau head or deputy; in the case of employees within an office, the office head or deputy; and in the case of a bureau or office head, the official who directly supervises the bureau or office head to whom such official reports pursuant to Treasury Department Order No. 190.

WILLIAM J. BECKHAM, Jr.,
Assistant Secretary
(Administration).

[FR Doc. 78-11200 Filed 4-24-78; 8:45 am]

[4910-06]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Emergency Order No. 7; Notice No. 2]

REMOVAL OF HIGH CARBON CAST STEEL WHEELS FROM SERVICE; INTERIM RESTRICTIONS ON THEIR USE

Amendment of Emergency Order

APRIL 19, 1978.

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Amendment of emergency order.

SUMMARY: FRA is amending paragraph 8 of Emergency Order No. 7 published March 27, 1978 (43 FR 12691) to provide more flexibility in the timing and method of destroying 70-ton one percent carbon cast steel wheels (commonly referred to as "70T U-1 wheels"). If these wheels are not demounted from the axle immediately after they have been removed from under a car, they must be stenciled "Scrap FRA EO 7". When these wheels are demounted from the axle, they must be made permanently unusable by cutting a hole through the plate, notching the hub or by some other destructive and disfiguring measure. FRA believes that this amendment will provide railroads with sufficient flexibility to provide for the safety of their employees and at the same time make certain that none of these wheels is ever returned to service.

EFFECTIVE DATE: April 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Principal Program Person: Rolf Mowatt-Larssen, Office of Safety, Federal Railroad Administration, Washington, D.C. 20590, 202-426-0924.

Principal Attorney: Edward F. Conway, Jr., Office of Chief Counsel. Federal Railroad Administration, Washington, D.C. 20590, 202-426-8836.

SUPPLEMENTARY INFORMATION: On March 27, 1978, the FRA issued Emergency Order No. 7 (43 FR 12691) under section 203 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 432). This emergency order restricts the use of freight cars with "70T U-1 wheels", prescribes a mandatory program for locating those wheels and removing them from under cars, and requires that all these wheels be found

and removed from service before January 1, 1979.

Paragraph 8 of Emergency Order No. 7 now provides that each railroad shall immediately destroy "70T U-1 wheels" by cutting a hole through the plate of each wheel. Since the issuance of the emergency order, a number of railroads have expressed concern that this procedure may endanger railroad employees. They indicated that a "stressed" or brittle wheel which has been further weakened by such a hole, may shatter violently while it is being demounted from the axle. One carrier reported a recent incident in which this occurred. Fortunately, no one was injured in this incident.

The purpose of Paragraph 8 of Emergency Order No. 7 is to assure that none of these wheels will ever be returned to service. Cutting a hole through the plate provides this assurance; stenciling of the wheel does not. Stenciling can be removed after a railroad has sold the wheels as scrap and the wheel might subsequently be returned to service. On the other hand, the safety of railroad employees engaged in removing these wheels must also be assured.

Accordingly, FRA has decided to amend Paragraph 8 of Emergency Order No. 7 to provide that if the wheels are not immediately demounted from the axle when they are removed from under a car, the back plate of each wheel shall be stenciled in white letters at least two inches high "Scrap FRA EO 7". However, immediately after the wheel is demounted from the axle, the wheel must be made permanently unusable by cutting a hole through the plate, notching the hub or by some other destructive and disfiguring measure.

FRA believes that this amendment will provide railroads with sufficient flexibility to provide for the safety of their employees and at the same time make certain that none of these wheels is ever returned to service.

Therefore, pursuant to the authority of section 203 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 432), delegated to the Federal Railroad Administration by the Secretary of Transportation (49 CFR 1.49(n)), it is hereby ordered that paragraph 8 of Emergency Order No. 7 (43 FR 12691) be amended to read as follows:

8. Each railroad shall immediately destroy its supply of "70T U-1 wheels" in addition to those it removes from cars. This shall be accomplished in the following manner: (a) the back plate of each wheel that is not immediately demounted from the axle shall be stenciled in white letters at least two inches high ("Scrap FRA EO 7"); and (b) immediately after each wheel is demounted from the axle, the wheel shall also be made permanently unusable by cutting a hole through the plate, notching the hub or by some other destructive and disfiguring measure.

Issued in Washington, D.C. on April 19, 1978.

JOHN M. SULLIVAN,
Administrator.

[FR Doc. 78-11233 Filed 4-24-78; 8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

Editorial Amendments Concerning Authorized Classes of Emission

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Commission is editorially amending its rules to indicate that F1 type emissions are permissable on certain frequencies. The Commision earlier modified its rules to permit narrow-band direct-printing but inadvertently failed to include the proper class of emission in its rules. This action will correct that error.

EFFECTIVE DATE: May 3, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Kemp J. Beaty, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION:

Adopted: April 18, 1978.

Released: April 18, 1978.

In the matter of editorial amendment of §81.132 of the Commission's rules. Order.

1. The Commission has provided for the use of narrow-band direct-printing for stations in the Maritime Services. Inadvertently, the authorized class of emission, F1, was not included in the appropriate section of the Commission's rules.

2. Accordingly, Section 81.132(a)(1) of the Commission's rules is being amended to include F1 emission. Authority for this amendment is contained in Sections 4(i) and 303 (c) and (r) of the Communications Act of 1934, as amended, and Section 0.231(d) of the Commission's rules. Since the amendment is editorial in nature the public notice, procedure and effective date provisions of 5 U.S.C. 553 do not apply.

3. In view of the above, *it is ordered*, That the rule amendment set forth in the attached appendix is adopted effective May 3, 1978.

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

FEDERAL COMMUNICATIONS COMMISSION,
R. D. LICHWARDT,
Executive Director.

Part 81 of Chapter I of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES

1. In Section 81.132, paragraph (a)(1) is amended to read as follows.

§81.132 Authorized classes of emission.

(a) * * *

Frequency band	Classes of emission
(1) Coast stations using telegraphy:	
14 to 160kHz.....	A1.
160 to 490 kHz.....	A1; A2 or A2H for distress, urgency and safety signals or any communication preceded by one of these signals.
490 to 535 kHz.....	A1 and A2 or A2H.
2035 to 27,500kHz	A1 on frequencies listed in §81.206; F1 on frequencies listed in §81.204(c); and only as authorized by the Commission on frequencies listed in §81.206.

* * * * *

[FR Doc. 78-11177 Filed 4-24-78; 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.

[6325-01]

CIVIL SERVICE COMMISSION

[5 CFR Part 890]

FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Miscellaneous Amendments

AGENCY: Civil Service Commission.

ACTION: Proposed rules.

SUMMARY: The Civil Service Commission proposes to amend its Federal employees health benefits program regulations. The amendments will correct certain inequities in the current regulations and include certain omissions. In addition, these amendments will greatly improve the Commission's administration of the Federal employees health benefits program.

DATE: Comments must be received on or before June 26, 1978.

ADDRESS: Comments should be directed to Thomas A. Tinsley, Director, Bureau of Retirement, Insurance, and Occupational Health, Civil Service Commission, 1900 E Street NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

Edward G. Borchers, 202-632-4684, Bureau of Retirement, Insurance, and Occupational Health, Office of Policy Development and Technical Services, Room 4334, 1900 E Street NW., Washington, D.C. 20415.

SUPPLEMENTARY INFORMATION:

Comprehensive Medical Plan

The proposed amendment of § 890.201(a)(8) of the regulations would substitute the words "a comprehensive medical plan" for the words "a group-practice plan." This will permit both group-practice and individual-practice plans to follow such financial procedures as are mutually agreed on by the Commission and the carrier, with respect to the allocation of the special reserve. The effect of this exemption will be to allow those individual- and group-practice plans which are community rated to practice cost-containment through the use of monetary incentives.

The proposed amendment of § 890.503(c)(4) of the regulations would substitute the words "comprehensive medical plan" for the words "group-practice plan." Under present regulations the Commission may approve community rating only for group-practice and not for individual-practice plans. The amendment would permit the Commission to approve community rating for both kinds of comprehensive plans when warranted by the organizational and financial structures of the health plan.

Benefit Limits

The proposed amendment of § 890.201(b) of the regulations would delete subsection (6) from the regulations. Section 890.201(b)(6) allows health plans, with the approval of the Commission, to limit benefits for services received by a person who, on the effective date of enrollment or change of enrollment, is confined in a hospital or other institution so long as the person is continuously confined therein.

Pub. L. 93-222 (the Health Maintenance Organizations Act of 1973), does not permit a "qualified HMO" to limit benefits for subscribers confined on the effective date of their coverage. With the number of "qualified HMO's" who are participating in the Federal employees health benefit program continuously growing, the Commission recognizes that by permitting other "nonqualified" plans to impose such limitations, it would be placing the "qualified HMO's" in an adverse selection position. The effect of the deletion of this section will be to require all health plans to provide full plan benefits to enrollees upon the effective date of enrollment.

Registration and Enrollment Changes

The proposed amendment of § 890.301(n) of the regulations would add the words "with a high option enrollment" to the section and, in addition, substitute the words "the low option of any plan when he or she become eligible for Medicare" for the words "low option within the same plan."

Current regulations permit an enrollee to change from high to low option when he or she becomes eligible for medicare. Many of the plans in the Federal employees health benefits (FEHB) program have eliminated the low option. Persons enrolled in these plans must wait until open season to change to a low option although they may become eligible for medicare as much as one year before open season. The proposed amendment would permit enrollees to change to the low option of any plan when they become eligible for medicare.

Also, the proposed amendment to § 890.301 of the regulations would add two new paragraphs to the section. An employee and his or her children can be left without coverage if a spouse cancels his or her self and family enrollment. The proposed amendment would permit an employee to enroll in the same plan and option as was lost when the spouse cancelled his or her enrollment.

There are no provisions under current regulations which permit an employee who loses medicaid (State program of medical assistance for the needy) coverage to enroll in the FEHB program. Persons with medicaid coverage often do not lose this coverage when they enter Federal service at the lower pay levels. As a result, they generally do not enroll in the FEHB program at their first opportunity. Later in Federal service, a promotion or step increase may cause them to lose their entitlement to medicaid coverage because the salary goes above the maximum level for medicaid eligibility. They must then wait, sometimes up to 1 year, for the next open season during which they may enroll in the FEHB program. The proposed amendment will permit these employees, who lose medicaid coverage, to enroll within 31 days after loss of medicaid.

When a husband and wife (both Federal employees) are divorced, one person generally continues a self and family enrollment to protect any children of the marriage while the other enrolls for self only. If the self and family enrollment is later terminated, cancelled, or changed to self only, there is no provision under the present regulations to permit the other employee to change to a self and family enrollment in order to protect the children. The proposed amendment would permit an employee or annuitant to change from self only to self and family if his or her children lost coverage under another FEHB program enrollment.

Coverage of Family Members

The proposed amendment to § 890.302 of the regulations would add a new paragraph. The definition of a family member in 5 U.S.C. 8901 includes an enrollee's unmarried children under age 22 and unmarried children age 22 or over who are incapable of self-support because of a mental of physical disability which existed prior

to age 22. In the past, the Commission has held that once a child marries, coverage under the enrollment cannot be regained in the event that the marriage is terminated by death or divorce. The proposed amendment would reverse this decision and permit such children to be covered under a family enrollment.

MILLITARY SERVICE

The proposed amendment to § 890.305 of the regulations adds a new subparagraph (b) to that section. An enrolled employee or annuitant who goes on active duty military service of more than 30 days has his or her enrollment terminated upon entry into military service and reinstated when restored to the civilian position (employee) or separated from military service (annuitant). There are no provisions to permit an employee, who retires from a civilian position while on active duty military service of more than 30 days, to have FEHB coverage as an annuitant after separation from military service. The proposed amendment would correct this omission.

EFFECTIVE DATES

The proposed amendment to § 890.306 of the regulations would substitute the word "day" for "first day of the first pay period after" in paragraph (a); substitute "(q)" for "(p)" on paragraph (b); substitute the words "January 1 of the next following year" for "the first day of the first pay period which begins in January of the next following year, except that a change in enrollment for the open season for employees ending April 14, 1972, and for annuitants ending April 30, 1972, is effective on the first day of the first pay period which begins after April 14, 1972" in paragrpah (c)(1); and, substitute the words "(i) January 1 of the next following year if the employee is in a pay status, or (ii) the first day in pay status after January 1 of the next following year, whichever is earlier" for "the first day of the first pay period which begins in the next following year and which follows a pay period during any part of which the employee is in pay status, except that the effective date of a new enrollment for the open season ending April 14, 1972, is the first day of the first pay period which begins after April 14, 1972, and which follows a pay period during any part of which the employee is in pay status" in paragraph (c)(2).

With the exceptions of FEHB open season enrollments and changes, an enrollment or change is generally effective on the first day of the next pay period if the employee is in a pay status during any part of the pay period in which the FEHB enrollment form is received by the employing office. This can be from 1 to 30 days after the form is received. This delay in coverage causes a period of time during which an employee may be put in financial jeopardy because he or she is temporarily without health insurance. The Commission has determined that it is in the best interest of the Government and its employees to make the effectice date of an enrollment or change in enrollment the day the form is received in the employing office. This is presently the practice with the optional life insurance under the Federal employees group life insurance program. Agencies will have to prorate premiums for portions of pay periods using daily premium rates provided by the Commission.

The effective date of an open season enrollment or change in enrollment is generally the first day of the first pay period which begins on or after January 1 of the next following year. As a result, some open season enrollments can become effective as early as January 1 and as late as January 14. Since many plans have a calendar year deductible, a person changing from one plan to another may have to meet two deductibles. The proposed amendment would make the effective date of an open season change January 1, eliminating the requirement of a person meeting two deductibles because of an open season change. Agencies will have to prorate premiums for portions of pay periods using daily premium rates provided by the Commission.

Under current regulations, an employee enrolled for self only who has a baby cannot change to a family enrollment (providing coverage for the newborn) until after the infant's birth. As a result, expenses of the child incurred between birth and the effective date of the change to family coverage must be borne entirely by the employee. At least one State mandates coverage for newborn infants for the first 30 days of their lives regardless of the type of enrollment the parent has. To meet the needs of employees who wish to cover their children from the moment of birth, and to counter most of the problems imposed on carriers by State laws on this subject, the proposed amendment would make the effective date of a change to self and family the date the child is born. It would also permit an employee, who acquires a child in any other manner (such as adoption or legal guardianship), to provide immediate coverage for the child.

Accordingly it is proposed to amend 5 CFR as follows:

1. Section 890.201 is revised by amending (a)(8) and revoking (b)(6) as follows:

§ 890.201 Minimum standards for health benefits plans.

(a) To be qualified to be approved by the Commission, a health benefits plan shall:

* * * * *

(8) Provide for a special reserve for the plan. The carrier shall account for the amounts retained by it as reserves for the plan separately from reserves maintained by it for the other plans. The carrier shall invest the special reserve and income derived from the investment of the special reserve shall be credited to the special reserve. If the contract is terminated or approval of the plan is withdrawn, the carrier shall return the special reserve to the employees health benefits fund. However, in the case of a comprehensive medical plan, the carrier, without regard to the foregoing provisions of this subparagraph, shall follow such financial procedures as are mutually agreed on by the carrier and the Commission.

* * * * *

(b) * * *

(6) [Revoked]

2. Section 890.301 is revised by adding (g)(4), amending (n) and adding (t) and (u) as set out below:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * * *

(g) *Loss of coverage under Federal programs.* * * *

(4) An employee who is not enrolled, but is covered by the enrollment of another under this part, may register to be enrolled in the same plan and option within 31 days after cancellation of the other's enrollment.

* * * * *

(n) *On becoming eligible for benefits under Title XVIII of the Social Security Act.* An enrolled employee or annuitant with a high option enrollment may register, at any time after he or she meets statutory requirements for eligibility under Title XVIII of the Social Security Act, to change his or her enrollment to the low option of any plan under this part.

* * * * *

(t) *Loss of medicaid coverage.* An employee who is not enrolled, but is covered by medicaid (State program of medical assistance for the needy), may register to be enrolled within 31 days after termination of medicaid.

(u) *Child's coverage ends.* An employee or annuitant may register to change enrollment from self only to self and family within 31 days after an

eligible child loses coverage of another enrollment under this part.

3. Section 890.302(e) is added as set out below:

§ 890.302 Coverage of family members.

* * * * *

(e) *Meaning of unmarried.* A child, under age 22 or incapable of self-support, who is divorced or widowed is considered to be unmarried.

4. Section 890.305 is revised to read as follows:

§ 890.305 Reinstatement of enrollment after military service.

(a) The enrollment of an employee or annuitant whose enrollment was terminated because he or she entered on duty in a uniformed service for a period of time not limited to 30 days or less is reinstated automatically on the day the employee is restored to a civilian position pursuant to Part 353 of this chapter or other similar authority or on the day the annuitant is separated from the uniformed service, as the case may be.

(b) The enrollment of an employee whose enrollment was terminated because he or she entered on duty in a uniformed service for a period of time not limited to 30 days or less, and who retires on an immediate annuity from his or her Federal civilian position while on such duty, is reinstated automatically on the day the person is separated from the uniformed service, provided he or she was covered under this part since his or her first opportunity or for the 5 years of civilian service (excluding the period of uniformed service) immediately preceding the civilian retirement, whichever, is shorter.

5. Section 890.306 is revised to read as follows:

§ 890.306 Effective dates.

(a) *Change to self alone.* The effective date of a change of enrollment under § 890.301(f) is the day the health benefits registration form is received by the employing office, except that at the request of the employee or annuitant and upon a showing satisfactory to the employing office that there was no family member eligible for coverage by the family enrollment, the change may be made effective as of the first day of the pay period following the one in which there were no family members.

(b) *Annuitant required to change enrollment.* The effective date of an annuitant's change to a lower cost enrollment under § 890.301(q) is immediately upon termination of his or her prior enrollment.

(c) *Open season.* The effective date of a change in enrollment under section 890.301(d) is January 1 of the next following year.

(2) The effective date of a new enrollment under section 890.301(d)(1) is:

(i) January 1 of the next following year if the employee is in a pay status, or

(ii) The first day in pay status after January 1 of the next following year, whichever is earlier.

(d) *Generally.* The effective date of any other enrollment or change of enrollment is the day of the health benefits registration form is received by the employing office, except:

(1) That such enrollment or change cannot become effective until the first day in a pay status for a person whose form is received by the employing office while he or she is in nonpay status;

(2) That enrollment under § 890.301(s) may be effective: (i) On a prospective basis, namely the first day the Commission receives the health benefits registration form, or (ii) on a retroactive basis, namely the date of restoration of survivor annuity or October 1, 1976, whichever is later;

(3) That if a change in enrollment is due to the acquisition of a family member, the change is effective the day the family member is acquired.

6. Section 890.503(c)(4) is revised as follows:

§ 890.503 Reserves.

* * * * *

(c) * * *

(4) The Commission may, by agreement with the carrier, approve community rating for a comprehensive medical plan. If the contingency reserve of the carrier of a community rated plan exceeds the preferred minimum balance, the carrier may request the Commission to pay a portion of the reserve not greater than the excess of the contingency reserve over the preferred minimum balance. The carrier shall state the reason for the request. The Commission will decide whether to allow the request in whole or in part and will advise the plan of its decision.

(5 U.S.C. 8913.)

For the U.S. Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-11176 Filed 4-24-78; 8:45 am]

[3410-30]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Part 210]

NATIONAL SCHOOL LUNCH PROGRAM

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National School Lunch Program regulations to implement the amendment of section 10 of the Child Nutrition Act of 1966 by section 17 of Pub. L. 95-166, respecting the sale of foods in competition with lunches served under the National School Lunch Program. Competitive foods that are not approved by the Secretary of Agriculture for sale to children on school premises until after the last lunch period are defined.

DATES: To be assured of consideration comments must be received on or before June 9, 1978.

ADDRESS: Comments should be sent to: Margaret O'K. Glavin, Acting Director, School Programs Division, USDA, FNS, Washington, D.C. 20250, 202-447-8130.

FOR FURTHER INFORMATION CONTACT:

Margaret O'K. Glavin, Acting Director, School Programs Division, USDA, FNS, Washington, D.C. 20250, 202-447-8130.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In 1970, section 10 of the Child Nutrition Act of 1966 was amended by Pub. L. 91-248 to give the Secretary of Agriculture the authority to prescribe regulations relating to food services in competition with nonprofit programs authorized under the Child Nutrition Act and the National School Lunch Act. Federal regulations were then amended to limit the types of food items sold in food service facilities and areas during the time the nonprofit food service was in operation to those items making a contribution to, or served as part of the school lunch or breakfast. Section 10 was further amended in 1972 by Pub. L. 92-433 and the implementing regulations placed the authority for regulation of competitive foods with State agencies and School Food Authorities. These local officials were allowed to establish such instructions as were necessary to control the sale of competitive foods, provided that any such sales of foods in food service facilities or areas during the time or service of program meals would inure to the benefit of the school's nonprofit lunch and breakfast programs or to the school or to stu-

dent organizations approved by the school.

Since the passage of these laws, parents, food service personnel, nutritionists, school administrators, teachers, physicians and members of Congress have had a growing concern about the sale of competitive foods in schools. The Department shares this concern. This has led to the belief that the sale of low nutrient per calorie density foods prior to or during meal periods may contribute substantially to increased plate waste, reduced participation in the programs, and a general decline in the consumption of nutritious foods in schools.

Under the provisions of Pub. L. 92-433, a few States and localities have been able to prohibit the encroachment of foods sold in competition with school meals. However, through its passage of Pub. L. 95-166, Congress expressed its view that what is needed is the force and effect of the Secretary's regulatory power. Public Law 95-166, while not prohibiting the sale of competitive foods, makes their sale dependent upon the approval of the Secretary.

PROPOSED CHANGE

In compliance with Pub. L. 95-166 and in furtherance of the objective to preserve the nutritional integrity of the school nutrition programs, the Secretary is proposing to specify competitive foods which are not approved. It is proposed that competitive foods not approved by the Secretary would be prohibited from being sold to children on school premises until after the last lunch period. It is not the intention of the Department to ban large numbers of competitive food items or to prohibit the sales of all foods from vending machines. We are aware that many nutritious food items such as fruits, soups, sandwiches, ice cream and other items are sold as competitive foods, and sometimes from vending machines. We have no intention of taking action to stop the sale of such items. The intent of the proposed regulation is to prohibit the sale of only those foods that do not make a positive nutritional contribution in terms of their overall impact on children's diets, dietary habits and appetites.

After careful review and consideration, the Department is proposing to ban the following categories of foods: soda water, frozen desserts, candy and chewing gum. The Department is proposing to define candy and chewing gum and will base the definitions of the remaining foods on applicable sections of regulations issued by the Food and Drug Administration (FDA). These Food and Drug Administration regulations appeared in the FEDERAL REGISTER, Volume 42, Number 50, on March 15, 1977. Copies of the excerpted FDA regulations which define the foods on the banned competitive food list can be obtained from: Margaret O'K. Glavin, Acting Director, School Programs Division, USDA, FNS, Washington, D.C. 20250.

All persons who desire to comment on the proposed regulations are encouraged to do so during the open public comment period. Because of the Department's desire to publish the final rule prior to August 1, the comment period is limited to 45 days. The Department feels that for the rulemaking to be effective during the 1978-1979 School Year, these regulations must be published prior to August 1, 1978. The Department is also seeking public comments on these proposed provisions as they relate to the School Breakfast Program.

Accordingly, Part 210 would be amended as follows:

1. § 210.2 is amended by adding a new paragraph (c-3) to read as follows:

§ 210.2 Definitions.

* * * * *

(c-3) "Competitive foods approved by the Secretary" means all foods sold to children on school premises until after the last lunch period with the exception of the following items:

(1) Soda water—as defined by 21 CFR 165.175, Food and Drug Administration Regulations.

(2) Frozen desserts—fruit sherbets, nonfruit sherbets, non-fruit water ices, and water ices which contain less than 50 percent full strength juice, as defined by 21 CFR 135.20, 135.65, 135.70, and 135.90, respectively, of the Food and Drug Administration.

(3) Candy—a processed food consisting of sugar, corn syrup or other sweeteners which may be combined with other ingredients such as cacao products, dairy products, egg products, fruits, nuts, flavorings, and colorings, and includes such items as hard candies, creams, jelly and gum-like candies, marshmallows, nougats, fudges, toffees, caramels, panned candies, chocolates, and chocolate coated fruits, nuts, and candies.

(4) Chewing gum—flavored products made from natural or synthetic gums and other ingredients which form an insoluble mass for chewing.

2. § 210.15b is revised to read as follows:

§ 210.15b Competitive food services.

State agencies and School Food Authorities shall establish such relations or instructions as are necessary to control the sale of food in competition with a school's nonprofit food service under the Program. The sale of competitive foods approved by the Secretary may be allowed provided that the proceeds from the sales of such foods inure to the benefit of the school's nonprofit lunch program or to the schools or to student organizations approved by the schools. Foods referred to in § 210.2(c-3), (1), (2), (3) and (4) shall not be sold competitively to children on school premises until after the last lunch period.

(Catalog of Federal Domestic Assistance No. 10,555.)

NOTE.—The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: April 19, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary for Food and Consumer Services.

[FR Doc. 78-11216 Filed 4-24-78; 8:45 am]

[3410-34]

Animal and Plant Health Inspection Service

[9 CFR Part 113]

VIRUSES, SERUMS, TOXINS, AND ANALOGOUS PRODUCTS

Miscellaneous Amendments

AGENCY: Animal and Plant Health Inspection Service (APHIS).

ACTION: Proposed rule.

SUMMARY: This proposed amendment updates 11 sections of the regulations with respect to requirements for detecting extraneous viruses in Master Seed Virus used in the preparation of certain biological products. A new section containing such requirements was recently added to the regulations and published in the FEDERAL REGISTER. Tests for the detection of extraneous viruses which are presently required by the 11 sections, are required to be performed according to the new section by this proposed amendment. This change will make uniform test requirements applicable to all the biological products affected by this proposal. Additionally, it is proposed that one section be amended by adding a reference to a cat safety test to be conducted when vaccines are recommended for use in cats.

DATE: Comments must be received on or before June 26, 1978.

ADDRESS: Interested parties are invited to submit written data, views, or arguments regarding the proposed regulations to: Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 828-A, Federal Building, Hyattsville, Md. 20782.

FOR FURTHER INFORMATION CONTACT:

Dr. R. J. Price, 301-436-8245.

SUPPLEMENTARY INFORMATION: Requirements for detection of ex-

traneous viruses in Master Seed Virus which is used in the preparation of biological products have recently been codified in new § 113.55 of the Standard Requirements (see 43 FR 11145, March 17, 1978). This proposed amendment incorporates these requirements in the Standard Requirements for several products. This is accomplished by either adding a reference to new § 113.55 in the standard being amended, or by making editorial changes which would require the testing of Master Seed Virus for extraneous viruses to be done according to the new section. These editorial changes include deletions, additions, and revisions of the present standards for certain virus products. Additionally, this proposed amendment adds a cat safety test found in § 113.39 to § 113.135, as a general requirement.

The first letter in each word of the headings for sections 113.129, 113.140, 113.141, 113.142, 113.144, 113.145, 113.146, 113.147, and 113.148 are to be capitalized.

1. Section 113.120 would be amended by adding a new subparagraph (c)(4) to read:

§ 113.120 General requirements for killed virus vaccines.

* * * * *

(c) * * *

(4) *Extraneous viruses.* Each lot of Master Seed Virus used to prepare killed virus vaccine recommended for animals other than poultry shall meet the requirements for extraneous viruses as prescribed in § 113.55.

* * * * *

2. § 113.129 would be amended by revising the introductory portion of paragraph (a), by revising paragraphs (a)(1) and (a)(2), and by deleting paragraph (a)(3) to read:

§ 113.129 Rabies vaccine, killed virus.

* * * * *

(a) The Master Seed Virus shall meet the applicable requirements prescribed in § 113.120 and the requirements prescribed in this section.

(1) Each lot of Master Seed Virus propagated in tissue or cells of avian origin shall also be tested for extraneous pathogens by procedures prescribed in § 113.37.

(2) Each lot of Master Seed Virus propagated in primary cell cultures of mouse or hamster origin or brain tissues of mouse origin shall be tested for lymphocytic choriomenigitis (LCM) virus by the procedure prescribed in § 113.42. If LCM virus is detected, the Master Seed Virus is unsatisfactory.

(b) * * *

* * * * *

3. § 113.135 would be amended by adding a new subparagraph (a)(4) and a new subparagraph (b)(4) to read:

§ 113.135 General requirements for live virus vaccines.

* * * * *

(a) * * *

(4) *Extraneous viruses.* Each lot of Master Seed Virus used to prepare live virus vaccine recommended for animals other than poultry shall meet the requirements for extraneous viruses as prescribed in § 113.55.

* * * * *

(b) * * *

(4) All live virus vaccines recommended for use in cats shall be tested for safety in accordance with the test provided in § 113.39.

* * * * *

4. § 113.140 would be amended by deleting and reserving paragraph (b)(3) to read:

§ 113.140 Canine hepatitis vaccine.

* * * * *

(b) * * *

(3) [Reserved]

* * * * *

5. § 113.141 would be amended by revising the introductory portion of paragraph (b)(2), by deleting subparagraphs (b)(2) (i) and (ii) and by deleting paragraph (b)(3) to read:

§ 113.141 Canine distemper vaccine, ferret avirulent.

* * * * *

(b) * * *

(2) Master Seed Virus propagated in chicken embryos shall be tested for pathogens by the chicken embryo test prescribed in § 113.37. If found unsatisfactory, the Master Seed Virus shall not be used.

(c) * * *

* * * * *

6. § 113.142 would be amended by revising the introductory portion of paragraph (b) and deleting paragraphs (b)(1) and (b)(2) to read:

§ 113.142 Canine distemper, ferret virulent.

* * * * *

(b) The lot of Master Seed Virus shall be tested for other viral contaminants as prescribed in § 113.55.

(c) * * *

* * * * *

7. § 113.144 would be amended by revising paragraphs (a) and (b) to read:

§ 113.144 Bovine parainfluenza$_3$ vaccine.

* * * * *

(a) The Master Seed Virus shall meet the applicable general requirements prescribed in § 113.135.

(b) Each lot of Master Seed Virus shall meet the special requirements prescribed in this section.

* * * * *

8. § 113.145 would be amended by revising paragraphs (a) and (b) to read:

§ 113.145 Bovine rhinotracheitis vaccine.

* * * * *

(a) The Master Seed Virus shall meet the applicable general requirements prescribed in § 113.135.

(b) Each lot of Master Seed Virus shall meet the special requirements prescribed in this section.

* * * * *

9. § 113.146 would be amended by revising paragraphs (a) and (b) to read:

§ 113.146 Bovine virus diarrhea vaccine.

* * * * *

(a) The Master Seed Virus shall meet the applicable general requirements prescribed in § 113.135.

(b) Each lot of Master Seed Virus shall meet the special requirements prescribed in this section.

* * * * *

10. § 113.147 would be amended by revising paragraphs (a) and (a)(1) to read:

§ 113.147 Rabies vaccine.

* * * * *

(a) The Master Seed Virus shall meet the applicable general requirements prescribed in § 113.135.

(1) Each lot of Master Seed Virus shall meet the special requirements prescribed in this section.

* * * * *

11. § 113.148 would be amended by revising paragraphs (a) and (b), and by deleting paragraphs (b)(1) and (b)(2) to read:

§ 113.148 Measles vaccine.

* * * * *

(a) The Master Seed Virus shall meet the applicable general requirements prescribed in § 113.135. Each lot of Master Seed Virus shall meet the special requirements prescribed in this section.

(b) To detect virulent canine distemper virus, each of two canine distemper susceptible ferrets shall be injected with a sample of the Master Seed Virus equivalent to the amount of virus to be used in one dog dose and observed each day for 21 days. If undesirable reactions occur in either ferret, the lot of Master Seed Virus is unsatisfactory.

(c) * * *

* * * * *

All written submissions made pursuant to this notice will be made available for public inspection at the address listed in this document during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 12.7(b)).

Done at Washington, D.C., this 19th day of April 1978.

NOTE.—The Animal and Plant Health Inspection Service 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.

E. A. SCHILF,
Acting Deputy Administrator
Veterinary Services.

[FR Doc. 78-11166 Filed 4-24-78; 8:45 am]

[6720-01]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Parts 523 and 563]

[No. 78-249]

FEDERAL SAVINGS & LOAN INSURANCE CORP.

Proposed Amendments Relating to Liquidity and Investment

APRIL 18, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: These proposed amendments would (1) limit the amount of an insured institution's deposits in one insured bank; (2) revise the Bank System liquidity provision to count as liquidity all deposits within such limit; and (3) revise the Board's regulation pertaining to liquidity-deficiency penalties by (a) giving Principal Supervisory Agents greater authority to mitigate such penalties and (b) limiting the Board's involvement to appellate review. The amendments are needed to simplify and improve the Board's regulations in these matters. This opportunity has also been taken to clarify and shorten the language of the affected liquidity regulations.

DATE: Comments must be received on or before May 26, 1978.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. Comments available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT:

Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. Telephone number: 202-377-6440.

SUPPLEMENTARY INFORMATION:

INVESTMENT IN BANK DEPOSITS

The Board currently allows unlimited investment by Federal Home Loan Bank System members in time and savings accounts of a single insured bank, but § 523.10(g)(4)(i) of the Regulations for the Federal Home Loan Bank System (12 CFR 523.10(g)(4)(i)) limits classification of such investment as liquidity to the greater of one-quarter of one percent of bank deposits or $40,000. This limitation has been interpreted by the Board's legal staff to preclude classification of any part of such investment as liquidity if the total investment exceeds the stipulated amount. The primary purpose of the limitation is to discourage concentration of a Bank System member's liquid funds in one bank.

Because the Board's concern relates not only to liquidity but also to safe and sound investment (and therefore to longer-term bank deposits as well), the proposal would shift this regulatory restriction from § 523.10(g)(4)(i) to a new § 563.9-6 of the Rules and Regulations of the Federal Savings and Loan Insurance Corporation (12 CFR Part 563), to restrict directly such investment by institutions whose deposits are insured by the FSLIC. Such practice is analogous to heavy investment in loans to one borrower, currently restricted as to insured institutions by the Board for the same reason. The proposed limitation would fix the maximum investment amount at the lesser of one-quarter of one percent of the bank's deposits or 100 percent of the investing institution's net worth, rather than just the former as is currently provided; this would preclude excessive investment in large banks by small associations as well as excessive deposits in small banks. The alternative limitation, allowing investment up to deposit-insurance amount (currently $40,000), would be retained. Under the proposed change, investment up to the permitted amount would count toward liquidity, even if there were additional investment beyond the regulatory limit.

Commercial bank deposits of Bank System members whose deposits are not insured by FSLIC would be adversely affected by the proposed change only if such members' net worth did not equal one quarter of one percent of the bank's deposits. They would not be restricted in single-bank investment and would only be able to count as liquidity such investments up to the stipulated amount.

LIQUIDITY-DEFICIENCY PENALTIES

The present Board regulation pertaining to assessment of penalties for deficient liquidity (12 CFR 523.12) provides that the President of a member's Federal Home Loan Bank or his designee may compromise, remit, or mitigate penalties in certain circumstances and that the Board may take such action upon any showing of good cause.

This proposal would delegate greater authority to Principal Supervisory Agents (who are normally Bank presidents) to waive such penalties, and limit the Board's involvement to appellate review. Decisions by the PSA's would be based on good cause shown, using the present list of circumstances (under which delegated action is currently taken) as examples of good cause. Interested persons are asked to comment on whether the phrase "good cause shown" should be retained or waiver should be based solely on the present list of described circumstances; the list is quite comprehensive and the Board has in fact never waived penalties on other grounds.

Accordingly, the Board hereby proposes to amend §§ 523.10 and 523.12 of the Regulations for the Federal Home Loan Bank System (12 CFR 523.10 and 523.12) and add a new § 563.9-6 to the Rules and Regulations of the Federal Savings and Loan Insurance Corporation (12 CFR 563.9-6), to read as set forth below.

1. Amend § 523.10(g) of the Regulations for the Federal Home Loan Bank System by amending the text of subparagraph (4) and deleting subdivision (i) thereof, to read as follows:

§ 523.10 Definitions.

* * * * *

(g) * * *

(4) time and savings deposits in an insured bank, including time deposits held subject to a repurchase agreement and loans of unsecured day(s) funds (Federal funds or similar unsecured loans to insured banks) to an insured bank, to the extent that such deposits in the same bank comply with § 563.9-6 of this chapter, if:

[Revoked]

* * * * *

2. Amend § 523.12 of the Regulations for the Federal Home Loan Bank System by revising paragraph (c) thereof to read as follows:

§ 523.12 Deficiencies and penalties.

* * * * *

(c) *Assessment of penalty; compromise, remission, or reduction.* Except as otherwise provided below, penalties are hereby assessed when deficiencies arise. The Principal Supervisory Agent or his delegate may, upon application and subject to such conditions as he may impose, compromise, remit, or reduce the penalty for good cause shown, e.g., that the penalty would cause a serious adverse effect on the member, or the deficiency resulted from (1) unexpectedly heavy withdrawals or other situations beyond the control of an institution's management, or (2) a merger or similar transaction. Denial of such an application may be appealed to the Board only on grounds of error or abuse of discretion. No relief will be granted if the member has failed to observe any condition imposed in connection with prior relief from a liquidity deficiency penalty.

3. Delete the designation "[Reserved]" at § 563.9-6 of the Rules and Regulations of the Federal Savings and Loan Insurance Corporation and substitute the following:

§ 563.9-6 Investment in commercial banks.

An insured institution may invest in time and savings deposits in an insured bank, including time deposits held subject to a repurchase agreement and loans of unsecured day(s) funds (Federal funds or similar unsecured loans) to an insured bank, in an amount not exceeding the greater of (a) one-fourth of one percent of the bank's deposits (as shown in its most recent published statement of condition) or the institution's net worth, whichever is less; or (b) the deposit-insurance coverage.

(Sec. 17, 47 Stat. 736, as amended; secs. 402, 403, 407, 48 Stat. 1256, 1259, 1260, as amended; 12 U.S.C. §§ 1437, 1725, 1726, 1730. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp, 1943-48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc. 78-11198 Filed 4-24-78; 8:45 am]

[4510-29]

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs Office

[29 CFR Part 2550]

RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

Proposed Regulation Relating to the Investment of Plan Assets Under the "Prudence" Rule

AGENCY: Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation relating to the investment duties of a fiduciary of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (the Act). Among other things, the proposed regulation states that investment decisions by a fiduciary of an employee benefit plan shall be made in the context of all relevant facts and circumstances and the plan's total investment portfolio. The proposed regulation, if adopted, would be relevant to the invstment of plan assets of all employee benefit plans and, thus, would affect participants, beneficiaries and fiduciaries of employee benefit plans.

DATES: Written comments must be received by the Department of Labor (the Department) on or before June 26, 1978. This proposed regulation would be effective 30 days after its adoption.

ADDRESSES: Written commnents (preferably at least six copies) should be addressed to: Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, Attention: Section 2550.404a-1. All written comments wil be available for public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Paul Antsen, Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, 202-523-8515. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department has under consideration a proposal to adopt a regulation, 29 CFR 2550.404a-1, under section 404(a)(1)(B) of the Act, relating to the investment duties of a fiduciary of an employee benefit plan. Section 404 (a)(1)(B) provides that, subject to certain exceptions not relevant to this proposed regulation, a fiduciary shall discharge his duties with respect to an employee benefit plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims (the "prudence" rule).

The Department has received a substantial number of inquiries from the public which indicate that there is some uncertainty as to how the "prudence" rule applies to the investment duties of a fiduciary of an employee benefit plan.[1] Generally the inquiries can be categorized as those which request information concerning: (1) Whether the "prudence" rule requires that an investment should be made by a fiduciary on the basis of the risk and anticipated return attendant to that investment, without regard to the role that it plays within the overall plan investment portfolio, (2) what criteria should be considered by fiduciaries in fulfilling their investment duties pursuant to the "prudence" rule, and (3) whether specific investments are prudent.[2]

This proposed regulation makes it clear that the "prudence" rule requires that each investment decision should be made with regard to the role that the investment in question would play within the overall plan investment portfolio and sets forth some, but not necessarily all, of the factors which generally should be considered by fiduciaries in fulfilling their investment duties to a plan.

DISCUSSION OF THE REGULATION

Proposed § 2550.404a-1(b)(1) provides that with respect to a fiduciary's investment duties, the requirements of the "prudence" rule have been satisfied if the fiduciary has given appropriate consideration to all relevant facts and circumstances and the role that the investment or investment course of action plays in the plan's investment portfolio. Proposed § 2550.404a-1(b)(2) sets forth those factors which may be included in an evaluation of the role an investment or investment course of action plays in the plan's investment portfolio. The term "investment duties" is defined in proposed § 2550.404a-1(c)(1) as any duties imposed, assumed or undertaken by a person in connection with the investment of plan assets which make or will make such person a fiduciary of the plan or which are undertaken by such person as a plan fiduciary. The term "investment course of action" is defined in proposed § 2550.404a-1(c)(2)

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[1] This proposed regulation pertains only to the investment duties of a fiduciary of an employee benefit plan. Section 404(a)(1)(B) of the Act, however, requires that a fiduciary shall discharge all his duties in accordance with the "prudence" rule.

[2] The Department issues Advisory Opinions which interpret and apply the Act to specific factual situations under ERISA Proc. 76-1 (41 FR 36281, August 27, 1976), but pursuant to section 5.02(o) thereof generally will not issue Advisory Opinions relating to the prudence of a specific proposed investment or type of investment. This is because a determination as to the prudence of any particular investment can be made only on the basis of an evaluation of all the relevant facts and circumstances.

as any series or program of investments or actions related to a fiduciary's performance of his investment duties.

The Department believes that the practice followed by some jurisdictions at common law of judging the prudence of an investment alone without regard to the role that the investment plays within the overall investment portfolio[3] is improper for evaluating the prudence of an investment or an investment course of action under the Act. The common law method of evaluating the prudence of an investment arose, in large part, from the need to resolve a basic conflict between the interests of the income beneficiary and the remainderman of a common law trust. In many instances the common law resolution, giving great weight to the interest of the remainderman, deemed the safety of corpus more important than the generation of income. The same type of conflict between the investment goals of the income beneficiary and the remainderman is presented far differently, if at all, in employee benefit plans and, thus, a primary rationale for judging the prudence of an investment alone, without regard to its role in the total investment portfolio, does not exist under the Act.

The Department believes that the evaluation of an investment or investment course of action by a fiduciary of an employee benefit plan in the context of the overall investment posture of the plan in light of the factors set forth in proposed § 2550.404a-1(b)(2) is supported by the legislative history of the Act and sound policy considerations.[4] The legislative history of the Act indicates that the common law rules of trusts, including the common law focus on the performance of the individual investment, should not be mechanically applied to employee benefit plans.[5] Further, in the Conference Report which accompanied the Act, Congress directed that the "prudence" rule (and the other fiduciary standards of section 404) be interpreted "bearing in mind the special nature and purpose of employee benefit plans."[6]

Proposed § 2550.404a-1(b)(2) sets forth the following basic factors which a fiduciary generally should consider in evaluating the role that an investment or investment course of action plays in the plan's investment portfolio: (1) the composition of the plan investment portfolio with regard to the diversification of risk, (2) the volatility of the plan investment portfolio with regard to general movements in investment prices, (3) the liquidity of the plan investment portfolio relative to the projected payment schedule for benefits, (4) the projected return of the plan investment portfolio relative to the funding objectives of the plan, and (5) the prevailing and projected economic conditions of the investments in which the plan has invested and proposes to invest.

The proposed regulation makes it clear that under the Act, the relative riskiness of a specific investment or investment course of action does not render such investment or investment course of action either per se prudent or per se imprudent. Thus, although securities issued by a small or new company may be a riskier investment than securities issued by a "blue-chip" company, the investment in such a company may be entirely proper under the Act's "prudence" rule.

General Information

The regulation set forth below is proposed pursuant to the authority contained in section 505 of the Act (Pub. L. 93-406, 88 Stat. 894 (29 U.S.C. 1135)). All interested persons are invited to submit written views or arguments concerning the proposed regulation set forth herein to the address and within the time period set forth above. All written submissions will be available for public inspection at the address set forth above.

Drafting Information

The principal author of this proposed regulation was Ms. Martha McLane of the Office of the Solicitor, Plan Benefits Security Division, Department of Labor. However, other persons in the Department of Labor participated in developing the proposed regulation, both on matters of substance and style.

Proposed Regulation

Accordingly, it is proposed to amend Part 2550 of Chapter XXV of Title 29 of the Code of Federal Regulations by inserting § 2550.404a-1 as set forth below:

Paragraph 1. § 2550.404a-1 is inserted in the appropriate place to read as set forth below:

§ 2550.404a-1 Investment Duties.

(a) *In general.* Section 404(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (the Act) provides that subject to sections 403 (c) and (d), 4042 and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(b) *Investment Duties.* (1) With regard to the investment duties of a fiduciary of an employee benefit plan, the requirements of paragraph (a) of this section and section 404(a)(1)(B) of the Act have been satisfied if, in making an investment decision, the fiduciary has given appropriate consideration to all facts and circumstances relevant to the particular employee benefit plan and particular investment or investment course of action involved and the role the investment or investment course of action plays in the plan's investment portfolio.

(2) The role an investment or investment course of action plays in an employee benefit plan's investment portfolio involves factors which may include, but are not necessarily limited to, the following:

(i) The composition of the plan investment portfolio with regard to the diversification of risk,

(ii) The volatility of the plan investment portfolio with regard to general movements in investment prices,

(iii) The liquidity of the plan investment portfolio relative to the projected payment schedule for benefits,

(iv) The projected return of the plan investment portfolio relative to the funding objectives of the plan, and

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[3] See III Scott, Law of Trusts section 227 (3rd ed.).

[4] Whether a fiduciary has complied with the investment duties of the "prudence" rule depends on all relevant factors, and obviously the nature of these factors will vary from case to case. The Secretary of Labor, however, is authorized in section 505 of the Act to prescribe such regulations as he finds necessary or appropriate to carry out the provisions of Title I of the Act, which includes section 404. Accordingly, this regulation, if adopted, will assure that a fiduciary's consideration of an investment or investment course of action will reflect the special nature and purpose of employee benefit plans as required by the "prudence" rule under the Act.

[5] The debate on the "prudence" rule took place in 1970, when essentially the present form of section 404(a)(1)(B) of the Act was first introduced in H.R. 16462. At that time, there was considerable discussion as to whether the "prudence" rule in that bill was preferable to the common law "prudence" rule. Testifying in support of the "prudence" rule in H.R. 16462, then Secretary of Labor Schultz characterized this rule as providing a standard "with a built in flexibility * * * which recognizes the vast diversity and other characteristics of private pension and welfare plans." See Committee on Education and Labor, General Subcommittee on Labor, Hearings on H.R. 1045, H.R. 1046, and H.R. 16462 (1st and 2nd Sess., 1969, 1970) at 477 (hereinafter referred to as Hearings). Those who supported the language in H.R. 16462 maintained that the common law "prudence" rule, developed for personal trusts, was in certain respects inappropriate for employee benefit plans because their objectives were quite different from those of typical common law trusts. See Hearings: Richard A. Van Deuren at 159, 163-64; H. C. Lumb at 292-93, 299-300; Robert C. Tyson at 833; American Retail Foundation at 902; N.Y.S. Bar Association Tax Section at 936; American Cyanamid Co. at 302.

[6] H.R. Rep. No. 93-1280, 93rd Cong., 2nd Sess. at 302 (1974).

(v) The prevailing and projected economic conditions of the entities in which the plan has invested and proposes to invest.

(c) *Definitions.* (1) The term "investment duties" means any duties imposed, assumed or undertaken by a person in connection with the investment of plan assets which make or will make such person a fiduciary of an employee benefit plan or which are performed by such person as a fiduciary of an employee benefit plan as defined in section 3(21)(A) (i) or (ii) of the Act.

(2) The term "investment course of action" means any series or program of investments or actions related to a fiduciary's performance of his investment duties.

Signed at Washington, D.C., this 21st day of April, 1978.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-11278 Filed 4-21-78; 3:29 pm]

[8320-01]

VETERANS' ADMINISTRATION

[38 CFR Part 14]

VETERANS' BENEFITS

Recognition of Organizations, Attorneys, and Agents

AGENCY: Veterans' Administration.

ACTION: Proposed regulations.

SUMMARY: These regulations provide for representation of Veterans' Administration claimants, including recognition of organizations and their representatives, agents, and attorneys to assure qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits. The Veterans' Administration hopes to accomplish more complete claims representation for all veterans and their dependents.

DATES: Comments must be received on or before May 25, 1978. It is proposed to make these regulations effective on the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans' Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. Comments will be available for inspection at the address shown above during normal business hours until June 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Joseph J. Lindekugel (02A1), Director, Management and Operations Staff, Office of General Counsel, Veterans' Administration, Washington, D.C. 20420, 202-389-3730.

SUPPLEMENTAL INFORMATION: This action provides for recognition of additional service organizations, elimination of the requirement for a monthly information bulletin which will be included in internal operating instructions, a uniform fee for either an allowed new claim or an allowed increase in benefits; elimination of restrictions on agents affiliated with organizations; termination of recognition for unlawful, unprofessional, or unethical practices after a hearing process, and provision of space and office facilities.

ADDITIONAL COMMENT INFORMATION

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans' Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays), until June 5, 1978. Any person visiting central office for the purpose of inspecting comments will be received by the central office Veterans Services Unit in Room 132. Visitors to a VA field station will be informed that the records are available for inspection only in central office and furnished the address and the above room number.

Approved: April 19, 1978.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

The centerhead preceding § 14.626 is changed, §§ 14.626 through 14.660 are revoked and §§ 14.626 through 14.637 are added to read as follows:

REPRESENTATION OF VETERANS ADMINISTRATION CLAIMANTS; RECOGNITION OF ORGANIZATIONS, ACCREDITED REPRESENTATIVES, ATTORNEYS, AGENTS; RULES OF PRACTICE AND INFORMATION CONCERNING FEES, 38 U.S.C. 3401-3405

§ 14.626 Purpose.

The purpose is to assure that claimants for Veterans' Administration benefits have qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits.

§14.627 Definitions.

As used in regulations on representation of Veterans' Administration claimants:

(a) "Agent" means a person who has met the standards and qualifications outlined in § 14.629(b).

(b) "Attorney" means a member in good standing of a State bar.

(c) "Cancellation" means termination of authority to represent claimants.

(d) "Claim" means application made under Title 38, United States Code, and implementing directives, for entitlement to Veterans' Administration benefits, reinstatement, continuation or increase of benefits, or the defense of a proposed agency adverse action concerning benefits.

(e) "Claimant" means a person who has filed a written application for determination of entitlement to benefits provided under Title 38, United States Code, and implementing directives.

(f) "National organization" means an organization chartered or acknowledged by the act of the U.S. Congress.

(g) "Recognition" means certification by the Veterans' Administration of organizations, their representatives, attorneys, and agents, to represent claimants.

(h) "Representative" means a person who has been recommended by a recognized organization and certified by the Veterans' Administration.

(i) "State" includes any State, possession, territory, Commonwealth, or the District of Columbia.

(j) "Suspension" means temporary withholding of authority to represent claimants.

§ 14.628 Requirements for recognition of organizations.

Authorized officers of an organization may request recognition by letter to the Administrator of the Veterans' Administration.

(a) *National organizations.* An organization chartered or acknowledged by act of Congress may be recognized as a national organization in the presentation of claims under the laws administered by the Veterans' Administration.

(b) *State organizations.* State organizations created for the purpose of serving the needs of veterans of that State may be recognized. Only one such organization may be recognized in each State.

(c) *Other organizations.* Organizations whose primary purpose is to serve the needs of veterans and their dependents in the presentation of claims before the Veterans Administration, may be recognized when the Veterans Administration has determined that they are incorporated or chartered by a State, and have a substantial paid-up membership (generally, at least 1,000). Further, the organizations shall establish that they will provide complete claims service to each veteran or dependent requesting representation. Complete claims service includes the ability to assure complete representation before the Board of Veterans Appeals. It may, however, be provided by agreement with a na-

tional organization recognized by the Veterans Administration.

(d) *Information necessary.* In requesting recognition, the following information shall be supplied:

(1) (i) Citation to (or copy of) the document establishing or acknowledging the national or State organization.

(ii) Copy of charter or letters of incorporation for other organizations.

(2) Statement that neither the organization nor its representatives will charge or accept a fee or gratuity for service to a claimant.

(3) Statement outlining the purpose of the organization and the manner in which the veterans or their dependents would benefit by recognition.

(4) Names, titles, and addresses of officers and the officials authorized to certify representatives.

(5) Number of posts or chapters and States in which located, and total paid-up membership.

(6) Names, titles, and addresses of full-time paid employees who are qualified to act as accredited representatives.

(7) Copy of the last financial statement of the organization.

(8) Copy of the constitution or charter and bylaws of the organization.

(9) Copy of an agreement, if any, with a national organization which provides claims service for the organization requesting recognition. (38 U.S.C. 3402.)

§ 14.629 Requirements for recognition of representatives, agents, and attorneys.

The District Counsel will resolve any question of current qualifications of a representative, agent, or attorney. Any interested party may appeal such determination to the General Counsel.

(a) *Representatives.* Recognized organizations shall file with the Office of the General Counsel VA Form 2-21 (Application for Accreditation as Service Organization Representative) for each person they desire recognized as a representative of that organization. In recommending a person, the organization shall certify that the designee:

(1) Is of good character and reputation; and:

(i) Has successfully completed a Veteran Administration approved course of instruction on veterans' benefits; or

(ii) Has passed an examination approved by the Veterans Administration; or

(iii) Has otherwise demonstrated an ability to present claims before the Veterans Administration;

(2) Is either a member in good standing or a full-time paid employee of such organization, or is recognized and functioning as a representative of another recognized organization;

(3) Is not employed in any civil or military department or agency of the United States.

(b) *Agents.* Applicants for recognition as agents must establish that they are of good character and reputation. In addition, applicants shall pass a written examination concerning laws administered by the Veterans Administration.

(c) *Attorneys.* Attorneys shall state in writing on their letterhead that they are authorized to represent the claimant. For an attorney to have complete access to all information in an individual's records, the attorney must provide a signed consent from the claimant or the claimant's guardian. The consent shall be equivalent to an executed power of attorney. (38 U.S.C. 3401, 3404.)

§ 14.630 Authorization for a particular claim.

Any person may be authorized to prepare, present, and prosecute a particular claim. A proper power of attorney, and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the office where the claim is presented. A person shall represent only one claimant; however, in unusual circumstances, appeal may be made to the General Counsel. (38 U.S.C. 3403.)

§ 14.631 Powers of attorney.

(a) A power of attorney, executed on either VA Form 23-22 (Appointment of Veterans Service Organization as Claimant's Representative) or VA Form 2-22a (Appointment of Attorney or Agent as Claimant's Representative), is required to represent a claimant, except when representation is by an attorney who complies with § 14.629(c). The power of attorney shall meet the following requirements:

(1) Signature by:

(i) The claimant, or

(ii) The claimant's guardian, or

(iii) In the case of an incompetent, minor, or otherwise incapacitated person without a guardian, the following in the order named—spouse, parent, other relative or friend (if interests are not adverse), or the director of the hospital in which the claimant is maintained; and

(2) Presented to the appropriate Veterans Administration field office for filing in the veteran's claims folder.

(b) Questions concerning powers of attorney shall be referred to the District Counsel of jurisdiction for initial determination. This determination may be appealed to the General Counsel.

(c) Only one organization, agent, or reresentative will be recognized at one time in the prosecution of a claim for one specific benefit. All transactions concerning the claim will be conducted exclusively with the recognized organization, agent, or representative of record until notice of a change, if any, is received by the Veterans Administration.

(d) A power of attorney may be revoked at any time and an attorney may be discharged at any time. A new power of attorney shall constitute a revocation of any existing power of attorney.

(e) A power of attorney may be continued for a reasonable time after the death of the claimant, to determine whether the claim will be continued by a new claimant and whether a new power of attorney will be executed. (38 U.S.C. 3402, 3403, 3404.)

§ 14.632 Letters of recognition.

If challenged, the qualifications of prospective representatives or agents shall be verified by the District Counsel of jurisdiction. The report of the District Counsel, if any, including any recommendation of Veterans Administration station directors, and the application shall be transmitted to the General Counsel for final action. If the designee is disapproved by the General Counsel, the reasons will be stated and an opportunity will be given to submit additional information. If the designee is approved, letters of recognition, or an identification card, will be issued by the General Counsel, and will constitute authority to prepare, present, and prosecute claims in all Veterans Administration installations. Record of recognition will be maintained in the Office of General Counsel. (38 U.S.C. 3402.)

§ 14.633 Termination of recognition.

(a) Recognition may be canceled by request.

(b) Recognition shall be suspended or revoked upon a finding of one of the following: (1) Violation or refusal to comply with the laws administered by the Veterans Administration or with the regulations or instructions governing practice before the Veterans Administration.

(2) Knowingly presenting or prosecuting a fraudulent claim against the United States or the Veterans Administration.

(3) Demanding or accepting unlawful compensation for preparing, presenting, prosecuting, or advising, or consulting concerning a claim.

(4) Any other unlawful, unprofessional, or unethical practice. (Unlawful, unprofessional, or unethical practice shall include but not be limited to the following—deceiving, misleading, or threatening a claimant or prospective claimant; neglecting to prosecute a claim for 6 months or more; failing to furnish evidence within 90 days of request by the Veterans Administration; or willfully withholding of an application for benefits or of material evidence.)

(c) Upon receipt of information indicating improper conduct, the District

Counsel of jurisdiction will initiate an inquiry.

(1) If the result of the inquiry does not justify further action, the District Counsel will close the inquiry and maintain the record for 2 years.

(2) If the result of the inquiry justifes further action, the District Counsel shall take immediate action to suspend recognition. The notice of suspension will state the reason and will also advise that additional evidence may be submitted, or a hearing requested (or both), within 10 working days of receipt of the notice. The time may be extended for sufficient reason.

(3) If a hearing is requested, a hearing officer will be appointed by the Director of the regional office involved. The hearing officer shall not be from the Office of the District Counsel. The hearing officer will have authority to administer oaths. A member of the District Counsel's office will present the evidence. The suspended person will have a right to counsel, to present evidence and to cross-examine witnesses. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim.

(4) Within 10 working days after either the time allowed under paragraph (c)(2) of this section, or the close of the hearing if one is conducted, the District Counsel will submit the case with recommendations to the General Counsel.

(5) The decision of the General Counsel is final. The records of the case will be maintained in the General Counsel's office for 5 years. (38 U.S.C. 3404, 3405.)

§ 14.634 Fees and expenses.

Representatives, other individuals, or guardians prosecuting claims in their fiduciary capacity, shall not receive fees.

(a) *Amount of fees.* For the successful prosecution of claims, attorneys and agents may receive the fee permitted by statute (38 U.S.C. 3404(c)). The fee will be paid to the attorney or agent of record at the time of allowance, by deduction from the benefit allowed, after approval by the Veterans Administration. Questions concerning the amount or proper payee of fees allowed will be resolved by the District Counsel, or designee, who will consider the quality, nature, and extent of the services.

(b) *Expenses.* Without regard to entitlement to fees, an agent, attorney, or other person who incurs an expense in the prosecution of a claim, may submit a sworn itemized account of the expense to the Veterans Administration. It will be retained in the claims folder as part of the permanent record. Before demanding or receiving reimbursement from the claimant, the expense shall be approved by the District Counsel, or designee. Notice of the action taken shall be transmitted to the requestor by the service handling the claim. (38 U.S.C. 3404.)

§ 14.635 Reconsideration of denial of fees and expenses.

A request for reconsideration of a denied fee, or statement of expenses, must be received by the General Counsel within 1 year of the date of denial. If agreement cannot be reached and a hearing is requested a hearing officer will be appointed by the Director of the regional office involved. The hearing officer shall not be from the Office of the District Counsel. The hearing officer will have authority to administer oaths. A member of the District Counsel's office will present the evidence. The complainant will have a right to counsel, to present evidence and to cross-examine witnesses. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. Within 10 working days after the close of the hearing, the District Counsel will submit the case with recommendations to the General Counsel. The decision of the General Counsel is final.

§ 14.636 Banks or trust companies acting as guardians.

Banks or trust companies, corporate entities, acting as guardians for claimants, may be represented before adjudicating agencies as authorized representatives of claimants by an officer or employee, including a regularly employed attorney, if the employee or attorney represents the corporation in its fiduciary capacity. No fee shall be allowed for such services under § 14.634(a).

§ 14.637 Space and office facilities.

The Administrator may furnish space and office facilities, if available, for the use of paid full-time representatives of recognized national organizations. (38 U.S.C. 3402.)

[FR Doc. 78-11151 Filed 4-24-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 233]

[FRL 877-5]

MODIFICATION OF SECONDARY TREATMENT REQUIREMENTS FOR DISCHARGES INTO MARINE WATERS

Proposed Criteria and Procedures

AGENCY: United States Environmental Protection Agency ("EPA").

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes the criteria which will be applied and the procedures which will be followed by EPA in acting upon applications for issuance of a National Pollutant Discharge Elimination System ("NPDES") permit which modifies the requirements of secondary treatment under section 301(h) of the Clean Water Act ("Act"), as amended.

DATE: Comments must be received by June 9, 1978.

ADDRESS: Comments should be sent, in triplicate if possible, to: Director, Municipal Construction Division (WH-547), Office of Water Program Operations, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Thomas P. O'Farrell, Municipal Construction Division (WH-547), Office of Water Program Operations, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-426-8976.

SUPPLEMENTARY INFORMATION: In 1972 the Clean Water Act was amended to require all publicly-owned treatment works ("POTW's"), irrespective of the nature or location of the waters into which they discharge to achieve, by July 1, 1977, effluent limitations based on the level of effluent quality achievable through application of secondary treatment, as defined by EPA. Sections 301(b)(1)(B) and 304(d)(1); 33 U.S.C. 1311(b)(1)(B) and 1314(d)(1). In 1973, EPA defined secondary treatment in terms of four pollutant parameters—biochemical oxygen demand (BOD), suspended solids, pH and fecal coliform—and established national uniform minimum effluent limitations for these pollutants to be attained by all POTW's by the 1977 deadline. 40 CFR Part 133, 38 FR 22298 (August 17, 1973), as amended by 41 FR 30785 (July 26, 1976) (deletion of fecal coliform limitations).

Since the enactment of the 1972 amendments and the promulgation of EPA's secondary treatment regulations, a number of West Coast municipalities have argued to both Congress and EPA that secondary treatment of municipal ocean discharges is not necessary to protect the marine environment or to assure the attainment and maintenance of water quality in deep ocean waters. These communities have contented that secondary treatment has traditionally been defined (and has been defined by EPA) in terms of pollutant parameters and levels of pollutant reduction which are important for freshwater ecology, where the discharge of oxygen-demanding wastes and sedimentation of suspended solids results in distinct environmental degradation, but which have little significance for deep ocean waters where wastes are rapidly aerated and dis-

persed by strong currents and tidal action. POTW's located in West Coast estuaries exhibiting a high degree of flushing have similarly argued that secondary treatment provides no significant environmental benefit because discharges are rapidly oxygenated, dispersed, and carried into the open ocean. On this basis, these municipalities have maintained that they should be exempted from the Act's secondary treatment requirement, and associated capital, maintenance, and operating costs.

During hearings on proposed amendments to the Act, these municipalities not only presented these arguments to Congress, but also represented that they had accumulated sufficient evidence to demonstrate the scienfific merit of their claims for exemption. As a result of their testimony, Congress included a special provision in the Clean Water Act of 1977 (Pub. L. 95-217)—section 301(h), 33 U.S.C. 1311(h)—which allows a municipal marine discharger to test its case in the administrative process. Section 301(h) provides that the Administrator of EPA, upon application of a POTW and with the concurrence of the State, may issue an NPDES permit which modifies EPA's effluent limitations for BOD, suspended solids and pH where the applicant discharges into certain ocean and estuarine waters and demonstrates to the satisfaction of the Administrator, by showing compliance with eight statutory criteria set forth in Sections 301(h)(1) through 301(h)(8), that the modification will not result in any increase in the discharge of toxic pollutants or otherwise impair the integrity of receiving waters.

An NPDES permit modifying the requirements of secondary treatment may be issued only by EPA, irrespective of whether the State in which the applicant is located has an approved NPDES permit program. States will, however, have a major role to play in the section 301(h) permitting process. State certification that a discharge complies with State water quality standards and other State requirements under section 301(b)(1)(C) of the Act will be required as part of any application submitted (section 233.22(b)). Under section 233.17, States will also be required to provide information on the effect of issuing a modified permit on waste load limitations for other dischargers into the same receiving waters. Finally, if EPA determines that a POTW qualifies for a modified permit, State concurrence in that determination must be obtained before the permit can be issued (section 233.45).

While recognizing that in specific circumstances evidence may support a relaxation of EPA secondary treatment limitations for BOD, suspended solids and pH, Congress has emphatically stressed throughout the legislative history of section 301(h) that no increase in toxic pollutants—such as heavy metals and synthetic organic compounds—may result from the granting of a modification under that section. Because secondary treatment incidentally removes toxic pollutants along with suspended solids, a POTW applying for a modified permit under section 301(h) must demonstrate that it has reduced the concentrations of these substances in its discharge to at least the level which would have been attained with secondary treatment, and to a greater degree if necessary to meet water quality standards or protect marine ecosystems. This will require at least primary treatment in the case of POTW's with wholly domestic influent and more than primary treatment (including additonal treatment, pretreatment and/or source control) for POTW's with industrial and nonindustrial sources of toxic pollutants. To assure that there will be a continuous reduction of toxicants from these sources over the life of any modified permit issued, an applicant must show under sections 301(h)(5) and 301(h)(6) of the Act that it has established an enforceable pretreatment program to reduce the amount of toxic substances introduced into the treatment system from industrial sources, and, to the extent practicable, that it has developed a program to eliminate or limit the influx of toxics from nonindustrial sources.

Congress' imposition of rigorous controls on the discharge of toxic pollutants to ocean and estuarine waters under section 301(h) represents a tacit recognition of the importance and sensitivity of marine biota in the coastal zone. These organisms are extremely susceptible to small changes in the chemistry of their environment and have the capacity to bioaccumulate toxic materials. For this reason, and because many toxics—especially synthetic organics—are not biodegradable, decompose very slowly, or decompose into other equally or more toxic materials, Congress has directed that mere dispersion of these pollutants, unlike BOD or suspended solids, is not an acceptable form of pollution control under section 301(h).

To assure that municipalities applying for a section 301(h) modification will be informed, as soon as possible, whether they must go forward with construction of secondary treatment facilities, Congress has established a statutory deadline of September 24, 1978, for submission of applications for modified permits under section 301(h) and has directed EPA to act expeditiously on all applications submitted.

In view of this directive, the regulations proposed today require that all information required by subpart B must be submitted to EPA no later than September 24, 1978. This should not be an onerous requirement for many POTW's, since section 301(h) was premised on the claims of a number of municipalities that "they have accumulated sufficient evidence to prove no adverse effect on water quality and aquatic ecosystems from [less than secondary treated] discharges." Cong. Rec. S 19637 (Daily ed., December 15, 1977). In addition, applicants have known in a general fashion since section 301(h) was enacted what requirements they would have to meet to qualify for a modified permit under that section. EPA nevertheless recognizes that there may be instances where an applicant has exercised its best efforts to fully and accurately complete the application form in a timely manner, but either is unable to do so because of circumstances beyond its control or finds it necessary to submit corrective or clarifying data to a complete application after the September 24, 1978 deadline. The submission of such additional materials will be authorized by EPA on a case-by-case basis upon written request to the Administrator under section 233.32(c).

For these reasons, although the regulations which are published today are subject to revision before they are published in final form, EPA encourages POTW's which are interested in applying for a section 301(h) modified permit to begin now (if they have not already done so) to assemble the data which is required by subpart B if they want to be assured of meeting the September 24, 1978 deadline.

For its part, EPA is adopting a three-part strategy to facilitate expedited action on section 301(h) applications. First, because the criteria which a POTW must address in applying for a modification lend themselves to a uniform method of submitting information, and because the submission of information in a uniform fashion would expedite EPA review of applications, EPA has developed an "Application for Modification of the Requirements of Secondary Treatment" which, together with an NPDES permit application, must be completed by all dischargers requesting a modified permit under section 301(h). The Agency has attempted to include in the application all the questions which EPA scientists and engineers have deemed necessary to determine compliance with the statutory criteria of section 301(h).

Secondly, the procedural regulations set forth in subpart C of these proposed regulations are designed to expedite decisions on applications while at the same time providing applicants and other interested persons full opportunity to present their views on

any application for modification before the Agency.

Finally, to reduce the number of clearly unmeritorious applications which are submitted to the Agency, EPA has attempted in both the regulations and application form to provide applicants with a fairly clear indication of whether they have a reasonable chance of qualifying for a modified permit. EPA recognizes (as did Congress) that a considerable investment of time and effort would be required of applicants to demonstrate compliance with the requirements of section 301(h); the Agency does not wish to encourage such efforts when they would clearly be futile.

In this respect, it cannot be emphasized too strongly that the modification provided under section 301(h) represents a highly restrictive departure from the technology-based pollution control philosophy of the 1972 Act. It is "a limited exception," "a narrow opportunity for certain municipal dischargers * * * to qualify for a modification of the secondary treatment requirement." Cong. Rec. S 19673 (Daily ed., December 15, 1977). Applicants are reminded that they bear the burden of demonstrating to EPA's satisfaction that they qualify for the modification requested; this burden is especially heavy for a POTW which treats wastewater containing toxics, and which must demonstrate that it has imposed tight controls on the introduction of toxics into both its facility and receiving waters.

Because section 301(h) is designed to reduce pollution control costs for POTW's by relieving them of the requirements of installing the wastewater and sludge treatment systems necessary to meet the Act's secondary treatment requirement, applicants are encouraged to determine whether they will, in fact, realize any economic savings from a modified permit before even submitting an application. For example, significant costs may be incurred in preparing the chemical and biological analyses necessary to complete the modification application and in planning, designing, constructing and operating the monitoring program required by section 301(h)(3). Additionally, POTW's are reminded that obtaining a modification the requirements of section 301(b)(1)(B) of the Act in no way relieves them of the responsibility of complying with the requirements of section 301(b)(2)(B)—the adoption of best practicable wastewater treatment technology (BPWTT) by July 1, 1983. The Agency is presently considering redefining BPWTT to emphasize the removal of toxic pollutants and recycle/reuse of wastewater. While some of these alternatives (such as recycle/reuse) may be achievable without secondary treatment in individual cases, in others (such as advanced waste treatment), secondary treatment may be a necessary interim step in the attainment of BPWTT. POTW's should, therefore, consider whether they are likely to fall into this latter category, and, if so, what the construction of secondary treatment facilities is likely to cost if it is postponed for several years.

Applicants should also note that need to demonstrate compliance with section 301(h) does not end with the issuance of a modified permit. Each modified permit issued under this part will include all terms and conditions which EPA deems necessary to insure continuing compliance with sections 301(h)(1) through 301(h)(8), as well as corresponding sections of Subpart B of these regulations, including effluent, volume and mass emission limitations, biomonitoring requirements, and pretreatment and nonindustrial source control program implementation schedules. As with any other NPDES permit, failure to meet these terms and conditions may result in revocation of the permit under section 402(b)(1)(C) of the Act or other appropriate enforcement action.

Finally, applicants which do not qualify for a modified permit and have delayed construction of secondary treatment pending EPA action on their application are reminded that they may be issued enforcement orders or may be subject to other enforcement actions under Section 309 of the Act to assure that construction is completed according to schedules of compliance contained in their existing NPDES permit.

Under the regulations proposed today, all applicants, irrespective of the nature or volume of their discharge, will be required to meet the same standards and to fill out the same application form in applying for a section 301(h) modified permit. Because the bulk of the regulations deal with the control of toxic pollutants, and because EPA regional offices will be available to assist small dischargers applying for a section 301(h) modification, EPA does not expect that completion of the form will be a difficult task for small POTWs which treat wholly domestic wastes.

Nevertheless, the Agency solicits comment as to whether small dischargers or dischargers which have no known or suspected sources of toxic pollutants should be treated differently than larger dischargers with significant industrial and nonindustrial sources of toxic substances in terms of either the extent or nature of the information which they are required to submit to EPA to obtain a modified permit under section 301(h).

A related issue is whether section 301(h) allows EPA to develop special criteria for small villages in the Pacific Trust Territories, Puerto Rico, and Alaska. Many of these communities currently operate on subsistence or near-subsistence economies and have either no or at most very primitive sewage treatment facilities. Raw sewage is often transported through the streets in open sewers directly to beaches or the ocean; in tropical climates these open sewers serve as a breeding ground for the intestinal parasites which afflict a large portion of the population. Most of these communities cannot afford to either build or maintain secondary treatment facilities.

Under the regulations proposed today, many of these communities could not even attempt to qualify for a modified permit without construction (or relocation) of outfalls and installation of primary treatment facilities. However, as discussed below in the section-by-section analysis of section 233.11, because the Act provides that section 301(h) modified permits may be issued only for "existing" discharges into marine waters, no modified permits could be issued to these communities based on such future construction.

EPA therefore requests comment on the question of whether and under what circumstances a special category could be carved out for these dischargers under section 301(h). Additionally, the Agency solicits comment on how provisions of the Act other than section 301(h) might be utilized to provide assistance to these communities in dealing with their very singular health, social, economic, and water pollution control problems.

Because of statutory time constraints and the complexity of these regulations, public participation in their development has been handled somewhat differently than participation in the development of other EPA regulations implementing the Clean Water Act of 1977. Public circulation of draft proposed regulations for preproposal comment has proved to be impracticable. However, numerous groups—including municipalities and public interest groups—have discussed the regulations in a general fashion with EPA staff; a public hearing was held in San Francisco on February 22, 1977, to solicit public comment on the implementation of the statutory criteria of section 301(h); a FEDERAL REGISTER notice was published on February 3, 1978 (43 FR 4675) requesting written comments on those criteria, and a preproposal preliminary concept paper for these proposed regulations was circulated to the public in mid-March (in effect extending the comment period on these regulations). To the extent possible, all public comments received prior to March 31, 1978, have been considered in developing these proposed regulations.

In order to expedite promulgation of final regulations and provide applicants with as much time as feasible to make any revisions in or additions to their applications necessitated by modifications to these proposed regulations prior to the September 24, 1978, deadline for submission of applications, a forty-five (45) day public comment period has been provided and will be strictly observed. Commenters are urged to submit comments as early as possible, to assist EPA in speeding up the issuance of final regulations.

Section-by-Section Analysis

SUBPART A

Subpart A contains definitions of terms used in the regulations, a description of the scope of the regulations, and a recitation of applicable legal authority. Definitions having special significance will be discussed in the context of the respective section(s) in subpart B or C to which they apply.

SUBPART B

Subpart B contains the substantive criteria for evaluation of applications for modified permits under section 301(h).

Section 233.11. Section 301(h) of the Act provides that a modified permit may be issued only for an existing discharge into "marine waters." The Act defines "marine waters" as deep waters of the territorial seas or the contiguous zone, or saline estuarine waters, where there is strong tidal movement and other hydrological and geological characteristics which EPA determines necessary to assure the protection of public water supplies and recreational interests and the protection and propagation of a balanced indigenous population of fish, shell-fish, and wildlife.

A publicly owned treatment work shall be deemed to be discharging into marine waters if it can demonstrate rapid initial dilution of partially treated wastes and rapid replenishment contaminated coastal waters with uncontaminated open ocean water. Initial dilution must be of the order achieved by accepted designs of multiport ocean outfalls at depths of approximately 200 feet or greater, and must be achieved within minutes of discharge. In addition, outfalls must be located in open coastal areas where net effective flushing will not be affected by inlets, headlands, or offshore islands.

Initial dilution may be more difficult to calculate in saline estuaries than open ocean waters for a number of reasons. First, dilution models have been developed based on the physical characteristics of deep ocean waters, not estuaries. Second, because estuaries are generally shallower than deep ocean waters, tidal currents may play a significantly more important role than in ocean waters in influencing the shape of the discharge plume, as well as its trajectory and the degree of initial dilution achieved. Finally, although discharges into deep estuarine basins may result in initial dilutions comparable to those achievable in deep ocean waters, other factors peculiar to estuarine circulation may be controlling in realizing effective dilution. For these reasons, estuarine dischargers have been requested to supply information not required of ocean dischargers to assist EPA in determining both initial dilution and net effective flushing.

Some ocean and estuarine waters are already so polluted or so biologically sensitive that it is highly questionable whether they can accommodate the additional pollutant loadings which would result from a relaxation of the requirements of secondary treatment and still assure the attainment and maintenance of water quality necessary to protect public water supplies, marine ecosystems, and recreational interests required by section 301(h)(2) or 101(a)(2) of the Act. Accordingly, EPA has determined that the following conditions will create a rebuttable presumption that the waters into which the applicant dischargers cannot accommodate such additional pollutants consistent with the requirements of those sections: (1) history of environmental neglect and lack of adequate wastewater treatment facilities; (2) stress on marine ecosystems; (3) existing high domestic and industrial waste loadings; (4) proximity to sensitive marine areas (including areas designated as biologically sensitive by any State or Federal agency); or (5) altered ecological communities. EPA expects to publish a list of ocean and estuarine waters having one or more of these characteristics at the time it promulgates this part in final form. In addition, determinations that these conditions exist for a particular water segment may be made in individual section 301(h) proceedings.

Based on the legislative history of section 301(h), EPA has also determined that dischargers into waters other than the coastal waters of the Western United States, Hawaii, the Pacific Islands, Puerto Rico, the Virgin Islands, Cook Inlet, and Resurrection Bay, will bear a particularly heavy burden of proof in demonstrating to EPA's satisfaction that public water supplies, marine organisms and recreational interests can be adequately protected with a less than secondary discharge.

Section 301(h) also provides that a permit modifying the requirements of secondary treatment may only be issued for an "existing discharge." EPA has construed this term to mean a discharge which was actually flowing into marine waters (as defined in these regulations) on or before the date of enactment of the Clean Water Act of 1977. Thus, a POTW which did not discharge into marine waters prior to December 27, 1977, would not be eligible for a modified permit under this part.

Under section 233.11(b)(2), all showings required under sections 301(h) (1) through (4) must be made on the basis of this "existing discharge." Chemical, physical, and biological data collected prior to December 27, 1977, may be utilized to make these demonstrations provided that they are based on a discharge which is virtually identical to the applicant's "existing discharge" in terms of location, volume, and composition. Additionally, chemical, physical, and biological data collected after December 27, 1977, may be utilized to show compliance with those sections if they are based on the applicant's actual discharge as of any time between December 27, 1977, and September 24, 1978, the deadline for submission of applications for a modified permit.

At EPA's February 22, 1978, hearing on implementation of section 301(h), a number of municipalities testified that they would have to relocate their outfalls, modify their diffusers, or upgrade treatment (e.g., from primary to primary with chemical addition) in order to meet the requirements of section 301(h). Under the regulations proposed today, EPA would not consider the effect of such outfall or treatment modifications on the applicant's discharge unless they were made prior to the date of application.

The Agency expressly solicits comment on this issue and on the following questions in particular:

(1) In light of the plain language of the statute and its legislative history, can section 301(h) be construed to allow EPA to issue a modified NPDES permit based on modifications which will be made in an applicant's discharge after September 24, 1978?

(2) If so, what types of modifications should be permitted? Upgrading of treatment? Relocation of the outfall? Modifications in the diffuser system? Should EPA be required to consider applications from POTWs which now discharge into inland waters but are considering constructing, or now have under construction, an ocean or estuarine outfall?

(3) How can EPA make an accurate predictive judgment as to whether a non-existent discharge will meet the stringent water quality, physical, chemical and biological criteria contained in subpart B? What additional information should the applicant provide to EPA if its application is based on a modified discharge? Should such an applicant bear a heavier burden of

proof than one who seeks a modified permit based on an existing discharge?

(4) It has been suggested that in making the physical, chemical and biological assessments required under Section 233.14, as well as assuring that discharge will comply with State water quality standards under section 233.22(b), consideration should be given to the effect of Federal pretreatment and nonindustrial source control programs which are scheduled to be operative at some time in the future. How can an accurate predictive judgment be made concerning the effect of such programs on the chemical composition or the environmental impact of the applicant's discharge when (a) Federal pretreatment standards for most industries will not be promulgated for several years; (b) the complete list of toxic pollutants to be regulated by such standards has not yet been determined; (c) the pretreatment standards promulgated will assume at least secondary treatment by the POTW; and (d) nonindustrial source control programs will not be in place until some time in the future?

(5) When should EPA require that any necessary modifications to the applicant's discharge be completed?

(6) What action should be taken by EPA if the modifications are not completed on time, if the actual impact of the modified discharge is more severe than that predicted by the applicant, if pretreatment programs are not in place on the date specified, or if upgraded treatment does not provide the degree of pollutant reduction anticipated? Specifically, should the modified permit be revoked and the permittee required to go forward with secondary treatment?

Section 233.12. Section 301(h)(1) of the act provides that applicants for a modified permit demonstrate that there is an applicable state water quality standard specific to the pollutant for which a modification of the requirements of secondary treatment is requested. Under section 233.12, the applicant must demonstrate not only the existence of, but compliance with such standard under section 301(b)(1)(C) of the act.

Only state water quality standards approved by EPA under section 303 of the act, or section 10 of the Federal Water Pollution Control Act prior to October 28, 1972, shall be considered water quality standards for purposes of section 301(h)(1). No new or revised state water quality standard may be utilized to determine compliance with this section unless it is approved by EPA prior to September 24, 1978.

Secondary treatment is currently defined by EPA in terms of BOD, suspended solids and pH. If a state has no water quality standard for BOD, the applicant may satisfy the requirements of section 301(h)(1) by demonstrating compliance with an approved standard for dissolved oxygen. Similarly, if a state has no standard for suspended solids, that requirement may be met by showing that the applicant meets an approved standard or standards for turbidity, light transmission, light scattering and maintenance of the photic zone. If a state has not promulgated and obtained EPA approval of a water quality standard for BOD, suspended solids or pH (or an appropriate surrogate or related parameter) by September 24, 1978, no modification may be granted for that pollution.

State water quality standards may not be promulgated or approved for waters of the contiguous zone under either section 303 of the act or section 10 of the act as in existence prior to October 28, 1972. Because the existence of a state water quality standard for BOD, suspended solids or pH is a statutory prerequisite for issuance of a modified permit under section 301(h), section 301(h)(1) raises some doubt as to whether a contiguous zone discharger would even be eligible for a section 301(h) modified permit. EPA has determined, however, based on both the statutory definition of "marine" waters (which includes the contiguous zone) and the scientific theory underlying the enactment of section 301(h), that Congress intended to make the modification afforded by section 301(h) available to contiguous zone dischargers. For purposes of determining such dischargers' compliance with section 301(b)(1), EPA will extend applicable state water quality standards for BOD, suspended solids and pH (or related or surrogate standards) established for the territorial seas to the contiguous zone.

Section 233.13. Section 301(h)(2) of the act requires dischargers to demonstrate that their less than secondary treated discharge will not interfere with the attainment and maintenance of water quality which is necessary to protect public water supplies.

While the legislative history of section 301(h)(2) does not indicate the purpose of this provision, it appears to be based on a 1973 National Academy of Sciences report which classified drinking water as a "use" of the ocean. Because the salinity of seawater precludes its use as a public water supply without desalinization, EPA has interpreted this provision as requiring a section 301(h) applicant to evaluate the impact of its discharge on any planned or existing desalinization plant whose seawater intakes are or would be located within ten (10) nautical miles of any outlet port of its outfall. EPA expects that this requirement will have limited application, in light of the high energy costs associated with desalinization.

For the purposes of this section, the term "public water supplies" has the same meaning as in the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f et seq.

Section 233.14. Under section 301(h)(2) of the act, dischargers are required to demonstrate, to the satisfaction of EPA, that their discharge will not interfere with the attainment and maintenance of water quality which assures the protection of a balanced, indigenous population of fish, shellfish and wildlife.

EPA has determined that the actual and potential impact of the discharge on the biota should be evaluated on the basis of a chemical assessment of effluent and water quality, and a physical assessment and biological assessment of the impact of the discharge on marine life and ecosystems.

At EPA's February 22, 1978 hearing on implementation of section 301(h), several persons stated that, in assessing the impact of an applicant's discharge under section 301(h)(2), EPA should look only at the impact of the applicant's existing discharge as compared with the impact which would occur if the applicant provided secondary treatment. In light of the fact that the statute contains no such requirement, EPA seriously questions whether its assessment under section 301(h) can or should be limited to such a comparison. EPA additionally questions whether, as a practical matter, an accurate predictive judgment of the degree of toxic pollutant removal which would have been achieved through secondary treatment can be made for all applicants or whether an accurate predictive judgment as to the physical, water quality or biological impact of a putative secondary discharge can be made for any applicant.

In the regulations proposed today, therefore, the following format has been adopted. Where toxic pollutant effluent limitations attainable through application of secondary treatment can be accurately determined (as, for example, where a representative portion of the applicant's influent now receives secondary treatment), the applicant will be required to demonstrate that, at a minimum, its existing discharge meets those effluent limitations. Physical, water quality, and biological impact assessments will be made on the basis of the actual impact of the applicant's discharge, without any comparison with the predicted impact of a secondary treated discharge. The Agency solicits comment on this approach.

Chemical and water quality assessment. Each applicant for a modified permit under section 301(h) must demonstrate that, for each of the substance listed in section 233.1(w),[1] the

[1] This list includes (1) all substances for which EPA has developed marine water quality criteria plus (2) all compounds and

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applicant's discharge meets either (1) the applicable EPA marine water quality criterion published in "Quality Criteria for Water" or (2) the effluent limitations which would be obtainable for such substance through the application of secondary treatment (if such limitations can be determined), whichever is more stringent. Compliance with EPA marine water quality criteria will be determined after initial dilution in the case of metals and other naturally occurring pollutants, and without allowance for initial dilution, in the case of synthetic organics, such as pesticides and PCBs. As noted above, Congress has emphasized that control of the latter category of pollutants may not be based on dilution or dispersion.

At the present time, marine water quality criteria have been developed for nineteen of the toxic pollutants listed in section 233.1(w). EPA expects to publish, within the next several months, new criteria for many of the remaining substances listed in that section and revisions of some of its existing criteria. The current status of this effort precludes EPA's providing, as part of this proposed regulation, a definitive list of the specific criteria which applicants will be required to meet under section 233.14(b). However, such criteria will be specifically identified when the regulation is promulgated in final form.

No chemical assessment need be made for any substance which the applicant certifies, because of the nature of its influent, cannot be present in its discharge. Thus, EPA expects that the chemical analysis which would have to be prepared by small dischargers of purely domestic wastes under this section would be very limited.

In addition to showing that its discharge complies with EPA marine water quality criteria, each applicant for a modified permit will be required to demonstrate that its discharge meets all applicable state water quality standards approved or promulgated for the purpose of protecting fish, shellfish or wildlife in the waters into which it discharges.

Physical Assessment. Each applicant for a modified permit under section 301(h) will be required to demonstrate, based on the physical arrangement of its outfall structure and the physical oceanographic conditions in the vicinity of its outfall, that there is sufficient initial dilution and effective flushing to assure the attainment of water quality necessary to protect marine communities at the edge of the zone of initial dilution. Applicants must provide information sufficient to allow the EPA to determine whether applicant's discharge will accelerate the accumulation of solids on the seabed and if so, what effect such accumulation will have on dissolved oxygen. In addition, because pathogenic microorganisms, toxic metals, and organic compounds are associated with suspended solids, applicants must also demonstrate that applicable water and sediment quality criteria are not exceeded for these parameters; that the increase in solids discharged will not result in increased discharges of metals and persistent synthetic organics, or increased distribution and survival of pathogenic microorganisms; and that marine biota will not be adversely affected by the discharge of such materials in association with suspended solids.

Biological Assessment. Each applicant for a section 301(h) modification must show that there exists at the edge of the zone of initial dilution of its outfall a balanced indigenous population of fish, shellfish, and wildlife. For purposes of this section, the term "balanced indigenous population of fish, shellfish, and wildlife" will be construed to mean that ecological community of marine organisms which (1) might reasonably be expected to repopulate the edge of the zone of initial dilution from nearby unpolluted waters if the outfall were removed, and (2) exhibits characteristics of natural nearby unpolluted, healthy communities existing under comparable environmental conditions, including depth, substratum composition, temperature, salinity, and hydrographic regime. Among these characteristics are species abundance and distribution, stratification, feeding relationships, seasonality, succession, and direction of community development.

The biological assessment consists of two parts: a biological questionnaire, which asks the applicant to respond to a number of questions regarding the characteristics outlined above and a summary of long and short-term biological conditions in the vicinity of the outfall, which must be prepared by the applicant to support its responses to the questionnaire.

The biological conditions summary should be based on existing data, if available, or original biological field surveys. Sampling guidelines for the benthos, phytoplankton, zooplankton, demersal fishes, and intertidal assemblages are available from EPA. Differences in community structure can be analyzed by the numerical classification techniques reviewed by Boesch (1977, EPA Ecol. Res. Ser., 600/3-77-033). The macrofaunal benthos is recommended as an appropriate community for detecting the effects of settleable effluent components. The design of the sampling program must include clean ocean control stations against which the effects of the outfall can be gauged. Using the discharge point as the epicenter, a radial pattern of sampling transects should be developed so that gradients of conditions can be observed. It may be necessary to stratify sampling according to natural environmental discontinuities in the outfall vicinity.

The extent of documentation required for an adequate biological assessment will depend on both the quality of effluent discharged and the relative sensitivity of the receiving ecosystem. Thus, an applicant which discharges wastewater containing toxic pollutants would be required to perform more extensive field surveys and develop or assemble a more extensive data base to support its biological conditions summary than an applicant discharging purely domestic wastes into the same receiving waters. In any case in which an applicant claims that adverse impacts on the marine ecosystem in the vicinity of its outfall is attributable to factors other than its discharge, it should provide sufficient data in its biological conditions summary to enable EPA to determine whether its discharge in any way contributes to such conditions. The applicant, it should be noted, bears the burden of proof in making this demonstration.

Section 233.15. Section 301(h)(2) of the Act requires that an application for modification demonstrates that its discharge will not interfere with the attainment and maintenance of that water quality which allows for recreational activities. To meet this requirement, an applicant will be required to prepare a detailed analysis of recreation fishing, boating, swimming, and diving outside the zone of initial dilution, and swimming, wading, picknicking and related activities along shorelines and beaches adjacent to the outfall. Evidence that a Federal or State agency has imposed any limitation restricting water contact or recreational activities in the vicinity of the outfall or has restricted human consumption of finfish or shellfish taken from the area of the outfall will create a rebuttable presumption that the applicant's discharge interferes with the attainment and maintenance of water quality necessary to permit recreational activities in the vicinity of the outfall.

Section 233.16. Under Section 301(h)(3), an applicant is required to show that it has established a monitoring system to measure the impact of its discharge on a representative sample of the aquatic biota in the receiving water. Since actual establishment of this biomonitoring program would be necessary only if a modified permit were issued under Section 301(h), an applicant need not demonstrate at the time it submits its application that it has an acceptable bio-

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classes of compounds listed in Table 1 of Data Relating to H.R. 3199 (Clean Water Act of 1977), No. 95-30 (Comm. Print 1977).

monitoring system in place, however, it must show that it has the necessary resources and technical capability to put such a system into operation immediately upon issuance of a modified permit.

Each monitoring program should have four objectives: to monitor effluent quality, to assure compliance with pretreatment standards and programs to control the introduction of toxicants from nonindustrial sources, to assure compliance with water quality standards, and to measure the impact of the discharge upon indigenous populations. The data generated by the biomonitoring program will be used by EPA to determine whether, as a general matter, relaxation of the requirements of secondary treatment have adverse impacts on marine biota and ecosystems in deep ocean or estuarine waters; whether, in any case where such adverse impacts are demonstrated, the discharger's modified permit should be revoked; and whether upon its expiration, the discharger's modified permit should be extended.

Development of an acceptable biomonitoring program—which addresses not only the methods but also the frequency of monitoring—should be based on consideration of a number of factors, including the nature and volume of the wastes discharged, the nature of the receiving waters, and the nature of the ecosystem in the vicinity of the discharge. Thus a POTW which discharges toxic pollutants into an area where there are sensitive marine communities will be required to develop a more sophisticated biomonitoring program requiring more frequent data gathering and analysis than a POTW which discharges small amounts of purely domestic wastes into a relatively uninhabited area.

All dischargers must include in their monitoring programs monitoring requirements geared to the parameters of secondary treatment. At a minimum, the monitoring system should measure mass emissions of immediate oxygen demand, ultimate carbonaceous oxygen demand, ammonia, suspended solids, and pH. Where a section 301(h) modification is sought on the basis of a state water quality standard which regulates parameters which are related to or surrogates for BOD, suspended solids, and pH, periodic monitoring of those parameters should also be included in the monitoring program. Measurements should be made for periods of from twenty-four hours to one year so that critical weekly, monthly, and annual cycles can be identified.

Where an applicant has known or suspected industrial or nonindustrial sources of toxic pollutants, it must also establish a monitoring program to assure that the concentrations of toxics discharged meet state water quality standards, the level of effluent quality which would have been attained by application of secondary treatment, or EPA marine water quality criteria, whichever is more stringent, and to assure compliance with pretreatment standards and programs to eliminate or control the introduction of toxic pollutants from nonindustrial sources.

In addition to these monitoring programs, applicants must devise a comprehensive program to monitor both the immediate and long-term impacts of the discharge on the receiving waters and marine biota and ecosystems. In most cases, a combination of laboratory analyses (*e.g.*, both acute and chronic bioassays) and field surveys will be required to assure adequate monitoring of the impact of the discharge on the biota. At a minimum, impacts should be measured at the edge of the zone of initial dilution as described in the discharger's application for modification.

In developing field survey programs, special attention should be given to the selection of control sites, frequency of monitoring, and the species monitored. Survey control sites should be chosen to assure that an accurate assessment of both the long- and short-term impacts of the discharge on the maintenance and propagation of a balanced indigenous population of marine organisms at the edge of the zone of initial dilution can be made. While the frequency of field studies required for a particular discharge will depend on its volume and composition and the nature of the receiving waters and affected ecosystems, at a minimum, intensive surveys should be done at those times of the year which have been defined as critical in some sense, including, without limitation, periods of high waste loadings, low background water quality, low net circulation, and biological sensitivity (such as spawning seasons).

Appropriate sensitive benthic, intertidal, and water column marine organisms representative of the various horizontal and vertical strata of the marine community should be monitored to determine whether the discharge is adversely impacting balanced indigenous marine populations at the edge of the zone of initial dilution. In all cases, monitoring should seek to detect adverse impacts on the marine community which result not only from chemical factors (e.g., fin rot or accumulation of toxics in tissues), but also from physical factors (e.g., smothering or changes in substrate or habitat). Because benthic and intertidal sediments provide a direct and generally stable medium for assessing the impact of discharges on indigenous communities, they should also be analyzed.

A biomonitoring program which EPA determines will meet the requirements of section 301(h)(3) will be included in any modified permit issued under section 301(h) and will be subject to revision during the life of the permit. Costly and extensive programs need not be continued indefinitely if monitoring results indicate that a discharge has a minimal impact on the environment, and if a suitable, simpler substitute monitoring program can be developed. Conversely, where a proposed monitoring program proves to be inadequate, more extensive monitoring requirements may be imposed by EPA.

Section 233.17. Section 301(h)(4) of the Act requires applicants for a modification to demonstrate that their discharge will not result in increased pollution control requirements on other point or non-point sources. Although this requirement would appear to be primarily applicable to POTWs which discharge into enclosed or semi-enclosed estuarine waters, it may also, in specific cases, affect POTWs which discharge into open coastal areas where there are significant pollutant loadings from other outfalls.

Since waste load allocations are determined by the State, each section 301(h) applicant must include with its application letter(s) from all State agencies which have any role in setting waste loadings or waste load allocations indicating whether the modification will affect pollution control or loading requirements for other point and non-point sources and explaining in detail how such a determination was made. Such statement, and the accompanying analysis, will be subject to review by EPA.

Section 233.18. Subsection 301(h)(5) requires that an applicant for a modified permit demonstrate that "all applicable pretreatment requirements for sources introducing wastes into such treatment works will be enforced." The showings which must be made by an applicant to demonstrate compliance with this section will depend first, on its contributors, and second, its size.

An applicant which has no known or suspected industrial sources of toxic pollutants need only submit a certification to that effect to EPA. A large discharger (i.e., a POTW that serves a population of more than 20,000 persons or has a flow of more than 2 million gallons of wastewater per day) which has known or suspected industrial sources of toxic pollutants must demonstrate that it has established both a pretreatment program which complies with EPA's General Pretreatment Regulations, 40 CFR part 403, at the time of application and a compliance schedule for implementing its program. A small discharger with known or suspected industrial sources of toxic pollutants is not required to have established an approvable pre-

treatment program at the time it applies for a modified permit under section 301(h). However, it must submit an inventory of all industrial contributors as described in section 233.18(b)(2)(A) and a compliance schedule for developing and implementing an approvable pretreatment program satisfying the requirements of 40 CFR part 403.

Part 403, which defines the requirements of a municipal pretreatment program and describes the evidence required to show that the requirements have been met, was proposed on February 2, 1977. Promulgation of final regulations is expected in April or May 1978. To assist POTW's in meeting the requirements of section 233.18 of the regulations, a draft of these final regulations is included as Attachment F, section 2 of the application form. While the Agency solicits comment on the use of these regulations to meet the requirements of section 301(h)(4), the regulations themselves are not subject to further comment, the comment period on the proposed regulations having closed on May 3, 1977.

The schedule of compliance required for both large and small dischargers is designed to assure that there will not be a lag between the promulgation of pretreatment standards under section 307 (b) or (c) of the Act and the initiation of any necessary construction, process changes and/or operating procedures by regulated sources. Each Federal pretreatment standard will identify the shortest time that would be required for an affected industrial source to order and install any required technology. Industrial contributors to publicly owned treatment works granted a section 301(h) modification will be required to comply with pretreatment standards within the shortest reasonable time, but in any event not more than the 3 years allowed by statute.

An accelerated schedule for implementing a pretreatment program is required for POTW's qualifying for a modified NPDES permit under section 301(h) because of secondary treatment's ability to incidentally remove toxic pollutants. Federal pretreatment standards assume that toxic pollutants introduced into POTW's by industrial sources will receive at least secondary treatment before being discharged. In addition, secondary biological treatment systems normally provide an early warning of the discharge of many toxic pollutants by exhibiting upsets and inhibitions. Unlike such secondary treatment systems, less than secondary or primary treatment may allow discharges (accidental or otherwise) of highly toxic pollutants to go unnoticed and significantly stress the marine environment.

The schedule of compliance submitted by applicants should include, as necessary to conform with 40 CFR part 403, identification of industrial contributors, notification of pretreatment standards, submission of an industrial discharger inventory, or a quantitative and qualitative characterization of undesignated sources of toxic pollutants to EPA, complete characterization of industrial waste contributions, submission of a state approved local pretreatment program together with a state certification that it conforms to applicable Federal and State requirements, implementation of a biomonitoring program if the industrial waste survey/inventory indicates the possible presence of toxic amounts of toxic pollutants in the applicant's effluent or sludge, notification of scheduled dates of promulgation of applicable pretreatment standards and establishment of appropriate monitoring and reporting requirements for high priority industrial contributors, plus development of schedules of compliance for industrial dischargers and implementation through the local pretreatment program after promulgation of applicable pretreatment standards.

Although it may be inappropriate for EPA to assign fixed time periods or require that the above steps be accomplished in any prescribed order, it is critical that the entire schedule not exceed eighteen (18) months from the date of approval of the section 301(h) modification.

Section 233.19. Under section 301(h)(6), an applicant for a modified permit is required to demonstrate, to the satisfaction of the Administrator, that it has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into its facility, to the extent practicable. To assure compliance with this requirement, the applicant must furnish a schedule of activities for identifying and monitoring toxic pollutants from nonindustrial sources, and their potential impacts and an effective control program, and must demonstrate that it has the necessary technical capability and has established the necessary personnel and institutional arrangements to assure that these activities and program are fully implemented according to schedule.

Best management practices must be developed to control toxic pollutants which may be carried into combined sewers by stormwater runoff, including street and catch basin cleaning and trash pickup. Programs must also be initiated to control pesticide runoff, which may include diking, banning the sale and use of certain pesticides or requiring the adoption of nonchemical pest management practices. For toxic pollutants from other nonindustrial sources, such as hospitals, laboratories, and schools, an analysis should be made of the entire spectrum of possible pollution control points—including sale, use, handling, disposal, and treatment—to determine the stage at which such pollutants can best be limited or eliminated.

Section 233.20. Section 301(h)(7) provides that an applicant for a section 301(h) modification must demonstrate that there will be no new or substantially increased discharges of the pollutant to which the modification applies above the volume of discharge specified in the modified permit, because increases in either the volume of effluent discharged or pollutant loadings may affect the impact of the discharge upon the quality of the receiving waters and marine biota or ecosystems, both volume of effluent and mass emissions will be subject to the requirements of this section.

Effluent volumes will be limited to the applicant's current design flow capacity, which is defined as existing design volume. Furthermore, any increases in volume must come from within the application's existing service area. Thus any POTW which is issued a modified permit under this part may neither extend its existing service area nor interconnect with new areas during the life of the modified permit.

Because EPA's decision to issue a modified permit is based on its analysis of the environmental impact of existing mass pollutant loadings, pollutant loadings in any modified permit issued will be limited to those mass emissions. To assure that pollutant loadings from combined sewer overflows are adequately controlled, a POTW with combined storm and sanitary sewers should submit as part of its application an analysis of its combined sewer overflow situation, which, among other things, identifies the corrective measures which will be taken to eliminate or minimize these discharges in the event a modification is granted.

Section 233.21. Under section 301(h)(8), any title II funds available to the POTW are to be used to achieve the degree of effluent reduction required by sections 201(b) and 201(g)(2)(A) of the Act or to carry out the requirements of section 301(h), including the construction of monitoring facilities.

As long as the grant applicant has satisfactorily demonstrated that alternative waste management techniques have been studied and evaluated and that the works proposed for grant assistance will be cost effective and will provide for application of BPWTT (including reclamation and recycling of wastewater and confined pollutant disposal), the development of monitoring, pretreatment, and toxic source control programs and other programs or construction necessary to assure compliance with the requirements of section

301(h) will be eligible for title II funds available to the treatment authority. Operation and maintenance costs for pretreatment, nonindustrial source control, biomonitoring, and other programs, however, will not be federally funded.

Section 233.22. Because section 301(h) requires that EPA issue a new NPDES permit to a successful section 301(h) applicant, applicants will be required to show at the time they apply for a modification that their discharge meets the requirements of section 301(b)(1)(C) of the Act—including any applicable State water quality or treatment standards. No modified permit will be issued where the State in which the applicant is located has a treatment standard requiring secondary treatment.

Applicants located in a State with an approved Federal coastal zone management program will also be required to provide certification that issuance of a modified permit complies with the State's approved program.

Finally, applicants which discharge into the territorial seas and the contiguous zone must demonstrate, at the time they apply for a section 301(h) modification, that they meet EPA ocean discharge guidelines implementing section 403(c) of the Act. Revised ocean discharge guidelines, which will track very closely the requirements of section 233.12 through 233.15 and 233.22 of this part, are scheduled to be proposed shortly.

SUBPART C

The procedural regulations governing Agency action on applications for modified permits under section 301(h) are based on the "initial licensing"[2] provisions of the Administrative Procedure Act ("APA"), 5 U.S.C. 551 et seq. These provisions govern agency proceedings involving the initial grant of a license or variance where decisionmaking is likely to involve policy determinations of the type normally made in rulemaking.

Under the APA, initial licensing proceedings are meant to be substantially less adversarial than other formal adjudications, such as administrative penalty assessments and license revocations. In initial licensing, no "separation of functions" requirement forbidding contact between agency trial staff and ultimate decisionmakers is imposed (5 U.S.C. 554) and there is no requirement that the Administrative Law Judge who presides must prepare the initial opinion. Instead, any "responsible employee" of the agency may recommend one. 5 U.S.C. 557(b)(1). In addition, agencies may require that all or part of the evidence be submitted in written form. 5 U.S.C. 556(d). The legislative history of the APA indicates that these exemptions were provided for initial licensing because the decisions involved were thought to be "like rulemaking" in that they would be complex, non-accusatory and policy-dominated. Because they do not involve accusing anyone of wrong-doing, there was no reason for "separation of functions" within the agency or for an initial decision by a statutorily independent individual, while the complexity of the problems required that the agency be able to draw on its staff experts freely without being hampered by such artificial barriers. The Administrative Procedure Act—A Legislative History, S. Doc. No. 248, 79th Cong., 2d. Sess. 204, 229, 262, 361 (1946).

Initial licensing procedures are, in EPA's opinion, peculiarly suited to the issuance of modified permits under Section 301(h). Section 301(h) proceedings will require decisionmaking on a number of very complex policy, scientific and technical issues. These decisions will not be of an "accusatory" or condemnatory nature but will involve setting and applying the policy of the statute in concrete sutuations. Additionally, Congress has directed EPA to act expeditiously in issuing Section 301(h) determinations, a process which could be facilitated through use of the innovative initial licensing proceedings proposed below.

In the proposed regulations EPA has attempted to utilize the initial licensing procedure not only to expedite decisionmaking on a number of complex, policy-type issues but also to diffuse the adversarial nature of administrative evidentiary proceedings. No EPA trial staff will be designated. Instead, a panel of agency employees with expert knowledge of or responsibility for the subjects involved will be present at the hearing and will question the parties, subject to over-all control of the proceeding by an Administrative Law Judge or by a Presidential appointee representing the administrator. The Agency will prepare a tentative determination on the permit application, and the information contained in the application and the tentative determination will be the focus of attention at the hearing. The hearing itself will be divided into a "legislative" phase at which the parties can present their views and arguments to the panel and be questioned by it, and an "adjudicative" phase at which formal cross-examination can be ordered if certain threshold conditions are met.

After the hearing, the panel will prepare a recommended decision which may be appealed to or reviewed sua sponte by the Administrator. In developing his final decision, the Administrator is free to consult with panel members as well as other EPA technical staff.

EPA believes this type of procedure not only complies with the literal language of the initial licensing provisions of the APA but also that it confoms to the spirit of those provisions better than more traditional procedures. Because Section 301(h) proceedings are one of the first areas in which EPA is considering using these types of procedures, the Agency is particularly interested in receiving public comment on its approach.

NOTE.—The Environmental Protection Agency has determined that this regulation, because it implements a statutory provision which eases, rather than imposes, pollution control costs, does not constitute a regulation requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and under OMB Circular A-107.

Dated: April 18, 1978.

BARBARA BLUM,
Acting Administrator.

PART 233—MODIFICATIONS OF SECONDARY TREATMENT REQUIREMENTS FOR DISCHARGES INTO MARINE WATERS

Subpart A—General

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233.31 Scope and purpose.

[2]The APA defines "licensing" in part as any "agency process respecting the * * * limitation, amendment, modification, or conditioning of a license". 5 U.S.C. 551(9). A license includes a permit. 5 U.S.C. 551(8). Section 301(h) proceedings are initial licensing because they involve the first NPDES permits to be issued under the standards of section 301(h).

Sec.

233.32 Application for modified permit.
233.33 Administrative record.
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APPLICATION FOR MODIFICATION OF THE REQUIREMENTS OF SECONDARY TREATMENT

AUTHORITY: Pub. L. 95-217, Clean Water Act Amendments of 1977.

Subpart A—General

§ 233.1 Definitions.

Except as otherwise specifically provided in this part:

(a) The term "Act" means the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq.

(b) The term "Administrative Law Judge" means an Administrative Law Judge appointed under 5 U.S.C. § 3105 (see also 5 CFR Part 930, as amended by 37 FR 16787). Such term is synonymous with the term "Hearing Examiner" as used in Title 5 of the United States Code.

(c) The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

(d) The term "applicant" means an applicant for a modified National Pollutant Discharge Elimination System permit under Section 301(h) of the Act.

(e) The term "application form" means EPA's "Application for Modification of the Requirements of Secondary Treatment."

(f) The term "Assistant Administrator for Enforcement" means the Assistant Administrator for Enforcement of the United States Environmental Protection Agency.

(g) The term "Assistant Administrator for Water and Hazardous Materials" means the Assistant Administrator for Water and Hazardous Materials of the United States Environmental Protection Agency.

(h) The term "balanced indigenous population" means that ecological community of organisms which (1) might reasonably be expected to repopulate the polluted water body segment from adjacent unpolluted waters if the sources of pollution were removed, and (2) exhibits characteristics similar to nearly unpolluted healthy communities existing under comparable environmental conditions, including depth, substrata composition, temperature, salinity and hydrologic regimes. Among these characteristics are species distribution and abundance, stratification, feeding relationships, seasonality, succession and direction of community development.

(i) The term "contiguous zone" means the entire zone established or to be established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

(j) The term "EPA" means the United States Environmental Protection Agency.

(k) The term "EPA marine water quality criteria" refers to criteria for marine waters published by EPA in Quality Criteria for Water and any additions or modifications thereto.

(l) The term "industrial source" means an industrial plant or facility which introduces pollutants or toxic pollutants into a publicly owned treatment works.

(m) The term "Judicial Officer" means an attorney who is a permanent or temporary employee of the United States Environmental Protection Agency.

(n) The term "nonindustrial source" means a source other than an industrial plant or facility which introduces toxic pollutants into publicly owned treatment works, including, without limitation: medical offices; dental offices; hospitals; schools; research, educational and commercial laboratories; warehouses; streets and gutters; shopping centers; carwashes; paint stores; residential, commercial and public uses of pesticides and fertilizers; gas stations; and septage collection and disposal.

(o) The term "permit" or "NPDES permit" means a National Pollutant Discharge Elimination System permit issued under Section 402 of the Act.

(p) The term "person" includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(q) The term "pollutant" means biochemical oxygen demand (BOD), suspended solids or pH.

(r) The term "public water supplies" means water distributed from a public water system.

(s) The term "public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least twenty-five (25) individuals. It includes: (1) Any collection, treatment, storage, and distribution facilities under the control of the operator of the system and used primarily in connection with the system, and (2) any collection or pretreatment storage facilities not under the control of the operator of the system which are used primarily in connection with the system.

(t) The term "Regional Administrator" means one of the Regional Administrators of the U.S. Environmental Protection Agency.

(u) The term "saline estuarine waters" means semi-enclosed marine waters freely connected with the territorial sea.

(v) The term "territorial sea" or "territorial seas" means the belt of seas measured from the line of ordinary low water along that portion of the coast which is in direct contract with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 3 miles.

(w) The term "toxic pollutants" means the following substances and any other substance identified by EPA as a toxic pollutant under section 307(a) of the Act:

Aldrin/Dieldrin; Arsenic; Benzidine; Carbon tetrachloride; Cadmium.
Dichlorobenzidine.
Chlorinated ethanes.
Chloroform.
Chromium; Demeton; Dichloroethylenes.
Dinitrotoluene.
Fluoranthene.
Diphenylhydrazine; Endrin; Hexachloro- cyclopentadiene; Ethylbenzene; Lindane; Mercury; Nickel.
Nitrobenzene; Naphthalene.
Silver; Vinyl Chloride.
Acenaphthene; Antimony; Chlorinated benzenes; Chloroalkyl ethers; DDT.
Dichloropropane and dichloropropene; Halomethanes; Malathion; Tetrachloroethylene.
Trichloroethylene.
Polynuclear aromatic hydrocarbons; Endosulfan; Mirex; Pentachlorophenol.
Phenol; Acrylonitrile.
Asbestos; Benzene.
Beryllium; Chlorinated Naphthalene; 2-Chlorophenol; Chlorophenols; Chlorophenoxy herbicides; Cyanide; 2,4-Dichlorophenol.
Acrolein; Chlordane; Nitrosamines; Copper; dichlorobenzenes; Guthion; Haloethers.
Heptachlor.
Hexachlorobutadiene; Hexachlorocyclohexane; Isophorone.
Lead; Methoxychlor; Nitrophenols; parathion; Phthalate Esters; PCB's.
Selenium; P-Dioxin.
Thallium; Toluene.
Toxaphene; Zinc.
2,4-dimethylphenol.

(x) The term "water quality standards" means applicable state water quality standards which have been: (1) Approved or permitted to remain by the Administrator under section 303(a) or 303(c) of the Act, or (2) promulgated or proposed for promulgation by the Administrator under section 303(b) or 303(c) of the Act, as of the date of any application for modification submitted under this part.

(y) The term "zone of initial dilution" means the regularly shaped boundary encompassing all outfall plume configurations described in the applicant's application form.

§ 233.2 Scope and purpose.

This part sets forth the procedures to be followed and the criteria to be applied in issuing an NPDES permit for discharges into the territorial sea, the contiguous zone, or saline estuarine waters which modifies the requirements of section 301(b)(1)(B) of the Act.

§ 233.3 Law authorizing issuance of modified permit.

Section 301(h) of the Act provides that:

"The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant in an existing discharge from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that:

(1) There is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) Such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;

(3) The applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) Such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) All applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) To the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(7) There will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(8) Any funds available to the owner of such treatment works under Title II of this Act will be used to achieve the degree of effluent reduction required by section 201 (b) and (g)(2)(A) or to carry out the requirements of this subsection.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act."

Subpart B—Criteria

§ 233.11 Existing discharge into marine waters.

(a) *Discharge into marine waters.* (1) No modified permit shall be issued under this part unless the applicant demonstrates, to the satisfaction of the Administrator, that the discharge for which a modified permit is requested is a "discharge into marine waters" within the meaning of this section.

(2) For purposes of this section, the term "marine waters" means the waters of the territorial sea or contiguous zone or saline estuarine waters:

(i) Where the Administrator determines, on the basis of information submitted by the applicant as attachment A of its application, that there is:

(ii) Rapid dilution of partially treated wastes, of the order achieved by accepted designs of multiport ocean outfalls at depths of 200 or more feet; and

(iii) Rapid replenishment of contaminated coastal waters with uncontaminated coastal waters; and

(iv) Where the Administrator determines that the increased pollutant loadings which would result from a modification of the requirements of section 301(b)(1)(B) of the Act would not impede the attainment of or interfere with the maintenance of water quality which assures protection of public water supplies, and the protection and propagation of a balanced indigenous population of fish, shellfish and wildlife, and allows for recreational activites both in and on the water. The existence of any of the following conditions shall create a rebuttable presumption that the waters into which the applicant discharges do not meet this requirement:

(A) A history of environmental neglect and lack of adequate wastewater treatment facilities, as evidenced, for example, by abnormally high levels of toxic pollutants in the water column and sediments;

(B) Stress on marine organisms and ecosystems in the water column, on the benthos, or on shore;

(C) Significant domestic and industrial waste loadings;

(D) The presence of marine areas valued for commercial, recreational, or scientific uses, utilized as preserves or sanctuaries, or considered areas of biological sensitivity or significance; or

(E) Altered ecological communities.

(b) *Existing discharge.* (1) No modified permit shall be issued under this part for a discharge other than an "existing discharge" within the meaning of this section.

(2) The term "existing discharge" means a discharge which was actually flowing into marine waters, as defined in paragraph (a)(2) of this section, on or prior to December 27, 1977.

(3) Demonstration of compliance with paragraph (a) of this section and §§ 233.12 through 233.17 of this part shall be made on the basis of the composition, volume, and location of the applicant's discharge as of: (i) December 27, 1977, or (ii) a date between December 27, 1977, and the date of submission of its application for a modified permit, designated by the applicant.

§ 233.12 Existence of and compliance with applicable water quality standards.

(a) No modified permit shall be issued under this part unless the applicant demonstrates, to the satisfaction of the Administrator, that:

(1) There exists a State water quality standard or standards, as defined in § 233.1(x), applicable to the pollutant for which a modified permit is requested, including, without limitation:

(i) For biochemical oxygen demand, State water quality standards for biochemical oxygen demand and dissolved oxygen; and

(ii) For suspended solids, State water quality standards for suspended solids, turbidity, light transmission, light scattering, and maintenance of the photic zone; and

(2) The applicant's discharge will meet such standard or standards after initial dilution, as determined on the basis of information submitted by the applicant in attachment A, sections 1 through 4, of its application.

(b) *Discharge into the contiguous zone.* For a discharge into the contiguous zone, State water quality standards adopted or promulgated for the segment of the territorial sea which is nearest the point of discharge shall be utilized for purposes of determining compliance with this section.

§ 233.13 Attainment and maintenance of water quality which assures protection of public water supplies.

(a) *General.* No modified permit shall be issued under this part unless the applicant demonstrates, to the satisfaction of the Administrator, that the applicant's discharge provides for the attainment and maintenance of water quality which assures protection of public water supplies.

(b) *Evaluation of impact on public water supplies.* To enable the Administrator to determine whether an applicant meets the requirements of this section, the applicant shall provide the following information as attachment B of its application for a modified permit under this part:

(1) The exact location of each planned or existing desalinization plant seawater intake which: (i) Is or will be utilized by a desalinization plant producing water for public water supplies, and (ii) is or will be located within ten (10) nautical miles of any outlet port of the applicant's outfall; and

(2) A detailed analysis of: (i) The impact of the applicant's discharge on

both the quality of the seawater utilized by such desalinization plant and the level of treatment required to assure that the water produced is fit for human consumption, and (ii) a comparison of such water quality and treatment with the water quality which would exist and the level of treatment which would be required in the absence of the discharge.

(3) The analysis required by paragraph (b)(2) of this section shall include, at a minimum, a detailed assessment of:

(i) The extent to which prevailing currents, tides, winds, and other meteorological or hydrological phenomenon may cause the applicant's discharge to affect the quality of water at any seawater intake identified under paragraph (b)(1) and the impact of the discharge on: (A) Water quality in the vicinity of the intake, and (B) the quality of the public water supply produced after treatment (assuming no additional treatment); and

(ii) The extent to which the impact of the applicant's discharge on water quality in the vicinity of the seawater intake may necessitate additional treatment to meet EPA safe drinking water standards.

(c) *Compliance with State water quality standards.* If any outlet port of the applicant's discharge is located within ten (10) nautical miles of any seawater intake identified under paragraph (b)(1)(i) of this section, the applicant shall also demonstrate in attachment B of its application that its discharge meets all water quality standards adopted or promulgated for the purpose of attaining or maintaining water quality which protects public water supplies.

§ 233.14 Attainment and maintenance of water quality which assures protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife.

(a) *General.* (1) No modified permit shall be issued under this part unless the applicant demonstrates, to the satisfaction of the Administrator, that the applicant's discharge provides for the attainment and maintenance of that water quality which assures protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife.

(2) The demonstration required under paragraph (a)(1) of this section shall be based on a chemical, physical, and biological assessment of the impact of the discharge on the receiving water and seabed.

(b) *Chemical assessment.*—(1) *General.* (i) The applicant shall demonstrate, for each toxic pollutant listed in § 233.1(w), that its discharge meets whichever of the following is more stringent:

(A) For naturally occurring substances (such as metals):

(*1*) EPA marine water quality criteria, after allowance for initial dilution; or

(*2*) The effluent limitations attainable through the application of secondary treatment to its discharge.

(B) For organics (such as polychlorinated biphenyls):

(1) EPA marine water quality criteria, without allowance for initial dilution; or

(2) The effluent limitations attainable through the application of secondary treatment to its discharge.

(ii) Compliance with paragraph (b)(1)(i) of this section shall be determined on the basis of information supplied by the applicant in Attachment A, Section 6 of the application form.

(iii) If an applicant is unable to determine, to the satisfaction of the Administrator, the effluent limitations attainable through the application of secondary treatment for any toxic pollutant, the applicant shall demonstrate that it meets the EPA marine water quality criterion for such toxic pollutant.

(2) *Compliance with state water quality standards.* The applicant shall demonstrate in Attachment A, Section 6 of its application that it meets all state water quality standards adopted or promulgated for the purpose of protecting fish, shellfish, or wildlife.

(3) *Exceptions.* No chemical or water quality assessment need be performed under this paragraph (b) for any toxic pollutant which the applicant certifies, because of the nature of its influent, cannot be present in its discharge.

(C) *Physical assessment.* (1) The applicant shall demonstrate that:

(i) Initial dilution is of the order achieved by accepted designs of multiport ocean outfalls at 200 or more feet and is sufficient to meet applicable water quality standards necessary for the protection of marine communities in the environment affected by the discharge under the most demanding critical conditions which are likely to exist during the life of any modified permit issued under this part;

(ii) Dilution water is continuously supplied in an amount equal to the wastewater flow times the dilution water;

(iii) Following initial dilution, the partially diluted wastewater is rapidly and permanently carried away from the outfall, nearshore water use areas, and areas of particular biological sensitivity; and

(iv) Water quality at the edge of the zone of initial dilution will protect fish, shellfish, and wildlife.

(2) To enable the Administrator to determine whether an applicant meets the requirements of paragraph (c)(1) of this section, the applicant shall provide the data on the arrangement of the outfall structure and the physical oceanographic conditions in the vicinity of the outfall required by Attachment A of its application.

(d) *Biological assessment.* (1) *General.* (i) The applicant shall demonstrate that there exists at the edge of the zone of initial dilution a balanced, indigenous population of fish, shellfish, and wildlife, as defined in § 233.1(b), and that the waters and substrate will allow for the maintenance and propagation of a diverse and healthy community of marine life comparable to that which exists in unpolluted areas of the biogeographic zone in which the outfall is located.

(ii) To enable the Administrator to determine whether the applicant meets the requirements of paragraph (d)(1)(i) of this section, the applicant shall answer all questions contained in the biological assessment questionnaire in Attachment A, Section 5 of the application form, based on the biological conditions summary prepared in accordance with paragraph (d)(2) of this section.

(2) *Biological conditions summary.* (i) The applicant shall prepare a summary of the biological conditions (A) which exist within and at the edge of the zone of initial dilution of the applicant's discharge and (B) which exist in nearby unpolluted waters of comparable depth, substratum composition, temperature, salinity, and hydrographic regime. The summary shall be included as Attachment A of the applicant's application for a modified permit under this part.

(ii) The biological conditions summary shall include, at minimum, an assessment of the following:

(A) The presence, characteristics, and distribution of biological communities, including, as appropriate, demersal and pelagic fishes, macrofaunal benthos, phytoplankton, zooplankton, macroalgae, and intertidal assemblages;

(B) The abundance and distribution of the dominant and subdominant species in each community;

(C) The presence or potential for commercial or recreational fisheries;

(D) The presence of distinctive habitats of limited distribution such as kelp beds, coral reefs, b- or intertidal rock outcroppings, etc.;

(E) The presence of man-made alterations to habitats, such as jetties, piers, breakwaters, etc.;

(F) The extent to which the applicant's discharge has caused, or may cause at any time over the life of the applicant's treatment works, alterations in the natural structure and function of biological communities or reproductive potential of populations. Such alterations shall include changes in species composition, standing crop, diversity, feeding relationships, seasonality, succession, direction of community development, and disease incidence; and

(G) Any other matters necessary to support the applicant's responses to the biological assessment questionnaire.

§ 233.15 Attainment and maintenance of water quality which allows for recreational activities.

(a) *General.* No modified permit shall be issued under this part unless the applicant demonstrates, to the satisfaction of the Administrator, that the applicant's discharge provides for the attainment and maintenance of water quality which allows for recreational activities.

(b) (1) *Evaluation of recreational activities.* (i) To enable the Administrator to determine whether it meets the requirements of paragraph (a) of this section, the applicant shall provide, as Attachment C of its application (A) an analysis of the impact of its discharge on existing or potential recreational activities in the vicinity of the outfall, and (B) a comparison of those activities with the recreational activities which might be expected to take place in that area in the absence of the discharge.

(2) The recreational activities analysis required by paragraph (b)(1) of this section shall include a detailed discussion of:

(i) Recreational fishing, including both finfishing and shellfishing (A) in marine waters surrounding the outfall within a radius of three (3) miles of any outfall diffuser port and (B) off shorelines or along beaches adjacent to the outfall, the location and length of which shall be determined by an analysis of prevailing currents and tides;

(ii) State, Federal or local (A) restrictions on consumption of fish taken from within a radius of three (3) miles of any outfall diffuser port and (B) limitations on concentrations of toxic pollutants or other substances in fish or shellfish tissue, including, where such limitations have been imposed, an analysis of whether the concentrations of such pollutants or other substances in the tissue of fish and shellfish taken from within the three (3) miles of any outfall diffuser port exceed such limitations;

(iii) Recreational boating and swimming, including underwater diving, in and on marine waters surrounding any outfall diffuser port within a radius of three (3) miles;

(iv) State, Federal or local restrictions or limitations on water contact sports within three (3) miles of the outfall;

(v) Recreational swimming, wading and picnicking along adjacent shorelines and beaches, as defined in paragraph (b)(2)(i) of this section; and

(vi) State, Federal or local restrictions or limitations on the recreational use of shorelines and beaches, as defined in paragraph (b)(2)(i) of this section, which are attributable to water pollution.

(c) *Compliance with state water quality standards for aesthetic or recreational uses of water.* The applicant shall demonstrate in Attachment C of its application that it meets all state water quality standards adopted or promulgated for the purpose of attaining or maintaining an aesthetic or recreational use of the waters within a radius of three (3) miles of any outfall diffuser port or along adjacent shorelines and beaches, as defined in paragraph (b)(2)(i) of this section.

§ 233.16 Establishment of monitoring system.

(a) *General.* (1) No modified permit shall be issued under this part unless the applicant demonstrates, to the satisfaction of the Administrator, that it has established a monitoring system to measure the impact of its discharge on a representative sample of aquatic biota.

(2) The monitoring program should be based on the nature and volume of the applicant's discharge, the nature of the receiving waters and the nature of the marine biota affected or likely to be affected by the discharge.

(b) *Description of monitoring program.* To enable the Administrator to determine whether the applicant meets the requirements of paragraph (a) of this section, the applicant shall submit, as Attachment D of its application, a description of the monitoring program it proposes to establish to comply with this section, an analysis of how the program addresses the criteria set forth in paragraph (a)(2) of this section, and a discussion of all alternatives considered by the applicant. The monitoring program shall include, at a minimum, and as appropriate, the following:

(1) *Monitoring to determine compliance with effluent limitations.* The monitoring program shall measure the applicant's compliance with applicable effluent limitations and marine water quality criteria, including, without limitation, limitations and criteria for toxic pollutants. The proposed program should, at a minimum, include a detailed description of sampling techniques, frequency of sampling, and analytical and verification methods.

(2) *Monitoring to determine compliance with pretreatment standards and nonindustrial source control program.* The monitoring program shall measure compliance with applicable pretreatment standards and the nonindustrial source program developed under § 233.19 and shall include both source and treatment plant monitoring. The proposed program should include, at a minimum, a detailed description of sampling/monitoring techniques, frequency of sampling/monitoring, and analytical and verification methods.

(3) *Monitoring of water quality.* The monitoring program shall measure the applicant's compliance with applicable water quality standards (including water quality standards for biochemical oxygen demand, suspended solids, or pH or surrogate or related parameters) for both receiving waters and the seabed. The program should include at a minimum, a detailed description of the methods used to select the sampling area and the area selected, sampling techniques, frequency of sampling, and analytical and verification methods.

(4) *Monitoring to determine the impact of the discharge on indigenous population.* The monitoring program shall measure the impact of the applicant's discharge on indigenous populations, including bioaccumulation and other lethal and sublethal effects on organisms in the water column and on the benthos. The proposed program should include, at a minimum, a detailed description of the laboratory and in situ bioassays (including acute and chronic bioassays) and reconnaissance and field studies to be used by the applicant, the methods used to select appropriate sensitive marine organisms for sampling/testing and the organisms selected, the methods used to select sampling/testing areas and control areas and the areas selected, sampling/testing techniques, frequency of sampling/testing, and analytical and verification methods.

(5) *Resource analysis.* For each monitoring program proposed under paragraph (b)(1) through (4) of this section, the applicant shall demonstrate that it has the economic, personnel, technical and other resources to implement the proposed program immediately upon issuance of a modified permit under this part and to carry out the proposed program for a five (5) year period.

§ 233.17 Effect of discharge on other point and non-point sources.

(a) *General.* No modified permit shall be issued under this part unless the applicant demonstrates, to the satisfaction of the Administrator, that its discharge will not result in any additional requirements on any other point or nonpoint source.

(b) *Information required.* The applicant shall provide, as Attachment E of its application, a letter from each State agency having any authority to establish or to advise in the establishment of waste loadings or waste load allocations for the waters into which the applicant discharges (including, without limitation, a State water pollution control agency, area-wide planning or management agency, and coastal zone commission), stating whether the applicant's discharge will

result in any additional treatment, pollution control, or other requirement on any other point or non-point source. The letter(s) shall include a detailed analysis of the facts and other considerations supporting the agency's conclusion, including a thorough analysis of existing and future waste loads and waste load allocations for the waters into which the applicant discharges, and the effect of granting modifications under this part to other publicly owned treatment works which discharge into such waters.

§ 233.18 Enforcement of applicable pretreatment requirements.

(a) *General.* (1) No modified permit shall be issued under this part unless the applicant demonstrates, to the satisfaction of the Administrator, that it has developed, or in the case of applicants described by paragraph (b)(2) of this section, that it will develop an enforceable pretreatment program.

(2) This requirement shall not apply to any applicant which has no known or suspected industrial sources of toxic pollutants and so certifies to the Administrator.

(b) *Pretreatment program.* To enable the Administrator to determine whether an applicant meets the requirements of paragraph (a)(1) of this section:

(1) An applicant serving a population of more than 20,000 persons or treating more than two million gallons of wastewater per day which has known or suspected industrial sources of toxic pollutants shall provide as Attachment F, Section 2 of its application:

(i) Evidence that an approvable pretreatment program which meet the requirements of 40 CFR Part 403 (Attachment F, Section 1 of the application form) has been established at the time of application;

(ii) Evidence that is has sufficient resources and qualified personnel to carry out the authorities and procedures in 40 CFR §§ 403.8(b) (1) and (2); and

(iii) A schedule of compliance for implementing its approvable pretreatment program.

(2) An applicant serving a population of less than 20,000 persons or treating less than two million gallons of wastewater per day which has known or suspected sources of toxic pollutants shall provide as Attachment F, Section 2 of its application:

(i) A list identifying and locating all industrial sources identified by any Standard Industrial Code (SIC) in the consent decree entered in *Natural Resources Defense Council* v. *Train*, 8 ERC 2120 (D.D.C. 1976), on June 8, 1976; and

(ii) If any industrial source is identified under paragraph (b)(2)(i) of this section:

(A) Evidence that the applicant will have, within eighteen (18) months of the issuance of any modified permit under this part, sufficient resources and qualified personnel to carry out the authorities and procedures in 40 CFR §§ 403.8(b) (1) and (2); and

(B) A schedule of compliance for developing and implementing an approvable pretreatment program which meets the requirements of 40 CFR Part 403.

(c) *Schedule of compliance.* The schedule of compliance required by paragraphs (b)(1)(iii) and (b)(2)(ii) of this section shall provide that the program will be implemented as soon as possible but in no event later than eighteen (18) months after issuance of a modified permit under this part. The compliance schedule shall include, at a minimum, the following interim actions and accompanying completion dates:

(1) Identification of all industrial sources (i) for which pretreatment standards have been developed under Section 307 (b) or (c) of the Act or (ii) which are listed in the consent decree entered in *Natural Resources Defense Council* v. *Train;*

(2) Dissemination of notice of pretreatment requirements to industrial sources;

(3) Submission of the inventory developed in paragraph (c)(1) of this action to EPA for designation of those industrial sources for which partial or complete characterization of wastewater, including analysis and quantification of wastewater composition, will be required;

(4) Characterization of wastewater from industrial sources designated under paragraph (c)(1) of this section;

(5) Characterization of wastewater from undesignated industrial sources as compatible or incompatible with the applicant's treatment system;

(6) Submission of State certification (or other form of approval) that the applicant's pretreatment program conforms to all applicable Federal and State laws and regulations;

(7) Submission of a pretreatment program approvable under 40 CFR Part 403;

(8) Implementation of a monitoring program to determine the concentration of each toxic pollutant which may be in treatment plant effluent and to determine compliance with any sludge disposal requirements under Section 405 of the Act, based on the industrial source waste characterizations developed under paragraphs (c) (4) and (5) of this section;

(9) Dissemination of notice of the scheduled date of promulgation of any applicable pretreatment standard;

(10) Establishment of appropriate monitoring and reporting requirements for industrial sources; and

(11) Development of schedules of compliance for industrial sources.

§ 223.19 Elimination of toxic pollutants from nonindustrial sources.

(a) *General.* No modified permit shall be issued under this part unless the applicant demonstrates, to the satisfaction of the Administrator, that, to the extent practicable, it has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into its treatment works.

(b) *Development of control program.* To enable the Administrator to determine whether the applicant meets the requirements of paragraph (a) of this section, the applicant shall provide as Attachment G to its application for a modified permit a schedule of activities designed to eliminate the introduction of toxic pollutants from nonindustrial sources into its treatment works, and a discussion of alternative activities considered by the applicant. The schedule shall require that such activities commence as soon as possible but in no event later than one year after issuance of a modified permit under this part. This schdeule should include, at a minimum, the following:

(1) *Identification and monitoring.* A program for identifying and monitoring both (i) nonindustrial sources of toxic pollutants and (ii) the toxic pollutants generated from such nonindustrial sources.

(2) *General control program.* A program for the control of nonindustrial toxic pollutants including (i) an analysis of the control technologies which the applicant uses or intends to use; (ii) an assessment of their effectiveness in eliminating or limiting the introduction of toxic pollutants from nonindustrial sources into the applicant's treatment facility; and (iii) an analysis of the feasibility and effectiveness of utilizing alternative control methods at the use, handling and ultimate disposal stage to eliminate or limit the introduction of toxic pollutants from nonindustrial sources into the applicant's treatment facility.

(3) *Stormwater runoff control.* A program for the development of best management practices to control urban stormwater runoff into combined sewers, including street cleaning, catch basin cleaning, trash pickup in both commercial and residential areas, and runoff controls at construction sites.

(4) *Pesticide control.* A program to control the introduction of herbicides, fungicides, insecticides, and rodenticides into the applicant's treatment facility from residential, commercial, and public works activities.

(5) *Resource analysis.* An assessment of the applicant's ability to provide the economic, institutional, personnel, technical and other resources or arrangements which would be necessary to carry out the proposed programs in paragraphs (b) (1) through (4) of this section for a five (5) year period.

§ 233.20 Increase in effluent volume or amount of pollutants discharged.

(a) *General.* No modified permit shall be issued under this part unless the applicant demonstrates, to the satisifaction of the Administrator, that there will be no new or substantially increased discharges of the pollutant to which the modification applies above the discharge specified in the permit.

(b) *Information required.*—(1) *General.* To enable the Administrator to determine whether the applicant meets the requirements of paragraph (a) of this section, the applicant shall demonstrate in Attachment H of its application that its discharge will meet the following requirements over the life of the modified permit:

(i) *Effluent volume.* There shall be no increase in volume beyond the applicant's design flow capacity as set forth in its current NPDES permit. Any increase shall be from within the applicant's existing service area.

(ii) *Mass emissions.* There shall be no increase in the amount of any pollutant(s) for which a modification is requested over and above the amount in the applicant's discharge, as defined in § 233.11(b)(3).

(2) *Combined sewer overflows.* Where pollutant discharges are attributable in part to combined sewer overflows, the applicant shall additionally include in Attachment H of its application a schedule of activities designed to minimize existing overflows and to prevent increases in the amount of pollutants discharged.

§ 233.21 Utilization of grant funds available under Title II of the Act.

(a) No modified permit shall be issued under this part unless the applicant demonstrates, to the satisfaction of the Administrator, that any funds available to it under Title II of the Act will be used to provide for the application of the best practicable wastewater treatment technology or to carry out the requirements of Section 301(h) of the Act and §§ 233.12 through 233.22.

(b) *Alternative funding program.* To enable the Administrator to determine whether the applicant meets the requirements of paragraph (a) of this section, the applicant shall include as Attachment I to its application an alternative funding program which describes the manner in which it proposes to expend any Title II funds previously granted to it if a modified permit is issued. This program shall include, at a minimum:

(1) A description of each proposed alternative planning, design or construction project and the dollar amount of Step 1, Step 2, or Step 3 funds which would be allocated to each; and

(2) A showing that:

(i) If the funds will be utilized to develop monitoring programs, reduce toxic pollutants in the applicant's discharge, or otherwise meet the requirements of Section 301(h) of the Act or this subpart; or

(ii) If the funds will be utilized to meet any other enforceable requirement of the Act, the applicant has fully studied and evaluated alternative waste management techniques and the works proposed for grant assistance will be cost-effective and will be used to provide for application of the best practicable wastewater technology, including reclamation, recycle, and reuse of water and confined disposal of pollutants.

§ 233.22 Compliance with ocean discharge guidelines, state water quality standards and other requirements.

(a) *Ocean dischargers.* If the applicant discharges into the territorial seas or the contiguous zone, it shall demonstrate in Attachment J to its application that its discharge meets all EPA ocean discharge guidelines.

(b) *State water quality standards.* Each applicant shall demonstrate that its discharge meets all applicable state water quality standards and any other state requirement under Section 301(b)(1)(C) of the Act by providing state certification that such standards and requirements have been complied with under 40 CFR Part 123.

(c) *Coastal zone management program.* Each applicant shall provide as Attachment K of its application a certification that its discharge complies with any applicable approved State coastal zone management program.

Subpart C—Procedures

§ 233.31 Scope and purpose.

(a) This subpart governs all proceedings for issuing an NPDES permit for a discharge into the waters of the territorial sea or the contiguous zone, or saline estuarine waters, which modifies the requirements of Section 301(b)(1)(B) of the Act.

(b) In the absence of specific provisions in this subpart, questions arising at any stage of the proceeding shall be resolved at the discretion of the Presiding Officer or the Administrator, as appropriate.

§ 233.32 Application for a modified permit.

(a) *General.* (1) Each applicant for a modified permit under this part shall complete, sign and submit an EPA "Application for Modification of the Requirements of Secondary Treatment." A copy of this application may be obtained upon request from any EPA Regional Administrator, or from the Director, Municipal Construction Division (WH-547), United States Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

(2) The applicant shall include as part of its application a State certification issued under 40 CFR Part 123 that its discharge meets applicable water quality standards and other State requirements under Section 301(b)(1)(C) of the Act.

(b) *Deadline for submitting applications.* All applications for a modified permit under this part must be submitted to EPA no later than September 24, 1978. Failure to submit a complete application by this date may constitute grounds for denial of the modified permit requested.

(c) *Additional information.* (1) Notwithstanding the foregoing, the Administrator may, in his sole discretion, authorize an applicant to submit information required by Subpart B after September 24, 1978, where the applicant either:

(i) Fails to submit a complete application by September 24, 1978, and demonstrates to the satisfaction of the Administrator that (A) it has made consistent and diligent efforts to obtain such information by September 24, 1978 and that its failure to do so was due to circumstances beyond its control, and (B) that such information can be promptly submitted; or

(ii) Proposes to submit clarifying or corrective information to an otherwise timely submitted application after September 24, 1978, and demonstrates that such information can be promptly submitted.

(2) The Regional Administrator, or the Administrator, or a person designated by either to review applications for modifications, may, whenever he determines that additional information is needed to make the determinations required by Subpart B, and can be promptly submitted by the applicant, so advise the applicant in writing.

(3) All additional information so authorized or requested shall be considered part of the original application.

(d) *Submission of application.* (1) Two copies of each application for modification under this part shall be filed with the Regional Administrator for the EPA Region in which the applicant is located.

(2) One copy of each application for modification under this part shall be filed with the Administrator.

(3) Additional information submitted or requested under paragraph (c) of this section shall be filed in the same manner.

§ 233.33 Administrative record.

(a) *Establishment of record.* (1) Upon receipt of an application for modification under this subpart, an administrative record for that application shall be established, and a Record and Hearing Clerk appointed by the Administrator to supervise the filing of documents in the record and to carry out all other duties assigned to him under this subpart.

(2) All material in the record shall be appropriately indexed and shall be available for public inspection during normal EPA business hours. The Record and Hearing Clerk shall make appropriate arrangements to allow members of the public to copy record materials. All material required to be included in the record shall be added to the record as soon as feasible after its receipt by EPA.

(b) *Record for issuing tentative determination.* The administrative record for issuing the tentative determination required by § 233.34 shall consist of the application for a modified permit (plus attachments) and any additional materials supporting the tentative determination which are cited or discussed in the tentative determination.

(c) *Record for acting on requests for cross-examination.* The administrative record for acting on requests for cross-examination under § 233.39 shall consist of the record for issuing the tentative determination, all notices issued under § 233.34 (b) and (c) and § 233.35(b), all requests for hearings and all rulings on those requests received or issued under § 233.35, any request to participate in the hearing received under § 233.35(d), all comments timely submitted under § 233.34(e)(4) and § 233.36(a), all material accepted for the record of the hearing held under § 233.28, and any additional material timely submitted under § 233.38(d).

(d) *Record for preparation of recommended decision.* The administrative record for preparation of the recommended decision required by § 233.42 shall consist of the record for acting on requests for cross-examination, any requests for or rulings on cross-examination filed or issued under § 233.39, the transcript of any supplementary hearing held under § 233.39(c), any requests for or any rulings on alternatives to cross-examination under § 233.39(d), any materials timely submitted in lieu of or in addition to cross-examination under § 233.39(d), all reply comments timely submitted under § 233.36(b), any memorandum or communication prepared or received under § 233.40, and all briefs, proposed findings of fact and conclusions of law, and proposed modified permits timely submitted under § 233.41.

(e) *Record for issuance of final decision.* (1) Where no hearing has been held, the administrative record for issuance of the Administrator's final decision shall consist of the record for issuing the tentative determination, all notices issued under § 233.34 (b) and (c) and all requests for hearing and all rulings on those requests received or issued under § 233.35, any comments timely submitted under § 233.34(e)(4), any briefs or reply briefs timely submitted under § 233.43 (a) through (c), and any transcript of oral argument under § 233.43(d).

(2) Where a hearing has been held, the administrative record for issuance of the Administrator's final decision shall consist of the record for preparation of the recommended decision, any briefs or reply briefs submitted under § 233.43 (a) through (c), and any transcript of oral argument under § 233.43(d).

§ 233.34 Issuance of tentative determination; notice.

(a) *Tentative determination.* (1) EPA staff shall formulate and prepare a tentative determination to grant or deny an application for a modified permit submitted under § 233.32. Such determination shall include; without limitation, the following:

(i) A proposed determination to grant or deny the application for a modified permit, in whole or in part;

(ii) A statement of the reasons for such grant or denial, including a full explanation of the factual, legal, methodological and policy issues considered in reaching the tentative determination and how they were resolved;

(iii) If the tentative determination is to grant the requested modification in whole or in part, a tentative modified NPDES permit which shall include provisions necessary to assure compliance with Section 301(h) of the Act and §§ 233.12 through 233.22 of this part; and

(iv) Any other statements or discussion which the person or persons preparing the determination consider sufficiently relevant to the decision at issue.

(2) The tentative determination shall contain or be accompanied by a list of all materials considered in developing it. Full copies of all such materials shall be included in the administrative record under § 233.33, except that, to the extent the material consists of published material which is generally available, full citations to that material may be given instead.

(b) *Public notice.* Public notice of EPA's tentative determination to grant or deny an application for a modified permit under Section 301(h) of the Act shall be given by:

(1) Publication at least once in a daily newspaper of general circulation in the area in which the applicant is located; and

(2) Posting in the principal office of the municipality in which the applicant is located.

(c) *Individual notice.* Individual notice of EPA's tentative determination to grant or deny an application for a modified permit shall be mailed to the applicant by certified mail, return receipt requested, and to the following Federal and State agencies by first-class mail:

(1) The Shellfish Sanitation Branch of the Food and Drug Administration;

(2) The National Oceanic and Atmospheric Administration;

(3) The United States Fish and Wildlife Service;

(4) The United States Army Corps of Engineers;

(5) The United States Coast Guard;

(6) The State water pollution control agency for the State in which the applicant is located;

(7) The State agency responsible for carrying out the Coastal Zone Management Act, if one exists, for each coastal State within 500 miles of the discharge;

(8) The State fisheries agency for the State in which the applicant is located; and

(9) All planning and management agencies designated under Section 208 of the Act for the State or area in which the applicant is located.

(d) *Request for individual notice.* EPA shall mail notice of its tentative determination to grant or deny an application for a modified permit to any person upon request. Any such request shall be submitted to the Administrator in writing, shall state that the request is for individual notice of tentative determinations to grant or deny any application for a modified National Pollutant Discharge Elimination System permit under Section 301(h) of the Federal Water Pollution Control Act, and shall describe the notice or types of notices desired (e.g., all notices, notices for a particular Region, notices for a particular State, notice for a particular publicly owned treatment works).

(e) *Form of notice.* The notice of tentative determination required to be distributed under paragraphs (b), (c), and (d) of this section shall include, in addition to any other materials, the following:

(1) A summary of the information contained in the application;

(2) A summary of the tentative determination prepared under paragraph (a) of this section, provided that the applicant shall be sent the full text;

(3) A brief description of the procedures set forth in § 233.35 for requesting a public hearing on the application, including a statement that such request must be filed within thirty (30) days of the date of the notice;

(4) A statement that written comments on the tentative determination may be submitted to EPA within sixty (60) days of the date of the notice and that comments timely submitted will be considered by EPA in making a final decision on the application;

(5) The location of the administrative record and the location at which interested persons may obtain further information on the tentative determination, including a copy of the appli-

cation, the tentative determination prepared under paragraph (a) of this section, and any related studies or other documentation; and

(6) Such additional statements, representations or information as the Regional Administrator or Administrator considers necessary or proper.

§ 233.35 Request for hearing; notice; request to participate in hearing.

(a) *Request for hearing.* Within thirty (30) days of the date of the notice required by § 233.34, any person may request the Administrator to hold an evidentiary hearing on the tentative determination by submitting a written request containing the following:

(1) Identification of the person requesting the hearing and his interest in the proceeding;

(2) A statement of any objections to the tentative determination; and

(3) A statement of the issues which such person proposes to raise for consideration at such hearing.

(b) *Grant or denial of hearing; notification.* Whenever (1) a written request satisfying the requirements of paragraph (a) of ths section has been received and presents genuine issues, or (2) the Administrator determines in his discretion that an evidentiary hearing under this subpart is necessary or appropriate, the Administrator shall give written notice of his determination to each person requesting such hearing and the applicant, and shall provide public notice of his determination in accordance with § 233.34(b). If the Administrator determines that a request filed under paragraph (a) of this section does not comply with the requirements of paragraph (a) of this section or does not present genuine issues, he shall give written notice of his determination to the person requesting the hearing.

(c) *Form of notice of hearing.* Each notice of hearing published under paragraph (b) of this section shall contain:

(1) A statement of the time and place of the hearing;

(2) The information required by paragraphs (e)(1) and (e)(2) of § 233.34;

(3) A statement identifying the place at which the administrative record is located, the hours during which it will be open for public inspection, and a description of the documents in the record as of the date of the notice of hearing;

(4) The due date for filing a written request to participate in the hearing under paragraph (d) of this section;

(5) The due date for filing main comments under § 233.16; and

(6) The name, address, and office telephone number of the Record and Hearing Clerk for the hearing.

(d) *Request to participate in hearing.* Each person who wants to participate in any hearing noticed under this section, including any person requesting such a hearing, shall file a written request to participate with the Record and Hearing Clerk by the deadline set forth in the notice of hearing. The request shall include:

(1) A brief statement of the interest of the person desiring to participate in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required;

(4) If the request is submitted by an organization, a nonbinding list of the persons to take part in the presentation. As soon as practicable, but in no event later than two (2) weeks before the scheduled date of the hearing, the Record and Hearing Clerk shall make a hearing schedule available to the public and mail it to each person who requested to participate in the hearing.

(e) *Effect of denial of or absence of request for hearing.* If no request for a hearing is made under this section, or if all such requests are denied under paragraph (b) of this section, the tentative determination shall be reviewed by EPA staff in light of any written comments filed under § 233.34(e) and revised, if appropriate. A response to each major point raised in those written comments shall also be prepared. The tentative determination as revised shall be treated procedurally as if it were a recommended decision issued under § 233.42 of this subpart, except that for the purposes of filing of briefs and reply briefs under § 233.43 and § 233.44 the terms "hearing participant" and "person who participated in the hearing" shall mean the applicant and any person who submitted comments under § 233.34(e)(4).

§ 233.36 Submission of written comments on tentative determination.

(a) *Main comments.* Each person who has filed a request to participate in the hearing shall file with the Record and Hearing Clerk no later than thirty (30) days before the scheduled start of the hearing (or such other date as may be set forth in the notice of hearing) all comments which such person has on the application for a modified permit and EPA's tentative determination, based on information which is or reasonably could have been available to that person at the time.

(b) *Reply comments.* Not later than two (2) weeks after copies of the transcript of the full hearing (including cross-examination) have been made available (or such other date as may be set forth in the notice of hearing), each person who filed a request to participate in the hearing shall file with the Record and Hearing Clerk all comments he may have on:

(1) Main comments submitted by other participants under paragraph (a) of this section;

(2) Written comments submitted under § 233.34(e)(4);

(3) Material in the hearing record; and

(4) Material which was not and could not reasonably have been available prior to the deadline for submission of main comments under paragraph (a) of this section.

(c) *Form of comments.* All comments shall be submitted in quadruplicate and shall include any affidavits, studies, tests or other materials relied upon for making any factual statements in the comments.

(d) *Contents of comments.* (1) Main comments filed under this section should constitute the bulk of the evidence submitted at the hearing. Oral statements at the hearing should be brief, and restricted either to points that could not have been made in written comments, or to emphasizing points which are made in the comments, but which the participant believes can be more forcefully urged in the hearing context.

(2) Notwithstanding the foregoing, within two (2) weeks prior to the deadline specified by paragraph (a) of this section for the filing of main comments, any person who has filed a request to participate in the hearing may file a request with the Presiding Officer to submit all or part of his main comments orally at the hearing in lieu of submitting written comments. The Presiding Officer shall, within one (1) week, grant such request if he finds that such person will be prejudiced if he is required to submit such comments in written form.

§ 233.37 Presiding Officer.

(a) *Assignment of Presiding Officer.* (1) The Administrator shall, as soon as practicable after the granting of a request for hearing under § 233.34:

(i) Appoint a Presiding Officer to chair the hearing panel, who shall be either the Assistant Administrator for Water and Hazardous Materials or the Assistant Administrator for Enforcement; or

(ii) Request that the Chief Administrative Law Judge assign an Administrative Law Judge as Presiding Officer. The Chief Administrative Law Judge shall thereupon make such assignment.

(2) If all parties to the hearing waive their right to have the Agency or an Administrative Law Judge preside at the hearing, the Administrator shall appoint an EPA employee having the qualifications of a Judicial Officer as defined in § 233.1(m) to serve as Presiding Officer.

(b) *Powers and duties of Presiding Officer.* It shall be the duty of the Presiding Officer to conduct a fair and impartial hearing, assure that the facts are fully elicited, and avoid delay.

With respect to those cases assigned to him, between the time he is assigned and the time the recommended decision is issued, the Presiding Officer shall have authority to:

(1) Chair and conduct administrative hearings held under this subpart;

(2) Administer oaths and affirmations;

(3) Receive relevant evidence, provided that the administrative record, as defined in § 233.33, shall be received in evidence;

(4) Consider and rule upon motions, dispose of procedural requests, and issue all necessary orders;

(5) Hold conferences for the settlement or simplification of the issues or the expediting of the proceedings; and

(6) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair, and impartial conduct of proceedings under this subpart.

§ 233.38 Panel hearing.

(a) *Composition of hearing panel.* A Presiding Officer shall preside at each hearing held under this subpart. An EPA panel shall also take part in the hearing. In general, the membership of the panel shall consist of EPA employees having special expertise in areas related to the issues to be addressed at the hearing. For this reason, the membership of the panel may change as different issues are presented for discussion. Other EPA employees who do not serve on the hearing panel may be designated to provide staff support to the panel as needed.

(b) *Additional hearing participants.* Either prior to the commencement of the hearing or during the hearing, the Presiding Officer, after consultation with the panel, may request that a person not then scheduled to participate in the hearing (including an EPA employee or a person identified by any scheduled hearing participant as having knowledge concerning the issues raised for discussion at the hearing) make a presentation of make himself available for cross-examination at the hearing.

(c) *Questioning of hearing participants.* The panel members may question any person participating in the hearing. Cross-examination by persons other than panel members shall not be permitted at this stage of the proceeding except where the Presiding Officer determines, after consultation with the panel, that circumstances compel such cross-examination. However, persons in the hearing audience, including other hearing participants, may submit written questions to the Presiding Officer for the Presiding Officer to ask the participants, and the Presiding Officer may, after consultation with the panel, and in his sole discretion, ask these questions.

(d) *Submission of additional material.* Participants in the hearing shall submit for the hearing record such additional material as the hearing panel may request within ten (10) days following the close of the hearing, or such other period of time as is ordered by the Presiding Officer. Participants may also submit additional information for the hearing record on their own accord within ten (10) days after the close of the hearing.

(e) *Transcript.* A verbatim transcript shall be made of the hearing.

§ 233.39 Opportunity for cross-examination.

(a) *Request for cross-examination.* After the close of the panel hearing conducted under this part, any participant in that hearing may submit a written request for cross-examination on any disputed issue of material fact. The request shall be received by EPA within one (1) week after a full transcript of the panel hearing becomes available and shall specify:

(1) The disputed issue(s) of material fact as to which cross-examination is requested. This shall include an explanation of why the questions at issue are factual, rather than of an analytical or policy nature, the extent to which they are in dispute in the light of the record made thus far, and the extent to which and why they can reasonably be considered material to the decision on the application for modification; and

(2) The person(s) the participant desires to cross-examine, an estimate of the time necessary, and a statement as to why the cross-examination requested can be expected to result in resolution of the issue(s) of material fact involved.

(b) *Order granting or denying request for cross-examination.* As expeditiously as practicable after receipt of all requests for cross-examination under paragraph (a) of this section, the Presiding Officer, after consultation with the hearing panel, shall issue an order either granting or denying each such requests, which shall be disseminated to all persons requesting cross-examination and all persons to be cross-examined. If any request for cross-examination is granted, the order shall specify:

(1) The issues as to which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits for the examination of witnesses by each cross-examiner; and

(5) The date, time, and place of the supplementary hearing at which cross-examination shall take place.

In issuing this ruling, the Presiding Officer may determine that one or more participants have the same or similar interests and that to prevent unduly repetitious cross-examination, they should be required to choose a single representative for purposes of cross-examination. In such a case, the order shall simply assign a time for cross-examination by that single representative without identifying the representative further.

(c) *Supplementary hearing.* The Presiding Officer and at least one member of the original hearing panel shall preside at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority to modify any order issued under paragraph (b) of this section. A verbatim transcript shall be made of this hearing.

(d) *Alternatives to cross-examination.* (1) No later than the time set for requesting cross-examination, a hearing participant may request that alternative methods of clarifying the record (such as the submittal of additional written information) be used in lieu of or in addition to cross-examination. The Presiding Officer shall issue an order granting or denying such request at the time he issues (or would have issued) an order under paragraph (b) of this section. If the request is granted, the order shall specify the alternative provided and any other relevant information (e.g., the due date for submitting written information).

(2) In passing on any request for cross-examination submitted under paragraph (a) of this section, the Presiding Officer may, as a precondition to ruling on the merits of such request, require that alternative means of clarifying the record be used whether or not a request to do so has been made under the preceding paragraph. The person requesting cross-examination shall have one (1) week to comment on the results of utilizing such alternative means, following which the Presiding Officer, as soon as practicable, shall issue an order granting or denying such person's request for cross-examination.

§ 233.40 Ex parte contacts.

(a) *General.* (1) At no time after issuance of the notice of hearing shall the Administrator, Presiding Officer, any panel member or any other EPA employee who is or may reasonably be expected to be involved in making a decision on the application for modificatin submitted under this part discuss ex parte the merits of proceedings with (i) the applicant, (ii) any other person outside the Agency who has filed written comments on the application or tentative determination, requested a hearing, requested to participate in a hearing or participated in a hearing on such application, (iii) any representative of any of the above or (iv) any other interested person outside the Agency.

(2) Notwithstanding the foregoing, the Administrator, Presiding Officer, any panel member or other employee who is or may reasonably be expected to be involved in the decisional process may discuss the merits of the proceedings with any person identified in paragraph (a) of this section if all participants in the proceedings, or their representatives, have been given reasonable notice and opportunity to be present and participate.

(b) *Written communications.* Any memorandum or other communication addressed to the Administrator, Presiding Officer, or other employee who is or may reasonably be expected to be involved in making a decision on the application for a modified permit, during the pendency of the proceeding, and relating to the merits thereof, by or on behalf of the applicant, any hearing participant, or any other interested person outside the Agency, shall be regarded as argument made in the proceeding and shall be served on the applicant and all other hearing participants.

(c) *Effect of receipt of ex parte communication.* (1) If the Administrator, Presiding Officer, any panel member or any other employee who is or may reasonably be expected to be involved in making a decision on the application for modification receives, or makes or knowingly causes to be made, an oral or written ex parte communication, he shall place in the record:

(i) The written communication, if any;

(ii) A memorandum stating the substance of any oral communication; and

(iii) All written responses and memoranda stating the substance of all oral responses to the materials in paragraphs (c)(1) and (2) of this section.

(2) Upon receipt of a communication from an applicant, hearing participant, or other interested person outside the Agency, in violation of paragraphs (a) and (b) of this section, the Administrator or Presiding Officer may, to the extent consistent with the interests of justice and the policy of the Act, require such person to show cause why his application, claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

§ 233.41 Filing of briefs, proposed findings of fact and conclusions of law and proposed modified permit.

Unless otherwise ordered by the Presiding Officer, each hearing participant may, within twenty (20) days after the transcript of hearing prepared under § 233.38(e) becomes available, or if a supplemental hearing for the purpose of cross-examination has been held under § 233.39(c), within twenty (20) days after the transcript of such supplemental hearing becomes available, file with the Record and Hearing Clerk and serve upon all other hearing participants proposed findings of fact, conclusions regarding material issues of law, fact, or discretion, a proposed modified NPDES permit (if such person is urging that a modified permit be issued), and a brief in support thereof, together with references to relevant pages of transcript and to relevant exhibits. Within ten (10) days thereafter each participant may file a reply brief concerning matters contained in opposing briefs and containing alternative findings of fact, conclusions regarding material issues of law, fact, or discretion and proposed modified permit. Oral argument may be held at the discretion of the Presiding Officer on motion of any hearing participant or sua sponte.

§ 233.42 Recommended decision.

As soon as practicable after the conclusion of the hearing, one or more responsible employees of the Agency shall evaluate the record of the hearing and prepare and file a recommended decision with the Record and Hearing Clerk. The employee(s) preparing the decision will generally be members of the hearing panel and may include the Presiding Officer. Such employee(s) may consult with and receive assistance from any member of the hearing panel in drafting a recommended decision and may also delegate the preparation of the recommended decision to the panel or to any member or members of it. This decision shall contain findings of fact, conclusions regarding all material issues of law, a recommendation as to whether a modified permit should be issued, and, if so, a recommended modified permit. After the recommended decision has been filed, the Hearing and Record Clerk shall serve a copy of such decision on each hearing participant and upon the Administrator.

§ 233.43 Appeal from or review of recommended decision.

(a) *Exceptions.* (1) Within twenty (20) days after service of the recommended decision, any hearing participant may take exception to any matter set forth in such decision or to any adverse order or ruling of the Presiding Officer prior to or during the hearing to which such participant objected, and may appeal such exceptions to the Administrator by filing them in writing with the Record and Hearing Clerk. Such exceptions shall contain alternative findings of fact, alternative conclusions regarding material issues of law, fact or discretion, together with references to the relevant pages of the record and initial decision, and, if it is urged that the application should be granted in whole or in part, a proposed modified NPDES permit. A copy of each document taking exception to the initial decision shall be served upon every other hearing participant. Within the same period of time each party filing exceptions shall file with the Administrator and shall serve upon all hearing participants a brief concerning each of the exceptions being appealed. Each brief shall include page references to the relevant portions of the record and to the recommended decision.

(2) Within ten (10) days of the service of exceptions and briefs under paragraph (a)(1) of this section, any hearing participant may file and serve a reply brief responding to exceptions or arguments raised by any other hearing participant together with references to the relevant portions of the record, recommended decision, or opposing brief. Reply briefs shall not, however, raise additional exceptions.

(b) *Sua sponte review by the Administrator.* Whenever the Administrator determines sua sponte to review a recommended decision, notice of such intention shall be served upon the parties by the Record and Hearing Clerk within thirty (30) days after the date of service of the recommended decision. Such notice shall include a statement of issues to be briefed by the hearing participants and a time schedule for the service and filing of briefs.

(c) *Scope of appeal or review.* The appeal of the recommended decision shall be limited to the issues raised by the appellant, except when the Administrator determines that additional issues should be briefed or argued. If the Administrator determines that briefing or argument of additional issues is warranted, all hearing participants shall be given reasonable written notice of such determination to permit preparation of adequate argument.

(d) *Argument before the Administrator.* The Administrator may, upon request by a party or sua sponte, set a matter for oral argument. The time and place for such oral argument shall be assigned after giving consideration to the convenience of the parties.

§ 233.44 Final decision.

(a) *After review.* As soon as practicable after all appeal or other review proceedings have been completed, the Administrator shall issue his final decision. Such final decision shall include findings of fact, conclusions regarding material issues of law, fact or discretion, as well as reasons therefor, and a modified NPDES permit to the extent appropriate. It may accept or reject all or part of the recommended decision. The Administrator may consult with the Presiding Officer, members of the hearing panel, or any other EPA employee in preparing his final decision. The Record and Hearing Clerk shall file a copy of the decision on all hearing participants.

(b) *In the absence of review.* If no party appeals a recommended decision to the Administrator and if the Administrator does not review it sua sponte, he shall be deemed to have adopted the recommended decision as the final decision of the Agency upon the expiration of the time for filing any exceptions under § 233.43(a).

§ 233.45 State concurrence.

(a) If the final decision of the Administrator is that an NPDES permit modifying the requirements of Section 301(b)(1)(B) of the Act should be issued to the applicant, he shall give notice in writing to the Governor of the State in which the applicant is located.

(b) No modified NPDES permit issued under § 233.44 of this part shall become effective until the Administrator has received in writing, from the person or agency designated by the Governor of the State in which the applicant is located, by statute, or by other governmental act to signify the state's concurrence in the issuance of a modified permit under Section 301(h) of the Act, a letter or other written documentation signifying such concurrence in the issuance of such modified permit.

APPLICATION FOR MODIFICATION OF THE REQUIREMENTS OF SECONDARY TREATMENT

The following is a list of attachments (A thru K) which must be provided by the applicant. The specific Attachments, Sections and Appendices have been referenced.

Attachment A. Technical Evaluation Information.

Section 1. Physical Assessment (see §§ 233.11, 233.12, and 233.14 of the Preamble and Subpart B).

Appendix I. Description of methods used to compute ID assuming PLUME not used (see Attachment A, Section 1, subsection A, question 1-4).

Appendix II. Oceanographic Data (see Attachment A, Section 1, subsection A, question 1-9).

Appendix III. Data on Ocean Discharge (see Attachment A, Section 1, subsection B, question 1-12).

Appendix IV. Data on Estuarine Discharge. (see Attachment A, Section 1, subsection C, question 1-13).

Section 2. Compliance with BOD or DO (see § 233.12 of the Preamble and Subpart B).

Appendix V. DO demand resulting from disturbance of bottom (see Attachment A, Section 2, question 2-13).

Appendix VI. Evaluation of biostimulatory effects due to BOD (see Attachment A, Section 2, Question 2-16).

Appendix VII. Description of more critical DO situation (optional to applicant) (see Attachment A, Section 2, question 2-17).

Section 3. Compliance with pH (see § 233.12 of the Preamble and Subpart B).

Appendix VIII. Other considerations relative to pH (see Attachment A, Section 3, question 3-6)

Section 4. Compliance with Suspended Solids (see § 233.12 of the Preamble and Subpart B).

Appendix IX. Compliance with State Water Quality criteria (see Attachment A, Section 4, question 4-8).

Appendix X. Description of experimental procedure used to compute amount and areal extent of SS accumulation on seabed (see Attachment A, Section 4, question 4-9).

Appendix XI. Description of how increased SS will impact heavy metals, persistent synthetic organics, and microorganisms in the water column and on the seabed (see Attachment A, Section 4, question 4-11).

Section 5. Marine Biological Assessment (see § 233.14 of the Preamble and Subpart B).

Appendix XII. Biological Assessment (see § 233.14 of the Preamble and Subpart B and Attachment A, Section 5).

Section 6. Chemical Assessment (see § 233.14 of the Preamble and Subpart B).

Appendix XIII. Results of Chemical Analysis (see Attachment A, Section 6).

Attachment B. Information on water quality which assures protection of public water supplies. (See § 233.13 of the Preamble and Subpart B).

Attachment C. Information on water quality which allows recreational activities (see § 233.15 of the Preamble and Subpart B).

Attachment D. Description of Monitoring System (see § 233.16 of the Preamble and Subpart B).

Attachment E. Letter from State or other point and non-point sources (see § 233.17 of the Preamble and Subpart B).

Attachment F. Pretreatment requirements (see § 233.18 of the Preamble and Subpart B).

Attachment G. Toxics in Non-Industrial Sources (see § 233.19 of the Preamble and Subpart B).

Attachment H. Effluent Volume and Mass Emission Control (see § 233.20 of the Preamble and Subpart B).

Attachment I. Use of Title II Funds (see § 233.21 of the Preamble and Subpart B).

Attachment J. Compliance with ocean discharge guidelines, state water quality standards and other requirements (see § 233.22 of the Preamble and Subpart B).

Attachment K. Completed NPDES application form Sections I, II and III (see § 233.32 of the Preamble and Subpart C).

ATTACHMENT A—TECHNICAL EVALUATION INFORMATION

TABLE OF CONTENTS

Section 1. Physical Assessment.
Subsection A—Initial Dilution.
Subsection B—Ocean Discharge.
Subsection C—Estuarine Discharge.
Section 2. Compliance with BOD or DO.
Section 3. Compliance with pH.
Section 4. Compliance with Suspended Solids.
Section 5. Marine Biological Assessment.
Section 6. Chemical Assessment.

General Instructions. In addition to providing the information required in the enclosed forms, the applicant must include the supplemental information requested in Sections 1-6 of Attachment A. An instruction section has been included to aid the applicant in completing Attachment A for those questions which are not self-explanatory.

INSTRUCTIONS FOR ATTACHMENT A

SECTION 1. PHYSICAL ASSESSMENT

Question 1-4: Initial dilution may be calculated by the applicant. However, this will be calculated by EPA using a simple computer program, PLUME,[1] based on a well known and widely accepted principle of buoyant plume dispersion employed in many mathematical models. A very conservative approach is taken in calculating initial dilution using PLUME. Applicants using other models, or other computer programs of essentially the same algorithm, must show by comparison of calculations that their results are equally conservative.

The EPA model does not account for any increased rate of dilution associated with ambient currents in the region of the discharge. EPA may or may not accept applicants calculations based on other models incorporating advection and diffusion in defining initial dilution. This judgment will depend, in part, on documentation provided and an evaluation of the merits relative to critical (worst case) conditions.

Calculations using PLUME provide dilution estimates for individual (non-interacting) plumes, primarily for simplicity. In conventional practice, multiport diffusers may result in plumes which overlap (interact) prior to reaching the level of buoyant equilibrium. Consequently, EPA will lower estimates of initial dilution, if deemed necessary, to reflect reduced dilution in situations where evidence of plume interaction appears significant.

For convenience, initial dilutions calculated by PLUME are minimum dilutions expected at any given depth in the plume. Considering the overall plume, these minimum dilutions are expected to be found along the centerline of each plume. For purposes of demonstrating impact on water quality criteria, and for field monitoring, the appropriate value is the average dilution (equal to 1.77 times the centerline dilution) as calculated at the depth where neutral buoyancy is first established, or in cases where neutral buoyancy is not achieved, the maximum depth over the diffuser. The concentration of waste constitutents expected at this depth is:

$$CF = CA + \frac{CE - CA}{1.77\ D}$$

Where:

CF=final concentration.
CE=effluent concentration.
CA=ambient concentration.
D=centerline dilution calculated by PLUME.

Question 1-9: The applicant must demonstrate that coastal circulation processes continuously supply dilution water in the amount of 1.77 D × Q, where Q is the volumetric flux of treated wastewater, using oceanographic data discussed in Appendix II, III, or IV.

Question 1-10: The margin of error should be limited to plus or minus 10 meters, but it may be increased under some circumstances which must be justified by the applicant.

[1] "User's Guide and Documentation for Outfall Plume Model," D. J. Baumgartner, D. S. Trent, and K. V. Byram. Working Paper No. 80, EPA, Pacific Northwest Water Laboratory, May 1971. Available by writing National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22151. (Order No. NTIS-PB 204-557, $3.)

SECTION 2. COMPLIANCE WITH BOD OR DO

Question 2-4: The location of effluent concentration measurement should be clearly indicated (i.e., final clarifier overflow, final pump station). If disinfection is employed periodically, samples must be obtained for every situation.

Question 2-5: Because anaerobic conditions in ocean outfalls may increase demand and adversely alter other chemical parameters, it is necessary to compute travel times at critical flows. Applicants should enter the values for the flows indicated and compute the time of flow between the sample point and the diffuser ports.

Question 2-6: The Immediate Dissolved Oxygen Demand (IDOD, Standard Methods, 14th ed) must be measured after representative temperatures for the time periods computed for question No. 2-6. This value is considered to be a conservative estimate of the oxygen demand exerted by the waste stream in the buoyant plume formed in the sea upon discharge from an ocean outfall.

Question 2-8: Compute the final DO using the following equation (all values in mg/l):

$$DO_F = DO_A + \frac{DO_E - IDOD - DO_A}{1.77D}$$

DO_F=final dissolved oxygen.
DO_A=background dissolved oxygen.
DO_E=dissolved oxygen of samples at final sampling point in the plant.
$IDOD$=immediate dissolved oxygen demand, per standard methods.
D=centerline dilution calculated by PLUME.

Question 2-11: Use formula presented in Question 1-4 of this section.

SECTION 3. COMPLIANCE WITH pH

Question 3-4: pH may change temporarily as a result of effluent dilution with seawater. Therefore, the applicant should provide results of pH measurement in tabular form (graphs of continuous measurement may be attached) for representative dilutions at the end of initial dilution. Measurements should be made immediately after mixing and at three more times following mixing as determined by observing the rate of reaction of the waste and seawater.

SECTION 4. COMPLIANCE WITH SUSPENDED SOLIDS

Question 4-9: If applicable water quality criteria limit settleable solids, the applicant must experimentally determine the amount of settleable solids after appropriate initial mixing and a period of quiescent settling. The mass of settleable material may be reported per unit volume of discharge or per unit volume of receiving water, whichever relates most directly to the applicable criterion.

Water quality criteria may limit the actual areal deposition[2] rate of settleable solids as a way to protect benthic communities from significantly altered sedimentary materials. An assessment of the accumulation of settleable solids must be provided in any event, in order to estimate the impact of deposited materials on oxygen levels.

[2]As distinguished from a limit on the concentration of settleable solids in the water column.

The applicant must also provide an assessment of the long term fate of the sedimentary material. It is important to assure that periodic sediment resuspension or continual drift of sediment loads will not result in deleterious accumulations in bays, estuaries, beaches, and oceanic topographic depressions. Data from seabed drifter studies, if available, should be reported.

SECTION 1. PHYSICAL ASSESSMENT

Subsection A. Initial Dilution.

1-1. List the characteristics of the outfall diffuser system:

—— angle of port orientation from horizontal degrees.

—— port diameter in meters to 3 significant figures.

—— vertical distance between water surface and outfall port centerline, in meters.

—— density of effluent in grams per cubic centimeters.

—— number of ports.

—— port spacing, meters; also, describe or sketch below, the spatial arrangement of ports with respect to each other.

—— design flow rate for each port if multiple flow rate ports are employed.

1—2. Determine the flow rates from each port for the following flow conditions:

a. Min. hourly flow=—— m^3/sec.
b. Avg. hourly flow=—— m^3/sec.
c. Max. hourly flow=—— m^3/sec.
d. Expected max. hourly flow by September 1983: —— m^3/sec.
e. Max. wet weather hourly flow=—— m^3/sec.

1-3. Provide density gradient lines for the region of the outfall (within 1 mile). Sufficient data points must be given to allow an accurate representation of true gradients by linear segments. The accuracy of density data should be 10^{-5} gram per cubic centimeter. A set of data must be provided for each of the following critical environmental situations:

a. Periods of minimum and maximum loadings from the wastewater treatment facility.

b. Periods of low background water quality due to natural conditions, including low DO, excessively high and low turbidity.

c. Periods of exceptional biological activity (e.g., spawning, migration of anadromous or catadromous organisms, etc.).

d. Periods of low net circulation, low effective net flushing, or low intertidal mixing.

e. Periods of minimum and maximum stratification.

1-4. Compute initial dilution, as directed in the instructions section, for each of the flow rates identified in section 1-2 and each of the critical environmental conditions given in section 1-3. Describe the method used in Appendix I.

1-5. If PLUME is used, check here ☐.

1-6. Of the initial dilutions listed in 1-4, which are most critical with respect to ambient DO requirements? Explain.

1-7. Which is most critical for pH? Explain.

1-8. Which is most critical for SS? Explain.

1-9. Provide in Appendix II an explanation of how the currents and tides in the vicinity of the outfall (using data provided in Appendices III and/or IV) may influence plume shape, trajectory, and seawater entrainment in the plume (or plumes if multiple diffusers are used).

1-10. From data and calculations in 1-1 through 1-9, compute the boundary of the zone of initial dilution. Include all possible plume configurations (using only the initial dilution regions), allowing for advection and for a margin of error in navigation. For purposes of compliance monitoring, a regularly shaped boundary (e.g., cylinder, cube, etc.) would be acceptable. List the geometric description of the zone configurations indicating the margin of error as a ± distance.

1-11. List the coordinates of the zone by latitude and longitude.

Subsection B. Ocean Discharge

112. If your discharge is to the ocean, provide in Appendix III an oceanographic report including:

a. Seasonal measurements of current speed and direction, and salinity representing continuous profiles (where possible) in transects from the shore to at least one pipeline length greater than the outfall distance offshore. Station spacings are to be in distances of one-fourth the pipeline length. Similarly, data at two stations on each side of the diffuser should be provided.

b. Depending on applicable water quality criteria and monitoring requirements, additional measurements should be simultaneously made at the same stations. Light transmittance, turbidity, BO, pH, dissolved oxygen and suspended solids measurements are possible requirements.

c. Continuous wind data representative of the outfall area (away from buildings creating topographic effects) must be provided for a significant historical period.

d. Correlation of current speed and direction with wind speed and direction, and wherever possible, cross-spectral analysis should be provided. Current meter records must also be examined for onshore/offshore components, frequency, and other statistical properties.

e. Continuous records of current speed and direction at two depths near the diffuser must be provided.

f. An assessment of the environmental effects of direct freshwater runoff from coastal areas is required.

Subsection C. Estuarine Discharge

1-13. If your discharge is to an estuary, provide in Appendix IV an oceanographic report describing the following characteristics:

a. Seasonal classification of the estuary in the vicinity of the discharge must be documented in relation to the scheme devised by Hansen and Rattray.[3]

b. the freshwater budget of the system must be documented as to the cumulative effect of runoff at the point(s) under consideration in conjuction with the above requirement.

c. Wind and tide effects must be considered in conjunction with an attempt to determine influence of different tidal (and wind) conditions on stratification/circulation.

d. The effects of geographical and geomorphological features on spatial and temporal variations shall be evaluated with narrows and shoaling effects in mind.

e. Spatial and temporal scale-dependent phenomena within the outfall tidal excursion zone are to be evaluated.

f. If numerical models are used to support the modification request, complete docu-

[3]"New dimensions in Estuary Classification," D. V. Hansen and M. Rattray, Jr., *Limnology and Oceanography, 11,* (3) 319-326, 1966.

mentation and seasonal verification at the point(s) in question will be required, as will methods employed to evaluate turbulent, advective, other terms.

g. If hydraulic models are used to support the modification request, time-lapse photographs covering combinations of seasonal runoff and tidal conditions at the point(s) in question will be required. Documentation of methods employed to simulate, e.g., wind, density, and velocity profiles will be required.

h. Background data on suspended solids contributions and estimates of deposition and resuspension to the estuary solids balance must be supplied.

SECTION 2. COMPLIANCE WITH BOD OR DO

2-1. If the BOD of your effluent exceeds the BOD criteria described in paragraph (a) Section 133.102, Subchapter D, Title 40 CFR, check this box ☐ and complete this section.

2-2. If the BOD of your effluent does not exceed the BOD criteria described in paragraph (a) Section 133.102, Subchapter D, Title 40 CFR, check this box ☐ and proceed to Section 3 (pH).

2-3. Provide applicable state water quality criteria levels in receiving water. You may only apply for a BOD modification if a value is entered in 2-3a or 2-3b below.

a. DO —— mg/l.

b. BOD —— mg/l.

Complete the appropriate subsection to show compliance with the criteria listed in 2-3a or 2-3b or both if applicable.

Dissolved Oxygen

2-4. Effluent Sample Point location ————. DO (mg/l) at Sample Point ————.

2-5. Travel time from Sample Point to diffuser ports:

a. Min. hourly flow —— m³/sec, time of flow —— min.

b. Avg. hourly flow —— m³/sec, time of flow —— min.

c. Max. hourly flow —— m³/sec, time of flow —— min.

d. Expected max. hourly flow in 1983 —— m³/sec, time of flow —— min.

e. Max. wet weather hourly flow —— m³/sec, time of flow —— min.

2-6. Immediate Dissolved Oxygen Demand (15 min.) of the sample after anaerobic incubation for times 2-4a through 2-4e, respectively.

a. ———.

b. ———.

c. ———.

d. ———.

e. ———.

2-7. List background DO concentrations at appropriate depths with respect to possible influence by the ocean outfall for the critical environmental situations listed in question 1-3.

2-8. Compute the influence of DO using the flows presented in 2-5, and the DO concentration presented in 2-7 which correspond to the response provided to question 1-6.

2-9. Do the results of 2-8 meet the criteria for DO presented in 2-3a? If not, explain.

2-10. Determine the BOD of grab samples taken at times of the day corresponding the flow presented in 2-5a, b, c, and e.

a. ———.

b. ———.

c. ———.

e. ———.

2-11. Compute the final BOD following initial dilution using the appropriate flows in 2-5.

a. ———.

b. ———.

c. ———.

e. ———.

2-12. Do the results of 2-11 meet the criteria for BOD presented in 2-3b? If not explain.

2-13. Provide in Appendix V, an analysis showing that BOD exerted *after* initial dilution will not result in subsequent depletion of DO below applicable criteria for DO. Describe the oxygen demand resulting from periodic disturbance of accumulated sediments, and from steady demand of undisturbed sediments, in relation to question 1-10.

2-14. The demand of oxygen in the bottom 2 meters of seawater for the critical 3 month period refers to the following data:

a. Ambient DO concentration —— mg/l.

b. DO criterion —— mg/l.

c. What months of the year are represented?

2-15. How often are the 2-3a criterion exceeded? ———.

2-16. In Appendix VI, provide an evaluation of biostimulatory effects on environmental quality and marine organisms, taking into account aesthetic conditions, increased turbidity, increases in undesirable organisms, increased incidence of damage in organisms.

2-17. Do you believe questions 2-3 through 2-14 adequately represent the most critical evaluation of possible adverse effects that may be associated with increased BOD discharges? If not, please describe in Appendix VII a more critical situation and demonstrate that your discharge will not exceed applicable water quality criteria or cause environmental damage.

SECTION 3. COMPLIANCE WITH PH

3-1. What is the average pH of your effluent? ———.

3-2. If the pH presented in 3-1 is between 6 and 9 check this box ☐ and continue to Section 4.

3-3. List the applicable criteria for pH in the vicinity of the discharge. Explain why the pH of the final effluent is <6.0 or >9.0.

3-4. List below pH resulting from a mixture of seawater and freshwater effluent according to initial dilutions as calculated in 1-4. Describe the method used in determining pH.

Values for each dilution must be a time series as deemed appropriate based on experimental observations.

3-5. Is the pH criterion met in every case? How often is the pH criteria exceeded? Explain.

3-6. If you have evaluated other considerations regarding pH, please provide a detailed analysis in Appendix VIII.

SECTION 4. COMPLIANCE WITH SUSPENDED SOLIDS

4-1. If the suspended solids of your effluent exceeds the suspended solids criteria described in paragraph (b), Section 133.102, Subchapter D, 40 CFR, check this box ☐ and complete this section.

4-2. If the suspended solids of your effluent does not exceed the suspended solids criteria described in paragraph (b), Section 133.102, Subchapter D, Title 40 CFR, check this box ☐ and proceed to Section 5.

4-3. Have you received, or are you in the process of receiving an adjusted suspended solids effluent requirement from EPA by virtue of operating an approved wastewater treatment pond? (See Section 133.103, Subchapter D, Title 40 CFR.)

YES——, please explain.

NO——, proceed to next question.

4-4. List the state water quality criteria related to suspended solids applicable to the marine waters where the outfall is located. Criteria for suspended solids, water clarity, turbidity, light transmittance, photic zone, or settleable solids are acceptable.

4-5. Determine the suspended solids content for the following flow conditions:

a. Min. hourly flow —— m³/sec, SS —— mg/l.

b. Avg. hourly flow —— m³/sec, SS —— mg/l.

c. Max. hourly flow —— m³/sec, SS —— mg/l.

d. Max. wet weather hourly flow —— m³/sec, SS —— mg/l.

4-6. Using the critical initial dilutions selected in 1-8 and corresponding SS in 4-5, compute the final suspended solids concentrations following initial mixing.

4-7. Do the final suspended solids concentrations meet the state water quality criteria for suspended solids? YES——NO——

State does not have water quality criteria for SS ——.

4-8. If the state does not have water quality criteria for SS, provide as Appendix IX a detailed discussion of how your outfall discharge meets state water quality criteria for water clarity, turbidity, light transmittance, photic zone, or settleable solids. The information should relate to the criteria condition explained in 1-8 and include the results of laboratory testing and field studies.

4-9. Describe in Appendix X the experimental procedure used to compute the amount and areal extent of seabed accumulation of SS discharged under this modification.

4-10. Does the discharge meet the settleable solids criteria in all critical cases as identified in question 1-3? Data must be provided to substantiate this assessment.

—— Yes, proceed.

—— No applicable criteria; however the seabed accumulation is computed for use in evaluating benthic oxygen demand.

—— No applicable criteria for settleable solids or benthic oxygen demand.

4-11. Describe in appendix XI how the increased SS may impact criteria for heavy metals, persistent synthetic organics, and pathogenic microorganisms in the water column and benthos. Include a description of the effect of settleable solids on the benthic community, both in terms of structure and function.

SECTION 5. MARINE BIOLOGICAL ASSESSMENT

Section 301(h)(2) of the Clean Water Act of 1977 requires that modification of the secondary treatment requirement will not threaten the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife. The "balanced indigenous population of shellfish, fish, and wildlife" within the zone of initial mixing of the outfall shall be interpreted, for purposes of granting modification under § 402(b)(1)(B), as a community of marine organisms which (1) might reasonably be expected to repopulate the polluted water body segment from nearby unpolluted waters if the sources of pollution were removed, and (2) exhibits characteristics similar to nearby unpolluted

healthy communities existing under comparable environmental conditions (physical, chemical and geologic), including depth, substratum composition, temperature, salinity, and hydrographic regime.

The Environmental Protection Agency's evaluation of applications for modifications from secondary treatment requirements will in part be based on an analysis of the existing condition and vulnerability of marine biological communities likely to be impacted by partially treated effluents. The extent of the required documentation is dependent on two factors—the quality of effluent and the relative sensitivity of the receiving ecosystem.

All applicants must provide in Appendix XII a summary of biological conditions in the vicinity of the outfall. This report will discuss at a minimum those topics required by § 233.13(d)(2)(B).

The biological conditions summary should be based on existing data if available, or original biological field surveys. Sampling guidelines for the benthos, phytoplankton, zooplankton, demersal fishes, and intertidal assemblages are available from EPA. Community structure, composition and diversity can be analyzed by the numerical classification techniques reviewed by Boesch (1977, EPA *Ecol. Res. Ser.*, 600/3-77-033). The macrofaunal benthos is recommended as an appropriate community for detecting the effects of settleable effluent components. The design of the sampling program must include control stations against which the effects of the outfall can be gauged, and sufficient stations should be occupied on a radial pattern of transects so that gradients of conditions can be observed. It may be necessary to stratify sampling according to natural environmental discontinuities in the outfall vicinity.

In addition, applicants shall complete the following questions and provide detailed information in the report (§ 233.13(d)(2)(B)) or by other means to support or explain their responses:

5-1. Is the marine environment beyond the zone of initial dilution so polluted as not to maintain or propagate a diverse and healthy community of marine life characteristic of the biogeographic zone in which the outfall is located? YES——NO——

5-2. Are the marine communities beyond the zone of initial dilution dominated by pollution resistant species (e.g., slime forming algae or bacteria; fouling or boring species; nuisance, trash or diseased species of finfish, invertebrates, etc.)? YES——NO——

5-3. Are any applicable Federal or State water quality standards violated at any time of the year at the border of the zone of initial dilution? YES——NO——

5-4. Has the outfall discharge had a deleterious effect on distinctive habitats of limited distribution such as kelp beds and coral reefs either within or beyond the zone of initial dilution? YES——NO——

5-5. Has the outfall discharge caused an increased incidence of disease in any marine organism? YES——NO——

5-6. Have commercial or recreational fisheries been adversely affected by pollution in the area of the outfall discharge? YES——NO——

5-7. Are the vertical and horizontal stratifications of biological communities beyond the zone of initial dilution characteristic of the biogeographic zone in which the outfall discharge is located? YES——NO——

5-8. Are the functional relationships (e.g., species successional pattern, propagation, food chain associations) within biological communities beyond the zone of initial dilution characteristic of the biogeographic zone in which the outfall discharge is located? YES——NO——

5-9. Has mass mortality of fishes or invertebrates, or atypical growths of marine algae due to anoxia or other conditions ever occurred in the area of the outfall discharge? YES——NO——

5-10. Have populations of any marine plant or animal organisms (especially nuisance or toxic species in the water column or substrate) in the area of the outfall discharge increased significantly beyond that characteristic of the biogeographic zone in which the outfall discharge is located? YES——NO——

5-11. Are the biological communities within the zone of initial dilution the same as would naturally occur in the absence of the outfall? YES——NO——

5-12. Has the outfall discharge caused adverse ecological impact(s) beyond the zone of initial dilution other than thos addressed in the preceding questions? If so, please explain. YES——NO——

SECTION 6. CHEMICAL ASSESSMENT

Section 301(h)(2) requires the attainment and maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in and on the water. In addition to the physical assessment (Section 1) and biological assessment (Section 5) a chemical assessment is required to assure that water quality standards are maintained.

Since chemical water quality standards are critical in determining water quality for further uses, the discharger will be required to submit a complete analysis for the substances listed in this part. All analyses shall be done on a 24 hour composite sample with incremental samples collected hourly.

Both dry weather and wet weather flows shall be sampled and analyzed. The dry weather flow shall be collected no less than 5 days following a rainfall of measurable intensity.

Analyses for the parameters and chemicals shall be conducted on both a mixed sample and the supernatant from the total sample following 3 hours of quiescent settling.

Conventional pollutants as well as toxic pollutants have been included. The list of toxic pollutants has been taken from Table 1 of Committee Print Numbered 95-30 and include "the 65 *Consent Decree* toxic pollutants." The EPA expects to publish marine water quality criteria in June 1978 for the 65 toxic substances which will be used to evaluate the applications.

Test procedures for the 65 toxics will be provided by EPA.

The discharger shall submit as Appendix XIII the results of analyses of mixed and settled samples for the following parameters:

Total Kjeldahl Nitrogen
Ammonia—Nitrogen
Nitrate—Nitrogen
Chlorine—Total residual
Oil and Grease
Phosphorus (as total P)
Settleable solids (mixed sample only)
96 hour LC 50
Fecal coliform bacteria
Manganese
pH
Hydrogen Sulfide
Solids—TSS, TDS, VSS
Mirex
Guthion
Methoxychlor
Parathion
Demeton
Malathion
Toxic Pollutants:

Aldrin/Dieldrin; Arsenic; Benzidine; Carbon tetrachloride; Cadmium (total); Dichlorobenzidine.
Cholorinated ethanes; Chloroform; Chromium (total).
Dichloroethylenes.
Dinitrotoluene; Fluoranthene; Diphenylhydrazine; Endrin; Hexachlorocyclo- pentadiene; Ethylbenzene; Mercury (total); Nickel (total); Nitrobenzene; Naphthalene; Silver (total); Vinyl Chloride.
Acenaphthene; Antimony; Chlorinated benzenes; Chloralkyl ethers; DDT; Dichloropropane and dichloropropene; Halomethanes; Tetrachloroethylene; Trichloroethylene.
Polynuclear aromatic hydrocarbons; Endosulfan; Pentachlorophenol; Phenol; Acrylonitrile; Asbestos; Benzene; Beryllium; Chlorinated Naphthalene; 2-Chlorophenol; Chlorophenols; Cyanide (total); 2,4-Dichlorophenol.
Acrolein; Chlordane; Nitrosamines; Copper (total); Dichlorobenzenes; Haloethers.
Heptachlor; Hexachlorobutadiene; Hexachlorocyclohexane—(Lindane); Isophorone.
Lead (total); Nitrophenols; Phthalate Esters; PCB's Selenium (total); P-Dioxin; Thallium (total); Toluene; Toxaphene; Zinc (total); 2,4-dimethylphenol.

ATTACHMENT F, SECTION 2

403.8 Development of pretreatment program by POTW Control Agencies.

(a) Any POTW with a design flow of 5 mgd or greater receiving industrial wastewater which passes through or interferes with the operation of the POTW will be required to establish a POTW Pretreatment Program. The Administrator may elect to require that a POTW with a design flow of less than 5 mgd develop a POTW Pretreatment Program. Similarly, the Administrator may exempt a POTW with a design flow of 5 mgd or greater from the requirement to develop a POTW Pretreatment Program.

(b) An approvable POTW Pretreatment Program will be developed within 3 years after the reissuance or modification of the POTW's existing NPDES permit (see section 403.9). The components of the Program set forth in paragraph (c) below, will be administered by the POTW Control Agency to assure compliance by Industrial Users with applicable Pretreatment Standards.

(c) A POTW Pretreatment Program shall meet the following requirements:

(1) *Legal Authority:* The POTW Control Agency shall operate pursuant to a statute, ordinance, contract, agreement, or other written legal authority, enforceable in State or local courts, which authorizes or enables the POTW Control Agency to apply and to enforce the requirements of sections 307 (b) and (c), and 402(b)(8) of the Act and any regulations implementing those sections. At a minimum, this legal authority shall enable the POTW Control Agency to:

(A) Deny or condition new or increased discharges of pollutants to the POTW by Industrial Users;

(B) Require compliance with Pretreatment standards by Industrial Users discharging wastes to the POTW.

(C) Control, through permit, contract, order, etc., the discharge to the POTW by each Industrial User to ensure compliance with Pretreatment Standards.

(D) Require (1) the development of a compliance schedule by the Industrial User for the installation of technology required to meet applicable pretreatment standards, and (2) the submission of all such notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance by Industrial Users with Pretreatment Standards, including but not limited to those reports required in section 403.14;

(E) Carry out all such inspection, surveillance and monitoring procedures as are necessary to determine, independent of information supplied by Industrial Users, compliance or noncompliance with applicable Pretreatment Standards by such Industrial Users. Representatives of the POTW Control Agency must be authorized to enter any premises of any Industrial User in which an effluent source or treatment system is located or in which records are required to be kept under paragraph (c)(1)(d) of this section to assure compliance with Pretreatment Standards.

(Comment: Authority to carry out surveillance, inspection and monitoring procedures should be at least as extensive as the authority provided under section 308 (a) and (b) of the Act.)

(F) Independently assess or recover through judicial action, civil or criminal fines, penalties, and injunctive relief for the noncompliance by an Industrial User with (i) any Pretreatment Standard, (ii) any duty to allow or carry out inspections, entry, or monitoring activities; (iii) any rules, regulations or orders issued by the POTW Control Agency; or (iv) any reporting requirements imposed by the POTW Control Agency. The POTW Control Agency shall have authority and procedures to immediately and effectively halt or eliminate any actual or threatened discharge of pollutants to the POTW which presents an imminent or substantial endangerment to the health or welfare of persons or to the proper operation of the POTW.

(2) *Procedures:* The POTW Control Agency shall have procedures to insure compliance with POTW Pretreatment Program requirements. At a minimum, these procedures shall enable the POTW Control Agency to:

(A) Make systematic, comprehensive surveys of all sewer lines leading to the POTW in order to identify and locate all Industrial Users which might be subject to the POTW Pretreatment program.

(Comment: Any compilation, index or inventory of Industrial Users made under this paragraph shall be made available to the Regional Administrator or Director upon request.)

(B) Identify the character and volume of pollutants discharged to the POTW by the Industrial Users identified under section 403.8(c)(2)(A);

(C) Notify Industrial Users identified under section 403.8(c)(2)(A) of applicable Pretreatment Standards and any applicable sludge management requirements under section 405 of the Act and sections 3001, 3004, and 4004 of the Resources Conservation and Recovery Act;

(D) Receive and analyze self-monitoring reports and other notices submitted by Industrial Users in accordance with the self-monitoring requirements in section 403.14;

(E) Randomly sample and analyze the effluent from Industrial Users and conduct surveillance and inspection activities in order to identify, independent of information supplied by Industrial Users, occasional and continuing noncompliance with Pretreatment Standards;

(F) Follow up instances of noncompliance with Pretreatment Standards, as indicated in the reports and notices required under section 403.14, or indicated by analysis, inspection, and surveillance activities described in paragraph (c)(2)(E). Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions;

(G) Initiate judicial action in courts of competent jurisdiction for injunctive relief or other civil or criminal remedies for noncompliance or threatened noncompliance with Pretreatment Standards and other requirements; and

(H) Implement and enforce other rules or regulations issued by the POTW Control Agency and any other rules or regulations promulgated by EPA or an NPDES State to implement Pretreatment Standards and/or sections 307 (b) or (c) or 402(b)(8) of the Act.

(I) Comply with the public participation requirements of section 101(e) of the Act and 40 CFR 105 in the enforcement of Federal pretreatment standards. These procedures shall include provision for at least annually providing public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users during the previous 12 months who at least once:

(i) Were not in compliance with the applicable categorical pretreatment standard as reported in pollutant concentration reports required by section 403.14, and/or

(ii) Reported a violation of the prohibited discharges (section 403.5) as required in section 403.14.

The notification shall summarize enforcement actions taken by the control authorities during the same 12 months.

(3) *Funding:* The POTW Control Agency shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in sections 403.8(b) (1) and (2).

(Comment: In combination with other sources of funding, the system of user charges required under section 201 of the Act and 40 CFR 35.929 shall provide adequate funding to carry out the authorities and procedures enumerated in sections 403.8 (1) and (2) and shall be structured so that any increased costs attributable to the POTW Pretreatment Program shall be passed on to Industrial Users through increased user charges.

Funding and personnel must ensure an effective POTW Pretreatment Program. However, in some limited circumstances, funding and personnel may be delayed where (1) the POTW Control Agency has adequate legal authority and procedures to carry out the POTW Pretreatment Program requirements described in section 403.8, and (2) a limited aspect of the POTW Permit Program does not need to be implemented immediately. For example, where a compliance monitoring program for a certain industrial category is not yet required because the Pretreatment Standard for that industrial category has not been promulgated and no other pretreatment requirements apply to that source, funding for that aspect of the POTW Pretreatment Program may be delayed, but only until such time as that aspect of the POTW Pretreatment Program must be implemented. To delay funding and personnel in this manner, the municipal agency must demonstrate that funding and personnel will be available when needed.)

403.9 Incorporation of POTW Pretreatment Program requirements in NPDES permits issued to POTWs.

(a) POTWs required to establish a POTW Pretreatment Program under section 403.8(a) must have received approval of a Program within three years after the reissuance or modification of their presently existing NPDES permit.

(b) A POTW Control Agency may develop an approvable POTW Pretreatment Program anytime before the time limit set forth in paragraph (a) above. Upon approval of the Program, the POTW's NPDES Permit will be modified to incorporate the Program conditions as enforceable conditions.

(c) If the POTW does not have an approved POTW Pretreatment Program at the time the POTW's existing Permit is reissued or modified, the shortest reasonable compliance schedule, not to exceed three years, for the development of the legal authority, procedures and funding required by 403.8, will be incorporated into the Permit at the time it is reissued or modified.

(d) When a NPDES Permit is reissued or modified as described in paragraphs (b) and (c) above, the following conditions also will be incorporated into the permit:

(1) A requirement that the POTW Control Agency, through the authorities and procedures set forth in the Program, will be responsible for ensuring compliance with Pretreatment Standards by Industrial Users.

(2) A provision that the POTW Control Agency may revise Pretreatment Standards for Industrial Users, upon approval by the Approval Authority, if the POTW Control Agency has demonstrated, in accordance the requirements set forth in section 403.7, that the POTW removes all or any part of the pollutant regulated by such Pretreatment Standard. The demonstrated percentage of removal and the revised pretreatment limits for Industrial Users will be included as enforceable requirements in the NPDES Permit as follows:

(A) The initial request for removal allowance may be submitted to the Approval Authority with the request for program approval submitted pursuant to section 403.8. Upon approval in accordance with the procedures of 403.11(a)-(i), the demonstrated percentage of removal will be incorporated in the permit.

(B) Subsequent requests for removal allowances resulting from the promulgation by EPA of new categorical pretreatment standards covering pollutants for which the POTW currently has no allowance approval will be considered once a year. Upon approval of such a request in accordance with the procedures set forth in 403.11(j), the demonstrated percentage of removal will be included as an enforceable condition of the POTW's NPDES permit.

(C) All requests for removal allowances arising after Program approval except for those referred to in paragraph (B) above will be considered only when the POTW permit existing at the time the Program is approved is reissued or modified.

(Comment: As explained in section 403.7, the POTW will be required to maintain the demonstrated percentage of removal reflected in the POTW permit. Continued compliance with this percentage of removal will be documented by self-monitoring reports submitted by the POTW to the Approval Authority once every six months, or more frequently, as set forth in section 403.14.)

(3) A requirement that the POTW will comply with sludge disposal requirements developed under section 405 of the Act if the POTW is requesting or has received a removal allowance under section 403.7.

(e) The Approval Authority may modify, or alternatively, revoke and reissue the Permit to incorporate the conditions set forth in sections 403.9 (c) and (d) above where:

(1) The addition of pollutants into a POTW by an Industrial User presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment and the Permit issued to the POTW does not contain POTW Pretreatment Program requirements and other pretreatment conditions; or

(2) The Permit must be reissued or modified to coordinate the issuance of a section 201 grant with the incorporation into a permit of a POTW Pretreatment Program compliance schedule.

[FR Doc. 78-11140 Filed 4-24-78; 8:45 am]

[6820-14]

GENERAL SERVICES ADMINISTRATION

[41 CFR Part 101-1]

DELEGATIONS OF AUTHORITY

Method of Issuance

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is considering changing the way it issues delegations of authority to other agencies. At present, GSA delegates authority through its temporary regulations system. GSA has determined that it can accomplish the same objective at a lower cost by issuing delegations of authority in a separate series. These delegations would be published in the FEDERAL REGISTER as general notice documents.

DATES: Comments must be received on or before June 26, 1978.

ADDRESSES: Comments should be addressed to: General Services Administration (BRAI), Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT:

Stanley W. Bowers, Chief, Directives Management Branch, Paperwork Management Division, Office of Administrative Services, Office of Administration, General Services Administration, Washington, D.C. 202-566-0666.

SUPPLEMENTARY INFORMATION: The Administrator of General Services is authorized to delegate certain authorities to heads of other agencies under the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 378; 40 U.S.C. 471 et seq.), and other applicable laws. Typical authorities delegated to agency heads include the authority to represent the consumer interests of the executive agencies in public utilities rate proceedings or the authority to lease space at specific installations. At present, the Administrator delegates these authorities by issuing temporary regulations in the Federal property management regulations (FPMR) series.

There are two problems with the present method:

1. FPMR temporary regulations are used also to transmit regulatory material pertaining to the management of Federal property. Although these temporary regulations are not codified in the CFR, they are published in the FEDERAL REGISTER and are distributed in looseleaf form to agencies that are governed by the FPMR. Temporary regulations are numbered sequentially, but those that delegate authority are issued only to the subject agency. Therefore, because each agency does not receive all regulations in the series, there has been confusion concerning whether an agency has received all of the temporary regulations that it should have. Resolving this confusion creates an administrative burden both for agencies that contact GSA and for GSA in answering the questions.

2. Printing and distribution costs for looseleaf directives are high. GSA can eliminate these costs for delegations of authority by discontinuing the looseleaf publication. Agencies would continue to be notified of delegations of authority by a letter from the Administrator and by a general notice in the FEDERAL REGISTER.

GSA has concluded that issuing delegations of authority in a separate series from FPMR temporary regulations will eliminate paperwork, avoid confusion, and save time and money.

Accordingly, it is proposed to amend 41 CFR Part 101-1 as follows:

PART 101-1—INTRODUCTION

Subpart 101-1.1—Regulation System

By revising § 101-1.103(b) to read as follows:

§ 101-1.103 FPMR temporary regulations.

* * * * *

(b) FPMR temporary regulations may have an effective period of up to 2 years when codification is not anticipated or is not considered practicable.

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

Dated: April 11, 1978.

JANICE K. MENDENHALL,
Director of Administration.

[FR Doc. 78-11128 Filed 4-24-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 78-52; RM-2808]

TABLE OF ASSIGNMENTS, TELEVISION BROADCAST STATIONS

Assignment of TV Channels in Washington, D.C., Waldorf, Md., Fairfax and Front Royal, Va.; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order extending time.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in a proceeding concerning proposed television channel changes in Washington, D.C., Waldorf, Md., Fairfax and Front Royal, Va. Petitioner, Central Virginia Educational Television Corp., states the additional time is needed in order to complete its engineering research regarding various options proposed in the Notice.

DATES: Comments must be received on or before May 8, 1978. Reply comments must be received on or before May 29, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (Washington, D.C., Waldorf, Maryland, Fairfax and Front Royal, Virginia). BC Docket No. 78-52, RM-2808. *Order extending time for filing comments and reply comments.*[1]

Adopted: April 18, 1978.

Released: April 19, 1978.

1. On Feruary 8, 1978, the Commission adopted a *Notice of Proposed Rule Making*, 43 FR 7330, concerning the above-entitled proceeding. The present dates for filing comments and reply comments are April 24, and May 18, 1978, respectively.

2. On April 7, 1978, Central Virginia Educational Television Corp.

[1] See 43 FR 13592.

("CVETC"), filed a timely request seeking an extension of time for filing comments to and including May 8, 1978. CVETC states that the additional time is needed because various parties involved in the preparation of comments were attending the conference of the National Association of Broadcasters and were not available during that period.

3. We are of the view that the public interest would be served by this extension so that the Central Virginia Educational Television Corp. may file any information which might be helpful to the Commission in reaching a decision in this proceeding. Also, as a result of this decision, it is necessary to extend the reply comment date an equivalent amount of time.

4. Accordingly, *it is ordered*, That the dates for filing comments and reply comments in BC Docket No. 78-52 are extended to and including May 8 and May 29, 1978, respectively.

5. This action is taken pursuant to authority found in sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

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

[FR Doc. 78-11178 Filed 4-24-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[49 CFR Ch. X]

[Ex Parte No. Mc-115]

PACK-AND-CRATE OPERATION ON BEHALF OF THE DEPARTMENT OF DEFENSE

Transportation of Used Household Goods

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Interstate Commerce Commission is proposing to adopt a simplified certification process for pack-and-crate operators performing transportation of used household goods in connection with a pack-and-crate service for the Department of Defense, or for an exempt freight forwarder acting on behalf of the Department of Defense. Under the proposed entry control procedure, the Commission would make a prospective general finding that the public convenience and necessity require the incidental transportation of used household goods in connection with a military pack-and-crate operation. A qualifying carrier would be authorized to perform the incidental transportation service merely by submitting a request to the Commission to participate in the special "master" certificate and by demonstrating its fitness.

DATES: Comments (an original and 11 copies) must be received on or before June 26, 1978.

ADDRESSES: Send comments to Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, telephone 202-275-7292.

SUPPLEMENTARY INFORMATION: The transportation of military shipments of used household goods in interstate or foreign commerce is made under one of two basic shipping methods. The most common shipping procedure is referred to by the Department of Defense (DOD) as the Through Government Bill of Lading (TGBL) method. A single Government bill of lading is issued to a freight forwarder to procure transportation and related services, including packing and crating, for a shipment of household goods from origin to destination. The freight forwarder wins the right to handle the traffic by filing the lowest rates with DOD pursuant to section 22 of the Interstate Commerce Act. The forwarder assumes total responsibility for the shipment and arranges for all segments of the transportation movement, and related services, from point of origin to point of final destination. Packing and crating of the shipment, and the incidental transportation related to this service, is generally handled by the forwarder's local agent, usually a warehouseman or local mover. The forwarder has a written agency agreement with its local operator at each military base. The agent containerizes the used household goods and transports the container to its warehouse or local terminal for stenciling, weighing, and banding. The agent then tenders the containerized goods to a motor or rail carrier to conduct the line-haul movement to the final destination or point of embarkation.

Certain forwarders operate under the exemption provided in section 402(b)(2) of the Interstate Commerce Act. That section 402(b)(2), as pertinent, exempts those persons performing a freight forwarder service from holding a freight forwarder operating permit, required in part IV of the act, "* * * where the property with respect to which service is performed consists of * * * used household goods * * *." In the decision in *Kingpak, Inc., Investigation of Operations*, 103 M.C.C. 318 (1966), affirmed, sub nom, *Household Goods Carriers' Bureau* v. *United States*, and *I.C.C.*, 288 F. Supp. 641 (1968), it was found that where a freight forwarder, operating under the exemption of section 402(b)(2), utilized a local motor carrier to perform the incidental transportation service, the local carrier must hold appropriate interstate operating authority to perform such service, *Kingpak*, supra; *Central Forwarding, Inc., Ext.—Household Goods*, 107 M.C.C. 706 (1968).

The second method of transportation employed by DOD in shipping used household goods is termed the Direct Procurement Method (DPM). In this system, DOD utilizes a bidding procedure and separately contracts for each segment of the total movement with various carriers and contractors utilizing a series of government bills of lading. As pertinent here, DOD awards to the low bidding carrier a separate pack-and-crate contract, extending usually for a 1 year period at a specific military base or installation. The contract provides for the packing and crating or containerization of household goods traffic plus the transportation of each crated shipment to the contractor's warehouse or terminal. DOD independently arranges for the subsequent line-haul movements with rail or motor carriers. The pack-and-crate services performed by the local contractors directly for DOD under the DPM transportation procedure are essentially identical to those performed by local operators, as agents of the freight forwarders, under the TGBL mode. The *Kingpak* and *Central Forwarding* decisions cited above dealt only with the TGBL procedure. Subsequently, in *Bud's Moving & Storage, Inc.*, Declaratory Order, 126 M.C.C. 56 (1976), the Commission found that pack-and-crate operators contracting directly with DOD, rather than with a forwarder, must also hold appropriate authority from this Commission. It also found in that decision, that a carrier must hold authority in its own name and may not use or lease the authority of the van line carrier, for which it acts as agent, in bidding on a contract.

The decision in *Bud's* spelled out one exception from the general rule that all pack-and-crate operators performing incidental transportation services under either DOD shipping method must hold operating authority. The exception results from an important distinction between the two systems in relation to the Act. Under the TGBL procedure, it is a freight forwarder which arranges for the entire through movement of the household goods, while DOD itself makes the arrangements under the DPM. The identity of the party making the arrangements is significant in terms of the applicability of the commercial zone exemption of section 203(b)(8) of the Act. The transportation of TGBL traffic routed by forwarders, which are considered carriers under the Act, requires operating

authority even where the local transportation takes place entirely within a commercial zone. However, the movement within a commercial zone of shipper-consigned traffic (DPM) is exempt, *Bud's*, supra, at pp. 60-61. Where the incidental transportation by the pack-and-crate operator extends beyond the commercial zone boundaries, under either shipping procedure, interstate authority is necessary. It is estimated by DOD that approximately 20 percent of its international household goods traffic moves in the DPM fashion; the overwhelming majority moves in the international TGBL, forwarder manner.

The Commission proposes to adopt a procedure of eased entry controls for the pack-and-crate operator performing incidental transportation of used household goods moving on a government bill of lading pursuant to either the TGBL or DPM shipping methods. It is further proposed that a simplified certification process be instituted, similar to the "master certificate" procedure adopted by the Commission in Ex Parte No. MC 85, *Transportation of "Waste" Products for Reuse*, 124 MCC 583 (1976), and the "master license" procedure for brokers adopted by the Commission in Ex Parte No. MC 96, *Entry Control of Brokers*, 126 MCC 476 (1977). In implementing a "master certificate" approach for pack-and-crate operators, the Commission would make a prospetive general finding that the public convenience and necessity require the incidental transportation of used household goods moving on a government bill of lading in connection with a pack-and-crate service. The master certificate would authorize participating pack-and-crate operators to perform such incidental transportation service between all points in the United States, including Alaska and Hawaii.

A carrier wishing to submit a bid on a DPM pack-and-crate contract, or establish its eligibility to handle the traffic under the TGBL method, would be required to submit only a written request for participation in the special certificate of public convenience and necessity. This request would include, among other items specified below, a statement from the applicant that it would be conducting only incidental transportation of used household goods moving on a government bill of lading pursuant to pack-and-crate service for the military, and a statement demonstrating its fitness to perform the involved service. Once the application is received, a notice describing the proposed service would be published in the FEDERAL REGISTER, thus giving formal notice to other carriers of the applicant's request to operate under the special certificate. The Commission would then determine whether applicant is eligible to perform this service and whether the appropriate application procedures have been followed. If applicant is found eligible, it may conduct operations under the special certificate as soon as it files with the Commission an appropriate tariff setting forth its rates for the service. An applicant would have an option of filing its tariff along with its application so that, once approved, it may commence operations immediately. On the other hand, an applicant may prefer to submit its tariff after it has filed its application and been found eligible to perform service. This would enable the applicant to ascertain the territorial scope of the pack-and-crate operations it will be conducting, under either a DPM contract or pursuant to TGBL shipping procedures, and to structure its rates for the service accordingly.

The proposed rules also require an applicant to serve a copy of its application under the master certificate on the Department of Defense. If DOD has any objections to the participation of any particular pack-and-crate operator-applicant under the master certificate, it may file a letter with the Commission stating the reasons for its position. A copy of the DOD letter should also be served on the applicant. Applicant would then be afforded an opportunity to respond to DOD's contentions. If no letter objecting to an applicant's participation in the master certificate is filed by DOD, it will be construed as supporting the application. Applicants should submit copies of their application to: Commander, Headquarters, Military Traffic Management Command, Washington, D.C. 20315, Attention: MTMC-PP.

Representations from interested parties should address the issue of whether additional information should be required in the applications or whether information now included in the proposal should be elimated. Comments should also be submitted concerning the term limitation and performance report requirement included in "Terms, Conditions, and Limitations" portion of the master certificate."

The issue involved here arose as a result of an investigation proceeding in No. MC-C 9026, White Transfer & Storage Co. and Allied Van Lines, Inc.—Investigation of operations. The Commission instituted, on its own motion, an investigation to determine whether respondent White, an agent for respondent Allied, has been performing incidental transportation of household goods pursuant to a pack-and-crate contract let by DOD under the DPM shipping arrangement. A decision in this proceeding will be held in abeyance pending disposition of the rulemaking proceeding.

The adoption of the eased entry controls described above appears desirable for several reasons. First, the transportation service performed by pack-and-crate operators is minimal and only incidental to the packing and crating operations. Moreover, the local operator's service is sufficiently well defined and routine to justify foregoing the repetitive fact finding required to support individual findings of public convenience and necessity. The incidental transportation service performed pursuant to a pack-and-crate operation is generally local in nature. Although the service rendered by local operators under both the TGBL and DPM shipping arrangements is practically identical, the anomalous situation exists that incidental movements entirely within a commercial zone under the forwarder-controlled, TGBL system require appropriate interstate operating authority, while the same movement handled under the DOD-arranged, DPM system is exempt from regulation. Most importantly, the bidding process involved in the DPM shipping method and the section 22 rate filing procedure in the TGBL method may be viewed as effective regulatory devices, controlling the rates charged and the level of service provided, so that intensive entry regulation by the Commission is unnecessary.

Comments also are requested on whether any prospective finding of public convenience and necessity should be expanded to nonmilitary pack-and-crate operations.

All written material submitted will be available for public inspection during regular business hours at the offices of the Interstate Commerce Commission, 12th and Constitution Avenue, Washington, D.C.

This notice of proposed rulemaking is issued under the authority of part II of the Interstate Commerce Act (49 U.S.C. 301 et seq.) and of 5 U.S.C. 552, 553, and 559 (the Administrative Procedure Act).

Issued in Washington, D.C., April 5, 1978.

H. G. HOMME, Jr.,
Acting Secretary.

Accordingly, it is proposed that the following rules be adopted at 49 CFR ———.

Part ———. Special regulations for for-hire carriers engaged in incidental transportation of used household goods moving on a government bill of lading pursuant to a pack-and-crate service on behalf of the Department of Defense.

§ ———.1 Special procedures for for-hire motor carriers engaged in incidental transportation of used household goods moving on a government bill of lading pursuant to a pack-and-crate service on behalf of the Department of Defense.

(a) *Scope of special rules.* These special rules govern the filing and han-

dling of applications seeking the right to operate pursuant to a special certificate of public convenience and necessity authorizing operations in interstate or foreign commerce, by motor vehicle over irregular routes, of used household goods moving on a government bill of lading, pursuant to a Department of Defense pack-and-crate service, under either the direct procurement method or the through government bill of lading method, between all points in the United States (including Alaska and Hawaii), subject to certain terms, conditions, and restrictions set forth in the certificate in paragraph (e) of this section.

(b) *Applications for a special certificate.* Motor carriers desiring to perform operations pursuant to the special certificate of public convenience and necessity set forth in paragraph (e) of this section must file with this Commission a sworn and notarized request (which may be in letter form) containing the following: (1) The name and address of the carrier's representative to whom inquiries may be made, (2) the designation of the carrier's statutory agent for service of process within each of the United States (Form BOC-3), (3) evidence of the carrier's insurance coverage (Forms BMC-90 and BMC-91) or a statement that such evidence is currently on file at this Commission, and (4) a statement demonstrating the applicant's fitness to perform the involved service. A copy of the application, containing the above information, must also be served on the Department of Defense.

(c) *Waiver of certain filing requirement.* Section 220(a) of the act respecting the filing of annual reports is suspended as to the operations authorized in the special certificate set forth in paragraph (e) of this section.

(d) *Notice.* This Commission will publish a notice in the FEDERAL REGISTER indicating the carrier's intention to participate in the special certificate of public convenience and necessity. Protests (in the form of verified statements in opposition) to such notices must be received at the Commission at Washington, D.C., within 20 days of the date of that publication. If the carrier is not otherwise informed by this Commission, operations may commence within 30 days of the date of publication in the FEDERAL REGISTER.

(e) *Certification.* Appropriate acknowledgement letters will be issued to notify motor carriers that they have been found eligible to operate pursuant to the special certificate of public convenience and necessity. Operations under the special certificate may commence only after an eligible applicant has submitted to the Commission and to the Department of Defense a copy of its tariff (in addition to the three copies filed with this Commission's Bureau of Traffic). The tariff must specify the rates to be charged for the transportation service. A carrier has the option of filing its tariff concurrently with its application or after it has been found eligible to operate. The special certificate of public convenience and necessity reads as follows:

SPECIAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

[Ex Parte No. MC 115]

DESIGNATED MOTOR CARRIERS PARTICIPATING IN THE INCIDENTAL TRANSPORTATION OF USED HOUSEHOLD GOODS MOVING ON GOVERNMENT BILLS OF LADING PURSUANT TO A PACK-AND-CRATE SERVICE ON BEHALF OF THE DEPARTMENT OF DEFENSE

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on April 5, 1978.

After due investigation, it appearing that the described carriers have compiled with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, having complied with all the requirements established by the Commission in its report in Ex Parte No. MC 115, are, therefore, entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as motor carriers; and the Commission so finding;

It is ordered, That these carriers be granted this special certificate of public convenience and necessity as evidence of the authority of the holders to engage in transportation in interstate or foreign commerce as common carriers by motor vehicle subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carriers.

It is further ordered, And is made a condition of this certificate that the holders shall render reasonably continuous and adequate service to the public in pursuance of the authority granted, and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of this certificate as to any such holder.

And it is further ordered, That the transportation service to be performed by these carriers in interstate or foreign commerce shall be as follows:

Between all points in the United States, in the transportation of used housdhold goods, moving on a government bill of lading, incidental to the performance of a pack-and-crate service on behalf of the Department of Defense, under the direct procurement method or the through government bill of lading method.

TERMS, CONDITIONS, AND LIMITATIONS

The authority granted herein to the extent that it duplicates any authority heretofore granted to or now held by the said participating carrier shall not be construed as conferring more than one operating right.

Any motor carrier with contract carrier authority to transport commodities similar to those authorized in the above-described certificate for the Department of Defense, or any agency, department, or subdivision thereof, shall not be permitted to transport the involved commodities for the same shipper as a common carrier under the authority granted herein. The right of the Commission to impose in the future such terms, conditions, or limitations as may be necessary to insure that any participating carrier's operations conform to the requirements of the Interstate Commerce Act, including section 210 thereof, is hereby expressly reserved.

The authority granted therein shall not hereinafter be severed by sale or otherwise.

The authority granted herein will expire 3 years from the date of approval unless a request for extension is submitted not earlier than 2 years after the date of issuance nor later than 90 days before the expiration date; and that such request for extension must include a performance report documenting: (a) The commodities transported, (b) the quantity of traffic, (c) revenues derived therefrom, (d) origins and destinations of traffic handled, and (e) any other pertinent data; and that the present and future public convenience and necessity warrant granting the extension.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

COMMISSIONER STAFFORD (DISSENTING IN PART)

I have no objection to the use of a general licensing procedure that would be limited in scope both as to commodity and territory.

The operation apparently envisioned in the notice involves primarily a pack-and-crate service for the movement of household goods. This clearly limits the commodities, and is not objectionable.

The territory involved would seem to be narrow in scope, and generally will involve movement from the point of origin to the contractor's warehouse or terminal. Presumably this terminal or warehouse is in the general vicinity of the origin point. The proposed special certificate, however, does not limit the territorial scope of the transportation. It would seem to authorize the pack-and-crate operator to begin a nationwide household goods moving service. The majority was aware of this problem and chose not to change the wording of the master license. Nationwide authority to transport household goods goes far beyond the problem that the general licensing seeks to solve. The proposed special certificate should be drafted in such a way that pack-and-crate service will remain only an incidental segment of the household goods movement, and will not be used to expand formerly local operations.

[FR Doc. 78-11196 Filed 4-24-78; 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.

[3410-07]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Notice of Designation Number A600]

PENNSYLVANIA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in Perry County, Pa., as a result of snowstorms January 15 through January 22, 1978, and excessive rainfall January 24, 1978.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR Part 1904 Subpart C, Exhibit D, Paragraph V B, including the recommendation of Governor Milton J. Shapp that such designation be made.

Applications for emergency loans must be received by this Department no later than October 11, 1978, for physical losses and April 16, 1979, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C. this 17th day of April, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-11145 Filed 4-24-78; 8:45 am]

[3410-16]

Soil Conservation Service

BEARTOWN FLOOD PREVENTION RC&D MEASURE, MISSISSIPPI

Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Beartown Flood Prevention RC&D Measure, Pike County, Miss.

The environmental assessment of this Federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Chester F. Bellard, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The measure concerns a plan for flood prevention. The planned works of improvement include 5,340 feet of channel work (1,078 feet of enlargement; 867 feet of rock-lined new channel; and 3,395 feet of channel clearing) and 1,310 feet of levees.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation of agencies and individuals with expertise or interest in the preparation of the draft environmental impact statement. The draft environmental impact statement will be developed by Mr. Chester F. Bellard, State Conservationist, Soil Conservation Service, P.O. Box 610, Jackson, Miss. 39205, 601-969-4335.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

Dated: April 17, 1978.

VICTOR H. BARRY, Jr.,
Deputy Administrator for Programs, Soil Conservation Service.

[FR Doc. 78-11152 Filed 4-24-78; 8:45 am]

[3410-16]

BLACK HILLS RC&D AREA CRITICAL AREA TREATMENT RC&D MEASURES, SOUTH DAKOTA AND WYOMING

Intent Not To Prepare Environmental Impact Statements

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that environmental impact statements are not being prepared for the Black Hills RC&D Area Critical Area Treatment RC&D Measures in Butte, Custer, Fall River, Lawrence, Meade, and Pennington Counties in S. Dak., and Crook, Niobrara, and part of Weston Counties in Wyo.

The environmental assessment of these Federally assisted actions indicates that the projects will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Robert D. Swenson, State Conservationist, South Dakota, and Mr. Frank S. Dickson, State Conservationist, Wyoming, have determined that the preparation and review of environmental impact statements are not needed for these projects.

The measures concern plans for critical area treatment. The planned works of improvement include small grade stabilization structures, diversions, critical area plantings, debris basins, fencing, and grassed waterways.

The notice of intent not to prepare environmental impact statements has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Robert D. Swenson, State Conservationist, Soil Conservation Service, 200 Fourth Street SW., Huron, S. Dak. 57350, 605-352-8651. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until after May 25, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

Dated: April 17, 1978.

VICTOR H. BARRY, Jr.,
Deputy Administrator for Programs, Soil Conservation Service.

[FR Doc. 78-11153 Filed 4-24-78; 8:45 am]

[3410-16]

CHICKASAW-SHILOH RC&D AREA CRITICAL AREA TREATMENT RC&D MEASURES, TENN.

Intent Not To Prepare Environmental Impact Statements

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that environmental impact statements are not being prepared for the Chickasaw-Shiloh RC&D Area Critical Area Treatment RC&D Measures in Chester, Decatur, Hardeman, Hardin, Haywood, Henderson, Madison, and McNairy Counties, Tenn.

The environmental assessment of these Federally assisted actions indicates that the projects will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Donald C. Bivens, State Conservationist, has determined that the preparation and review of environmental impact statements are not needed for these projects.

The measures concern plans for critical area treatment. The planned works of improvement include diversions, critical area plantings (which include trees or perennial grasses and legumes), debris basins, fencing, and grassed waterways.

The notice of intent not to prepare environmental impact statements has been forwarded to the Environmental Protection Agency. The basic data developed during trhe environmental assessment are on file and may be reviewed by contracting Mr. Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, Nashville, Tenn. 37203, 615-251-5471. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until after May 25, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

Dated: April 17, 1978.

VICTOR H. BARRY, Jr.,
Deputy Administrator for Programs, Soil Conservation Service.

[FR Doc. 78-11154 Filed 4-24-78; 8:45 am]

[3410-16]

COW CREEK CRITICAL AEA TREATMENT RC&D MEASURE, CALIFORNIA

Intent Not to Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cow Creek Critical Area Treatment RC&D Measure, Modoc County, Calif.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Francis C. H. Lum, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the stabilization of critically eroding areas. The planned works of improvement include the installation of a road culvert/grade control structure under Surprise Valley Road and a series of 10 gabion grade control structures in the man-made channel of Cow Creek. All unstable and disturbed areas will be vegetated.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Francis C. H. Lum, State Conservationist, Soil Conservation Service, 2828 Chiles Road, Davis, Calif. 95616, 916-758-2200. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until after May 25, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

Dated: April 17, 1978.

VICTOR H. BARRY, Jr.,
Deputy Administrator for Programs, Soil Conservation Service.

[FR Doc. 78-11155 Filed 4-24-78; 8:45 am]

[3410-16]

GOGEBIC COUNTY CRITICAL AREA TREATMENT (PUBLIC LANDS) RC&D MEASURE, MICHIGAN

Intent Not to Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environment Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Gogebic County Critical Area Treatment (Public Lands) RC&D Measure, Gogebic County, Mich.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Arthur H. Cratty, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment. The planned works of improvement include the installation of critical area treatment on approximately 19 sites where roads cross drains and 12 acres of eroding road-cut banks comprising approximately 18 acres. Total construction costs are approximately $126,000; $94,000 RC&D fund and $32,000 local funds.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Arthur H. Cratty, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Mich. 48823, 517-372-1910, extension 242. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until after May 25, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

Dated: April 17, 1978.

VICTOR H. BARRY, Jr.,
Deputy Administrator for Programs, Soil Conservation Service.

[FR Doc.78-11156 Filed 4-24-78; 8:45 am]

[3410-16]

INDIAN LAKE SCHOOL LAND DRAINAGE RC&D MEASURE, NEW YORK

Intent Not To Prepare an Enironmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Indian Lake School Land Drainage RC&D Measure, Hamilton County, N.Y.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Robert L. Hilliard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for land drainage. The planned works of improvement include deepening about 300 feet of road ditch, installing about 3,700 linear feet of subsurface drainage, and grading and seeding of disturbed areas of the Indian Lake Central School athletic field.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Robert L. Hilliard, State Conservationist, Soil Conservation Service, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 771, Syracuse, N.Y. 13260, 315-423-5493. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until May 25, 1978.

Dated: April 17, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

VICTOR H. BARRY, Jr.,
Deputy Administrator for Programs, Soil Conservation Service.

[FR Doc.78-11157 Filed 4-24-78; 8:45 am]

[3410-16]

LENOX MEMORIAL HIGH SCHOOL FLOOD PREVENTION AND DRAINAGE RC&D MEASURE, MASSACHUSETTS

Intent Not To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lenox Memorial High School Flood Prevention and Drainage RC&D Measure, Berkshire County, Mass.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Dr. Benjamin Isgur, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for flood prevention and land drainage. The planned works of improvement include a total of approximately 3,900 linear feet of subsurface drain pipe and 1,700 linear feet of vegetated diversion channel for the purpose of alleviating flooding and drainage problems.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Dr. Benjamin Isgur, State Conservationist, Soil Conservation Service, P.O. Box 848, 29 Cottage Street, Amherst, Mass. 01002, 413-549-0650. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until after May 25, 1978.

Dated: April 17, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

VICTOR H. BARRY, Jr.,
Deputy Administrator for Programs, Soil Conservation Service.

[FR Doc. 78-11158 Filed 4-24-78; 8:45 am]

[3410-16]

PORTLAND-WESTBROOK COLLEGE LAND DRAINAGE RC&D MEASURE, MAINE

Intent Not To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Portland-Westbrook College Land Drainage RC&D Measure, Cumberland County, Maine.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Warwick M. Tinsley, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for providing subsurface water control for the Westbrook College athletic field. The planned works of improvement include a tile system and vegetative stabilization of disturbed areas.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Warwick M. Tinsley, Jr., State Conservationist, Soil Conservation Service, USDA Building, University of Maine, Orono, Maine 04473, 207-866-2132. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until after May 25, 1978.

Dated: April 17, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

VICTOR H. BARRY, Jr.,
Deputy Administrator for Programs, Soil Conservation Service.

[FR Doc. 78-11159 Filed 4-24-78; 8:45 am]

[3410-16]

STOCKHOLM BALLFIELD LAND DRAINAGE R.C. & D. MEASURE, MAINE

Intent Not To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Stockholm Ballfield Land Drainage R.C. & D. Measure, Aroostook County, Maine.

The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Warwick M. Tinsley, Jr., State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for providing both surface and subsurface water control for the Town of Stockholm's community ballfield. The planned works of improvement include a diversion, grassed waterway, tile system, grassed outlet, and vegetative stabilization of disturbed areas.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Warwick M. Tinsley, Jr., State Conservationist, Soil Conservation Service, USDA Building, University of Maine, Orono, Maine 04473, 207-886-2132. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until after May 25, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Public L. 87-703, 16 U.S.C. 590a-f, q.)

Dated: April 17, 1978.

VICTOR H. BARRY, Jr.,
Deputy Administrator for Programs, Soil Conservation Service.

[FR Doc. 78-11160 Filed 4-24-78; 8:45 am]

[3410-34]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

JAPANESE BEETLE

Draft Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to prepare a draft environment impact statement on the Japanese beetle program.

SUMMARY: As a result of recent litigation, the Department has been ordered to prepare an environmental impact statement on the Japanese beetle program as it applies to Treatment of aircraft. This gives notice that a draft environmental impact statement is under preparation pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, by the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service. The first draft is scheduled for completion June 15, 1978.

In its order in the case of *Aviation Consumer Action Project* v. *Secretary of Agriculture* (Civil Action No. 77-1941), the United States District Court for the District of Columbia has directed the Department to present the draft statement to the Court no later than June 15, 1978. Therefore, this time constraint allows a limited comment period of 15 days from date of publication of this notice in the FEDERAL REGISTER.

To provide opportunity for participation in the development of the draft environmental impact statement, comments are invited from all interested members of the public, from State and local agencies which administer plant pest control regulatory programs or are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any national program, issue, or environmental impact involved.

DATE: Comments must be received on or before May 10, 1978.

ADDRESS: Comments concerning matters that should be addressed to the Regulatory Support Staff, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, Md. 20782, by May 10, 1978.

FOR FURTHER INFORMATION CONTACT:

H. I. Rainwater, 301-436-8247.

SUPPLEMENTARY INFORMATION: All written submissions made pursuant to this notice will be made available for public inspection in Room 633, Federal Building, Hyattsville, Md. 20782, during regular hours of business, unless the person makes the submission to the Regulatory Support Staff, Plant Protection and Quarantine Programs, and requests that it be held confidential. A determination will be made whether a proper showing in support of the request has been made on grounds that its disclosure could adversely affect any person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential. If it is determined that a proper showing has been made in the support of the request, the material will be held confidential; otherwise, notice will be given of denial of such request and an opportunity afforded for withdrawal of the submission. Requests for confidential treatment will be held confidential (7 CFR 1.27(c)).

The Japanese beetle is a destructive pest of nearly 300 plants and is under regulation in 24 States and the District of Columbia. The movement of articles which present a hazard to spread the Japanese beetle from infested areas into noninfested areas is regulated by the Japanese beetle quarantine and regulations (7 CFR 301.48 et seq.). The Department has recently proposed amendments to these regulations which would regulate only the interstate movement of aircraft which pose a threat to spread the Japanese beetle into seven Western States (43 FR 16984, April 21, 1978).

The Department is considering treating aircraft transiting and departing hazardous airports destined for noninfected States with a formulation of d-phenothrin or, if necessary, with DDT/carbaryl micronized dust. These formulations have been registered by the Environmental Protection Agency for this use. Airports are declared hazardous when adult beetles are on or about aircraft destined for noninfected areas.

The Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, 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.

Done at Washington, D.C., this 24th day of April 1978.

H. L. FORD,
Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 78-11385 Filed 4-24-78; 11:40 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Dockets 29409; 29561; 29623; Order 78-4-98]

AMERICAN AIRLINES, INC., ET AL.

Order

APRIL 18, 1978.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of April 1978.

By Order 76-11-57, November 10, 1976, the Board deferred action on complaints by Eastern Airlines, Inc. (Eastern), and American Airlines, Inc. (American), against various promotional fares in United States-Caribbean markets filed by British West Indian Airways, Ltd. (BWIA), and Air Jamaica, Ltd. (Air Jamaica). The fares were generally filed pursuant to orders from their respective governments. The Board tentatively concluded that they were uneconomic and warranted suspension pending investigation; U.S. carrier earnings in the Caribbean were inadequate despite respectable load factors; and the fares were significantly below cost, would only divert traffic from higher fares, without generating significant new business, and would therefore dilute carrier earnings. The Board did not, however, suspend the fares at the time, noting that they were being introduced to match similar low fares already in existence to other Caribbean destinations, and it would be unfair to suspend them while leaving comparable existing fares in effect to other points in the area. Instead we directed interested parties to show cause why the fares, as well as other, similar government-ordered discount fares in the Caribbean, should not be investigated, or suspended pending investigation.

An answer urging the Board to suspend the fares was filed by Eastern, which supported the tentative conclusions and also argued for inclusion of other fares not named in order 76-11-57. American, in answer to the order, stated that the fares should be investigated but urged that any suspension exclude the group inclusive-tour (GIT) fare to Barbados, which has been revised to eliminate the features originally objected to.[1] Answers in opposition to the show cause order were filed by BWIA, Air Jamaica, the Minister of Trade and Tourism of St. Lucia, the Antigua Department of Tourism and the Antigua Hotel Association, the St. Lucia Hotel Association, and the Caribbean Hotel Association. These parties generally asserted that low promotional fares are necessary to develop tourism to the Caribbean area; the IATA-agreed fares have not adequately fulfilled this need; and the fares at issue would generate enough traffic to offset diversion from higher fares, and would not dilute carrier earnings.[2]

The Board has decided to terminate the show cause proceeding and dismiss Eastern's outstanding complaints. The tariffs at issue have been in place for some time now, and have not had a serious adverse impact on U.S. carrier revenues. Our review of available data indicates that no erosion of overall yields occurred between the year ended June 1976, the approximate date when the reduced fares were introduced, and the year ended June 1977, when the carriers instituted a general increase in most Caribbean promotional fares.[3] In fact, Eastern's yield increased slightly. At the same time, Eastern itself has introduced a system-wide 7/21-day excursion fare, which is available for use in the Caribbean, and allows unlimited stopovers for two or more passengers traveling together.[4]

For these reasons, and in view of our commitment to low generative fares, the board has concluded that no purpose would be served by pursuing the matter at this time.

Accordingly, pursuant to sections 102, 204(a), and 403 of the Federal Aviation Act of 1958,

It is ordered, That: 1. The complaints of Eastern Air Lines, Inc., in dockets 29409, 29561, and 29623, are dismissed;

2. The show cause proceeding in dockets 29409, 29561, and 29623 be terminated; and

3. Copies of this order shall be served upon Eastern Air Lines, Inc., British West Indian Airways, Ltd., Air Jamaica, Ltd., American Airlines, Inc., Delta Airlines, Inc., Pan American World Airways, Inc., ALM Dutch Antillean Airlines, Deutsche Lufthansa Aktiengesellschaft, KLM Royal Dutch Airlines, the Minister of Trade and Tourism of St. Lucia, the Antigua Department of Tourism and the Antigua Hotel Association, the St. Lucia Hotel Association and the Caribbean Hotel Association.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-11183 Filed 4-24-78; 8:45 am]

[1] American also opposed Eastern's recommendation that American's GIT fares to Santo Domingo and Haiti, which were filed to meet competition by Dominicana, be included in a suspension. American's earlier complaint, which was solely against the Barbados GIT fare, was dismissed as moot in order 77-1-169, January 31, 1977.

[2] The Governments of Barbados, Jamaica, and Trinidad and Tobago sent communications through diplomatic channels opposing the Board's order.

[3] The government-ordered fares generally remained at status quo. The carriers' unilateral filings to increase fares were in response to the Board's action in order 77-3-62, March 11, 1977, which disapproved IATA-agreed increases in normal economy and excursion fares. The carriers left the normal economy fares at their old levels and increased the excursion fares by a lesser amount than originally proposed.

[4] See order 77-8-110, August 23, 1977.

[6320-01]

[Docket 32254; Order 78-4-97]

FRONTIER AIRLINES, INC.

Order Granting Exemption

Issued under delegated authority April 18, 1978.

By application filed March 15, 1978, and amended April 10, 1978, Frontier Airlines, Inc. (Frontier), requests an exemption from order 74-12-109[1] to the extent necessary to permit it to establish a fare between Denver and Montrose/Delta, Colo., which will match the fare charged by Aspen Airways, Inc. (Aspen), a federally certificated carrier which is authorized to provide service in the market by the Colorado Public Utilities Commission.

In support of its application, the carrier states that it is the only Board-certificated air carrier currently providing service between Denver and Montrose/Delta, and its standard class fare is $35.19; on April 10, 1978, Aspen is scheduled to inaugurate service with a standard class fare of $31.48 between Denver and Montrose and that, without the exemption, Frontier will be placed at a competitive disadvantage; it desires to match Aspen's fare but is precluded from doing so by the coach fare formula of phase 9 of the domestic passenger-fare investigation (DPFI) which sets the lowest fare at $34.26; the Board has in the past granted it an exemption in similar situations;[2] the Board has explicitly recognized that certificated carriers should be allowed to establish fares below those prescribed by phase 9 to meet competition from noncertificated carriers; and the Board has similarly held, in investigation of interstate and intrastate

[1] The Board's opinion and order on reconsideration in phase 9 of the domestic passenger fares investigation (DPFI), December 27, 1974. Frontier's application of March 15, 1978, also sought an exemption from order 77-6-21, domestic common fares investigation, to the extent necessary to permit it to establish the same fare between Denver-Montrose/Delta as it had filed for April 15 effectiveness in its Denver-Gunnison market, 52 miles less in distance. Inasmuch as the Aspen filing pertains only to the Denver-Montrose/Delta market, Frontier's request for relief from the common-faring provisions of order 77-6-21 is essentially mooted and the instant order is addressed only to Frontier's amended application. In order to be competitive with Aspen, Frontier is requesting short-notice tariff permission.

[2] Orders 78-2-43, February 9, 1978, and 77-1-164, January 31, 1977.

fares in California and Texas markets,[3] that fares of certificated carriers may be lowered below phase 9 minima to the extent necessary to meet competition from intrastate carriers.

No answer has been filed in opposition to Frontier's application.

Upon review of the statements contained in the application and all other relevant matters we find that enforcement of the requirements of phase 9 of the DPFI, insofar as they would prevent Frontier from matching standard class fares offered by Aspen between Denver and Montrose/Delta, would be an undue burden on the carrier by reason of the limited extent of and unusual circumstances affecting its operations and would not be in the public interest.

We believe that granting the requested exemption authority comports with our long-standing policies according the maximum possible pricing flexibility to local service carriers and permitting certificated carriers, generally, to match genuinely competitive fares.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 403, 404, and 1002, and the authority duly delegated in the Board's regulations, 14 CFR 385.14(b).

It is ordered, That: 1. Frontier Airlines, Inc., is exempted from the requirements of orders 74-12-109 to the extent necessary to permit it to file tariffs containing fares between Denver and Montrose/Delta Colo., matching the published fare of Aspen Airways, Inc., in these markets.

2. To the extent not granted herein, the application in docket 32254 is denied; and

3. A copy of this order be served upon all U.S.-certificated air carrier parties in phase 9 of the domestic passenger-fare investigation[4] and Aspen Airways, Inc.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petition within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-11182 Filed 4-24-78; 8:45 am]

[3]Order 76-7-23, July 7, 1976.
[4]Order 74-12-109, December 27, 1974.

[6320-01]

[Docket 28475; Order 78-4-108]

OZARK AIR LINES INC.

Order Granting Petition and Setting Application for Hearing

APRIL 19, 1978.

Adopted by the Cival Aeronautics Board at its office in Washington, D.C., on the 19th day of April 1978.

By Order 77-4-16, April 4, 1977, the Board dismissed an application of Ozark requesting that, pursuant to subpart M of the Board's rules of practice (14 CFR Part 302, Subpart M), the Board amend its certificate to eliminate the requirement that Ozark serve at least one intermediate point on all flights between St. Louis, Mo., and Kansas City, Mo. As grounds for the dismissal, the Board found that the service benefits offered by Ozark's application were minimal in relation to those offered by other pending applications, and that, therefore, Ozark's application did not merit expeditious treatment under subpart M.

On April 28, 1977, Ozark filed a petition for reconsideration, accompanied by a motion to file the petition out of time.[1] Relying on Board statements in PSDR-16,[2] the notice of proposed rulemaking that preceded PDR-26, which in turn resulted in the adoption of subpart M. Ozark argues that the Board's consideration of service benefits constituted an improper application of subpart M, and that the subpart M application should have been granted unless the Board found either that Ozark would not be able to reduce its subsidy need, or that the proposed service would have had an undue detrimental impact on the incumbent carriers. In any event, Ozark argues that the Board's findings on service needs are unfounded.

On May 6, 1977, TWA filed an answer opposing the petition, along with a motion to file an otherwise unauthorized document.[3]

We have decided to grant Ozark's petition, and to set this application for hearing under subpart M. Our decision is not, however, based on the merits of the arguments in Ozark's petition for reconsideration, and we expressly decline to rule on those arguments. Our decision to set this application for hearing is based on the fact that at this time we have hearing resources available to process this application expeditiously.[4]

[1]This motion will be granted.
[2]Issued December 8, 1966.
[3]That motion will be granted.
[4]As outlined more fully in the order instituting the Chicago-Albany/Syracuse-Boston competitive service investigation, order 77-12-50, this proceeding will include the examination of price/quality options, multiple and permissive authority and related issues.

The evidence submitted in support of Ozark's application was filed on November 10, 1975. Accordingly, we will allow it 25 days from the service date of this order to update its exhibits. This 25-day period will also allow interested persons to file competing applications if they wish to do so. A period of 14 days will be allowed for answers.

Accordingly, *It is ordered*, That: 1. Ozark Air Lines' petition for reconsideration be granted, and the St. Louis-Kansas City subpart M proceeding, docket 28475, be set for hearing under subpart M of the Board's rules of practice, at a time and place to be designated later.;

2. The issues in that proceeding shall include the following:

Do the public convenience and necessity require the certification of an additional air carrier or carriers to operate nonstop service between St. Louis and Kansas City, Mo.; if so, which applicant or applicants should be selected; and what terms, conditions and limitations, if any, should be placed on any new or existing authority?

3. No authority granted in this proceeding shall be eligible for subsidy;

4. Ozark's motion to file its petition for reconsideration out of time be granted;

5. TWA's motion to file an otherwise unauthorized document be granted;

6. Updated exhibits, applications, amended applications, and motions to consolidate shall be filed within 25 days after the service date of this order and answers to such filings within 14 days after the expiration of that period; and

7. Environmental evaluations pursuant to 14 CFR Part 312 shall be filed within 30 days after the service date of this order.

This order will be published in the FEDERAL REGISTER.

By the Civil Areonautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-11184 Filed 4-24-78; 8:45 am]

[6320-01]

[Docket Nos. 28848, 29945, 29186, 28115, 21162, 28800]

IMPROVED AUTHORITY TO WICHITA CASE, ET AL.

Oral Argument

In the matter of Improved Authority to Wichita Case, Docket 28848; Las Vegas-Dallas/FORT Worth Nonstop Service Investigation, docket 29445; Memphis-Twin Cities/Milwaukee Case, Docket 29186; Midwest-Atlanta Nonstop Service Investigation, Docket 28115; Ohio/Indiana Points Nonstop Service Investigation, Docket 21162;

Phoenix-Des Moines/Milwaukee Route Proceeding, Docket 28800.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in these proceedings is assigned to be held before the Board on May 17 and May 18, 1978, at 10 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

Each party which wishes to participate in the oral argument shall so advise The Secretary, in writing, on or before April 28, 1978, together with the name of the person who will represent it at the argument.

Dated at Washington, D.C., April 20, 1978.

PHYLLIS T. KAYLOR
Secretary.

[FR Doc. 78-11181 Filed 4-24-78; 8:45 am]

[6335-01]

CIVIL RIGHTS COMMISSION

ILLINOIS ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Illinois Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 4 p.m. on May 15, 1978, Holiday Inn, 1505 N. Neil, Champaign, Ill. 61820.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwestern Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Ill. 60604.

The purpose of this meeting is for the purpose of the report on Insurance Redlining Project Assignments; Discuss Project Proposals for Fiscal Year 1979-80; Community Fact-finding; discussion of Local Civil Rights Issues.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-11141 Filed 4-24-78; 8:45 am]

[6335-01]

VIRIGINIA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Viriginia Advisory Committee (SAC) of the Commission will convene at 7 p.m. and will end at 10 p.m. on May 12, 1978, Holiday Inn—South, Room 104, on Route 1 and Interstate 95, Fredericksburg, Va.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street NW., Room 510, Washington, D.C. 20037.

The purpose of this meeting is to plan for the Virginia State Advisory Committee through September 1978.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 20, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-11142 Filed 4-24-78; 8:45 am]

[6325-01]

CIVIL SERVICE COMMISSION

FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Special Open Season; Correction

In the document appearing in the FEDERAL REGISTER of Friday, March 31, 1978 (FR Doc. 78-8243), on page 13597, the third paragraph should read:

"Change of enrollment during the special open season will take effect on the first day of the first pay period which begins on or after July 1, 1978."

Dated: April 25, 1978.

For the U.S. Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-11173 Filed 4-24-78; 8:45 am]

[3510-25]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

DUTY-FREE ENTRY ON SCIENTIFIC ARTICLES

Applications

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before May 15, 1978.

Regulations (15 CFR 301.9) issued under the cited act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5 p.m., Monday through Friday, in Room 6886C of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00137. Applicant: University of South Alabama—College of Medicine, Electron Microscopy Suite, Room 1206 Medical Sciences Building, 307 University Boulevard, Mobile, Ala. 36688. Article: LKB 8800A Ultrotome III Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section plant, animal, and fungal tissues which have been embedded in hardened epoxy resins. Investigations will include ultrastructural studies on normal and pathologic plant and animal tissues, developmental studies on fungal systems, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interactions at host-parasite interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments. In addition, the article will be used in the courses Ultrastructure and Cytochemistry which will involve a study of general principle on techniques and the use of the electron microscope to study the fine structure of cells and various methods to localize various enzymes. Application received by Commissioner on Customs: March 24, 1978.

Docket No. 78-00160. Applicant: University of Miami, School of Medicine, P.O. Box 520875, Miami, Fla. 33152. Article: LKB 8800A Ultrotome III Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section human and animal tissues for ultrastructural studies in neuropathology. Application received by Commissioner of Customs: March 22, 1978.

Docket No. 78-00174. Applicant: University of Florida, Department of Anatomy, MG-42 M.S.B., Gainesville, Fla. 32610. Article: Electron Microscope, Model JEM 100S Including Water Recirculator and Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use of article: The article is intended to be used for experiments involving the study of Cryptorchidism in mammals and the characterization of Sertoli cell functions using tracer elements. These experiments will be conducted in order to develop and im-

prove upon current techniques for the production of new information regarding the characterization of Sertoli cell functions at the ultrastructural level. Application received by Commissioner of Customs: March 23, 1978.

Docket No. 78-00175. Applicant: University of California, Los Angeles, 405 Hilgard Avenue, Los Angeles, Calif. 90024. Article: Varian MAT Mass Spectrometer System MAT 250 and Accessories. Manufacturer: Varian MAT GmbH, West Germany. Intended use of article: The article is intended to be used for isotope measurements of separated components (deuterium, ^{13}C, ^{34}S, ^{15}N, ^{18}O) for evaluation of pollution in coastal ocean and exploration for petroleum. The article will also be used to train students in use and application of stable isotopes to solve geological and environmental problems in the courses Isotope Geochemistry (M130) and Biogeochemistry (M132) and graduate research studies. Application received by Commissioner of Customs: March 23, 1978.

Docket No. 78-00176. Applicant: DHEW/NIH/NHLBI-IR/LEA, Building 10, Room 5N204, 9000 Rockville Pike, Bethesda, Md. 20014. Article: LKB 2128-010 Ultrotome IV Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section biological specimens which have been embedded in hardened epoxy resins for ultrastructural studies of normal and abnormal animal tissues and the development of new techniques in quantitative electron and light microscopic autoradiography. Application received by Commissioner of Customs: March 23, 1978.

Docket No. 78-00177. Applicant: University of Nebraska, Lincoln, 14th and R Streets, Lincoln, Nebr. 68588. Article: Electron Microscope, Model EM 10A and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used to study micro-organisms, visuses, and nucleic acids, the interaction of plants and pathogens, and plant responses to disease and stress at the cellular level. Experiments will include serological, autoradiographic, and ultrastructural studies by electron microscopy to characterize viruses and antigens and determine their location in plant hosts and vectors and their probable site, sequence, and method of synthesis; determination of physiological and cytological changes in plants and vectors caused by viral, fungal, or bacterial pathogens and the relation of these changes to the general problem of the interaction of virus, fungus, bacterium, plant, and vector; study of translocation of pesticides and herbicides in plants; localization of heavy metal uptake by crop plants grown on soils into which municipal wastes were incorporated. The article will also be used in teaching a course in electron microscope techniques to individual students in lieu of university language requirements. Application received by Commissioner of Customs: March 23, 1978.

Docket No. 78-00179. Applicant: National Aeronautics and Space Administration, Headquarters, Contracts Division, Code HWE-2, Washington, D.C. 20546. Article: Eighteen (18) Ultrasonic Flowmeter Transducers and Accessories. Manufacturer: O.N.E.R.A., France. Intended use of article: The article is intended to be used to ascertain the oscillatory flow component of liquid oxygen being perturbated by a positive displacement pulser as it flows through a turbopump. Application received by Commissioner of Customs: March 23, 1978.

Docket No. 78-00180. Applicant: Albert Einstein College of Medicine of Yeshiva University, Department of Molecular Pharmacology, 1300 Morris Park Avenue, Bronx, N.Y. 10461. Article: Laminar Flow Cage Rack. Manufacturer: Forth-Tech Services, Ltd., United Kingdom. Intended use of article: The article is intended to be used to breed and maintain a special group of mice that are very prone to infection due to a genetic defect in the immune defense system. A large colony of these mice will be set up for the study of human cancers as well as for studies of other specific tumors and how these special mice do or do not fight off infections as compared to normal mice. Application received by Commissioner of Customs: March 23, 1978.

Docket No. 78-00182. Applicant: University of Alaska—Geophysical Institute, C. T. Elvey Building, Fairbanks, Alaska 99701. Article: (2) Two Aanderaa Tide Recorders (TG3A Water level gauge) with pressure transducer range. Manufacturer: Aanderaa Instruments, Canada. Intended use of article: The article is intended to be used for studies of the circulation under ice and in the cold waters of the Arctic Continental Shelf off Alaska. During the open water season the article will be used first to measure the actual water circulation and sea level variations at the same time that other experiments concerned with the meteorological effects, biology and ice movements are being conducted. Application received by Commissioner of Customs: March 23, 1978.

Docket No. 78-00184. Applicant: The Ohio State University, College of Veterinary Medicine, 1900 Coffey Road, Columbus, Ohio 43210. Article: Electron Microscope, Model H-300 and Accessories. Manufacturer: Hitachi Perkin-Elmer, Japan. Intended use of article: The article is intended to be used to confirm that sphincteric areas of the intracranial arteries in the dog are morphologically unlike those of the intestine and colon then the question of innervation becomes significant. Association of the sphincteric areas with the autonomic nervous system would suggest function as peripheral resistance vessels and help account for the greater blood supply available to the brain in shock. The article will also be used for training of graduate students and as a research tool by students on Master of Science and Ph. D. program. In addition, the faculty will be using the article for the preparation of teaching materials for undergraduate professional veterinary programs. These materials will be used in all of the "systems courses," covering histological and small surface structures of the respiratory cardiovascular, digestive, reproductive, and musculoskeletal systems. Application received by Commissioner of Customs: March 28, 1978.

Docket No. 78-00185. Applicant: University of Arizona Health Sciences Center, 1501 North Campbell Avenue, Tucson, Ariz. 85724. Article: Echoscope, Multi-Transducer, with accessories. Manufacturer: Ausonics Pty, Ltd., Australia. Intended use of article: The article is intended to be used to generate diagnostic images in breast examinations, testicular examinations, and children's skull and brain. In addition, there is a great deal of diagnostic information which can be gained by this machine in other areas within the body, such as the abdomen, thyroid, and heart, which are not achievable with currently available diagnostic ultrasound instrumentation in this country. Plans are to expand the techniques and anatomical areas of diagnostic ultrasonic imaging. Resident physicians and medical students on the Radiology Service will use the diagnostic ultrasonic images in their training. Application received by Commissioner of Customs: March 29, 1978.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,
Statutory Import Programs Staff.

[FR Doc. 78-11084 Filed 4-24-78; 8:45 am]

[3510-25]

SANDIA LABORATORIES ET AL.

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or

apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the FEDERAL REGISTER.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5 p.m., Monday through Friday, in Room 6886C of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00190. Applicant: Sandia Laboratories, Kirtland AFB East, Albuquerque, N. Mex. 87115. Article: Imacon 675/51 Ultra Fast Camera System and Accessories. Manufacturer: John Hadland Photonics Ltd., United Kingdom. Intended use of article: The article is intended to be used to identify and study chemical processes that can be stimulated by laser radiation. In contrast to a "brute force" approach, this work will emphasize the selection of laser frequencies that will stimulate molecular vibrational frequencies, and thus lead to the production of molecular radicals. Application received by Commissioner of Customs: April 6, 1978.

Docket No. 78-00195. Applicant: The University of Texas System Cancer Center, M.D. Anderson Hospital and Tumor Institute Science Park, Research Division, Buescher State Park, P.O. Box 418, Smithville, Tex. 78957. Article: Electron Microscope, Model EM 201 and accessories. Intended use of article: The article is intended to be used for research directed toward identification of various environmental carcinogens and elucidation of their mode of action at both the molecular and cellular levels. The research projects will include the following:

(1) Cellular selection and its relationship to histopathological changes observed during carcinogenesis,

(2) Metabolic alterations induced by chemical carcinogens,

(3) Alterations in plasma membrane structure, dynamics and antigenic properties during carcinogenesis, and

(4) Virus-chemical carcinogen interactions.

Application received by Commissioner of Customs: April 10, 1978.

Docket No. 78-00197. Applicant: Medical College of Georgia, 1120 Fifteenth Street, Augusta, Ga. 30901. Article: Electron Microscope, Model EM 400 HMG and Accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for studies of biological materials derived from laboratory animals and/or humans. The experiments to be conducted will include the following:

(a) Examination and photographic recording of tissue sections, 500A to 4um thick, from normal and experimentally altered laboratory animals.

(b) Examination and photographic recording of normal and experimentally altered whole cells from tissue culture.

(c) Examination of cells, organelles, inclusions and cell membranes from (a) and (b) above using eucentric goniometer to optimalize the orientation of these structures for photographic analyses.

(d) Examination and photographic recording of normal and pathological human tissue, including the use of goniometric analysis as detailed in (c) above.

All projects are directed at providing as detailed a correlation of structural relationships with regard to normal experimentally altered and/or pathological states as possible. The article will also be used for educational purposes in the courses: Anatomy 814. High Resolution Microscopy (the basic technique in electron microscopy) and Anatomy 322. Advanced High Resolution Microscopy (advance and specialized techniques of electron microscopy). Application received by Commissioner of Customs: April 6, 1978.

Docket No. 78-00198. Applicant: Princeton University, P.O. Box 33, Princeton, N.J. 08540. Article: Differential Scanning Calorimeter (DSC) and Accessories. Manufacturer: Setaram, France. Intended use of article: The article is intended to be used to study the pyrolyses/steam gasification of all forms of biomass in a pressurized steam atmosphere. Heats of reaction and rates of gasification will be determined. Gaseous product composition and rates of species formation will also be measured. Application received by Commissioner of Customs: April 6, 1978.

Docket No. 78-00199. Applicant: Stanford University, 851 Welch Road, Palo Alto, Calif. 94304. Article: Electron Microscope, Model EM 201 with Plate Camera and Accessories. Manufacturer: Philips Electronics Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used in conducting the following experiments:

(a) Studies of eggs and sperm in fertilization studies in sea urchins,

(b) Particle destribution and size in plasma membranes in fruit flies (*Drosophila*) in reference to circadian rhythms,

(c) Structure and development of male reproductive structures in selected species of algae, and

(d) Structure of walls and internal components in algal cells and how these structures relate and effect functions of tissues.

The article will also be used for independent research at the graduate and postdoctoral level as well as in a course in cellular biology for advanced undergraduates. Application received by Commissioner of Customs: April 6, 1978.

Docket No. 78-00201. Applicant: Professional Staff Association of Los Angeles County Harbor Gen. Hosp., 1124 West Carson Street, Torrance, Calif. 90502. Article: LKB 8800A Ultrome III Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for sectioning biological materials including animal and human cartilage, bone and skin from normal animals or persons and patients or animals with a wide variety of diseases of these tissues. Through investigations it is hoped to further basic knowledge of the cause of the inherited diseases of connective tissue which afflict mankind. Application received by Commissioner of Customs: April 10, 1978.

Docket No. 78-00202. Applicant: Veterans Administration Center Research Service/151, 5000 West National Ave., Wood (Milwaukee), Wis. 53193. Article: LKB 2128-010/Ultrotome IV Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section animal and human tissues which have been embedded in Spurr's low viscosity epoxy resin. The experiments to be conducted will include ultrastructural studies of diseased human tissues (cornea, epiretinal membranes, femoral veins, coronary arteries) as well as ultrastructural studies of: (a) corneal tissue from animals subjected to transcorneal freezing to stimulate endothelial regeneration, (b) corneal tissue following in vitro perfusion of the endothelium with various drugs, (c) retinas and pigment epithelium from animals subjected to retinal detachment or continuous light or darkness in order to determine the effects on turnover and phagocytosis of photoreceptor outer segments, and cells raised under different conditions of tissue culture. Application received by Commissioner of Customs: April 10, 1978.

Docket No. 78-00203. Applicant: Biomedical Laboratory, Aberdeen Proving Ground Edgewood Area, Aberdeen Proving Ground, Md. 21010. Article: Electron Microscope, Model JEM 100S. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used to study ultrastructural changes in animal tissues to detect changes caused by potentially toxic chemicals. Application received by Commissioner of Customs: April 10, 1978.

Docket No. 78-00204. Applicant: The Johns Hopkins University, Charles and 34th Streets, Baltimore, Md. 21218. Article: Electron Microscope, Model EM 10A and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for localization of enzyme activities in bone and cartilage cells using electron microscopic histochemistry and investigations of the substructure of bone and cartilage cells, and noncellular matrix secreted and resorbed by these cells, including collagen fibers, proteoglycans and mineral crystals. The objectives of these studies include gaining insight into the control mechanisms of skeletal growth and development, and the identification and characterization of bone and cartilage lysosomal enzymes. Application received by Commissioner of Customs: April 6, 1978.

(Catalog of Federal domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Statutory Import Programs Staff.

[FR Doc. 78-11161 Filed 4-24-78; 8:45 am]

[3510-25]

CARNEGIE-MELLON UNIVERSITY ET AL.

Consolidated Decision on Applications for Duty-Free Entry of Ultramicrotomes

The following is a consolidated decision on applications for duty-free entry of ultramicrotomes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially section 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00078. Applicant: Carnegie-Mellon University—Mellon Institute of Science, 4400 Fifth Avenue, Pittsburgh, Pa. 15213. Article: LKB 2128-010/Ultrotome IV Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for biological studies of cultured mammalian cells, their virus transformed derivatives and tumors derived from small animals. Experiments will be designed to determine the function of cytoplasmic fibers in normal, virus-transformed and tumor cell motility. The objectives of these investigations determine which ultrastructural entities function in controlling normal cells behavior and how these functions are altered in virus-transformed and tumor cells. The article will also be used in the training of graduate students and for demonstrations in undergraduate laboratory and lecture courses entitled "Introduction to Cellular and Molecular Biology." Graduate students will be trained in methods involved in the study of mammalian cell ultrastructure, which will of course involve the preparation of thin sections. Application received by Commissioner of Customs: December 22, 1977. Advice submitted by the Department of Health, Education, and Welfare on: March 23, 1978.

Docket No. 78-00081. Applicant: College of Medicine and Dentistry of New Jersey—New Jersey Dental School, 100 Bergen Street, Newark, N.J. 07103. Article: LKB 2128-010 Ultrotome IV Ultramicrotome and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for the studies of human biopsy material, animal and microbial specimens. Investigations will include ultrastructural studies on normal and pathologic tissues, developmental studies on dental plaque systems, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interactions at host-parasite interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments. The objective of the investigations is to further basic knowledge on cell and tissue ultrastructure and to reveal, at the ultrastructural level, the enzyme localization and distribution in cells and tissues developing under normal and pathological conditions. In addition, the article will be used in courses entitled "Ultrastructure and Cytochemistry" which will involve a study of general principles on techniques and the use of the electron microscope to study the fine structure of cells and various subcellular organelles and the employment of cytochemical staining methods to localize various enzymes. Application received by Commissioner of Customs: December 20, 1977. Advice submitted by the Department of Health, Education, and Welfare on: March 23, 1978.

Docket No. 78-00085. Applicant: Eye and Ear Institute of Louisiana, 145 Elk Place, New Orleans, La. 70112. Article: LKB 8800A Ultrotome III Ultramicrotome with Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section animal human and microbiological materials which have been embedded in hardened epoxy resins. Investigations will include ultrastructural studies on normal and pathologic animal and human tissues, cyto and histochemical studies on viral and subcellular organnele localization in cells and tissues, membrane interactions as host-parasite interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments. Application received by Commissioner of Customs: January 4, 1978. Advice submitted by the Department of Health, Education, and Welfare on: March 23, 1978.

Docket No. 78-00089. Applicant: University of California, Santa Barbara, 45517 Central Receiving, Santa Barbara, Calif. 93106. Article: LKB 8800A Ultrotome III Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section neural tissue, principally tissue specimens from the retinas of a variety of vertebrates and some invertebrates. The experiments to be conducted will include ultrastructural studies on vertebrate photoreceptors and the process of outer segment renewal in mammalian cones; studies on the synaptology of the retina and brain of vertebrates; and some histochemical studies contemplated concerning enzyme localization within the pigment epithelium of the retina. The article will also be used in the training of undergraduate and graduate students in the techniques of light and electron microscopy in the course Biology 199 and 596, Independent Studies in the Biological Sciences and Directed Reading and Research. Application received by Commissioner of Customs: January 5, 1978. Advice submitted by the Department of Health, Education, and Welfare on: March 23, 1978.

Docket No. 78-00090. Applicant: Washington University School of Medicine, Department of Pediatrics, St. Louis Children's Hospital, 500 South Kingshighway, P.O. Box 14871, St. Louis, Mo. 63178. Article: LKB 8800A Ultrotome Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for ultrastructural studies on normal and pathological animal tissues, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interactions at host-parasite interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments. Human biopsy tissue removed at surgery will be examined to identify structural abnormalities useful in diagnosing disease states. The article will also be used in the courses: "Pediatric Neurology Research" and "Pathology Research (Bio 590)" to train students in the use and application of electron microscopy and to use the electron microscope in solving individual research problems. Application received by Commissioner of Customs: January 5, 1978. Advice submitted by the Department of Health, Education, and Welfare on: March 23, 1978.

Docket No. 78-00104. Applicant: Valley Medical Center of Fresno, 445 South Cedar Avenue, Fresno, Calif. 93702. Article: LKB 2128-010 Ultrotome IV Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of biological materials, primarily human tissues obtained at surgery or by autopsy. The tissues, will be embedded in hardened epoxy resins for sections for ultrastructural examination correlated with histochemical and immunologic and regular light microscopic observations. The primary object of the investigations will be the diagnosis and study of the pathogenesis of various disease processes. In addition, the article will be used in the training of physicians and histotechnologists in use and application of electron microscopy. Application received by Commissioner of Customs: January 23, 1978. Advice submitted by the Department of Health, Education, and Welfare on: March 23, 1978.

Docket No. 78-00116. Applicant: Veterans Administration, Wadsworth Hospital Center, Wilshire and Sawtelle Boulevards, Los Angeles, Calif. 90073. Article: LKB 8800A Ultrotome III Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of human, animal, viral, and bacterial specimens by several investigators with different research interests in electron microscopy. The investigations will include ultrastructural studies on normal and pathologic age-related changes in human and animal tissues, developmental studies, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interactions at host-parasite interfaces, subcellular changes in cells induced by changes in their biochemical and physical environments, and changes in membrane receptors. The article will also be used to teach ultrastructure and cytochemistry to post-doctoral fellows, graduate students and undergraduate students in honors programs. The courses will involve a study of general principles on techniques and the use of the electron microscope to study the fine structure of cells and various subcellular organelles and the employment of cytochemical staining methods to localize various enzymes. Application received by Commissioner of Customs: February 7, 1978. Advice submitted by the Department of Health, Education, and Welfare on: March 23, 1978.

Docket No. 78-00117. Applicant: University of Wisconsin-Madison, Department of Food Microbiology and Toxicology, 1925 Willow Drive, Madison, Wis. 53706. Article: LKB 8800A Ultrotome III Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies on normal and pathologic microbial plant and animal tissues, developmental studies on bacterial systems, cyto- and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interactions at host-parasite interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments. Specific experiments in which the article will be used include the following:

1. The study of adsorption, penetration, and replication of ECPO-6 (a pig enterovirus) in pig intestine.

2. The study of a virus-like entity isolated from a coprolite; infected Hela cells will be observed for virus particles. Further studies on the infection process will be made.

3. The effect *Clostridium perfringens* enterotoxin on the ultrastructure of liver cells.

4. The effects of aflatoxin, ochratoxin and other mycotoxins on liver cells.

5. Location of *Clostridium perfringens* enterotoxin in the spore coat. The article will also be used in the training of graduate students for advanced degrees in bacteriology and food science. Application received by Commissioner of Customs: February 7, 1978. Advice submitted by the Department of Health, Education, and Welfare on: March 23, 1978.

Docket No. 78-0018. Applicant: The University of Illinois at the Medical Center, Chicago, College of Nursing, Department of General Nursing, Room 538, 845 South Damen Avenue, Chicago, Ill. 60612. Article: LKB 2128-010 Ultrotome IV Ultramicrotome with accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of: Plant cells (e.g., bacteria such as escherichia coli and diplococcus pneumonia) and fungal specimens; normal and pathological cells and tissues of animal origin (e.g., from rats, mice, hamsters, rabbits, and monkeys) and of human origin. The experiments being conducted include investigation of the morphological and cytochemical charateristics of 35 and 90-120 day-old malnourished, neonatally cretinized, and control rats. Types of synapses will be analyzed on the basis of symmetry or asymmetry, cleft width, vesicle form and whether axosomatic or axodendritic. The appearance of mitochondria in axon terminals will be studied and any anomalous structures noted. The article will also be used for graduate studies in ultrastructure and cytochemistry which involve learning the general principles of ultramicrotomy for electron microscopy and microtomy for light microscopy. Application received by Commissioner of Customs: January 30, 1978. Advice submitted by the Department of Health, Education, and Welfare on: March 23, 1978.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for such purposes as these articles are intended to be used, is being manufactured in the United States. Reasons: Each of the foreign articles provides a range of cutting speeds 0.1 to 20 millimeters per second. The most closely comparable domestic instrument is the Model MT-2B ultramicrotome which is manufactured by Ivan Sorvall, Inc. (Sorvall). The Model MT-2B has a range of cutting speeds from 0.09 to 3.2 millimeters per second. The conditions for obtaining high-quality sections that are uniform in thickness, depend to a large extent on the hardness, consistency, toughness and other properties of the specimen materials, the properties of the embedding materials, and geometry of the Block. In connection with a prior application (Docket No. 69-00665-33-46500), which relates to the duty-free entry of an article that is identical to those to which the foregoing applications relate, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting, (among such [other] factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior application (Docket No. 70-00077-33-46500) which also relates to an article that is identical to those described above, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that the "production of ultrathin serial sections of specimens that have a great variation in physical properties is very difficult." Accordingly, HEW advises in its respectively cited memoranda, that cutting speeds in excess of 4 millimeters per second are pertinent to the satisfactory sectioning of the specimen materials and the relevant embedding materials that will be used by the applicants in their respective experiments.

For these reasons, we find that the Sorvall Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,
Statutory Import Programs Staff.

[FR Doc.78-11162 Filed 4-24-78; 8:45 am]

[3510-25]

EXPORT POLICY TASK FORCE

Request for Comments

At President Carter's direction, the Secretary of Commerce has established a cabinet-level Export Policy Task Force to develop options for measures to increase U.S. exports and improve the U.S. trade balance. The Task Force is to report to the President within 60 days.

Frank A. Weil, Assistant Secretary for Industry and Trade, is directing the Task Force Executive Committee's preparation of a comprehensive set of recommendations to be submitted to the Task Force for consideration. The Executive Committee's Steering Group is headed by Stanley J. Marcuss, Deputy Assistant Secretary for Trade Regulation, and its members consist of W. Dean Moran, Deputy Assistant Secretary for Export Development, Forest E. Abbuhl, Acting Deputy Assistant Secretary for International Economic Policy and Research, and Robert E. Shepherd, Deputy Assistant Secretary for Domestic Business Development.

Five working groups will address issues in the following areas: (1) Export financing and financial incentives; (2) export development and private sector attitudes; (3) agricultural export policy; (4) government regulations, including antitrust; and (5) research and development affecting export potential.

Views of the private sector with respect to the areas concerned by the five working groups are welcome. Interested parties are invited to submit their written views and comments to Robin M. Potter, Steering Group Executive Coordinator, Industry and Trade Administration, Room 3830-A, U.S. Department of Commerce, Washington, D.C. 20230.

Such comments (five copies thereof) should be received no later than May 19, 1978. Written public comments which are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason will not be accepted, and will be returned to the submitter. Copies of all written comments received will be available for public inspection between the hours of 8:30 a.m. and 4:45 p.m., Monday through Friday, in the Industry and Trade Administration Freedom of Information Records Inspection Facility, Room 3012, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

STANLEY J. MARCUSS,
Deputy Assistant Secretary
for Trade Regulation.

[FR Doc. 78-11363 Filed 4-24-78; 10:04 am]

[3510-22]

National Oceanic and Atmospheric Administration

MARINEWORLD-AFRICA USA

Issuance of Permit To Take Marine Mammals

On March 1, 1978, notice was published in the FEDERAL REGISTER (43 FR 8283), that an application had been filed with the National Marine Fisheries Service by Marineworld-Africa USA, Marine World Parkway, Redwood City, Calif. 94065, for a permit to take ten (10) Atlantic bottlenosed dolphins (*Tursiops truncatus*) for public display.

Notice is hereby given that on April 18, 1978, as authorized by the provisions of the Marine Mammal Protection Act, of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a public display permit for the above taking to Marineworld-Africa USA, subject to certain conditions set forth therein. The permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, Fla. 33701; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, Calif. 90731.

Dated: April 18, 1978.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc. 78-11163 Filed 4-24-78; 8:45 am]

[3510-16]

Patent and Trademark Office

PUBLIC ADVISORY COMMITTEE FOR TRADEMARK AFFAIRS

Open Meeting

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

The Public Advisory Comittee for Trademark Affairs will meet from 9:30 a.m. until 5:30 p.m. on June 15, 1978, at the National Lawyers Club, 1815 H Street NW., Washington, D.C. 20006, in the White Room.

The Committee was esablished in 1970 to advise the Patent and Trademark Office on steps which can be taken in order to increase the efficiency and effectiveness of the administration of the Trademark Act and to provide a continuing source of knowledge from the private sector to the government in the field.

The agenda for the meeting is as follows:

(1) Introductory Remarks.
(2) Trademark Operation Resources.
(3) Report on the Assignment Branch Operation.
(4) Consideration of an Order of Priority for Trademark Operation Services.
(5) Computerization Report.
(6) Problems Relating to Retrieval of Files from the Warehouse.
(7) Amendment of Trademark Rule 2.120(a)(2).
(8) Review of Comments Made at the USTA Meeting By Government Officials.

The meeting will be open to public observation; approximately 15 seats will be available for the public on a first come—first served basis. If time permits, oral comments by the public of 3 minutes on each each topic within the above agenda items will be allowed. To insure proper consideration at the meeting, any comments or suggestions relating to the agenda items should be submitted in writing before June 8. Further comments and suggestions will be accepted after the meeting on any of the matters discussed.

Copies of the minutes will be available upon request.

Inquiries may be addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 2231. Please mark all correspondence to the attention of Committee Control Officer, Patricia M. Davis, Office of Trademark Program Control, Room CP3-11C17. Telephone: 703-557-3881.

Dated: April 14, 1978.

RENE D. TEGTMEYER,
Acting Commissioner of
Patents and Trademarks.

Dated: April 17, 1978.

Approved:

FRANCIS W. WOLEK,
Acting Assistant Secretary for Science and Technology.

[FR Doc. 78-11195 Filed 4-24-78; 8:45 am]

[3510-17]

Office of the Secretary

[Organization Order 30-6]

OFFICE OF PRODUCT STANDARDS

Organizational Status and Functions

This order, effective March 31, 1978, supersedes the material appearing at 34 FR 12841 of August 7, 1969.

SECTION 1. PURPOSE

.01 This order prescribes the organizational status and functions of the Office of Product Standards (OPS).

.02 The purpose of this revision is to: specify the principal Commerce officials with whom the work of OPS will be routinely coordinated (paragraph 2.02); delete reference to certain types of consumer and industrial product standards, to Title 15 U.S.C., Chapters 25 and 26 which have been transferred by law to another agency, to mandatory standards, and to the Business and Defense Services Administration which no longer exists; remove the organizational designation of "constituent operating unit" from OPS; and include new functions being performed by OPS (subparagraphs 3.01 g. through r.).

SECTION 2. GENERAL

.01 The Office of Product Standards shall be headed by the Director, OPS who shall report and be responsible to the Assistant Secretary for Science and Technology (the "Assistant Secretary"). The director shall also have the rank and title of Deputy Assistant Secretary for Product Standards, under the Assistant Secretary. The Director shall be assisted by a Deputy Director, plus professional and clerical staff needed to accomplish the mission of OPS. The Deputy Director shall perform the functions of the Director during the latter's absence.

.02 The Assistant Secretary in exercising supervisory responsibility over OPS shall ensure that matters handled by OPS for the Assistant Secretary's or the Secretary's action are fully coordinated with the Assistant Secretary for Industry and Trade, the Assistant Secretary for Policy, the Assistant Secrtetary for Administration, and other Secretarial Officers to the extent that their areas of responsibility and interest are involved, and the Assistant Secretary shall otherwise ensure that the Director, OPS directly coordinates the work of OPS with the Secretarial Officers and operating unit heads whose responsibilities are affected thereby.

.03 OPS exists to strengthen the ability of the Department to contribute to the development, coordination, evaluation, and effectiveness of U.S. domestic and international standards policy. OPS thereby serves the public interest in contributing to a more responsive and efficient U.S. standards policy including, for example, reduction in costs associated with standards development and use, promotion of U.S. trade interests, and the well-being of consumers and others affected by standards. The National Bureau of Standards provides technical, analytical, and operational support to OPS, as directed by the Assistant Secretary. Accordingly, OPS shall contribute to the solution of national and Federal policy issues concerning:

a. Development of an efficient and responsive U.S. national standards policy.

b. Responsibilities of the Federal Government and its various agencies in development or aiding in the development of standards.

c. The forms of participation in standards-setting activities by Government, industry, the scientific community, and the general public.

d. The means and effectiveness of participation by the United States in international standards activities.

e. Legal, economic, and other aspects of assuring adherence to or compliance with standards.

f. Effective use of standards in the national interest.

g. Promotion of consumer welfare through standards.

h. Department of Commerce positions on relevant legislation, directives from the Executive Office of the President, and international agreements on standards.

i. Metric conversion policy, as regards standards.

j. Other issues or problems relating to the development and use of standards.

SECTION 3. FUNCTIONS

.01 In providing staff assistance and advice to the Assistant Secretary in connection with the areas of concern described above, OPS shall:

a. Develop, or advise on, all procedural regulations pursuant to Chapters 6, 7, and 39 to Title 15, U.S.C., which are issued by the Assistant Secretary and which deal with the development, adoption, or publication of voluntary product standards;

b. Advise on the issuance of standards which are to be adopted or published, or reviewed prior to publication, by the Secretary or the Assistant Secretary;

c. Provide analyses and recommendations to the Assistant Secretary with respect to all determinations that the Assistant Secretary is required to make under sections 5 (d) and (e) of the Fair Packaging and Labeling Act (15 U.S.C. 1454 (d) and (e)), and assist in the development of any report and recommendations to the Congress resulting therefrom;

d. Chair the Interagency Committee on Standards Policy, and provide for the secretariat services and assistance of that committee and other inter- or intra-Departmental of public advisory committees dealing with standards policies and practices;

e. Explore and make appropriate recommendations regarding participation by the U.S. Government in the activities of international organizations or conferences concerned with the formulation or adoption of international standards;

f. Cooperate with the Executive Office of the President and with other Federal agencies to assure that their interests in standards and other matters normally handled by OPS, and the interests of groups for which they are responsible, are given proper consideration. Direct, coordinate and, as appropriate, implement Federal Government standards policy functions assigned to the Department of Commerce by the Office of Management and Budget (OMP) directives and by legislation;

g. Consistent with the overall responsibilities and authorities of the Assistant Secretary for Congressional Affairs and the General Counsel, maintain liaison with Members of Congress and the Executive Office of the President on matters pertaining to existing and proposed legislation and executive directives concerned with the formulation and/or use of standards. Prepare and review proposed reports to Congress and the Executive Office as required.

h. Administer a voluntary consumer product information labeling program;

i. Propose initiation of and implement legislation and executive directives on standards matters, as appropriate;

j. Assess the effectiveness of U.S. participation in international forums dealing with standardization and related matters, and develop, recommend, and implement, as appropriate, measures to strengthen this effectiveness;

k. Explore, make recommendations, and carry out U.S.-foreign arrangements regarding standards and related matters such as recognition of national laboratory testing and certification programs, as appropriate;

l. Provide assistance regarding U.S. implementation of the proposed International Standards Code;

m. Recommend, develop, and carry out, as appropriate, measures to increase the likelihood that standards adopted in Less Developed Countries (LDC's), and other countries will promote U.S. trading interests;

n. Provide assistance to State and local code authorities in connection with standardization and related matters;

o. Maintain liaison with or participation in private and governmental national, regional, (State, local, foreign), and international bodies concerned with product standardization and related activities including labeling, testing, and certification;

p. Promote industry and appropriate government involvement in voluntary standardization and related activities;

q. Assist the Assistant Secretary in coordinating Federal metric policy as it affects standards, and arrange for methods of coordinating relevant metric conversion policies and programs within the Federal Government consistent with any direction or guideline provided by the U.S. Metric Board;

r. Administer the National Voluntary Laboratory Accreditation Program.

.02 In performing the above functions, the Office shall obtain, where applicable, the findings and views of the National Bureau of Standards, the Office of the Assistant Secretary for Industry and Trade, the Office of Assistant Secretary for Policy, the Office of the Assistant Secretary for Administration, other Commerce units, other Federal agencies, the affected industry, and the general public, so as to identify and analyze interrelated technical, economic, social, and legal factors bearing on standards policies or other matters at issue.

SECTION 4. DEFINITIONS

Assused in this order, the term "standards" includes formal stipulations as to the qualities of processes, products, goods, or commodities (including raw or semi-finished material) with respect to their purity, performance, or other objective characteristics. The term includes specifications of the means of measurement or other observation to determine the extent to which a substance conforms to a standard. The term excludes, however, quantifications of the laws or facts of nature, such as the nuclear characteristics of pure elements. or the speed of light.

ELSA A. PORTER,
Assistant Secretary for Administration.

[FR Doc. 78-11174 Filed 4-24-78; 8:45 am]

[6740-02]

DEPARTMENT OF ENERGY

[Project No. 2832]

Federal Energy Regulatory Commission

BOISE PROJECT BOARD OF CONTROL

Notice of Application for Preliminary Permit

APRIL 17, 1978.

Public notice is hereby given that an application for a preliminary permit was filed on January 3, 1978, under the Federal Power Act (16 U.S.C. §§ 791a-825r), by the Boise Project Board of Control (Applicant) (Correspondence to: Chairman, Boise Project Board of Control, 214 Broadway, Boise, Idaho 83702; and Mr. Raymond D. Givins, Attorney at Law, Box 964, Boise, Idaho 83701) for the proposed Luck Peak Power Plant, FERC Project No. 2832. The proposed project would be located on the Boise River in Ada County, Idaho.

Applicant proposes to develop a powerplant consisting of six hydroelectric generator units with a total installed capacity of 75,000 kW. The powerplant would be located at the base of the Corps of Engineers' Lucky Peak Dam and use the existing outlet works installed in the dam for the passage of water for power and flood releases.

According to the application, the powerplant would be developed to supply power for project purposes and to market power to Idaho Power Company or to municipalities, publicly owned utilities, rural electric co-ops, or mutual electric companies within the State of Idaho.

A preliminary permit does not authorize the construction of a project. A permit, if issued, gives the permittee during the period of the permit the right of priority of application for license while the permittee undertakes the necessary studies and examinations to determine the engineering and economic feasibility of the proposed project, the market for the power, and all other necessary information for inclusion in an application for a license.

Any person desiring to be heard or to make protest with reference to said application should, on or before June 21, 1978, file with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, D.C. 20246, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR § 1.8 or § 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11099 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-304]

BOSTON EDISON CO.

Notice of Filing

APRIL 17, 1978.

Take notice that Boston Edison Company ("Edison") on April 10, 1978 tendered for filing a rate schedule for Partial Requirements service in compliance with the Commission's Opinion No. 809-A issued December 9, 1977, in Docket Nos. E-7783 and E-7784. Edison indicates that the rate schedule is tendered to permit wholesale customers to obtain a portion of their power requirements from self-generation or purchases from other sources than Edison while obtaining the balance of their service requirements. Edison indicates that the Partial Requirements rate is intended to carry forward the same revenue level as the Company's existing S-4 rate.

Edison states that no wholesale customer is currently taking Partial Requirements service, nor has any customer requested such service. The Partial Requirements rate schedule is proposed to become effective when a wholesale customer commences such service.

Copies of the filing were served upon Edison's jurisdictional firm power customers and the Massachusetts Department of Public Utilities, according to Edison.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 1, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11100 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. RP78-52]

CONSOLIDATED GAS SUPPLY CORP.

Corrected Notice of Proposed Changes in Rate and Charges

APRIL 14, 1978.

Take notice that Consolidated Gas Supply Corp. (Consolidated), pursuant to section 4 of the Natural Gas Act and section 154.63 of the Commission's Regulations thereunder, tendered for filing on March 31, 1978, proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1 to become effective April 30, 1978. A prior notice of Consolidated's March 31 filing was inadvertently issued in Consolidated's purchased gas adjustment docket, RP72-157 (PGA78-8). To assure that adequate notice is given to all interested persons, notice is again provided hereby and a slightly extended period provided for the filing of protests and petitions to intervene.

The proposed rate changes would increase Consolidated's revenue from jurisdictional sales and services by $61,588,592, based on the twelve months ended December 31, 1977, adjusted for known and measurable changes through March 31, 1978. The rates reflect the costs associated with the purchase of liquefied natural gas (LNG) not previously reflected in Consolidated's effective rates and other changes in cost related to gas supply. There have been no material changes in the company's facilities, sales volumes, and cost of service other than cost of purchased gas since its prior rate increase in Docket No. RP77-140.

Consolidated has filed alternative rates, one reflecting cost classification, cost allocation, rate design and zoning methods in accordance with Opinion No. 819, now before the Commission on applications for rehearing, and the Commission's order of October 31, 1977 in Docket No. RP77-140, and the other reflecting the resolution of those issues in a Stipulation and Agreement filed by Consolidated on November 28, 1977, which also is pending Commission action. Consolidated states that it will make effective the rates based upon the Stipulation and Agreement if that is approved by the Commission and if the Stipulation and Agreement is not approved it intends to make effective rates which conform to a final Commission order on rehearing of Opinion No. 819.

Consolidated states that this filing reflects only increases relating to the cost of purchased gas and reflects no material change in facilities, sales volumes and cost of service other than cost of purchased gas and requests that it either be considered as a part of Docket No. RP77-140 or be consolidated with that docket.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 25, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11101 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-295]

CONSUMERS POWER CO.

Notice of Filing

APRIL 14, 1978.

Take notice that on April 8, 1978 Consumers Power Co. (Consumers Power) tendered for filing a Letter Agreement between Consumers Power and Edison Sault Electric Co. providing for an increase in contract capacity reservation from 25,000 KW to 36,000 KW.

Consumers Power states that the increase in capacity reservation is required to provide for the growth in load on Edison Sault Electric Co.'s system.

Consumers Power requests an effective date of March 23, 1978, and therefore requests waiver of the Commission's notice requirements.

Consumers Power further states that copies of this filing were served on Edison Sault Electric Co. and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11102 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-301]

DUKE POWER CO.

Supplement to Electric Power Contract

APRIL 17, 1978.

Take notice that Duke Power Co. (Duke Power) tendered for filing on April 10, 1978 a supplement to the Company's Electric Power Contract with Lockhart Power Co. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Co. Rate Schedule FPC No. 252.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following changes in contract demand: Delivery Point No. 1, from 12,000 KW to 15,000 KW; Delivery Point No. 2, from 33,000 KW to "Terminate"; and Delivery Point No. 3, from 0 to 37,000 KW.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date.

Duke Power proposes an effective date of March 20, 1978, and therefore requests waiver of the Commission's notice requirements.

According to Duke Power copies of this filing were mailed to Lockhart Power Co. and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 1, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.78-11103 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. RP78-12]

EAST TENNESSEE NATURAL GAS CO.

Motion To Make Tariff Sheets Effective

APRIL 14, 1978.

Take notice that on March 31, 1978, East Tennessee Natural Gas Co. (East

Tennessee) filed a motion in the instant docket to make certain suspended tariff sheets effective. East Tennessee also filed a substitute twenty-fifth revised Sheet No. 4 to be effective on May 1, 1978, subject to refund. This substitute sheet, according to East Tennessee affects a general increase in East Tennessee's rates.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before April 25, 1978. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11104 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-298]

ILLINOIS POWER CO.

Notice of Filing Facility Use Agreement

APRIL 14, 1978.

Take notice that Illinois Power Co. (Illinois Power) on April 8, 1978, tendered for filing a proposed Facility Use Agreement (Agreement) dated October 5, 1976, between Illinois Power and Soyland Power Cooperative, Inc. (Soyland).

Illinois Power indicates that the Service Schedules A and B which are part of the Agreement provide for compensation to Illinois Power on a monthly basis for the use of its transmission and subtransmission systems. Illinois Power states that this charge is based on the proportionate use which Soyland makes of these systems for all deliveries scheduled by Illinois Power to Soyland.

This Agreement is proposed to become effective May 10, 1978. Copies of this filing have been mailed to Soyland and the Illinois Commerce Commission, Springfield, Ill., according to Illinois Power.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 1, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11105 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-302]

ILLINOIS POWER CO.

Notice of Filing Facility Use Agreement

APRIL 14, 1978.

Take notice that Illinois Power Co. ("Illinois Power"), on April 10, 1978, tendered for filing a proposed Facility Use Agreement ("Agreement") between Illinois Power and Western Illinois Power Cooperative, Inc. ("WIPCO") dated September 30, 1976.

Illinois Power indicates that Service Schedule A which is part of the Agreement provided use of its subtransmission system. Illinois Power states that this charge is based on the proportionate use which WIPCO makes of Illinois Power's subtransmission system for all deliveries scheduled by Illinois Power to WIPCO.

Illinois Power states that copies of this filing have been mailed to WIPCO and the Illinois Commerce Commission, Springfield, Ill.

Illinois Power proposes an effective date of May 10, 1978.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 1, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11106 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-103]

INDIANA & MICHIGAN ELECTRIC CO.

Notice of Extension of Time

APRIL 14, 1978.

Please change the date for the initial conference from June 28, 1978, to September 28, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11107 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-292]

INDIANA & MICHIGAN ELECTRIC CO. AND OHIO POWER CO.

Notice of Agreement

APRIL 13, 1978.

Take notice that American Electric Power Service Corp. (AEP) on April 7, 1978, tendered for filing on behalf of its affiliate, Ohio Power Co. (Ohio), and Indiana & Michigan Electric Co. (Indiana), collectively called the "American Central Parties", Modification No. 5 dated March 15, 1978 to the Interconnection Agreement dated December 12, 1949 between the American Central Parties and The Cincinnati Gas & Electric Co. (Cincinnati), designated Ohio Rate Schedule FPC No. 21 and Indiana Rate Schedule FPC No. 16.

AEP indicates that this Modification No. 5 provides that, for the purpose of conserving energy resources during extended fuel shortages the American Central Parties or Cincinnati may arrange to obtain Conservation Energy from the other. AEP further states that when supplied, the charge for Conservation Energy generated on the supplying party's will be 110% of the out-of-pocket replacement cost of generating the energy, plus 5.00 mills per kilowatt-hour. AEP indicates that the new Modification No. 5 also provides for a transmission service charge of 1.7 and 1.1 mills per kilowatt-hour for deliveries of Conservation Energy from systems interconnected with the American Central Parties or Cincinnati respectively.

Copies of the filing were served upon Cincinnati, the Public Utilities Commission of Ohio, the Public Service Commission of Indiana, and the Michigan Public Service Commission, according to AEP.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.78-11108 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ES78-29]

IOWA PUBLIC SERVICE CO.

Notice of Application

APRIL 17, 1978.

Take notice that on April 10, 1978, Iowa Public Service Co. (Applicant) filed an application seeking an order pursuant to Section 204 of the Federal Power Act authorizing the issuance of up to 65,000 shares of Common Stock (par value $5 per share), and an extension, as to 14,353 shares of Common Stock, of an authorization previously granted for the issuance of Common Stock, all in connection with the operation of the Employees' Stock Ownership Plan of Iowa Public Service Co. and Participating Subsidiaries, as amended (the "Plan") and the related Employees' Stock Ownership Trust of Iowa Public Service Co. and Participating Subsidiaries, as amended (the "Trust").

Applicant is incorporated under the laws of the State of Iowa, with its principal business office in Sioux City, Iowa, and is engaged in the electric utility business in northwestern, north central and east central Iowa and a few small communities in South Dakota.

Under the Plan, the Company and its subsidiaries which adopt the Plan (the "Participating Subsidiaries") will contribute, for each calendar year, cash or Common Stock of the Company having an aggregate value equal to 1 percent of the amount of their investment in property during the year which is the basis for a claim of investment tax credit by the Company and its Participating Subsidiaries in their consolidated Federal income tax return for that year ("Qualified Investment"). In addition, if the Company and its Participating Subsidiaries so elect, they may, for each calendar year, contribute cash or Common Stock of the Company having an aggregate value equal to the aggregate total amount of employee contributions made pursuant to the Plan but not more than 0.5 percent of the amount of their Qualified Investment for such year. Employee contributions are voluntary, are made on the condition that they will be matched by contributions of the employing company, and are limited to a pre-determined amount set by an Administrative Committee of the Plan.

By adopting the Plan, the Company and its Participating Subsidiaries will be entitled to an additional 1 percent to 1.5 percent investment tax credit which they otherwise would not be able to claim. In effect, this means that money that would otherwise be paid in taxes is used to provide employees with an ownership interest in the Company. In addition, the Company will receive additional funds through the sales of Common Stock for cash provided by employee contributions.

Cash and Common Stock contributed pursuant to the Plan will be held in trust under the Trust for the benefit of employees of the Company and its Participating Subsidiaries who are qualified to participate in the Plan. Generally, each employee who has been employed at least three years automatically participates in the Plan. It is intended that cash contributed under the Plan either by employees or by the Company and its Participating Subsidiaries will be invested in Common Stock of the Company, and it is intended that such Common Stock will be newly-issued shares. However, the Company presently anticipates that it will ordinarily contribute Common Stock rather than cash to the Plan. In addition, cash dividends paid on the Common Stock of the Company held in the Trust, will be reinvested in additional shares of Common Stock of the Company. Such additional shares will also be newly-issued shares.

It is anticipated that the operation of the Plan through 1978 will require the issuance of up to 79,353 shares of authorized but unissued Common Stock of the Company. (It is anticipated that any of such shares not issued in 1978 will be issued in 1979 pursuant to the continued operation of the Plan). Under the Plan, the value of each share of Common Stock contributed to the Plan will be an amount equal to the average of closing prices of the Company's Common Stock on the New York Stock Exchange for the twenty consecutive trading days immediately preceding the date such stock is transferred to the Trust. Purchases by the Trust of the Company's Common Stock must be made at fair market value. It is anticipated that any such purchases made from the Company will be for an amount equal to the average of the the high and low sales prices for the Company's Common Stock on the New York Stock Exchange on the day the purchase is made (or the next preceding day on which the New York Stock Exchange is open, if it is closed on that day) or, if no trading occurs in the Company's Common Stock on such day, an amount equal to the average of the reported bid and asked prices for the Company's Common Stock on such day.

Applicant proposes to use the funds made available through the issuance of the Common Stock pursuant to the Plan to secure funds for its construction program and for other corporate purposes.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 28, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11109 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. RM77-14]

KANSAS-NEBRASKA NATURAL GAS CO., INC.

Notice of Proposed Changes in FERC Gas Tariff

APRIL 14, 1978.

Take notice that Kansas-Nebraska Natural Gas Co., Inc. (Kansas-Nebraska) on April 3, 1978 tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1. In this filing Kansas-Nebraska proposes to add a Gas Research Institute Charge Adjustment provision to the General Rules and Regulations of its FERC Gas Tariff pursuant to the Commission's Opinion No. 11, issued March 22, 1978 in Docket No. RM77-14. In addition, this filing will increase Kansas-Nebraska's rates charged its jurisdictional customers pursuant to the Gas Research Institute Charge Adjustment provision in an amount of 1.2 mills per Mcf. This filing is proposed to become effective June 1, 1978.

Any person desiring to be heard or make any protest with reference to this filing should, on or before May 3, 1978, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10) under the Regulations of the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this

filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11110 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. CP78-244]

MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Pipeline Application

APRIL 17, 1978.

Take notice that on March 21, 1978, Michigan Wisconsin Pipe Line Co. (Applicant), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP78-233 an application pursuant to Section 7(c) of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorizing the construction and operation of facilities necessary to connect to its existing offshore gathering system, gas reserves underlying Ship Shoal Area Block 290, 291, and 292, offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it has acquired the right to purchase ninety-six (96%) percent of the recoverable gas reserves underlying Ship Shoal Block 290 and 291 and subject to finalizing an agreement with Northern Natural Gas Co., has agreed to provide transportation for the remaining four (4%) percent. Moreover, Applicant states that it has acquired the right to purchase the recoverable gas reserves attributable to the fifty (50%) percent interest in Ship Shoal Area Block 292 of Texaco, Inc.

The application indicates that to connect the reserves underlying Block 290 and 291, Applicant proposes to construct approximately 18.5 miles of 10¾" o.d. pipelines extending between the Block 291 production platform and the southerly terminus of its existing 12" lateral located in Ship Shoal Area Block 219. The application also indicates that to connect the reserves underlying Block 292, that Applicant proposes to construct approximately 3.3 miles of 6⅝" o.d. pipeline extending laterally between the Block 292 production platform and the aforementioned Block 291 production platform. Applicant states that it also proposes to install and operate gas measurement facilities on both the Block 291 and Block 292 production platforms, and cause to have installed 1,000 horsepower of compression on the Block 291 production platform. Applicant states that in accordance with a Construction and Operating Agreement between it and Placid Oil Co. dated November 23, 1977, the 1,000 horsepower of compression, including associated appurtenances, will be wholly owned by Applicant but designed, installed, and operated by Placid Oil Co. on Applicant's behalf and subject to its approval as to design, material and construction specifications, construction drawings, and equipment selections.

The application indicates that the facilities for which authorization is requested are estimated to cost $10,417,980, which Applicant contemplates will be financed with treasury funds, retained earnings, and other funds generated internally, together with borrowings from banks under short-term lines of credit as may be required.

Any person desiring to be heard or to make any protest with reference to said application, on or before May 9, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing, therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.78-11111 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. RM77-14]

MISSISSIPPI RIVER TRANSMISSION CORP.

Notice of Proposed Change in Rates

APRIL 14, 1978.

Take notice that Mississippi river transmission corp. ("Mississippi") on April 6, 1978 tendered for filing six (6) copies of Original Sheet No. 3C and Original Sheet No. 27L to its FERC Gas Tariff, First Revised Volume No. 1, to become effective June 1, 1978.

Mississippi states that the instant tariff sheets are being submitted in order to incorporate as a part of Mississippi's FERC tariff the Gas Research Institute ("GRI") Charge Adjustment Provision. The GRI adjustment charge was approved by the Commission's Opinion No. 11 "Opinion and Order Approving the Initial Research, Development and Demonstration Program of Gas Research Institute" dated March 22, 1978 at Docket No. RM77-14. Original Sheet No. 27L reflects the tariff provisions necessary to implement the GRI adjustment charge and Original Sheet No. 3C reflects the initial effective GRI research, development and demonstration adjustment charge of $0.0012/mcf applicable to Mississippi's first year program funding services.

Mississippi states they have submitted copies of the above-mentioned tariff sheets to each of their jurisdictional customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 2, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene unless such petition has previously been filed. Copies of the filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11112 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-303]

NORTHERN STATES POWER CO.

Notice of Supplement No. 5 to the Twin Cities-Iowa-St. Louis 345 KV Interconnection Coordinating Agreement

APRIL 14, 1978.

Take notice that Northern States Power Co. on April 10, 1978, tendered for filing Supplement No. 5, dated April 4, 1978, to the Twin Cities-Iowa-St. Louis 345 KV Interconnection Coordinating Agreement among Interstate Power Co., Iowa Electric Light & Power Co., Iowa-Illinois Gas & Electric Co., Iowa Public Service Co., Iowa Southern Utilities Co., Northern States Power Co., and Union Electric Co.

Northern States indicates that Supplement No. 5 increases the charge for Emergency Energy and Short Term Power and adds a new type of service, System Participation Power. Supplement No. 5 also terminates Supplements 3 and 4 to the Agreement.

An effective date of May 1, 1978 is proposed, and waiver of the Commission's notice requirements is therefore requested.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 1, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11113 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket Nos. CI76-633; CI76-644; CI76-678; CI76-722; CI76-784]

TENNECO EXPLORATION, LTD. ET AL.

Notice of Extension of Time

APRIL 14, 1978.

In the matter of Tenneco Exploration, Ltd., Tenneco Oil Co. and Texaco Inc.

On April 12, 1978, Staff Counsel filed a motion to extend the time for filing Briefs On Exceptions and Briefs Opposing Exceptions to the Initial Decision, Issued March 15, 1978, in the captioned proceedings. The motion states that Tenneco Exploration Ltd., Tenneco Oil Co., Texaco Inc., Tennessee Gas Pipeline Co., Columbia Gas Transmission Corp., Public Service Commission of the State of New York, and Associated Gas Distributors have been contacted and none opposes the requested extension of time.

Upon consideration, notice is hereby given that an extension of time is granted to and including April 18, 1978, within which Briefs On Exceptions shall be filed in these proceedings. The time for filing Briefs Opposing Exceptions is correspondingly extended to and including May 8, 1978. Staff Counsel is reminded of the provisions of § 1.13(d) of the Rules of Practice and Procedure which requires that motions for extensions of time be made before expiration of four-fifths of the period originally prescribed.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11114 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-296]

THE CONNECTICUT LIGHT & POWER CO.

Notice of Filing

APRIL 14, 1978.

Take notice that on April 9, 1978, the Connecticut Light & Power Co. (CL&P) tendered for filing a proposed second Amendment to Purchase Agreement with respect to various Gas turbine units (II), (Second Amendment), dated February 24, 1978 between (1) the Hartford Electric Light Co. (HELCO) and Western Massachusetts Electric Co. (WMECO), and (2) Vermont Electric Cooperative, Inc. (VEC).

CL&P states the Second Amendment provides for a change in the percentages of capability to be purchased by VEC for the period from March 1, 1978 to October 31, 1978, and extends the term of the third capability period.

CL&P further states that the details of the third capability period were not decided until a date which prevented the execution and filing of the second amendment with the Commission until this date.

CL&P requests an effective date of March 1, 1978, and therefore requests waiver of the Commission's notice requirements.

According to CL&P copies of this filing have been sent to HELCO, Hartford, Conn., WMECO, West Springfield, Mass. and VEC, Johnson, Vt.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11115 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-290]

UNION ELECTRIC CO.

Notice of Proposed Revised Service Schedule

APRIL 13, 1978.

Take notice that on April 3, 1978, Union Electric Co. (Union) tendered for filing an Amendment and revised Schedule II to the Interchange Agreement dated July 17, 1967, between Union and Iowa Power & Light Co.

Union indicates that said agreements provide for revisions in certain rates under said Interchange Agreement.

Union requests a proposed effective date of May 1, 1978, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before April 24, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11116 Filed 4-24-78; 8:45 am]

[6740-02]

[Project Nos. 1889, 2485]

WESTERN MASSACHUSETTS ELECTRIC CO. ET AL.

Notice of Application for Approval of Conveyance of Project Lands

APRIL 17, 1978.

In the matter of Western Massachusetts Electric Co., Connecticut Light & Power Co., and Hartford Electric Light Co.

Applicants are licensees of the Turner Falls Project (No. 1889) and Northfield Mountain Pumped Storage Project (No. 2585) located on the Connecticut River in Franklin County, Mass.

Notice is hereby given that a joint application has been filed by the above-named licensees (Applicants) on February 14, 1978, for authorization to grant conveyance in fee and easement of specified project lands to the town of Gill, Mass. (Gill). The proposed 30' wide easement is required by Gill to construct a sanitary sewer to collect and transport an estimated 10,400 gallons per day wastewater from the village of Riverside to Turner Falls, to there enter the Turner Falls gravity sewer and the town of Montague treatment plant. The proposed sewage facilities consist of about 12,000 feet of eight-inch pipe and a pumping station in Riverside and about 3,000 feet of six-inch force main in Turner Falls.

Gill has received orders and permits, with respect to the proposal, from both the Gill and Montague Conservation Commissions, the Division of Water Pollution Control of Massachusetts, the Division of Waterways of the Massachusetts Department of Environmental Quality Engineering and the U.S. Corps of Engineering.

The plan submitted by Applicants shows that the facilities will be located at Fairview, Gill, First, L, and Oak streets and County Highway in Montague. The sewers will be buried in the land and bed of the Connecticut River. Applicants state the proposal will abate water pollution and will not have an adverse effect on the operation of the project, the recreational facilities, nor create a nuisance or health hazard. Gill will pay Western Massachusetts Electric Co. $2,200 for granting the fee and easement to reimburse it the costs in effectuating the grant.

Wastewater treatment, as proposed by Gill, will improve the water quality of the Connecticut River pursuant to the goals established in the Federal Water Pollution Control Act, and make the river useable for boating and swimming in the future. Applicant states the proposal will have no effect on power generation or air quality. The proposed force main will cross the river about 1,200' upstream from the dam at Turner Falls.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 25, 1978, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.18 or § 1.10 (1977). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11117 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-299]

DELMARVA POWER & LIGHT CO.

Notice of Filing

APRIL 17, 1978.

Take notice that on April 10, 1978, Delmarva Power & Light Co. (Delmarva) transmitted herewith for filing six copies of each of the following FERC Electric Tariffs of the Delmarva Power & Light Co., Delmarva Power & Light Co. of Maryland, and Delmarva Power & Light Co. of Virginia:

Volume No. 6 (Delaware Municipal Tariff)
Volume No. 7 (Delaware Cooperative Tariff)
Volume No. 6 (Maryland Municipal Tariff)
Volume No. 7 (Maryland Cooperative Tariff)
Volume No. 3 (Virginia Cooperative Tariff)

Delmarva states that this filing does not contain changes in rates charged to wholesale customers for electric service. Delmarva further states that the purpose of this filing is to eliminate certain anachronistic provisions from the terms and conditions embodied in the existing tariff such as prohibitions upon the customers that they may not sell energy purchased from the Company to any entity for further resale and that the customer may not interconnect the Company's facilities with any other generating facility.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 1, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11118 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-293]

ILLINOIS POWER CO.

Notice of Filing of Interconnection Agreement

APRIL 14, 1978.

Take notice that on April 7, 1978, Illinois Power Co. ("Illinois Power") tendered for filing an Interconnection Agreement ("Agreement") dated November 23, 1977, between Illinois Power and Soyland Power Cooperative, Inc. ("Soyland").

Illinois Power indicates that the Agreement includes Appendix A, which sets forth the points of interconnection between the parties' systems. The proposed Agreement also includes Service Schedules A through E, which specify the types of service and rates of compensation contemplated.

Illinois Power states that copies of this filing have been mailed to Soyland and the Illinois Commerce Commission, Springfield, Ill.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 1, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11119 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-306]

NORTHWESTERN PUBLIC SERVICE CO.

Notice of Filing of Transmission Service Agreements

APRIL 17, 1978.

Take notice that Northwestern Public Service Co. (NWPS) on March

20, 1978, tendered for filing notice of the fact that on December 14, 1977, they tendered for filing electric energy wheeling agreements with Rushmore G&T Electric Cooperative, Inc.; the State of South Dakota on behalf of Southern State College in Springfield, South Dakota, and Northern State College in Aberdeen, S. Dak.; the State is South Dakota on behalf of Southern State College in Springfield, S. Dak.; and the city of Groton, S. Dak. Effective dates of said agreements date back as early as July 1, 1959. NWPS states that the untimely filing of said agreements was the result of a misinterpretation of the Commission's jurisdiction regarding said agreements.

NWPS further states that the current discovery of noncompliance was the result of communications regarding the Company's recent application in Docket No. ER77-631 pursuant to which the Company is seeking approval to provide supplemental service to certain South Dakota customers whose primary requirements are secured through commitments with the U.S. Bureau of Reclamation. NWPS requests waiver of prior notice requirements prescribed by section 35.3 of the Commission's regulations.

Any person desiring to be heard or to make application with reference to said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1,8, 1.10). All such petitions or protests should be filed on or before May 5, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11120 Filed 4-24-78; 8:45 am]

[6740-02]

NORTHERN STATES POWER CO.

[Docket No. ER78-300]

Notice of Filing

APRIL 17, 1978.

Take notice that Northern States Power Co. (Northern States) on April 10, 1978, tendered for filing Supplement No. 3, dated April 6, 1978, to the Twin Cities-Iowa-Omaha-Kansas City 345 Kv Interconnection Coordinating Agreement executed with Interstate Power Co., Iowa Public Service Co., Omaha Public Power District, St. Joseph Light & Power Co., and Kansas City Power & Light Co.

Northern States states that Supplement No. 3 increases the charges for emergency energy and short term power and adds a new type of service, system participation power. Northern States further states that the filed supplement terminates supplements Nos. 1 and 2 to the agreement.

Northern States requests an effective date of May 1, 1978, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 or the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 1, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11121 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-171]

SAN DIEGO GAS & ELECTRIC CO.

Notice of Further Extension of Time

APRIL 14, 1978.

On April 7, 1978, San Diego Gas & Electric Co. (SDG&E) filed a motion for reconsideration of the notice of further extension of time issued March 31, 1978, in the above-indicated proceeding. The motion stated that SDG&E and the State of California Department of Water Resources (DWR) are presently conducting extensive negotiations in an attempt to resolve differences between them, that a settlement appears likely in the near future, that if such a settlement is reached extensive litigation will be avoided, and that the filing of responsive pleadings in this docket on April 17 might adversely affect the ongoing negotiations.

Upon consideration, notice is hereby given that an extension of time is granted to and including May 26, 1978, within which to file petitions to intervene or protests, and to file responses to other pleadings filed in this proceeding.

KENNETH F. PLUMB,
Secretary.

[FR Doc.78-11122 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-297]

TUCSON GAS & ELECTRIC

Notice of Filing of Amendment No. 1 to TGE-PNM 1979-81 San Juan Generating Station Power Sale Agreement

APRIL 14, 1978.

Take notice that Tucson Gas & Electric Co. (TGE) on April 9, 1978, tendered for filing an Amendment No. 1 dated January 13, 1978, to the TGE-PNM 1979-81 San Juan Generating Station Power Sale Agreement between TGE and Public Service Co. of New Mexico (PNM) dated July 13, 1977. According to TGE, copies of the filing were served upon PNM on April 4, 1978.

TGE indicates that the primary purpose of Amendment No. 1 is to extend the period ot time during which TGE will have available the use of PNM's rights in the 345/230 kV transformer located at the Four Corners Generating Station Switchyard so as to enable TGE to deliver 100 megawatts of power and energy from the 345 kV to the 230 kV bus side of said transformer.

Any person desiring to be heard or to make any application with reference to said Amendment No. 1 should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 1, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this Amendment No. 1 are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11123 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket Nos. CP76-285, et al.]

MOUNTAIN FUEL RESOURCES, INC., ET AL.

Notice of Informal Conference

APRIL 17, 1978.

Take notice that on April 26, 1978, at 10 a.m., an informal conference of all interested persons will be convened concerning the above-captioned matter. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in Room 8402.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene by order of the Commission, attendance will not be deemed to authorize intervention.

All parties will be expected to appear fully prepared to discuss all matters concerning the application of Mountain Fuel Resources, Inc., in Docket No. CP76-285, and any other related matter.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11124 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. CP77-511]

NORTHWEST PIPELINE CORP.

Notice of Petition To Amend

APRIL 18, 1978.

On October 1, 1977, pursuant to the provisions of the Department of energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977), and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

The "savings provisions" of section 705(b) of the DOE Act provided that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The function which are the subject of this proceeding were specifically transferred to the FERC by section 402(a)(1) of the DOE Act.

The joint regulation adopted on October 1, 1977, by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR —, provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

Take notice that on April 3, 1978, Northwest Pipeline Corp. (Petitioner), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP77-511 a petition to amend the order of September 30, 1977 (57 FPC —) issued by the Federal Power Commission (FPC) in the instant docket pursuant to section 7(c) of the Natural Gas Act so as to provide for the continuation of transportation of natural gas for El Paso Natural Gas Co. (El Paso) through September 30, 1980, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is stated that Petitioner's application as originally submitted herein was one of a series of applications intended to provide an interim storage service for El Paso to assist El Paso in the husbanding of volumes of natural gas during the summer of 1977 to be utilized ultimately to protect the priority 1 and 2 requirements of El Paso's East of California (EOC) customers, and that the storage service was for a limited term pending El Paso's developing underground storage, at which time it was contemplated that the volumes of natural gas remaining in interim storage would be transferred to El Paso's permanent storage. It is further stated that in order to provide the interim storage service to El Paso, Petitioner, Mountain Fuel Resources Inc. (Resources), and El Paso entered into certain agreements as follows:

(a) A gas transportation and exchange agreement (agreement) dated March 24, 1977, between El Paso and Petitioner, whereby Petitioner agreed to transport, on a best effort basis, El Paso's gas from the San Juan Basin to Resources' Clay Basin storage field during the period May 1, 1977, through April 30, 1978, and to redeliver such volumes to El Paso by displacement by December 31, 1979, and

(b) An interim storage service Rate Schedule S-2 (Storage Service) dated March 21, 1977, between Resources, Petitioner, and El Paso, whereby Resources agreed to provide El Paso, on a best efforts basis, storage service utilizing the Clay Basin storage field which Resources was then developing for the benefit of Petitioner. The term of the Storage Service was the same as the agreement set forth above.

The petition states that El Paso, during the fall and winter of the 1977-78 heating season, delivered to Petitioner 6,178,121 Mcf of gas for transportation and delivery to Resources for injection and storage in the Clay Basin storage field, and that during the same period, El Paso requested the withdrawal of 200,000 Mcf and such volumes were delivered to El Paso by Petitioner by displacement out of Petitioner's San Juan Basin gas supply. El Paso has the right to continue injections into the Clay Basin field through April 30, 1978.

Petitioner indicates that El Paso has requested and Petitioner and Resources have agreed to extend the interim storage arrangement for two additional storage withdrawal seasons and to extend the primary term of the agreement to September 30, 1980, which extensions would permit El Paso to inject volumes of natural gas into Clay Basin storage during the summer injection periods of 1978 and 1979, for possible withdrawal, as needed, for protection of EOC priorities 1 and 2 during the 1978-79 and 1979-80 withdrawal seasons. It is contemplated that for the 1978-79 withdrawal season a maximum working gas inventory of up to 18,000,000 Mcf would be available to El Paso and that for the 1979-80 withdrawal season up to 20,000,000 Mcf would be available to El Paso, it is said. It is stated that any volumes remaining in Clay Basin storage for the account of El Paso as of the completion of the 1979-80 withdrawal season would be redelivered to El Paso by September 30, 1980.

It is indicated that in order to effectuate the extension as requested by El Paso; El Paso, Resources, and Petitioner have amended the storage service and the agreement as follows:

(a) Resources, in order to provide the expanded level of service discussed herein, has proposed an interim storage service Rate Schedule S-2, as amended and restated (revised storage service), dated March 15, 1978; which, when made effective by the Commission, would supercede and take the place of Resources' FERC interim storage Rate Schedule S-2, as amended.

(b) The agreement has, by the first amendment dated March 13, 1978, been amended to extend the term as hereinbefore set forth.

Petitioner now proposes to transport volumes of natural gas during the injection seasons of 1978 and 1979 for the account of El Paso, with such transportation limited to the excess capacity available from time to time in Petitioner's transmission system. Petitioner estimates that depending on the operating conditions existing on its system during the injection season that sufficient volumes of natural gas can be transported for the account of El Paso to permit El Paso to have a working gas inventory of 18,000,000 Mcf at the outset of the 1978-79 heating season and 20,000,000 at the onset of the 1979-80 heating season, it is stated.

It is indicated that the volumes of natural gas which El Paso may require to have withdrawn would be withdrawn from Clay Basin storage and/or transferred to Petitioner's Clay Basin inventory with Petitioner concurrently delivering thermally equivalent volumes to El Paso by displacement in the San Juan Basin. It is further indicated that the amended agreement provides that Petitioner would redeliver up to 250,000 Mcf per day or such volumes as may be mutually agreed upon by the parties.

Petitioner states that it has been informed that, under certain operating

parameters, Resources could operate Clay Basin so as to sustain a withdrawal rate of approximately 245,000 Mcf per day during 112 days of the 151-day withdrawal season or approximately 75 percent of the season. Petitioner has first call on the first 150,000 Mcf of daily withdrawal capability of Clay Basin storage, which would result in 95,000 Mcf per day of withdrawal capability remaining for the benefit of El Paso, and should Petitioner not require any Clay Basin withdrawals on a given day, El Paso could call on the full 245,000 Mcf, providing that Petitioner could redeliver equivalent volumes in the San Juan Basin, it is said.

The petition states that deliveries by El Paso to Petitioner could be made at any one of three existing points of interconnection between the facilities of El Paso and Petitioner in the San Juan Basin of Colorado and New Mexico. It is stated that redelivery by Petitioner to El Paso would also be at one of the aforementioned delivery points, and that deliveries of the gas transported for El Paso to Resources for El Paso's account would be at an existing point of interconnection between the facilities of Resources and Petitioner in Dagget County, Utah.

Petitioner proposes to charge El Paso the transportation rate of 16.03 cents per Mcf, as presently authorized in its currently effective Rate Schedule X-34, for all volumes of natural gas delivered to Petitioner for transportation and delivery to Resources, it is said.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 9, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11125 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket No. ER78-305]

ORANGE & ROCKLAND UTILITIES, INC., AND CONSOLIDATED EDISON CO. OF NEW YORK, INC.

Proposed Change in Electric Rate Schedule

APRIL 17, 1978.

Take notice that Orange & Rockland Utilities, Inc., and Consolidated Edison Co. of New York, Inc., on April 11, 1978, tendered for filing, as a supplemental rate schedule an extension of the term of ORU FERC rate schedule No. 36 and supplement No. 2, thereto (Con Edison FERC rate schedule No. 37 and supplement No. 2 thereto) from April 27, 1978, at 11:59 p.m. to October 24, 1978, at 11:59 p.m. The parties indicate that the supplemental agreement provides for the exchange of 200 MW of electric generating capability between Orange & Rockland Utilities, Inc., and Consolidated Edison Co. of New York, Inc., during the period April 27, 1978, at 11:59 p.m. to October 24, 1978, at 11:59 p.m. unless sooner terminated by Con Edison in accordance with the terms of the agreement.

A copy of the supplemental agreement has been served upon the New York State Public Service Commission, according to the parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 1, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11126 Filed 4-24-78; 8:45 am]

[6740-02]

[Docket Nos. CP77-291, CP77-435]

SEA ROBIN PIPELINE CO. AND TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Proposed Change in FERC Gas Tariff

APRIL 17, 1978.

Take notice that on March 16, 1978, Transcontinental Gas Pipe Line Corp. (Transco) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

Original sheet Nos. 1451 through 1467 constituting rate schedule X-159, a transportation agreement dated May 20, 1977, between Transco and United Gas Pipe Line Co. (United).

Transco states that subject transportation arrangement was originally authorized by the Commission in a temporary (90-day) certificate issued in docket No. CP77-291 on May 6, 1977, and subsequently in a temporary certificate issued in docket No. CP77-435 on August 3, 1977. Transco further states that a copy of the instant filing has been served upon United.

The tariff sheets are proposed to become effective May 6, 1977, the date that the transportation service commenced pursuant to the temporary (90-day) certificate. Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10).

All such petitions or protests should be filed on or before May 1, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.78-11127 Filed 4-24-78; 8:45 am]

[6740-02]

1977 ANNUAL PIPELINE CONSTRUCTION INDICES

APRIL 18, 1978.

Jurisdiction over oil pipelines, as it relates to establishment of valuations for pipelines, was transferred from the Interstate Commerce Commission to the Federal Energy Regulatory Commission (FERC), pursuant to sections 306 and 402 of the Department of Energy Organization Act, 42 U.S.C. §§ 7155 and 7172, and Executive Order No. 12009, 42 FR 46267 (September 15, 1977).

The FERC, by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Take notice that the FERC is now giving consideration to costs associated with the construction of oil pipelines during 1977. These costs will be translated to an index number which shows the relative cost of oil pipeline con-

struction using 1947 Period Costs equal to 100.

In the development of the annual indices, major consideration is given to data submitted by all jurisdictional oil pipelines pursuant to ICC valuation order (49 CFR 1260.103 and 1260.104). Such data includes pipe purchases, tank construction, pump and motor purchases, buildings constructed, labor cost for laying new pipelines, and other related pipeline construction and facilities costs.

Any person desiring to submit information for the FERC's consideration on the development of the 1977 annual oil pipeline construction indices should file an original and six copies of such information with the Secretary, Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, D.C. 20426, on or before May 22, 1978. Copies of these filings will be available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11134 Filed 4-24-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

CASES FILED WITH THE OFFICE OF HEARINGS AND APPEALS

Week of March 31, 1978 through April 7, 1978

Notice is hereby given that during the week of March 31, 1978 through April 7, 1978, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under the DOE's procedural regulations, 10 CFR, Part 205, any person who will be aggrieved by the DOE action sought in such cases may file with the DOE written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

Dated: April 14, 1978.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

APPENDIX.—*List of cases received by the Office of Hearings and Appeals*

[Week of Mar. 31 through Apr. 7, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 31, 1978	Cory's Gasoline Stations, Inc., Mesa, Ariz. If granted: Cory's Gasoline Stations, Inc. would not be required to file form EIA-8 (Retail Motor Fuels Service Station Survey).	DEE-0980	Exception to the reporting requirements.
Do	Hub City Body Shop, Wendell, Idaho. If granted: Hub City Body Shop would not be required to file form EIA-9 (Retail Motor Fuels Service Station Survey).	DEE-0981	Exception to the reporting requirements.
Do	North Pole Refining, Washington, D.C. If granted: North Pole Refining would receive a stay of its entitlement purchase obligations pending a final determination on its application for exception (case No. FEE-4451).	DES-0052	Stay request.
Do	Standard Oil Co. (Indiana), Chicago, Ill. If granted: Standard Oil Co. (Indiana) would be permitted to sell the crude oil produced from the south middle ground shoal unit located in the Kenai Peninsula Borough, Alaska, at upper tier ceiling prices.	DEE-0982	Price exception (sec. 212.73).
Apr. 3, 1978	Wesreco, Inc., Woods Cross, Utah. If granted: The buy/sell list which was published in the FEDERAL REGISTER of Mar. 3, 1978 would be modified to increase the quantity of crude oil which Wesreco, Inc. is entitled to purchase.	DEA-0166	Appeal of the buy/sell list.
Do	Continental Oil Co., Houston, Tex. If granted: Continental Oil Co. would be permitted to sell the crude oil produced from the McCroskey and McNee leases located in Santa Barbara County, Calif., at upper tier ceiling prices.	DEE-0983 and DEE-0984	Price exception (sec. 212.73).
Do	Dee's Super Service, Laketown, Utah. If granted: Dee's Super Service would not be required to file form EIA-8 (Retail Motor Fuels Service Station Survey).	DEE-0994	Exception to the reporting requirements.
Do	Denny's Chrysler Dodge, Kahoka, Mo. If granted: Denny's Chrysler Dodge would not be required to file form EIA-8 (Retail Motor Fuels Service Station Survey).	DEE-0988	Do.
Do	Ervs Conoco, Aurora, Minn. If granted: Ervs Conoco would not be required to file form EIA-8 (Retail Motor Fuels Service Station Survey).	DEE-0991	Do.
Do	Quest Oil Co., Denver, Colo. If granted: Quest Oil Co.'s boxer unit located in Morgan County, Colo., would be classified as a stripper well property.	DEE-0993	Price exception (sec. 212.73).
Do	Sun Co., Inc., Dallas, Tex. If granted: The DOE's Feb. 27, 1978 decision and order would be modified to permit Sun Co., Inc. to increase its prices to reflect nonproduct cost increases in excess of $0.00375 for the natural gas liquids produced at its Putnam-Oswego plant.	DMR-0018	Modification of relief granted in *Sun Co., Inc.*, case No. DEE-0068 (decided Feb. 27, 1978) (unreported decision).
Apr. 5, 1978	C. H. Sprague & Son, Co., Washington, D.C. If granted: The DOE's Mar. 2, 1978 information request denial would be rescinded and C. H. Sprague & Son Co. would receive access to additional DOE data regarding the interpretation or application of the reseller price rule.	DFA-0165	Appeal of information request denial.
Do	W. L. Coehran, Princess Anne, Md. If granted: W. L. Coehran would not be required to file form EIA-8 (Retail Motors Fuels Service Station Survey).	DEE-0989	Exception to the reporting requirements.

APPENDIX.—*List of cases received by the Office of Hearings and Appeals*—Continued

[Week of Mar. 31 through Apr. 7, 1978]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 5, 1978	Custom Capers, Seattle, Oreg. If granted: Custom Capers would not be required to file form EIA-8 (Retail Motor Fuels Service Station Survey).	DEE-0989	Exception to the reporting requirements.
Do	Gulf Oil Corp., Houston, Tex. If granted: Gulf Oil Corp. would be permitted to sell the crude oil produced from the Sidney A. Smith lease located in Liberty County, Tex., at upper tier ceiling prices.	DEE-0985	Price exception (sec. 212.73).
Do	Leonard E. Belcher, Inc., Springfield, Mass. If granted: The Jan. 18, 1978 decision and order issued to Leonard E. Belcher, Inc. would be modified to provide additional time for region I to issue a revised remedial order.	DRX-0057	Supplemental order in Leonard E. Belcher, Inc., 1 DOE par. —— (Jan. 18, 1978).
Do	Mapco, Inc., Tulsa, Okla. If granted: The applicant would be permitted to increase its prices to reflect nonproduct cost increases incurred in producing natural gas liquids and natural gas liquid products at its Altonah and Tyrone plants.	DEE-0986 and DEE-0987	Extension of the relief granted in *Mapco, Inc.*, case Nos. FXE-4527 and FXE-4528 (decided Nov. 4, 1977) (unreport-decision).
Do	Nickerson's Auto Sales, Coffstown, N.H. If granted: Nickerson's Auto Sales would not be required to file form EIA-8 (Retail Motor Fuels Service Station Survey).	DEE-0992	Exception to the reporting requirements.
Do	Sun Co., Inc., Dallas, Tex. If granted: Sun Co., Inc. would be permitted to increase its prices to reflect nonproduct cost increases in excess of $0.005/gal for natural gas liquid products produced at the Columbus III, Denver Central, Goldsby Central, Grieve, Pineview, and Stephens plants.	DEE-0997 through DEE-1002	Price exception (sec. 212.165).
Apr. 6, 1978	Marathon Oil Co., Washington, D.C. If granted: Marathon Oil Co. would be permitted to sell the crude oil produced from the canal unit located in Kern County, Calif., at upper tier ceiling prices.	DEE-0996	Price exception (sec. 212.73).
Do	Southland Oil Co./VGS, Jackson, Miss. If granted: DOE would review the entitlements exception relief granted to Southland Oil Co. during its 1977 fiscal year in order to determine whether the level of relief approved was appropriate.	DEX-0058	Supplemental order.

NOTICE OF OBJECTION RECEIVED

[Week of Mar. 31, 1978 through Apr. 7, 1978]

Date	Name and Location of Applicant	Case No.
Mar. 31, 1978	Golden Eagle Refining Co., Washington, D.C.	DEE-0513
Do	Quincy Oil, Inc., Quincy, Mass	DEE-0447
Apr. 3, 1978	Martin Exploration Co., Washington, D.C.	FEE-4789
Apr. 4, 1978	Crystal Oil Co., Shreveport, La	FPI-0128
Do	Pacific Northern Oil Corp., Seattle, Wash	FPI-0124
Apr. 5, 1978	Adams Oil Co., Inc., Charlottesville, Va	FEE-4816
Do	Biglane Operating Co., Natchez, Miss	FEE-4050
Do	Estates of Inez and Loyce Phillips, Austin, Tex	DXE-0545

PROPOSED REMEDIAL ORDERS.—NOTICE OF OBJECTION RECEIVED

[Week of Mar. 31, 1978 through Apr. 7, 1978]

Date	Name and location of applicant	Case No.
Mar. 31, 1978	Pennco Oil, Inc., Baton Rouge, La. Proposed remedial order: Feb. 27, 1978	DRO-0021
Apr. 4, 1978	Marine Fuel Supply & Towing, Inc., Tampa, Fla. proposed remedial order: Mar. 14, 1978	DRO-0022
Apr. 5, 1978	Pyrofax Gas Corp., Houston, Tex. Proposed ancillary order: Mar. 20, 1978	DRO-0023

[FR Doc. 78-11076 Filed 4-24-78; 8:45 am]

[6450-48]

VOLUNTARY AGREEMENT AND PLAN OF ACTION TO IMPLEMENT THE INTERNATIONAL ENERGY PROGRAM

Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (Pub. L. 94-163), notice is hereby provided of a meeting of the Industry Working Party (IWP) to the International Energy Agency (IEA) to be held on May 16 and 17, 1978, at the offices of Mobil Oil Corp., 150 East 42d Street, New York, N.Y., beginning at 9:30 a.m. on May 16.

AGENDA

1. Status of Standing Group on the Oil Market (SOM) and IWP activities and arrangements for future meetings.
2. Purchases from other oil companies—consideration of any points outstanding including the response on SOM's question regarding the Chase Manhattan Bank submission.
3. Discussion of the SOM proposal for additions to the historical financial reporting system including consideration of the draft response and preparation of documents relating to this question.
4. Consideration of a response to SOM on the subject of publication of oil market data.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public.

Issued in Washington, D.C., April 19, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration, Department of Energy.

[FR Doc. 78-11148 Filed 4-24-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

FM AND TV TRANSLATOR APPLICATIONS

Availability for Processing

Adopted: April 7, 1978.

Released: April 14, 1978.

By the Chief, Broadcast Bureau.

Notice is hereby given pursuant to sections 1.572(c) and 1.573(d) of the Commission's Rules, that on May 25, 1978, the TV and FM translator applications listed in the attached appendix will be considered as ready and available for processing. Pursuant to §§ 1.227(b)(1) and 1.519(b) of the Commission's rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on May 24, 1978, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on May 24, 1978. The attention of prospective applicants is directed to the fact that some contemplated proposals may not be eligible for consideration with an application appearing in the attached appendix by reason of conflicts between the listed applications and applications appearing in previous notices published pursuant to § 1.573(d) of the Commission's rules.

The attention of any party in interest desiring to file pleadings concerning any pending TV and FM translator application, pursuant to section 309(d)(1) or the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

CORRECTION

The following entry appeared on the Public Notice (Mimeo No. 99018) released April 4, 1978, listing translator applications which would be considered as ready and available for processing on May 19, 1978.

BPTTV-6037 (new), Caliente, Nev., Lincoln County TV District No. 1. Req: Channel 11, 198-204 MHz, 1 watt. Primary: KVVU-TV, Henderson, Nev.The entry is corrected to read as follows:

BPTTV-6037 (new), Caliente, Nev., Lincoln County TV District No. 1. Req: Channel 2, 54-60 MHz, 1 watt. Primary: KVVU-TV, Henderson, Nev.

VHF TV TRANSLATOR APPLICATIONS

BPTTV-6055 (new), Silver Fork, Utah, Big Cottonwood Canyon Association. Req: Channel 13, 210-216 MHz, 1 watt. Primary: KSL-STV, Salt Lake city, Utah.

BPTTV-6056 (new), Laurel, Miss., Southern Television Corp. Req: Channel 4, 66-72 MHz, 1 watt. Primary: WTOK-TV, Meridian, Miss.

BPTTV-6057 (new), Laurel, Miss., Southern Television Corp. Req: Channel 6, 82-88 MHz, 1 watt. Primary: WTOK-TV, Meridian, Miss.

BPTTV-6058 (new), La Pine, Oreg., La Pine TV Corp., Req: Channel 2, 54-60 MHz, 10 watts. Primary: KTVZ-TV, Bend, Oreg.

BPTTV-6063 (new), McLeod and South Rural Area, Mont., Boulder TV Association. Req: Channel 10, 192-198 MHz, 10 watts. Primary: KTVQ-TV, Billings, Mont.

BPTTV-6064 (new), McLeod and South Rural Area, Mont., Boulder TV Association. Req: Channel 12, 204-210 MHz, 10 watts. Primary: KULR-TV, Billings, Mont.

BPTTV-6065 (K05FP), Ponderosa Basin, Calif., Ponderosa Basin Community Television Association. Req: Change frequency to Channel 6, 82-88 MHz.

BPTTV-6066 (new), Snowflake, Show Low, Pinetop, Taylor, Clay Springs and Pinedale, Ariz., Porter Mountain Antenna TV Association. Req: Channel 3, 60-66 MHz, 10 watts. Primary: KUAT-TV, Tucson, Ariz.

BPTTV-6067 (new), Prospect, Oreg., Southern Oregon Education Co. Req: Channel 2, 54-60 MHz, 10 watts. Primary: KSYS-TV, Medford, Oreg.

BPTTV-6068 (new), Butte Falls, Oreg., Southern Oregon Education Co. Req: Channel 2, 54-60 MHz, 5 watts. Primary: KSYS-TV, Medford, Oreg.

BPTTV-6069 (new), Williams (Greater Williams Area), Oregon, Southern Oregon Education Co. Req: Channel 2, 54-60 MHz, 5 watts. Primary: KSYS-TV, Medford, Oreg.

BPTTV-6070 (new), Pinehurst, Oreg., Southern Oregon Education Co. Req: Channel 13, 210-216 MHz, 10 watts. Primary: KSYS-TV, Medford, Oreg.

BPTTV-6071 (new), Shady Cove, Oreg., Southern Oregon Education Co. Req: Channel 13, 210-216 MHz, 5 watts. Primary: KSYS-TV, Medford, Oreg.

BPTTV-6072 (new), Cave Junction, Oreg. Southern Oregon Education Co. Req: Channel 13, 210-216 MHz, 5 watts. Primary: KSYS-TV, Medford, Oreg.

BPTTV-6073 (new), Ruch/Applegate, Oreg., Southern Oregon Education Co. Req: Channel 13, 210-216 MHz, 5 watts. Primary: KSYS-TV, Medford, Oreg.

BPTTV-6075 (new), St. John Plantation, Maine, town of St. John. Req: Channel 3, 60-66 MHz, 1 watt. Primary: WAGM-TV, Presque Isle, Maine.

BPTTV-6076 (new), Ferndale, Mont., Swan Hill TV, Inc. Req: Channel 12, 204-210 MHz, 5 watts. Primary: KPAX-TV, Missoula, Mont.

BPTTV-6077 (K07HC), Sheridan, Wyo., Garryowen Corp. Req: Add Gillette and Surrounding Rural Areas, Wyoming to present principal community.

UHF TV TRANSLATOR APPLICATIONS

BPTT-3542 (new), Cortez, Colo., Four States Television, Inc. Req: Channel 63, 764-770 MHz, 100 watts. Primary: KIVA-TV, Farmington, N. Mex.

BPTT-3569 (new), Desert Hot Springs, Calif., International Panorama TV, Inc. Req: Channel 60, 746-752 MHz, 100 watts. Primary: KTBN-TV, Fontana, Calif.

BPTT-3571 (new), Thousand Oaks, Calif., International Panorama TV, Inc. Req: Channel 55, 716-722 MHz, 100 Watts. Primary: KLXA-TV, Fontana, Calif.

BPTT-3572 (new), Wasco, Oreg., Sherman County Intermediate Education District. Req: Channel 62, 758-764 MHz, 100 watts. Primary: KTVR-TV, LaGrande, Oreg.

BPTT-3573 (new), Randolph and Woodruff, Utah, University of Utah. Req: Channel 55, 716-722 MHz, 100 watts. Primary: KUED-TV, Salt Lake City, Utah.

BPTT-3574 (new), Lake Town and Garden City, Utah, University of Utah. Req: Channel 63, 764-770 MHz, 100 watts. Primary: KUED-TV, Salt Lake City, Utah.

BPTT-3575 (new), Hobbs, N. Mex., Marsh Media of El Paso. Req: Channel 55, 716-722 MHz, 100 watts. Primary: KAVE-TV, Carlsbad, N. Mex.

BPTT-3576 (new), Coos Bay, North Bend, and Coquilla, Oreg., State of Oregon acting by and through the State Board of Higher Education. Req: Channel 17, 488-

494 MHz, 1,000 watts. Primary: KOAP-TV, Portland, Oreg.

BPTT-3577 (new), Grants Pass, Oreg., State of Oregon acting by and through the State Board of Higher Education. Req: Channel 18, 494–800 MHz, 1,000 watts. Primary: KOAP-TV, Portland, Oreg.

BMPTT-997 (K69BO), Grand Portage, Minn., Channel 10, Inc. Req: change frequency to Channel 55, 716–722 MHz.

[FR Doc. 78-10933 Filed 4-24-78; 8:45 am]

[6712-01]

FM BROADCAST APPLICATION READY AND AVAILABLE FOR PROCESSING PURSUANT TO SECTION 1.573(d) OF THE COMMISSION'S RULES

Adopted: April 14, 1978.

Released: April 20, 1978.

By the Chief, Broadcast Bureau:

Notice is hereby given, pursuant to § 1.573(d) of the Commission's Rules, that the FM broadcast application listed in the attached Appendix will be considered as ready and available for processing on May 22, 1978. since the listed application for Herkimer, New York, is timely filed and mutually exclusive with the earlier filed and cut-off application of WBVM Associates (File No. BPH-10,394), no other applications which involve conflict with these applications may be filed. Rather, the purpose of this Notice is to establish a date by which the parties to the forthcoming comparative hearing may compute the deadlines for filing amendments as a matter of right under Section 1.522(a)(2) of the Rules and pleadings to specify issues pursuant to Section 1.584.

The attention of any party in interest desiring to file a petition to deny any listed application pursuant to Section 309(d)(1) of the communications Act of 1934, as amended, is directed to Section 1.580(i) of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

APPENDIX

BPH-10,465 (new), Herkimer, N.Y., WALY Enterprises, Inc. Req: 92.7 MHz; Channel No. 224A. ERP: 3kW; HAAT: 300 feet.

[FR Doc. 78-11175 Filed 4-24-78; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10218; or may inspect the agreements at the field offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, P.R. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before May 15, 1978. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitiors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. 10329.

Filing party: Dennis N. Barnes, Esq., Morgan, Lewis & Bockius, Counselors at Law, 1800 M Street NW., Washinton, D.C. 20036.

Summary: Agreement No. 10329 is a space charter agreement between Toko Kaiun Kaisha, Ltd. (Toko), and Korea Line Corp. (KLC) whereby Toko will charter space, inbound, aboard KLC vessels operating in the Korea and Japan/U.S. Gulf Coast ports trade. The principal commodities to be carried by the parties under the agreement will be iron and steel products, and plywood.

Agreement No. T-3628.

Filing party: Frank McRight, Esq., McRight, Sims, Rowe & Bagwell, P.O. Box 1024, Mobile, Ala. 36601.

Summary: Agreement No. T-3628, between certain members of the Pensacola Steamship Association, Inc. (PSA), is a funding agreement providing for the following assessments per long ton of cargo loaded or unloaded by the participating members:

Classification A—Bulk cargo—not packaged and loaded without mark or count, $0.001.

Classification B—Containers, $0.300.

Classification C—Metals and metal products, exclusive of bulk cargo, of the type described in part 2 of the schedule 6 of schedule B of the "Statistical Classification of Domestic and Foreign Commodities Exported from the U.S." published by the U.S. Department of Commerce, $0.060.

Classification D—General cargo not otherwise specifically provided for above, $0.150.

The purpose of these assessments is to fund an obligation of the participating PSA members resulting from a settlement with Local 1988 of the International Longshoremen's Association, AFL-CIO (ILA) providing for a one-time payment of $45,714 to the administrator of the PSA-ILA vacation and holiday plan and trust for distribution to eligible employees. PSA has borrowed, on its members' behalf, funds to enable it to make this payment instead of requiring each participant to make an immediate lump-sum payment. The assessments made under this agreement shall terminate when the amount paid by PSA is sufficient to pay the principal and all interest on the loan.

Agreements Nos. T-3624 and T-3624-1.

Filing party: Dwight Green, Traffic Consultant, Port of Palm Beach District, P.O. Box 9935, Riviera Beach, Fla. 33404.

Summary: Agreement No. T-3624, between the Port of Palm Beach District (port) and Kennelly & Sisman Co. (K & S), provides for the port's 2-year exclusive lease to K & S of certain premises at the Port of Palm Beach Terminal, city of Riviera Beach, Fla., to be used for warehouse space, for storage, and for office purposes. In addition, K & S shall have the nonexclusive right to use the port's lands and dock facilities for the loading and unloading of K & S' vessels. As compensation, K & S shall pay the port the sum of $10,813.91 per year plus all applicable port tariff charges.

By order of the Federal Maritime Commission.

Dated: April 19, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.78-11092 Filed 4-24-78; 8:45 am]

[6730-01]

PETITIONS FILED

The Federal Maritime Commission hereby gives notice that the following petition(s) have been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 813a).

Interested parties may inspect and obtain a copy of the petition(s) and the justification(s) offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10218; or may inspect the petition(s) at the Field Offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, Puerto Rico. Interested parties may submit comments on the petition(s), including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before May 15, 1978. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed petition(s). Comments shall discuss with particularity allegations that the petition is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States,

or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the petition(s) and the statement should indicate that this has been done.

Agreement No. 2846-DR-6.

Filing Party: Stanley O. Sher, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street NW., Washington, D.C. 20006.

Summary: Essentially, Agreement 2846-DR-6 modifies the West Coast of Italy, Sicilian and Adriatic Ports-North Atlantic Range Conference's (WINAC) form of exclusive patronage (dual rate) contract to permit continuation of the contract system with respect to those rates, charges, rules, or regulations which have been altered independently by any of the WINAC lines pursuant to their right to do so as set forth in Article 2A of the WINAC's basic agreement, No. 2846 as amended. The "* * * freight rates of the independently acting Carrier(s) will continue to be 15 percent below the noncontract rates of such Carrier(s), and the Merchant will continue to be bound by all the terms and provisions of this contract."

By Order of the Federal Maritime Commission.

Dated: April 20, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-11179 Filed 4-24-78; 8:45 am]

[6730-01]

[Docket No. 78-10]

UNION CAMP CORPORATION, ET AL.

Possible Violation of Sections 15, 16, 18, and 44 of the Shipping Act, 1916, and Commission General Order No. 4; Order of Investigation and Hearing

The Department of Justice has commenced an action in U.S. District Court for the Southern District of Georgia, Savannah Division (Civil Action No. C. V. 477-193) for recovery of civil penalties for alleged violations of the Shipping Act, 1916 (hereinafter "the Act"), and of Commission's general order No. 4 (46 CFR 510.24). The action stemmed from activities in 1972, 1973, and 1975 arising out of volume contracts negotiated between Union Camp Corp. and Open Bulk Carriers, Ltd. (hereinafter "Troll", its trade name), for the carriage of linerboard and woodpulp from U.S. South Atlantic ports to ports in Europe. Major provisions of the contracts for 1972-1973 and 1975 were embodied in Troll's tariff on file with the Commission. That tariff also contained rates for lesser quantities of linerboard and woodpulp than those stemming from the volume contracts.

The facts alleged in the District Court action are generally as follows. During the period between August 25, 1972, and August 24, 1973, Union Camp on various occasions, could not meet the minimum quantities prescribed in the tariff, and in the 1972-1973 contract, to be eligible for the lower rate. Union Camp then solicited cargo from other shippers with the result of combining its own shipments of linerboard with those of Mead Corp. (hereinafter "Mead"), and Continental Can Corp. (hereinafter "Continental Can") for purposed of obtaining lower ocean transportation rates. On most of these shipments, J. K. Ebberwein, Inc. (hereinafter "Ebberwein"), is noted as the ocean freight forwarder, and many of the pertinent bills of lading reflect "J. K. Ebberwein, as agent" in the space reserved for the shipper's name. Moreover, Ebberwein collected compensation from Troll on certain of these shipments without performing the prerequisite functions associated with soliciting or booking the cargo. Allegations have also been made that during 1975 Troll failed to collect and Union Camp refused to pay deficient tonnage penalties for failure to meet the minimum tonnage requirements set forth in Troll's tariff and in the contract.

Settlement discussions were held with the various parties subsequent to the filing of the complaint and compromise agreements were concluded with Troll, Mead, and Continental Can. During the course of settlement negotiations several issues were raised that, in our opinion, warrant consideration and resolution by this Commission in its capacity as the agency with particular expertise in matters arising under the Act. Those issues include:

1. Whether the language which appears in 3rd, 4th, and 5th revised page 6 of Troll's tariff can be interpreted as authorizing various shippers to combine their cargo in order to take advantage of the volume rate set forth therein;

2. Whether, absent any specific tariff authorization, shippers may combine their cargo in order to take advantage of a volume rate;

3. Whether Union Camp acted in the capacity of a non-vessel-operating common carrier by water by soliciting cargo from Mead and Continental Can and combining that cargo with its own to obtain lower freight rates although Union Camp may not have explicitly accepted liability for the shipments and may have received no compensation other than its own reduced transportation costs;

4. Whether the volume contracts between Union Camp and Troll are subject to section 15 of the Act and, if so, whether the filing requirements of that section were met by the filing of certain major provisions of those agreements in Troll's tariff;

5. Whether the confirmation of booking of the cargo in question by Ebberwein is sufficient to have fulfilled the requirements set forth in section 44 of the Act for the payment of compensation in view of the fact that Ebberwein may have neither solicited nor booked the cargo;

6. Whether the collection of compensation by Ebberwein was lawful under 46 CFR 510.24, where only the notation "J. K. Ebberwein, as agent" appeared in the space designated for the shipper's name on the bill of lading;

7. Whether the combination of cargo by Union Camp, Mead, and Continental Can and the use of "J. K. Ebberwin, as agent" on certain of the pertinent bills of lading constitutes an "unjust or unfair device or means" as that term is used in section 16 of the Act;

8. Whether Union Camp's agreement with Troll in 1975 to pay less than the penalties prescribed in Troll's tariff for deficient tonnage on particular shipments, even though various Union Camp shipments during 1975 failed to meet those minimum tonnage requirements, constitutes and "unjust or unfair device or means" as that term is used in section 16 of the Act;

9. Whether Union Camp's failure to pay the tariff rate applicable to certain shipments constitutes an "unjust or unfair device or means" as that term is used in section 16 of the Act;

10. Whether other carriers, shippers, forwarders, terminal operators, or ports were competitively harmed by the alleged activities of the five defendants in the District Court action, and, if not, whether the absence of such competitive harm precludes a finding of violations of section 16, initial paragraph, of the Act.

The specific items of inquiry identified above are not intended to limit the scope of the investigation instituted herein. Rather, they are merely the minimum level of inquiry required by the Commission.

Therefore, *it is ordered*, That, pursuant to sections 15 and 22 of the Shipping Act, 1916, an investigation is hereby instituted in order to resolve the above mentioned issues, and, in addition to, determine whether:

(1) Union Camp violated section 16, initial paragraph, of the Act by entering into agreements with Mead and Continental Can to consolidate the latter's linerboard shipment with it's own in order to take advantage of the volume rate;

(2) Union Camp violated section 18(b)(1) of the Act by acting as a non-vessel-operating common carrier by water by consolidating and shipping cargo for Mead and Continental Can without filing a tariff;

(3) Union Camp violated section 44(a) of the Act by acting as a freight forwarder by consolidating and shipping cargo for Mead and Continental Can without obtaining a freight forwarder license;

(4) Ebberwein violated section 44(e) of the Act and 46 CFR 510.24(a) by re-

ceiving freight forwarder compensation when the basic services of solicitation, booking, or arranging space were not performed, and for shipments in which the notation "J. K. Ebberwein, as agent" appeared in the space designated for the shipper's name on the bill of lading;

(5) Ebberwein violated section 16, initial paragraph, of the Act by using or permitting the use of the name "J. K. Ebberwein, as agent" on certain bills of lading as a device to conceal the combination of cargo by Union Camp, Mead, and Continental Can;

(6) Union Camp violated section 16, initial paragraph, by agreeing with Troll in 1975 to pay less than the penalties prescribed in Troll's tariff for deficient tonnage on particular shipments, even though various Union Camp shipments during 1975 failed to meet those minimum tonnage requirements;

(7) Union Camp violated section 16, initial paragraph, by failure to pay the tariff rates applicable to certain shipments in 1975;

(8) Union Camp violated section 15 of the Act by failing to file the volume rate contracts between Union Camp and Troll.

It is further ordered, That Union Camp and Ebberwein are hereby named respondents in this proceeding.

It is further ordered, That this proceeding be referred to the Commission's Office of Administrative Law Judges for public hearing, and that hearing be held at a time and date to be determined by the presiding Administrative Law Judge, but not later than August 20, 1978; *Provided, however,* That this investigation shall include oral testimony and cross-examination, in the discretion of the Presiding Officer, only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That a copy of this order be served upon respondents and the Commission's Bureau of Hearing Counsel; that a copy be published in the FEDERAL REGISTER;

It is further ordered, That this order shall become effective upon the District Court's entry of a stay of its proceedings pending the Commission's hearing and investigation.

It is further ordered, That all persons (including individuals, corporations, associations, firms, partnerships, and public bodies desiring to intervene in this proceeding) shall comply with rule 72 of the Commission's rules of practice and procedure (46 CFR 502.72).

It is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-11180 Filed 4-24-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

GREAT WISCONSIN CORP.

Formation of Bank Holding Company

Great Wisconsin Corp., Fond du Lac, Wis. has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Eldorado State Bank, Eldorado, Wis. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than May 18, 1978.

Board of Governors of the Federal Reserve System, April 19, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.78-11138 Filed 4-24-78; 8:45 am]

[6210-01]

Acquisition of Bank

Texas Commerce Bancshares, Inc., Houston, Tex., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of Westview Commerce Bank, National Association, Houston, Tex., a *de novo* bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 19, 1978.

Board of Governors of the Federal Reserve System, April 19, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-11139 Filed 4-24-78; 8:45 am]

[4110-88]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alchohol, Drug Abuse, and Mental Health Administration

NATIONAL INSTITUTE OF MENTAL HEALTH

Filing of Report

A report prepared by the members of the Rape Prevention and Control Advisory Committee has been filed with the Library of Congress. Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, and on weekdays between 9 a.m. and 4:30 p.m., at the Department of Health, Education, and Welfare, Department Library, North Building, Room 1436, 330 Independence Avenue SW., Washington, D.C. 20201, telephone 202-245-6791.

Dated: April 17, 1978.

DAVID F. KEFAUVER,
Acting Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-10935 Filed 4-24-78; 8:45 am]

[4110-86]

Center for Disease Control

IMMUNIZATION PRACTICES ADVISORY COMMITTEE

Renewal

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), 5 U.S.C., Appendix I, the Center for Disease Control announces the renewal of the Immunization Practices Advisory Committee on April 1, 1978, by the Secretary of Health, Education, and Welfare, with concurrence by the General Services Administration.

Authority for this committee will expire April 1, 1980, unless the Secretary formally determines that continuance is in the public interest.

Dated: April 18, 1978.

WILLIAM H. FOEGE,
Director,
Center for Disease Control.

[FR Doc. 78-11225 Filed 4-24-78; 8:45 am]

[4110-03]

Food and Drug Administration

PANEL ON REVIEW OF BLOOD AND BLOOD DERIVATIVES

Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advi-

sory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Committee name	Date, time, and place	Type of meeting and contact person
Panel on Review of Blood and Blood Derivatives.	May 12 and 13, 9 a.m., Room 115, Building 29, National Institutes of Health, 8800 Rockville Pike, Bethesda, Md.	Open public hearing May 12, 9 to 10 a.m.; open committee discussion May 12, 10 a.m. to 5:30 p.m.; May 13, 8:30 a.m. to 2 p.m.; closed committee deliberations May 13, 2 to 4 p.m.; Clay Sisk (HFB-5), 8800 Rockville Pike, Bethesda, Md. 20014, 301-443-5455.

General function of the committee. Reviews and evaluates the safety and effectiveness of biological products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of antivenins; cobra venom; Thrombin, bovine; donor immunization guidelines; hepatitis testing; Fibrinolysin; editing of earlier statements on plasma fractionation, blood grouping, and blood bank products.

Closed committee deliberations. Review of data submissions of producers of blood diagnostic reagents, Thrombin, Fibrinolysin (human), cobra venom, hepatitis testing products, and other plasma products. This portion of the meeting will be closed to permit discussion of trade secret manufacturing processes (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permit such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably, deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: April 18, 1978.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc. 78-11093 Filed 4-24-78; 8:45 am]

[4110-03]

PANEL ON REVIEW OF DENTIFRICES AND DENTAL CARE AGENTS

Meeting Change

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document gives notice that the Panel on Review of Dentifrices and Dental Care Agents

telephone conference meeting announced by a notice published in the FEDERAL REGISTER of April 21, 1978 (43 FR —) for May 31, 1978 has been changed. The Panel will hold a regular committee meeting on May 31 and June 1, 1978, in Conference Room K, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. 20857, with the open public hearing starting at 9 a.m. on May 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas D. DeCillis, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

Dated: April 19, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.78-11094 Filed 4-24-78; 8:45 am]

[4110-03]

ADVISORY COMMITTEE

Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Committee name	Date, time, and place	Type of meeting and contact person
Arthritis Advisory Committee.	May 18 and 19, 9 a.m., Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open committee discussion May 18, 9 a.m. to 10 a.m.; open public hearing May 18, 10 a.m. to 11 a.m.; open committee discussion May 18, 11 a.m. to adjournment, May 19, 9 a.m. to 1 p.m.; closed committee deliberations May 19, 1 p.m. to 3 p.m.; John G. Harter, M.D. (HFD-150), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4260.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in arthritic conditions.

Agenda.—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of the proposal for patient registry; subcommittee report on basis of approval for nonsteroidal anti-inflammatory drugs; discussion of Penicillamine and Azathioprine for Rheumatoidal Arthritis; and discussion of Topical Dimethyl Sulfoxide (DMSO) for Scleroderma.

Closed committee deliberations. Discussion of the current status of IND's and NDA's under review. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1-hour long unless public participation does not last that long. It is emphasized, however, that the 1-hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of

trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably, deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: April 20, 1978.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc. 78-11226 Filed 4-24-78; 8:45 am]

[4110-12]

Office of the Secretary

BOARD OF ADVISORS TO THE FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

Meeting

Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), that the next meeting of the Board of Advisors to the Fund for the Improvement of Post-secondary Education will be held on May 4, 1978, at 5 p.m. through May 6, 1978, at 2:30 p.m. at the Belmont Conference Center, 6555 Belmont Woods, Elkridge, Md.

The Board of Advisors to the Fund was established to recommend to the Director of the Fund and the Assistant Secretary for Education priorities for funding and the approval or disapproval of grants and contracts of a given kind or over a designated amount under section 404 of the General Education Provisions Act.

The meeting will not be open to the public. It will be for the sole purpose of reviewing and evaluating grant applications submitted to the Fund under the Comprehensive Program. The meeting will involve discussion of project designs, personnel, and other information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. It has therefore been determined that closing this meeting is in accordance with 5 U.S.C. 552b(c)(6) and the policies of the Federal Advisory Committee Act.

A summary of the proceeding of the meeting and a roster of members may be obtained from the Fund for the Improvement of Post-secondary Education, 400 Maryland Avenue SW., Room 3123, Washington, D.C. 20202, telephone 202-245-8091.

Signed at Washington, D.C., on April 6, 1978.

ERNEST BARTELL,
Director, Fund for the Improvement of Postsecondary Education.

[FR Doc. 78-11146 Filed 4-24-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 4982]

CALIFORNIA

Proposed Withdrawal and Reservation of Lands; Correction

APRIL 17, 1978.

In FEDERAL REGISTER Document No. 78-9238, appearing on pages 14745 and 14746 of the issue of April 7, 1978, the last sentence of the penultimate paragraph reads, "If the withdrawal is approved by the Secretary, it will be for an indefinite period, and the lands will remain segregated." It is corrected to read, "If the withdrawal is approved by Congress, the land will be segregated for 20 years as requested, or for such period of time as designated in the Act."

JOAN B. RUSSEL,
Chief, Lands Section Branch of Lands and Minerals Operations.

[FR Doc. 78-11164 Filed 4-24-78; 8:45 am]

[4310-70]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before April 14, 1978. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by May 5, 1978.

WILLIAM J. MURTAGH,
Keeper of the National Register.

ALASKA

Nome Division

Nome, *McLain, Carrie, House,* Belmont Point

CALIFORNIA

San Bernardino County

Twentynine Palms, *Indian Rock Art Site*

Solano County

Benicia vicinity, *SS Jeremiah O'Brien (Liberty Ship),* E of Benicia at Suisun Bay

IDAHO

Ada County

Boise, *St. John's Cathedral,* 8th and Hays Sts.

Blaine County

Ketchum vicinity, *Proctor Mountain Ski Lift,* NE of Ketchum off ID 75

Cassia County

Albion, *Swanger Hall,* Albion State Normal School campus

Elmore County

Mountain Home, *Mountain Home Carnegie Library,* 180 S. 3rd St. E.

Gooding County

Hagerman, *Roberts, Morris, Store,* off U.S. 30

Idaho County

Grangeville, *Grangeville Savings and Trust,* State and Main Sts.

Jefferson County

Roberts, *St. Anthony's Catholic Church,* 1st and Teton Sts.

Power County

American Falls vicinity, *Register Rock,* W of American Falls on U.S. 30

ILLINOIS

Champaign County

Champaign, *Burnham Athenaeum,* 306 W. Church St.

DuPage County

Clarendon Hills, *Middaugh, Henry C., House,* 66 Norfolk Ave.

McLean County

Bloomington, *Benjamin, Ruben M., House,* 510 E. Grove St.
Bloomington, *Hamilton, John M., House,* 502 S. Clayton St.
Bloomington, *Miller, George H., House,* 405 W. Market St.

Sangamon County

Springfield, *Union Station,* Madison St. between 5th and 6th Sts.

Stephenson County

Kent vicinity, *Kellogg's Grove (Blackhawk Battlefield and Monument)* SE of Kent

Will County

Joliet, *Rubens Rialto Square Theater*, 102 N. Chicago St.

INDIANA

Monroe County

Bloomington vicinity, *Honey Creek School*, NE of Bloomington on Low Gap Rd.

MARYLAND

Charles County

Faulkner vicinity, *Timber Neck Farm*, SE of Faulkner.

Montgomery County

Rockville, *Corby Estate*, 10701 Rockville Pike.

MINNESOTA

Hennepin County

Minneapolis, *Foshay Tower*, 821 Marquette Ave.
Minneapolis, *Little Sisters of the Poor Home for the Aged*, 215 Broadway Ave. NE.

Koochiching County

Pelland vicinity, *McKinstry Mounds and Village Site*, W of Pelland.

Otter Tail County

Pelican Rapids vicinity, *Maplewood Site*, E of Pelican Rapids.

Rice County

Northfield, *Scriver Block Building*, Bridge Sq. and Division St.

Wabasha County

Weaver, *Weaver Mercantile Building*, U.S. 61 and MN 74.

Washington County

Cottage Grove vicinity, *Schilling Archeological Distict*, S of Cottage Grove

OHIO

Allen County

Lima, *MacDonell House*, 632 W. Market St.

Auglaize County

Uniopolis vicinity, *Rinehart, Hugh T., House*, E of Uniopolis on OH 67.

Delaware County

Delaware vicinity, *Limestone Vale*, 3490 Olentangy River Rd.

Fairfield County

Carroll vicinity, *Bright, John, No. 1 Iron Bridge*, 2 mi. (3.2 km) NE of Carroll on Havensport Rd.

Franklin County

Columbus, *Jones, W. H., Mansion*, 731 E. Broad St.

Hamilton County

Cincinnanti, *Hoffner Historic District*, bounded by Bluerock, Moline Ct., Langland and Hamilton Aves.
Cincinnati, *Observatory Historic District*, Observatory Pl.

Lake County

Mentor, *Garfield Library*, 7300 Center St.

Lorain County

Amherst, *Old Amherst Freight Depot*, Franklin St.
Avon Lake, *Miller, Peter, House, 33740 Lake Rd.*
Lorain, *Root, William H., House*, 3535 E. Erie Ave.
North Ridgeville, *Cahoon, Samuel C., House*, 38369 Center Ridge Rd.
Sheffield, *Garfield, Milton, House*, 4921 Detroit Rd.
Sheffield, *Sheffield Village Hall*, Detroit Rd.

Mercer County

Fort Recovery vicinity, *Wallischeck Homestead*, N of Fort Recovery.

Muskingum County

Zanesville, *St. James Episcopal Church*, 155 N. 6th St.

Preble County

Eaton, *St. Clair Street Bridge*, St. Clair St. over Seven Mile Creek.

Shelby County

Anna, *Anna Town Hall*, Main St.

Summit County

West Richfield vicinity, *Kirby, James, Mill*, W of West Richfield off OH 303.

Wood County

Bowling Green, *U.S. Post Office and North School*, 305 N. Main and 304 N. Church St.

RHODE ISLAND

Kent County

Nooseneck vicinity, *Allen, Stephen, House*, NW of Nooseneck on Sharp St.

Newport County

Jamestown vicinity, *Windmill Hill Historic District*, N of Jamestown at Eldred Ave. and N. Main Rd.
South Portsmouth vicinity, *Lawton-Almy-Hall Farm*, 559 Union St.

Providence County

Cranston vicinity, *Potter-Remington House*, W of Cranston on Natick Rd.
Pawtucket, *Pawtucket Congregational Church*, 40 and 56 Walcott St.

Washington County

Lafayette, *Lafayette Village*, RI 102.

UTAH

Sanpete County

Ephraim, *Anderson, Niels Ole, House*, 306 S. 100 East.

Utah County

Provo vicinity, *Nunn Power Plant*, E of Provo on U.S. 189.

VERMONT

Franklin County

Enosburg Falls, *Enosburg Opera House*, 31 Depot St.

WASHINGTON

Clark County

Vancouver, *Hidden Houses*, 100 and 110 W. 13th St.
Vancouver, *House of Providence*, 400 E. Evergreen Blvd.

King County

Seattle, *Pioneer Square-Skid Road District* (Boundary revision).

Pierce County

Tacoma, *Pacific Brewing and Malting Company*, S. 25th St. between C St. and Jefferson Ave.

Thurston County

Olympia, *McCleary, Henry, House*, 111 W. 21st Ave.

WEST VIRGINIA

Greenbrier County

Lewisburg, *Lewisburg Historic District*, irregular pattern along U.S. 60 and U.S. 219.

WISCONSIN

Dane County

Madison, *Fess Hotel*, 123 E. Doty St.

Rock County

Milton, *Grout Buildings*, Janesville, High, and 3rd Sts., Madison Ave., and SR M.

[FR Doc. 78-10736 Filed 4-24-78; 8:45 am]

[4310-09]

Bureau of Reclamation

[INT DES 78-12]

MCGEE CREEK PROJECT, OKLA.

Availability of Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the McGee Creek Project, Okla.

The environmental statement concerns a water supply to meet expanding municipal and industrial (M&I) water needs of Oklahoma City and parts of south-central Oklahoma. Flood control, fish and wildlife, and environmental enhancement are other project purposes. A 3,350-acre reservoir will provide about 60,000 acre-feet of M&I water and 8,000 acre-feet will be released downstream to provide a continuous streamflow rate of 11 cubic feet per second. An 18.5-mile pipeline will connect the water supply to existing facilities. The project will provide an 8,900-acre natural scenic recreation area and a 10,000-acre wildlife management area. Water based recreation facilities will also be provided. Written comments may be submitted to the Regional Director on or before.

Copies are available for inspection at the following locations:

Office of Assistant to the Commissioner, Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Wash-

ington, D.C. 20240, telephone 202-343-4991.
Division of Engineering Support, Technical Services Branch, E&R Center, Denver Federal Center, Denver, Colo. 80225, telephone 303-234-3022.
Office of the Regional Director, Bureau of Reclamation, Herring Plaza, Box H-4377, Amarillo, Tex. 79101, telephone 806-376-2404.
Oklahoma Planning Office, Bureau of Reclamation, P.O. Box 495, Oklahoma City, Okla. 71301, telephone 405-231-4515.
Oklahoma County Library System, 131 NW., Third Street, Oklahoma City, Okla. 73102.
City of Atoka Library, 200 South Minnesota, Atoka, Okla. 74525.
East Central Oklahoma State University Library, Ada, Okla. 74820.
University of Oklahoma's Library, Norman, Okla. 73019.
Southeastern Oklahoma State University Library, Durant, Okla. 74701.

Single copies of the draft statement may be obtained on request to the Commissioner of Reclamation, Regional Director, or Albuquerque Planning Officer. Please refer to the statement number above.

Dated: April 20, 1978.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc. 78-11169 Filed 4-24-78; 8:45 am]

[4410-01]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 77-30]

JOHN W. WHITENIGHT

Hearing

Notice is hereby given that on October 19, 1977, the Drug Enforcement Administration, Department of Justice, issued to John W. Whitenight, D. O., Dauphin, Pa., an order to show cause as to why his DEA certificate of registration, AW2505761, should not be revoked.

Thirty days having elapsed since the said order to show cause was received by the respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10 a.m. on Tuesday, May 16, 1978, in the Hearing Room, Room 1210, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C.

Dated: April 19, 1978.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 78-11149 Filed 4-24-78; 8:45 am]

[4410-18]

Law Enforcement Assistance Administration

NATIONAL MINORITY ADVISORY COUNCIL ON CRIMINAL JUSTICE

Hearing

This is to provide notice of a hearing of the National Minority Advisory Council on Criminal Justice (NMACCJ).

The National Minority Advisory Council will hold a hearing on May 15 and 16, 1978. The hearing will be held at the Ramada Inn, Sioux Falls, S. Dak. The hearing is scheduled to run from 12 noon until 6 p.m. on the 15th and from 9 a.m. until 2 p.m. on the 16th. The two sessions will be public hearings with discussion centering on the methodology to be utilized in accomplishing the national needs assessment of minorities and their relationship with the criminal justice system, with particular emphasis on Native Americans.

Anyone wishing to provde the Council with information or to provide testimony should contact Mr. Frank de la Fe, Project Monitor, 633 Indiana Avenue NW., Washington, D.C. 20531, telephone number: 202-376-3868.

JAY A. BROZOST,
Attorney-Advisor, Office of General Counsel.

[FR Doc. 78-11165 Filed 4-24-78; 8:45 am]

[4510-24]

DEPARTMENT OF LABOR

Bureau of Labor Statistics

BUSINESS RESEARCH ADVISORY COUNCIL

Meeting

The regular spring meeting of the Business Research Advisory Council will be held at 9:30 a.m., May 10, 1978, at the New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C., Room S-5215 (A, B, & C). The agenda for the meeting is as follows:

1. Chairman's opening remarks.
2. Commissioner's remarks.
3. Presentation of Federal statistics reorganization—Dr. James T. Bonnen.
4. Committee reports: (a) Manpower and employment; (b) occupational safety and health; (c) productivity and technology; (d) foreign labor and trade; (e) wages and industrial relations; (f) consumer and wholesale prices.
5. Other business.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council of area code 202-523-1559.

Signed at Washington, D.C., this 19th day on April 1978.

JULIUS SHISKIN,
Commissioner of Labor Statistics.

[FR Doc. 78-11203 Filed 4-24-78; 8:45 am]

[4510-24]

BUSINESS RESEARCH ADVISORY COUNCIL'S COMMITTEE ON CONSUMER AND WHOLESALE PRICES

Meeting

The BRAC Committee on Consumer and Wholesale Prices will meet at 1:30 p.m., May 9, 1978, at the General Accounting Office Building, 441 G Street NW., Room 4454, Washington, D.C. The agenda for the meeting is as follows:

1. Brief review of status of fiscal 1979 price budget.
2. Program reviews: (a) CPI; (b) WPA; and (c) family budgets.
3. Report on cost-of-living project.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council, on area code 202-523-1559.

Signed at Washington, D.C., this 19th day of April 1978.

JULIUS SHISKIN,
Commissioner of Labor Statistics.

[FR Doc. 78-11205 Filed 4-24-78; 8:45 am]

[4510-24]

2BUSINESS RESEARCH ADVISORY COUNCIL'S COMMITTEE ON WAGES AND INDUSTRIAL RELATIONS

Meeting

The BRAC Committee on Wages and Industrial Relations will meet at 9:30 a.m., May 9, 1978, at the General Accounting Office Building in Room 4454, 441 G STREET NW., Washington, D.C. The agenda for the meeting is as follows:

1. Work in progress. Review of work completed and begun since last meeting.
2. Studies required for legislative action: (a) Fair Labor Standards Act; (b) Service Contracts ACT: (c) Federal Pay Comparability ACT.
3. Review of the coal situation: Mr. William Habgood, Director, Mediation Services, Federal Mediation and Conciliation Services, will discuss the mediation role.
4. Long-run program review: Report on progress of subcommittee.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers con-

tact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council, on area code 202-523-1559.

Signed at Washington, D.C., this 19th day of April 1978.

JULIUS SHISKIN,
Commissioner of Labor Statistics.

[FR Doc. 78-11204 Filed 4-24-78; 8:45 am]

[4510-43]

Mine Safety and Health Administration

SECTION 103(f) OF THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

Interpretative Bulletin

The Interpretative Bulletin published below contains a statement of certain interpretations of section 103(f) of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173 as amended by Pub. L. 95-164) made by the Department and implemented on March 9, 1978, the effective date of the Act, and provides an explanation of the interpretations.

The Department of Labor is responsible for interpreting and applying the statutes which it administers. Interpretation and application of these statutes to particular situations is a continuous daily activity. Publication of all interpretative positions taken by the Department is obviously impossible, but from time-to-time the Department has found it extremely useful as a means of informing the public in general, and interested segments of the public in particular, to publish Interpretative Bulletins or other materials setting forth the Department's general interpretative positions on particular provisions of certain statutes.

Section 103(f) of the Act provides rights to miners and their representatives in connection with their participation in inspections made by Mine Safety and Health Administration (NSHA) inspectors.

It must be emphasized that this Interpretative Bulletin is not intended to address every conceivable issue that could arise in connection with section 103(f) or every conceivable factual situation which could occur. Rather, it deals with certain situations and applications which are of sufficient importance and immediacy to warrant publication of an Interpretative Bulletin.

INTERPRETATIVE BULLETIN

INTRODUCTORY STATEMENT

The Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173, as amended by Pub. L. 95-164, November 9, 1977) (hereinafter referred to as the Act) is a Federal statute designed to achieve safer and more healthful conditions in the nation's mines. Effective implementation of the Act and achievement of its goals depend in large part upon the active but orderly participation of miners at every level of safety and health activity. Therefore, under the Act, miners and representatives of miners are afforded a wide range of substantive and procedural rights.

Section 103(f) provides an opportunity for the miners, through their representatives, to accompany inspectors during the physical inspection of a mine, for the purpose of aiding such inspection, and to participate in pre- or post-inspection conferences held at the mine. As the Senate Committee on Human Resources stated, "If our national mine safety and health program is to be truly effective, miners will have to play an active part in the enforcement of the Act." S. Rep. No. 95-181, 95th Cong., 1st Sess., at 35 (1977). Several important purposes are served by affording representatives of miners the opportunity to accompany Mine Safety and Health Administration (MSHA) inspectors. Participation by miners' representatives will enhance miner safety and health awareness and contribute to greater understanding by miners of the safety and health requirements of the Act. In addition, participation in the inspection process by representatives of miners will directly aid the inspection itself by providing information through individuals familiar with day-to-day conditions at the mine site.

PURPOSE OF THIS INTERPRETATIVE BULLETIN

The purpose of this Bulletin is to make public certain interpretations of section 103(f) of the Act, which will guide the Secretary of Labor in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the Federal Mine Safety and Health Review Commission (Commission), or of the courts, or until the Secretary concludes, upon reexamination of an interpretation, that modification is appropriate.

TEXT OF SECTION 103(f) OF THE ACT

Section 103(f) provides:

Subject to regulations issued by the Secretary, a representative of the operator and a representative authorized by his miners shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any coal or other mine made pursuant to the provisions of subsection (a), for the purpose of aiding such inspection and to participate in pre- or post-inspection conferences held at the mine. Where there is no authorized miner representative, the Secretary or his authorized representative shall consult with a reasonable number of miners concerning matters of health and safety in such mine. Such representative of miners who is also an employee of the operator shall suffer no loss of pay during the period of his participation in the inspection made under this subsection. To the extent that the Secretary or authorized representative of the Secretary determines that more than one representative from each party would further aid the inspection, he can permit each party to have an equal number of such additional representatives. However, only one such representative of miners who is an employee of the operator shall be entitled to suffer no loss of pay during the period of such participation under the provisions of this subsection. Compliance with this subsection shall not be a jurisdictional prerequisite to the enforcement of any provision of this Act.

SCOPE

This Bulletin deals with the following subject areas:

(1) Relationship of participation right to inspections and discretion of inspectors in particular factual situations;

(2) Enforcement of participation rights;

(3) Types of activities giving rise to participation rights under section 103(f);

(4) Activities which do not give rise to participation rights;

(5) Protection against loss of pay during participation.

RELATIONSHIP OF PARTICIPATION RIGHT TO INSPECTION: DISCRETION OF AUTHORIZED REPRESENTATIVES.

Considerable discretion must be vested in inspectors in dealing with the different situations that can occur during an inspection. While every reasonable effort will be made in a given situation to provide opportunity for full participation in an inspection by a representative of miners, it must be borne in mind that the inspection itself always takes precedence. The inspector's primary duty is to carry out a thorough, detailed, and orderly inspection. The inspector cannot allow inordinate delays in commencing or conducting an inspection because of the unavailability of or confusion surrounding the identification or selection of a representative of miners. Where necessary in order to assure a proper inspection, the inspector may limit the number of representatives of the operator and miners participating in an inspection. The inspector can also require individuals asserting conflicting claims regarding their status as representatives of miners to reconcile their differences among themselves and to select a representative. If there is inordinate delay, or if the parties cannot resolve conflicting claims, the inspector is not required to resolve the conflict for the miners and may proceed with the inspection without the presence of a representative.

ENFORCING PARTICIPATION RIGHTS

Section 103(f) explicity provides that a representative authorized by the

miners shall be given an opportunity to accompany the inspector, and such representative is to suffer no loss of pay during the period of such participation. An operator's refusal to allow participation by a representative of miners, or an actual withholding of pay for the time so spent, are violations of the Act which the operator is subject to citation and penalty under sections 104 and 105 of the Act.

In addition, failure to abate such violations subjects an operator to additional civil penalties for each day during which the failure to abate continues. (section 110(b).) Under circumstances where an operator refused to allow participation by a representative of miners, each day thereafter during which an inspector is carrying out activities covered by section 103(f) will be considered a day during which the failure to correct a violaltion continues, for purposes of proposing additional civil penalties. When an operator refuses to compensate a representative of miners who is an employee of the operator at the mine and who has participated in an inspection, each day after the actual withholding of compensation will be deeded subject to proposed additional civil penalties.

It should be noted that section 104(b) of the Act provides for issuance of withdrawal orders if an inspector finds that a violation described in a citation has not been abated. Pursuant to the requirements of section 104(b), orders under that provision will be issued in cases where there has been a failure to abate violations of section 103(f). However, actual withdrawal of miners will not *ordinarily* occur in cases arising under section 103(f), because section 104(b) also requires the inspector to determine the extent of the area of the mine affected by the violation. In most cases, the area(s) of the mine affected by an operator's refusal to permit participation or to compensate the representative(s) under section 103(f) would be a matter of conjecture and could not be determined sufficient specificity. However, cases may arise where a particular condition or situation, in the opinion of the inspector, cannot be adequately evaluated in the absence of a representative of miners. In such cases, the area affected by a refusal to permit participation could be determined, and physical withdrawal of miners in the affected area would be directed in the order.

The right to accompany an inspector without loss of compensation is also an activity protected by section 105(c) of the Act, which prohibits discrimination. Section 105(c)(1) provides, in pertinent part:

> No person shall discharge or in any manner discriminate against . . . or otherwise *interfere* with the exercise of the statutory rights of any miner . . . in any coal or other mine subject to this Act because . . . of the exercise by such miner . . . on behalf of himself or others of any statutory right afforded by this Act. (emphasis added)

In discussing this provision, the Senate Committee stated:

> The Committee intends that the scope of the protected activities be broadly interpreted by the Secretary and intends it to include . . . the participation in mine inspections under [section 103(f)] . . . . Senate Report at 35.

A refusal by an operator to comply with the requirements of section 103(f) is an act which "interferes" with the exercise of statutory rights. Accordingly, the provisions of section 105(c) apply to discrimination or interference with the participation right, and a miner who believes that section 103(f) has been violated may file a discrimination complaint pursuant to section 105(c). Information regarding the filing of discrimination complaints is available at the nearest MSHA office.

TYPES OF ACTIVITIES GIVING RISE TO PARTICIPATION RIGHTS.

Section 103(f) provides a representative of miners with participation rights "during the *physical inspection* of any coal or other mine made *pursuant to* the provisions of subsection (a) [of section 103], for the purpose of *aiding* such inspection . . . ." (emphasis added).

Section 103(a) provides, in pertinent part:

> Authorized representatives of the Secretary . . . shall make frequent inspections and investigations in coal or other mines each year *for the purpose* of (1) obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of accidents, and the causes of diseases and physical impairments originating in such mines, (2) gathering information with respect to mandatory health or safety standards, (3) determining whether an imminent danger exists, and (4) determining whether there is compliance with the mandatory health or safety standards or with any citation, order, or decision issued under this title or other requirements of this Act . . . . In carrying out the requirements of clauses (3) and (4) of this subsection, the Secretary shall make inspections of each underground coal or other mine in its entirety at least four times a year, and of each surface coal or other mine in its entirety at least two times a year . . . . (emphasis added)

An inspection is made "pursuant to" section 103(a) if it is made for one of the purposes enumerated above. The inclusion of a statutory minimum number of inspections at each mine is no more than an additional requirement, clearly directed to the Secretary, which does not affect the participation right.

The types of activities which give rise to the participation right under section 103(f) are numerous, but not unlimited. Section 103(f) does not necessarily apply to every situation in which a representative of the Secretary is present at a mine. Rather, section 103(f) contemplates activities where the inspector is present for purposes of physically observing or monitoring safety and health conditions as part of a direct enforcement activity. This is indicated by the text of section 103(f) itself, which refers to "physical inspection" where the presence of miners' representatives will "aid" the inspection.

In practice, MSHA makes several types of section 103(a) inspections. Many of these inspections, more specifically, are for purposes of section 103(a)(3) and (4). MSHA makes what have come to be called "regular inspections" which are the inspections of each mine "in its entirety" required as a statutory minimum under section 103(a). In the larger mines, "regular inspections" take a period ranging from several days to more than a month, depending on the size and type of mine. In such a case, the "inspection" is an activity which occurs over an extended period of time, and it sometimes requires more than one inspector.

MSHA also makes what have come to be called "spot inspections." These inspections are likewise made for purposes of determining if an imminent danger or a violation exists, and, for many mines, they are made frequently. They are made for a variety of purposes, including electrical examinations, health examination, ventilation examinations, roof control examinations, and other purposes. Often they are made by inspector specialists who specialize in one particular type of health or safety problem such as respirable dust, ventilation control, or electrical standards. The "spot inspection," unlike the "regular inspection," is an activity that ordinarily can be completed in a single day.

In addition to such inspections, MSHA makes other inspections that are conducted for purposes of determining whether there is an imminent danger or violation at the mine. For example, MSHA makes inspections in response to requests from miners or their representatives. (Section 103(g).) It makes statutory "spot inspections" at especially hazardous mines, including mines where methane or other gases are liberated in specified quantities. (Section 103(i).) MSHA also makes inspections in conjunction with investigations of accidents to determine the causes of an accident and whether the accident resulted from violations of standards or the Act.

Because they are carried out for the purpose of determining if an imminent danger or a violation exists, the types of inspections described above are clearly conducted "pursuant to" sec-

tion 103(a). The inspector is present at the mine to physically observe or monitor safety and health conditions as part of a direct safety and health enforcement activity.

In summary, section 103(f) applies to the following types of activities:

(1) "Regular inspections,"
(2) The various kinds of "spot inspections,"
(3) Inspections conducted at the request or miners of miners' representatives,
(4) Inspections at especially hazardous mines, including mines liberating excessive amounts of explosive gases,
(5) Inspections made in conjunction with accident investigations.

It must be emphasized that MSHA carries out a wide range of activities at minesites. The administrative classification of a particular activity as an "inspection" does not necessarily control the applicability of section 103(f). While the list summarized above is generally inclusive of activities giving rise to section 103(f) rights, unusual factual situations may arise which require resolutions on a case-by-case basis. The general rule will be that the participation right under section 103(f) arise when: (1) an inspection is made for the purposes set forth in section 103(a), and (2) the inspector is present at the mine to physically observe or monitor safety and health conditions as part of direct safety and health enforcement activity.

It should be noted further that circumstances may arise in which the purposes of section 103(f) are served by having different individuals serve as the representative of miners at different times or phases of the inspection activity. For example, during an inspection of a mine in its entirety, diverse operations such as extraction, milling, and construction may be inspected. There may be different representatives of the miners who are most familiar with the areas and who should accompany the inspector during inspection of those areas. Accordingly, it must be emphasized that nothing in section 103(f) or this Bulletin requires that the same individual serve as the representative of miners throughout the course of a particular inspection activity.

ACTIVITIES NOT GIVING RISE TO PARTICIPATION RIGHT UNDER SECTION 103(f)

As previously indicated, there are occasions when purposes not directly related to enforcement activities. For example, a representative of the Secretary from the Office of Technical Support may be present to carry out technical consultation activities pursuant to section 52 of the Act. Other such activities include demonstration of prototype equipment, the providing of education and training services, activities in conjunction with health and safety research, or general information-gathering. In addition, a representative of the Secretary may also be present at a mine to carry out investigations relating to variances under § 101(c) of the Act. (Special provision is made in § 101(c) for the representative of miners to be furnished notice and afforded an opportunity for party status in variance proceedings.)

In these types of activities, while there may sometimes be a need to physically observe or monitor certain conditions or practices, this aspect of the overall primary activity is incidental to other purposes. Although enforcement action could result from certain of these activities, the relationship of the activities to enforcement of safety and health requirements is indirect, or the activity is being carried out in accordance with other duties under the Act. The continuing presence of a representative of miners in all phases of these activities would not necessarily aid the activity.

A clear distinction between "physical inspection" and other activities cannot always be maintained. Sometimes, a representative or representatives of the Secretary may be present for several purposes at a mine. For example, investigation of a discrimination complaint made under section 105(c) could also involve, be conducted concurrently with, or result in inspection activity for direct safety and health enforcement. Also, to the extent that investigation into criminal liability forms a discrete or identifiable phase of an activity or may be conducted separately, participation rights under section 103(f) would not arise, because of the special nature of the activity.

In summary, section 103(f) is not generally deemed to apply to:

(1) Technical consultations,
(2) Demonstration of prototype equipment,
(3) Education and training services,
(4) Safety and health research,
(5) General information-gathering,
(6) Investigations into criminal liability, insofar as such activities comprise a discrete activity,
(7) Investigations of discrimination complaints,
(8) Investigations and other activities pursuant to a petition for variance,
(9) Field certification of permissible equipment.

Again, it must be emphasized that MSHA carries out a wide range of activities at minesites. The administrative classification of a particular activity as an "inspection" does not necessarily control the applicability of section 103(f). While the list summarized above is generally inclusive of activities which do not give rise to section 103(f) rights, unusual or unforeseen situations may arise requiring resolution on a case-by-case basis. Furthermore, MSHA may develop new programs or innovations in present approaches and techniques. But under any circumstances, it should be noted that even during the course of MSHA activities which would not ordinarily give rise to section 103(f) rights, a representative of the Secretary may determine that an enforcement inspection is warranted, and a so-called "regular" or "spot" inspection may result, giving rise to a right of participation by miners' representatives.

Finally, it must also be emphasized that, while the section 103(f) right to accompany an inspector does not always arise, miners and their representatives remain protected against reprisals or discrimination in any form because of cooperation with the representative of the Secretary who is conducting activities at the mine.

PROTECTION AGAINST LOSS OF PAY DURING PARTICIPATION: GENERAL

In addition to providing the representative of the miners with the right to accompany the inspector, Congress guaranteed that the representative would suffer no loss of pay for the time during which the representative exercises this right. Thus, the right to accompany the inspector and the right to compensation for the time spent exercising this right stand together. Otherwise, if the representative of the miners suffered a loss of pay because of accompanying the inspector, the representative of miners would be placed in the situation of having to elect to sustain an economic loss in order to exercise a valuable statutory right. The Senate Committee recognized that it would be ineffective to provide the participation right without the right to suffer no loss of compensation for the time spent exercising this right when it said that:

> To encourage such miner participation it is the Committee's intention that the miner who participates in such inspection and conferences be fully compensated by the operator for time thus spent. Senate Report at 28.

As a remedial provision, whose fundamental purpose is to encourage participation by miners in inspections through their representatives, section 103(f) must be construed in a manner which accomplishes this purpose. See *International Union, United Mine Workers of America* v. *Kleppe*, 532 F. 2d 1403 (D.C. Cir.), cert. denied sub nom. *Bituminous Coal Operators Assn., Inc.* v. *Kleppe*, 429 U.S. 858 (1976); *Freeman Coal Mining Company* v. *Interior Board of Mine Operations Appeals*, 504 F. 2d 741 (7th Cir. 1974); *Reliable Coal Corp.* v. *Morton*, 478 F. 2d 257 (4th Cir. 1973).

SCOPE OF PROTECTION AGAINST LOSS OF PAY

As a general matter, the protection against loss of pay during participa-

tion in inspections is as broad as the participation right itself. As indicated previously, when section 103(f) refers to inspections conducted "pursuant to" section 103(a), "pursuant to" applies to the inspections conducted for purposes of section 103(a) (1)-(4). The participation right, and the right to suffer no loss of pay, is not limited to the statutory minimum number of inspections required to be carried out annually by the Secretary.

LIMITATION ON PROTECTION AGAINST LOSS OF PAY

The general rule established by section 103(f) is that the participation right gives rise to a corresponding protection against loss of pay. "(A) representative authorized by his miners shall be given an opportunity to accompany * * * Such representative of miners * * * shall suffer no loss of pay."

The only limitation on this general rule is found in section 103(f) itself, and must be viewed in the context in which it appears. The limiting language occurs toward the end of section 103(f), to wit:

> To the extent that the Secretary or authorized representative of the Secretary determines that more than one representative from each party would further aid the inspection, he can permit each party to have an equal number of such additional representatives. However, only *one such representative* of miners who is an employee of the operator shall be entitled to suffer no loss of pay during the period of such participation under the provisions of this subsection * * * (italic added)

This limitation—"one such representative"—directly follows a provision authorizing an inspector to allow more than one representative of miners to accompany him. The limitation is linked directly to the preceding sentence by the word "However," and affects only that sentence. Thus, where there is a single inspector, that inspector may allow more than one representative of miners to accompany him—*however*, only one such representative is entitled to suffer no loss of pay.

In situations where there is a single inspector on the mine property, the limit on the protection against loss of compensation is clear. Under this particular provision, a single inspector may, in his discretion, allow more than one representative of miners to accompany the inspection, but only one of those representatives of miners is entitled to suffer no loss of pay. This type of situation can arise, for example, where there are several unions at a given minesite.

However, there are also occasions when there is more than one inspector at a mine, such as when the mine is so large that it is necessary to send several inspectors in order to most effectively or efficiently conduct inspection activity. Inspectors may also arrive to conduct special "spot inspections" at a mine where a "regular inspection" of the mine is already in progress. There are also situations when several inspectors are dispatched to a mine at which there are special safety and health problems needing concentrated attention. Where more than one inspector is on the mine property at the same time, the inspectors frequently go to different areas of the mine, and for all practical purposes, they could be inspecting different mines.

Under such circumstances, if representatives of miners are accompanying each inspector, one such representative accompanying each inspector is protected against loss of pay. If, regardless of the number of inspectors engaged in inspection activity at a mine, one and only one representative of miners were protected against loss of pay, an anomaly would result in that the decision to send several inspectors, rather than a single inspector, to a mine would adversely impact the protection against loss of pay, thereby eroding the participation right itself. The manner in which inspectors were assigned would thus determine the scope of a statutory right. In addition, as previously indicated, the occasions when several inspectors are at a mine frequently include inspections of larger mines or mines with special problems requiring concentrated attention. It is precisely in those mines that participation by miners' representatives will ordinarily be most helpful. Moreover, the total time required to complete an inspection of a mine would be shorter if more inspectors are involved and they are inspecting different areas of the mine. Thus, on such occasions, the total outlay in wages necessary to protect representatives of miners against loss of pay would be approximately the same, whether there is a single inspector accompanied by a single paid representative of miners for a longer period of time or several inspectors each accompanied by a paid representative of miners for a proportionately shorter period of time.

However, in situations where there are several inspectors who are proceeding together as a group on inspection activity, the limitation on loss of pay would apply. Only one representative accompanying the single group of inspectors would be entitled to suffer no loss of pay.

It should be noted that section 103(f) simply sets forth certain basic statutory participation rights of miners' representatives in inspection activity. Nothing in section 103(f) operates to reduce additional rights arising pursuant to existing agreements between mine operators and their employees, nor does section 103(f) preclude voluntary agreements between operators and employees to extend rights beyond those afforded by the Act.

Dated: April 19, 1978.

ROBERT B. LAGATHER,
Assistant Secretary, Mine Safety and Health Administration.

[FR Doc. 78-11206 Filed 4-24-78; 8:45 am]

[4510-28]

DEPARTMENT OF LABOR

Office of the Secretary

[TA-W-2687]

A.F.T. MOTOR FREIGHT, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2687: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 1, 1977, in response to a worker petition received on November 23, 1977, which was filed on behalf of workers and former workers engaged in transportation operations at A.F.T. Motor Freight, Inc., Conshohocken, Pa.

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63485). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of A.F.T. Motor Freight, Inc., and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. The Department has determined that services are not "articles" within the meaning of section 222 of the Act, and that independent firms for which the subject firm provides services cannot be considered to be the "workers' firm."

The Departments's investigation revealed that A.F.T. Motor Freight, Inc. is a trucking company that transported steel products for the Alan Wood Steel Co. A.F.T. Motor Freight, Inc. is not owned or controlled by the Alan Wood Steel Co. and is not involved in the production of any product(s).

A.F.T. Motor Freight, Inc. ceased transportation operations on September 12, 1977, when the Alan Wood Steel Co. closed down. All employees of A.F.T. Motor Freight, Inc. were engaged exclusively in transportation operations, and were given the opportunity to work elsewhere when the company closed.

A.F.T. Motor Freight, Inc. does not produce an article within the meaning of section 222(3) of the Act and this Department has already determined that the performance of services are not covered by the adjustment assistance program; see Notice of Determination in *Pan American World Airways, Inc.* (TA-W-153, 40 FR 54639). A.F.T. Motor Freight, Inc. performed a service; transportation operations. The only question in this case is whether any customers of A.F.T. Motor Freight, Inc. i.e., firms which produce an article, namely steel, and for whom the service is provided, can be considered the "workers' firm." See Notice of Determination in *Nu-Car Driveway, Inc.* (TA-W-393, 41 FR 12749).

No customer of the A.F.T. Motor Freight, Inc. nor the subject firm is financially, corporately, or otherwise involved in the business of the other. The workers on whose behalf this petition was filed were hired and paid by the subject to the control of A.F.T. Motor Freight, Inc. personnel only. All employment benefits which they enjoy are provided and maintained by A.T.F. Motor Freight. Inc.

CONCLUSION

After careful review, I determine that workers of A.F.T. Motor Freight Inc., Conshohocken, Pa. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 14th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research

[FR Doc. 78-11061 Filed 4-24-78; 8:45 am]

[4510-28]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 5, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 5, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 6th day of April 1978.

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Allegheny-Ludlum Steel Corp. (USWA).	Brackenridge, Pa	Mar. 27, 1978	Mar. 21, 1978	TA-W-3,473	Stainless steel sheet and plate, high speed and tool steel.
Do	West Leechburgh, Pa	do	do	TA-W-3,474	Stainless steel strip and coil tool steel and selectron steel.
Bi-Flex Marion, Inc. (ILGWU).	Marion, Ala	do	do	TA-W-3,475	Bras and girdles.
Cardone & Baker Shoe Inc. (United Shoe Workers of America).	Brooklyn, N.Y	Mar. 30, 1978	Mar. 17 1978	TA-W-3,476	Women's shoes.
Copa Coats, Inc. (workers)	Lindenhurst, N.Y	Mar. 27, 1978	Mar. 22, 1978	TA-W-3,477	Ladies' coats.
Alvin J. Eckhart Co. (company).	Ephrata, Pa	Mar. 7, 1978	Mar. 2, 1978	TA-W-3,478	Cutting of trees and finishing the logs into various sizes of lumber.
Evy Footwear Co., Inc. (company).	New York, N.Y	Mar. 27, 1978	Mar. 23, 1978	TA-W-3,479	Selling of ladies' shoes and boots produced by Altoona Shoe Co., Inc., and Fairfoot Shoe Co., Inc.
Jarmel Fabrics, Inc. (company).		do			
		Mar. 24, 1978	Mar. 20, 1978	TA-W-3,480	Double knit polyester fabrics.
Pennsylvania Tire & Rubber Co. of Mississippi, Inc. (URW).	Tupelo, Miss	Mar. 30, 1978	do	TA-W-3,481	Automobile and truck tires.
Spun Steel Co. (UAW)	Canton, Ohio	Mar. 27, 1978	Mar. 22, 1978	TA-W-3,482	Spun steel automotive pulleys.
VSD Clothing Co. (ILGWU)	Newburgh, N.Y	do	Mar. 21, 1978	TA-W-3,483	Women's rainwear.

[FR Doc. 78-11058 Filed 4-24-78; 8:45 am]

[4510-28]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

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The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 5, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 5, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of March 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Alpha Handbag Corp (workers).	New York, N.Y	Mar. 20, 1978	Feb. 24, 1978	TA-W-3,445	Ladies' handbags.
Sangamo Weston, Inc. (International Union United Automobile, Aerospace and Agricultural Implement Workers of America).	Springfield, Ill	Mar. 21, 1978	Mar. 14, 1978	TA-W-3,446	Electrical measuring meters, transformers, and data recording equipment.
F & A Fashions (ILGWU)	Long Branch, N.J	Feb. 24, 1978	Feb. 21, 1978	TA-W-3,447	Children's coats.
Hy-Gain de Puerto Rico, Inc. (workers).	Humaco, P.R	Mar. 13, 1978	Mar. 8, 1978	TA-W-3,448	Citizen band radios, base stations, mobile sets, hand-held units, and mobile antennas.
Imperial Reading Corp., LaFollette Shirt Division (USWA).	LaFollette, Tenn	do	Feb. 8, 1978	TA-W-3,449	Men's dress shirts.
Interlake, Inc. (USWA)	Chicago, Ill	Mar. 10, 1978	Mar. 7, 1978	TA-W-3,450	Molten iron.
National Apparel Industries (workers).	New York, N.Y	Mar. 21, 1978	Mar. 17, 1978	TA-W-4,451	Selling of raincoats manufactured by Raincraft Corp.
Parker-Hannifin Corp., Parker Seal Division (UAW).	Lexington, Ky	do	Mar. 20, 1978	TA-W-3,452	Lathe cuts used to seal liquids on various types of equipment.
Raincraft Corp. (workers)	Farmingdale, N.Y	do	Mar. 17, 1978	TA-W-3,453	Men's raincoats.
Reidbord Bros. Co. (workers)	Buckhannon, W.Va	do	Mar. 16, 1978	TA-W-3,454	Men's slacks.
St. Joe Zinc Co., Zinc Smelting Division (USWA).	Monaca, Pa	Mar. 13, 1978	Mar. 10, 1978	TA-W-3,455	Mining of zinc metal and zinc oxide.
Stylish Sportswear Co., Inc. (company).	New York, N.Y	Mar. 21, 1978	Mar. 17, 1978	TA-W-3,456	Ladies' sportswear such as slacks, tops, and shorts.
Textron Corp., Shuron plant (USWA).	Tampa, Fla	do	Mar. 20, 1978	TA-W-3,457	Opthomic lenses.
Union Carbide Corp., Metals Division (USWA).	Hot Springs, Ark	Mar. 22, 1978	do	TA-W-3,458	Mining and processing of vanadium ore.
Universal Coat Co. (workers)	Bayshore, N.Y	Mar. 16, 1978	Mar. 3, 1978	TA-W-3,459	Ladies' coats and raincoats.
Weathercraft Manufacturing Industries (workers).	New York, N. Y	Mar. 21, 1978	Mar. 17, 1978	TA-W-3,460	Selling of raincoats produced by Raincraft Corp.

[FR Doc. 78-11059 Filed 4-24-78; 8:45 am]

[4510-28]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 5, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 5, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 13th day of April 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Jean Authur Sportswear (company).	Jersey City, N.J	Apr. 3, 1978	Mar. 28, 1978	TA-W-3,504	Cutting and sewing of women's knitted clothing.
Bentley Knitwear Corp., (ILGWU).	Brooklyn, N.Y	Mar. 27, 1978	Mar. 17, 1978	TA-W-3,505	Women's sportswear.
Cath-Car Textile Co., Inc. (workers).	Clifton N.J	Apr. 6, 1978	Apr. 5, 1978	TA-W-3,506	Fabrics for the home sewing trade and the apparel industry.
D & M Uniform Co., Inc. (company).	Salem, Mass	Apr. 3, 1978	Mar. 27, 1978	TA-W-3,507	Women's blouses and shirts.
Florsheim Shoe Co. (United Shoe Workers of America).	Olney, Ill	do	Mar. 23, 1978	TA-W-3,508	Men's shoes and boots.
Jubilee Coat, Inc. (ILGWU).	New York, N.Y	Apr. 4, 1978	Mar. 27, 1978	TA-W-3,509	Women's coats.
Lehigh Structural Steel Co. (workers).	Allentown, Pa	do	Mar. 29, 1978	TA-W-3,510	Fabricated steel transmission towers used for the transmission of electric power.
Phelps Dodge Refining Corp. (USWA).	El Paso, Tex	Apr. 3, 1978	Mar. 30, 1978	TA-W-3,511	Electrolytically refines copper.
Timex Components, Inc. (IUE).	Somerset, N.J	Apr. 4, 1978	Mar. 29, 1978	TA-W-3,512	Liquid crystals and displays for digital watches.
Thermatomic Carbon Co. (Oil, Chemical and Atomic Workers International Union).	Sterlington, La	Apr. 5, 1978	Mar. 30, 1978	TA-W-3,513	Thermal grade carbon blacks.

[FR Doc. 78-11060 Filed 4-24-78; 8:45 am]

[4510-28]

[TA-W-2819]

DIRECT REDUCTION DIVISION, GILMORE STEEL CORP., PORTLAND, OREG.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2819: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 27, 1977 in response to a worker petition received on December 8, which was filed by the United Steelworkers of America on behalf of workers and former workers producing iron and steel products at the Direct Reduction Division, Gilmore Steel Corp., Portland, Oreg. The investigation revealed that pelletized iron ore is produced at the plant.

The Notice of Investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1555). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Gilmore Steel Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increased imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations,

or threat thereof, and to the absolute decline in sales or production.

The Direct Reduction Division of Gilmore Steel Corp. is a captive supplier of pelletized iron ore to the Oregon Steel Mills Division of Gilmore Steel Corp. These divisions constitute a fully integrated production unit manufacturing carbon steel plate. Workers at the Oregon Steel Mills Division were on strike from September 1, 1977 through January 20, 1978. This strike forced the Direct Reduction Division to close down for lack of work. These were the only separations at the plant during the period covered by this petition.

CONCLUSION

After careful review I conclude that all workers at the Direct Reduction Division, Gilmore Steel Corp., Portland, Oreg. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 14th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11062 Filed 4-24-78; 8:45 am]

[4510-28]

[TA-W-2877]

HENNOCH MANUFACTURING CONTRACTING CORP., EAST ELMHURST, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2877: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on January 9, 1978 in response to a worker petition received on December 20, 1977, which was filed on behalf of workers and former workers producing juniors' and ladies' sportswear at Hennoch Manufacturing Contracting Corp., East Elmhurst, N.Y. During the course of the investigation, it was established that the workers produce women's and juniors' knitted T-shirts and tops.

The notice of investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3778). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Hennoch Manufacturing Contracting Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of women's, misses' and children's blouses and shirts increased from 26.11 million dozens in 1975 to 30.27 million dozens in 1976. Imports increased from 24.02 million dozens in the first nine months of 1976 to 24.04 million dozens in the same period in 1977.

The ratio of imports to domestic production increased from 70.4 percent in 1975 to 74.8 percent in 1976.

Hennoch Manufacturing Contracting Corp. is a contractor producing women's and juniors' knitted T-shirts and tops under contract from other companies. One of these companies, accounting for nearly half of Hennoch's production, decreased orders from Hennoch while increasing its imports of tops in 1976 and 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's and juniors' tops and T-shirts produced at Hennoch Manufacturing Contracting Corp., East Elmhurst, N.Y., contributed importantly to the decrease in production and to the total or partial separation of the workers at the company. In accordance with the provisions of the Act, I make the following certification:

All workers at Hennoch Manufacturing Contracting Corp., East Elmhurst, N.Y., who became totally or partially separated from employment on or after December 14, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 14th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11063 Filed 4-24-78; 8:45 am]

[4510-28]

[TA-W-2492; TA-W-2763]

JONES AND LAUGHLIN STEEL CORP., SPECIALTY STEEL, CONDUIT DIVISION, NEW KENSINGTON, PA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2492 and TA-W-2763: Investi-

gations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

Investigation TA-W-2492 was initiated on October 20, 1977 in response to a worker petition received on October 13, 1977 which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers and former workers producing steel conduit pipe, tubing and galvanized pipe at Jones and Laughlin Steel Corp., Specialty Steel, Conduit Division, New Kensington, Pa. Investigation TA-W-2763 was initiated on December 12, 1977 in response to a worker petition received on December 2, 1977 which was filed on behalf of salaried workers at the Conduit Division.

The Notice of Investigation pertaining to TA-W-2492 was published in the FEDERAL REGISTER on November 1, 1977 (42 FR 57174). The Notice of Investigation pertaining to TA-W-2763 was published in the FEDERAL REGISTER on December 30, 1977 (42 FR 65306). No public hearings were requested and none were held.

The information upon which the determination was made was obtained principally from officials of Jones and Laughlin Steel Corp., its customers, the U.S. International Trade Commission, the U.S. Department of Commerce, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that the impact of imports in the domestic market for steel conduit pipe has been small. Although imports of steel conduit increased from 904 short tons in 1975 to 5,078 short tons in 1976, over 98 percent of the imports represented fittings for conduit pipe as opposed to conduit pipe itself. Imports decreased from 848 short tons during the period January-September 1976 to 661 short tons during the same period in 1977. Only twice during the years 1972 to 1977 did the ratio of imports of steel conduit to domestic production exceed 1 percent. The ratio increased from 0.32 percent in 1975 to 1.7 percent in 1976. The ratio then decreased from 0.36 percent during the period January-September 1976 to 0.29 percent during the same period in 1977.

A survey of New Kensington's customers reflects the minor influence of imports of steel conduit in the market served by New Kensington. No customers who responded to the survey purchased imported conduit in either 1976 or 1977. Decreased purchases from New Kensington were attributed to a reduced level in the domestic construction industry and increased purchases from other domestic sources.

CONCLUSION

After careful review of the facts obtained in the investigation, I determine that all workers at Jones and Laughlin Steel Corp., Specialty Steel, Conduit Division, New Kensington, Pa. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 14th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11064 Filed 4-24-78; 8:45 am]

[4510-28]

[TA-W-2547]

LESNOW MANUFACTURING CO., INC., EASTHAMPTON, MASS.

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2547: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 1, 1977, in response to a worker petition received on October 27, 1977, which was filed on behalf of workers and former workers producing men's clothing at the Lesnow Manufacturing Co., Inc., Easthampton, Mass.

During the course of the investigation it was established that the firm produces men's suits, sportcoats, and outercoats.

The notice of investigation was published in the FEDERAL REGISTER on November 15, 1977 (42 FR 59131). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Lesnow Manufacturing Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. With respect to workers producing men's overcoats, without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations of workers, or threat thereof, and to the decline in sales or production.

Evidence developed during the course of the investigation revealed that the manufacturer for whom the subject firm produces outercoats indicated that it increase contract work with the subject firm in 1976 compared to 1975 and in the first three quarters of 1977 compared to the first three quarters of 1976. This manufacturer did not purchase any imported men's outercoats since 1975.

With respect to workers producing men's suits and sportcoats, all of the group eligibility requirements of section 222 of the Act have been met.

Imports of men's and boys' sportcoats and dress coats increased from 4.35 million units in 1972 to 5.47 million units in 1975. Imports increased to 6.97 million units in 1976, an increase of 25.7 percent over the previous year. Imports decreased from 5.69 million units in the first three quarters of 1976 to 4.66 million units in the first three quarters of 1977, a decline of 18.2 percent. The ratio of imports to domestic production rose every year from 16.1 percent in 1972 to 28.2 percent in 1975, and rose to 32.4 percent in 1976.

Imports of men's and boys' suits increased annually from 1.95 million units in 1972 to 3.11 million units in 1975, and further increased to 3.56 million units in 1976. Imports increased 24.5 percent from 2.52 million units in the first three quarters of 1976 to 3.13 million units in the same period of 1977. The ratio of imports to domestic production increased each year from 8.7 percent in 1972 to 18.3 percent in 1975. In 1976 the ratio further increased to 20.0 percent.

A survey of manufacturers for whom the subject firm performs contract work indicated that a manufacturer, which accounted for a significant proportion of the subject firm's value of contract work for men's suits and sportcoats, substantially decreased contract work with the subject firm in 1977 compared to 1976. Total sales for this manufacturer declined during these periods. A major customer of this manufacturer indicated that it increased purchases of imported suits and sportcoats and decreased purchases of domestically producted suits and sportcoats in 1977 compared to 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's suits and sportcoats producted by Lesnow Manufacturing Co., Inc., Easthampton, Mass., contributed importantly to the decline in the vaue of contract work and to the separations of workers at that firm. In accordance with the providions of the Act, I make the following certification:

All workers of Lesnow Manufacturing Co., Inc., Easthampton, Mass., engaged in employment related to the production of men's suits and sportcoats who became totally or partially separated from employment on or after October 1, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further conclude that workers engaged in employment related to the production of men's outercoats are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 14th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11065 Filed 4-24-78; 8:45 am]

[4510-28]

[TA-W-2533]

MEDALIST OF SIKESTON, SIKESTON, MO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2533: Investigation regarding certification of eligibility to apply for worker adjustment assitance as prescribed in section 222 of the Act.

The investigation was initiated on October 31, 1977, in response to a worker petition received on October 25, 1977, which was filed on behalf of workers and former workers producing caps, grass catchers, and athletic equipment at Medalist of Sikeston, Sikeston, Mo. Workers producing caps have already been certified as eligible to apply for adjustment assistance (see TA-W-1691), therefore this investigation covered only grass catchers and athletic equipment.

The Notice of Investigation was published in the FEDERAL REGISTER on November 15, 1977 (42 FR 59131). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Medalist of Sikeston, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met with respect to workers producing grass catchers and athletic equipment.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

GRASS CATCHERS

Industry sources reveal that there are no imports of grass catchers for sale with domestically made lawn mowers. Imports of grass catchers as a component part of foreign made lawn mowers are insignificant since high shipping charges and import duties make imported lawn mowers uncompetitive with domestically manufactured lawn mowers. The Department's survey of Medalist's customers purchasing grass catchers supported the findings on aggregate imports.

ATHLETIC EQUIPMENT

The Department surveyed some of Medalist's customers of athletic equipment. Most of the respondents did not purchase any equipment from foreign sources.

CONCLUSION

After careful review I conclude that workers engaged in employment related to the production of grass catchers and athletic equipment at Medalist of Sikeston, Sikeston, Mo., are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

All workers engaged in employment related to the production of caps previously certified as eligible to apply for adjustment assistance under TA-W-1641 continue to be eligible.

Signed at Washington, D.C., this 14th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning

[FR Doc. 78-11066 Filed 4-24-78; 8:45 am]

[4510-28]

[TA-W-2559]

MODERN CLOTHING CO., HAMMONTON, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W—2559: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 3, 1977, in response to a worker petition received on October 28, 1977, which was filed on behalf of workers and former workers producing women's sportswear at the Modern Clothing Co. of Hammonton, N.J. During the course of the investigation, it was established that women's outer coats and capes were produced prior to January of 1977.

The notice of investigation was published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59583). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Modern Clothing Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in production.

A survey of the manufacturers that contracted with Modern Clothing Co. for the production of women's outer coats and capes indicated that these manufacturers neither purchased imported items from domestic sources nor imported directly during 1975 and 1976. These manufacturers, which experienced increased sales from 1975 to 1976, increased contract work with other domestic contractors during that period. Modern Clothing ceased the production of outer coats and capes in December 1976.

A survey of the sole manufacturers that contracted with Modern Clothing Co. in 1977 for the production of women's sportswear (coats, jacket blouses, and vests) indicated that this manufacturer decreased purchases of imports in 1977. This manufacturer, which experienced increased sales in 1977 compared to 1976, increased contract work with other domestic contractors.

CONCLUSION

After careful review I conclude that all workers at the Modern Clothing Co., Hammonton, N.J., are denied eligibility to apply for adjustment assis-

tant under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 14th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11067 Filed 4-24-78; 8:45 am]

[4510-28]

[TA-W-2826]

PRESTONSBURG SHOE CO., PRESTONSBURG, KY.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2826: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 28, 1977, in response to a worker petition received on December 12, 1977, which was filed on behalf of workers and former workers producing women's nonrubber footwear at the Prestonsburg Shoe Co., Prestonsburg, Ky., a plant of the U.S. Shoe Corp., Cincinnati, Ohio.

The notice of investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1554). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the U.S. Shoe Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's nonrubber footwear increased from 183.5 million pairs in 1975 to 183.8 million pairs in 1976, and declined to 134.4 million pairs in the first nine months of 1977 compared to 147.6 million pairs for the same period in 1976.

The imports to domestic production ratio for women's nonrubber footwear decreased from 119.1 percent in 1975 to 117.9 percent in 1976, and then increased in 124.9 percent in the first 9 months of 1977 compared to 119.9 percent in the same period of 1976.

The International Trade Commission recently found that certain footwear articles, including women's nonrubber shoes, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to domestic producers. In the women's nonrubber footwear industry, the ratio of imports to domestic production has been greater than 99 percent in each of the past 5 years, reaching a peak level of 124.9 percent in the first 9 months of 1977.

Imports of women's footwear by U.S. Shoe increased from 16.9 percent of total sales in 1976 to 17.0 percent of total sales in 1977.

A Department survey of retail customers of the U.S. Shoe Corp. indicated that many increased purchases of imported women's footwear in 1976 and 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's nonrubber footwear produced at the Prestonsburg, Ky., plant of the U.S. Shoe Corp., contributed importantly to the decline in sales and production and to the total or partial separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Prestonsburg Shoe Co., Prestonsburg, Ky., a plant of the U.S. Shoe Corp., Cincinnati, Ohio, who became totally or partially separated from employment on or after October 29, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 14th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11068 Filed 4-24-78; 8:45 am]

[4510-28]

[TA-W-3089]

SUPERIOR TUBE CO., WAPAKONETA, OHIO

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3089: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 7, 1978, in response to a worker petition received on January 10, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers producing carbon steel products at the Wapakoneta, Ohio, plant of Superior Tube Co. The investigation revealed that specialty tubing is produced at the plant.

The notice of investigation was published in the FEDERAL REGISTER on February 24, 1978 (43 FR 7744). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Superior Tube Co., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales of specialty tubing produced at the Wapakoneta, Ohio, plant of Superior Tube Co. increased in 1977 from 1976. Sales increased in every quarter of 1977 compared to the like quarter in 1976. Superior produces to order, therefore sales equal production.

CONCLUSION

After careful review I conclude that all workers at the Wapakoneta, Ohio, plant of Superior Tube Co. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 14th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11069 Filed 4-24-78; 8:45 am]

[4510-28]

[TA-W-2540]

RIVERSIDE MANUFACTURING CO., INC., NEW BEDFORD, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2540: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 1, 1977, in response to a worker petition received on October 26, 1977, which was filed on behalf of workers and former workers producing men's, women's, and young men's sportswear and outerwear at the Riverside Manufacturing Co., Inc., New Bedford, Mass. The investigation revealed that men's suit coats and sportcoats are produced at Riverside Manufacturing Co., Inc.

The notice of investigation was published in the FEDERAL REGISTER on November 15, 1977 (42 FR 59131). No

public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Riverside Manufacturing Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Riverside Manufacturing began operations in January 1976. Employment increased in the first 9 months of 1977 compared to the same period in 1976.

A sample survey of Riverside's customers indicated that they did not purchase any imports in 1976 and 1977.

CONCLUSION

After careful review I conclude that all workers at Riverside Manufacturing Co., Inc., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 14th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11070 Filed 4-24-78; 8:45 am]

[4510-28]

[TA-W-2684]

THOMPSON STEEL CO., INC., SPARROWS POINT, MD.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2684: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 30, 1977, in response to a worker petition received on November 17, 1977, which was filed on behalf of workers and former workers producing cold-rolled sheet and strip steel at the Sparrows Point, Md., plant of Thompson Steel Co., Inc.

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63488). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Thompson Steel Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that workers at the subject firm did not produce cold-rolled sheet steel as alleged in the petition, but produced only cold-rolled strip steel.

Imports of cold-rolled strip steel declined to 32,100 tons in the first 9 months of 1977 compared to 32,600 tons in the same period of 1976. The ratio of imports to domestic production also declined to 4.8 percent in the first 9 months of 1977 compared to 5.1 percent in the same period of 1976.

A survey of customers of the subject firm revealed that of those customers who decreased purchases of cold-rolled strip steel in 1976 compared to 1975 and 1977 compared to 1976, none purchased imports of cold-rolled strip steel.

CONCLUSION

After careful review I conclude that all workers at the Sparrows Point, Md., plant of Thompson Steel Co., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 14th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-11071 Filed 4-24-78; 8:45 am]
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[4510-28]

[TA-W-2850]

U.S. STEEL CORP., CORPORATE HEADQUARTERS, PITTSBURGH, PA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2850: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 4, 1978, in response to a worker petition received on December 15, 1977, which was filed on behalf of all workers at the Corporate Headquarters of the U.S. Steel Corp. in Pittsburgh, Pa.

The notice of investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3777). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the U.S. Steel Corp. and its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. It is concluded that all of the criteria have been met.

The Corporate Headquarters performs services necessary to support the production of all of the steel products produced by the U.S. Steel Corp. Employees at various company manufacturing facilities engaged in employment related to the production of approximately 50 percent of the company's total 1976 production have previously been certified eligible to apply for trade adjustment assistance benefits with impact dates ranging from October 15, 1975, through June 26, 1977. See Department notices of determinations for TA-W- 1292, 1429, 1431, 1433, 1438, 1439, 1444, 1447, 1449, 1451, 1452, and 2135.

Layoffs of salaried workers at the Corporate Headquarters staff of U.S. Steel Corp. in Pittsburgh began in March 1977 and continued throughout 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the steel products produced at various locations of the U.S. Steel Corp. have contributed importantly to the total or partial separation of workers at the U.S. Steel Corp.'s Corporate Headquarters in Pittsburgh, Pa. In accordance with the provisions of the Act, I make the following certification:

All workers at the U.S. Steel Corp.'s Corporate Headquarters in Pittsburgh, Pa., who became totally or partially separated from employment on or after March 1, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 14th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-11072 Filed 4-24-78; 8:45 am]

[7536-01]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

FEDERAL COUNCIL ON THE ARTS AND THE HUMANITIES ARTS AND ARTIFACTS INDEMNITY PANEL ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 2401 E Street NW., Washington, D.C. 20506 in the Fourteenth Floor Conference Room, from 9:30 a.m. to 5:30 p.m. on May 22, 1978.

The purpose of the meeting is to review applications for certificates of indemnity submitted to the Federal Council on the Arts and the Humanities for exhibits beginning after July 1, 1978.

Because the proposed meeting will consider commercial and financial data and because it is important to keep values of objects, methods of transportation, and security measures confidential, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 16, 1978, I have determined that the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552b(c) 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. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-11135 Filed 4-24-78; 8:45 am]

[7536-01]

NATIONAL COUNCIL ON THE HUMANITIES ADVISORY COMMITTEE

Meeting

APRIL 19, 1978.

Pursuant to the Provisions of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a meeting of the National Council on the Humanities will be conducted at Washington, D.C., on May 11-12, 1978.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Shoreham Building, 806 15th Street NW., 1st Floor Conference Room, Washington, D.C. The session of the proposed meeting on May 11, 1978, and the afternoon session on May 12, 1978, will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy. Pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) 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.

The morning session on May 12, 1978, will convene at 8:30 a.m. and will be open to the public. The agenda for the morning session will be as follows:

MINUTES OF THE PREVIOUS MEETING

Reports
- A. Chairman's Introductory Remarks
- B. Introduction of New Staff
- C. Summary of Recent Business
- D. Chairman's Grants
- E. Application Report
- F. Gifts and Matching Report
- G. Federal Reorganization
- H. Evaluation
- I. Fiscal year 1979 Appropriations

The remainder of the proposed meeting will be closed to the public.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 78-11136 Filed 4-24-78; 8:45 am]

[7536-01]

FEDERAL GRAPHICS EVALUATION ADVISORY PANEL

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Federal Graphics Evaluation Advisory Panel to the National Endowment for the Arts will be held on May 10, 1978, from 10 a.m. to 1 p.m. in Room 0345 South of the Department of Agriculture, Washington, D.C.

This meeting will be open to the public on a space available basis. Accommodations are limited. Interested persons may submit written statements to the panel.

The agenda for this meeting will include evaluation of graphics materials of the Department of Agriculture.

Further information with reference to this meeting can be obtained from Mr. Jerome Perlmutter, Coordinator of Federal Graphics, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-4286.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

APRIL 19, 1978.

[FR Doc. 78-1147 Filed 4-24-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Revised Meeting

The meeting notice for the meeting to be held on May 4-6, 1978 (published on April 19, 1978, FEDERAL REGISTER Volume 43, p. 16575) is revised as detailed below. This revision involves the scheduling of an additional half-day, May 6, 1978 in order to complete the preparation of the Committee's reports.

SATURDAY, MAY 6, 1978

8:30 a.m.-12:30 p.m. Executive Session (Open)—The Committee will complete preparation of its reports to the NRC regarding the Indian Point Nuclear Generating Station, Unit 3, the Maine Yankee Atomic Power Station, and Liquid Pathway Generic Study. Also, the Committee will complete its consideration of items discussed during this meeting.

Dated: April 19, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-11090 Filed 4-24-78; 8:45 am]

[7590-01]

[NUREG-75/087]

REVISION TO THE STANDARD REVIEW PLAN

Issuance and Availability

As a continuation of the updating program for the Standard Review

Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to section Nos. 2.3.1 and 2.3.2 of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear powerplants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Powerplants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to section Nos. 2.3.1 and 2.3.2 is $4 per section. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 (5 U.S.C. 552(a)).

Dated at Bethesda, Md. this 18th day of April, 1978.

For the U.S. Nuclear Regulatory Commission.

DANIEL R. MULLER,
Deputy Director, Division of Site Safety and Environmental Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 78-11091 Filed 4-24-78; 8:45 am]

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on April 5, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institute of Education, Exploratory Study of the Impact of PACs on Title I Programs, NIE 189A-D, single time, 531 PAC members/chairpersons, and LEA staff and officials, Office of Federal Statistical Policy and Standard, Laverne V. Collins, 673-7959.

REVISIONS

DEPARTMENT OF INTERIOR

Bureau of Mines, Molybdenum Concentrates, 6-1100-M, monthly, producers of molybdenum, 216 responses, Office of Federal Statistical Policy and Standard, 54 hours, Ellett, C. A., 673-7959.

DEPARTMENT OF TRANSPORTAION

Coast Guard, Application, consent and Approval for Surrender of Marine Document of Vessel Covered by Preferred Mortgage, CG-4593, on occasion, Owners and Mortgagors of documented vessels, 5,000 responses, 833 hours, Clearance Office, 395-3772.

EXTENSIONS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development, Redevelopers Statement for Public Disclosure and Statement of Qualifications and Financial Responsibility, HUD 6004, 6004A, annually, 6,000 responses, 24,000 hours, Caywood, D. P. 395-3443.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-11230 Filed 4-24-78; 8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on April 6, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

U.S. INTERNATIONAL TRADE COMMISSION

Producers Questionnaire (Unalloyed, Unwrought Copper), single time, 20 producers of unalloyed, unwrought copper, C. Louis Kincannon, 395-3211.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration, Billfish Survey (for East Coast Fisheries), NOAA 88-930, single time, 45,000 owner of boat or vessel capable of billfishing, Clearance Office, 395-3772.

National Bureau of Standards, Survey of State Public Utility Commissions, NBS-1093, single time, 80 survey of State public utility commissions, C. Louis Kincannon, 395-3211.

Bureau of Census:

1978 Census of Agricultural Services; 78-A40(A) through 78-A40(D); single time, 250,000 agricultural service establishments, Office of Federal Statistical Policy and Standard, 673-7959.

Self-Employment Form, NC-X5, single-time, 5,500 self-employed individuals, Clearance Office, 395-3772.

National Oceanic and Atmospheric Administration, Subscriber Survey—CDNS, single time, 1,445 consultants-professionals, Clearance Office, 395-3772.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Reporting for State Student Financial Assistance Training Program, OE-1329-1, annually, 48 the State scholarship agencies, Budget Review Division, 395-4775.

Alcohol, Drug Abuse, and Mental Health Administration, Division of Resource Development Product Utilization Survey, single time, 8,750 drug abuse personnel, Richard Eisinger, 395-3214.

Social Security Administration, Quality Assurance Retirement Survivors Insurance Review, SSA-3865, single time, 550 RSI beneficiaries residing in the State of Maryland, Human Resources Division, 395-3532.

Office of the Assistant Secretary for Education, Application for Federal Assistance (Nonconstruction), Institute of Museum Services, IMS-100, annually, 1,000 museums, Budget Review Division, 395-4775.

DEPARTMENT OF LABOR

Employment and Training Administration, Surplus Employment Security Property, ETA-49, on occasion, 30 State employment security agencies, Strasser, A., 395-6132.

REVISIONS

ACTION

NSVP Training Evaluation Questionnaire, 76-NSVP-001, on occasion, 420 former participants of NSVP training, 420 responses, 105 hours, Clearance Office, 395-3772.

VETERANS ADMINISTRATION

Annual Farm and Home Plan for Institutional On-Farm Course of Training (Ch. 31), 22-1905P, on occasion, 200 vewterans in farm training, 200 responses, 600 hours, Caywood, D. P., 395-3443.

Annual Status Report—Insured Loans, 26-1872, annually, mortgage lenders, 1200 responses, 25 hours, Clearance Office, 395-3772.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration:

Supplemental Security Income—Quality Assurance Case Review Analysis, SSA-8508, on occasion, 55,000 SSI beneficiaries selected for sampling, 55,000 responses, 27,500 hours, Human Resources Division, Reese, B. F., 395-3532.

SSA State SSI Information Exchange, SSA-8220, on occasion, 4,500 local welfare departments, 500,000 responses, 84,444 hours, Clearance Office, 395-3772.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development, Preapplications for CDBG Small Cities Program, HUD-4007, annually, 6,500 small cities, counties, States applying for CDBG discretionary, 7,200 responses, 115,200 hours, Budget Review Division, 395-4775.

DEPARTMENT OF INTERIOR

Bureau of Mines, Placer-Mine Production of Gold, Silver, and Platinum, 6-1176-A, annually, producers of gold, silver, and platinum, 225 responses, 113 hours, Office of Federal Statistical Policy and Standard, Ellett, C. A., 673-7959.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration, Aviation Medical Examiner Appointment Application, FAA-8520-2, on occasion, 1,080 private physicians, 1,000 responses, 1,000 hours, Clearance Office, 395-3772.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service, Confidential Statement of Formula—Chemicals Used in Meat and Poultry Processing Plants, MP 29, on occasion, 4,043 responses, 1,011 hours, Clearance Office, 395-3772.

DEPARTMENT OF COMMERCE

Bureau of Census, Bunker Coal or Fule Oil Laden on Vessels Cleared for Foreign Countries, FT 563, monthly, 516 responses, 600 hours, Office of Federal Statistical Policy and Standard, 673-7959.

DEPARTMENT OF DEFENSE

Departmental and other, Application for Armed Services Identification and Privilege Card, DD1172, on occasion, 500,000 responses, 125,000 hours, Marsha Traynham, 395-3773.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit Group Practice Facility—Title XI Application for Project Mortgage Insurance, FHA2013GP2, on occasion, 20 responses, 40 hours, Caywood, D. P., Richard Eisinger, 395-3443.

DEPARTMENT OF INTERIOR

Bureau of Mines, Tungsten Ore and Concentrate (Supply and Disposition), 6-1140-A, annually, 100 responses, 200 hours, Office of Federal Statistical Policy and Standard, Caywood, D. P., 673-7959.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service:

Alien Registration (Description and) Fingerprint Chart, AR-4, on occasion, 75000 responses, 18,750 hours, Clearance Office, 395-3772.

Special Care and Attention for Alien, I-287-A-B, on occasion, 100 responses, 8 hours, Clearance Office, 395-3772.

DEPARTMENT OF TRANSPORATION

Departmental and other:

Leak Report—Transmission and Gathering Systems, DOTF7100.2, on occasion, transmission and gathering gas pipeline operators, 800 responses, 1,200 hours, Strasser, A., C. Louis Kincannon, 395-6132.

Leak Report—Distribution System, DOTF7100.1, on occasion, distribution gas pipeline operators, 1,000 responses, 1,500 hours, Strasser, A., C. Louis Kincannon, 395-6132.

Annual Report—Distribution system, annually, distribution gas pipeline operators, 2,100 responses, 25,200 hours, Strasser, A., C. Louis Kincannon, 395-6132.

Distribution Gas Pipeline Operators Gathering Systems, annually, annual report—transmission and gathering systems, 400 responses, 4,800 hours, Strasser, A., C. Louis Kincannon, 395-6132.

Federal Highway Administration, Estimates of Selected State Highway Finance Data, PR-530, annually, 51 responses, 612 hours, Office of Federal Statistical Policy and Standard, 673-7959.

National Highway Traffic Safety Administration, National Accident Sampling System Occupant Interview Form, HS-367, on occasion, 18,000 responses, 4,500 hours, Clearance Office, 395-3772.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-11231 Filed 4-24-78; 8:45 am]

[4710-01]

DEPARTMENT OF STATE

SECRETARY OF STATE'S ADVISORY COMMITTEE ON PRIVATE INTERNATIONAL LAW, STUDY GROUP ON TRANSNATIONAL BANKRUPTCY PROBLEMS

Rescheduled Meeting

The meeting of the Study Group on Transnational Bankruptcy Problems, a subgroup of the Secretary of State's Advisory Committee on Private International Law, announced in Public Notice CM-8/21 in the FEDERAL REGISTER of March 16, 1978, has been rescheduled to take place on Thursday, May 18, 1978, at 10 a.m. in room 5519 of the Department of State. Members of the public may attend up to the limits of the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The meeting will be to consider the scope and content of possible bilateral agreements with respect to the liquidation or reorganization of insolvent estates which may involve assets, creditors or stockholders in the United States and another State.

Entrance to the Department of State building is controlled, and members of the general public should use the C Street entrance. Entry will be facilitated if arrangements are made in advance, and it is requested that members of the general public who plan to attend the meeting inform their name, affiliation, and address to Miss Dorothy Fagan, Office of the Legal Adviser, Department of State, prior to May 18, 1978. The telephone number is area code 202-632-8134.

Dated: April 19, 1978.

RICHARD D. KEARNEY,
Chairman.

[FR Doc.78-11089 Filed 4-24-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Customs Service

GRAIN ORIENTED SILICON ELECTRICAL STEEL FROM ITALY

Receipt of Information and Initiation of Countervailing Duty Investigation

AGENCY: U.S. Customs Service, Treasury Department

ACTION: Receipt of Information and Initiation of Countervailing Duty Investigation.

SUMMARY: This notice is to inform the public that information has been received which tends to indicate that benefits are granted by the Government of Italy to a producer and exporter of grain oriented silicon steel which constitute a bounty or grant

under the Countervailing Duty Law. Accordingly, Treasury is opening a countervailing duty investigation on the subject merchandise from Italy. A preliminary determination will be made not later than May 11, 1978 and a final determination not later than November 11, 1978.

EFFECTIVE DATE: April 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard B. Self, Director, Office of Tariff Affairs, Department of the Treasury, 15th and Pennsylvania Avenue NW., Washington, D.C. 20220, 202-566-8585.

SUPPLEMENTARY INFORMATION: On October 11, 1977, a "Final Countervailing Duty Determination" was published in the FEDERAL REGISTER (42 FR 54899). The notice stated that Terni Societa per l'Industria e l'Elettricita, S.p.A. ("Terni"), had not received from the Government of Italy, directly or indirectly, any bounties or grants on its exports of grain oriented silicon electrical steel within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

Among the alleged benefits claimed by petitioner to constitute bounties or grants was the purchase of stock or conversion of debt to equity in Terni's parent, Finsider, S.p.A., by the Istituto per la Ricostruzione Industriale ("IRI"), an agency of the Italian Government under the Ministry of State Participations. The available evidence indicated that no such transaction had occurred since 1965, a date deemed too remote from Terni's expansion to have an impact on its current exports, and that to the extent Finsider had invested in Terni since 1965, it had done so with funds internally generated or raised in capital markets on commercial terms. Accordingly, it was determined that even if Finsider's recent decision to expand Terni were made at the suggestion or direction of the Italian Government, no bounty or grant within the meaning of the Law exists. The final determination then stated:

> Of course if, in the future, the Italian Government should, either through IRI or otherwise, increase Finsider's available funds, on other than terms that may reasonably be regarded as commercial, this conclusion may require reconsideration.

On November 11, 1977 petitioner submitted information indicating that on October 3, 1977, Finsider held a special shareholders' meeting at which a 390 billion lire increase in share capital (from 195 billion to 585 billion lire) was approved. The shareholder resolution approved issuance of 780 million shares with a par value of 500 lire, and the offer of an option to all shareholders to purchase at par two newly issued shares for each one held. Although the stock market value of Finsider's shares was then 85 lire per share, IRI not only agreed to purchase its quota of the newly issued stock (58 percent of the offering), it also agreed to buy the remainder of the offering and to hold it in escrow for five years to enable Finsider's minority shareholders to purchase their pro rata portions at 500 lire. Accordingly, it has been concluded that a new investigation on grain oriented silicon electrical steel from Italy is warranted. The new investigation will be concerned solely with the above-described recapitalization. All other aspects of the October 11, 1977, Final Determination remain unchanged and will not be reconsidered.

Pursuant to section 303(a)(4) of the Tariff Act of 1930, as amended, the Secretary is required to make a preliminary determination by May 11, 1978 and a final determination by no later than November 11, 1978 as to whether or not any bounty or grant is being paid or bestowed.

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order No. 190 (Revision 14), July 1, 1977, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a notice of receipt of information and initiation of a countervailing duty investigation by the Commissioner of Customs are hereby waived.

This notice is published pursuant to section 303(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(3)(A)).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

APRIL 18, 1978.

[FR Doc. 78-11137 Filed 4-24-78; 8:45 am]

[4510-29]
[4830-01]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

EMPLOYEE BENEFIT PLANS

Notice of Pendency of Exemption Relating to a Transaction Involving the Leo F. Quinn, P.A. Profit Sharing Trust (Application No. D-707)

AGENCIES: Department of the Treasury/Internal Revenue Service, Department of Labor.

ACTION: Notice of pendency of exemption.

SUMMARY: The Internal Revenue Service and the Department of Labor (the Agencies) propose granting an exemption from certain restrictions imposed by the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption was requested by the trustees of the Leo F. Quinn, P.A. Profit Sharing Trust (the Trust). The exemption, if granted, will allow the Trust to sell a parcel of land to Drs. Jacob L. Raney, Charles G. Dalbey and Leo F. Quinn, who are the trustees of the Trust and officers, directors, shareholders and highly compensated employees of Leo F. Quinn, P.A. (the Employer).

DATE: Written comments and requests for a public hearing must be received by the Internal Revenue Service on or before May 25, 1978.

ADDRESS: All written comments and all requests for a hearing (preferably six copies) should be addressed to the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: E:EP:PT:1 (D-707). The application for exemption referred to in this notice, all comments relating to the proposed exemption, and any requests for a hearing will be available for public inspection at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue NW., Washington, D.C. 20224 and at the Public Documents Room of the Pension and Welfare Benefit Programs, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Timothy S. Smith of the Prohibited Transactions Staff of the Employee Plans Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: E:EP:PT:1, 202-566-6761. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

REQUESTED EXEMPTION

Notice is hereby given of the pendency before the Agencies of an exemption from the restrictions of sections 406(a)(1) (A) and (D) and 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A), (D) and (E) of the Code. The application was filed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

SUMMARY OF REPRESENTATIONS

The proposed exemption is based on the facts and representations contained in the application for exemption filed by the trustees of the Trust which are summarized below. Interested persons are referred to the application for exemption for the complete representations of the applicants.

1. The Trust and the Leo F. Quinn, P.A. Pension Trust (the Pension Trust) are the funding instruments for the Leo F. Quinn, P.A. Profit-Sharing Plan and Pension Plan (the Plans). As of February 16, 1977 the Plans had seven participants. The trustees of each Trust are Drs. Jacob L. Raney, Charles G. Dalbey and Leo F. Quinn, who are also officers, directors, 10 percent or more shareholders and highly compensated employees of the Employer. Dr. Quinn is also the Plan Administrator for both Plans.

2. On or about January 8, 1973, the Employer obtained 2.46 acres of land located in Boca Raton, Palm Beach County, Fla. On or about that same date the Employer and the Trusts entered into an agreement under which the Trusts each agreed to purchase approximately one-half of the property. On or about January 19, 1973, the Trusts purchased the property. The price paid by each Trust was $49,000, of which $32,500 was financed by a local financial institution.

3. Prior to the enactment of the Act the intention of the Trusts was to build a medical complex on the property and lease this complex to the Employer.

4. An appraisal of the two pieces of property made by the Inland Mortgage and Investment Company, West Palm Beach, Fla., estimated the total fair market value of both pieces of property to be $176,800 as of January 12, 1977.

5. The Pension Trust sold its parcel, which consisted of approximately 1.28 acres, to unrelated parties on March 22, 1977, for $90,000 cash.

6. The Trust's parcel, which consists of approximately 1.18 acres, was listed for sale with Florida Sites, Inc. of Boca Raton, Fla. for a period of 2 months beginning on April 7, 1977. The asking price was $95,000 with cash to be paid at closing. In the event of sale, a commission of 10 percent of the sales price was to be paid by the Trust. In a letter addressed to Leo F. Quinn, M.D., Trustee, dated May 18, 1977, a representative of Florida Sites, Inc. states that although on several occasions he thought that they were close to a contract, there was purchaser resistance to the price, and, more importantly, to the requirement of cash at closing. He suggested that the price be lowered to $90,000 with payment to be made over a 3½ year period.

7. In a letter dated May 18, 1977, Peter F. Doran of Peter F. Doran, Inc., of Boca Raton, Fla., gives his personal opinion, not an appraisal, that the Trust's parcel could be sold for between $85,000 and $90,000.

8. In an appraisal by the Inland Realty Associates, Inc., dated August 30, 1977, the fair market value of the Trust's parcel alone was estimated to be $90,000.

9. Applicants assert that the proposed transaction is in the interests of the Trust and its participants and beneficiaries for the following reasons:

(a) The Trust's parcel which represents approximately 47 percent of plan assets is no longer appreciating in value and is therefore a wasting asset.

(b) The Trust's parcel which produces no income is becoming increasingly expensive to hold as a result of changes in the law which were not forseeable when the investment was made. The Trust's holding costs include taxes, assessments for improvements, insurance, other nonrecurring and recurring expenses, and maintenance.

(c) The sale will be for $90,000 in cash. Such sale of a nonliquid asset which produces no income will enable the Trust to invest the money in liquid, income producing assets.

10. Drs. Raney, Dalbey and Quinn will pay all costs and expenses of the sale and the attorney fees related to this application for exemption.

11. Drs. Raney, Dalbey and Quinn intend to construct a medical complex on the land and lease it to the Employer exclusively for the Employer's orthopedic-surgical practice.

Notification of Interested Persons

Written notice shall be given to all interested persons. The interested persons include the employees of the Employer and the beneficiaries of the Trust. The manner of the notice shall be in writing giving a brief description of the transaction, giving a copy of the notice of pendency of such exemption as published in the Federal Register, informing the interested persons of their right to comment on such exemption, and informing the interested persons of the period for comments to be received as published in the Federal Register.

The notice shall be given to the interested persons by the Plan Administrator within 10 (ten) days after the notice of pendency of such exemption is published in the Federal Register.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code and section 408(a) of the Act does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Code and the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption contained herein does not extend to transactions prohibited under section 4975(c)(1)(F) of the Code and section 406(b)(3) of the Act;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code and section 408(a) of the Act, the Agencies must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries, and protective of the rights of the participants and beneficiaries; and

(4) The exemption proposed herein, if granted, is supplemental to, and not in derogation of, any other provisions of the Code and Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption set forth herein to the address and within the time period set forth above. The application for exemption and all comments relating to the proposed exemption will be open to public inspection at the addresses set forth above.

Proposed Exemption

Based upon the facts and representations set forth in the application, the Agencies are considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in Rev. Proc. 75-26 and ERISA Procedure 75-1. Effective upon the granting of this exemption, the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A), (D) and (E) of the Code and the restrictions of section 406(a)(1) (A) and (D) and section 406(b)(1) and 406(b)(2) of the Act shall not apply to the sale of the Boca Raton property from the Trust to Drs. Raney, Dalbey and Quinn for $90,000 cash provided that this amount is not less than the fair market value of the property.

The pending exemption, if granted, will be subject to the express conditions that the material facts and rep-

resentations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 18th day of April 1978.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-11132 Filed 4-20-78; 11:16 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[AB 7 (SDM)]

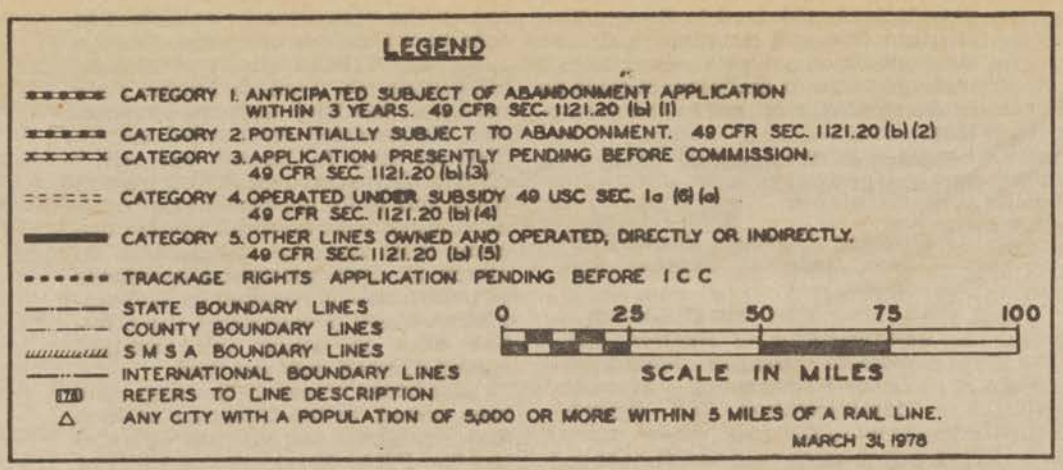
CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in title 49 of the Code of Federal Regulations, part 1121.23, that the Chicago, Milwaukee, St. Paul & Pacific Railroad Co., has filed with the Commission its amended color-coded system diagram map in Docket No. AB 7 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 31, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

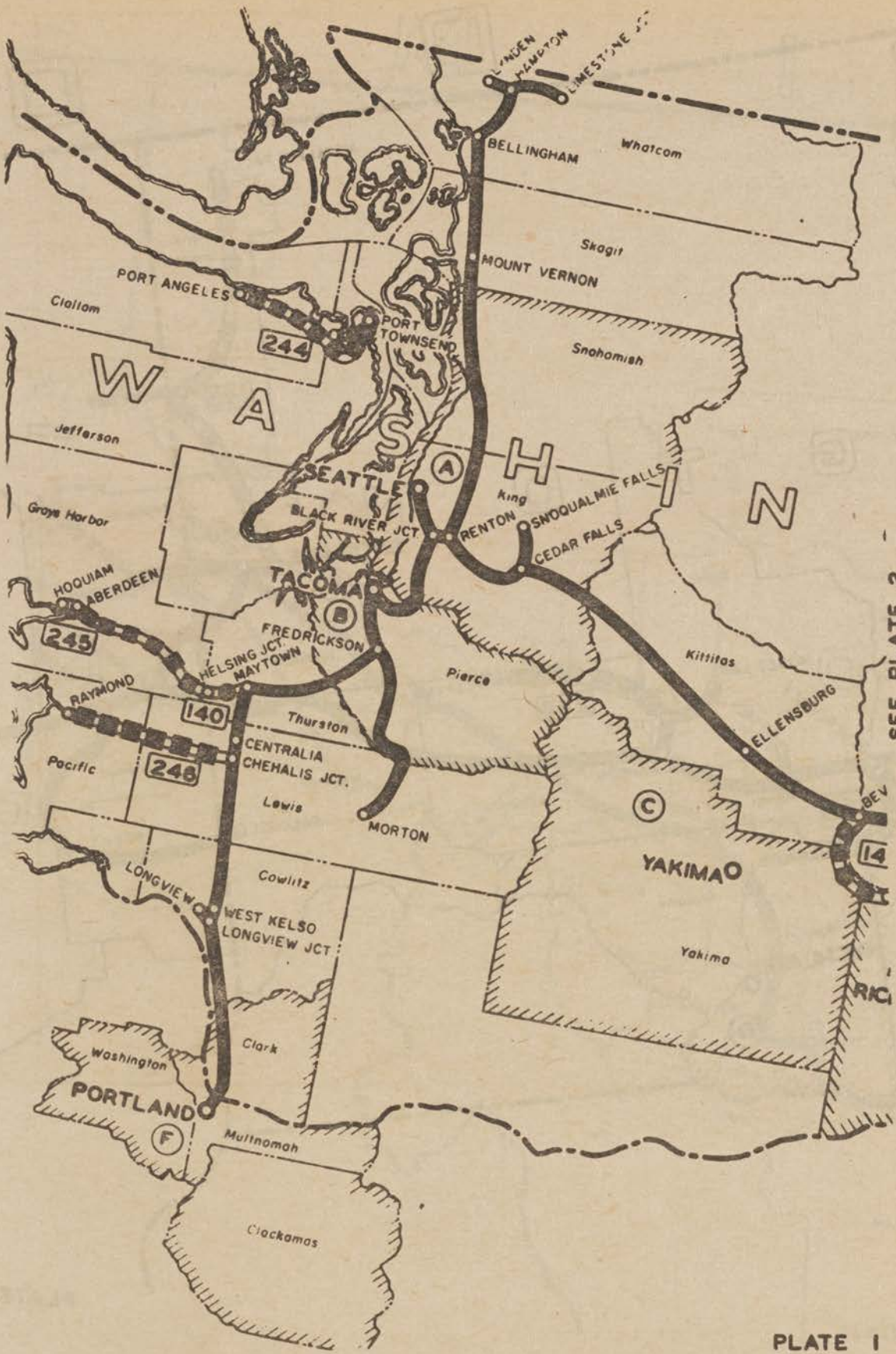
Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 7 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.



STANDARD METROPOLITAN STATISTICAL AREAS

(A)	SEATTLE-EVERETT	(R)	DUBUQUE
(B)	TACOMA	(S)	CEDAR RAPIDS
(C)	YAKIMA	(T)	DES MOINES
(D)	RICHLAND-KENNWICK	(U)	DAVENPORT-ROCK ISLAND
(E)	SPOKANE	(V)	GREEN BAY
(F)	PORTLAND	(W)	APPLETON
(G)	GREAT FALLS	(X)	MADISON
(H)	BILLINGS	(Y)	MILWAUKEE
(I)	FARGO	(Z)	RACINE
(J)	SIOUX FALLS	(AA)	KENOSHA
(K)	SIOUX CITY	(BB)	ROCKFORD
(L)	OMAHA	(CC)	CHICAGO
(M)	KANSAS CITY	(DD)	KANKAKEE
(N)	DULUTH-SUPERIOR	(EE)	GARY-HAMMOND
(O)	MINNEAPOLIS-ST. PAUL	(FF)	TERRE HAUTE
(P)	EAU CLAIRE	(GG)	BLOOMINGTON
(Q)	LA CROSSE	(HH)	LOUISVILLE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Clallam
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PORT TOWNSEND
Snohomish
WASHINGTON
Jefferson
SEATTLE
A
King
SNOQUALMIE FALLS
Grays Harbor
BLACK RIVER JCT.
RENTON
CEDAR FALLS
HOQUIAM
ABERDEEN
TACOMA
B
245
FREDRICKSON
HELSING JCT.
MAYTOWN
Pierce
Kittitas
RAYMOND
140
Thurston
ELLENSBURG
CENTRALIA
CHEHALIS JCT.
Pacific
248
Lewis
MORTON
C
YAKIMA
LONGVIEW
Cowlitz
WEST KELSO
LONGVIEW JCT
Yakima
Clark
Washington
PORTLAND
F
Multnomah
Clackamas
SEE PLATE 2

PLATE 1

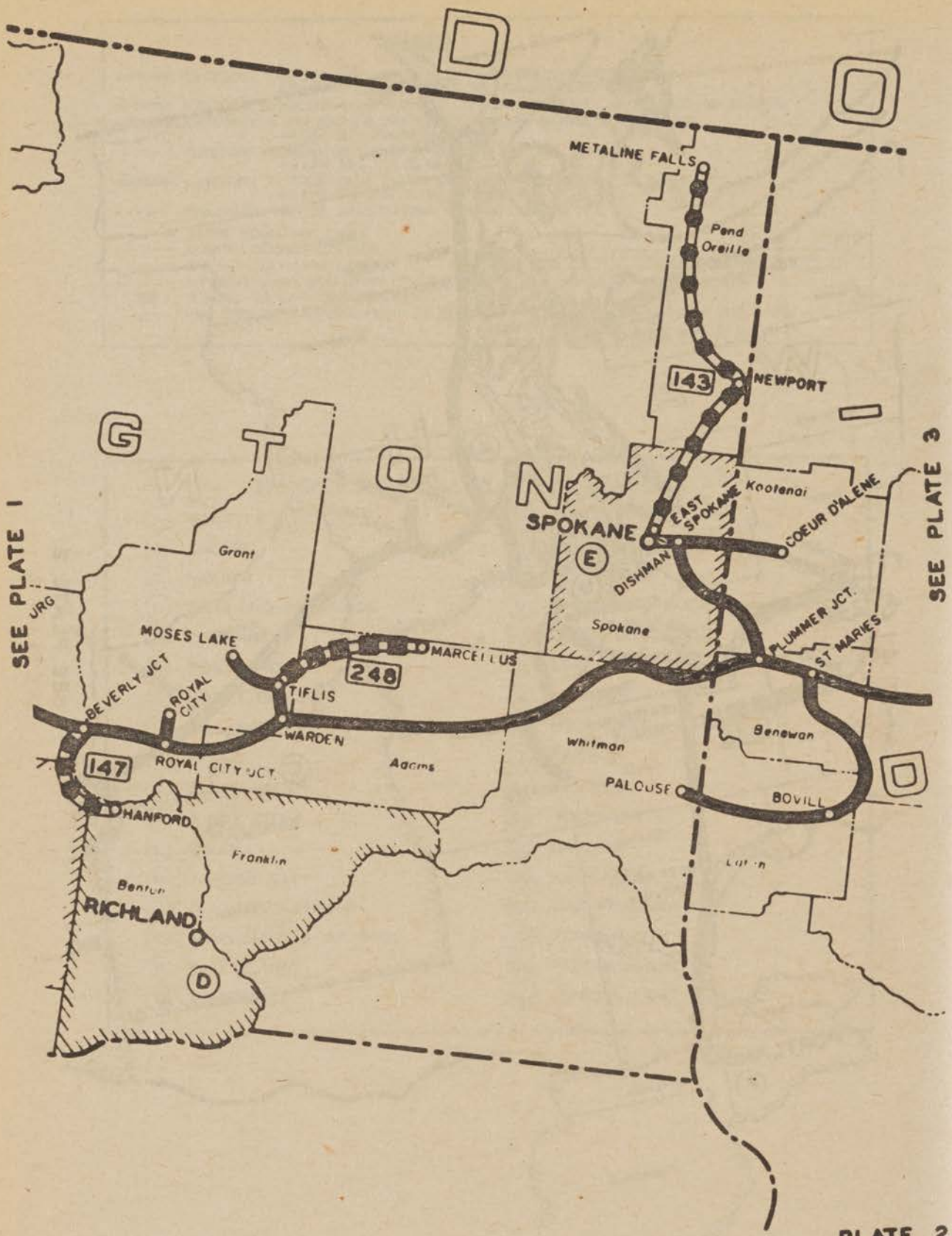
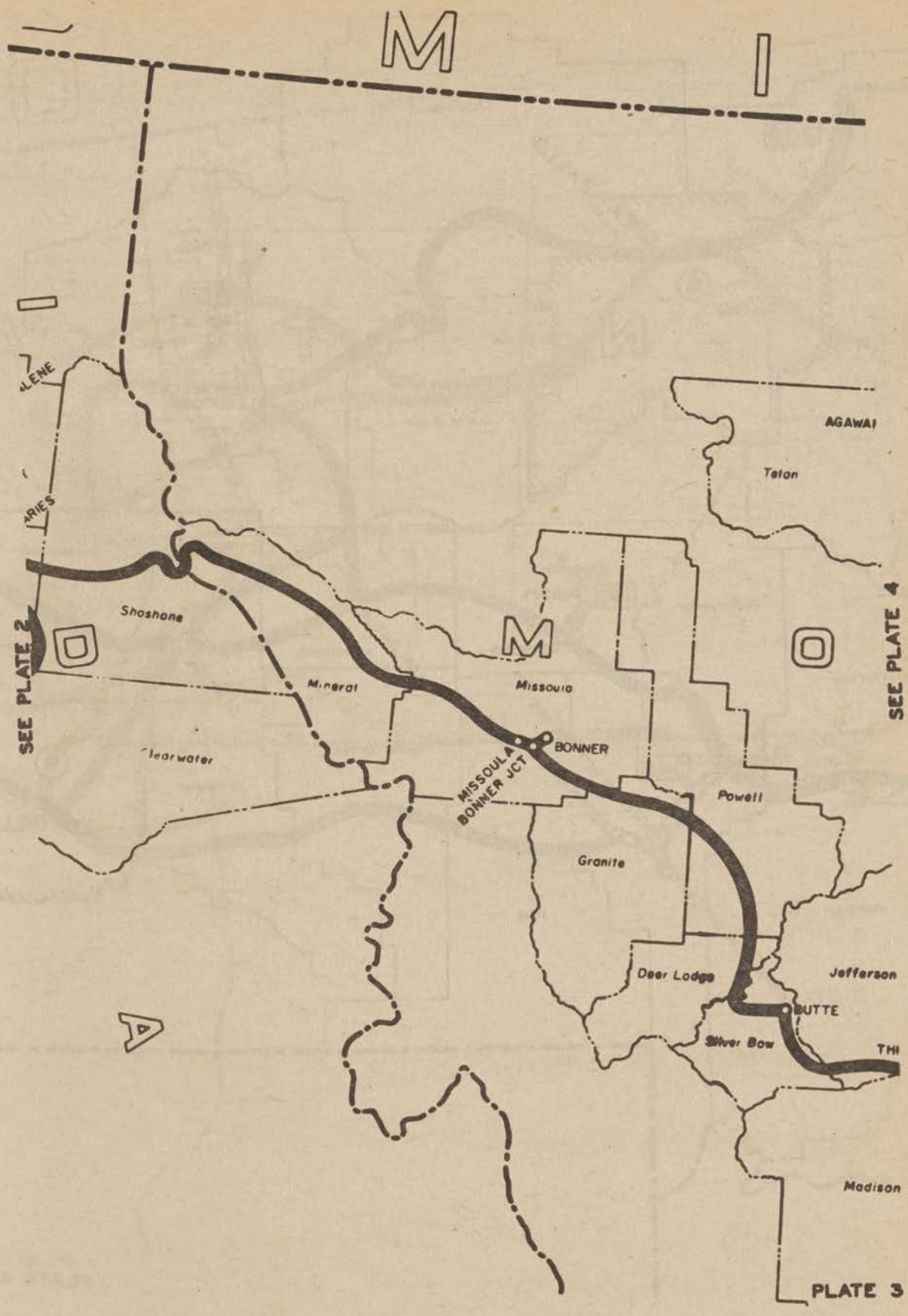
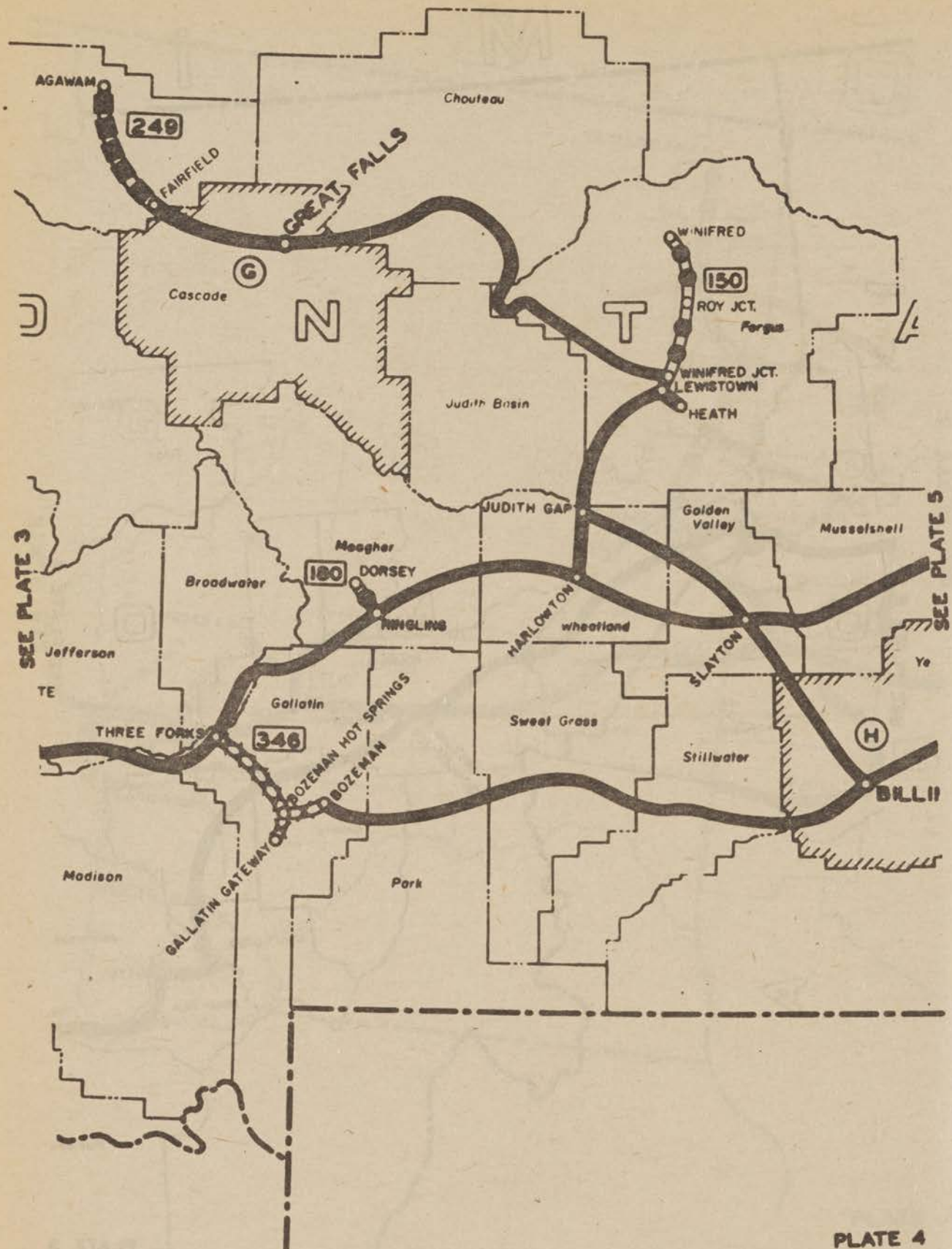

METALINE FALLS
Pend Oreille
143
NEWPORT
SEE PLATE 1
SEE PLATE 3
Kootenai
EAST SPOKANE
COEUR D'ALENE
SPOKANE
DISHMAN
Grant
Spokane
PLUMMER JCT.
ST MARIES
MOSES LAKE
MARCELLUS
248
BEVERLY JCT
ROYAL CITY
TIFLIS
WARDEN
Whitman
Benewah
147
ROYAL CITY JCT.
Adams
PALOUSE
BOVILL
HANFORD
Franklin
RICHLAND

PLATE 2


M
I
SEE PLATE 2
SEE PLATE 4
Shoshone
Mineral
Missoula
BONNER
MISSOULA
BONNER JCT
Powell
Granite
Deer Lodge
Jefferson
BUTTE
Silver Bow
Madison
PLATE 3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Chouteau
Cascade
WINIFRED
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ROY JCT.
Fergus
WINIFRED JCT.
LEWISTOWN
HEATH
Judith Basin
JUDITH GAP
Golden Valley
Musselshell
SEE PLATE 3
SEE PLATE 5
Meagher
180
DORSEY
Broadwater
RINGLING
HARLOWTON
wheatland
SLAYTON
Jefferson
Gallatin
THREE FORKS
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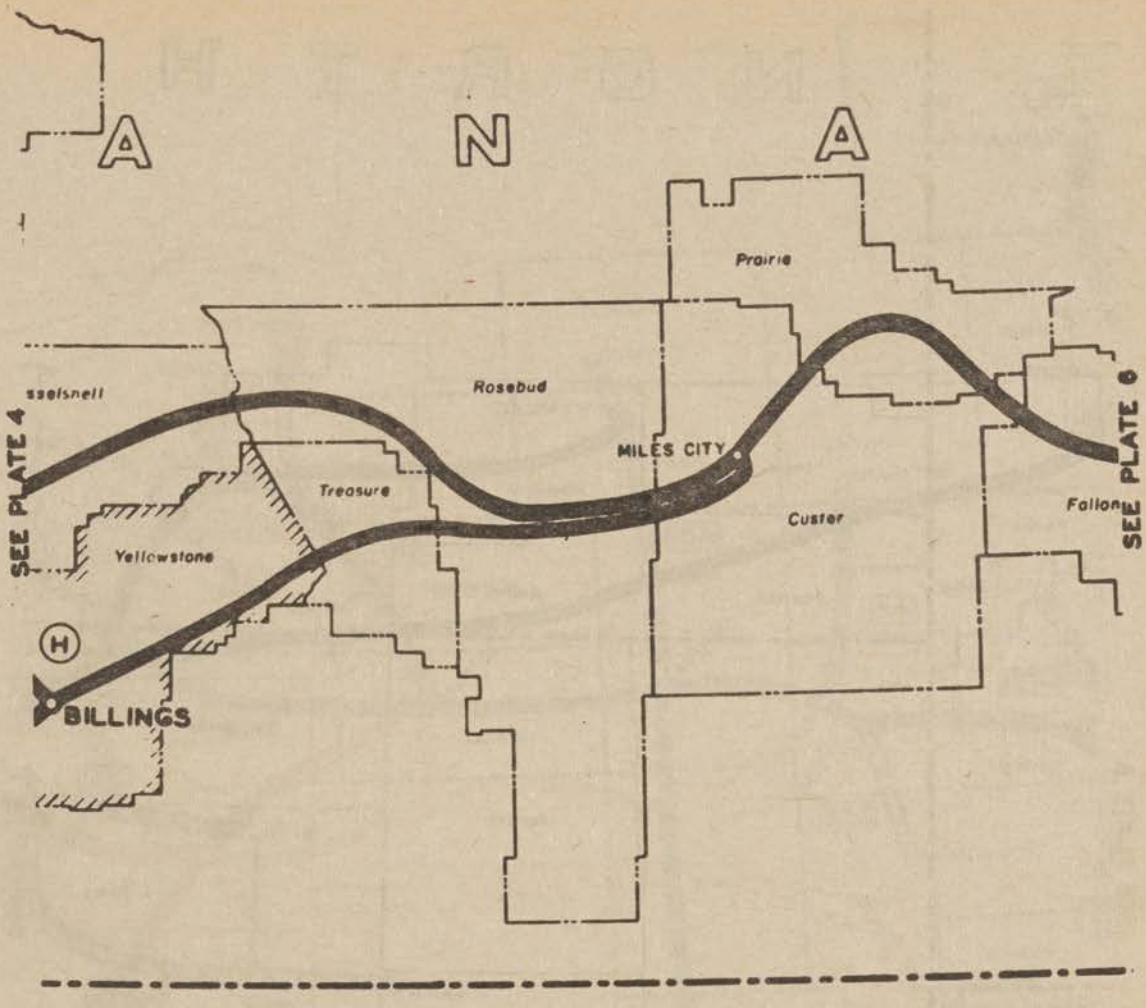
BOZEMAN HOT SPRINGS
BOZEMAN
Sweet Grass
Stillwater
BILLI
Madison
GALLATIN GATEWAY
Park
PLATE 4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N
A
Prairie
Rosebud
MILES CITY
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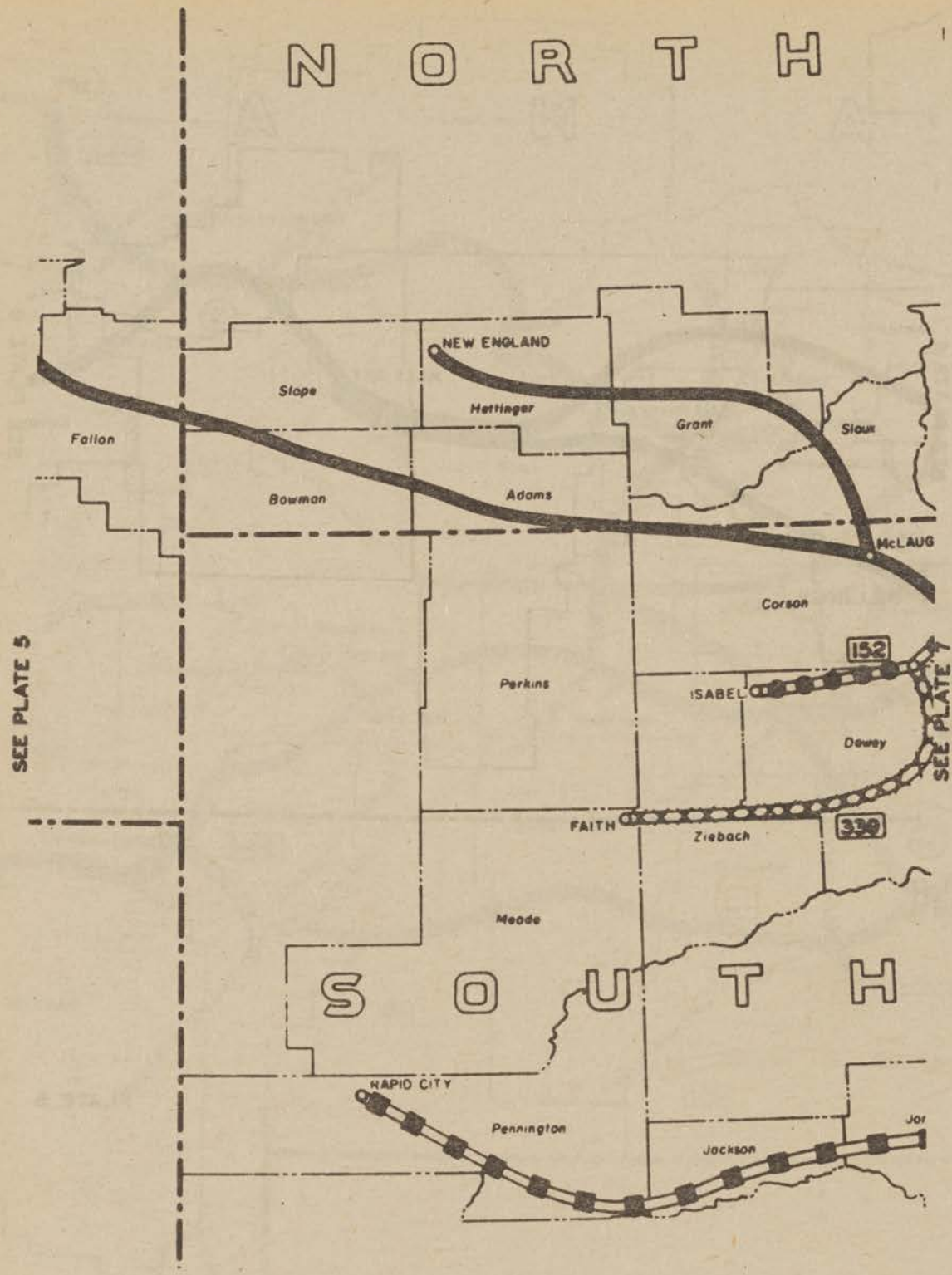
Fallon
Treasure
Yellowstone
BILLINGS
SEE PLATE 4
SEE PLATE 6

PLATE 5


NORTH
NEW ENGLAND
Slope
Hettinger
Grant
Sioux
Fallon
Bowman
Adams
McLAUG
Corson
SEE PLATE 5
Perkins
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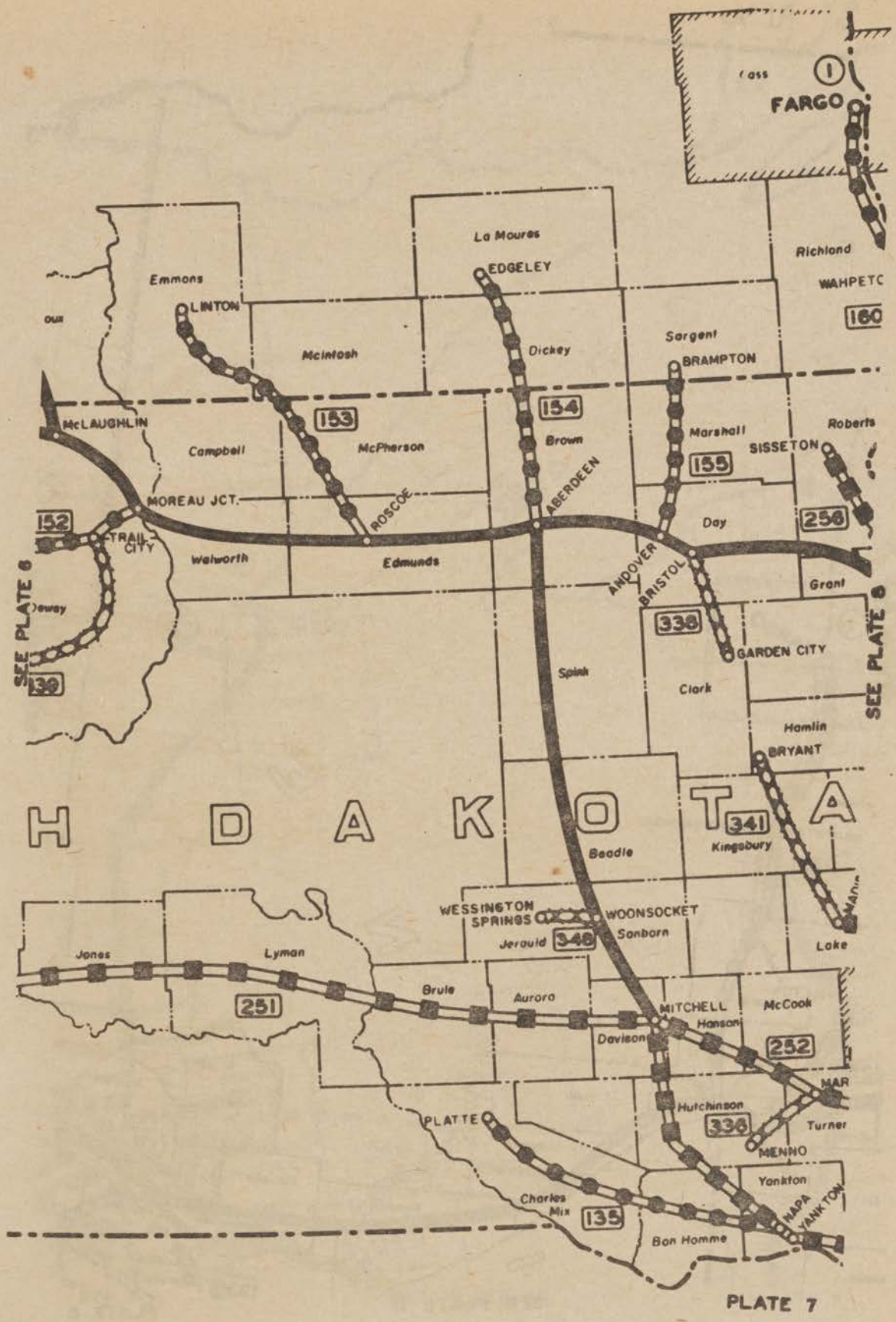
ISABEL
Dewey
SEE PLATE 7
FAITH
Ziebach
330
Meade
SOUTH
RAPID CITY
Pennington
Jackson

PLATE 6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Richland
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BRAMPTON
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154
McLAUGHLIN
Campbell
McPherson
Brown
Marshall
Roberts
SISSETON
155
MOREAU JCT.
ROSCOE
ABERDEEN
152
TRAIL CITY
Walworth
Edmunds
Day
256
ANDOVER
BRISTOL
Grant
SEE PLATE 6
SEE PLATE 8
338
GARDEN CITY
Spink
Clark
Hamlin
BRYANT
H D A K O T A
341
Kingsbury
Beadle
WESSINGTON SPRINGS
WOONSOCKET
Jerauld
348
Sanborn
Lake
Jones
Lyman
251
Brule
Aurora
MITCHELL
Hanson
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Davison
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Hutchinson
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Turner
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PLATTE
Yankton
Charles Mix
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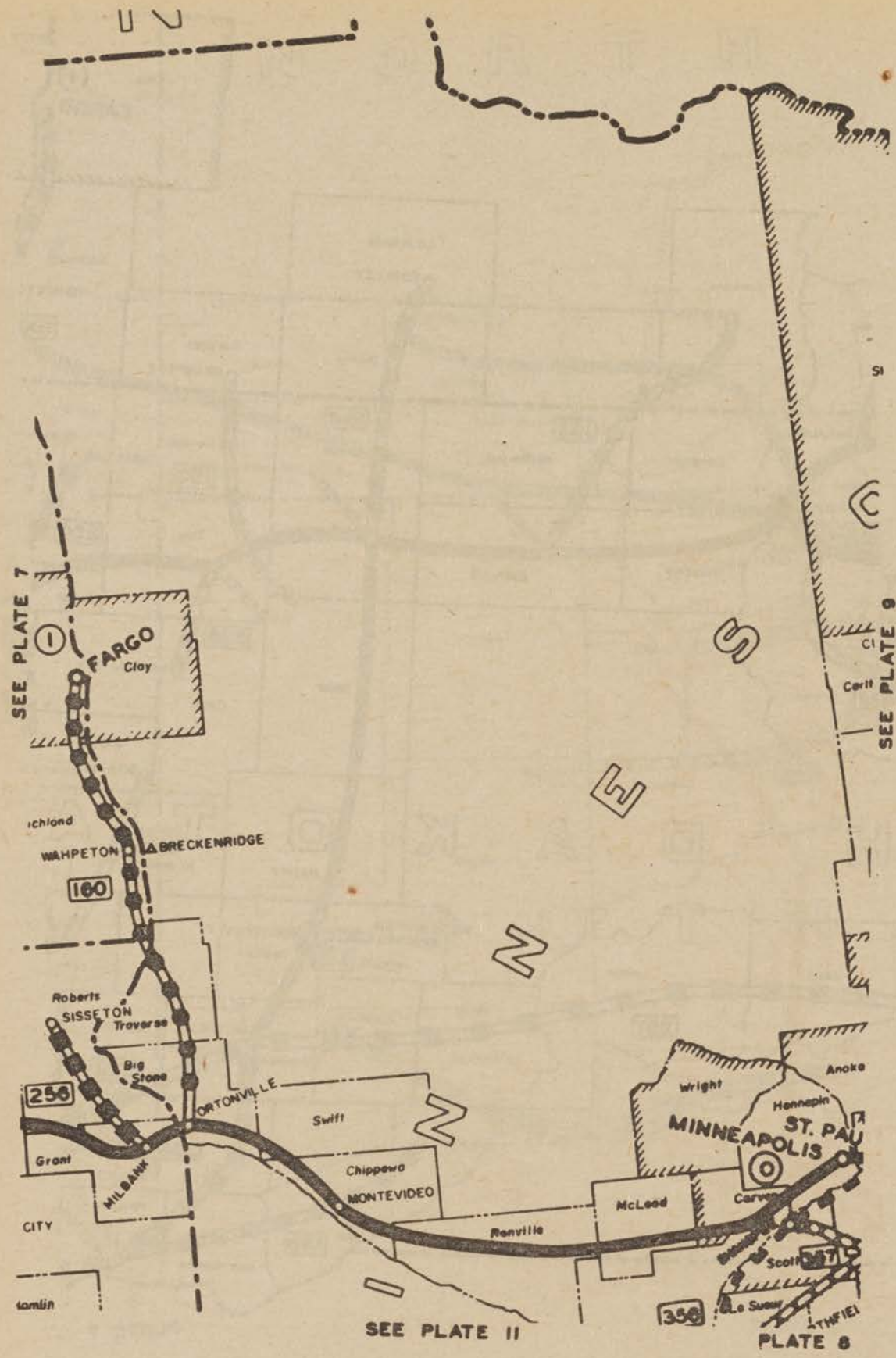
Bon Homme
YANKTON
PLATE 7


SEE PLATE 7
FARGO
Clay
WAHPETON
BRECKENRIDGE
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Roberts
SISSETON
Traverse
Big Stone
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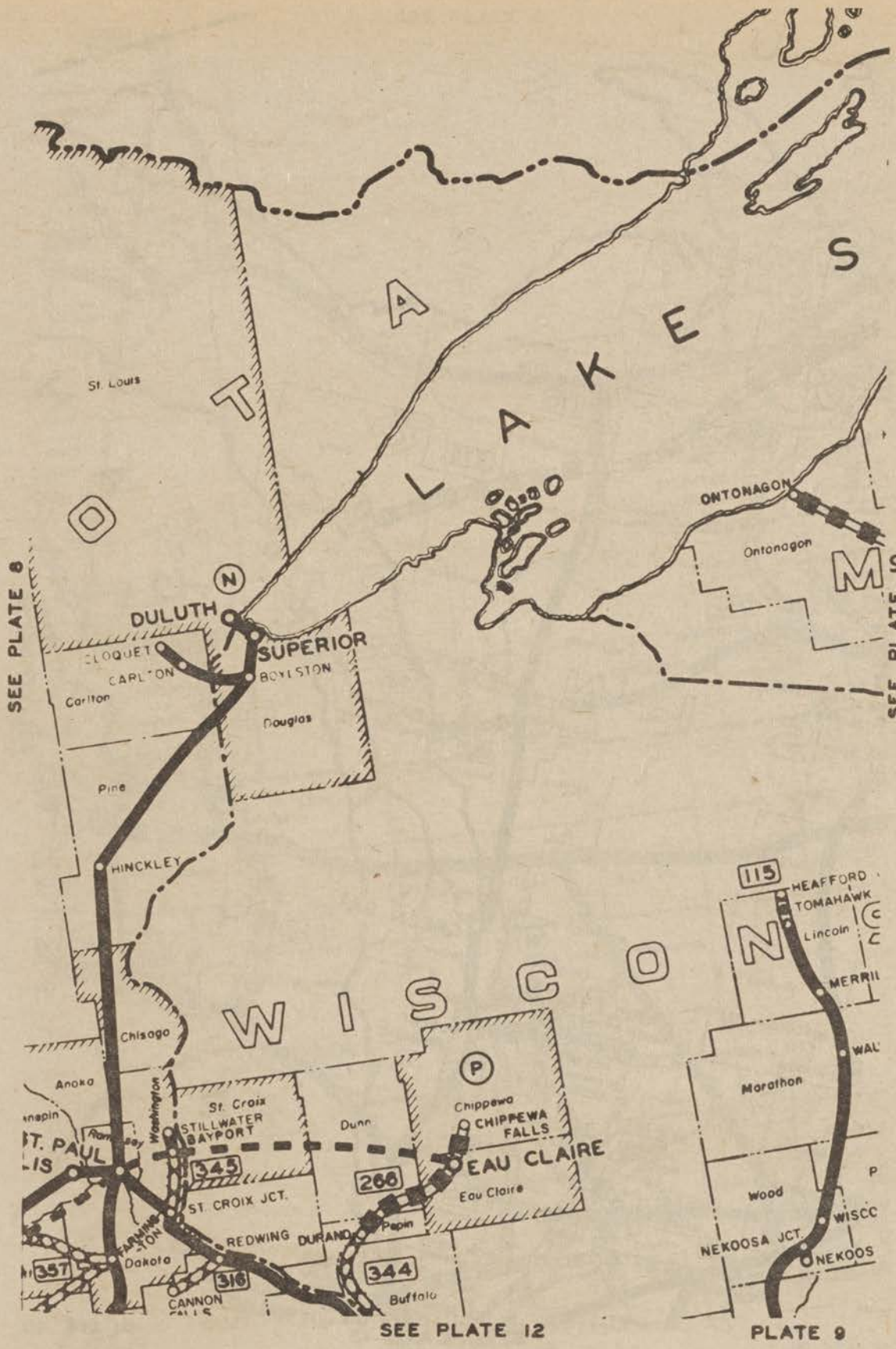
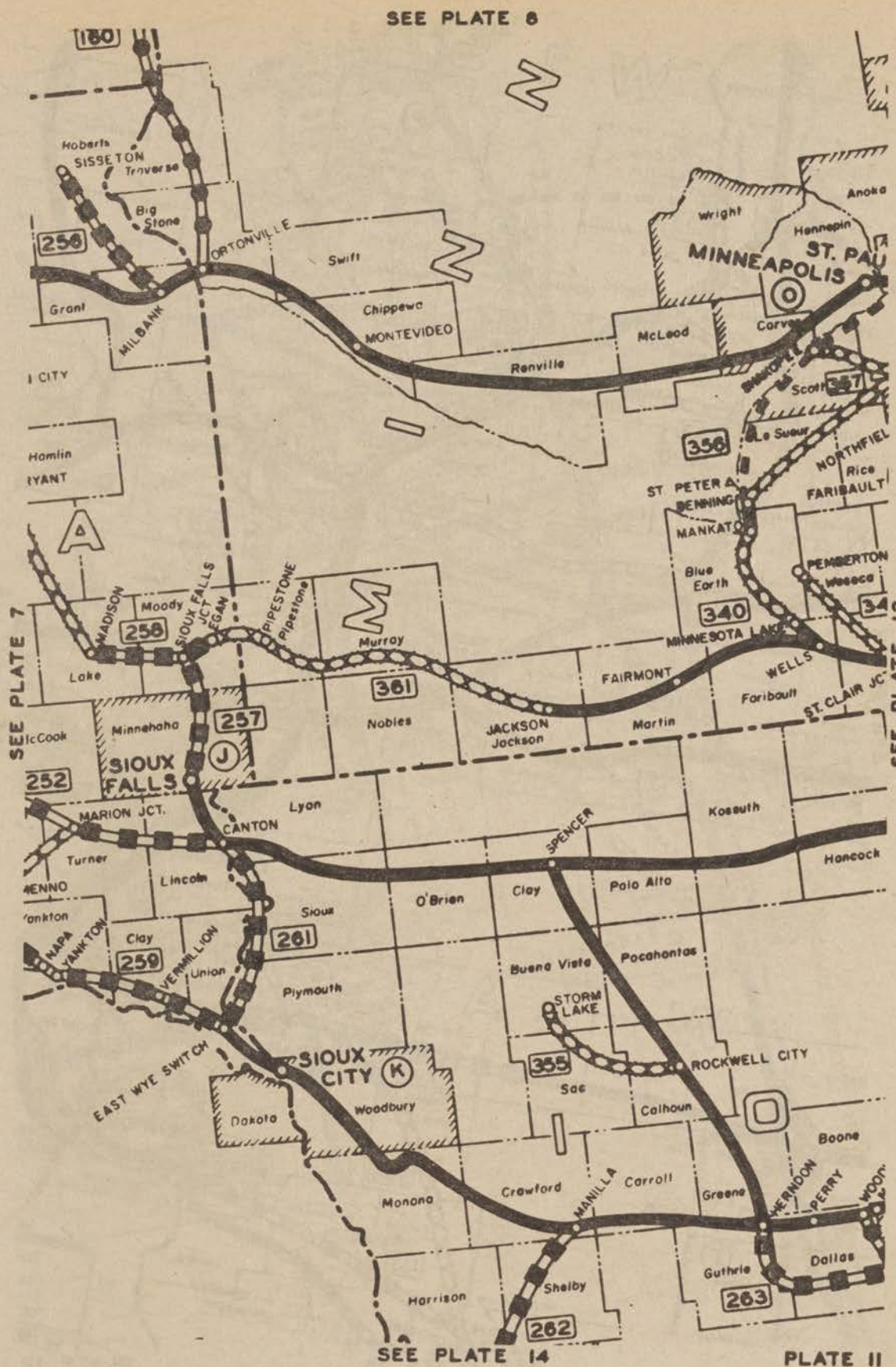
Swift
Grant
MILBANK
CITY
Chippewa
MONTEVIDEO
Renville
McLeod
Wright
Hennepin
Anoka
MINNEAPOLIS
ST. PA
Carver
Scott
35E
35
Le Sueur
SEE PLATE 11
SEE PLATE 9
PLATE 8


SEE PLATE 8
DULUTH
SUPERIOR
CLOQUET
CARLTON
BOYLSTON
Carlton
Douglas
St. Louis
Pine
HINCKLEY
Chisago
Anoka
Washington
St. Croix
STILLWATER
BAYPORT
Dunn
Chippewa
CHIPPEWA FALLS
EAU CLAIRE
Eau Claire
345
268
ST. CROIX JCT.
REDWING
DURAND
Pepin
Dakota
357
316
344
Buffalo
CANNON
SEE PLATE 12
ONTONAGON
Ontonagon
SEE PLATE 10
115
HEAFFORD
TOMAHAWK
Lincoln
MERRI
Marathon
Wood
NEKOOSA JCT.
NEKOOS
PLATE 9

SU
MICHIGAN
WISCONSIN
Houghton
Baraga
Marquette
REPUBLIC
170
269
Iron
CHANNING
279
Delta
RANDVILLE
Dickinson
ESCANABA
Menominee
Marinette
MENOMINEE
MARINETTE
CRIVITZ
182
Oconto
SEE PLATE 9
MERRILL
WAUSAU
Portage
WISCONSIN RAPIDS
NEKOOSA
Adams
NEW LISBON
GREEN BAY
Brown
Outgamie
APPLETON
SOUTH APPLETON
116
MENASHA
NEENAH
Winnebago
OSHKOSH
172
HILBERT
Manitowoc
Calumet
BERLIN
342
RIPON JCT.
RIPON
Green Lake
MARKESAN
274
FOND DU LAC
Fond Du Lac
360
273
FOX LAKE
Dodge
173
PORTAGE
Columbia
Sauk
IRON RIDGE
Washington
Ozaukee
Sheboygan
272
GRANVILLE
NORTH MILWAUKEE
WAUKEE
SEE PLATE 13
PLATE 10


SEE PLATE 8
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Roberts
SISSETON
Traverse
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ORTONVILLE
Swift
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McLeod
Wright
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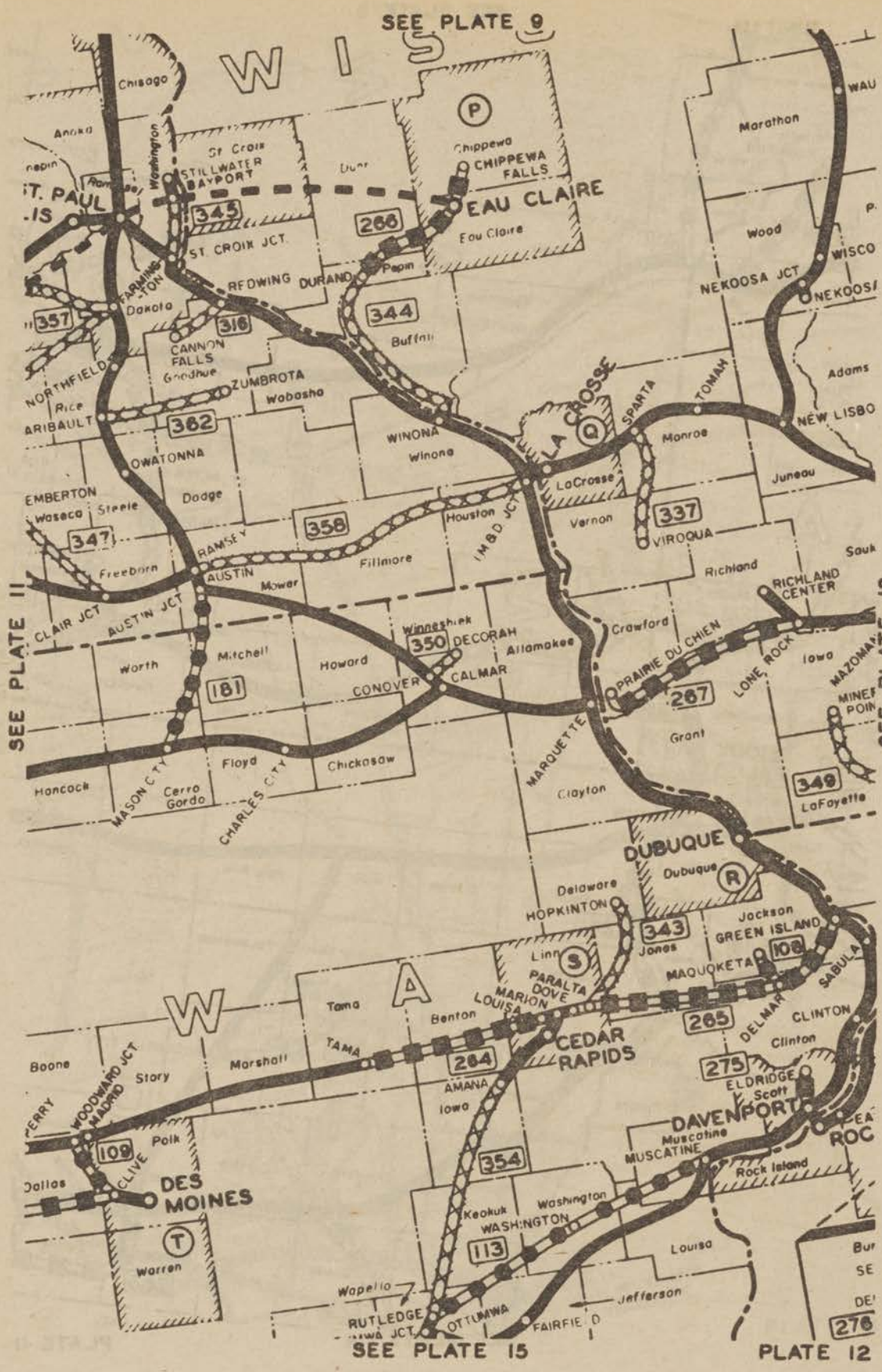
Hennepin
MINNEAPOLIS
ST. PAU
Carver
Scott
357
Le Sueur
356
NORTHFIEL
Rice
FARIBAULT
ST PETER
BENNING
MANKATO
Blue Earth
PEMBERTON
Waseca
340
MINNESOTA LAKE
FAIRMONT
WELLS
Faribault
ST. CLAIR JC
Hamlin
RYANT
A
MADISON
Moody
258
SIOUX FALLS JCT
EGAN
PIPESTONE
Pipestone
Murray
Lake
361
Nobles
JACKSON
Jackson
Martin
SEE PLATE 7
SEE PLATE 12
IcCook
Minnehaha
257
J
SIOUX FALLS
252
MARION JCT.
CANTON
Lyon
Kossuth
SPENCER
Hancock
Turner
Lincoln
O'Brien
Clay
Palo Alto
MENNO
Yankton
NAPA
YANKTON
Clay
259
VERMILLION
Union
Sioux
261
Plymouth
Buena Vista
Pocahontas
STORM LAKE
EAST WYE SWITCH
SIOUX CITY
K
355
ROCKWELL CITY
Sac
Calhoun
Boone
Dakota
Woodbury
Monona
Crawford
MANILLA
Carroll
Greene
HERNDON
PERRY
Dallas
Guthrie
Harrison
Shelby
263
262
SEE PLATE 14
PLATE 11


SEE PLATE 9
WIS
Chisago
Anoka
Washington
St Croix
STILLWATER
BAYPORT
Dunn
Chippewa
CHIPPEWA FALLS
EAU CLAIRE
Eau Claire
Marathon
Wood
WISCO
NEKOOSA JCT
NEKOOSA
345
268
ST CROIX JCT
REDWING
DURAND
Pepin
344
357
316
Dakota
CANNON FALLS
Goodhue
NORTHFIELD
Rice
ARIBAULT
ZUMBROTA
Wabasha
382
WINONA
Winona
LA CROSSE
SPARTA
TOMAH
Monroe
Adams
NEW LISBO
Juneau
LaCrosse
OWATONNA
Steele
Dodge
EMBERTON
Waseca
347
358
Houston
IMBD JCT
Vernon
337
VIROQUA
Richland
RICHLAND CENTER
Sauk
FreeBorn
RAMSEY
AUSTIN
Mower
Fillmore
CLAIR JCT
AUSTIN JCT
Winneshiek
350
DECORAH
Allamakee
Crawford
PRAIRIE DU CHIEN
LONE ROCK
Iowa
MAZOMA
MINER POIN
SEE PLATE 11
SEE PLATE 13
Worth
Mitchell
Howard
CONOVER
CALMAR
181
267
Grant
MARQUETTE
Clayton
Hancock
MASON CITY
Cerro Gordo
Floyd
Chickasaw
CHARLES CITY
349
LaFayette
DUBUQUE
Dubuque
R
Delaware
HOPKINTON
343
Jackson
GREEN ISLAND
Jones
108
MAQUOKETA
SABULA
Linn
S
PARALTA
DOVE
MARION
LOUISA
Benton
Tama
W A
TAMA
285
DELMAR
CLINTON
Clinton
Boone
Story
Marshall
284
CEDAR RAPIDS
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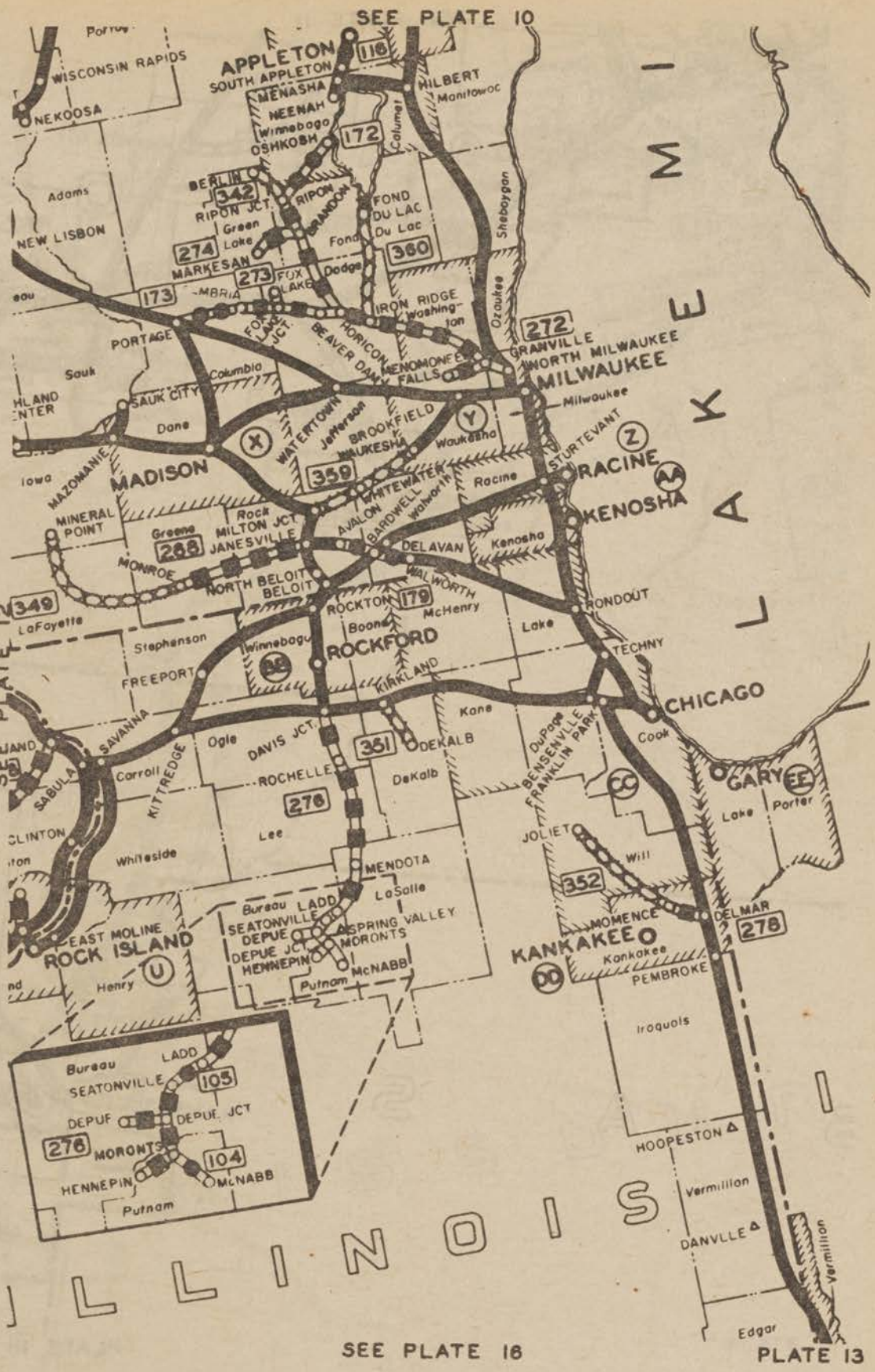
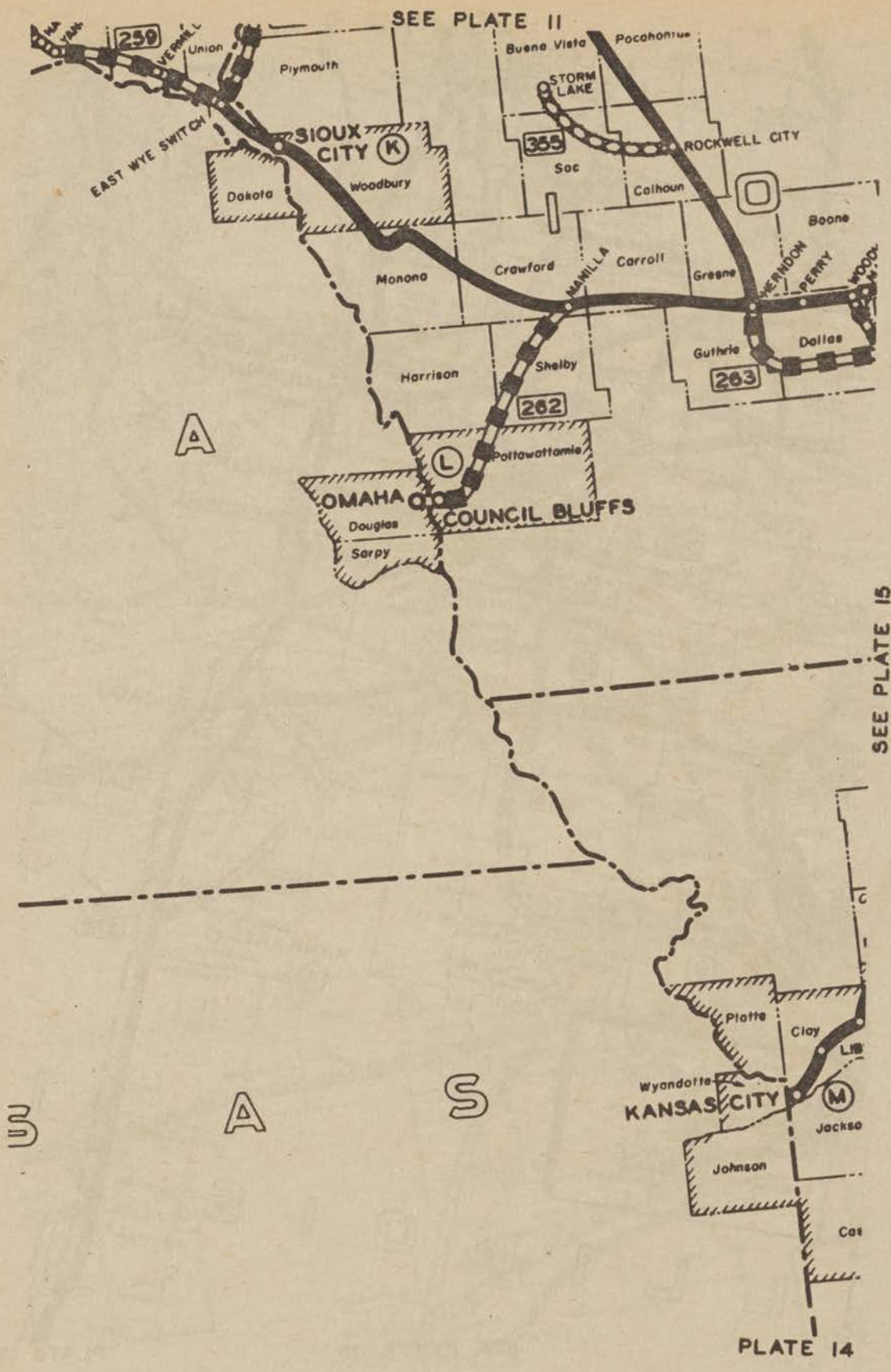
AMANA
Iowa
ELDRIDGE
Scott
DAVENPORT
Muscatine
MUSCATINE
WOODWARD JCT
MADRID
109
Polk
CLIVE
DES MOINES
Dallas
354
Rock Island
Keokuk
Washington
WASHINGTON
113
Louisa
T
Warren
Wapello
RUTLEDGE
OTTUMWA
Jefferson
FAIRFIELD
276
SEE PLATE 15
PLATE 12


SEE PLATE 10
APPLETON
SOUTH APPLETON
MENASHA
NEENAH
Winnebago
OSHKOSH
HILBERT
Manitowoc
WISCONSIN RAPIDS
NEKOOSA
Adams
NEW LISBON
BERLIN
RIPON JCT.
RIPON
BRANDON
FOND DU LAC
Fond Du Lac
Green Lake
MARKESAN
FOX LAKE
Dodge
Columbia
Sheboygan
Ozaukee
IRON RIDGE
Washington
HORICON
BEAVER DAM
FOX LAKE JCT.
PORTAGE
Sauk
SAUK CITY
Dane
Columbia
GRANVILLE
NORTH MILWAUKEE
MILWAUKEE
Milwaukee
MENOMONEE FALLS
BROOKFIELD
Waukesha
WATERTOWN
Jefferson
WAUKESHA
STURTEVANT
RACINE
Racine
KENOSHA
Iowa
MAZOMANIE
MADISON
MINERAL POINT
Green
Rock
MILTON JCT.
JANESVILLE
WHITEWATER
Walworth
AVALON
BARDWELL
DELAVAN
Kenosha
MONROE
NORTH BELOIT
BELOIT
ROCKTON
McHenry
RONDOUT
LaFayette
Stephenson
Winnebago
Boone
ROCKFORD
Lake
TECHNY
FREEPORT
KIRKLAND
CHICAGO
SAVANNA
Ogle
DAVIS JCT.
DEKALB
Kane
DuPage
BENSENVILLE
FRANKLIN PARK
Cook
SABULA
Carroll
KITTREDGE
ROCHELLE
DeKalb
GARY
Lake
Porter
CLINTON
Whiteside
Lee
JOLIET
Will
MENDOTA
LaSalle
Bureau
LADD
SEATONVILLE
DEPUE
DEPUE JCT.
HENNEPIN
SPRING VALLEY
MORONTS
Putnam
McNABB
DELMAR
EAST MOLINE
ROCK ISLAND
Henry
MOMENCE
KANKAKEE
Kankakee
PEMBROKE
Iroquois
HOOPESTON
Vermillion
DANVLLE
Edgar
ILLINOIS
SEE PLATE 16
PLATE 13


SEE PLATE 11
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Union
Plymouth
Buena Vista
Pocahontas
STORM LAKE
EAST WYE SWITCH
SIOUX CITY
K
355
ROCKWELL CITY
Sac
Dakota
Woodbury
Calhoun
Boone
Monona
Crawford
MANILLA
Carroll
Greene
PERRY
Guthrie
Dallas
Harrison
Shelby
263
262
A
L
Pottawattamie
OMAHA
COUNCIL BLUFFS
Douglas
Sarpy
SEE PLATE 15
U S A S
Platte
Clay
Wyandotte
KANSAS CITY
M
Jackso
Johnson
PLATE 14

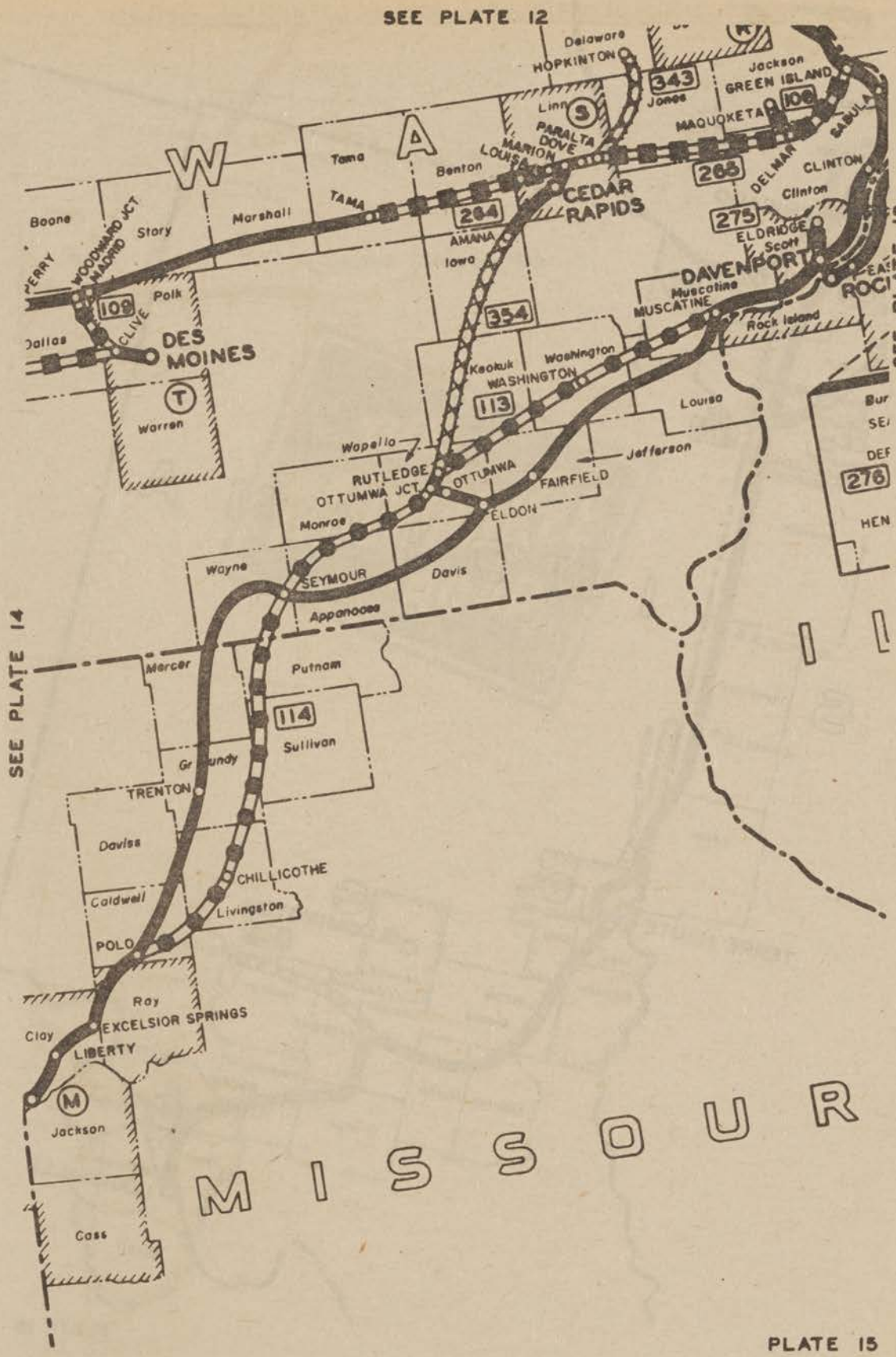
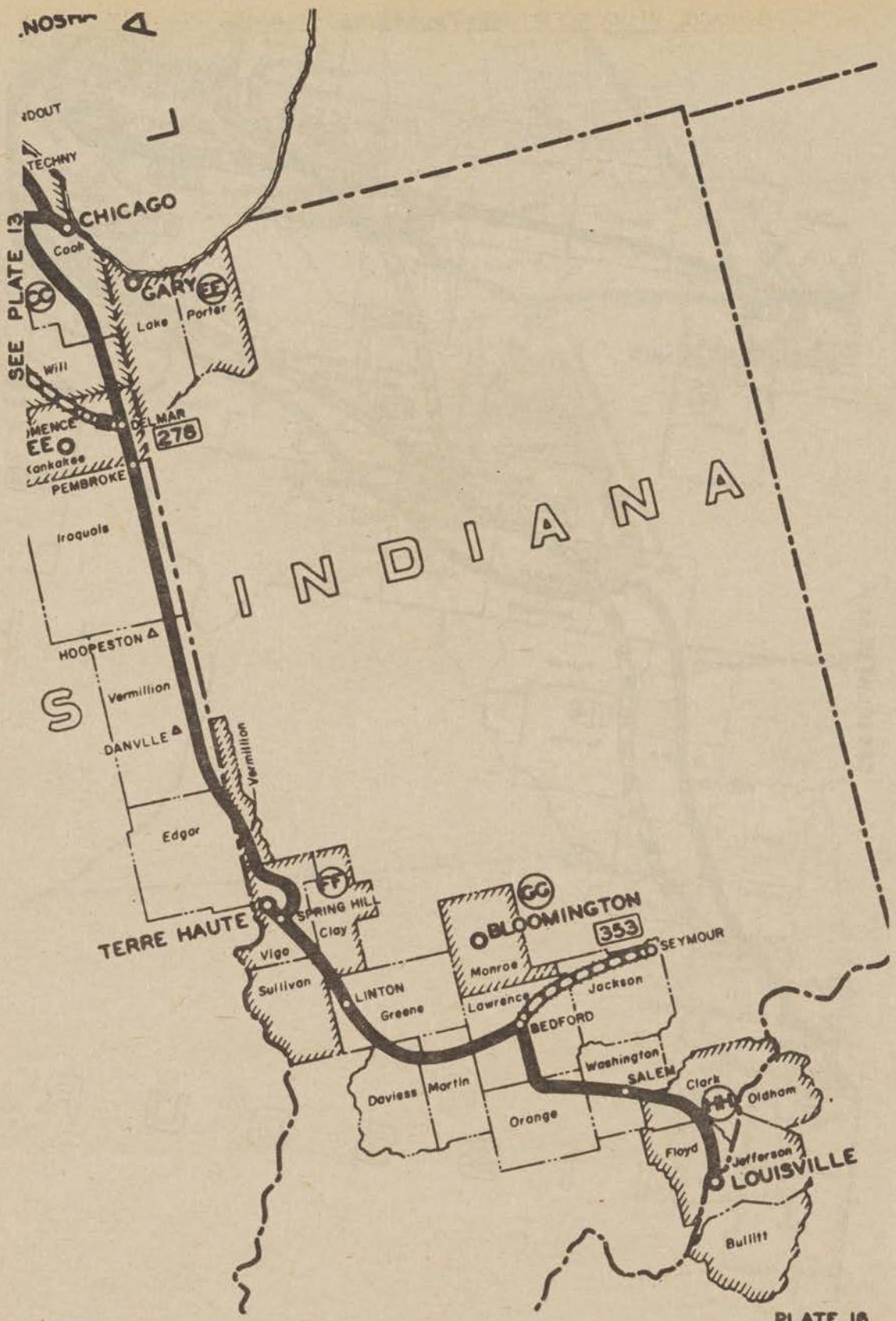

SEE PLATE 12
SEE PLATE 13
SEE PLATE 14
Delaware
HOPKINTON
Jackson
GREEN ISLAND
343
Jones
MAQUOKETA
106
Linn
PARALTA
DOVE
MARION
LOUISA
Benton
Tama
TAMA
Boone
Story
Marshall
WOODWARD JCT
MADRID
PERRY
284
AMANA
Iowa
CEDAR RAPIDS
285
DELMAR
CLINTON
Clinton
275
ELDRIDGE
Scott
DAVENPORT
Muscatine
MUSCATINE
Rock Island
109
Polk
CLIVE
DES MOINES
Dallas
Warren
354
Keokuk
WASHINGTON
Washington
113
Louisa
Wapello
RUTLEDGE
OTTUMWA JCT
OTTUMWA
FAIRFIELD
Jefferson
Monroe
ELDON
276
Wayne
SEYMOUR
Davis
Appanoose
Mercer
Putnam
114
Sullivan
TRENTON
Daviss
Caldwell
CHILLICOTHE
Livingston
POLO
Ray
EXCELSIOR SPRINGS
Clay
LIBERTY
Jackson
Cass
MISSOUR

PLATE 15


SEE PLATE 13
CHICAGO
Cook
GARY
Lake
Porter
Will
DEL MAR
278
PEMBROKE
Iroquois
INDIANA
HOOPESTON
Vermillion
DANVLLE
Vermillion
Edgar
TERRE HAUTE
SPRING HILL
Clay
Vigo
Sullivan
LINTON
Greene
BLOOMINGTON
353
SEYMOUR
Monroe
Lawrence
Jackson
BEDFORD
Washington
SALEM
Clark
Oldham
Daviess
Martin
Orange
Floyd
Jefferson
LOUISVILLE
Bullitt
PLATE 16

CHICAGO, MILWAUKEE, St.PAUL and PACIFIC RAILROAD COMPANY

Description of Lines

to Accompany

System Diagram Map

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD CO.

CATEGORY 1

Lines or portions of lines which the carrier anticipates will be the subject of abandonment or discontinuance application to be filed within three (3) years.

ILLINOIS

Map Code [104]

(a) Moronts to McNabb (11.0 mile segment of trackage rights of the Illinois-Iowa Division, Fourteenth Subdivision, and related trackage).
(b) Located wholly in the State of Illinois.
(c) Located in Putnam County.
(d) Milepost 91.7 (Moronts) to milepost 95.6 (Granville); and milepost 0.0 (Granville) to milepost 7.1 (McNabb).
(e) No agency stations on this segment.
(f) Operation authorized by trackage rights over ConRail.

Map Code [105]

(a) Ladd to Seatonville (2.3 mile segment of the Illinois-Iowa Division, Fourteenth Subdivision, and related trackage).
(b) Located wholly in the State of Illinois.
(c) Located in Bureau County.
(d) Milepost 81.9 to 84.2 (MILW).
(e) No agency stations on this segment.
(f) Contemplates coordination with Chicago North Western Transportation Co. (CNWT), and Burlington Northern, Inc. (BN).

IOWA

Map Code [108]

(a) Delmar to Maquoketa (6.5 mile segment of the Illinois-Iowa Division, Twenty-third Subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Clinton and Jackson Counties.
(d) Milepost 26.7 to 33.2
(e) No agency stations on this segment.

Map Code [109]

(a) Clive to Woodward Junction (22.0 mile segment of the Illinois-Iowa Division, Twenty-seventh Subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Dallas and Polk Counties.
(d) Milepost 0.0 to 22.0
(e) Agency station Clive (milepost 7.5) not included, Agency station Grimes (milepost 6.5) included, dualized with Adel (milepost 22.4) not included.

Map Code [113]

(a) Muscatine to Rutledge (75.7 mile segment of the Illinois-Iowa Division, Nineteenth Subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Muscatine, Louisa, Washington, Keokuk, Jefferson, and Wapello Counties.
(d) Milepost 28.6 to 104.3
(e) No agency stations on this segment.

IOWA/MISSOURI

Map Code [114]

(a) Ottumwa Junction, Iowa, to Polo, Mo. (151.5 mile segment of the Illinois-Iowa Division, Twentieth Subdivision, and related trackage) 59.0 miles in Iowa; 92.5 miles in Missouri).
(b) Located in the States of Iowa and Missouri.
(c) Located in Iowa Counties of: Wapello, Monroe, Appanoose, and Wayne. Located in Missouri Counties of: Putnam, Sullivan, Grundy, Livingston, and Caldwell.
(d) Milepost 111.0 to 262.5.
(e) Agency station Chillicothe, Mo. (milepost 228.6) dualized with Chula, Mo. (milepost 219.0) is included.

WISCONSIN

Map Code [115]

(a) Tomahawk to Heafford Junction (5.7 mile segment of the Wisconsin Division, Nineteenth Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Lincoln County.
Milepost 133.4 to 139.1.
(e) Agency station Heafford Junction. (milepost 138.6) included.

Map Code [116]

(a) South Appleton to Appleton (1.7 mile segment of the Wisconsin Division, Eigth Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Winnebago and Outagamie Counties.
(d) Milepost 188.5 to 190.2.
(e) Agency station Menasha (milepost 185.5) serves this segment, but not included.

SOUTH DAKOTA

Map Code [135]

(a) Napa to Platte (82.9 mile segment of the Minnesota-Dakota Division, Thirty-sixth Subdivision, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Yankton, Bon Homme, and Charles Mix Counties.
(d) Milepost 0.0 to 82.9.
(e) No agency stations on this segment.

WASHINGTON

Map Code [140]

(a) Maytown to Helsing Junction (11.2 mile segment of the Washington Division, Sixteenth Subdivision, and related trackage).
(b) Located wholly in the State of Washington.
(c) Located in Thurston County.
(d) Milepost 37.0 to 48.2.
(e) No agency stations on this segment.
(f) Contemplates coordination with the Union Pacific RR. for operation Centralia to Helsing Junction.

Map Code [143]

(a) East Spokane to Metaline Falls (108.6 mile segment (47.5 miles of trackage rights, and 61.1 miles of MILW trackage of the Washington Division, Twenty-second Subdivision, and related trackage).
(b) Located wholly in the State of Washington.
(c) Located in Spokane and Pend Oreille Counties.
(d) Burlington Northern, Inc., East Spokane (milepost 1,479.5 to Newport (milepost 1,432.0) (47.5 miles of trackage rights), Milwaukee road Newport (milepost 43.6 to Metaline Falls (milepost 104.7) (61.1 miles).
(e) No agency stations on this segment.

Map Code [147]

(a) Beverly Junction to Hanford (20.8 mile segment of the Washington Division, Eighteen Subdivision, and related trackage).
(b) Located wholly in the State of Washington.
(c) Located in Kittitas, Yakima, and Benton Counties.
(d) Milepost 0.0 to 20.8.
(e) No agency stations on this segment.

MONTANA

Map Code [150]

(a) Winifred Junction to Winifred (43.4 mile segment of the Montana Division, Twelfth Subdivision, and related trackage).
(b) Located wholly in the State of Montana.
(c) Located in Fergus County.
(d) Milepost 0.0 to 43.4.
(e) No agency stations on this segment.

SOUTH DAKOTA

Map Code [152]

(a) Moreau Junction to Isabel (56.5 mile segment of the Minnesota-Dakota Division, Forty-seventh Subdivision, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Corson and Dewey Counties.
(d) Milepost 0.0 to 56.5.
(e) No agency stations on this segment.

NORTH DAKOTA/SOUTH DAKOTA

Map Code [153]

(a) Roscoe, S. Dak., to Linton, N. Dak. (75.6 mile segment of the Minnesota-Dakota Division, Thirty-first Subdivision, and related trackage).
(b) Located in the States of North Dakota and South Dakota, (34.9 miles in North Dakota and 40.7 miles in South Dakota).
(c) Located in North Dakota Counties of: McIntosh and Emmons. Located in South Dakota Counties of: Edmunds, McPherson, and Campbell.
(d) Milepost 0.0 to 75.6.
(e) Agency station at Roscoe (milepost 0.0) not included.

Map Code [154]

(a) Aberdeen, S. Dak., to Edgeley, N. Dak. (63.3 mile segment of the Minnesota-Dakota Division, Twenty-ninth Subdivision, and related trackage).

(b) Located on the States of North Dakota and South Dakota (31.8 miles in South Dakota and 31.5 miles in North Dakota).
(c) Located in Brown County of South Dakota, and in Dickey and La Moures Counties, in North Dakota.
(d) Milepost 0.0 to 63.3.
(e) Agency station of Aberdeen, S. Dak. (milepost 0.0) not included.

Map Code [155]

(a) Andover, S. Dak., to Brampton, N. Dak. (42.8 mile segment of the Minnesota-Dakota Division, Twenty-eighth Subdivision, and related trackage).
(b) Located in the States of North and South Dakota (38.6 miles in South Dakota, and 4.2 miles in North Dakota).
(c) Located in Sargent County, N. Dak., and in Day and Marshall Counties, S. Dak.
(d) Milepost 0.0 to 42.8.
(e) Agency station Britton (milepost 28.2) included.

MINNESOTA/NORTH DAKOTA/SOUTH DAKOTA

Map Code [160]

(a) Ortonville, Minn., to Fargo, N. Dak. (117.0 mile segment of the Minnesota-Dakota Division, Twenty-Fifth Sub-Division, and related trackage).
(b) Located in the States of Minnesota, North Dakota, and South Dakota (46.2 miles in Minnesota, 69.5 miles in North Dakota, and 1.3 miles in South Dakota).
(c) Located in Big Stone and Traverse Counties of Minnesota; Richland and Cass Counties of North Dakota; and Roberts County of South Dakota.
(d) Milepost 0.0 to 117.0.
(e) Agency station of Ortonville (Mainline milepost 600.0) not included, agency station Wahpeton (milepost 70.9) included, agency station Fargo (milepost 116.1) included.

MICHIGAN

Map Code [170]

(a) Channing to Republic (23.1 mile segment of the Wisconsin Division, Tenth Subdivision, and related trackage).
(b) Located wholly in the State of Michigan.
(c) Located in Dickinson and Marquette Counties.
(d) Milepost 315.3 to 338.4.
(e) Agency station Channing (milepost 315.9) not included.

WISCONSIN

Map Code [172]

(a) Ripon Junction to Oshkosh (19.0 mile segment of the Wisconsin Division, Twelfth Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Fond du Lac and Winnebago Counties.
(d) Milepost 169.3 to 188.3.
(e) Agency station Ripon (milepost 169.5) not included, agency station Oshkosh (milepost 188.0) included.

Map Code [173]

(a) Cambria to Portage Junction (16.7 mile segment of the Wisconsin Division, Fifteenth Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Columbia County.
(d) Milepost 182.4 to 165.7.
(e) Agency station Portage (mainline milepost 178.2) not included.

Map Code [179]

(a) Walworth to Avalon (13.5 mile segment of the Illinois-Iowa Division, Third Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Rock and Walworth Counties.
(d) Milepost 75.2 to 88.7.
(e) Agency station Walworth (milepost 73.5) not included.

MONTANA

Map Code [180]

(a) Ringling to Dorsey (3.49 mile segment of the Montana Division, leased, operated, and maintained by the White Sulphur Springs and Yellowstone Park Railway).
(b) Located wholly in the State of Montana.
(c) Located in Meagher County.
(d) Engineering Stations 520+30.5 to 335+96.4.
(e) No agency stations on this segment.

MINNESOTA/IOWA

Map Code [181]

(a) Austin Junction to Mason City (39.5 mile segment of the Minnesota-Dakota Division, Thirteenth Subdivision, and related trackage).
(b) Located in the States of: Minnesota, 11.3 miles; Iowa, 28.2 miles.
(c) Located in Mower Country, Minn., and in Cerro Gordo, Worth, and Mitchell Counties, Iowa.
(d) Milepost 0.0 to 39.5.
(e) Agency station Mason City (mainline milepost 116.7) not included, agency station Austin (mainline milepost 69.5) not included.

WISCONSIN

Map Code [182]

(a) Crivitz to Marinette (16.8 mile segment of the Wisconsin Division, Ninth Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Marinette County.
(d) Milepost 249.7 to 266.5.
(e) Agency station Crivitz (mainline milepost 248.3) and agency station Marinette (milepost 270.4) not included.
(f) Contemplates coordination with Chicago North Western Transportation Co. (CNWT).

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD CO.

CATEGORY 2

Lines or portions of lines potentially subject to abandonment.

THE MILWAUKEE ROAD

WASHINGTON

Map Code [244]

(a) Port Angeles to Port Townsend (50.8 mile segment of the Washington Division, Fourteenth Subdivision, and related trackage).
(b) Located wholly in the State of Washington.
(c) Located in Clallam and Jefferson Counties.
(d) Milepost 0.0 to 50.8.
(e) Agency at Port Angeles (milepost 50.8) included.

Map Code [245]

(a) Helsing Junction to Hoquiam (47.1 mile segment of the Washington Division, Sixteenth Subdivision, and related trackage).
(b) Located wholly in the State of Washington.
(c) Located in Grays Harbor and Thurston Counties.
(d) Milepost 48.2 to 90.7 (Joint ownership Milwaukee Road and Union Pacific RR.). Milepost 90.7 to 95.3 (trackage rights over Burlington Northern, Inc.).
(e) Agency station Aberdeen (milepost 90.2) included.

Map Code [246]

(a) Chehalis Junction to Raymond (53.0 mile segment of the Washington Division, Seventeenth Subdivision, and related trackage).
(b) Located wholly in the State of Washington.
(c) Located in Lewis and Pacific Counties.
(d) Milepost 0.0 to 53.0 on Burlington Northern, Inc. (trackage rights over the BN, Inc.).
(e) Agency station Chehalis (mainline milepost 19.0) not included.

Map Code [248]

(a) Tiflis to Marcellus (39.0 mile segment of the Washington Division, Twenty-first Subdivision, and related trackage).
(b) Located wholly in the State of Washington.
(c) Located in Grant and Adams Counties.
(d) Milepost 8.2 to 47.2.
(e) No agency stations on this segment.

MONTANA

Map Code [249]

(a) Fairfield to Agawam (31.3 mile segment of the Montana Division, Fourteenth Subdivision, and related trackage).
(b) Located wholly in the State of Montana.

(c) Located in Teton County.
(d) Milwaukee Road milepost 234.3 to Milwaukee milepost 244.4. Joint Milwaukee-Burlington Northern, Inc. milepost 244.4 to MILW-BN milepost 251.2. Milwaukee Road milepost 251.2 to milepost 265.6.
Agency station Fairfield (milepost 234.0) not included, agency station Choteau (milepost 252.0) included.

SOUTH DAKOTA

Map Code [251]

(a) Mitchell to Rapid City (286.0 mile segment of the Minnesota-Dakota Division, Forty-first and Forty-second Subdivisions, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Davison, Aurora, Brule, Lyman, Jones, Jackson, and Pennington Counties.
(d) Milepost 374.5 to 660.5.
(e) Agency station Mitchell (mainline milepost 373.9) not included, agency stations Parker (milepost 323.2). Chamberlain (milepost 440.5), Kennebec (milepost 471.1), Murdo (milepost 516.3), Rapid City (milepost 660.2), and Presho (milepost 481.0) now dualized with Kennebec, are all included.

Map Code [252]

(a) Canton to Mitchell (78.1 mile segment of the Minnesota-Dakota Division, Thirty-eighth Subdivision, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Lincoln, Turner, Hutchinson, McCook, Hanson, and Davison Counties.
(d) Milepost 295.4 to 373.5.
(e) Agency station at Mitchell (milepost 373.9) not included, agency station Canton (milepost 294.7) not included, Agency station Parker (milepost 323.2) included.

Map Code [256]

(a) Milbank to Sisseton (38.0 mile segment of the Minnesota-Dakota Division, Twenty-sixth Sub-division, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Grant and Roberts Counties.
(d) Milepost 0.0 to 38.0.
(e) Agency station Milbank (mainline milepost 611.2 not included.

Map Code [257]

(a) Sioux Falls to Sioux Falls Junction (29.7 mile segment of the Minnesota-Dakota Division, Thirty-seventh Sub-division, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Minnehaha and Moody Counties.
(d) Milepost 73.3 to 103.0.
(e) Agency station Sioux Falls (milepost 70.0) not included, agency station Dell Rapids (milepost 90.2) included.

Map Code [258]

(a) Egan to Madison (26.0 mile segment of the Minnesota-Dakota Division, Nineteeth Subdivision, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Moody and Lake Counties.
(d) Milepost 308.0 to 334.0.
(e) Agency stations Egan (milepost 308.3) and Madison (milepost 33.4) included.

Map Code [259]

(a) East Wye Switch to Mitchell (116.5 mile segment of the Minnesota-Dakota Division, Thirty-fifth Subdivision, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Union, Clay, Yankton, Bon-Homme, Hutchinson, and Davison Counties.
(d) Milepost 533.5 to 650.0.
(e) Agency stations Vermillion (milepost 548.3), Yankton (milepost 575.1), and Parkston (milepost 627.9) included, agency station Mitchell (mainline milepost 373.9) not included.

IOWA/SOUTH DAKOTA

Map Code [261]

(a) East Wye Switch to Canton (49.9 mile segment of the Minnesota-Dakota Division, Thirty-seventh Subdivision, and related trackage).
(b) Located in Iowa (34.6 miles), and in South Dakota (15.3 miles).
(c) Located in Union and Lincoln Counties, S. Dak., and in Lyon, Plymouth, and Sioux Counties, Iowa.
(d) Milepost 0.0 to 49.9.
(e) Agency station Canton (milepost 49.8) not included.

IOWA

Map Code [262]

(a) Manilla to Council Bluffs (61.6 mile segment of the Illinois-Iowa Division, Eighteenth Subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Crawford, Shelby, Harrison, and Pottawatamie Counties.
(d) Milepost 422.8 to 484.4.
(e) Agency stations Manilla (milepost 422.7) and Council Bluffs (milepost 482.2) not included, agency station Portsmouth (milepost 447.4) and Earling (milepost 435.9) dualized with Portsmouth included.

Map Code [263]

(a) Herndon to Clive (46.6 mile segment of the Illinois-Iowa Division, Twenty-fifth Subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Polk, Dallas, and Guthrie Counties.
(d) Milepost 7.5 to 54.1.
(e) Agency station Clive (milepost 7.6) not included, agency stations Adel (milepost 22.4) and Redfield (milepost 32.0) included.

Map Code [264]

(a) Tama to Louisa (50.1 mile segment of the Illinois-Iowa Division, Sixteenth and Seventeenth Subdivisions, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Linn, Benton, and Tama Counties.
(d) Milepost 230.7 to 280.8.
(e) Agency station Tama (milepost 280.5) not included.

Map Code [265]

(a) Green Island to Dove (73.4 mile segment of the Illinois-Iowa Division, Sixteenth Subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Jackson, Clinton, Jones, and Linn Counties.
(d) Milepost 152.5 to 225.9.
(e) No agency stations on this segment.

WISCONSIN

Map Code [266]

(a) Durand to Chippewa Falls (44.1 mile segment of the Minnesota-Dakota Division, Fifth Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Pepin, Dunn, Eau Claire, and Chippewa Counties.
(d) MILW milepost 18.0 (Durand) to MILW. Milepost 50.5 (Eau Claire)—32.5 miles, Eau Claire to Chippewa Falls—11.6 miles, total 44.1 miles. (Operated by Soo Line), MILW-Soo Line Joint ownership.

Map Code [267]

(a) Lone Rock to Prairie du Chien (54.0 mile segment of the Wisconsin Division, Twenty-second Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Richland, Iowa, Grant, and Crawford Counties.
(d) Milepost 182.3 to 236.3.
(e) Agency station Praire du Chien (milepost 255.9), and agency station Boscobel (milepost 208.9) dualized with Muscoda (Milepost (194.7) included.

Map Code [268]

(a) Janesville to Monroe (34.0 mile segment of the Wisconsin Division, Twenty-fifth Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Rock and Greene Counties.
(d) Milepost 10.0 to 44.0.
(e) Agency station Janesville (Mainline milepost 99.0) not included, agency station Monroe (milepost 43.4) included.

MICHIGAN

Map Code [269]

(a) Randville to Ontonagon (103.5 mile segment of the Wisconsin Division, Sixth and Seventh Subdivisions, and related trackage).
(b) Located wholly in the State of Michigan.
(c) Located in Dickinson, Iron, Baraga, Houghton, and Ontonagon Counties.
(d) Milepost 304.5 to 408.0.
(e) Agency station Ontonagon (milepost 407.7), and agency station Channing (milepost 315.9) included.

WISCONSIN

Map Code [272]

(a) North Milwaukee to Horicon Granville to Menominee Falls Horicon to Ripon (79.9 mile segment of the Wisconsin Division, Twelfth Subdivision and Seventeenth Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Milwaukee, Waukesha, Washington, Dodge, and Fond du Lac Counties.
(d) Milepost 93.7 (North Milwaukee) to milepost 139.0 (Horicon) milepost 100.5 (Granville) to milepost 104.3 (Menominee Falls); and milepost 139.0 (Horicon) to milepost 169.8 (Ripon):

	Miles
North Milwaukee to Horicon	45.3
Granville to Menominee Falls	3.8
Horicon to Ripon	30.8
Total	79.9

(e) Agency stations of: Granville (milepost 100.2), Slinger (milepost 117.2), Horicon (milepost 139.1), Waupun (milepost 153.7), Brandon (milepost 161.0), dualized with Markesan; and agency station Ripon (milepost 168.9) are included.

Map Code [273]

(a) Cambria to Horicon (26.7 mile segment of the Wisconsin Division, Fifteenth Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Dodge and Columbia Counties.
(d) Milepost 139.0 to 165.7.
(e) No agency stations on this segment.

Map Code [274]

(a) Brandon to Markesan (11.6 mile segment of the Wisconsin Division, Sixteenth Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Fond du Lac and Green Lake Counties.
(d) Milepost 161.0 to 172.6.
(e) Agency station Markesan (milepost 172.6) included, agency station Fairwater (milepost 165.5), dualized with Markesan, included.

IOWA

Map Code [275]

(a) Davenport to Eldridge (11.4 mile segment of the Illinois-Iowa Division, Twenty-second Subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Scott County.
(d) Milepost 0.1 to 11.5.
(e) No agency stations on this segment.

ILLINOIS

Map Code [276]

(a) Davis Junction to Moronts (66.0 mile segment of the Illinois Division, Fourteenth Subdivision, and related trackage).
(b) Located wholly in the State of Illinois.
(c) Located in Ogle, Lee, LaSalle, Bureau, and Putnam Counties.
(d) Milepost locations as follows:

	Miles
BN milepost 11.7 to BN milepost 0.3 (BN MP 86.3)	11.4
BN milepost 86.3 to BN milepost 77.8 (MILW MP 46.8)	8.5
MILW milepost 46.8 to MILW milepost 81.9	35.1
MILW milepost 81.9 to MILW milepost 84.2	2.3
MILW milepost 84.2 (C/R MP 191.8) to MILW MP 91.7 (C/R MP 184.3)	7.5
DePue to DePue Junction (secondary track)	1.2
Total	66.0

NOTE.—C/R—ConRail. Trackage rights on BN and ConRail.

(e) Agency stations—Rochelle (MILW mainline milepost 69.4) and Mendota (MILW mainline milepost 83.3) included, agency station Davis Junction (MILW mainline milepost 80.1) not included.

Map Code [278]

(a) Delmar to Momence (3.1 mile segment of the Illinois-Iowa Division, Ninth Subdivision, and related trackage).
(b) Located wholly in the State of Illinois.
(c) Located in Kankakee County.
(d) Milepost 52.9 to 56.0.
(e) Agency station Delmar (mainline milepost 53.1) not included.

MICHIGAN

Map Code [279]

(a) Channing to Escanaba (approximately 66-mile segment of Operating Rights over the Escanaba & Lake Superior RR., and related trackage).
(b) Located wholly in the State of Michigan.
(c) Located in Dickinson, Menominee, and Delta Counties.
(d) None.
(e) No agency stations on this segment.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD CO.

CATEGORY 3

Lines or portions of lines for which an abandonment or discontinuance application is currently pending before the interstate Commerce Commission.

THE MILWAUKEE ROAD

MINNESOTA

Map Code [316]

(a) Red Wing to Cannon Falls (21.6 mile segment of the Minnesota-Dakota Division, Eight Subdivision. AB-7 (Sub. No. 16)).
(b) Located wholly within the State of Minnesota.
(c) Located in Goodhue County.
(d) Milepost 72.88 to 94.48.
(e) Agency station Red Wing (milepost 95.0) not included.

SOUTH DAKOTA

Map Code [336]

(a) Marion Junction to Menno (21.5 mile segment of the Minnesota; Dakota Division, Thirty-ninth Subdivision, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Turner and Hutchinson Counties.
(d) Milepost 0.3 to 21.8.
(e) No agency stations on this segment.

WISCONSIN

Map Code [337]

(a) Sparta to Viroqua (34.7 mile segment of the Wisconsin Division, Eleventh Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Monroe and Vernon Counties.
(d) Milepost 0.0 to 34.7.
(e) Agency station Viroqua (milepost 34.7) included, agency station Sparta (milepost 0.0) is not included.

SOUTH DAKOTA

Map Code [338]

(a) Garden City to Bristol (28.8 mile segment of the Minnesota-Dakota Division, Twenty-seventh Subdivision, and related trackage).
(b) Located wholly within the State of South Dakota.
(c) Located in Clark and Day Counties.
(d) Milepost 73.9 to 102.7.
(e) Agency station Bristol (mainline milepost 668.5) not included.

Map Code [339]

(a) Trail City to Faith (106.5 mile segment of the Minnesota-Dakota Division, Forty-eight Subdivision, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Dewey, Corson, Ziebach, and Meade Counties.
(d) Milepost 0.0 to 106.5.
(e) No agency stations on this segment.

MINNESOTA

Mape Code [340]

(a) Mankato to Minnesota Lake (29.5 mile segment of the Minnesota-Dakato Division, Eighteenth Subdivision, and related trackage).
(b) Located wholly in the State of Minnesota.
(c) Located in Blue Earth and Faribault Counties.
(d) Milepost 8.5 to 38.0.
(e) Agency station Mankato (milepost 37.7) not included, agency station Good Thunder (milepost 24.5) included, Wells (milepost 144.4) not included. Good Thunder is an on-call station from wells.

SOUTH DAKOTA

Map Code [341]

(a) Madison to Bryant (47.3 mile segment of the Minnesota-Dakota Division, Twenty-first Subdivision, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Lake, Kingsbury, and Hamlin Counties.
(d) Milepost 0.6 to 47.9.
(e) Agency station Madison (milepost 0.0) not included.

WISCONSIN

Map Code [342]

(a) Ripon Junction to Berlin (11.8 mile segment of the Wisconsin Division, Thirteenth Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Fond du Lac, Winnebago, and Green Lake Counties.
(d) Milepost 169.8 to 181.6.
(e) Agency station Berlin (milepost 181.5) included, dualized with Oshkosh (milepost 188.1) not included.

IOWA

Map Code [343]

(a) Paralta to Hopkinton (33.5 mile segment of the Illinois-Iowa Division, Twenty-fourth Sub-Division, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Linn, Jones, and Delaware Counties.
(d) Milepost 0.0 to 33.5.
(e) Agency station Monticello (milepost 24.2) included.

WISCONSIN/MINNESOTA

Map Code [344]

(a) Winona, Minn., to Durand, Wis. (51.1 miles of trackage rights and line segment of the Minnesota-Dakota Division, Fifth Subdivision, and related trackage).
(b) Located in the States of Minnesota and Wisconsin: 1.0 mile in Minnesota and 50.1 miles in Wisconsin.
(c) Located in Pepin and Buffalo Counties, Wis., and in Winona County, Minn.
(d) Milepost 325.0 to milepost 362.0 (Burlington Northern, Inc., trackage rights) and milepost 3.9 to 18.0 Milwaukee Road.
(e) Agency stations Winona (mainline milepost 308.4) and Durand (milepost 19.1), not included.
(f) Contemplates coordination with Chicago North Western Transportation Co. (CNWT) for operation St. Paul to Eau Claire.

MINNESOTA

Map Code [345]

(a) St. Croix Junction to Bayport (22.5 mile segment of the Minnesota-Dakota Division, Sixth Subdivision, and related trackage).
(b) Located wholly in the State of Minnesota.
(c) Located in Washington County.
(d) Milepost 0.0 to 22.5.
(e) Agency station Bayport (milepost 21.7) not included.
(f) Contemplates coordination with Chicago North Western Trasportation Co. (CNWT) for operation St. Paul to Bayport.

MONTANA

Map Code [346]

(a) Three Forks to Bozeman, including Bozeman Hot Springs to Gallatin Gateway (45.2 mile segment of the Montana Division, Ninth Subdivision; and 4.9 mile segment of the Montana Division, Fifteenth Subdivision, and related trackage).
(b) Located wholly in the State of Montana.
(c) Located in Gallatin County.
(d) Milepost 0.0 to 4.9 and milepost 0.0 to 40.3.
(e) Agency station Bozeman (milepost 38.2) included, agency station Three Forks (mainline milepost 1449.8) not included.

MINNESOTA

Map Code [347]

(a) St. Clair Junction to Pemberton (32.6 mile segment of the Minnesota-Dakota Division, Twentieth Subdivision, and related trackage).
(b) Located wholly in the State of Minnesota.
(c) Located in Freeborn, Waseca, and Blue Earth Counties.
(d) Milepost 1.3 to 33.9.
(e) No agency stations on this segment.

SOUTH DAKOTA

Map Code [348]

(a) Woonsocket to Wessington Springs (15.2 mile segment of the Minnesota-Dakota Division, Thirty-fourth Subdivision, and related trackage).
(b) Located wholly in the State of South Dakota.
(c) Located in Sanborn and Jerould Counties.
(d) Milepost 393.8 to 409.0.
(e) Agency station Woonsocket (milepost 393.5) not included.

WISCONSIN

Map Code [349]

(a) Monroe to Mineral Point (46.7 mile segment of the Wisconsin Division, Twenty-fifth Subdivision, and related trackage).
(b) Located wholly within the State of Wisconsin.
(c) Located in Greene, LaFayette, and Iowa Counties.
(d) Milepost 44.0 to 90.7.
(e) Agency station Monroe (milepost 43.2) not included.

IOWA

Map Code [350]

(a) Conover to Decorah (10.0 mile segment of the Minnesota-Dakota Division, Fifteenth Subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Milepost in Winneshiek County.
(d) Milepost 0.0 to 10.0.
(e) Agency station Decorah (milepost 10.0) not included, dualized with Cresco (mainline milepost 19.4).

ILLINOIS

Map Code [351]

(a) Kirkland to DeKalb (14.5 mile segment of the Illinois-Iowa Division, Eleventh Subdivision, and related trackage).
(b) Located wholly in the State of Illinois.
(c) Located in DeKalb County.
(d) Milepost 20.5 to 35.0.
(e) Agency station DeKalb (milepost 34.0) included, dualized with Kirkland (mainline milepost 67.4) not included.

Map Code [352]

(a) Momence to Joliet (35.0 mile segment of the Illinois-Iowa Division, Ninth Subdivision, and related trackage).
(b) Located wholly within the State of Illinois.
(c) Located in Will and Kankakee Counties.
(d) Milepost 56.0 to 91.0.
(e) No agency stations on this segment.

INDIANA

Map Code [353]

(a) Bedford to Seymour (37.5 mile segment of the Illinois-Iowa Division, Eighth Subdivision, and related trackage).
(b) Located wholly in the State of Indiana.
(c) Located in Lawrence and Jackson Counties.
(d) Milepost 262.5 to 300.0.
(e) Agency station Bedford (milepost 262.4) not included.

IOWA

Map Code [354]

(a) Amana to Rutledge (65.2 mile segment of the Illinois-Iowa Division, Twenty-first Subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Keokuk, Iowa, and Wapello Counties.
(d) Milepost 65.2 to 0.0.
(e) Agency station Sigourney (milepost 24.3) included, agency station Amana (milepost 67.0) not included.

Map Code [355]

(a) Rockwell City to Storm Lake (38.8 mile segment of the Illinois-Iowa Division, Twenty-eighth Subdivision, and related trackage).
(b) Located wholly in the State of Iowa.
(c) Located in Sac, Buena Vista, and Calhoun Counties.
(d) Milepost 0.0 to 38.8.
(e) Agency station Rockwell City (milepost 0.0) not included, agency station Storm Lake (milepost 38.5) included.

MINNESOTA

Map Code [356]

(a) Farmington to Benning (54.9 mile segment of the Minnesota-Dakota Division, Ninth Subdivision, and related trackage).
(b) Located wholly in the State of Minnesota.
(c) Located in Dakota, Scott, Rice, Le Sueur, and Blue Earth Counties.
(d) Milepost 1.2 to 56.1.
(e) Agency station LeCenter (milepost 36.0), dualized with Montgomery (milepost 27.6) included, agency station Farmington (milepost 0.0) not included.
(f) Contemplates coordination with Chicago North Western Transportation Co. (CNWT) for operation St. Paul to Mankato.

Map Code [357]

(a) Farmington to Shakopee (23.5 mile segment of the Minnesota-Dakota Division, Eleventh Subdivision, and related trackage).
(b) Located wholly in the State of Minnesota.
(c) Located in Carver, Scott, and Dakota Counties.
(d) Milepost 0.5 to 24.0.
(e) Agency station Shakopee (milepost 24.7) and Farmington (milepost 0.0) not included, agency station Prior Lake (milepost 16.1) and Lakeville (milepost 5.1) are dualized with Farmington, and included.
(f) Contemplates coordination with the Chicago North Western Transportation Co. (CNWT) for operation St. Paul to Shakopee.

Map Code [358]

(a) IM&D Junction to Ramsey (100.0 mile segment of the Minnesota-Dakota Division, Fourteenth Subdivision, and related trackage).
(b) Located wholly in the State of Minnesota.
(c) Located in Houston, Fillmore, and Mower Counties.
(d) Milepost 2.9 to 102.9.
(e) Agency station Spring Valley (milepost 73.5) included, agency station Grand Meadow (milepost 83.0) dualized with Spring Valley included.

WISCONSIN

Map Code [359]

(a) Milton Junction to Waukesha (41.0 mile segment of the Wisconsin Division, Twenty-sixth Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Waukesha, Rock, Jefferson, and Walworth Counties.

(d) Milepost 20.5 to 61.5.
(e) Agency station Waukesha (milepost 23.0) not included.
(f) Line between milepost 23.0 (near Waukesha) and milepost 48.86 (near Whitewater) subject to pending Application for Abandonment in Docket AB-7 (Sub-No. 20).

Map Code [360]

(a) Iron Ridge to Fond du Lac (28.8 mile segment of the Wisconsin Division, Fourteenth Subdivision, and related trackage).
(b) Located wholly in the State of Wisconsin.
(c) Located in Dodge and Fond du Lac Counties.
(d) Milepost 133.0 to 161.8.
(e) Agency station Mayville (milepost 140.0) and Fond du Lac (milepost 161.0) included.

MINNESOTA/SOUTH DAKOTA

Map Code [361]

(a) Jackson, Minn., to Egan, S. Dak., (98.0 mile segment of the Minnesota-Dakota Division, Nineteenth Subdivision, and related trackage).
(b) Located in the States of Minnesota and South Dakota: 86.0 miles in Minnesota and 12.0 miles in South Dakota.
(c) Located in Minnesota Counties of: Nobles, Jackson, Murray, and Pipestone. Located in Moody County, S. Dak.
(d) Milepost 210.0 to 308.0.
(e) Agency station Jackson (milepost 209.4) and Egan (milepost 309.3) included, agency station Pipestone (milepost 288.6) is on-call from Egan, and included.

MINNESOTA

Map Code [362]

(a) Faribault to Zumbrota (35.0 mile segment of the Minnesota-Dakota Division, Tenth Subdivision, and related trackage).
(b) Located wholly in the State of Minnesota.
(c) Located in Rice and Goodhue Counties.
(d) Milepost 53.7 to 88.7.
(e) No agency stations on this segment, agency station Faribault (milepost 89.0) not included.

[FR Doc. 78-11034 Filed 4-24-78; 8:45 am]

[7035-01]

[AB 35 (SDM)]

LOS ANGELES & SALT LAKE RAILROAD CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Los Angeles & Salt Lake Railroad Co., has filed with the Commission its amended color-coded system diagram map in Docket No. AB 35 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 29, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 35 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.

SYSTEM DIAGRAM MAP of the LOS ANGELES & SALT LAKE RAILROAD CO. AB No. 35 prepared in conjunction with I.C.C. Order Ex Parte No. 274 (Sub-No. 2) and Title 49 of the code of Federal Regulation 1121.

LEGEND

Lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within three years shown ---------- (1)

Lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues shown -- (2)

Lines or portions of lines for which an abandonment or discontinuance application is pending before the Interstate Commerce Commission shown ---------- (3)

Lines or portions of lines which are being operated under rail service continuance provisions shown ---------- (4)

All other Los Angeles and Salt Lake Railroad Co. lines shown --

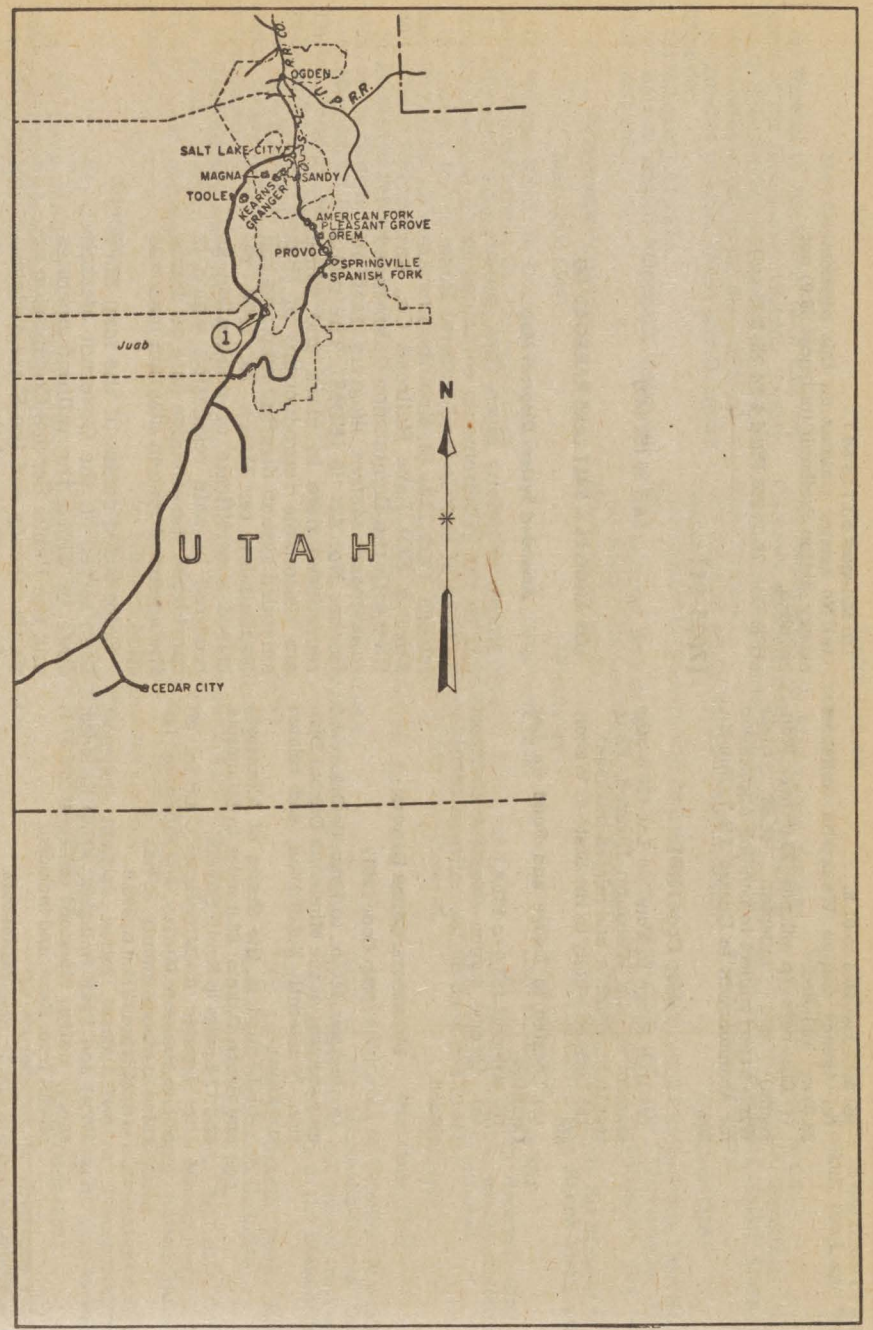
0 50 100
SCALE IN MILES

Standard Metropolitan Statistical Area (SMSA) shown ----

City outside of an (SMSA) with a population of 5,000 or more persons according to 1970 U.S. Census reports shown ----------

State boundaries shown ----------

Boundaries of counties in which proposed abandonments are located shown ---------- County



NEVADA
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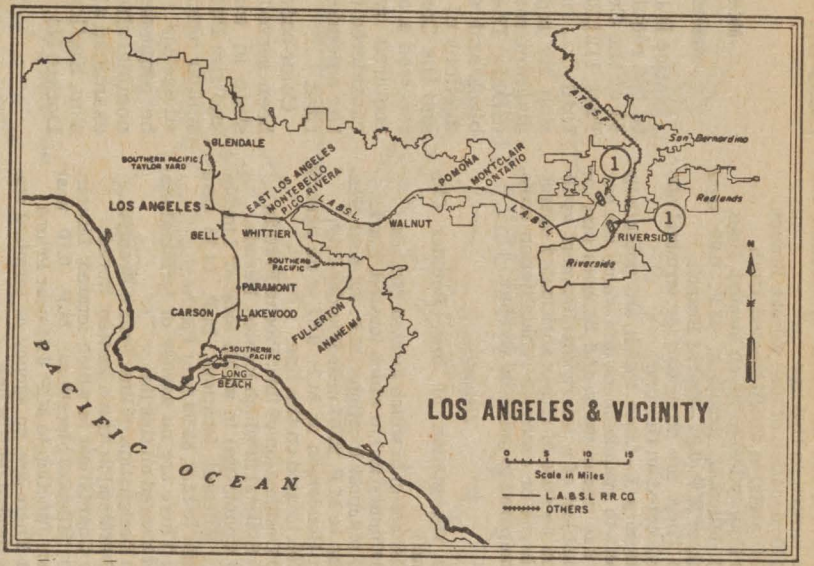
Lincoln
Clark
San Bernardino
Riverside
LAS VEGAS
BOULDER CITY
GLENDALE
LOS ANGELES
BELL
WHITTIER
FULLERTON
ANAHEIM
ONTARIO
RIVERSIDE
ATSF RR.
PACIFIC OCEAN


GLENDALE
SOUTHERN PACIFIC TAYLOR YARD
LOS ANGELES
EAST LOS ANGELES
MONTEBELLO
PICO RIVERA
L.A.S.L.
POMONA
MONTCLAIR
ONTARIO
ATSF
San Bernardino
Redlands
RIVERSIDE
Riverside
WALNUT
L.A.S.L.
BELL
WHITTIER
SOUTHERN PACIFIC
PARAMONT
CARSON
LAKEWOOD
FULLERTON
ANAHEIM
SOUTHERN PACIFIC
LONG BEACH
PACIFIC OCEAN
LOS ANGELES & VICINITY
Scale in Miles
L.A.S.L. RR CO.
OTHERS

LOS ANGELES & SALT LAKE RAILROAD CO., SYSTEM DIAGRAM (AB-35)

DESCRIPTION OF LINES

Pursuant to regulations of the Interstate Commerce Commission (49 CFR § 1121.23), following is an amended and updated description of lines of Los Angeles & Salt Lake Railroad Co. as shown on the System Diagram Map.

Category 1.—Lines anticipated to be the subject of abandonment applications within three years.

California

(a) Designation of line: Crestmore Branch.
(b) State(s) in which located: California.
(c) County(ies) in which located: Riverside and San Bernardino.
(d) Milepost locations: M.P. 3.00 near Crestmore to M.P. 4.24.
(e) There are no agency or terminal stations located on this line.
(a) Description of line: Crestmore Branch.
(b) State(s) in which located: California.
(c) County(ies) in which located: Riverside.
(d) Milepost locations: M.P. 0.07 near Riverside Junction to M.P. 0.86 near A.T. & S.F. station.
(e) There are no agency or terminal stations located on this line.

Utah

(a) Designation of line: Silver City Branch.
(b) State(s) in which located: Utah.
(c) County(ies) in which located: Juab.
(d) Milepost locations: M.P. 0.48 of Eureka Branch to M.P. 2.42 near Silver City.
(e) There are no agency or terminal stations located on this line.
(a) Designation of line: Eureka Branch.
(b) State(s) in which located: Utah.
(c) County(ies) in which located: Juab.
(d) Milepost locations: M.P. 0.00 near Tintic to M.P. 0.81—End of Branch.
(e) There are no agency or terminal stations located on this line.

Category 2.—Lines which are potentially subject to abandonment and which the carrier has under study and believes may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenue.

Nevada

(a) Designation of line: Boulder City Branch.
(b) State(s) in which located: Nevada.
(c) County(ies) in which located: Clark.
(d) Milepost locations: M.P. 9.8 near Henderson to M.P. 22.67 near Boulder City.
(e) Henderson at M.P. 9.87 is an agency station located on this line.
(a) Designation of line: Pioche Branch.
(b) State(s) in which located: Nevada.
(c) County(ies) in which located: Lincoln.
(d) Milepost locations: M.P. 14.78 near Panaca to M.P. 32.96 near Pioche.
(e) There are no agency or terminal stations located on this line.
(a) Designation of line: Prince Branch.
(b) State(s) in which located: Nevada.
(c) County(ies) in which located: Lincoln.
(d) Milepost locations: M.P. 0.10 near Prince Junction to M.P. 8.81 near Prince.
(e) There are no agency or terminal stations located on this line.

[FR Doc. 78-11039 Filed 4-24-78; 8:45 am]

[7035-01]

[AB 160 (SDM)]

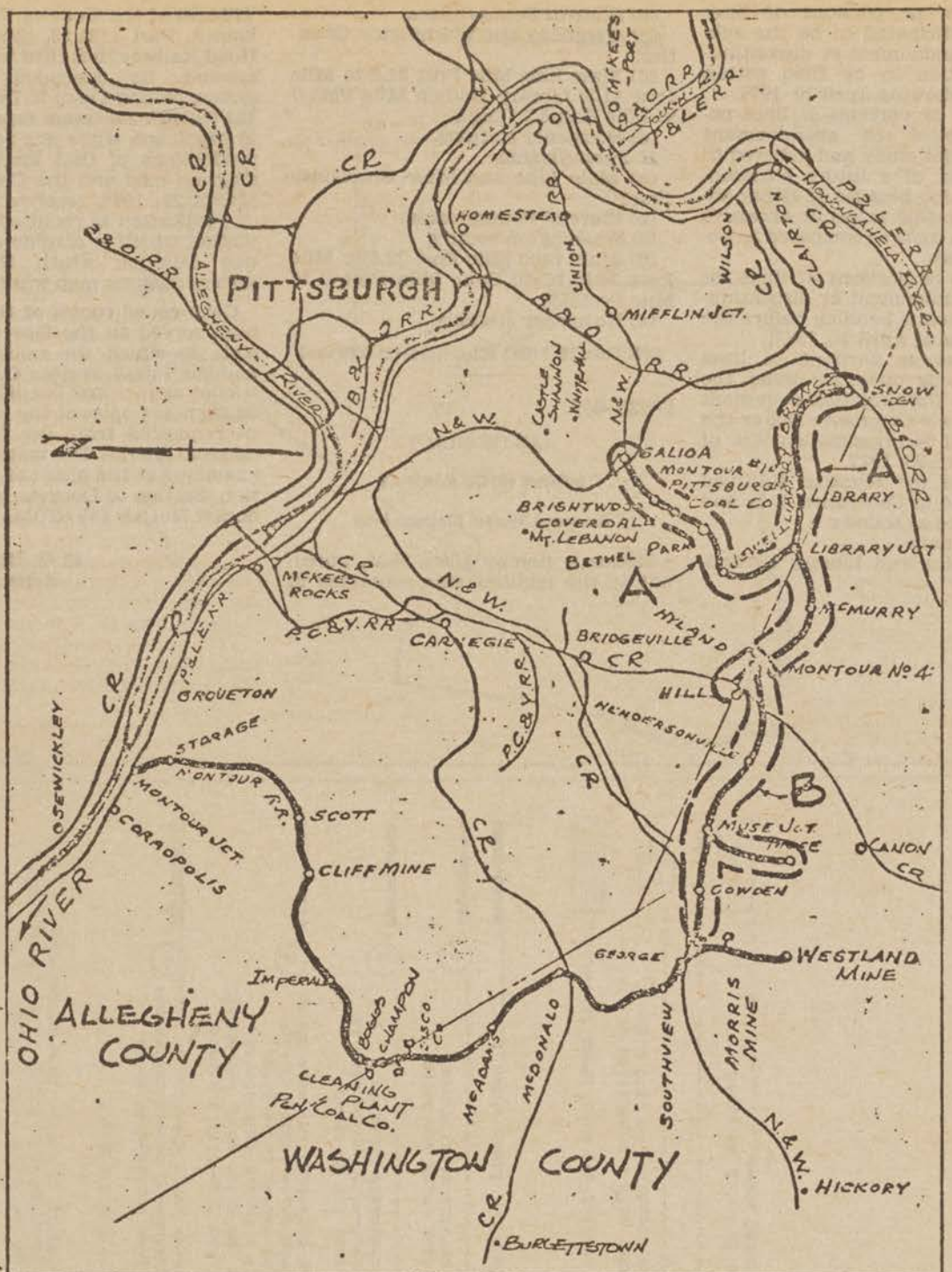
MONTOUR RAILROAD CO.

Amended System Diagram Map

Notice is hereby given that pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Montour Railroad Co., has filed with the Commission its amended color-coded system diagram map in Docket No. AB 160 (SDM). The maps reproduced here in black and white are reasonable reproductions of that system diagram map and the Commission on April 10, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting Docket No. AB 160 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.



AB - 160

MONTOUR RAILROAD COMPANY

Scale: 1" = 4 Miles

March 3, 1978

A. All lines or portions of lines which are anticipated to be the subject of an abandonment or discontinuance application to be filed within three years following April 30, 1977.

B. All lines or portions of lines potentially subject to abandonment which are under study and believed to be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs as compared to potential revenues.

C. All lines or portions of lines for which an abandonment or discontinuance application is pending before the Commission as of April 30, 1977.

D. All lines or portions of lines which are being operated under the Rail Services Continuation provisions of the Interstate Commerce Act or the Regional Rail Reorganization Act of 1973 as of April 30, 1977.

The lines of the Montour Railroad Co. designated in Categories A, B, and C are described as follows:

A: Pennsylvania:

(a) Main Line and Library Secondary Track;

(b) State of Pennsylvania;

(c) Allegheny and Washington Counties;

(d) Main Line Mile Post 31.5 to Mile Post 41.3; Library Branch Mile Post 0 to Mile Post 5.7 (End);

(e) No agency stations.

B: Pennsylvania:

(a) Main Line and Muse Secondary Track;

(b) State of Pennsylvania;

(c) Washington county;

(d) Main Line Mile Post 22.5 to Mile Post 31.5; Muse Spur Mile Post 0 to Mile Post 0.9;

(e) No agency stations.

[FR Doc. 78-11043 Filed 4-24-78; 8:45 am]

[7035-01]

[AB 153 (SDM)]

MOUNT HOOD RAILWAY

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Mount Hood Railway, has filed with the Commission its amended color-coded system diagram map in Docket No. AB 153 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 29, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 153 (SDM).

H. G. Homme, Jr.,
Acting Secretary.

SYSTEM DIAGRAM MAP of the MOUNT HOOD RAILWAY AB No. 153 prepared in conjunction with I.C.C. Order Ex Parte No. 274 (Sub-No. 2) and Title 49 of the code of Federal Regulation 1121.

* L E G E N D *

Lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within three years shown ---------- (1)

Lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues shown -- (2)

Lines or portions of lines for which an abandonment or discontinuance application is pending before the Interstate Commerce Commission shown ---------- (3)

Lines or portions of lines which are being operated under rail service continuance provisions shown ---------- (4)

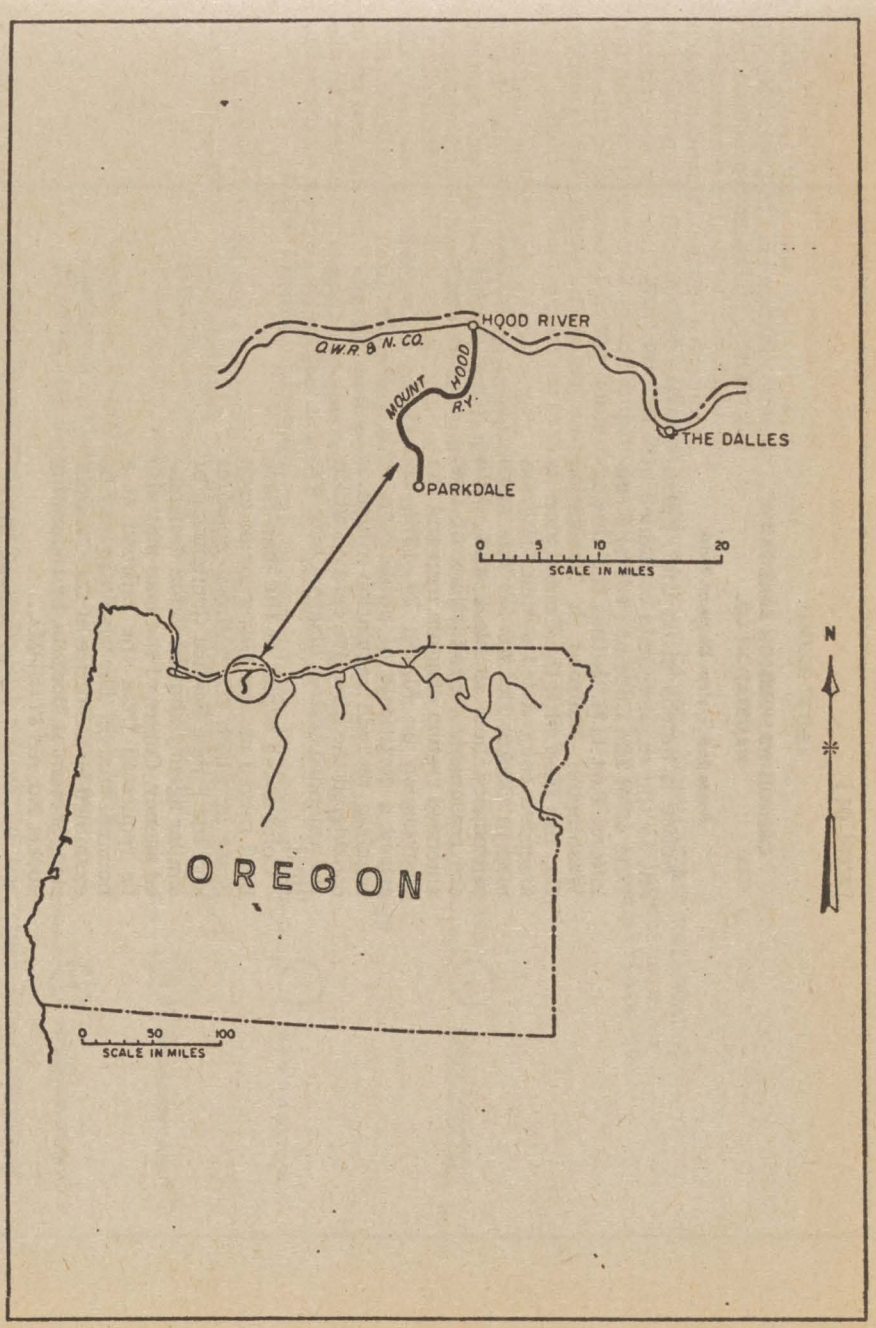
All other Mount Hood Railway lines shown ----------

Standard Metropolitan Statistical Area (SMSA) shown ----

City outside of an (SMSA) with a population of 5,000 or more persons according to 1970 U.S. Census reports shown ----------

State boundaries shown ----------

Boundaries of counties in which proposed abandonments are located shown ---------- County



[FR Doc. 78-11042 Filed 4-24-78; 8:45 am]

[7035-01]

[AB 37 (SDM)]

OREGON-WASHINGTON RAILROAD & NAVIGATION CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Oregon-Washington Railroad & Navigation Co., has filed with the Commission its amended color-coded system diagram map in Docket No. AB 37. The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 29, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The map also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 37 (SDM).

H. G. Homme, Jr.,
Acting Secretary.

SYSTEM DIAGRAM MAP of the OREGON-WASHINGTON RAILROAD & NAVIGATION CO. AB No. 37 prepared in conjunction with I.C.C. Order Ex Parte No. 274 (Sub-No. 2) and Title 49 of the code of Federal Regulation 1121.

* L E G E N D *

Lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within three years shown ---------- (1)

Lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues shown -- (2)

Lines or portions of lines for which an abandonment or discontinuance application is pending before the Interstate Commerce Commission shown ---------- (3)

Lines or portions of lines which are being operated under rail service continuance provisions shown ---------- (4)

All other Oregon-Washington Railroad & Navigation Co. lines shown

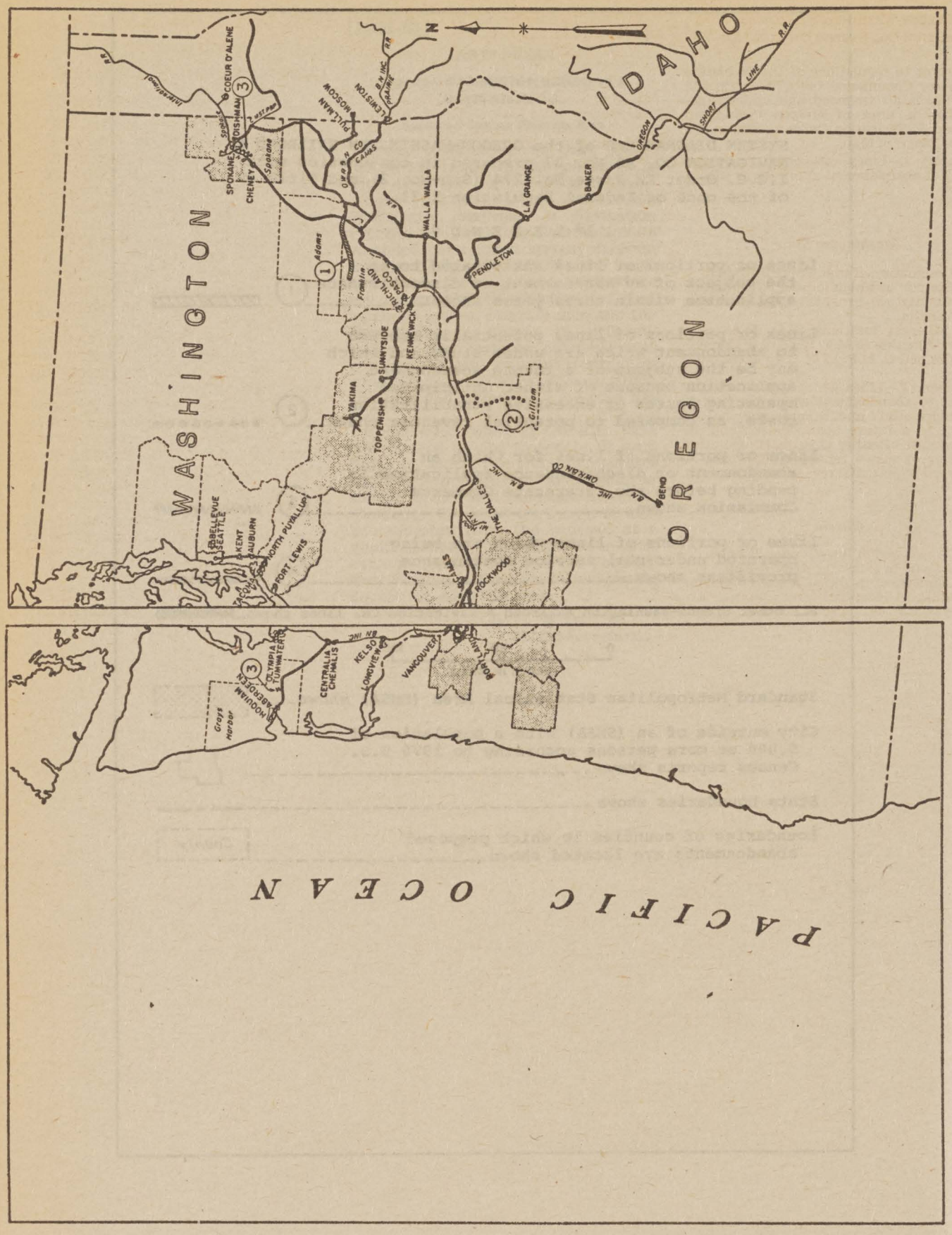
0 50 100
SCALE IN MILES

Standard Metropolitan Statistical Area (SMSA) shown ----

City outside of an (SMSA) with a population of 5,000 or more persons according to 1970 U.S. Census reports shown ----------

State boundaries shown ----------

Boundaries of counties in which proposed abandonments are located shown ---------- County


WASHINGTON
OREGON
IDAHO
PACIFIC OCEAN
COEUR D'ALENE
SPOKANE
CHENEY
Spokane
Adams
Franklin
PASCO
RICHLAND
KENNEWICK
SUNNYSIDE
YAKIMA
TOPPENISH
WALLA WALLA
PENDLETON
LA GRANDE
BAKER
Gilliam
THE DALLES
BEND
OAKDALE
ROCKWOOD
BELLEVUE
SEATTLE
KENT
AUBURN
NORTH PUYALLUP
FORT LEWIS
OLYMPIA
TUMWATER
ABERDEEN
HOQUIAM
Grays Harbor
CENTRALIA
CHEHALIS
KELSO
LONGVIEW
VANCOUVER
PORTLAND

OREGON-WASHINGTON RAILROAD & NAVIGATION CO., SYSTEM DIAGRAM (AB-37)

Pursuant to regulations of the Interstate Commerce Commission (49 CFR § 1121.23), following is an amended and updated description of lines of Oregon-Washington Railroad & Navigation Co. as shown on the System Diagram Map.

Category 1.—Lines anticipated to be the subject of abandonment applications within 3 years.

Washington State

(a) Designation of line: Connell Branch.
(b) State(s) in which located: Washington.
(c) County(ies) in which located: Adams and Franklin.
(d) Milepost locations: M.P. 15.81 near Hooper Junction to M.P. 53.06 near Connell.
(e) Connell at M.P. 52.94 is an agency station.

Category 2.—Lines which are potentially subject to abandonment which the carrier has under study and believes may be the subject to a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues.

Oregon

(a) Designation of line: Condon Branch.
(b) State(s) in which located: Oregon.
(c) County(ies) in which located: Gilliam.
(d) Milepost locations: M.P. 0.00 near Arlington to M.P. 44.5 near Condon.
(e) There are no agency or terminal stations located on this line.

Washington State

(a) Designation of line: Connell Branch.
(b) State(s) in which located: Washington.
(c) County(ies) in which located: Adams and Whitman.
(d) Milepost locations: M.P. 0.00 near La Crosse to M.P. 15.81 near Hooper Junction.
(e) La Crosse at M.P. 0.11 is an agency station.

Category 3.—Abandonment applications pending before the Interstate Commerce Commission.

Washington State

(a) Designation of line: Hinkle-Spokane Main Line.
(b) State(s) in which located: Washington.
(c) County(ies) in which located: Spokane.
(d) Milepost locations: M.P. 354.71 near Fish Lake to M.P. 367.19 near Spokane.
(e) There are no agency or terminal stations located on this line.

(a) Designation of line: Montesano Branch.
(b) State(s) in which located: Washington.
(c) County(ies) in which located: Grays Harbor.
(d) Milepost locations: M.P. 0.00 near Montesano to M.P. 1.60 near South Montesano.
(e) There are no agency or terminal stations located on this line.

[FR Doc. 78-11040 Filed 4-24-78; 8:45 am]

[7035-01]

[AB 15 (SDM)]

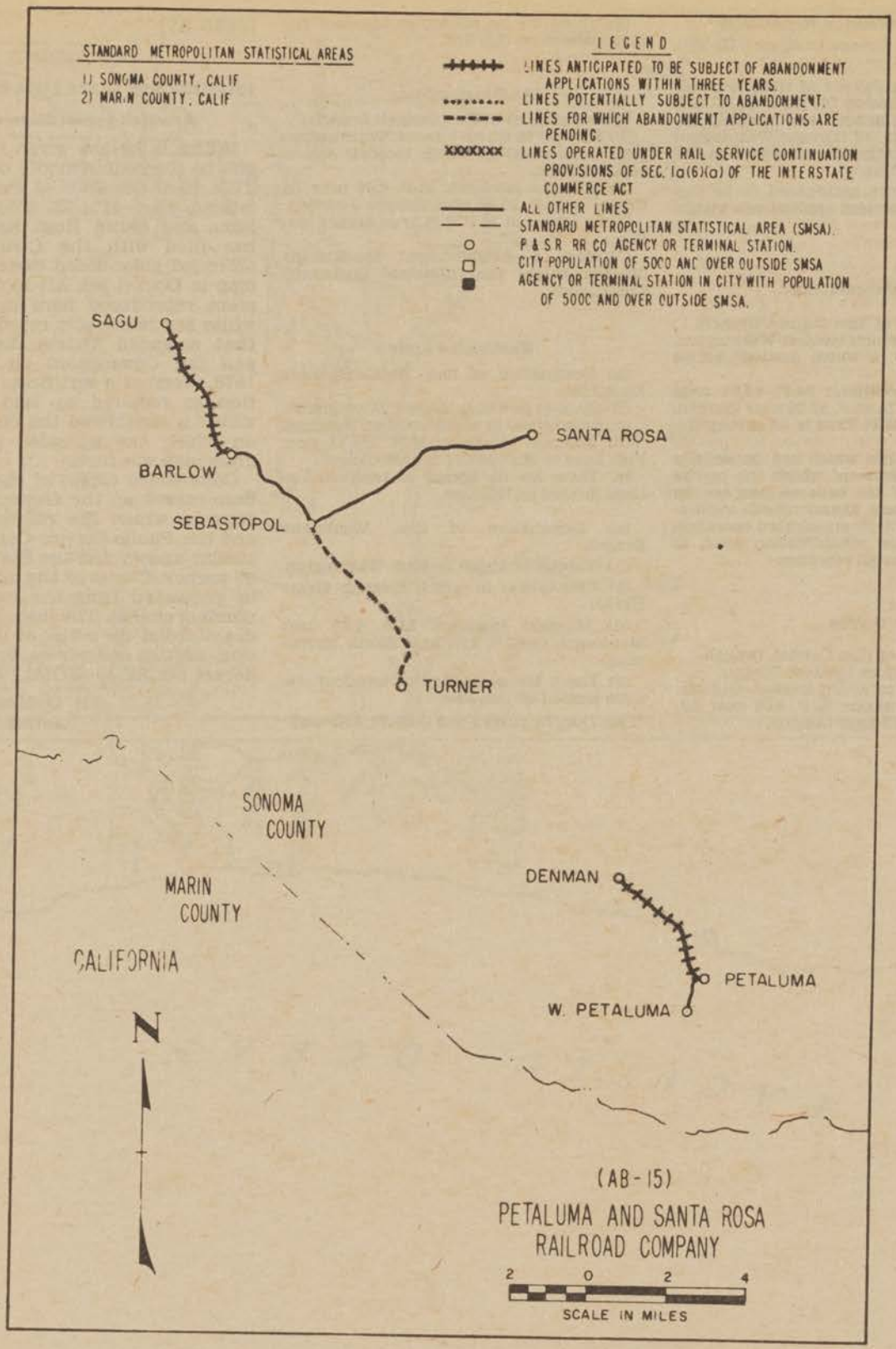
PETALUMA AND SANTA ROSA RAILROAD CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Petaluma and Santa Rosa Railroad Co., has filed with the Commission its amended color-coded system diagram map in Docket No. AB 15 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 31, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 15 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.


STANDARD METROPOLITAN STATISTICAL AREAS
1) SONOMA COUNTY, CALIF
2) MARIN COUNTY, CALIF
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING.
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT
ALL OTHER LINES
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
P & S R RR CO AGENCY OR TERMINAL STATION.
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
SAGU
SANTA ROSA
BARLOW
SEBASTOPOL
TURNER
SONOMA COUNTY
MARIN COUNTY
CALIFORNIA
DENMAN
PETALUMA
W. PETALUMA
N
(AB-15)
PETALUMA AND SANTA ROSA RAILROAD COMPANY
2 0 2 4
SCALE IN MILES

rev 3/14/78

PETALUMA & SANTA ROSA RAILROAD CO.

DESCRIPTION OF LINES

Pursuant to the regulations of the Interstate Commerce Commission (49 CFR 1121.21), the following is a description of lines of the Petaluma & Santa Rosa Railroad Co. as shown on the system diagram map.

Lines anticipated to be subject of abandonment applications within 3 years in the State of California

(1) (a) Designation of line: Main Line.
(b) States in which located: California.
(c) Counties in which located: Sonoma.
(d) Milepost locations: 1.212 at or near Petaluma to 3.587 at or near Denman.
(e) Agency or terminal stations on the line: Denman (milepost 3.587).
(2) (a) Designation of line: Forestville Branch.
(b) States in which located: California.
(c) Counties in which located: Sonoma.
(d) Milepost locations: 19.9 at or near Barlow to 21.68 at or near Sagu.
(e) Agency of terminal stations on the line: Sagu (milepost 21.6).

Lines in the State of California for which an abandonment application is pending before the Interstate Commerce Commission

(1) (a) Designation of line: Main Line.
(b) States in which located: California.
(c) Counties in which located: Sonoma.
(d) Milepost locations: 11.138 at or near Turner to 16.660 at or near Sebastopol.
(e) Agency or terminal stations on the line: Turner (milepost 11.3).

* * * * *

[FR Doc.78-11036 Filed 4-24-78; 8:45 am]

[7035-01]

[AB 161 (SDM)]

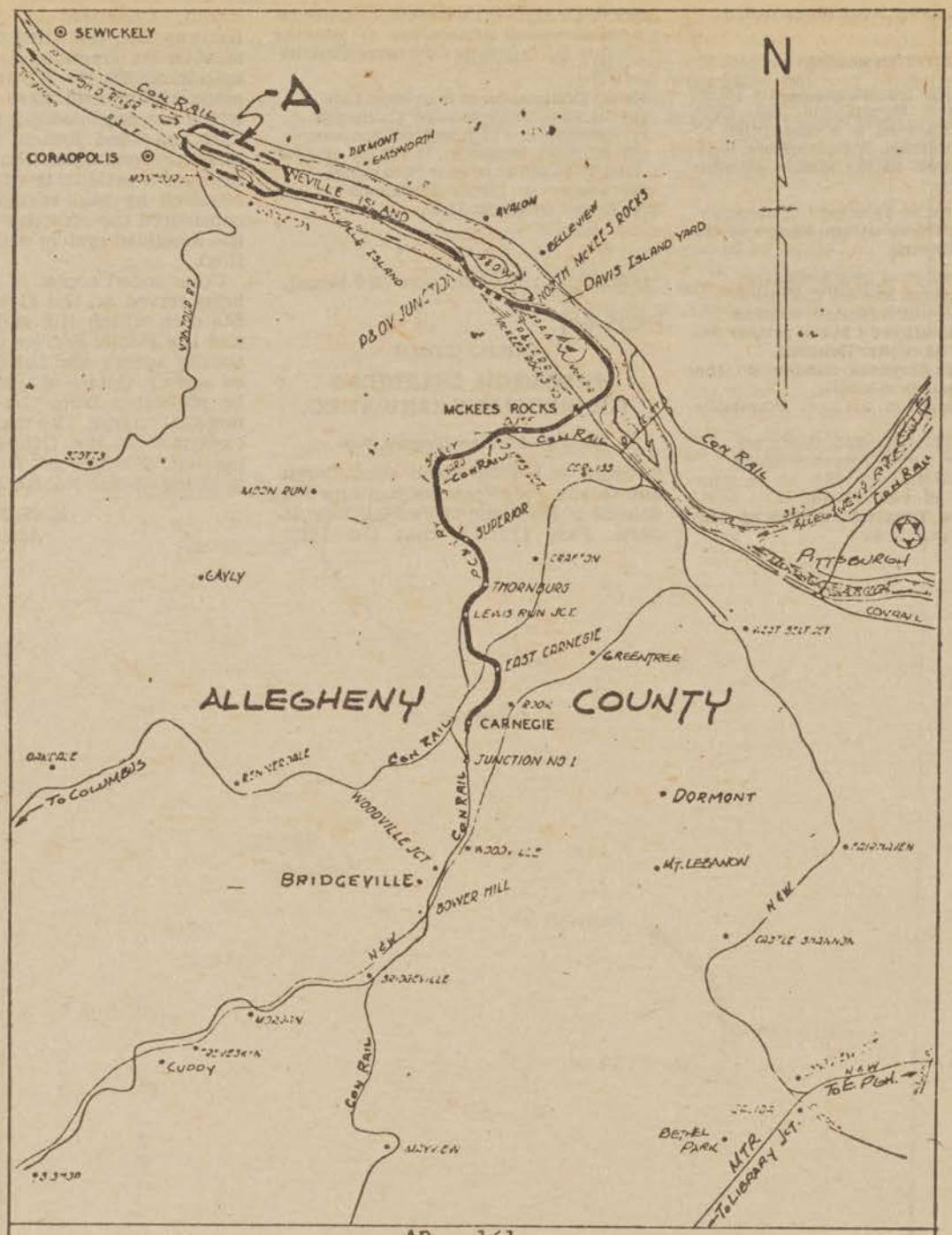
PITTSBURGH, CHARTIERS & YOUGHIOGHENY RAILWAY CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in title 49 of the Code of Federal Regulations, Part 1121.23, that the Pittsburgh, Chartiers & Youghiogheny Railway Co., has filed with the Commission its amended system diagram map in docket No. AB 161 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on April 6, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State-designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the Office of the Commission, Section of Dockets, by requesting docket No. AB 161 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.


SEWICKLEY
CORAOPOLIS
CON RAIL
A
N
DUQUESNE
DUMONT
EMSWORTH
AVALON
BELLEVIEW
NORTH MCKEES ROCKS
DAVIS ISLAND YARD
P&OV JUNCTION
MCKEES ROCKS
MOON RUN
SUPERIOR
CRAFTON
CAYLY
THORNBURG
LEWIS RUN JCT.
EAST CARNEGIE
GREENTREE
ALLEGHENY COUNTY
CARNEGIE
JUNCTION NO 1
To COLUMBUS
WOODVILLE JCT.
BRIDGEVILLE
DORMONT
MT. LEBANON
BOWER HILL
CUDDY
BETHEL PARK
MTR.
To LIBRARY JCT.
To E. PGH.
PITTSBURGH
AB - 161
PITTSBURGH, CHARTIERS & YOUGHIOGHENY RAILWAY COMPANY
0 1 2
Scale in Miles
TRACKAGE RIGHTS - - - -
March 3, 1978

A. All lines or portions of lines which are anticipated to be the subject of an abandonment or discontinuance application to be filed within 3 years following April 30, 1977.

B. All lines or portions of lines potentially subject to abandonment which are under study and believed to be the subject of a future abandonment application because of either anticipated operating losses or successive rehabilitation costs as compared to potential revenues.

C. All lines or portions of lines for which an abandonment or discontinuance application is pending before the Commission as of April 30, 1977.

D. All lines or portions of lines which are being operated under the rail services continuation provisions of the Interstate Commerce Act or the Regional Rail Reorganization Act of 1973 as of April 30, 1977.

The lines of the Pittsburgh, Chartiers & Youghiogheny Railway Co., designated in categories A, B, and C are described as follows:

A—PENNSYLVANIA

(a) Neville Island branch.
(b) State of Pennsylvania.
(c) Allegheny County, Pa.
(d) Mile post 5.66 to mile post 6.44 (end).
(e) No agency stations.

[FR Doc. 78-11044 Filed 4-24-78; 8:45 am]

[7035-01]

[AB 16 SDM]

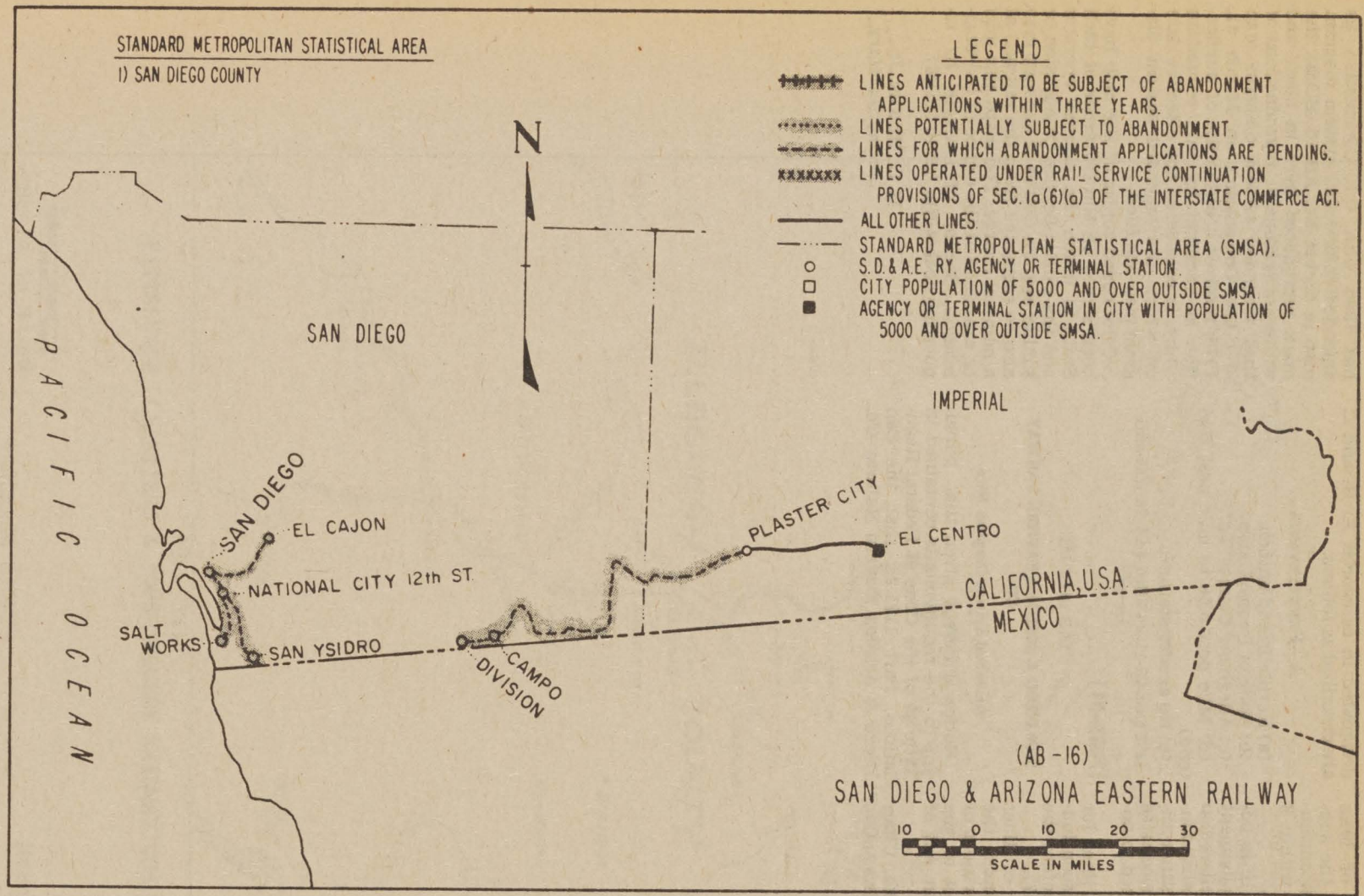
SAN DIEGO & ARIZONA EASTERN RAILWAY CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the San Diego & Arizona Eastern Railway Co. has filed with the Commission its amended color-coded system diagram map in docket No. AB 16 (SDM). the maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 31, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the Office of the Commission, Section of Dockets, by requesting docket No. AB 16 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.


STANDARD METROPOLITAN STATISTICAL AREA
1) SAN DIEGO COUNTY
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING.
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT.
ALL OTHER LINES.
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S.D.&A.E. RY. AGENCY OR TERMINAL STATION.
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA.
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
N
SAN DIEGO
IMPERIAL
PACIFIC OCEAN
SAN DIEGO
EL CAJON
NATIONAL CITY 12th ST.
SALT WORKS
SAN YSIDRO
CAMPO
DIVISION
PLASTER CITY
EL CENTRO
CALIFORNIA, U.S.A.
MEXICO
(AB-16)
SAN DIEGO & ARIZONA EASTERN RAILWAY
10 0 10 20 30
SCALE IN MILES
rev. 3/14/78

SAN DIEGO AND ARIZONA EASTERN RAILWAY CO.

DESCRIPTION OF LINES

Pursuant to the regulations of the Interstate Commerce Commission (49 CFR 1121.21), the following is a description of lines of the San Diego and Arizona Eastern Railway Co. as shown on the system diagram map:

Lines in the State of California for which an abandonment application is pending before the Interstate Commerce Commission

(1) (a) Designation of line: Main line.
(b) State in which located: California.
(c) County in which located: San Diego, Imperial.
(d) Milepost locations: 0.454 at or near San Diego to 15.566 at or near San Ysidro; and 59.94 at or near Division to 129.61 at or near Plaster City.
(e) Agency or terminal stations on the line: San Diego (milepost 1.1), San Ysidro (milepost 15.5), Division (milepost 60.3), Campo (milepost 65.8).
(2) (a) Designation of line: La Mesa Branch.
(b) State in which located: California.
(c) County in which located: San Diego.
(d) Milepost locations: 1.12 at or near San Diego to 17.22 at or near El Cajon.
(e) Agency or terminal stations on the line: San Diego (milepost 1.1), El Cajon (milepost 16.8).
(3) (a) Designation of line: Coronada Branch. (b) State in which located: California. (c) County in which located: San Diego. (d) Milepost locations: 4.75 at or near National City 12th Street to 12.0 at or near Salt Works.
(e) Agency or terminal stations on the line: National City 12th Street (milepost 4.8), Salt Works (milepost 9.9).

* * * * *

[FR Doc. 78-11037 Filed 4-24-78; 8:45 am]

[7035-01]

[AB 12 (SDM)]

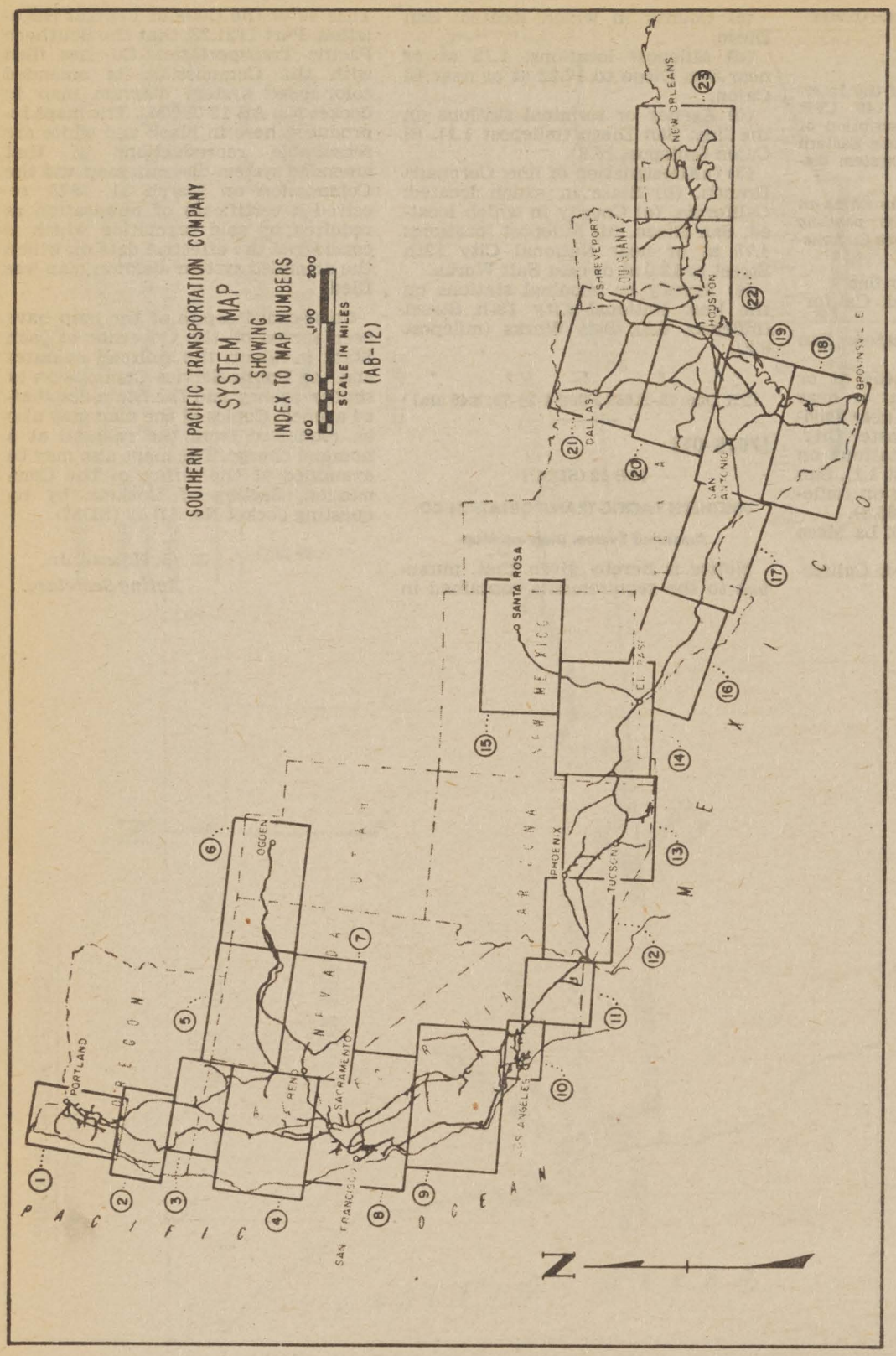
SOUTHERN PACIFIC TRANSPORTATION CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulation, Part 1121.23, that the Southern Pacific Transportation Co. has filed with the Commission its amended color-coded system diagram map in docket No. AB 12 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 31, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State-designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the Office of the Commission, Section of Dockets, by requesting docket No. AB 12 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.


SOUTHERN PACIFIC TRANSPORTATION COMPANY
SYSTEM MAP
SHOWING
INDEX TO MAP NUMBERS
(AB-12)
SCALE IN MILES
100 0 100 200
PACIFIC OCEAN
OREGON
NEVADA
UTAH
ARIZONA
NEW MEXICO
TEXAS
LOUISIANA
PORTLAND
OGDEN
RENO
SACRAMENTO
SAN FRANCISCO
LOS ANGELES
PHOENIX
TUCSON
SANTA ROSA
EL PASO
DALLAS
SHREVEPORT
HOUSTON
SAN ANTONIO
NEW ORLEANS
BROWNSVILLE
1
2
3
4
5
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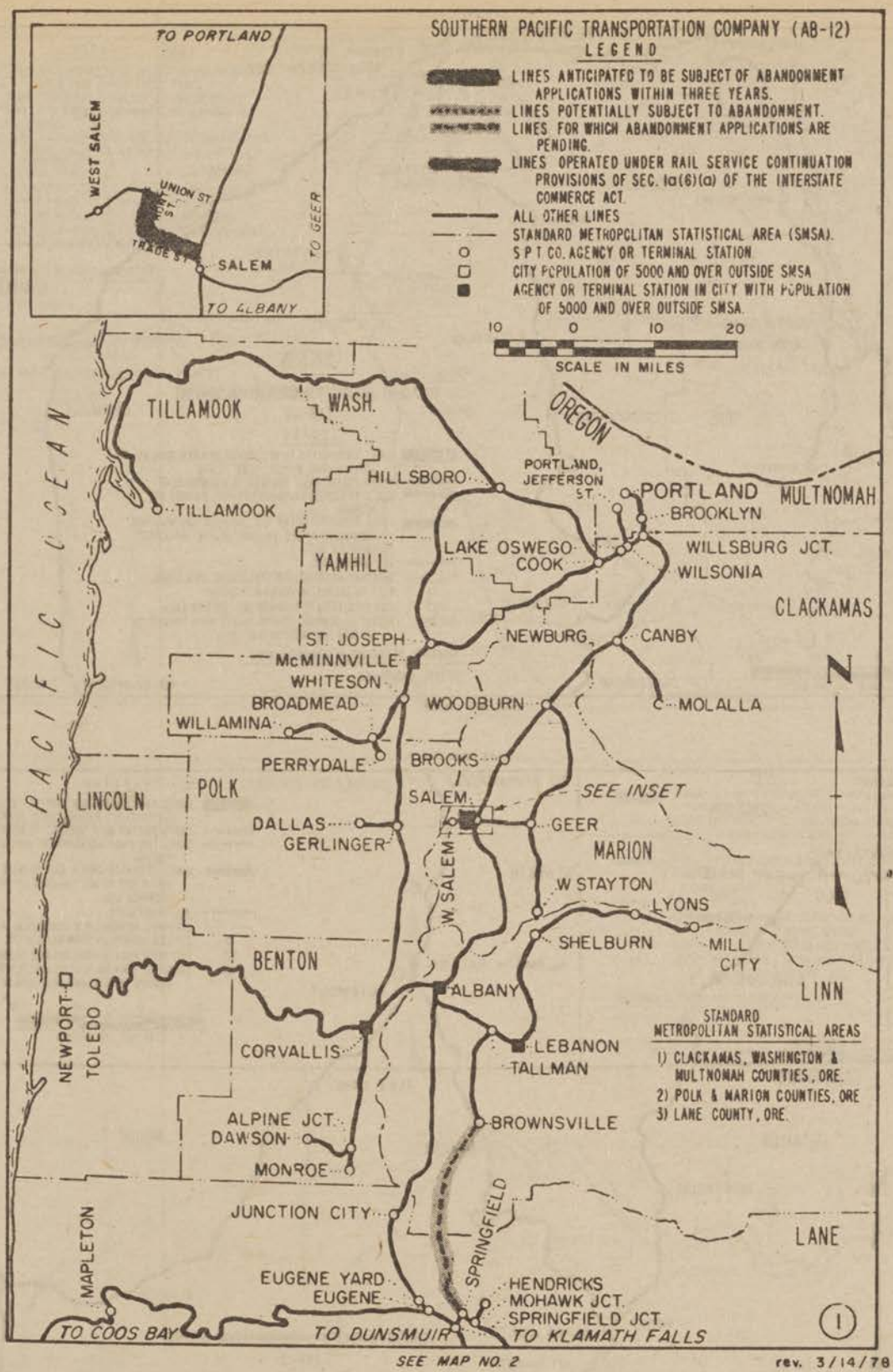
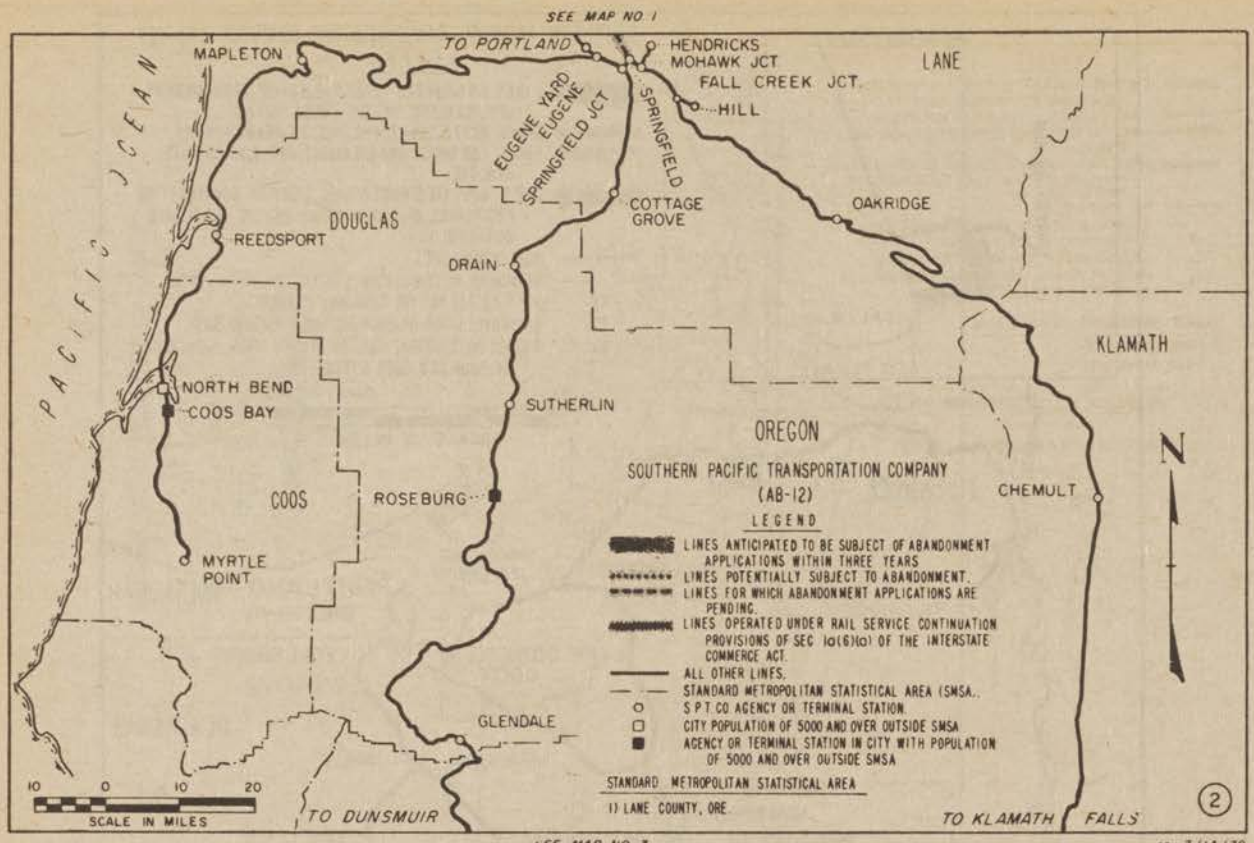
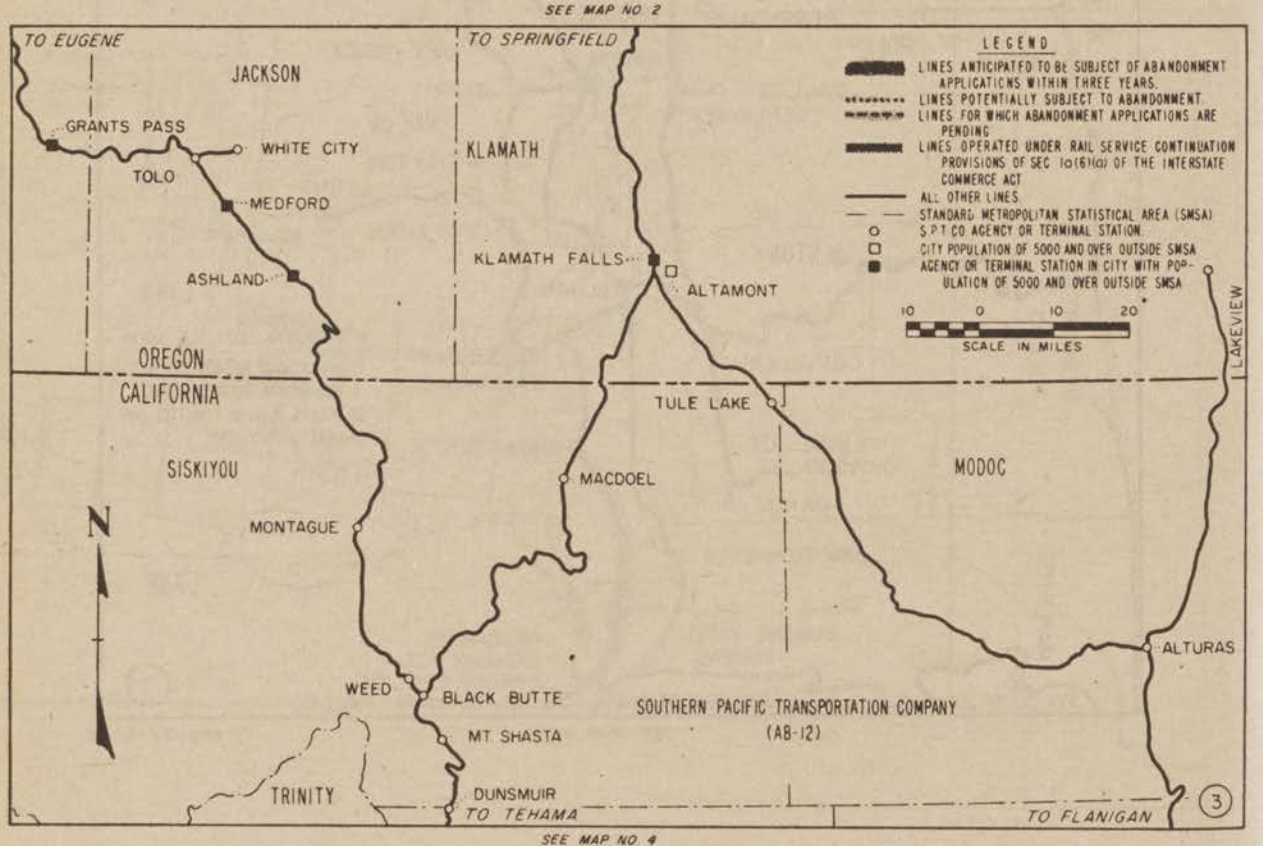
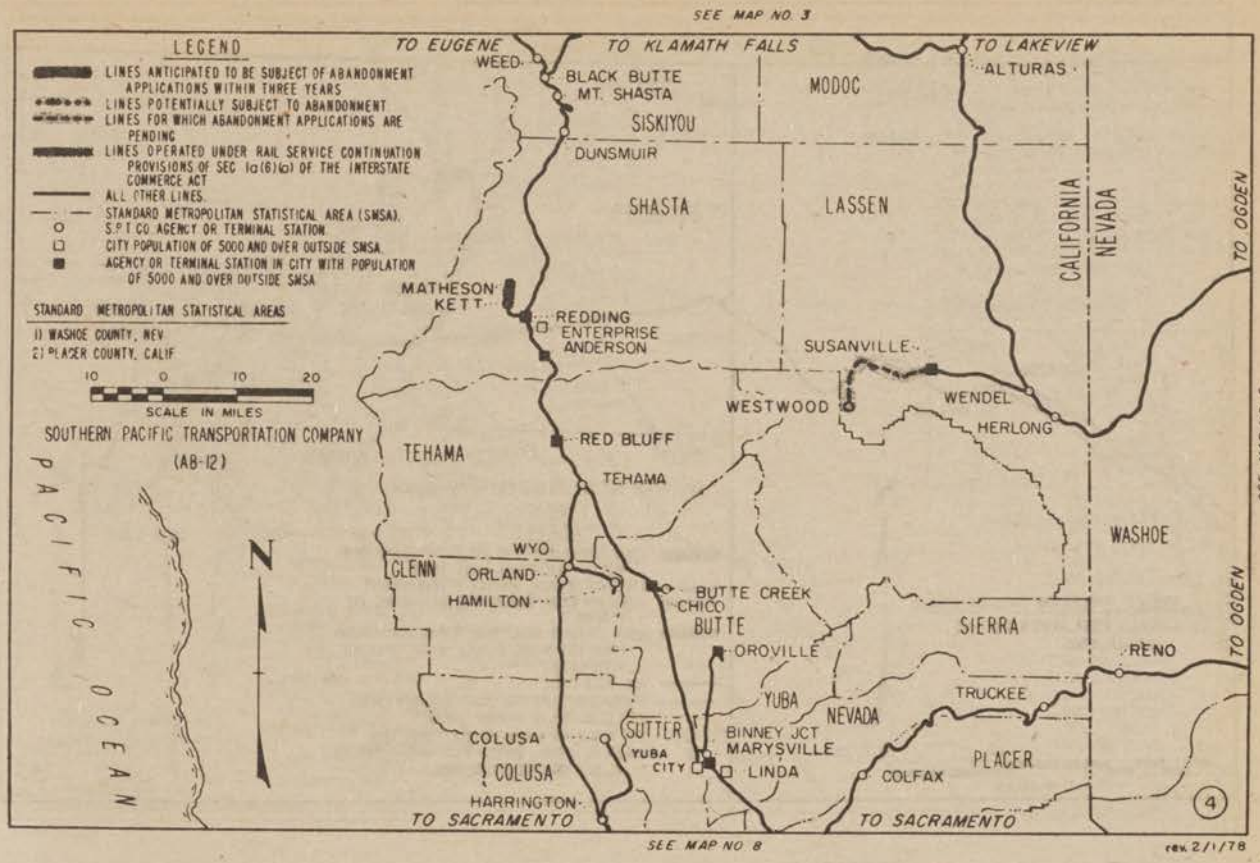
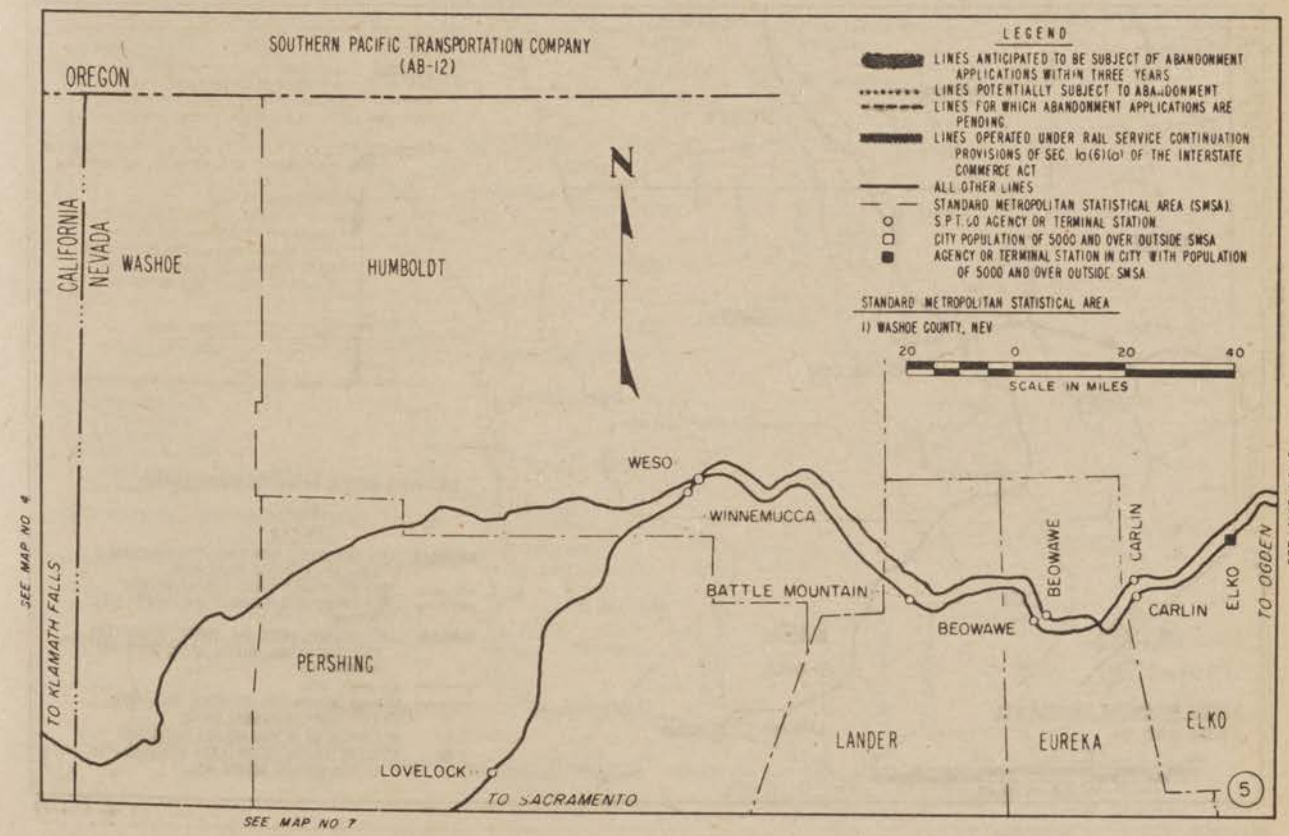
22
23

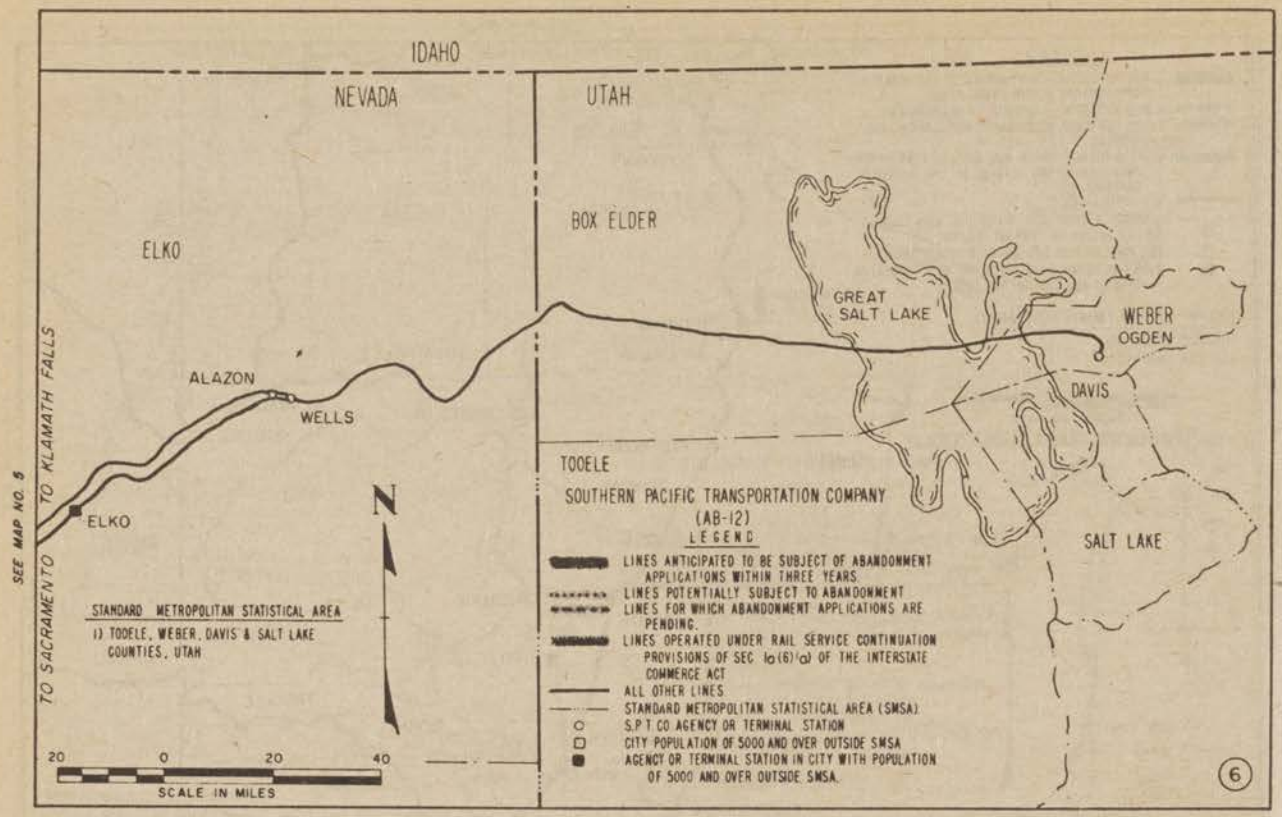

SOUTHERN PACIFIC TRANSPORTATION COMPANY (AB-12)
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING.
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT.
ALL OTHER LINES
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S P T CO. AGENCY OR TERMINAL STATION
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
10 0 10 20
SCALE IN MILES
TO PORTLAND
WEST SALEM
UNION ST
TRADE ST
SALEM
TO GEER
TO ALBANY
PACIFIC OCEAN
TILLAMOOK
WASH.
OREGON
HILLSBORO
PORTLAND, JEFFERSON ST.
PORTLAND
MULTNOMAH
BROOKLYN
TILLAMOOK
YAMHILL
LAKE OSWEGO
COOK
WILLSBURG JCT.
WILSONIA
CLACKAMAS
ST. JOSEPH
NEWBURG
CANBY
McMINNVILLE
WHITESON
BROADMEAD
WILLAMINA
WOODBURN
MOLALLA
N
PERRYDALE
BROOKS
LINCOLN
POLK
SALEM
SEE INSET
DALLAS
GERLINGER
GEER
MARION
W SALEM
W STAYTON
LYONS
SHELBURN
MILL CITY
BENTON
ALBANY
LINN
NEWPORT
TOLEDO
CORVALLIS
LEBANON
TALLMAN
STANDARD METROPOLITAN STATISTICAL AREAS
1) CLACKAMAS, WASHINGTON & MULTNOMAH COUNTIES, ORE.
2) POLK & MARION COUNTIES, ORE
3) LANE COUNTY, ORE.
ALPINE JCT.
DAWSON
BROWNSVILLE
MONROE
JUNCTION CITY
SPRINGFIELD
LANE
MAPLETON
EUGENE YARD
EUGENE
HENDRICKS
MOHAWK JCT.
SPRINGFIELD JCT.
TO COOS BAY
TO DUNSMUIR
TO KLAMATH FALLS
1
SEE MAP NO. 2
rev. 3/14/78


SEE MAP NO 1
TO PORTLAND
MAPLETON
HENDRICKS
MOHAWK JCT
FALL CREEK JCT.
HILL
LANE
EUGENE YARD
EUGENE
SPRINGFIELD JCT
SPRINGFIELD
COTTAGE GROVE
OAKRIDGE
PACIFIC OCEAN
DOUGLAS
REEDSPORT
DRAIN
KLAMATH
NORTH BEND
COOS BAY
SUTHERLIN
OREGON
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(AB-12)
CHEMULT
COOS
ROSEBURG
MYRTLE POINT
GLENDALE
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING.
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC 1a(6)(a) OF THE INTERSTATE COMMERCE ACT.
ALL OTHER LINES.
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S.P.T.CO AGENCY OR TERMINAL STATION.
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA
STANDARD METROPOLITAN STATISTICAL AREA
1) LANE COUNTY, ORE.
10 0 10 20
SCALE IN MILES
TO DUNSMUIR
TO KLAMATH FALLS
2
SEE MAP NO 3
rev. 3/14/78


SEE MAP NO 2
TO EUGENE
TO SPRINGFIELD
JACKSON
GRANTS PASS
WHITE CITY
TOLO
MEDFORD
KLAMATH
ASHLAND
KLAMATH FALLS
ALTAMONT
LAKEVIEW
OREGON
CALIFORNIA
TULE LAKE
SISKIYOU
MACDOEL
MODOC
MONTAGUE
ALTURAS
WEED
BLACK BUTTE
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(AB-12)
MT SHASTA
TRINITY
DUNSMUIR
TO TEHAMA
TO FLANIGAN
3
SEE MAP NO 4


SEE MAP NO. 3
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS
LINES POTENTIALLY SUBJECT TO ABANDONMENT
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT
ALL OTHER LINES
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S.P.T.CO. AGENCY OR TERMINAL STATION
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA.
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA
STANDARD METROPOLITAN STATISTICAL AREAS
1) WASHOE COUNTY, NEV.
2) PLACER COUNTY, CALIF.
10 0 10 20
SCALE IN MILES
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(AB-12)
TO EUGENE
TO KLAMATH FALLS
TO LAKEVIEW
WEED
BLACK BUTTE
MT. SHASTA
SISKIYOU
DUNSMUIR
MODOC
ALTURAS
SHASTA
LASSEN
CALIFORNIA
NEVADA
TO OGDEN
MATHESON
KETT
REDDING
ENTERPRISE
ANDERSON
SUSANVILLE
WESTWOOD
WENDEL
HERLONG
RED BLUFF
TEHAMA
TEHAMA
WASHOE
WYO
GLENN
ORLAND
HAMILTON
BUTTE CREEK
CHICO
BUTTE
SIERRA
OROVILLE
RENO
TO OGDEN
YUBA
NEVADA
TRUCKEE
COLUSA
SUTTER
BINNEY JCT
MARYSVILLE
YUBA CITY
LINDA
PLACER
COLFAX
COLUSA
HARRINGTON
TO SACRAMENTO
TO SACRAMENTO
PACIFIC OCEAN
N
SEE MAP NO. 5
SEE MAP NO. 8
4
rev. 2/1/78


SOUTHERN PACIFIC TRANSPORTATION COMPANY
(AB-12)
OREGON
CALIFORNIA
NEVADA
WASHOE
HUMBOLDT
PERSHING
LOVELOCK
LANDER
EUREKA
ELKO
WESO
WINNEMUCCA
BATTLE MOUNTAIN
BEOWAWE
CARLIN
ELKO
TO OGDEN
TO SACRAMENTO
TO KLAMATH FALLS
N
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS
LINES POTENTIALLY SUBJECT TO ABANDONMENT
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT
ALL OTHER LINES
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S.P.T.CO. AGENCY OR TERMINAL STATION
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA
STANDARD METROPOLITAN STATISTICAL AREA
1) WASHOE COUNTY, NEV.
20 0 20 40
SCALE IN MILES
SEE MAP NO. 4
SEE MAP NO. 6
SEE MAP NO. 7
5


IDAHO
NEVADA
UTAH
ELKO
BOX ELDER
GREAT SALT LAKE
WEBER
OGDEN
DAVIS
ALAZON
WELLS
ELKO
TOOELE
SALT LAKE
SEE MAP NO. 5
TO KLAMATH FALLS
TO SACRAMENTO
STANDARD METROPOLITAN STATISTICAL AREA
1) TOOELE, WEBER, DAVIS & SALT LAKE COUNTIES, UTAH
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(AB-12)
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
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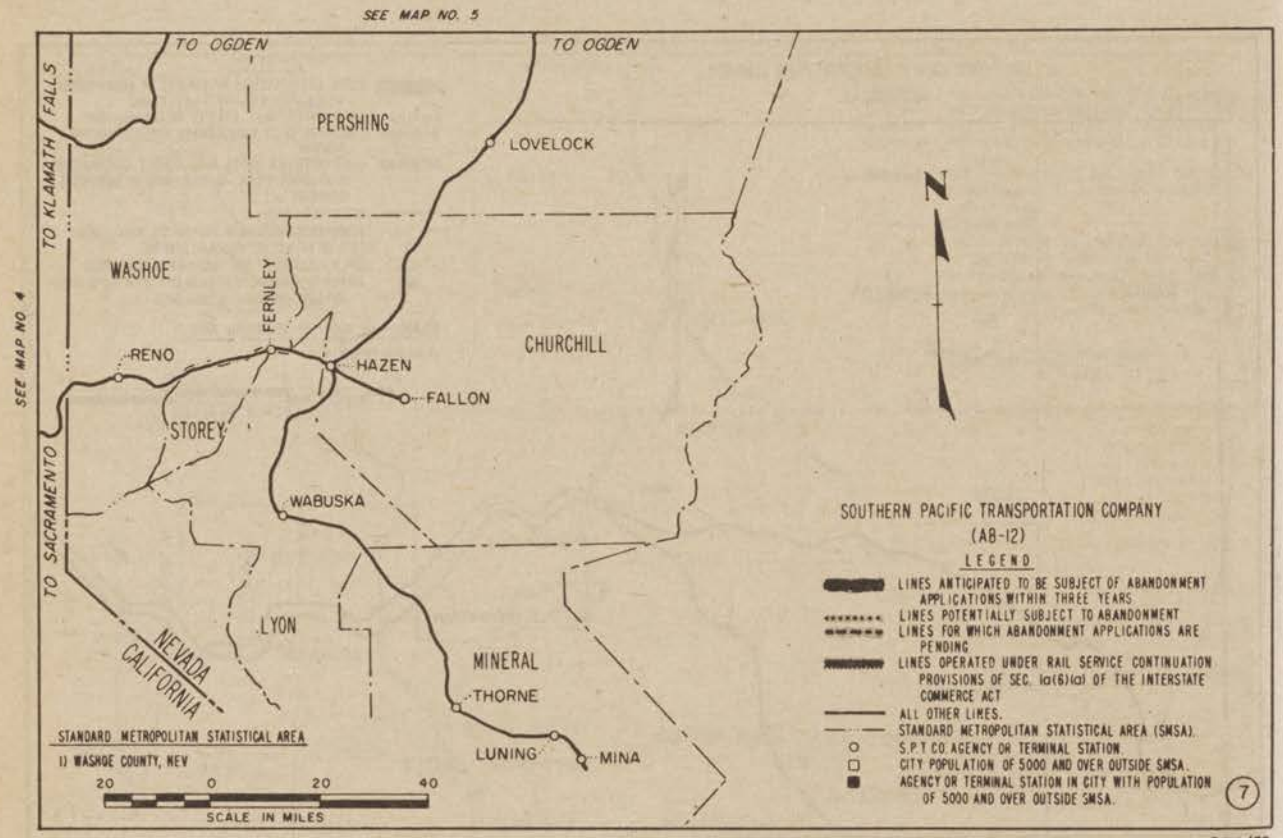
ALL OTHER LINES
STANDARD METROPOLITAN STATISTICAL AREA (SMSA)
S.P.T.CO AGENCY OR TERMINAL STATION
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
20 0 20 40
SCALE IN MILES
6


SEE MAP NO. 5
TO OGDEN
TO OGDEN
PERSHING
LOVELOCK
WASHOE
FERNLEY
CHURCHILL
RENO
HAZEN
FALLON
STOREY
WABUSKA
LYON
NEVADA
CALIFORNIA
MINERAL
THORNE
LUNING
MINA
SEE MAP NO. 4
TO KLAMATH FALLS
TO SACRAMENTO
STANDARD METROPOLITAN STATISTICAL AREA
1) WASHOE COUNTY, NEV
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(AB-12)
LEGEND
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S.P.T.CO. AGENCY OR TERMINAL STATION.
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA.
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
20 0 20 40
SCALE IN MILES
7

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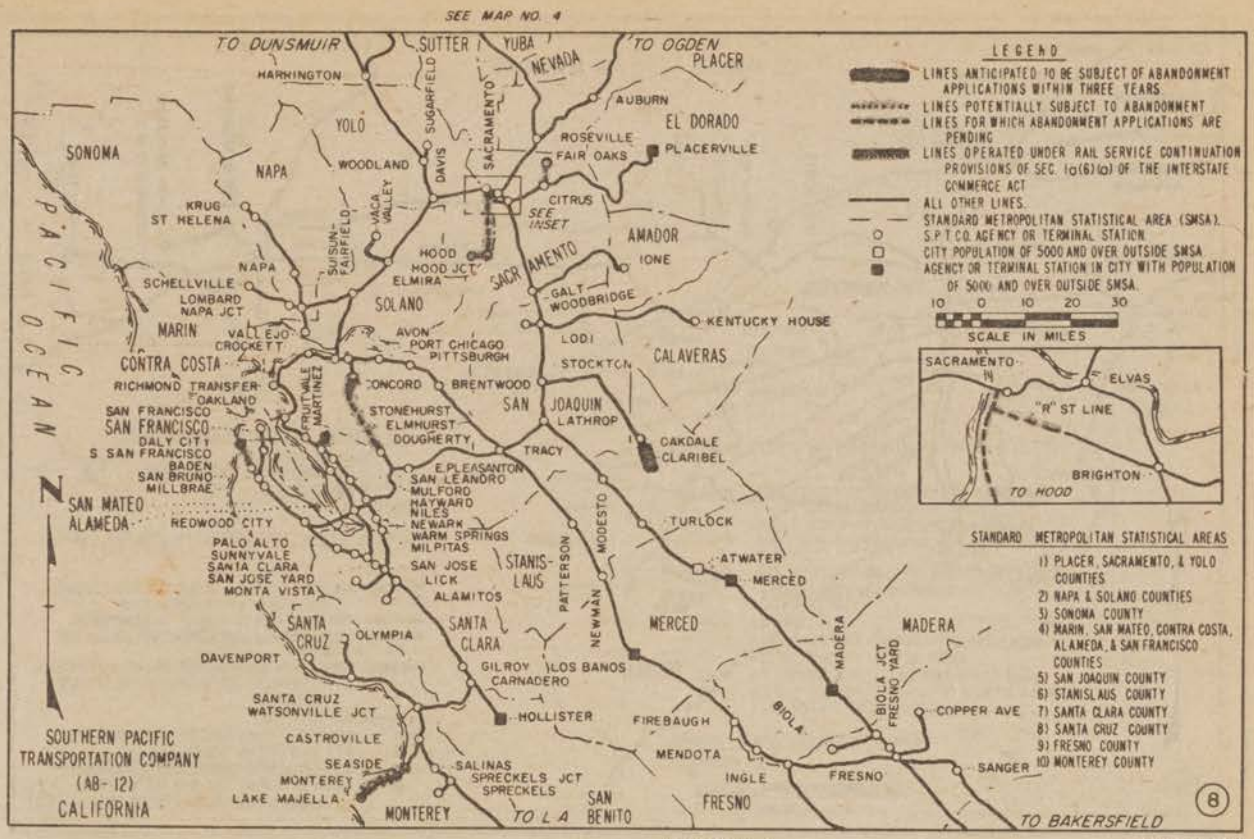
SEE MAP NO. 4
TO DUNSMUIR
SUTTER
YUBA
NEVADA
TO OGDEN
PLACER
HARRINGTON
AUBURN
EL DORADO
YOLO
SONOMA
NAPA
WOODLAND
ROSEVILLE
FAIR OAKS
PLACERVILLE
DAVIS
SACRAMENTO
SUGARFIELD
VACA VALLEY
SUISUN-FAIRFIELD
KRUG
ST HELENA
CITRUS
SEE INSET
AMADOR
IONE
HOOD
HOOD JCT
ELMIRA
SACRAMENTO
NAPA
SCHELLVILLE
LOMBARD
NAPA JCT
SOLANO
GALT
WOODBRIDGE
KENTUCKY HOUSE
MARIN
VALLEJO
CROCKETT
AVON
PORT CHICAGO
PITTSBURGH
LODI
CONTRA COSTA
STOCKTON
CALAVERAS
RICHMOND TRANSFER
OAKLAND
CONCORD
BRENTWOOD
SAN FRANCISCO
SAN FRANCISCO
DALY CITY
S SAN FRANCISCO
BADEN
SAN BRUNO
MILLBRAE
STONEHURST
ELMHURST
DOUGHERTY
SAN JOAQUIN
LATHROP
OAKDALE
CLARIBEL
TRACY
E PLEASANTON
SAN LEANDRO
MULFORD
HAYWARD
NILES
NEWARK
WARM SPRINGS
MILPITAS
SAN MATEO
ALAMEDA
REDWOOD CITY
PALO ALTO
SUNNYVALE
SANTA CLARA
SAN JOSE YARD
MONTA VISTA
SAN JOSE
LICK
ALAMITOS
STANIS-LAUS
PATTERSON
MODESTO
TURLOCK
ATWATER
MERCED
NEWMAN
SANTA CRUZ
OLYMPIA
SANTA CLARA
DAVENPORT
GILROY
LOS BANOS
CARNADERO
MADERA
BIOLA JCT
FRESNO YARD
COPPER AVE
SANTA CRUZ
WATSONVILLE JCT
HOLLISTER
FIREBAUGH
BIOLA
CASTROVILLE
MENDOTA
SEASIDE
SALINAS
SPRECKELS JCT
SPRECKELS
INGLE
FRESNO
SANGER
MONTEREY
LAKE MAJELLA
MONTEREY
TO L A
SAN BENITO
FRESNO
TO BAKERSFIELD
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(AB- 12)
CALIFORNIA
PACIFIC OCEAN
N
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS
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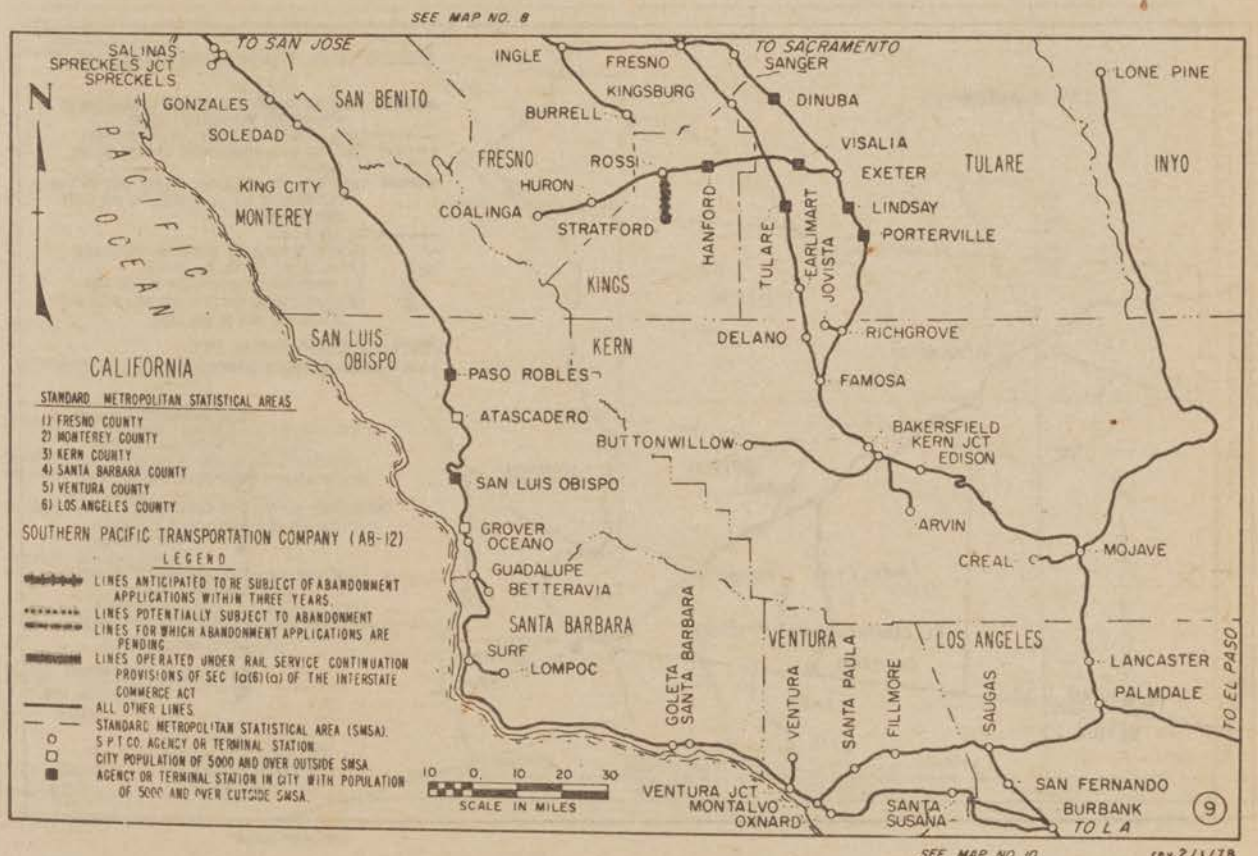
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
10 0 10 20 30
SCALE IN MILES
SACRAMENTO
ELVAS
"R" ST LINE
BRIGHTON
TO HOOD
STANDARD METROPOLITAN STATISTICAL AREAS
1) PLACER, SACRAMENTO, & YOLO COUNTIES
2) NAPA & SOLANO COUNTIES
3) SONOMA COUNTY
4) MARIN, SAN MATEO, CONTRA COSTA, ALAMEDA, & SAN FRANCISCO COUNTIES
5) SAN JOAQUIN COUNTY
6) STANISLAUS COUNTY
7) SANTA CLARA COUNTY
8) SANTA CRUZ COUNTY
9) FRESNO COUNTY
10) MONTEREY COUNTY
8
SEE MAP NO 9
rev. 3/14/78


SEE MAP NO. 8
SALINAS
SPRECKELS JCT
SPRECKELS
TO SAN JOSE
INGLE
FRESNO
TO SACRAMENTO
SANGER
LONE PINE
GONZALES
SAN BENITO
KINGSBURG
DINUBA
SOLEDAD
BURRELL
VISALIA
TULARE
INYO
FRESNO
ROSSI
EXETER
KING CITY
HURON
MONTEREY
COALINGA
LINDSAY
STRATFORD
PORTERVILLE
HANFORD
TULARE
EARLIMART
JOVISTA
KINGS
SAN LUIS OBISPO
KERN
DELANO
RICHGROVE
CALIFORNIA
PASO ROBLES
FAMOSA
ATASCADERO
BAKERSFIELD
KERN JCT
EDISON
BUTTONWILLOW
SAN LUIS OBISPO
ARVIN
GROVER
OCEANO
CREAL
MOJAVE
GUADALUPE
BETTERAVIA
SANTA BARBARA
VENTURA
LOS ANGELES
LANCASTER
SURF
LOMPOC
GOLETA
SANTA BARBARA
VENTURA
SANTA PAULA
FILLMORE
SAUGAS
PALMDALE
TO EL PASO
SAN FERNANDO
BURBANK
VENTURA JCT
MONTALVO
OXNARD
SANTA SUSANA
TO L A
9
PACIFIC OCEAN
N
STANDARD METROPOLITAN STATISTICAL AREAS
1) FRESNO COUNTY
2) MONTEREY COUNTY
3) KERN COUNTY
4) SANTA BARBARA COUNTY
5) VENTURA COUNTY
6) LOS ANGELES COUNTY
SOUTHERN PACIFIC TRANSPORTATION COMPANY (AB-12)
LEGEND
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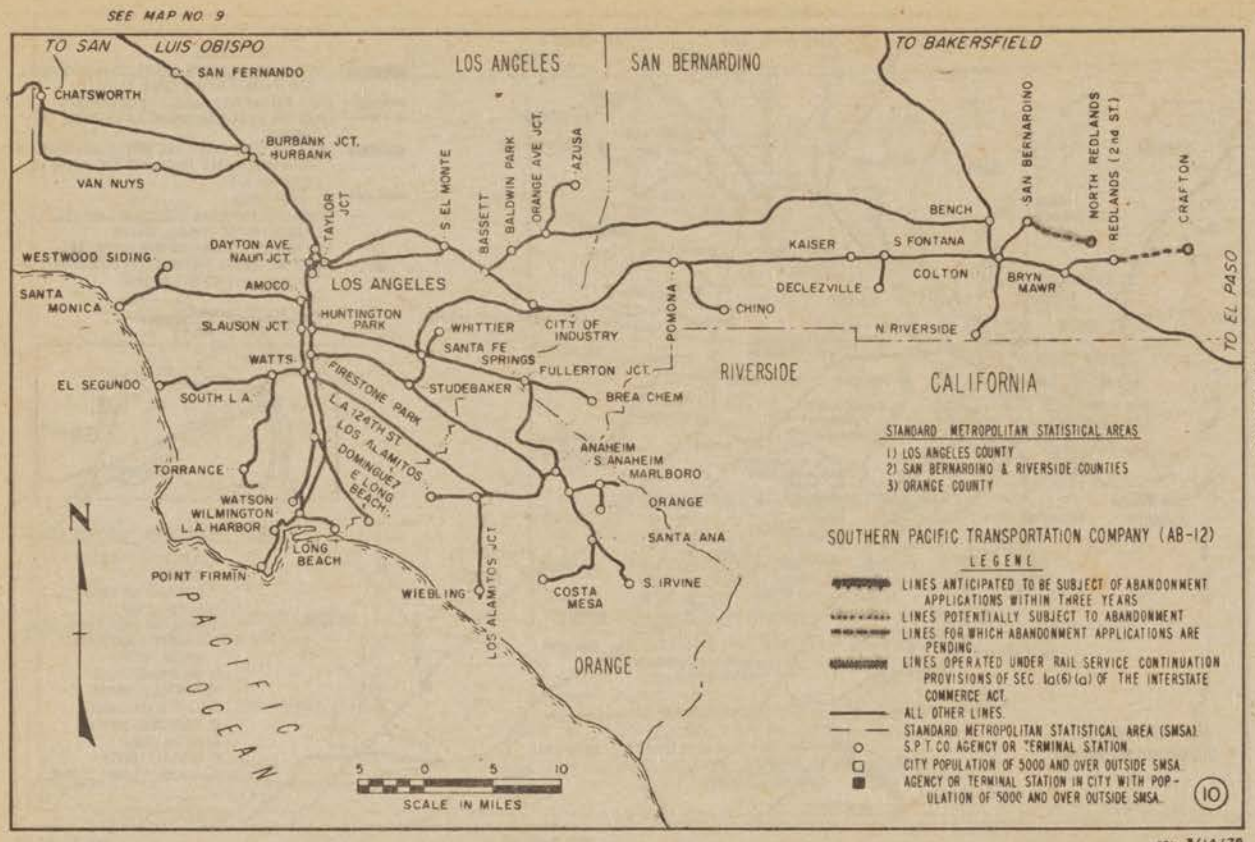
S.P.T.CO. AGENCY OR TERMINAL STATION
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
10 0 10 20 30
SCALE IN MILES
SEE MAP NO 10
rev.2/1/78


SEE MAP NO. 9
TO SAN LUIS OBISPO
SAN FERNANDO
CHATSWORTH
LOS ANGELES
SAN BERNARDINO
TO BAKERSFIELD
BURBANK JCT.
BURBANK
VAN NUYS
TAYLOR JCT
S. EL MONTE
BASSETT
BALDWIN PARK
ORANGE AVE JCT.
AZUSA
SAN BERNARDINO
NORTH REDLANDS
REDLANDS (2nd ST.)
CRAFTON
BENCH
KAISER
S FONTANA
COLTON
BRYN MAWR
DECLEZVILLE
CHINO
N. RIVERSIDE
TO EL PASO
WESTWOOD SIDING
DAYTON AVE.
NAUN JCT.
AMOCO
SANTA MONICA
SLAUSON JCT.
HUNTINGTON PARK
WHITTIER
CITY OF INDUSTRY
POMONA
SANTA FE SPRINGS
FULLERTON JCT.
WATTS
EL SEGUNDO
SOUTH L.A.
FIRESTONE PARK
STUDEBAKER
BREA CHEM
L.A. 124TH ST.
LOS ALAMITOS
DOMINGUEZ
E. LONG BEACH
ANAHEIM
S. ANAHEIM
MARLBORO
TORRANCE
WATSON
WILMINGTON
L.A. HARBOR
ORANGE
SANTA ANA
LONG BEACH
POINT FIRMIN
WIEBLING
LOS ALAMITOS JCT
COSTA MESA
S. IRVINE
PACIFIC OCEAN
ORANGE
RIVERSIDE
CALIFORNIA
SEE MAP NO 11
STANDARD METROPOLITAN STATISTICAL AREAS
1) LOS ANGELES COUNTY
2) SAN BERNARDINO & RIVERSIDE COUNTIES
3) ORANGE COUNTY
SOUTHERN PACIFIC TRANSPORTATION COMPANY (AB-12)
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS
LINES POTENTIALLY SUBJECT TO ABANDONMENT
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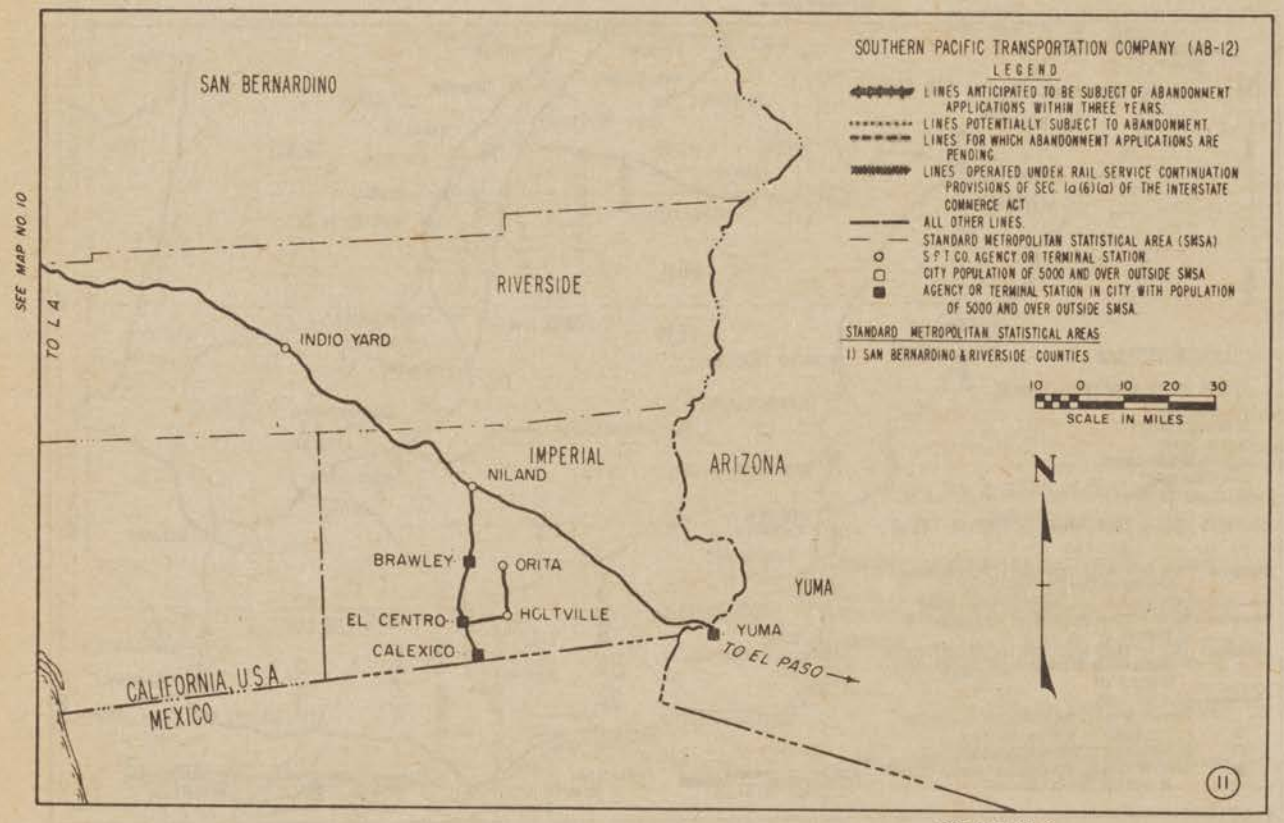
ALL OTHER LINES
STANDARD METROPOLITAN STATISTICAL AREA (SMSA)
S.P.T.CO. AGENCY OR TERMINAL STATION
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA
5 0 5 10
SCALE IN MILES
N
10

rev. 3/14/78


SEE MAP NO. 10
SAN BERNARDINO
RIVERSIDE
TO L.A.
INDIO YARD
IMPERIAL
NILAND
ARIZONA
BRAWLEY
ORITA
YUMA
EL CENTRO
HOLTVILLE
YUMA
CALEXICO
TO EL PASO
CALIFORNIA, U.S.A.
MEXICO
SOUTHERN PACIFIC TRANSPORTATION COMPANY (AB-12)
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
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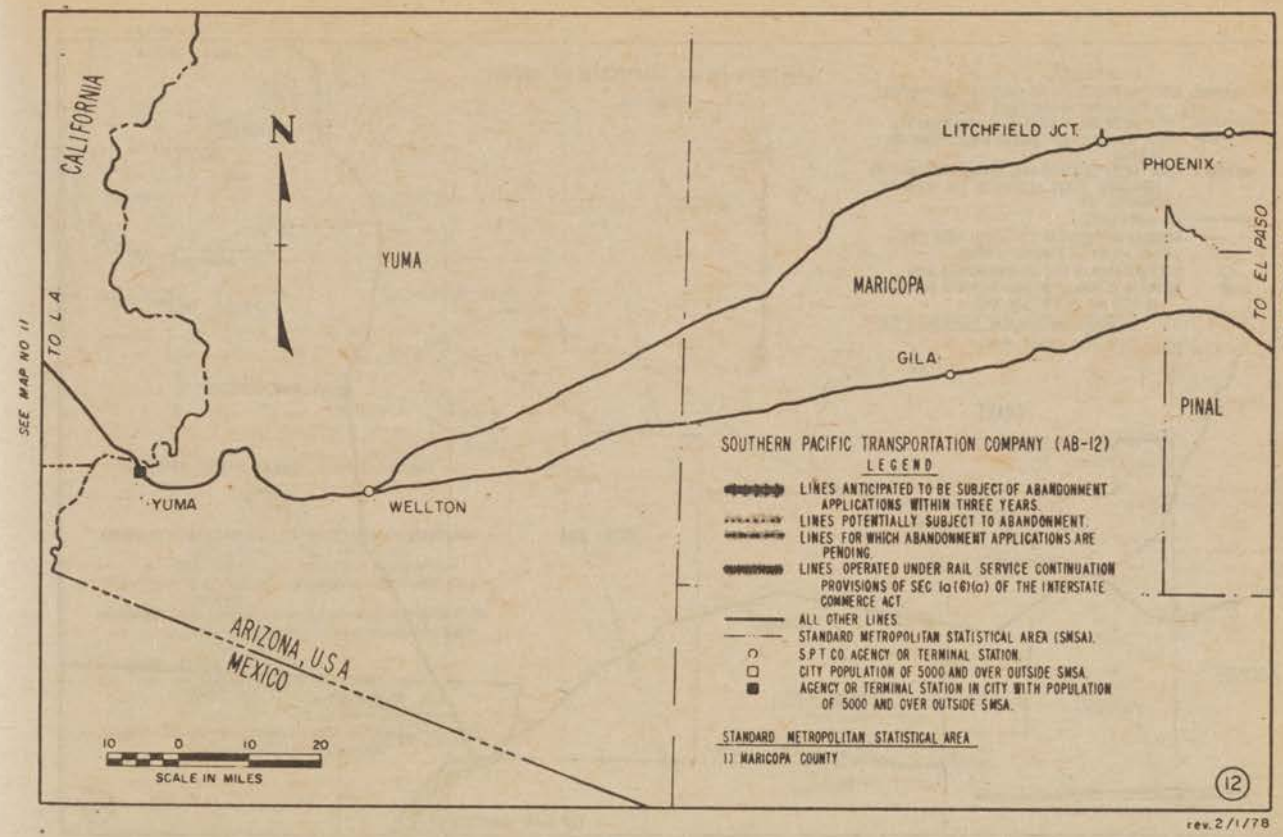
ALL OTHER LINES.
STANDARD METROPOLITAN STATISTICAL AREA (SMSA)
S.P.T.CO. AGENCY OR TERMINAL STATION
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA
STANDARD METROPOLITAN STATISTICAL AREAS
1) SAN BERNARDINO & RIVERSIDE COUNTIES
10 0 10 20 30
SCALE IN MILES
N
11
SEE MAP NO. 12


CALIFORNIA
N
YUMA
LITCHFIELD JCT.
PHOENIX
MARICOPA
TO EL PASO
SEE MAP NO 13
GILA
PINAL
SEE MAP NO 11
TO L A
YUMA
WELLTON
ARIZONA, U.S.A.
MEXICO
10 0 10 20
SCALE IN MILES
SOUTHERN PACIFIC TRANSPORTATION COMPANY (AB-12)
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
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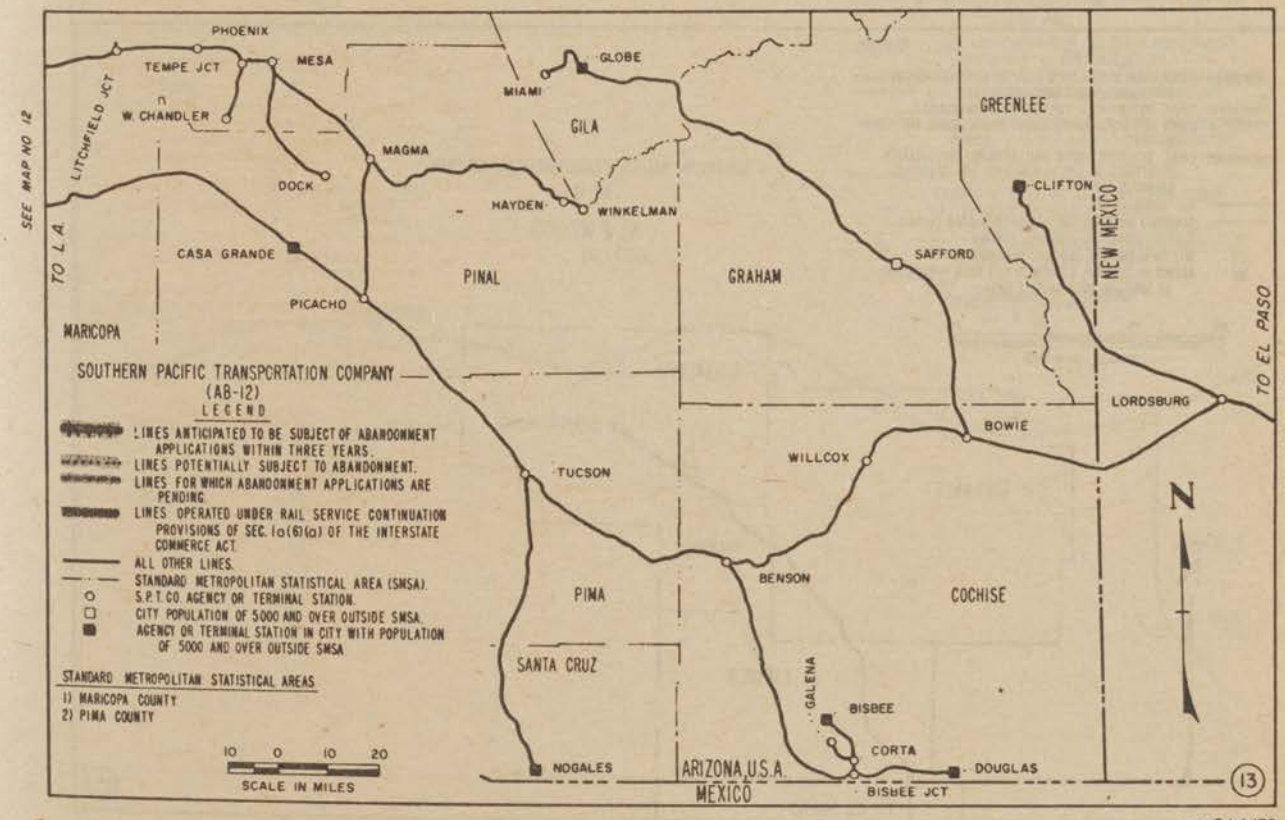
ALL OTHER LINES.
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S.P.T.CO. AGENCY OR TERMINAL STATION.
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA.
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
STANDARD METROPOLITAN STATISTICAL AREA
1) MARICOPA COUNTY
12
rev. 2/1/78


SEE MAP NO 12
TO L A
LITCHFIELD JCT
PHOENIX
TEMPE JCT
MESA
W. CHANDLER
MIAMI
GLOBE
GILA
GREENLEE
MAGMA
DOCK
HAYDEN
WINKELMAN
CLIFTON
NEW MEXICO
CASA GRANDE
PINAL
GRAHAM
SAFFORD
PICACHO
MARICOPA
TO EL PASO
SEE MAP NO. 14
LORDSBURG
BOWIE
WILLCOX
TUCSON
N
BENSON
PIMA
COCHISE
SANTA CRUZ
GALENA
BISBEE
CORTA
DOUGLAS
NOGALES
ARIZONA, U.S.A.
MEXICO
BISBEE JCT
10 0 10 20
SCALE IN MILES
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(AB-12)
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
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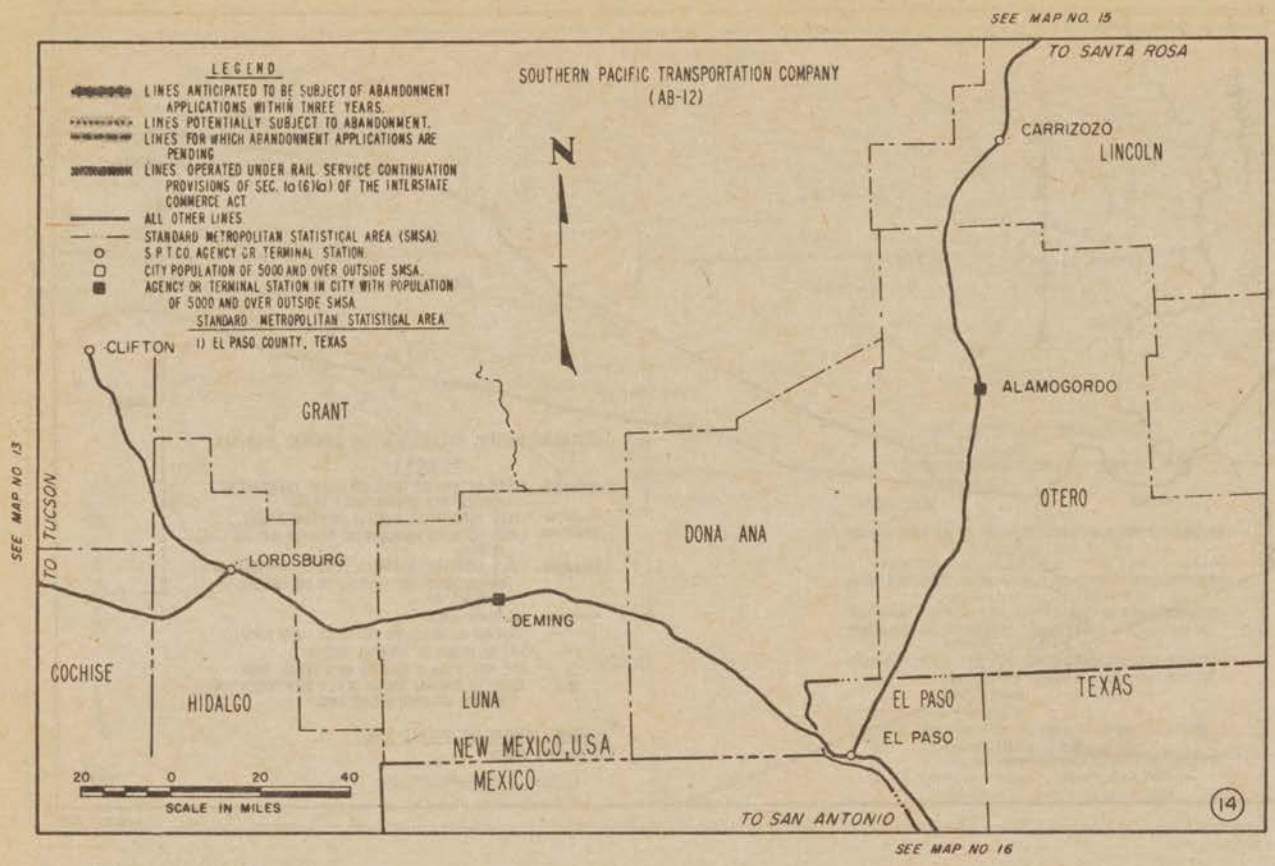
ALL OTHER LINES.
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S.P.T. CO. AGENCY OR TERMINAL STATION.
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA.
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA
STANDARD METROPOLITAN STATISTICAL AREAS
1) MARICOPA COUNTY
2) PIMA COUNTY
13
rev. 3/14/78


SEE MAP NO. 15
TO SANTA ROSA
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(AB-12)
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
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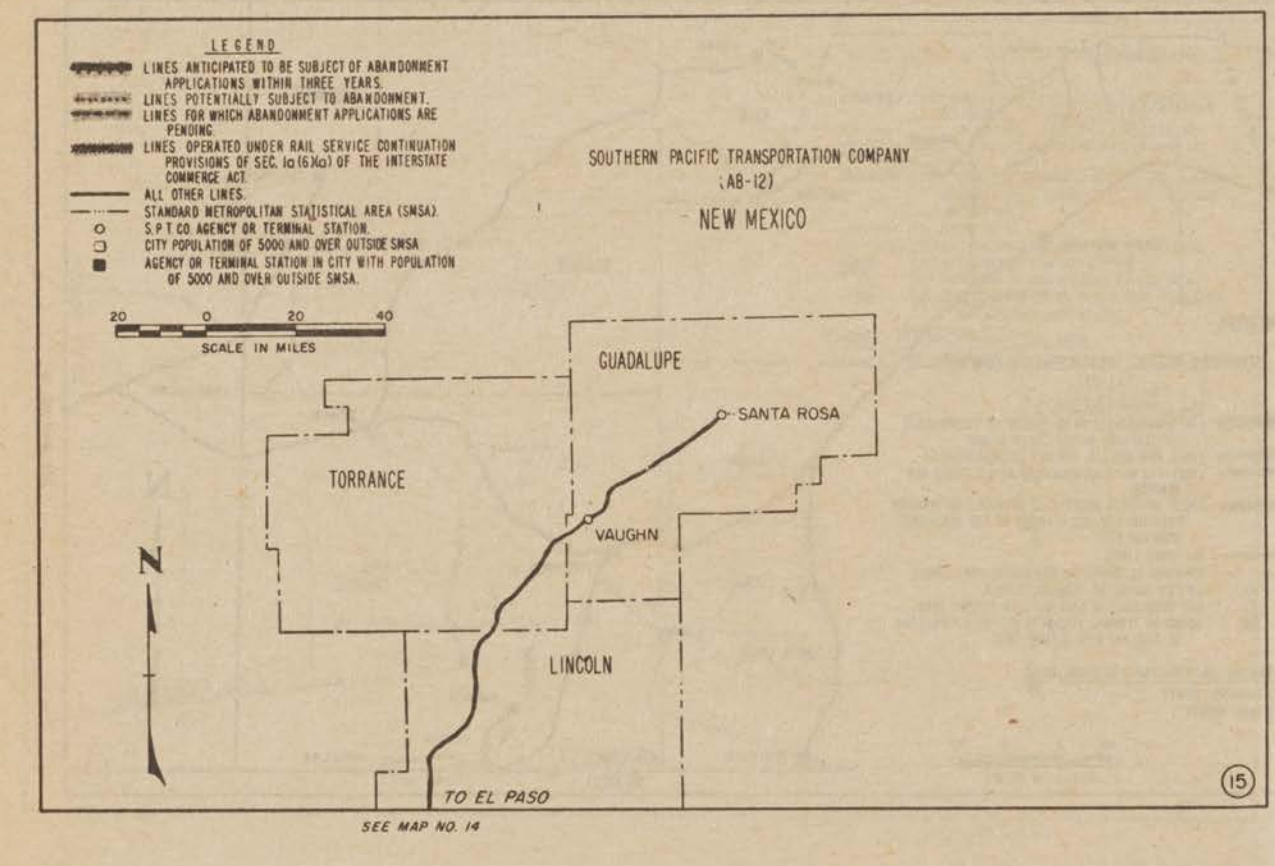
ALL OTHER LINES
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S.P.T.CO. AGENCY OR TERMINAL STATION
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA.
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA
STANDARD METROPOLITAN STATISTICAL AREA
1) EL PASO COUNTY, TEXAS
N
CARRIZOZO
LINCOLN
CLIFTON
GRANT
ALAMOGORDO
OTERO
SEE MAP NO 13
TO TUCSON
DONA ANA
LORDSBURG
DEMING
COCHISE
HIDALGO
LUNA
EL PASO
TEXAS
EL PASO
NEW MEXICO, U.S.A.
MEXICO
20 0 20 40
SCALE IN MILES
TO SAN ANTONIO
SEE MAP NO 16
14


LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
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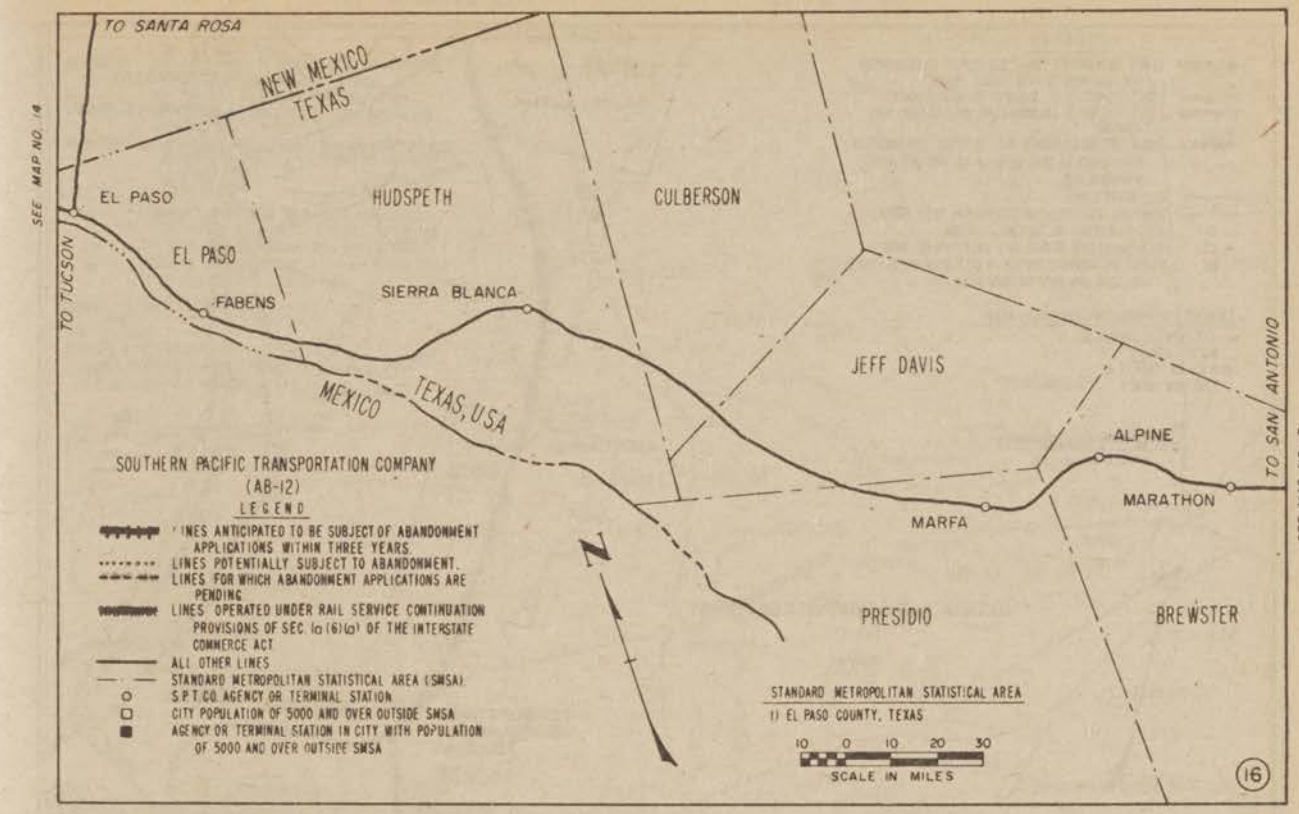
ALL OTHER LINES.
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S.P.T.CO. AGENCY OR TERMINAL STATION.
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(AB-12)
NEW MEXICO
20 0 20 40
SCALE IN MILES
GUADALUPE
SANTA ROSA
TORRANCE
VAUGHN
N
LINCOLN
TO EL PASO
SEE MAP NO. 14
15


TO SANTA ROSA
NEW MEXICO
TEXAS
EL PASO
HUDSPETH
CULBERSON
EL PASO
FABENS
SIERRA BLANCA
JEFF DAVIS
MEXICO
TEXAS, USA
ALPINE
MARATHON
MARFA
PRESIDIO
BREWSTER
SEE MAP NO. 14
TO TUCSON
TO SAN ANTONIO
SEE MAP NO 17
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(AB-12)
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
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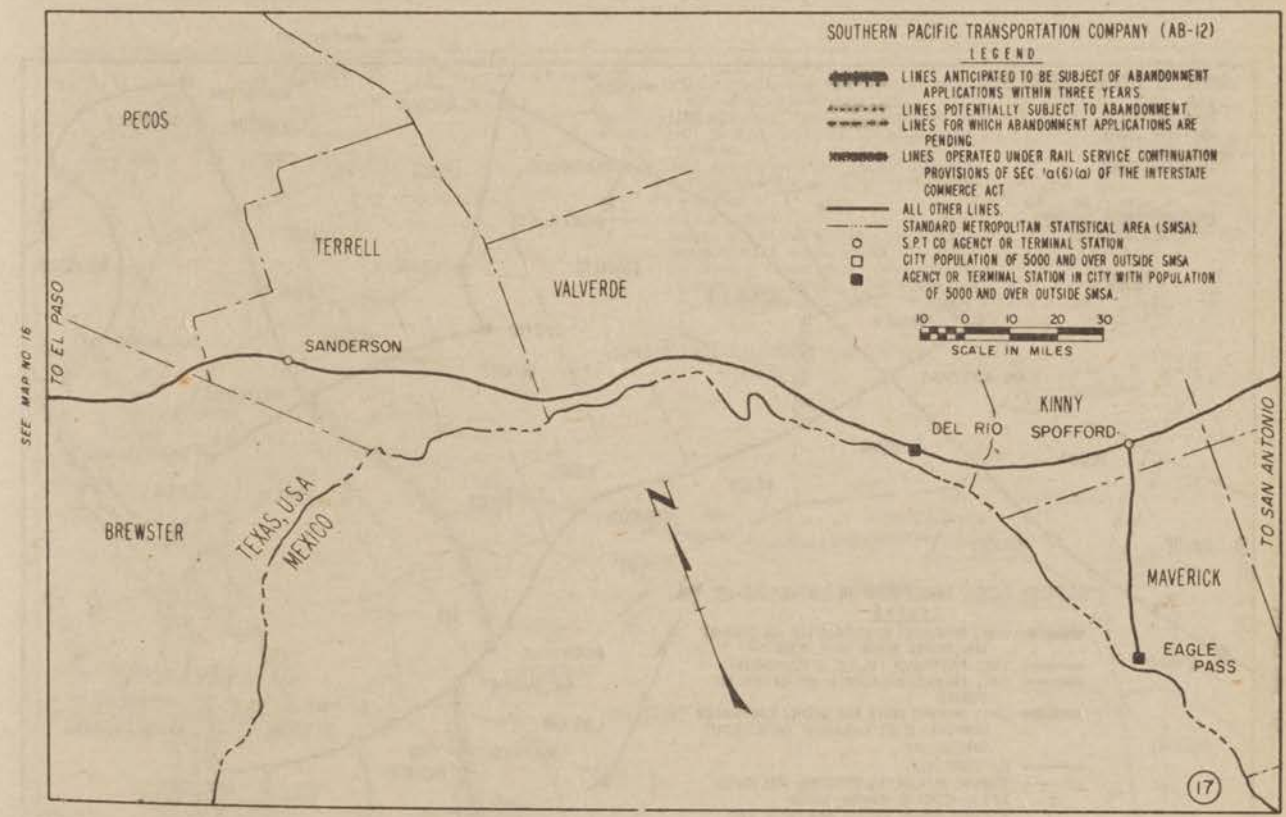
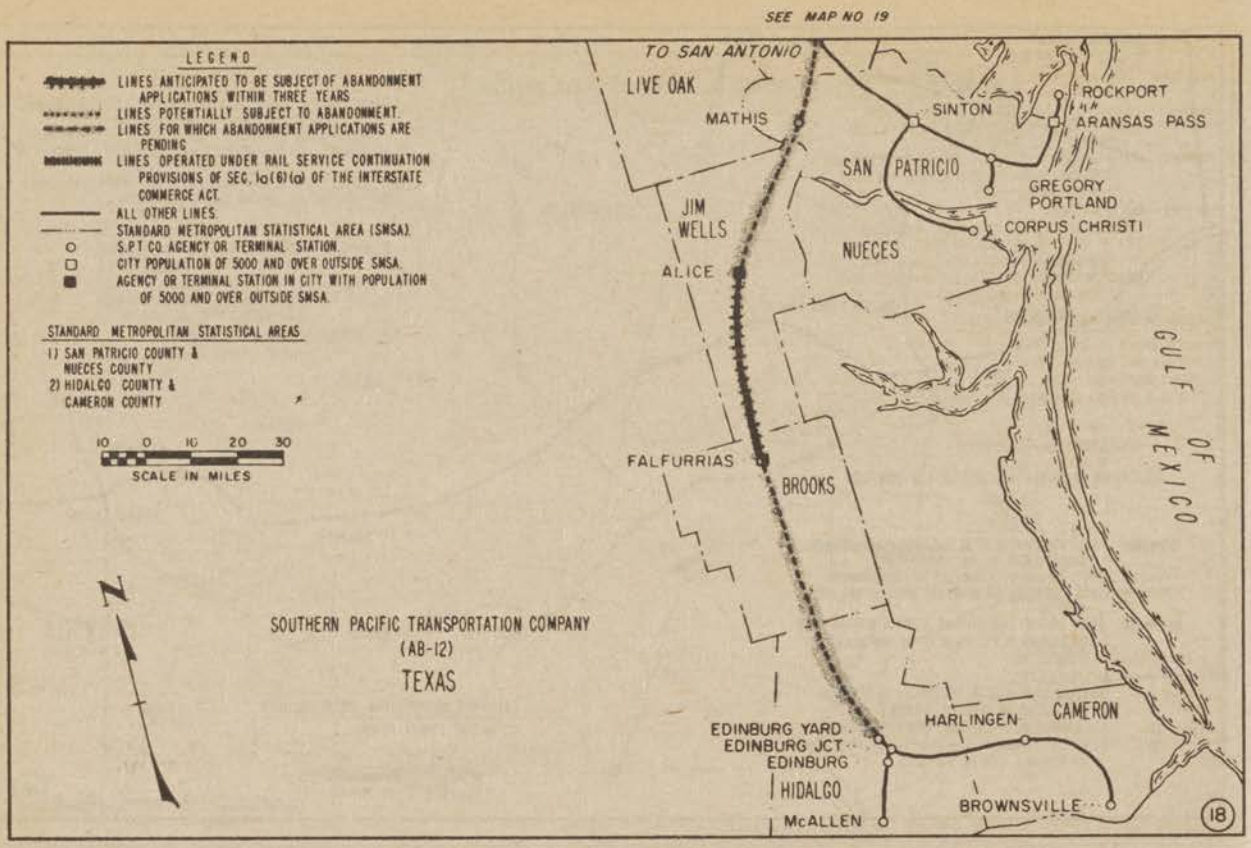
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA
STANDARD METROPOLITAN STATISTICAL AREA
1) EL PASO COUNTY, TEXAS
10 0 10 20 30
SCALE IN MILES
16


SOUTHERN PACIFIC TRANSPORTATION COMPANY (AB-12)
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING.
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT
ALL OTHER LINES.
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S.P.T.CO AGENCY OR TERMINAL STATION
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
10 0 10 20 30
SCALE IN MILES
PECOS
TERRELL
VALVERDE
SANDERSON
KINNY
DEL RIO
SPOFFORD
BREWSTER
TEXAS, USA
MEXICO
MAVERICK
EAGLE PASS
SEE MAP NO 16
TO EL PASO
TO SAN ANTONIO
SEE MAP NO. 19
17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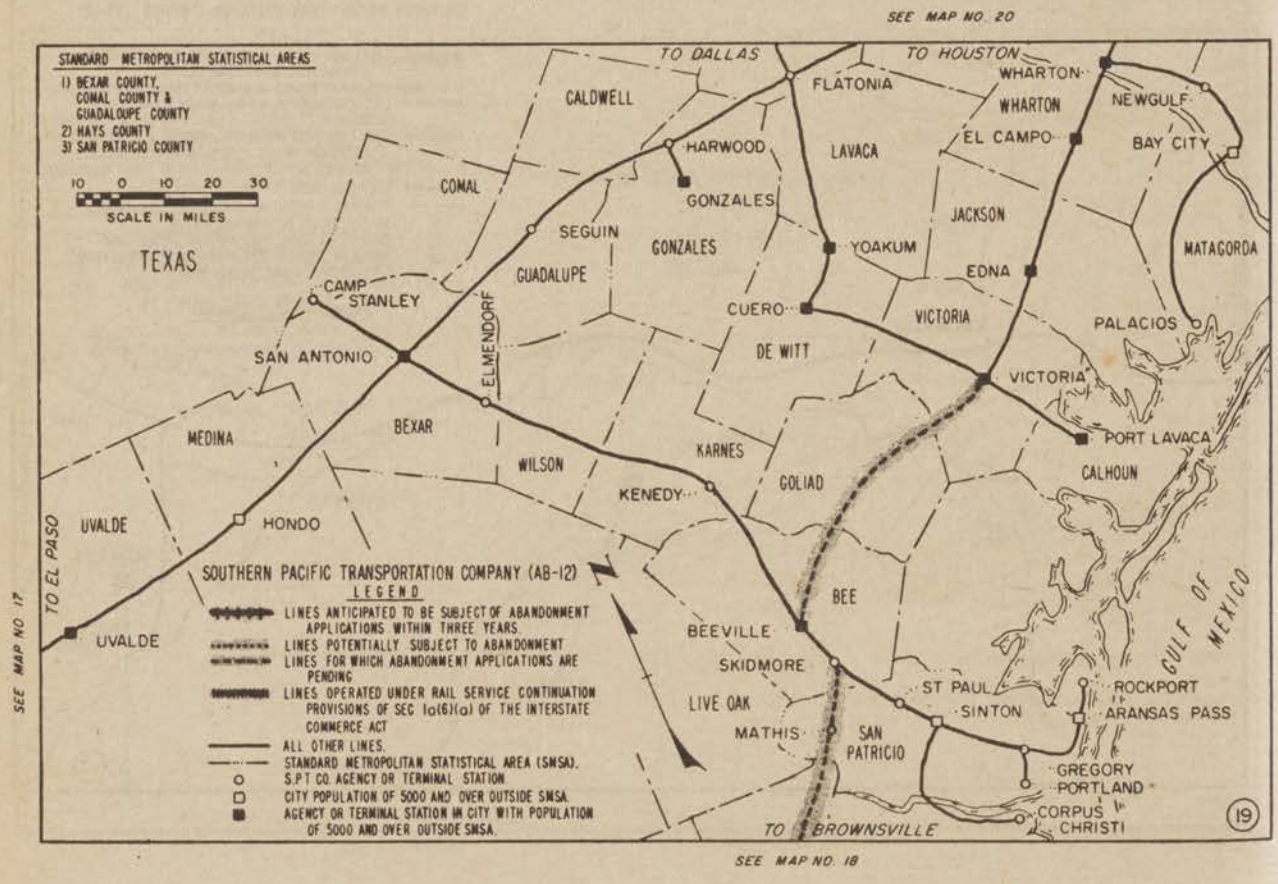
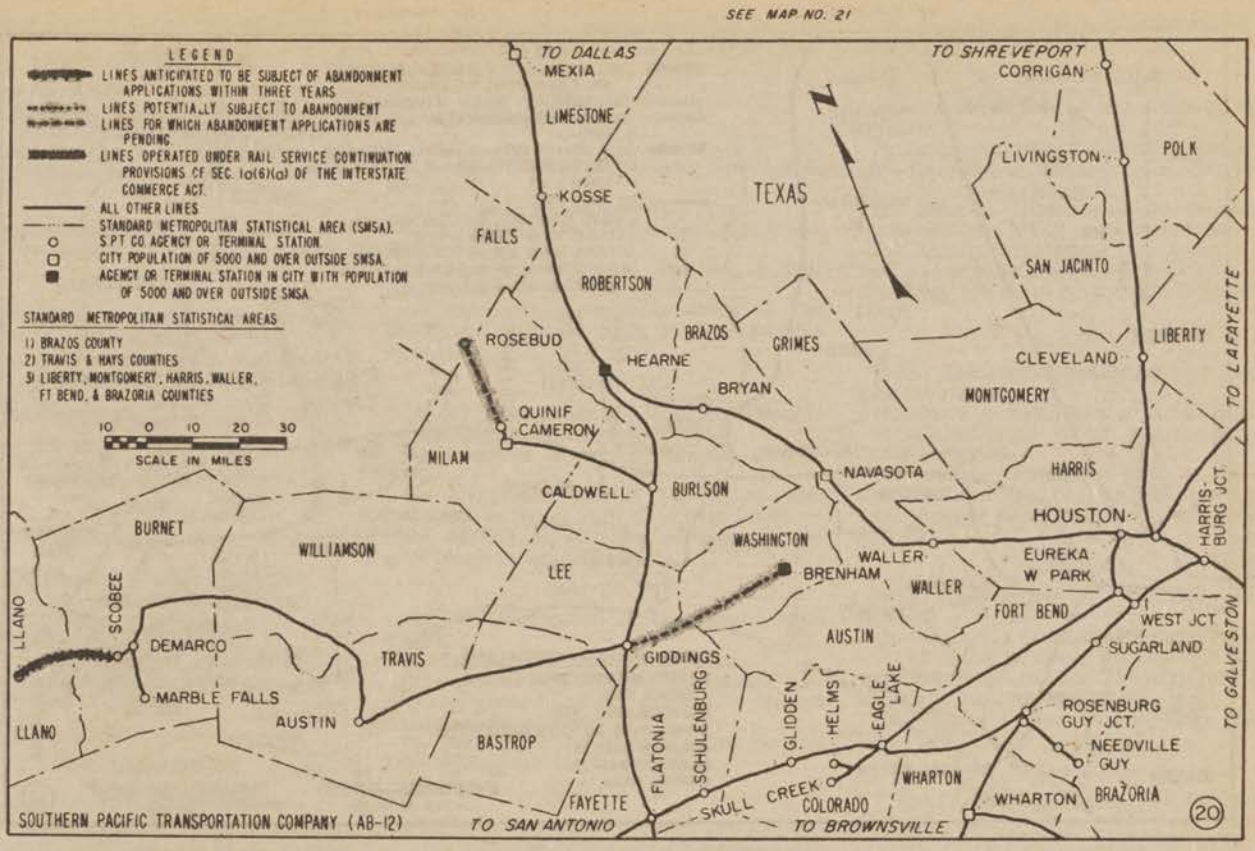
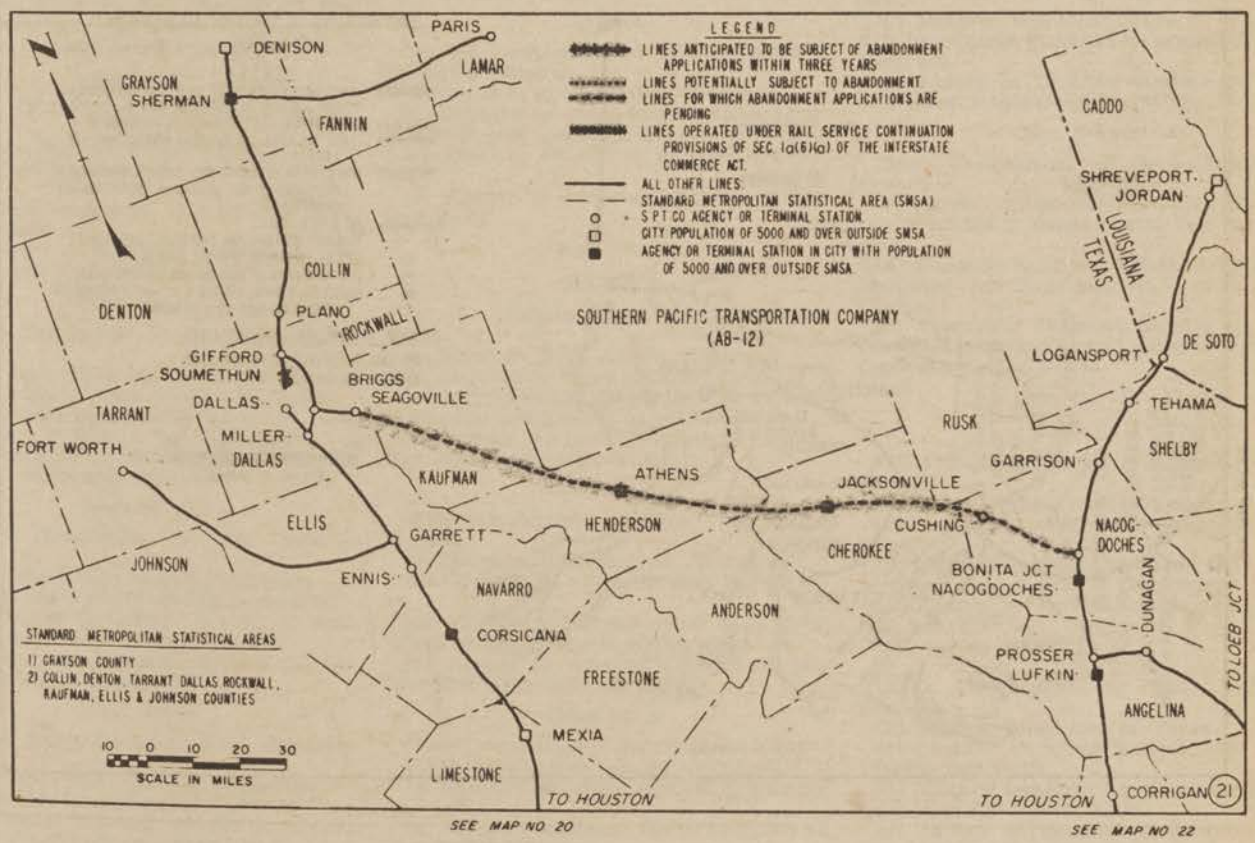
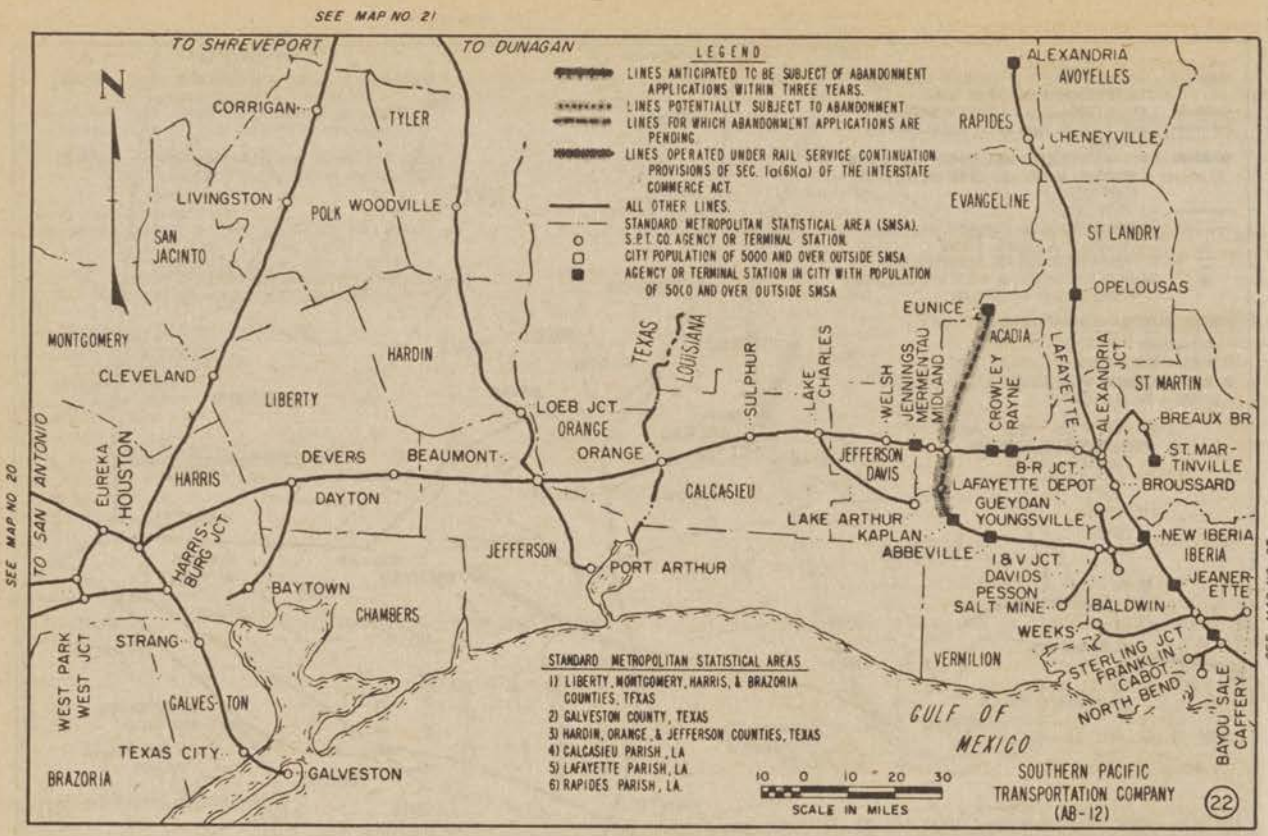
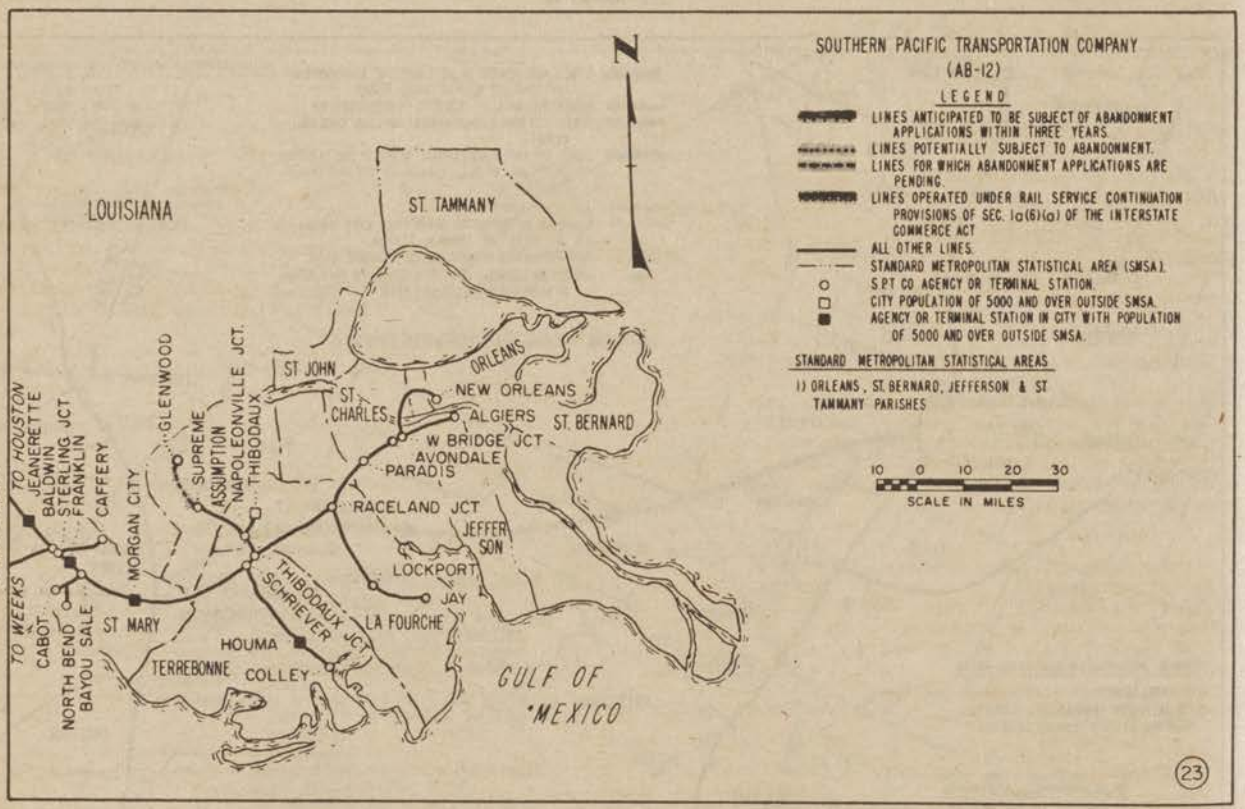
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT.
ALL OTHER LINES.
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S.P.T CO. AGENCY OR TERMINAL STATION.
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA.
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
STANDARD METROPOLITAN STATISTICAL AREAS
1) SAN PATRICIO COUNTY & NUECES COUNTY
2) HIDALGO COUNTY & CAMERON COUNTY
10 0 10 20 30
SCALE IN MILES
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(AB-12)
TEXAS
TO SAN ANTONIO
LIVE OAK
MATHIS
SINTON
ROCKPORT
ARANSAS PASS
SAN PATRICIO
GREGORY
PORTLAND
JIM WELLS
CORPUS CHRISTI
NUECES
ALICE
GULF OF MEXICO
FALFURRIAS
BROOKS
HARLINGEN
CAMERON
EDINBURG YARD
EDINBURG JCT
EDINBURG
HIDALGO
BROWNSVILLE
McALLEN
18


SEE MAP NO. 20
STANDARD METROPOLITAN STATISTICAL AREAS
1) BEXAR COUNTY, COMAL COUNTY & GUADALOUPE COUNTY
2) HAYS COUNTY
3) SAN PATRICIO COUNTY
10 0 10 20 30
SCALE IN MILES
TEXAS
TO DALLAS
TO HOUSTON
CALDWELL
FLATONIA
WHARTON
WHARTON
NEWGULF
HARWOOD
LAVACA
EL CAMPO
BAY CITY
COMAL
GONZALES
SEGUIN
GONZALES
JACKSON
YOAKUM
MATAGORDA
CAMP STANLEY
GUADALUPE
EDNA
CUERO
VICTORIA
PALACIOS
ELMENDORF
SAN ANTONIO
DE WITT
VICTORIA
MEDINA
BEXAR
KARNES
PORT LAVACA
WILSON
GOLIAD
CALHOUN
KENEDY
UVALDE
HONDO
TO EL PASO
SEE MAP NO 17
SOUTHERN PACIFIC TRANSPORTATION COMPANY (AB-12)
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC 1a(6)(a) OF THE INTERSTATE COMMERCE ACT
ALL OTHER LINES.
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S.P.T CO. AGENCY OR TERMINAL STATION
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA.
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
BEE
BEEVILLE
SKIDMORE
LIVE OAK
MATHIS
SAN PATRICIO
ST PAUL
SINTON
ROCKPORT
ARANSAS PASS
GREGORY
PORTLAND
CORPUS CHRISTI
TO BROWNSVILLE
GULF OF MEXICO
19
SEE MAP NO. 18


SEE MAP NO. 21
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS
LINES POTENTIALLY SUBJECT TO ABANDONMENT
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT.
ALL OTHER LINES
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S.P.T.CO AGENCY OR TERMINAL STATION
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA.
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA
STANDARD METROPOLITAN STATISTICAL AREAS
1) BRAZOS COUNTY
2) TRAVIS & HAYS COUNTIES
3) LIBERTY, MONTGOMERY, HARRIS, WALLER, FT BEND, & BRAZORIA COUNTIES
10 0 10 20 30
SCALE IN MILES
TO DALLAS
MEXIA
LIMESTONE
KOSSE
FALLS
ROBERTSON
ROSEBUD
HEARNE
BRAZOS
GRIMES
QUINIF
CAMERON
MILAM
CALDWELL
BURLSON
BURNET
WILLIAMSON
LEE
WASHINGTON
BRENHAM
LLANO
SCOBEE
DEMARCO
TRAVIS
GIDDINGS
MARBLE FALLS
AUSTIN
LLANO
BASTROP
FLATONIA
SCHULENBURG
GLIDDEN
HELMS
EAGLE LAKE
AUSTIN
FAYETTE
SKULL CREEK
COLORADO
WHARTON
WHARTON
BRAZORIA
TO SAN ANTONIO
TO BROWNSVILLE
SOUTHERN PACIFIC TRANSPORTATION COMPANY (AB-12)
20
TO SHREVEPORT
CORRIGAN
LIVINGSTON
POLK
TEXAS
SAN JACINTO
LIBERTY
CLEVELAND
MONTGOMERY
TO LAFAYETTE
NAVASOTA
HARRIS
HOUSTON
HARRISBURG JCT
WALLER
EUREKA
W PARK
FORT BEND
WEST JCT
SUGARLAND
ROSENBURG
GUY JCT.
NEEDVILLE
GUY
TO GALVESTON
SEE MAP NO 22
SEE MAP NO 19


LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS
LINES POTENTIALLY SUBJECT TO ABANDONMENT
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT.
ALL OTHER LINES
STANDARD METROPOLITAN STATISTICAL AREA (SMSA)
S.P.T.CO AGENCY OR TERMINAL STATION
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA
SOUTHERN PACIFIC TRANSPORTATION COMPANY (AB-12)
STANDARD METROPOLITAN STATISTICAL AREAS
1) GRAYSON COUNTY
2) COLLIN, DENTON, TARRANT, DALLAS, ROCKWALL, KAUFMAN, ELLIS & JOHNSON COUNTIES
10 0 10 20 30
SCALE IN MILES
DENISON
PARIS
LAMAR
GRAYSON
SHERMAN
FANNIN
COLLIN
DENTON
PLANO
ROCKWALL
GIFFORD
SOUMETHUN
BRIGGS
SEAGOVILLE
DALLAS
TARRANT
MILLER
DALLAS
FORT WORTH
KAUFMAN
ATHENS
ELLIS
GARRETT
HENDERSON
JOHNSON
ENNIS
NAVARRO
CORSICANA
ANDERSON
FREESTONE
MEXIA
LIMESTONE
TO HOUSTON
SEE MAP NO 20
CADDO
SHREVEPORT
JORDAN
LOUISIANA
TEXAS
DE SOTO
LOGANSPORT
TEHAMA
RUSK
SHELBY
GARRISON
JACKSONVILLE
CUSHING
NACOGDOCHES
CHEROKEE
BONITA JCT
NACOGDOCHES
DUNAGAN
TOLOEB JCT
PROSSER
LUFKIN
ANGELINA
TO HOUSTON
CORRIGAN
21
SEE MAP NO 22


SEE MAP NO 21
TO SHREVEPORT
TO DUNAGAN
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING.
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT.
ALL OTHER LINES.
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S.P.T. CO. AGENCY OR TERMINAL STATION.
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA.
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA
CORRIGAN
TYLER
LIVINGSTON
POLK
WOODVILLE
SAN JACINTO
MONTGOMERY
CLEVELAND
HARDIN
LIBERTY
HARRIS
DEVERS
BEAUMONT
DAYTON
EUREKA
HOUSTON
HARRISBURG JCT
TO SAN ANTONIO
SEE MAP NO 20
BAYTOWN
CHAMBERS
JEFFERSON
PORT ARTHUR
STRANG
WEST PARK
WEST JCT
GALVESTON
TEXAS CITY
BRAZORIA
LOEB JCT
ORANGE
ORANGE
TEXAS
LOUISIANA
SULPHUR
LAKE CHARLES
WELSH
JENNINGS
MERMENTAU
MIDLAND
CROWLEY
RAYNE
ACADIA
LAFAYETTE
ALEXANDRIA JCT
CALCASIEU
JEFFERSON DAVIS
LAKE ARTHUR
KAPLAN
ABBEVILLE
EUNICE
ALEXANDRIA
AVOYELLES
RAPIDES
CHENEYVILLE
EVANGELINE
ST LANDRY
OPELOUSAS
ST MARTIN
BREAUX BR
ST MARTINVILLE
BROUSSARD
B-R JCT
LAFAYETTE DEPOT
GUEYDAN
YOUNGSVILLE
I & V JCT
DAVIDS
PESSON
SALT MINE
NEW IBERIA
IBERIA
JEANERETTE
BALDWIN
WEEKS
VERMILION
STERLING JCT
FRANKLIN
CABOT
NORTH BEND
BAYOU SALE
CAFFERY
SEE MAP NO 23
GULF OF MEXICO
STANDARD METROPOLITAN STATISTICAL AREAS
1) LIBERTY, MONTGOMERY, HARRIS, & BRAZORIA COUNTIES, TEXAS
2) GALVESTON COUNTY, TEXAS
3) HARDIN, ORANGE, & JEFFERSON COUNTIES, TEXAS
4) CALCASIEU PARISH, LA
5) LAFAYETTE PARISH, LA
6) RAPIDES PARISH, LA
10 0 10 20 30
SCALE IN MILES
SOUTHERN PACIFIC TRANSPORTATION COMPANY (AB-12)
22


SOUTHERN PACIFIC TRANSPORTATION COMPANY
(AB-12)
LEGEND
LINES ANTICIPATED TO BE SUBJECT OF ABANDONMENT APPLICATIONS WITHIN THREE YEARS.
LINES POTENTIALLY SUBJECT TO ABANDONMENT.
LINES FOR WHICH ABANDONMENT APPLICATIONS ARE PENDING.
LINES OPERATED UNDER RAIL SERVICE CONTINUATION PROVISIONS OF SEC. 1a(6)(a) OF THE INTERSTATE COMMERCE ACT
ALL OTHER LINES.
STANDARD METROPOLITAN STATISTICAL AREA (SMSA).
S.P.T. CO. AGENCY OR TERMINAL STATION.
CITY POPULATION OF 5000 AND OVER OUTSIDE SMSA.
AGENCY OR TERMINAL STATION IN CITY WITH POPULATION OF 5000 AND OVER OUTSIDE SMSA.
STANDARD METROPOLITAN STATISTICAL AREAS
1) ORLEANS, ST. BERNARD, JEFFERSON & ST TAMMANY PARISHES
10 0 10 20 30
SCALE IN MILES
LOUISIANA
ST. TAMMANY
ORLEANS
NEW ORLEANS
ST. BERNARD
ALGIERS
W BRIDGE JCT
AVONDALE
PARADIS
ST JOHN
ST CHARLES
GLENWOOD
SUPREME
ASSUMPTION
NAPOLEONVILLE JCT
THIBODAUX
MORGAN CITY
RACELAND JCT
JEFFERSON
LOCKPORT
JAY
LA FOURCHE
THIBODAUX SCHRIEVER JCT
HOUMA
TERREBONNE
COLLEY
ST MARY
TO HOUSTON
JEANERETTE
BALDWIN
STERLING JCT
FRANKLIN
CAFFERY
TO WEEKS
CABOT
NORTH BEND
BAYOU SALE
SEE MAP NO 22
GULF OF MEXICO
23

SOUTHERN PACIFIC TRANSPORTATION CO.

DESCRIPTION OF LINES

Pursuant to the regulations of the Interstate Commerce Commission (49 CFR 1121.21), the following is a description of lines of the Southern Pacific Transportation Co as shown on the system diagram map:

Lines anticipated to be subject of abandonment applications within 3 years

Oregon

(1) (a) Designation of line: Dallas Branch.
(b) States in which located: Oregon.
(c) Counties in which located: Marion.
(d) Milepost locations: 718.36 to 719.74 at or near Salem.
(e) Agency or terminal stations on the line: None.

(Map No. 1)

California

(1) (a) Designation of line: Matheson Branch.
(b) States in which located: California.
(c) Counties in which located: Shasta.
(d) Milepost locations: 263.2 at or near Kett to 267.2 at or near Matheson.
(e) Agency or terminal stations on the line: Kett (milepost 263.2), Matheson (milepost 267.2).

(Map No. 4)

(2) (a) Designation of line: Monterey Branch.
(b) States in which located: California.
(c) Counties in which located: Monterey.
(d) Milepost locations: 123.30 at or near Seaside to 130.0 at or near Lake Majella.
(e) Agency or terminal stations on the line: Seaside (milepost 123.3), Monterey (milepost 125.7), Lake Majella (milepost 130.0).

(Map No. 8)

(3) (a) Designation of line: San Ramon Branch.
(b) States in which located: California.
(c) Counties in which located: Contra Costa.
(d) Milepost locations: 40.29 to 42.60 at or near Concord.
(e) Agency or terminal stations on the line: Concord (milepost 42.5).

(Map No. 8)

(4) (a) Designation of line: Stonehurst Branch.
(b) States in which located: California.
(c) Counties in which located: Alameda.
(d) Milepost locations: 13.57 at or near Elmhurst to 14.32 at or near Stonehurst.
(e) Agency or terminal stations on the line: Stonehurst (milepost 14.3).

(Map No. 8)

(5) (a) Designation of line: Oakdale Branch.
(b) States in which located: California.
(c) Counties in which located: Stanislaus.
(d) Milepost locations: 124.4 at or near Oakdale to 127.02 at or near Claribel.
(e) Agency or terminal stations on the line: Claribel (milepost 126.3).

(Map No. 8)

(6) (a) Designation of line: Stratford Branch.
(b) States in which located: California.
(c) Counties in which located: Kings.
(d) Milepost locations: 263.438 at or near Rossi to 271.69 at or near Stratford.
(e) Agency or terminal stations on the line: Stratford (milepost 271.1), Rossi (milepost 263.5).

(Map No. 9)

Texas

(1) (a) Designation of line: Brownsville Branch.
(b) States in which located: Texas.
(c) Counties in which located: Jim Wells, Brooks.
(d) Milepost locations: 40.9 at or near Alice to 80.2 at or near Falfurrias.
(e) Agency or terminal stations on the line: Alice (milepost 43.2), Falfurrias (milepost 79.6).

(Map No. 18)

(2) (a) Designation of line: Llano Branch.
(b) States in which located: Texas.
(c) Counties in which located: Burnet, Llano.
(d) Milepost locations: 74.0 at or near Scobee to milepost 99.07 at or near Llano.
(e) Agency or terminal stations on the line: Llano (milepost 98.8).

(Map No. 20)

(4) (a) Designation of line: Soumethun Branch.
(b) States in which located: Texas.
(c) Counties in which located: Dallas.
(d) Milepost locations: 269.813 to 269.156 at or near Soumethun.
(e) Agency or terminal stations on the line: Soumethun (milepost 269.4).

(Map No. 21)

Lines for which abandonment applications are pending before the Interstate Commerce Commission

Oregon

(1) (a) Designation of line: Woodburn-Springfield Branch.
(b) States in which located: Oregon.
(c) Counties in which located: Lane, Linn.
(d) Milepost locations: 644.889 at or near Springfield to 669.800 at or near Brownsville.
(e) Agency or terminal stations on the line: None.

(Map No. 1)

California

(1) (a) Designation of line: Westwood Branch.
(b) States in which located: California.
(c) Counties in which located: Lassen.
(d) Milepost locations: 381.900 at or near Susanville to 412.433 at or near Westwood.
(e) Agency or terminal stations on the line: Westwood (milepost 411.3).

(Map No. 4)

(2)(a) Designation of line: Fair Oaks Branch.
(b) States in which located: California.
(c) Counties in which located: Sacramento.
(d) Milepost locations: 104.37 at or near Citrus to 106.36 at or near Fair Oaks.
(e) Agency or terminal stations on the line: Fair Oaks (milepost 106.3).

(Map No. 8)

(3)(a) Designation of line: R Street Line.
(b) States in which located: California.
(c) Counties in which located: Sacramento.
(d) Milepost locations: 89.592 to 91.225 at or near Sacramento.
(e) Agency or terminal stations on the line: None.

(Map No. 8)

(4)(a) Designation of line: Walnut Grove Branch.
(b) States in which located: California.
(c) Counties in which located: Sacramento.
(d) Milepost locations: 91.10 at or near Sacramento to 104.96 at or near Hood.
(e) Agency or terminal stations on the line: Hood Junction (milepost 104.6), Hood (milepost 105.3 (on spur from Hood Junction)).

(Map No. 8)

(5)(a) Designation of line: San Ramon Branch.
(b) States in which located: California.
(c) Counties in which located: Contra Costa, Alameda.
(d) Milepost locations: 42.60 at or near Concord to 62.10 at or near Dougherty.
(e) Agency or terminal stations on the line: None.

(Map No. 8)

(6)(a) Designation of line: San Bruno Branch.
(b) States in which located: California.
(c) Counties in which located: San Mateo.
(d) Milepost locations: 7.39 at or near Daly City to 10.80 at or near Baden.
(e) Agency or terminal stations on the line: Daly City (milepost 7.4).

(Map No. 8)

(7)(a) Designation of line: San Bernardino Branch.
(b) States in which located: California.
(c) Counties in which located: San Bernardino.
(d) Milepost locations: 542.09 at or near San Bernardino to 549.37 at or near North Redlands.
(e) Agency or terminal stations on the line: North Redlands (milepost 549.2).

(Map No. 10)

(8)(a) Designation of line: Redlands Branch.
(b) States in which located: California.
(c) Counties in which located: San Bernardino.
(d) Milepost locations: 547.86 at or near Redlands (2nd Street) to 551.57 at or near Crafton.
(e) Agency or terminal stations on the line: Redlands (2nd Street) (milepost 547.86) Crafton (milepost 551.4).

(Map No. 10)

Texas

(1)(a) Designation of line: Brownsville Branch.
(b) States in which located: Texas.
(c) Counties in which located: Brooks, Hidalgo.
(d) Milepost locations: 80.2 at or near Falfurrias to 138.9 at or near Edinburg.
(e) Agency or terminal stations on the line: None.

(Map No. 18)

(2)(a) Designation of line: Beeville Branch.
(b) States in which located: Texas.
(c) Counties in which located: Bee, San Patricio, Jim Wells.
(d) Milepost locations: 1.0 at or near Skidmore to 40.9 at or near Alice.
(e) Agency or terminal stations on the line: Mathis (milepost 14.1).

(Map No. 18 and 19)

(3)(a) Designation of line: Beeville Branch.
(b) States in which located: Texas.
(c) Counties in which located: Victoria, Goliad, Bee.
(d) Milepost locations: 93.7 at or near Victoria to 145.0 at or near Beeville.
(e) Agency or terminal stations on the line: None.

(Map No. 19)

(4) (a) Designation of line: Cameron Branch.
(b) States in which located: Texas.
(c) Counties in which located: Falls, Milam.
(d) Milepost locations: 119.7 at or near Quinif to 133.70 at or near Rosebud.
(e) Agency or terminal stations on the line: Rosebud (milepost 133.3).

(Map No. 20)

(5) (a) Designation of line: Austin Branch.
(b) States in which located: Texas.
(c) Counties in which located: Washington, Lee Fayette.
(d) Milepost locations: 20.86 at or near Brenham to 55.78 at or near Giddings.
(e) Agency or terminal stations on the line: Brenham (milepost 21.0).

(Map No. 20)

(6) (a) Designation of line: Athens Branch.
(b) States in which located: Texas.
(c) Counties in which located: Dallas, Kaufman, Henderson, Anderson, Cherokee.
(d) Milepost locations: 298.70 at or near Seagoville to 203.43 at or near Jacksonville.
(e) Agency or terminal stations on the line: Athens (milepost 243.0).

(Map No. 21)

(7) (a) Designation of line: Jacksonville Branch.
(b) States in which located: Texas.
(c) Counties in which located: Cherokee, Rusk, Nacogdoches.
(d) Milepost locations: 203.43 at or near Jacksonville to 154.56 at or near Bonita Junction.
(e) Agency or terminal stations on the line: Jacksonville (milepost 261.2), Cushing (milepost 172.1), Bonita Junction (milepost 154.6).

(Map No. 21)

Louisiana

(1) (a) Designation of line: Midland Branch.
(b) States in which located: Louisiana.
(c) Counties in which located: Vermilion, St. Landry, Acadia.
(d) Milepost locations: 31.0 at or near Kaplan to 80.56 at or near Eunice.
(e) Agency or terminal stations on the line: Eunice (milepost 79.4), Gueydan (milepost 45.3).

(Map No. 22)

(2) (a) Designation of line: Napoleonville Branch.
(b) States in which located: Louisiana.
(c) Counties in which located: Assumption.
(d) Milepost locations: 15.28 at or near Supreme to 23.14 at or near Glenwood.
(e) Agency or terminal stations on the line: Glenwood (milepost 22.9).

(Map No. 23)

[FR Doc. 78-11035 Filed 4-24-78; 8:45 am]

[7035-01]

[AB 33 (SDM)]

UNION PACIFIC RAILROAD CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Union Pacific Railroad Company, has filed with the Commission its amended color-coded system diagram map in Docket No. AB 33 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 29, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 33 (SDM).

H. G. Homme, Jr.,
Acting Secretary.

SYSTEM DIAGRAM MAP of the UNION PACIFIC RAILROAD AB No. 33 prepared in conjunction with I.C.C. Order Ex Parte No. 274 (Sub-No. 2) and Title 49 of the code of Federal Regulation 1121.

* L E G E N D *

Lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within three years shown ---------- (1)

Lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues shown -- (2)

Lines or portions of lines for which an abandonment or discontinuance application is pending before the Interstate Commerce Commission shown ---------- (3)

Lines or portions of lines which are being operated under rail service continuance provisions shown ---------- (4)

All other Union Pacific Railroad Company lines shown --

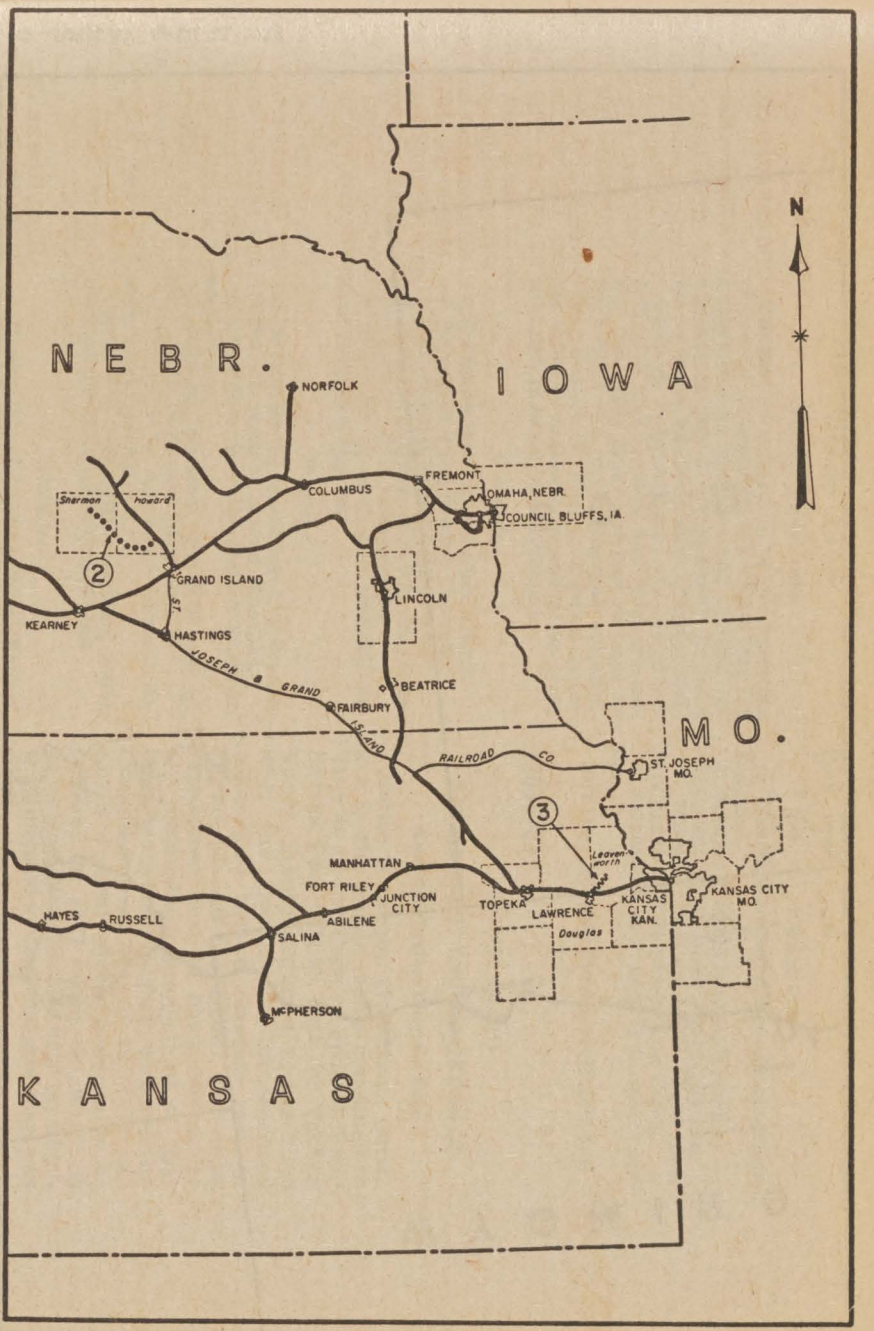
0 50 100
SCALE IN MILES

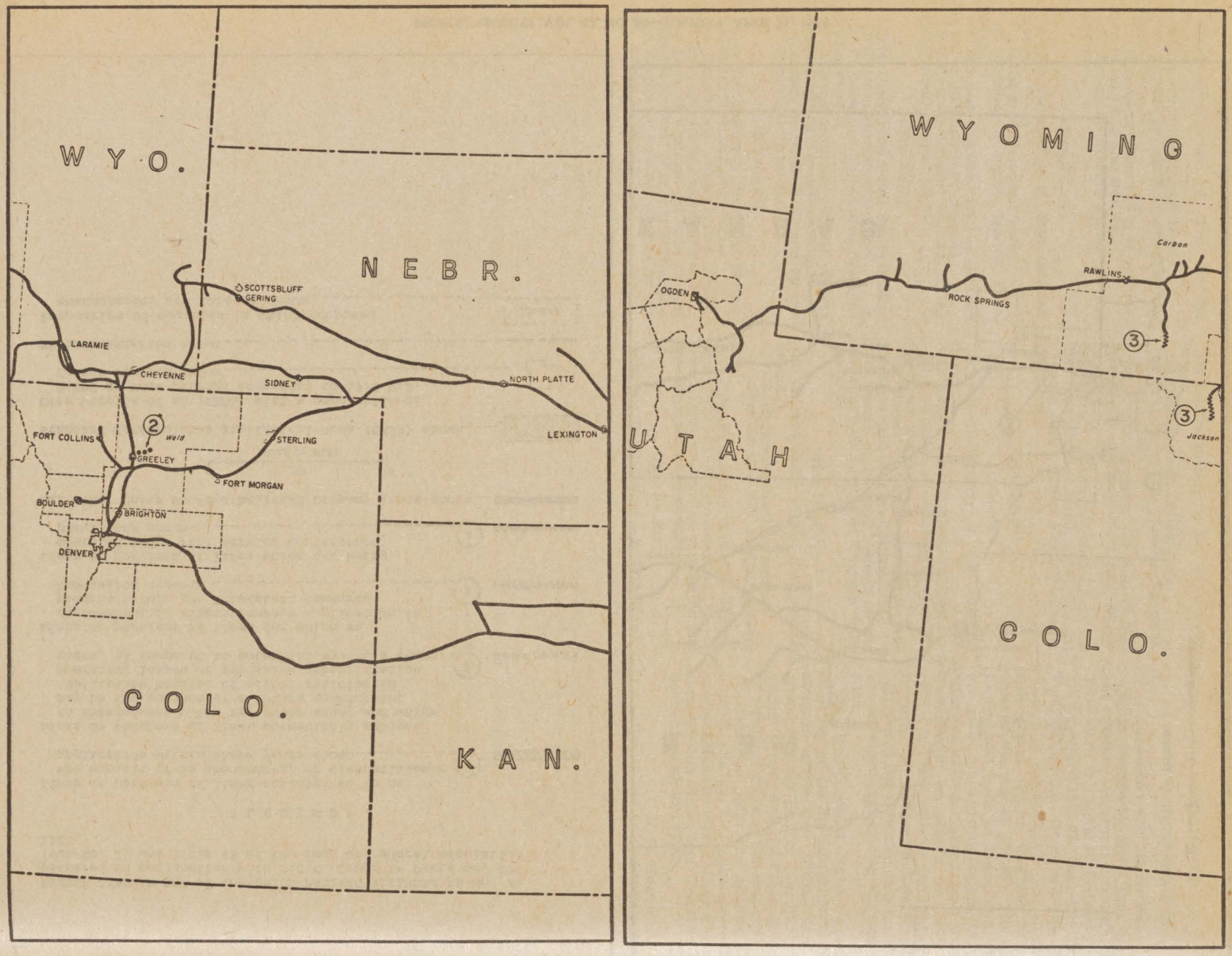
Standard Metropolitan Statistical Area (SMSA) shown ----

City outside of an (SMSA) with a population of 5,000 or more persons according to 1970 U.S. Census reports shown ----------

State boundaries shown ----------

Boundaries of counties in which proposed abandonments are located shown ---------- County




WYO.
NEBR.
SCOTTSBLUFF
GERING
LARAMIE
CHEYENNE
SIDNEY
NORTH PLATTE
LEXINGTON
FORT COLLINS
2
Weld
GREELEY
STERLING
FORT MORGAN
BOULDER
BRIGHTON
DENVER
COLO.
KAN.
WYOMING
OGDEN
ROCK SPRINGS
RAWLINS
Carbon
3
Jackson
UTAH
COLO.

UNION PACIFIC RAILROAD CO. SYSTEM DIAGRAM (AB-33)

DESCRIPTION OF LINES

Pursuant to regulations of the Interstate Commerce Commission (49 CFR § 1121.23), following is an amended and updated description of lines of Union Pacific Railroad Co. as shown on the System Diagram Map.

Category 2—Lines which are potentially subject to abandonment and which the carrier has under study and believes may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues.

Colorado

a. Designation of Line: Greeley Branch.
b. State(s) in which located: Colorado.
c. County(ies) in which located: Weld.
d. Milepost locations: M.P. 0.00 near Greeley Junction to M.P. 10.86 near Gill.
e. There are no agency or terminal stations located on this line.

Nebraska

a. Designation of Line: Loup City Branch.
b. State(s) in which located: Nebraska.
c. County(ies) in which located: Sherman and Howard.
d. Milepost locations: M.P. 0.20 near St. Paul to M.P. 39.60 near Loup City.
e. There are no agency or terminal stations located on this line.

Category 3—Applications pending before the Interstate Commerce Commission.

Colorado

a. Designation of Line: Coalmont Branch.
b. State(s) in which located: Colorado.
c. County(ies) in which located: Jackson.
d. Milepost locations: M.P. 93.0 near Walden to M.P. 108.0 near Hebron.
e. Walden at M.P. 92.21 is an agency station.

Kansas

a. Designation of Line: Leavenworth Branch.
b. State(s) in which located: Kansas.
c. County(ies) in which located: Leavenworth and Douglas.
d. Milepost locations: M.P. 20.72 near Tonganoxie to M.P. 34.49 near Lawrence.
e. Lawrence at M.P. 34.34 is an agency station.

Wyoming

a. Designation of Line: Emcampment Branch.
b. State(s) in which located: Wyoming.
c. County(ies) in which located: Carbon.
d. Milepost locations: M.P. 24.29 near Saratoga to M.P. 33.40 near Cow Creek.
e. Saratoga at M.P. 24.02 is an agency station.

[FR Doc. 78-11038 Filed 4-24-78; 8:45 am]

[7035-01]

[AB 131 (SDM)]

YAKIMA VALLEY TRANSPORTATION CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Yakima Valley Transportation Co., has filed with the Commission its amended color-coded system diagram map in Docket No. AB 131 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 29, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting Docket No. AB 131 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.

SYSTEM DIAGRAM MAP of the YAKIMA VALLEY TRANSPORTATION CO. AB No. 131 prepared in conjunction with I.C.C. Order Ex Parte No. 274 (Sub-No. 2) and Title 49 of the code of Federal Regulation 1121.

* L E G E N D *

Lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within three years shown ---------- (1)

Lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues shown -- (2)

Lines or portions of lines for which an abandonment or discontinuance application is pending before the Interstate Commerce Commission shown ---------- (3)

Lines or portions of lines which are being operated under rail service continuance provisions shown ---------- (4)

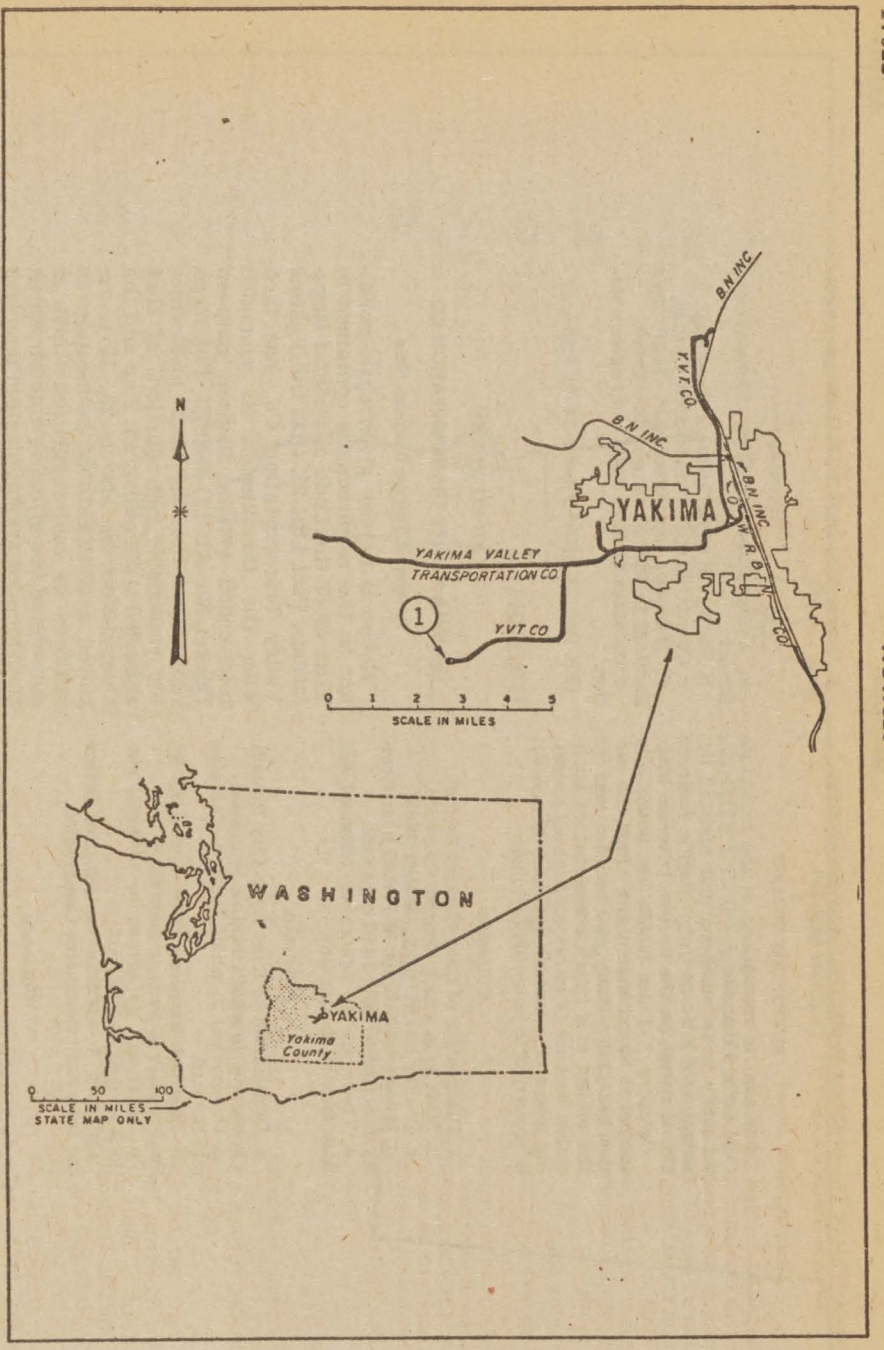
All other Yakima Valley Transportation Company lines shown ----

Standard Metropolitan Statistical Area (SMSA) shown ----

City outside of an (SMSA) with a population of 5,000 or more persons according to 1970 U.S. Census reports shown ----------

State boundaries shown ----------

Boundaries of counties in which proposed abandonments are located shown ---------- County



YAKIMA VALLEY TRANSPORTATION CO., SYSTEM DIAGRAM (AB-131)

Description of Lines

Pursuant to regulations of the Interstate Commerce Commission (49 CFR § 1121.23), following is an amended and updated description of lines of Yakima Valley Transportation Co. as shown on the System Diagram Map.

Category 1. Lines anticipated to be the subject of abandonment application within three years.

Washington State.

a. Designation of Line: YVT Branch.
b. State(s) in which located: Washington.
c. County(ies) in which located: Yakima.
d. Milepost locations: M.P. 4.55 near Wiley City to M.P. 4.59 near Wiley City.
e. There are no agency or terminal stations located on this line.

[FR Doc. 78-11041 Filed 4-24-78; 8:45 am]

[7035-01]

[Exception No. 1 to Rev. S.O. No. 1322]

ATCHISON, TOPEKA & SANTA FE RAILWAY CO. ET AL.

In the matter of the Atchison, Topeka & Santa Fe Railway Co., Illinois Central Gulf Railroad Co., Missouri Pacific Railroad Co., and Union Pacific Railroad Co.

Pursuant to the authority vested in me by section (f) of revised service order No. 1322, each of the railroads named above is directed to assign to grain service at least fifty-five (55) percent of its ownership of jumbo covered hoppers, as defined in section (a)(2) of revised service order No. 1322, regardless of the provisions of section (c)(1) of the order.

Effective 12:01 a.m., April 17, 1978.

Issued at Washington, D.C., April 17, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Chairman,
Railroad Service Board.

[FR Doc. 78-11188 Filed 4-24-78; 8:45 am]

[7035-1]

[I.C.C. Order No. 54 Under Revised Service Order No. 1252]

REROUTING TRAFFIC

In the opinion of Joel E. Burns, agent, the Chicago, Milwaukee, St. Paul & Pacific Railroad Co. is unable to transport promptly all traffic offered for movement over its lines between Savanna, Ill., and Kansas City, Mo., because of track conditions and shortages of locomotives.

It is ordered, That: (a) *Rerouting traffic.* The Chicago, Milwaukee, St. Paul & Pacific Railroad Co. being unable to transport promptly all traffic offered for movement over its lines between Savanna, Ill., and Kansas City, Mo., because of track conditions and shortages of locomotives that line is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 4 p.m., April 4, 1978.

(g) *Expiration date.* This order shall expire at 11:59 p.m., April 30, 1978, unless otherwise modified, changed, or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the DIrector, Office of the Federal Register.

Issued at Washington, D.C., April 4, 1978.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 78-11189 Filed 4-24-78; 8:45 am]

[7035-01]

[Notice No. 644]

ASSIGNMENT OF HEARINGS

APRIL 20, 1978.

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.

No. MC-C-9725, Woodline Motor Freight, Inc. v. Arkansas Best Freight Systems, Inc, and MC-C-9726, Woodline Motor Freight, Inc. v. Ryder Truck Lines, Inc., now assigned May 2, 1978, at Little Rock, AR, postponed to June 15, 1978 (1 day), at Little Rock, AR, in a hearing room to be later designated.

No. MC 73165 (Sub-No. 415), Eagle Motor Lines, Inc., now assigned May 3, 1978, at Columbus, OH is cancelled and application dismissed.

No. MC 116915 (Sub-No. 35), Eck Miller Transportation Corp., now assigned June 6, 1978, at Louisville, KY., is cancelled and application dismissed.

MC 59856 (Sub 76), Salt Creek Freightways, is now assigned for hearing June 12, 1978 (1 week) at Missould, MT, at a location to be later designated.

MC 116915 (Sub 42), Eck Miller Transportation Corp., now assigned May 9, 1978, at Omaha, NE, is canceled and reassigned to May 9, 1978 (1 day), at Council Bluffs, IA, and will be held in the United States District Courtroom, U.S. Post Office, 6th and Broadway.

MC 48958 (Sub 138), Illinois-California Express, Inc., now assigned May 10, 1978, at Omaha, NE, is cancelled and reassigned to May 10, 1978 (3 days), at Council Bluffs, IA, and will be held in the United States District Courtroom, U.S. Post Office, 6th and Broadway.

MC 143916, McQuade Heavy Hauling, Inc., now assigned May 15, 1978, at Omaha, NE, is cancelled and reassigned to May 15, 1978, (1 week), at Council Bluffs, IA, and will be held in the United States District Courtroom, U.S. Post Office, 6th and Broadway.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11187 Filed 4-24-78; 8:45 am]

[7035-01]

[Eighth Revised Exemption No. 123]

EXEMPTION UNDER PROVISION OF RULE 19 OF THE MANDATORY CAR SERVICE RULES ORDERED IN EX PARTE NO. 241

It appearing, that railroads named herein own numerous plain flat cars; that under present conditions, there is

virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, plain flat cars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 406, issued by W. J. Trezize, or successive issues thereof, as having mechanical designation "FM", and having less than 200,000 lbs. carrying capacity, and bearing reporting marks assigned to railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a), and 2(b).

The Atchison, Topeka and Santa Fe Railway Co. deleted.
Missouri-Kansas-Texas Railroad Co.
Reporting Marks: BKTY-MKT-MKTT.
Southern Railway Co. deleted.

Effective April 15, 1978, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., April 10, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-11190 Filed 4-24-78; 8:45 am]

[7035-01]

EXEMPTION UNDER PROVISION OF RULE 19 OF THE MANDATORY CAR SERVICE RULES ORDERED IN EX PARTE NO. 241

[Eighteenth Revised Exemption No. 129]

It appearing, that the railroads named herein own numerous 40-ft. plain boxcars; that under present conditions, there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plan boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 406, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", with inside length 44-ft. 6-in. or less, regardless of door width and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a), and 2(b).

Atlanta & Saint Andrews Bay Railway Co.
Reporting Marks: ASAB.
Bessemer and Lake Erie Railroad Co.
Reporting Marks: BLE
Chicago, West Pullman & Southern Railroad Co.
Reporting Marks: CWP.
Detroit and Mackinac Railway Co.
Reporting Marks: D&M-DM.
Illinois Terminal Railroad Co.
Reporting Marks: ITC.
Louisville, New Albany & Corydon Railroad Co.
Reporting Marks: LNAC.
Manufacturers Railway Co. deleted.
New Hope and Ivyland Railroad Co.
Reporting Marks: NHIR.
Richmond, Fredericksburg and Potomac Railroad Co.
Reporting Marks: RFP.

Effective 12:01 a.m., April 15, 1978, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., April 10, 1978.

INTERSTATE COMMERCE COMMISSION
Joel E. Burns,
Agent.

[FR Doc. 78-11185 Filed 4-24-78; 8:45 am]

[7035-01]

Forty-First Revised Exemption No.90]

EXEMPTION UNDER PROVISION OF RULE 19 OF THE MANDATORY CAR SERVICE RULES ORDERED IN EX PARTE NO. 241

It appearing, that certain of the railroads named below own numerous 50-ft. plain boxcars; that under present conditions, there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars; and

It further appearing, that there are substantial shortages of 50-ft. plain boxcars throughout the country; that the carriers identified in this exemption by the symbol (†) have 150 percent or more of their ownership of these cars of their lines; and that such a disproportionate use of the total supply of such cars causes shippers served by other lines to be deprived of their proper share of such cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 406, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1, 2(a), and 2(b).

Apalachicola Northern Railroad Co.
Reporting Marks: AN.

∞
†The Baltimore and Ohio Railroad Co.
Reporting Marks: BO.
†Bessemer and Lake Erie Railroad Co.
Reporting Marks: BLE.
Camino, Placerville & Lake Tahoe Railroad Co.
Reporting Marks: CPLT.
†The Chesapeake and Ohio Railway Co.
Reporting Marks: CO-PM.
†Chicago & Illinois Midland Railway Co.
Reporting Marks: CIM.
†Chicago, Rock Island and Pacific Railroad Co.
Reporting Marks: RI-Rock.
City of Prineville.
Reporting Marks: COP.
The Clarendon and Pittsford Railroad Co.
Reporting Marks: CLP.
†Consolidated Rail Corp.
Reporting Marks: CR-DLW-EL-ERIE-LV-NH-NYC-P&E-PAE-PC-PCA-PRR-RDG.

elaware and Hudson Railway Co.
Reporting Marks: DH.
Duluth, Missabe and Iron Range Railway Co.
Reporting Marks: DMIR.
†Florida East Coast Railway Co.
Reporting Marks: FEC.
†Grand Trunk Western Railroad Co.
Reporting Marks: GTW.
Greenville and Northern Railway Co.
Reporting Marks: GRN.
Greenwich & Johnsonville Railway Co.
Reporting Marks: GJ.

∞
Louisville and Wadley Railway Co.
Reporting Marks: LW.
Louisville, New Albany & Corydon Railroad Co.
Reporting Marks: LNAC.
Mc Cloud River Railroad Co.
Reporting Marks: MR.
Middletown and New Jersey Railway Company, Inc.
Reporting Marks: MNJ.
Municipality of East Troy, Wisconsin.
Reporting Marks: METW.
New Orleans Public Belt Railroad.
Reporting Marks: NOPB.
†Norfolk and Western Railway Co.
Reporting Marks: ACY-N&W-NKP-WAB.
Pearl River Valley Railroad Co.
Reporting Marks: PRV.
***
Raritan River Rail Road Co.
Reporting Marks: RR.
Sacramento Northern Rwy.
Reporting Marks: SN.
St. Johnsbury & Lamoille County RR.
Reporting Marks: SJL.
St. Lawrence RR.
Reporting Marks: NSL.
Sierra Railroad Co.

***The following carriers deleted: Atlanta & Saint Andrews Bay Railway Co., Lake Erie, Franklin and Clarion Railroad Co., and Providence and Worcester Company.

Reporting Marks: SERA.
Terminal Railway, Alabama State Docks.
Reporting Marks: TASD.
Tidewater Southern Railway Co.
Reporting Marks: TS.
Toledo, Peoria & Western Railroad Co.
Reporting Marks: TPW.
WCTU Railway Co.
Reporting Marks: WCTR.
†Western Maryland Railway Co.
Reporting Marks: WM.
†Western Railway of Alabama.
Reporting Marks: WA.
Youngstown & Southern Railway Co.
Reporting Marks: YS.
Yreka Western Railroad Co.
Reporting Marks: YW.

Effective April 15, 1978, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., April 10, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-11193 Filed 4-24-78; 8:45—]

[7035-01]

[Notice No. 27]

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 of 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.

No. MC-F-C77457, filed December 9, 1978. Transferee: DIGGINS & ROSE, INC., 3 Sagamore Park Road, Hudson, NH 03051. Transferor: McKee's Hingham Express, Inc., 14 Longwater Drive, Rockland, MA 02370. Applicants' representative: Francis E. Barrett, Jr., Attorney at Law, 10 Industrial Park Road, Hingham, MA 02043. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in certificate No. MC 61242, MC 61242 (Sub-No. 1), and MC 61242 (Sub E1), issued May 9, 1968, May 9, 1968, and January 10, 1975, respectively, as follows: *Household goods,* as defined by the Commission, between Auburn and Lewiston, ME, on the one hand, and, on the other, points in ME, NH, and MA, between Auburn and Lewiston, ME, on the one hand, and, on the other, ports of entry on the United States-Canada boundary line at or near Canaan, Norton, Derby line, and Troy, VT; between Boston, MA, and points in MA within 25 miles of Boston, on the one hand, and, on the other, points in MA, NH, ME, VT, RI, CT, NY, NJ, PA, MD, and DC; *mill machinery,* between Auburn and Lewiston, ME, on the one hand, and, on the other, points in a specified part of MA; *household goods,* as defined by the Commission, between Taunton, MA, and points in MA within 20 miles of Taunton, on the one hand, and, on the other, points in ME, NH, VT, RI, CT, NY, and NJ; *household goods,* between points in CT, and NJ, Rochester and Niagara Falls, NY, and points in a specified part of NY, on the one hand, and on the other, points in ME, and NH. Transferee is presently authorized to operate as a common carrier under certificate No. MC 63837 and subs thereafter. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-C 77480, filed December 30, 1977. transferee: MY OWN TRUCKING CO., 2280 Arby Court, Wantagh, NY. Transferor: Sutherland Transportation Corp., 100 Allwood Avenue, Central Islip, NY 11722 (Jules V. Speciner, Trustee in Bankruptcy, 45 North Station Plaza, Great Neck, NY 11020). Applicants' representative: Arthur J. Piken, Esq., Piken & Piken, 1 Lefrak City Plaza, Suite 1515, Flushing, NY 11368. Authority sought for purchase by transferee of the operating rights of transferor as set forth in certificate of registration No. 120648 (Sub-No. 1), issued November 29, 1963, as follows: *General commodities* between New York City, on the one hand, and, on the other, points in Nassau and Suffolk Counties, NY, and from points in Nassau County to points in Suffolk County. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-C 77566 filed March 3, 1978. Transferee: LAW TRANSIT LINES, INC., 300 Reisch Building, Springfield, IL 62701. Transferor: Crossroad Express, Inc., Box 422, Effingham, IL 62401. Applicants' representative: Robert T. Lawley, Attorney, 300 Reisch Building, Springfield, IL 62701. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in certificate No. MC 62541, issued June 7, 1960, as follows: *General commodities,* with certain exceptions, over a specified regular route between Vandalia, IL, and St. Louis, MO, over U.S. Hwy 40, serving certain intermediate and offroute points. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-C 77595, filed March 27, 1978. Transferee: R. G. R. TRANSPORT CORP., 315 Coles Street, Jersey City, NJ 07302. Transferor: Russo Trucking Co., Inc. (James E. Masterson, Trustee in Bankruptcy), 225 Millburn Avenue, Millburn, NJ 07041. Applicants' representative: Thomas F. X. Foley, Esq., Colts Neck Professional Plaza, Colts Neck, NJ 07722 (for transferee); Harold S. Okin, Esq., Okin, Pressler & Shapiro, 222 South Marginal Road, Fort Lee, NJ 07024 (for transferor). Authority sought for purchase by transferee of the operating rights of transferor as set forth in certificate No. MC 59576, issued August 4, 1953, as follows: *Paper, paperboards, paper containers, paper mill machinery, waste paper, and rags,* between New York, NY, on the one hand, and, on the other, points in named counties in NJ, between New York, NY, and points in named NJ counties on the one hand, and, on the other, Wilmington, DE, Baltimore, MD, and points in CT, MA, RI, NJ, and in a specified portion of PA; *roofing and roofing materials,* between New York, NY, on the one had, and, on the other, points in specified NJ counties and Wilmington, DE, and Providence, RI; *and other commodities* including, but not limited to, alum, and paper mill products, from and to, among other points, Philadelphia and Marcus Hook, PA, New York, NY, specified points in CT, MA, and NJ. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

No. MC-F-C 77604, filed April 3, 1978. Transferee: MOSHER TRUCKING, INC., 157 Orleans Street, East Boston, MA 02128. Transferor: Stone

& Co., Inc., 79 Auburn Street, Chelsea, MA 02150. Applicants' representative: Norman Novinsky, Attorney at Law, 41 Arlington Street, Brockton, MA 02401. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in certificate of registration No. MC 120640 (Sub-No. 1), issued January 21, 1964, as follows: *General commodities,* between points in MA. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11191 Filed 4-24-78; 8:45 am]

[7035-01]

[Notices No. 28]

MOTOR CARRIER TRANSFER PROCEEDINGS

APRIL 24, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and transfer rules, 49 CFR Part 1132:

No. MC-F-C77605. By application filed April 18, 1978, R.S.P. BUS CO., INC., 24 South Morgan, Chicago, IL 60607, seeks temporary authority to transfer the operating rights of CHICAGO GRAY LINE, INC., 400 North Wabash, Chicago, IL 60611, under section 210a(b). The transfer to R.S.P. BUS CO., INC., of the operating rights of CHICAGO GRAY LINE, INC., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11192 Filed 4-24-78; 8:45 am]

[7035-01]

[Notice No. 29]

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 rquest 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.

REPUBLICATION

No. MC-F—C 77260, filed August 12, 1977. Transferee: GARDEN CITY TRANSPORTATION CO., INC., 2041 Pioneer Court, Suite 1, San Mateo, CA 94403. Transferor: G. C. T., Inc., 900 East Williams Street, San Jose, CA 95116. Applicant's representative: George M. Carr, Esq., 235 Montgomery Street, Suite 1620, San Francisco, CA 94104. Authority sought for purchase by transferee of that portion of the operating rights fo transferor set forth in certificate of registration No. MC 5047 (Sub-No. 12), issued October 26, 1973, as follows: *General commodities,* excluding newsprint, between specified points in CA, subject to certain restrictions, *and canned goods, dried fruits, and cannery and dried fruit packing plant machinery, materials and supplies,* between San Jose and points within 10 miles of the city limits of San Jose, on the one hand, and Sacramento on the other. The above-described request for authority was published in the FEDERAL REGISTER on August 25, 1977. Subsequently, this application was amended and approved by the Motor Carrier Board on March 28, 1978. The amended application included the authority described above and added all the authority, with the exception of authority to transport newspring, contained in certificate No. MC 5047, issued March 14, 1956, as follows: Dried fruit, canned goods, cannery machinery, and materials, and supplies, fertilizer, spray materials, feed, and fuels, general commodities, fruit pits, and fruit pit kernels, and other specified commodities, from, to, and between specified points in CA, including, but not limited to, San Jose, Richmond, Oakland, Sunnyvale, Watsonville, San Francisco, and Alameda. All authority for the transportation of newsprint contained in certificate No. MC 5047 has been canceled. Insofar as the transfer of the authority in certificate No. MC 5047 is concerned, any interested party may file a petition for reconsideration within 20 days from the service date of the order. Send petitions for reconsideration to: The Secretary, Interstate Commerce Commission, Washington, DC 20423.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11186 Filed 4-24-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6714-01]

1

FEDERAL DEPOSIT INSURANCE CORPORATION.

NOTICE OF CHANGE IN SUBJECT MATTER OF AGENCY MEETING

At the commencement of its closed meeting held at 4 p.m. on Wednesday, April 19, 1978, the Corporation's Board of Directors unanimously voted, on motion of Director William M. Isaac, seconded by Chairman George A. LeMaistre, with Director John G. Heimann (Comptroller of the Currency) concurring, to withdraw from consideration the application of Commerce Bank of New Jersey, Evesham Township (P.O. Marlton), N.J., for consent to establish a branch on Stokes Road at Skeet Road, Medford, N.J. The Board further voted, on motion of Chairman LeMaistre, seconded by Director Heimann, with Director Isaac concurring in the motion, to withdraw from consideration a recommendation regarding the liquidation of assets acquired by the Corporation from the Drovers' National Bank of Chicago, Chicago, Ill., (Case No. 43,470-L).

By vote of the Board taken at its earlier open meeting, a resolution creating an Office of Congressional Relations and establishing the office's organization and Manning Table was transferred from the agenda for the open meeting to the agenda for the closed meeting, pursuant to subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)), on the basis of the Board's determination that the public interest did not require consideration of the matter in a meeting open to public observation.

The Board further determined, by unanimous vote, that no earlier notice of these changes in the subject matter of the meeting was practicable.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-862-78 Filed 4-21-78; 11:02 am]

[6714-01]

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

NOTICE OF CHANGE IN SUBJECT MATTER OF AGENCY MEETING

At the commencement of its open meeting held at 3 p.m. on Wednesday, April 19, 1978, the Corporation's Board of Directors voted, on motion of Director William M. Isaac, seconded by Director John G. Heimann (Comptroller of the Currency), with Chairman George A. LeMaistre concurring with the motion, (1) to withdraw from consideration at the meeting a resolution creating an Office of Congressional Relations and establishing the office's organization and Manning Table, and (2) to add the matter to the agenda for the closed meeting scheduled for 4 p.m. that same date, pursuant to subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)), since the public interest did not require consideration of the matter in a meeting open to public observation.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: April 20, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-861-78 Filed 4-21-78; 11:02 am]

[6740-02]

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published April 24, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., April 26, 1978.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No., and Company

ER-7.—EL78-6, Illinois Power Co.
ER-8.—ES76-42, Pacific Power & Light Co.
M-3.—RM78- , Procedures for Review by the Federal Energy Regulatory Commission of remedial order issued by the Secretary of Energy.
RP-7.—RP75-30, United Gas Pipe Line Co.
CP-7.—CP77-61Texas Gas Transmission Corp.

KENNETH F. PLUMB,
Secretary.

[S-867-78 Filed 4-21-78; 2:57 pm]

[6720-01]

4

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 43, No. 76, Page 16645, Wednesday, April 19, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., April 24, 1978.

PLACE: 1700 G Street NW., Sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Robert Marshall, 202-377-6256.

CHANGES IN THE MEETING:

The following item has been added to the agenda for the open portion of the meeting:

Appointment of Director, Office of the Federal Savings and Loan Insurance Corporation—Samuel D. Ewing, Jr.

[S-868-78 Filed 4-21-78; 2:57 pm]

[7550-01]

5

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 p.m., Wednesday, May 3, 1978.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of Board actions taken by notation voting during the month of April, 1978.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rowland K. Quinn, Jr., Executive Secretary; Telephone 202-523-5920.

Date of notice: April 21, 1978

[S-864-78 Filed 4-21-78; 11:02 am]

[4910-58]

6

NATIONAL TRANSPORTATION SAFETY BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 16882, April 20, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (NM78-19), Thursday, April 27, 1978.

CHANGE IN THE MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires revising the agenda of this meeting and that no earlier announcement was possible. The agenda as now revised is set forth below.

STATUS: Open.

1. *Marine Accident Report.*—M/T ELIAS Explosion and Fire at the Atlantic Richfield Co. Fort Mifflin Terminal, Delaware River, Pa. April 9, 1974.

CONTACT PERSON FOR MORE INFORMATION:

Sharon Flemming 202-472-6022.

[S-865-78 Filed 4-21-78; 11:02 am]

[7590-01]

7

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: April 17, 1978.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

Approval

By vote of 3-0 on April 20 (Commissioner Kennedy not participating), the Commission determined, pursuant to 5 U.S.C. 552b(e)(1) and § 9.107(a) of the Commission's Rules, that Commission business requires that this agenda item be held on less than 1 week's notice to the public. Immediate discussion is required to act on an urgent matter.

MATTERS TO BE CONSIDERED:

THURSDAY, APRIL 20

2:55 p.m.—Affirmation of Assessment of Environmental Effects of Uranium Mills in Agreement States.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

APRIL 21, 1978.

[S-869-78 Filed 4-21-78; 3:24 pm]

[7600-01]

8

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., April 26, 1978.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: This meeting is subject to being closed by a vote of the Commissioners taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudication process.

CONTACT PERSON FOR MORE INFORMATION:

Ms. Lottie Richardson, 202-634-7970.

Dated: April 20, 1978.

[S-860-78 Filed 4-21-78; 8:45 am]

[8010-78]

9

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be printed April 20, 1978.

STATUS: Open meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

TIME AND DATE PREVIOUSLY ANNOUNCED: Thursday, April 20, 1978, 9 a.m.

The following additional item will be considered by the Commission at an open meeting scheduled for Thursday, April 20, 1978, at 9 a.m.:

Proposed transmittal to Congress of a revised draft bill which would delete the existing Securities Act exemption for certain industrial development bonds, and comments regarding industrial bond development legislation.

Chairman Williams, Commissioners Loomis, Evans, Pollack, and Karmel determined that Commission business required consideration of this matter and that no earlier notice thereof was possible.

APRIL 19, 1978.

[S-863-78 Filed 4-21-78; 11:02 am]

[7020-02]

10

[USITC SE-78-20]

UNITED STATES INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, May 4, 1978.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints (if necessary):
   a. Electrical rod, wire, and cable (Docket No. 508);
   b. "Dynarama" motion pictures (Docket No. 495); and
   c. Soft-sided luggage (American Tourister) (Docket No. 477).
5. Canons of Ethics—see action jacket GC-78-033.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-866-78 Filed 4-21-78; 11:45 am]

[7710-12]

11

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS.

NOTICE OF COMMITTEE MEETING

The Committee on Postal Rates of the Board of Governors of the United States Postal Service, pursuant to the Bylaws of the Board (39 CFR 5.2, 75.) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:15 a.m. on Tuesday, May 2, 1978, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, D.C. 20260. The meeting is open to the public. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at 202-245-4632.

LOUIS A. COX,
Secretary.

[S-870-78 Filed 4-21-78; 3:34 pm]

[7710-12]

12

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS.

NOTICE OF MEETING

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 9 a.m. on Tuesday, May 2, 1978, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 l'Enfant Plaza, SW., Washington, D.C. 20260. The meeting is open to the public. The Board expects to discuss the matters stated in the Agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at 202-245-4632.

AGENDA

1. Minutes of the previous meeting.
2. Remarks of the Postmaster General.
(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the occurrence of a recent Congressional hearing, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)
3. Quarterly Report on Financial Performance.
(Mr. Biglin, Senior Assistant Postmaster General (Finance Group) will present the quarterly summary on financial performance of the Postal Service.)
4. Quarterly Report on Service Performance.
(Mr. Dorsey, Senior Assistant Postmaster General (Operations Group) will present the quarterly summary on service performance.)
5. Recommended Decision of the Postal Rate Commission Concerning Certain Proposal to Simplify the Classification Structure of Second-class Mail.
(The Governors will consider the Recommended Decision of the Postal Rate Commission dated March 30, 1978, (Rate Commission Docket No. MC76-2) concerning certain proposals of the officer of the Commission to simplify the classification structure of second-class mail and the proposal of the Agricultural Publishers Association to provide a rate preference for the editorial portion of agricultural publications. The affirmative recommendations of the Commission would modify the existing Domestic Mail Classification Schedule only in regard to "within-county publications".)
6. Proposed Capital Investment Project for a new General Mail Facility at Cleveland, Ohio.
(Mr. J. G. Schraer, District Manager for the Northeastern Ohio District, will present a proposal for a capital investment for a new General Mail Facility for Cleveland, Ohio.
7. Report on Postal Mechanization and Research and Development.
(Mr. Wise, Assistant Postmaster General (Research and Development), will present a general review of the current status of the Postal Service mechanization and R. & D. programs.)
8. Review of Customer Services Activities.
(Mr. Applegate, Assistant Postmaster General (Customer Services) will report on current programs and recent accomplishments of the Customer Services Department.
9. Report of the Consumer Advocate.
(Mr. Chadwick, Consumer Advocate, will report on the activities of the Office of Consumer Affairs.

LOUIS A. COX,
Secretary.

[S-871-78 Filed 4-21-78; 3:34 pm]

[7590-01]

13

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of April 24, 1978 (Changes).

PLACE: Commissioners' Conference Room, 1717 H St. NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Wednesday, April 26

2:45 p.m. (Approx)—Discussion of Personnel Matter (Approx 1½ hrs) (Closed—Exemption 6) *is cancelled.*

This meeting is replaced by the following:

2:45 p.m. (Approx)—Discussion of Proposed Licensing Legislation (Approx 1½ hrs) (Closed—Exemption 9) (*rescheduled* from 4/27/78)

Thursday, April 27

2 p.m.—1. Briefing on Comprehensive Evaluation Report on NFS-Erwin (Approx 1 hr) (Closed-Exemption 1) (Tentative).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

Dated: April 20, 1978.

WALTER MAGEE,
Office of the Secretary.

[S-874-78 Filed 4-24-78; 10:00 am]

Federal Register

TUESDAY, APRIL 25, 1978
PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

HEALTH MAINTENANCE ORGANIZATIONS

Employees' Health Benefits Plans

[4110-85]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER J—HEALTH CARE DELIVERY SYSTEMS

PART 110—HEALTH MAINTENANCE ORGANIZATIONS

Employees' Health Benefits Plans; Interim Regulations

AGENCY: Public Health Service, HEW.

ACTION: Interim regulations.

SUMMARY: This rule amends the Public Health Service regulations on health maintenance organizations with respect to employees' health benefit plans. These interim regulations implement the provisions of section 1310 of the Public Health Service Act as amended with respect to the obligation of certain employers, States and political subdivisions of States to include in any health benefits plans offered to their employees the option of membership in qualified health maintenance organizations.

EFFECTIVE DATE: These regulations are effective April 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. William J. McLeod, Director, Division of Health Maintenance Organizations, Qualification and Compliance, 5600 Fishers Lane, Parklawn Building, Room 16A-08, Rockville, Md. 20857, phone 301-443-2778.

SUPPLEMENTARY INFORMATION: Regulations to implement section 1310 of the Public Health Service Act (the Act) were published in the FEDERAL REGISTER on October 28, 1975 (40 FR 50212-50216, Subpart H). The Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, hereby amends the regulations cited above by adding new sections and amending, as appropriate, prior sections, in order to conform to the Health Maintenance Organization Amendments of 1976 (Pub. L. 94-460).

In order to make this provision effective as soon as possible, with repect to States and political subdivisions, and so that health maintenance organizations may have access to these potential sources of enrollment and may make their services available to employees of States and political subdivisions pursuant to section 1310 of the Act, the Secretary has determined that public participation in rulemaking prior to issuance of these regulations and a delay in their effective date would be impractical and contrary to the public interest. Accordingly, the Secretary has determined that good cause exists to waive public participation and to make these regulations effective upon publication. The Department invites public comment on these regulations for a period of 45 days following their publication. These comments will be taken into consideration, where appropriate, in any further amendments to these regulations.

Set forth below is a summary of the amendments made by these interim regulations.

(a) In order to implement Section 1310(a)(1)(B) of the Act, added by Section 110(a)(1) of Pub. L. 94-460, the following amendments have been made:

(1) A new term, "public entity," has been added in these regulations. It is defined at § 110.801(c) as a State, a political subdivision of a State or any agency or instrumentality of the foregoing. The term "political subdivision" is also defined by § 110.801(c) to include counties, parishes, townships, cities, municipalities, towns, villages, and incorporated villages.

(2) A new term "public entity-employee contract," has been added to these regulations, and is defined at § 110.801(m).

(3) Section 110.802(a) has been amended so as to make these regulations applicable to "public entities" which during any calendar year quarter of the previous calendar year employed an average number of not less than 25 employees.

(4) The term "public entity" has been, where appropriate, included in new sections added to and prior sections retained in these regulations.

Attention is called to the fact that terms have been re-defined so as to conform to the applicability of these regulations to "public entities." Among these amended definitions are: "bargaining representative" (§ 110.801(b)), and "collective bargaining agreement" (§ 110.801(1)).

(b) In order to implement Sections 1310(a)(1)(A) and 1310(f) of the Act, added by Section 110(a) of Pub. L. 94-460, the definition of the term "employer" at § 110.801(a) has been amended to exclude from its meaning those entities excluded by Section 1310(f) of the Act.

(c) Section 110.802(b) sets forth the minimum period of time required before the expiration or renewal date, as appropriate, of health benefits contracts, employer-employee contracts, public entity-employee contracts and collective bargaining agreements, for the receipt of requests from health maintenance organizations for inclusion in health benefits plans offered by employers or public entities. This section has been amended to provide that if required by State statute such minimum periods of time may be extended in conformance with such statute for such requests made to public entities or their designees.

(d) Section 110.805, setting forth the employees to whom the option of membership in qualified health maintenance organizations must be offered, has been amended so as to conform to Section 1310(a)(2) of the Act, added by Section 110(a)(1) of Pub. L. 94-460, which requires that where employees of an employer or State or political subdivision thereof are represented by a collective bargaining representative or other employee representative, the offer of such option shall first be made to the collective bargaining representative or other employee representative and if accepted, then made to such employees.

(e) Section 110.802(a)(2) has been amended so as to conform to the requirement of Section 1310(a)(1) of the Act, added by Section 110(a)(1) of Pub. L. 94-460, that employers and States and political subdivisions thereof shall include in health benefits plans offered to their employees the option of membership in qualified health maintenance organizations which provide basic health services in service areas in which at least 25 of their employees reside.

(f) Section 110.803(b) has been amended by substituting the language of Section 1310(b) of the Act, as amended by Section 110(a)(2) of Pub. L. 94-460, and has been made applicable to public entities.

The Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary, hereby amends 42 CFR Part 110, Subpart H.

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: February 24, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: April 13, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Subpart H of 42 CFR Part 110 is revised as follows:

Subpart H—Employees' Health Benefits Plans

Sec.

110.801 Definitions.
110.802 Applicability.
110.803 Offer of health maintenance organization alternatives to employees.
110.804 Timing of the health maintenance organization alternative offer to employees.
110.805 Employees to whom the health maintenance organization alternative must be offered.

Sec.
110.806 Copayment levels and supplemental health services determination.
110.807 Employer contributions for health maintenance organization alternative.
110.808 Relationship of section 1310(a) of the Public Health Service Act to the National Labor Relations Act as amended and the Railway Labor Act, as amended.

AUTHORITY: Sec. 215, 58 Stat. 690 (42 U.S.C. 216); secs. 1301-1316, as amended, 90 Stat. 1945-1960 (42 U.S.C. 300e-300e-15).

Subpart H—Employees' Health Benefits Plans

§ 110.801 Definitions.

In addition to the terms defined in § 110.101 and § 110.602 of this Part, as used in this subpart:

(a) "Employer" shall have the same meaning as that given such term in Section 3(d) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 203(d), 203(x)), except that the term "employer" does not include (1) the Government of the United States, the government of the District of Columbia or any territory or possession of the United States, a State or any political subdivision thereof, or any agency or instrumentality (including the United States Postal Service and Postal Rate Commission) of any of the foregoing; or (2) a church, convention or association of churches, or any organization operated, supervised or controlled by a church, convention, or association of churches which organization (i) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1954, and (ii) does not discriminate (A) in the employment, compensation, promotion, or termination of employment of any personnel, or (B) in the extension of staff or other privileges to any physician or other health personnel, because such persons seek to obtain or obtained health care, or participate in providing health care, through a health maintenance organization.

(b) "Bargaining representative" means a representative designated or selected for the purposes of collective bargaining under the National Labor Relations Act, as amended, (29 U.S.C. 151 *et seq.*) or under the Railway Labor Act, as amended, (45 U.S.C. 151 *et seq.*) or under a public entity collective bargaining agreement, or under the laws of any State or political subdivision thereof, or other employee representative designated or selected under any law.

(c) "Public entity" means a State as defined at section 2(f) of the Public Health Service Act (42 U.S.C. 201(f)), a political subdivision of a State or any agency or instrumentality of the foregoing. "Political subdivision" includes counties, parishes, townships, cities, municipalities, towns, villages, and incorporated villages.

(d) "Employee" means any individual employed by an employer or public entity whether on a full- or part-time basis.

(e) "Eligible employee" means an employee who meets the terms and conditions established by an employer or public entity or designee, to participate in a health benefits plan.

(f) "Designee" means any person or entity authorized to act on behalf of an employer, a group of employers, or a public entity, to offer the option of membership in a qualified health maintenance organization to the eligible employees of such employer, group of employers, or public entity.

(g) "Service area" means the particular geographic area described by the health maintenacne organization as its service area as part of its application for a determination that it is a qualified health maintenance organization (see § 110.604 of this part), or such other area defined by the health maintenance organization and found by the Secretary to be the area within which basic and supplemental health services are available and accessible to members as required by section 1301(b)(4) of the Act and § 110.107(b) of this part.

(h) "Health benefits" means health benefits and services.

(i) "Health benefits plan" means any arrangement for the provision of, or payment for, any of the basic and supplemental health benefits described in §§ 110.101(b) and (c) of this part offered to eligible employees, or to such employees and their eligible dependents, by or on behalf of an employer or public entity.

(j) "To offer a health benefits plan" means to make participation in a health benefits plan available to eligible employees, or to such employees and their eligible dependents, whether the financial contribution by the employer or public entity on behalf of such employees is made directly or indirctly (e.g., through payments on any basis into a health and welfare trust fund).

(k) "Group enrollment period" means the period of at least 10 working days each calendar year during which each eligible employee is given the opportunity to select among the alternatives included in a health benefits plan.

(l) "Collective bargaining agreement" means an agreement entered into between an employer or public entity and the bargaining representative of its employees, and includes such agreements entered into on behalf of groups of employers or public entities with the bargaining representative of their employees in accordance with provision of the National Labor Relations Act, as amended, (29 U.S.C. 151 et seq.) or the Railway Labor Act, as amended, (45 U.S.C. 151 et seq.) or a public entity collective bargaining agreement, or the laws of any State or political subdivision thereof.

(m) "Public entity-employee contract" means a legally enforceable agreement (other than a collective bargaining agreement) between a public entity and its employees for the provision of, or payment for, health benefits for its employees, or for such employees and their eligible dependents.

(n) "Employer-employee contract" means a legally enforceable agreement (other than a collective bargaining agreement) between an employer and its employees for the provision of, or payment for, health benefits for its employees, or for such employees and their eligible dependents.

(o) "Health benefits contract" means a contract or other agreement between and employer or public entity or a designee, and a carrier for the provision of, or payment for, health benefits to eligible employees or to such eligible employees and their eligible dependents.

(p) "Carrier" means a voluntary association, corporation, partnership, or other organization which is engaged in providing, paying for, or reimbursing all or part of the cost of health benefits under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier.

§ 110.802 Applicability.

(a) The regulations of this subpart apply in each calendar year to:

(1) Each employer which was required during any calendar quarter of the previous calendar year to pay its employees the minimum wage specified by Section 6 of the Fair Labor Standards Act of 1938 (or would have been required to pay its employees the minimum wage but for section 13(a) of that Act) and which during any calendar quarter of the previous calendar year employed an average of not less than 25 employees, and

(2) Each public entity, as a condition of the payment to the State of funds under section 314(d), 317, 318, 1002, 1525, or 1613 of the Public Health Service Act, which during any calendar quarter of the previous calendar year employed an average of not less than 25 employees, where the employer or public entity:

(i) Offers, or on whose behalf there is offered, in the calendar year beginning after any calendar quarter of the previous calendar year in which the employer or public entity employed an average of not less than 25 employees, a health benefits plan to its eligible employees; and

(ii) Has received a written request for inclusion in the employer's or

public entity's health benefits plan from one or more qualified health maintenance organizations which provide basic health services in a service area in which at least 25 employees of the employer or the public entity, respectively reside.

(b) For a request to be effective under paragraph (a)(2) of this section, it shall be received by the employer or public entity or designee at least 180 days before the expiration or renewal date of a health benefits contract or employer-employee or public entity-employee contract; and by an employer or public entity or designee at least 90 days before the expiration date of a collective bargaining agreement, unless otherwise agreed to by the health maintenance organization and the employer or public entity or designee: *Provided*, That if a State statute requires that a request made to a public entity shall be received more than 180 days before the expiration or renewal date of a health benefits contract or public entity-employee contract, or more than 90 days before the expiration date of a collective bargaining agreement, the request shall be received within the time so required.

(c) For employers or public entities with a collective bargaining agreement that is automatically renewable and without fixed term, the agreement shall, for purposes of this subpart, be treated as having an expiration date coresponding to the anniversary date of the collective bargaining agreement. For employers or public entities with a collective bargaining agreement that is for a fixed term in excess of one year but has provisions for periodically changing wages, hours, or conditions of employment, the agreement shall, for purposes of this subpart, be treated as having an expiration date corresponding to the anniversary date of the collective bargaining agreement, or at any other time not less than annually, as may be provided by the agreement for discussion of changes in its provisions, whichever is earlier.

(d) Additionally, the request for inclusion in the health benefits plan shall:

(1)(i) For employers, be in writing and directed specifically to a managing employer official at the employer site being solicited or to the employer's designee;

(ii) For public entities, be in writing and directed specifically to the chief executive officer of the public entity or the public entity's designee;

(2) Provide evidence that the health maintenance organization has been determined to be qualified by the Secretary under subpart F of this part;

(3) Indicate whether the services of health professionals which are provided as basic health services are provided:

(i) Without (A) the use of an individual practice association and (B) the use of contracts (except for contracts for unusual or infrequently used services) with health professionals, or

(ii) Through (A) an individual practice association (or associations), (B) health professionals who have contracted with the health maintenance organization for the provision of such services, or (C) a combination of such association (or associations) and health professionals under contract with the organization;

(4) Provide a current financial report;

(5) Describe the health maintenance organization's service area or the proposed service area, and give the dates basic and supplemental health services will be provided in the area or areas;

(6) Describe the location of facilities where, and give the dates and hours of operation when, health services are provided or will be provided at these facilities;

(7) Provide proposed contracts between the health maintenance organization and the employer or public entity or designee;

(8) Include sample copies of marketing brochures and membership literature;

(9) Identify the staff and ownership of the health maintenance organization and the physicians who will provide health services for the organization;

(10) State the payment for basic and supplemental health services to be required for various categories of memberships; and

(11) State the health maintenance organization's capacity to enroll new members and the likelihood of any future limitations on such enrollment.

§ 110.803 Offer of health maintenance organization alternative to employees.

(a) An employer or public entity subject to § 110.802 shall, at the time a health benefits plan is offered to its eligible employees or to eligible employees and their eligible dependents, include in the plan the option of membership in qualified health maintenance organizations in accordance with the provisions of this section.

(b) If more than one qualified health maintenance organization which is engaged in the provision of basic and supplemental health services in the area in which eligible employees of an employer or public entity subject to § 110.802 reside have requested inclusion in the employer's or public entity's health benefits plan as provided by § 110.802, and if:

(1) One or more of these organizations provides basic health services (i) without the use of an individual practice association, and (ii) without the use of contracts (except for contracts for unusual or infrequently used services) with health professionals, and

(2) One or more of these organizations provides basic health services through (i) an individual practice association (or associations), (ii) health professionals who have contracted with the health maintenance organization for the provision of basic health services, or (iii) a combination of an individual practice association (or associations) and health professionals under contract with the organization,

then of the qualified health maintenance organizations included pursuant to this section in a health benefits plan of an employer or public entity subject to § 110.802 at least one shall be an organization which provides basic health services as described in paragraph (b)(1) of this section and at least one shall be an organization which provides basic health services as described in paragraph (b)(2) of this section.

(c) An employer or public entity subject to this subpart shall offer the option of membership in additional qualified health maintenance organizations to its eligible employees, described in paragraphs (c) (1) and (2) of this paragraph, if the additional qualified health maintenance organizations demonstrate that their service areas include the place of residence of at least 25 employees of the employer or public entity, respectively:

(1) Who do not reside in the service area of qualified health maintenance organizations already included in the employer's or public entity's health benefits plans; or

(2) To whom membership in qualified health maintenance organizations already included in the health benefits plan is not available because these organizations have closed their enrollment of additional eligible employees of the employer or public entity.

(d) An employer or public entity subject to this subpart is not required to include in the health benefits plan offered to eligible employees the option of membership in the specific qualified health maintenance organization which initiated the request for inclusion in the health benefits plan: *Provided*, That the employer or public entity or designee selects, in a manner consistent with this section, one or more other qualified health maintenance organizations that may not have made a request within the time limit of § 110.802(b) but are willing to be included: *Provided further*, That these latter health maintenance organizations are of the same type (i.e., the type described in paragraph (b)(1) of this section or the type described in paragraph (b)(2) of this section) and serve, or will serve at a minimum, the same area (in which the employer's or public entity's employees reside) individually or collectively as the health maintenance organization which submitted the timely request.

(e) An employer or public entity or designee including the option of membership in a qualified health maintenance organization pursuant to this subpart as part of the health benefits plan offered to its eligible employees shall provide for a group enrollment period during which eligible employees may enroll in any qualified health maintenance organization or may transfer from a qualified health maintenance organization to any other alternative without application of waiting periods or exclusions or limitations based on health status as conditions of enrollment or transfer. Nothing in this subpart shall preclude the uniform application of coordination of benefit arrangements between the health maintenance organizations and the other carriers which are included in the health benefits plan at the official transfer time of the group enrollment period.

(f) During the group enrollment period in which the alternative of membership in a qualified health maintenance organization is offered to a group of employees for the first time, the health benefits plan alternative shall be presented to each eligible employee with the requirement that an affirmative written selection be made among the different alternatives included in the health benefits plan. In subsequent group enrollment periods, a selection among these alternatives shall be made available; however, a written selection is required only when the eligible employee elects to change from one alternative to another.

(g) In addition to the group enrollment period, the opportunity to select among different alternatives within a health benefits plan shall be made available to new employees, employees who have been transferred or otherwise changed their place of residence resulting in eligibility for membership in a qualified health maintenance organization for which they were not previously eligible by place of residence, or eligible employees covered by any alternative which ceases operation. At the time any of these employees are eligible to participate in the health benefits plan, the opportunity shall be made available without waiting periods or any exclusions or limitations based on health status as conditions of enrollment or transfer, and shall be presented to these employees with the requirement that they make an affirmative written selection among the different alternatives included in the health benefits plan.

(h) The employer or public entity shall provide each qualified health maintenance organization which is included in its health benefits plan with fair and reasonable access, not less than 30 days prior to and during group enrollment periods, to employees referred to in § 110.805, for purposes of presenting and explaining its program in accordance with § 110.108(c) of this part. This access shall include, at a minimum, the opportunity for distribution of educational literature, brochures, announcements of meetings, and other relevant printed materials meeting the requirements of § 110.108(c) to each employee referred to in § 110.805. The employer or public entity or designee shall be given the opportunity to review, revise, and approve these materials before distribution. Revisions shall be limited to correcting factual errors, misleading or ambiguous statements, unless otherwise agreed to by the health maintenance organization and the employer or public entity or designee, or as may be required by law or regulations. The employer or public entity or designee shall complete promptly any of these revisions in the offering material so as not to delay or otherwise interfere with the group enrollment period. In no event shall the access to eligible employees provided to these qualified health maintenance organizations be more restrictive or less favorable than that provided other offerers of alternatives included in the health benefits plan, whether or not the representatives of the other alternatives elect to avail themselves of that access.

§ 110.804 Timing of the health maintenance organization alternative offer to employees.

The employer or public entity or designee shall offer eligible employees the option of membership in a qualified health maintenance organization at the earliest date permitted under the terms of the existing contracts. Should the health maintenance organization's request for inclusion in a health benefits plan be received at a time when the existing collective bargaining agreement, employer-employee or public entity-employee contract, or contract for health benefits does not provide for including a qualified health maintenance organization in the health benefits plan, the inclusion of the health maintenance organization in the health benefits plan shall occur at the time that new contracts are offered or a new contract negotiated and shall be consistent with the following paragraphs:

(a) If a collective bargaining agreement is in force at the time the request for inclusion in the health benefits plan is made by the health maintenance organization to the employer or public entity or designee, the request shall be raised in the collective bargaining process when a new contract is negotiated or if the agreement is automatically renewable, on its anniversary date or at any other time as may be provided by the agreement for discussion of changes in its provisions, or in accordance with a specific process to review health maintenance organization offers.

(b) In the absence of a collective bargaining agreement, if there is an existing employer-employee or public entity-employee contract, health benefits contract or any other arrangement which provides for a health benefits plan, the option shall be included in any health benefits plan offered to eligible employees when the existing contract is renewed, or when a new health benefits contract or other arrangement is negotiated. If an employer-employee or public entity-employee contract or health benefits contract has no fixed term or has a term in excess of one year, the contract shall be treated as renewable on the earliest anniversary date of the contract. If the employer or public entity is self-insured, the budget year shall be treated as the term of the existing contract.

(c) For employers or public entities with multiple contracts or other arrangements included as part of the health benefits plan which may have different expiration or renewal dates, the offer shall be included for each contract or arrangement at the time the contract or arrangement is renewed or reissued or the benefits provided under the contract or arrangement are offered to employees.

§ 110.805 Employees to whom the health maintenance organization alternative must be offered.

Each employer or public entity subject to this subpart, or designee, shall offer the option of membership in a qualified health maintenance organization to each eligible employee, or to each eligible employee and his eligible dependents, who reside within the service area of the qualified health maintenance organization being offered.

(a) If any of the employees of an empoyer or public entity subject to this subpart are represented by a collective bargaining representative or other employee representative designated or selected under any law, the offer of membership in a qualified health maintenance organization required by this subpart to be made in a health benefits plan offered to those employees (i) shall first be made to the collective bargaining representative or other employee representative and (ii) if the offer is accepted by the representative, shall then be made to each represented employee;

(b) For those employees not represented by a bargaining representative, the offer of the health maintenance organization alternative by the employer, public entity, or designee, shall be made directly to those employees in accordance with this subpart.

§ 110.806 Copayment levels and supplemental health services determination.

Each eligible employee's selection of a copayment level and of supplemental health services to be contracted for is to be made as follows:

(a) For those employees of an employer or public entity represented by a bargaining representative, the selection of supplemental health services and copayment levels is subject to the collective bargaining process.

(b) For those employees not represented by a bargaining representative, the selection of copayment levels and supplemental health services to be offered to eligible employees shall be made through the decision-making process that exists with respect to the existing health benefits plan.

§ 110.807 Employer contributions for health maintenance organizations alternative.

(a) The health maintenance organization alternative shall be included in the health benefits plan on term no less favorable, in regard to an employer's or public entity's monetary contribution or designee's cost for health benefits, than those on which the other alternatives in the health benefits plan are included: *Provided*, That the employer or public entity shall not be required to pay more for health benefits as a result of offering the option of membership in qualified health maintenance organizations than the employer or public entity would otherwise be required to pay for health benefits by a collective bargaining agreement or other employer-employee or public entity-employee contract in effect at the time that the health maintenance organization is included in the health benefits plans.

(b) The amount of the employer's or public entity's or designee's contribution shall be determined in a manner consistent with this section.

(1) Administrative expenses of the employer, or public entity, or designee, incurred in connection with offering any alternative in the health benefits plan shall not be considered in determining the amount of the employer's or public entity's contribution to the health maintenance organization.

(2) The amount of the employer's or public entity's contribution or designee's costs may exclude such portions of the contribution allocable to benefits (e.g., life insurance or insurance for supplemental health benefits) for which eligible employees or eligible emloyees and their eligible dependents will continue to be covered notwithstanding selection of membership in the health maintenance organization, and which benefits are not offered on a prepaid basis by the health maintenance organization to the employer's or public entity's employees.

(c) Where the specific amount of the employer's or public entity's contribution for health benefits is fixed by a collective bargaining agreement, by an employer-employee or public entity-employee contract, or by law, the amount so determined shall constitute the employer's or public entity's obligation for contribution toward the health maintenance organization dues or premiums on behalf of eligible employees or eligible employees and their eligible dependents.

(d) Where the employer's or public entity's contribution for health benefits is determined by a collective bargaining agreement, but the amount so fixed includes contribution for benefits in addition to health benefits, the employer or public entity shall determnine, or shall instruct its designee to determine, the portion of the employer's or public entity's contribution applicable to health benefits in accordance with this section.

(e) In the absence of a collective bargaining agreement or employer-employee or public entity-employee contract specifying contribution for health benefits, the employer's or public entity's contribution to the health maintenance organization on behalf of eligible employees or eligible employees and their eligible dependents, unless otherwise agreed to by the health maintenance organization and the employer or public entity or designee, shall be based upon the total costs of the health benefits offered to the employees for the most recent period for which experience is available, reduced by the amounts identified in accordance with paragraph (b)(2) of this section. Such cost determination shall be consistent with paragraphs (a) and (f) of this section.

(f) For purposes of this section, an employer's or public entity's contribution or designee's cost for the alternatives with in the health benefits plan other than the qualified health maintenance organization option shall be determined in the following manner, unless otherwise agreed to by the health maintenance organization and the employer or public entity or designee:

(1) If the employer's or public entity's contribution or designee's cost for health benefits with respect to the non-health maintenance organization alternatives is determined solely on the basis of a fixed prospective amount (not subject to retrospective adjustment) contributed by the employer or public entity or paid by the designee, then the prospective payment made by or on behalf of the employer or public entity to the non-health maintenance organization alternative for the provision of health benefits to eligible employees or to eligible employees and their eligible dependents under these alternatives shall be used as the basis for determining the employer's or public entity's obligation for contribution toward the health maintenance organization dues or premiums.

(2) If the employer's or public entity's contribution or designee's cost for health benefits with respect to the non-health maintenance organization alternative is determined by a contract with a carrier on any form of retrospective experience rating basis, any billing contract arrangement, any plan of self-insurance, any direct service plan provided by the employer or public entity or designee, or any other form of health benefits plan wherein the actual cost to the employer or public entity or designee is determined retrospectively, an estimated cost shall be used to determine the obligation for contribution toward the health maintenance organization's dues or premiums. This estimated cost shall be determined by the employer or public entity or designee based on consideration of the following factors:

(i) The employer's or public entity's or designee's cost experience for the non-health maintenance organization alternative with respect to the most recent benefit period for which the experience is available at the time when the employer's or public entity's prospective contribution or designee's obligation to the health maintenance organization is to be determined;

(ii) A reasonable allowance for inflation based on historical cost trends and anticipated future cost increases;

(iii) Where applicable and consistently applied, cost differences experienced in the provision of health benefits for separate regional or local areas of employment;

(iv) Anticipated changes in the composition and experience of the covered population actually being served by the non-health maintenance organization alternative attributable to the shift of enrollment to the health maintenance organization;

(v) Any changes in health benefits to be provided by non-health maintenance alternatives during the period for which the estimated contribution is to be determined; and

(vi) Any other anticipated material change in the experience rating basis under any health benefits contract for the benefit period.

(g) An employer or public entity or designee shall retain for at least three years the data used to compute its level of contribution to the alternatives included in the health benefits plan. This data may be reviewed by the Secretary either on his own initiative or in response to a request which sets forth reasonable grounds supporting the request, to determine whether the level of contributions determined by the employer or public entity complies with this subpart.

§ 110.808 Relationship of section 1310(a) of the Public Health Service Act to the National Labor Relations Act as amended and the Railway Labor Act, as amended.

The obligation of an employer or public entity subject to this subpart to include the option of membership in a qualified health maintenance organization in any health benefits plan offered to its eligible employees shall be carried out consistently with the obligations imposed on such employer or public entity under the National Labor Relations Act and the Railway Labor Act, or other law of similar effect.

[FR Doc. 78-10996 Filed 4-24-78; 8:45 am]

federal register

TUESDAY, APRIL 25, 1978
PART III

ENVIRONMENTAL PROTECTION AGENCY

FEDERAL WATER POLLUTION CONTROL ACT

Construction Grants

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 35]

[FRL 875-5]

GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

Proposed Regulations Implementing Clean Water Act of 1977

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: These proposed changes to the regulations governing grants for construction of publicly-owned treatment works are intended to implement certain amendments to sections 201(g), 201(i), 202(a), 203(e), and 304(d) of the Federal Water Pollution Control Act, as amended, (FWPCA) contained in the Clean Water Act of 1977 (Pub. L. 95-217 or the "1977 Act"). These proposed regulations involve innovative and alternative technologies, recreational and open space uses, and the provision of assistance by the Environmental Protection Agency (EPA) to grant recipients with respect to contracts. These proposed changes also incorporate certain requirements and incentives to implement the pretreatment program for industries contributing to municipal wastewater treatment works. Pretreatment requirements are found in section 307(b) and (c) of the FWPCA as amended by the 1977 Act.

DATES: Comments must be received on or before June 30, 1978. Public meetings for purposes of receiving comments will be held in June and July, 1978. Notice of these meetings will be published in the FEDERAL REGISTER.

ADDRESS: Written comments should be submitted (in triplicate, if possible) to Mr. Alexander J. Greene, Director, Grants Administration Division, Attention: PM-216-P Construction Proposed, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Comments submitted may be inspected at the Public Information Reference Unit, EPA Headquarters, Room 2922, Waterside Mall, 401 M Street SW., Washington, D.C., between 8 a.m. and 4:30 p.m., business days. Public meetings will be held at all EPA regional offices. In addition, five areawide conferences have been scheduled through the cooperation of several environmental and special interest groups and the Environmental Protection Agency. These meetings are scheduled to be held on May 15, 1978—Century Center, Atlanta, Ga.; June 4—Hyatt Regency O'Hare, Chicago, Ill.; June 9—Sheraton Place Hotel, San Francisco, Calif.; June 12—Hyatt Regency at Reunion, Dallas, Tex., and June 14—Philadelphia Sheraton, Philadelphia, Pa.

FOR FURTHER INFORMATION CONTACT:

Michael B. Cook, Facility Requirements Branch (WH-547), Environmental Protection Agency, 401 M Street SW., Room E1137D, Washington, D.C. 20460, telephone 202-426-9404.

SUPPLEMENTARY INFORMATION: In January 1978, a task force comprised of EPA headquarters and regional representatives was organized to formulate regulations and guidelines for the implementation of the requirements of the Clean Water Act of 1977. Four drafts of these regulations and the Interim/Final regulations published on this date have been circulated extensively for comment by State, regional, and local officials as well as by the public and interested organizations. Numerous meetings were conducted to solicit public input. These included four days of open meetings in Washington, D.C., six briefings for State and local officials held at EPA regional offices, and meetings for EPA advisory groups. Three meetings were held with State representatives appointed by the National Governors Conference and by the Association of State and Interstate Water Pollution Control Agencies. Two meetings were held with the Association of Metropolitan Sewerage Agencies, and a presentation was made at the government affairs seminar of the Water Pollution Control Federation. Representatives of Federal agencies were consulted informally. These discussions raised a number of important questions and issues, especially regarding the implementation of the innovative and alternative technology provisions of the 1977 Act. Major issues raised are summarized below, following descriptions of the amendments that these proposed regulations are to implement.

These proposed regulations principally address provisions of the 1977 Act. However, EPA is initiating a process to review all construction grants regulations in 40 CFR Part 35 Subpart E to make technical and administrative changes. These will be referred to as "Technical Amendments". Some of these revisions will be based on operating experience as reflected in Program Requirements Memoranda issued for the construction grants program by the Office of Water Program Operations. The "Technical Amendments" are to be proposed in early summer 1978. The "Technical Amendments" and these proposed regulations will be promulgated in final form together in the autumn of 1978. At that time a complete conformed version of the construction grants regulations will be published. Comments on technical and administrative amendments are solicited.

Discussion of the regulatory changes being made by these amendments is grouped by subject matter. Following the discussion of each subject area, the preamble identifies those sections in the regulatory changes which are related to the subject area.

INNOVATIVE AND ALTERNATIVE TECHNOLOGIES

Under the new section 201(g)(5), after September 30, 1978, grant recipients are required to analyze innovative and alternative treatment processes and techniques for use in wastewater treatment works. Section 201(i) requires the encouragement of processes that reduce energy needs. Section 202(a)(2) provides for Federal grants for 85 percent of allowable construction costs for treatment works or significant portions of treatment works that utilize innovative and alternative treatment processes and techniques. A special 2 percent reserve is established in the State construction grant allotment to pay the increased part of the Federal share. Section 202(a)(3) provides 100 percent Federal grants for replacement or modification of treatment works constructed in accordance with section 202(a)(2), under certain conditions. These provisions and others in the 1977 Act that involve innovative and alternative technologies depend upon guidelines authorized by section 304(d)(3) that set forth criteria to be utilized in identifying innovative and alternative technologies.

The interim/final regulations that implement the 1977 Act and that are published on this date contain several important provisions relating to innovative and alternative technologies. The cost-effectiveness guidelines permit a 15 percent cost preference for treatment works that utilize innovative or alternative processes or techniques. Under the regulations on priorities a funding reserve is established to pay for the increased part of the grants for treatment works that include innovative or alternative processes or techniques. Also, States are authorized to give higher priority to treatment works utilizing innovative or alternative technologies. A 4 percent reserve of each State's yearly allotment is set aside to fund alternatives to conventional treatment works in small communities.

The Clean Water Act of 1977 and its legislative history make it clear that the provisions pertaining to innovative and alternative technologies are intended to achieve greater use of systems which provide for the reclaiming and reuse of water, productively recyle waterwater constituents or otherwise eliminate the discharge of pollutants, or recover energy. The principal dif-

ference between alternative and innovative wastewater treatment technologies, as viewed by the 1977 Act and its legislative history, is the degree to which they have been developed and implemented. Alternative wastewater treatment processes and techniques are those which have been proven and used in actual practice; innovative processes and techniques are developed methods which have not been fully proven under the circumstances of their contemplated use. The goal of achieving greater recycling and reclamation, however, is clearly indicated as being an objective common to both innovative and alternative technologies.

In order to carry out this mandate of the law, the proposed regulations developed for identification of innovative technologies take distinctly different approaches with respect to systems which incorporate wastewater reclamation and energy recovery as compared to those which are based on the conventional concept of treatment by means of biological or physical/chemical unit processes and discharge to surface waters. Accordingly, treatment and discharge processes such as primary treatment, suspended-growth or attached-growth biological systems for secondary or advanced wastewater treatment, physical/chemical treatment, disinfection and sludge processing must meet rigorous criteria pertaining to cost reduction or energy reduction in order to be considered innovative. Land application and water reuse systems for the treatment and management of wastewaters and sludges as well as energy recovery systems can be classified as innovative by applying either the cost or energy reduction criterion. They can also be classified as innovative if they represent a significant advancement in terms of greater operational reliability, better management of toxic materials, increased environmental benefits, or improved methods for joint treatment and management of municipal and industrial waste. There are six criteria listed in Appendix E, section 6, that help define innovative processes and techniques.

Numerous important issues have been raised. Among them are the following:

1. The 1977 Act authorizes 85 percent Federal grants for treatment works or significant parts of treatment works that utilize innovative or alternative processes or techniques. When should the 85 percent grant apply to the treatment works and when should it be limited to significant parts thereof?

Three responses to the question have been seriously debated. (1) If any part of the treatment works is deemed innovative or alternative, then the entire treatment works should be 85 percent grant eligible. (2) Only the innovative or alternative parts of the treatment works should be 85 percent grant eligible. (3) A cutoff should be established. If the present worth of innovative or alternative parts of the treatment works exceeds the cutoff, then the entire treatment works is eligible for the 85 percent grant; if not, then only the innovative or alternative parts are eligible for the 85 percent grant.

EPA decided upon a 50 percent cutoff. In general, the 85 percent grant applies to the total non-sewer related eligible construction cost of the treatment works utilizing innovative or alternative processes and techniques if the present worth of the innovative or alternative components exceeds 50 percent of the total present worth cost of the non-sewer related part of the treatment works. Otherwise, the 85 percent grant only applies to eligible components, either unit processes or operations. Sewers are not included in this comparison unless they are alternatives to conventional treatment works in small communities.

A notable parallel provision occurs in the cost-effectiveness guidelines published as interim/final regulations on this date. The 1977 Act authorizes a 15 percent preference under the cost-effectiveness analysis for treatment works that utilize innovative or alternative processes or techniques. For the purposes of this cost comparison should the 15 percent preference apply to the entire treatment works or only to portions utilizing innovative or alternative technologies?

EPA has decided to apply a 50 percent cutoff similar to the one used above for 85 percent grants. For the cost-effectiveness analysis the basis of comparison between the alternatives studied is the present worth of the entire treatment works, including sewers, if the present worth of the innovative or alternative components of the option utilizing them is greater than 50 percent of its total present worth cost. Otherwise, the basis of comparison is major components, either unit processes or operations.

2. Can qualified alternative and innovative projects be 75 percent funded in FY 1978 and then be given a supplemental 10 percent grant in FY 1979 as a grant amendment?

Funds for increasing Federal grants from 75 to 85 percent are authorized only for fiscal years 1979 through 1981. It can be argued that Congress intended to restrict the increased funding of innovative and alternative projects to grants made in those three fiscal years. However, the beginning date was set at FY 1979 primarily to give EPA time to establish the administrative apparatus, including regulations, needed to implement the new provisions. Congress has forcefully expressed its intention that innovative and alternative technologies be utilized. A number of reviewers have pointed out that many States may find it difficult to utilize the reserved funds during FY 1979 because of the time needed to plan projects. The ability to give the supplemental 10 percent grant for projects funded from FY 1978 monies will assist those States in utilizing their funds. In addition, an overriding Congressional concern is that the implementation of the amendments under the 1977 Act not delay or disrupt the ongoing operation of the construction grants program for wastewater treatment facilities. Use of supplemental grants would ease the operation of the program by avoiding application delays on innovative or alternative proposals until FY 1979 begins and by avoiding the need to reallot unused funds.

EPA has decided to allow the supplemental 10 percent grant for projects being developed under grants made after the enactment of the 1977 Act. The supplemental grant must come from funds allotted for the 1979 fiscal year. Grantees that proceed with innovative or alternative projects in light of Congressional directives in the 1977 Act should not be penalized for their diligence. The cutoff date at enactment of the 1977 Act aheres to the incentive character of innovative and alternative grants while helping States utilize their reserves during fiscal year 1979.

3. How is the 2 percent reserve to cover the grant increases to be reallotted if not utilized?

Some of the options suggested are (1) to include it in general funds to be reallotted to all States which used all of their funds; (2) to add it to the reserve for innovative and alternative technology and reallot it to States that used all of their funds from that reserve; (3) to include it in a designated fund from which 100 percent modification and replacement grants are made; or (4) to include funds to be reallotted from each reserve; including the 2 percent reserve, in a separate reallotment fund which would go only to those States that used all of their funds from that particular reserve.

Primarily for administrative reasons EPA is proposing to use the first option.

4. Where the State contributes a portion of the cost of projects, how will the 85 percent Federal contribution affect the State's share?

States are required to contribute no less than the same proportion to the 15 percent non-Federal share as they do to the 25 percent non-Federal share for other types of projects. Thus, if a State contributes 50 percent of the non-Federal share on 75 percent Federal grants, which is 12½ percent of total project costs, then it must con-

tribute 50 percent of the non-Federal share on 85 percent Federal grants, which is 7½ percent of the total project costs.

5. For what period of time should the provision for a 100 percent Federal grant to modify or replace malfunctioning treatment works constructed under an 85 percent grant be operable?

Recommendations have been made for periods as long as 10 years. The Agency prefers to allow two years from the completion of construction. This will provide ample operational experience with the treatment works.

6. Does the 2 percent reserve represent the maximum amount that a State can use for increasing grants from 75 percent to 85 percent for innovative and alternative projects?

Several reviewers have argued that the 2 percent reserve is not a maximum. They rely principally on Section 202(a)(2) of the 1977 Act which states that grants for eligible treatment works utilizing innovative or alternative technologies shall be 85 percent grants. To understand Congressional intent on this question, however, section 202(a)(2) must be read together with other provisions in the 1977 Act and the legislative history.

In order to pay for grant increases from 75 to 85 percent, Congress reserved funds from each State's yearly allotment for three years under section 205(i). Specifically, a reserve of 2 percent for fiscal years 1979 and 1980, and 3 percent for fiscal year 1981 was provided. Linked to this reserve, Congress in section 202(a)(4) defined the "eligible treatment works" which can be the subject of the 85 percent grant as those which utilize innovative or alternative technologies and "which can be fully funded from funds available for such purpose in such State" in the three fiscal years. In addition, the Conference Committee report refers to the reserves as funds "set aside * * * to carry out this program." Accordingly, EPA maintains that the reserved funds constitute a maximum amount that a State can use to increase grants from 75 percent to 85 percent for alternative or innovative projects.

7. What is the relationship of the 4 percent reserve in the State allotment for alternatives to conventional treatment works in small communities to the 2 percent reserve in the State allotment for grant increases for treatment works utilizing innovative or alternative processes and techniques?

If a project or part of a project qualifies as an alternative to conventional treatment works in a small community, it is eligible for an 85 percent grant if it is the most cost-effective option. The first 75 percent of the cost of construction will be paid from funds in the 4 percent reserve. The next 10 percent will be paid from the 2 percent reserve. The final 15 percent of construction costs must be borne by State and local sources.

Proposed regulatory changes relating to innovative or alternative technologies are made in §§ 35.908, 35.917-1(d), 35.930-5, 35.935-20, and Appendix E.

Recreational Use

Section 201(g)(6) requires that no wastewater treatment facilities grants be made after September 30, 1978, unless the grant applicant has satisfactorily demonstrated to the Administrator that potential recreation and open space opportunities have been analyzed in the planning of the proposed treatment works. This provision is intended to provide an opportunity for communities to obtain important recreational and open space benefits at relatively little extra cost. In accordance with the intent of Congress not to delay ongoing projects, this provision does not apply retroactively to projects on which facilities planning has already begun. It will apply to facilities planning initiated after September 30, 1978. The EPA will undertake a study of its policy on funding multiple purpose projects, including those involving recreation and open space. Proposed regulatory changes relating to recreational and open space uses have been made in § 35.917-1(j).

Contract Enforcement

Under the new provision of section 203(e), the EPA is authorized at the request of the grantee to provide technical and legal assistance in the administration and enforcement of any contract in connection with treatment works assisted by an EPA grant and also to intervene in any civil action involving the enforcement of the contract. EPA is not to be a party to the contract. The authority applies only after execution of a contract. Nothing in this authority is to add to, or detract from, existing EPA authorities in the precontract negotiation phase.

Proposed regulatory changes on contract enforcement have been made in §§ 35.936-5, 35.936-8, and by adding a new § 35.970.

Pretreatment

Amendments are proposed to provide incentives in the construction grants program to implement the pretreatment program required in section 307 (b) and (c) of the FWPCA as amended by the 1977 Act. Regulations implementing a comprehensive pretreatment program will be published as 40 CFR Part 403. The proposed construction grant regulations for pretreatment have been developed apart from the main body of the changes to the construction grant regulations to implement the 1977 Act.

On February 2, 1977, the Agency proposed four options for a national pretreatment policy and general pretreatment standards for existing and new sources of pollution (42 FR 6476-6502). Section K of the preamble discussed relationships between pretreatment and the construction grants program. In all four options, EPA proposed to use the grants program to encourage the development of local pretreatment programs. Briefly, the proposal included: (1) Providing Federal monies from the grants program to fund 75 percent of local pretreatment program development costs; (2) requiring that the user charge system, in combination with other revenue sources available to the publicly-owned treatment works, be adequate to fund the operating costs of any existing local pretreatment program; and (3) permitting a construction grantee to retain more than 10 percent of industrial cost recovery payments to use for any purpose if an approvable pretreatment program is developed.

Also in section K, EPA stated it would propose and amendment to the construction grant regulations to require that an approvable pretreatment program be developed as a condition of any Step 1, 2, or 3 construction grant award. This was proposed to apply in areas with significant industry where the Regional Administrator determines that the work plan developed for water quality management planning under section 208 of the FWPCA does not adequately provide for the development of an approvable pretreatment program. Payment of up to 10 percent of the Step 3 grant amount could be withheld by EPA in accordance with 40 CFR 30.615-3 until the pretreatment program is approved.

Following proposal of the four options, EPA held public hearings in Chicago, Boston, San Francisco, and Washington. Each public hearing was proceded by public meetings with State government officials, local government officials, representatives of industry, and environmental, consumer, and other public interest groups. These four public hearings and sixteen public meetings, together with approximately 400 written comments submitted by individuals and groups, provided a major opportunity for public input, review, and comment on the issues. The national pretreatment policy was considered by the Congress as the 1977 Act was being developed. The Congressional debate included a focus on pretreatment and contributed significantly to resolution of the major issues. Moreover, the 1977 Act placed pretreatment in the larger context of national pollution control policy by emphasizing the Congressional intent to control toxics and by re-emphasizing the objectives of recla-

mation and reuse of wastes wherever practicable.

As a result, EPA is developing final general pretreatment regulations. The regulations, which will be published as 40 CFR Part 403, are expected to be promulgated in the near future. EPA has determined that this is the appropriate time to propose amendments to the construction grant regulations to relate the construction grants program to the pretreatment program, as discussed in the preamble to the February 2, 1977 proposal of 40 CFR Part 403.

These proposed regulations are intended to: (1) establish pretreatment program development as a grant eligible item, (2) allow funding to be accomplished through either award of a new Step 1 grant or by amendment of a Step 1, 2, or 3 grant whichever is most appropriate to the circumstances, (3) ensure uniform development of the pretreatment program by requiring that certain elements be completed before the award of a Step 2 grant, and other elements be completed prior to award of a Step 3 grant, (4) withhold grant payment at the 90 percent point in Step 3 if the pretreatment program is not approved within a specified time and (5) provide for time phasing that ensures the attainment of environmental benefits of the pretreatment program without severe disruption to the construction grants program.

It is recognized that many municipalities have already developed or are in the process of developing pretreatment programs either on their own initiative or in response to National Pollutant Discharge Elimination System permit requirements. It is not intended that such work be duplicated. To the extent that previous work meets the requirements of an approvable pretreatment program under Part 403 of this chapter, it is to be incorporated in the program development under these construction grant regulations. To the degree that additional work must be done to complete the requirements of an approvable program, such work may be grant eligible. Work done prior to the effective date of the final regulations shall not be grant eligible or reimbursable under this program.

Proposed regulatory changes on pretreatment have been made in § 35.907, 35.915-1, 35.917-1(b), 35.920-3 (b) and (c), 35.929-2, 35.935-19, 35.940-1, and 35.940-2.

In this same issue of the FEDERAL REGISTER, we are also publishing interim/final construction grant regulations for those amendments required to be implemented immediately by the 1977 Act (40 CFR, Part 35, Subparts E and F). These proposed regulations should be read with the interim/final regulations in this issue.

The EPA has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis statement under Executive Order 11821 and OMB Circular A-107.

(Secs. 9, 13, 17, 19, 23, 27, 33, 47, 54 of Clean Water Act.)

Dated: April 18, 1978.

DOUGLAS M. COSTLE,
Administrator.

40 CFR, Part 35, Subpart E is proposed to be amended as follows:

1. By adding a new § 35.907 to read as follows:

§ 35.907 Municipal pretreatment program.

(a) The Regional Administrator is authorized to amend an existing or pending step 1, step 2, or step 3 grant to provide for the development of an approvable municipal pretreatment program as required by Part 403 of this chapter.

(b) The grantee is required to develop a pretreatment program if the Regional Administrator determines that:

(1) The municipal treatment works:

(i) Serves industries subject to proposed or promulgated pretreatment standards under section 307(b) of the Act, or

(ii) Expects to serve industries tying into the works in accordance with section 301(i)(2), where these industries are subject to the section 307 (b) or (c) standards; and

(2) A work plan under a section 208 planning grant has not provided for the development of a program approvable under Part 403 of this chapter.

(c) A pretreatment program may be required for municipal treatment works which receive other nondomestic wastes covered by guidance issued under section 304(f) of the Act.

(d) Development of an approvable municipal pretreatment program under Part 403 of this chapter shall include, but not be limited to:

(1) An industrial survey as required by § 403.— of this chapter including identification of system users, the character and volume of pollutants discharged, type of industry, location;

(2) An evaluation of legal authority, including adequacy of enabling legislation, selection of mechanisms to be used for control and enforcement (i.e., ordinance, joint powers agreement, contract);

(3) An evaluation of financial programs and revenue sources to ensure adequate funding to carry out the pretreatment program;

(4) A determination of technical information necessary to support development of an industrial waste ordinance;

(5) Design of a monitoring enforcement program;

(6) A determination of pollutant removals in existing treatment works;

(7) A determination of the treatment works tolerance to pollutants which interfere with its operation or sludge use or disposal;

(8) A determination of monitoring equipment required for use by the municipal treatment works;

(9) A determination of municipal facilities to be constructed for monitoring or analysis of industrial wastes;

(e) Items (d)(6) and (d)(7) of this section are not grant eligible and shall apply only to those grantees seeking allowances for removal of pollutants under § 403.—.

(f) The pretreatment program developed under paragraph (b) of this section is subject to approval by the Regional Administrator under § 35.935-19 and must be implemented in accordance with Part 403 of this chapter.

2. By revising § 35.908 to read as follows:

§ 35.908 Innovative and alternative technologies.

(a) *Policy.* It is the policy of the Environmental Protection Agency to encourage, and, where possible, to assist in the development of innovative and alternative technologies for the construction of wasterwater treatment works. Such technologies may be used in the construction of wastewater treatment works under this subpart as provided § 35.915-1, § 35.930-5, Appendix E, and this section. New technology or processes may also be developed or demostrated with the assistance of EPA research or demonstration grants awarded under Title I of the Act (see Part 40 of this subchapter).

(b) *Funding for innovative and alternative technologies.* (1) Projects or portions of projects (see subparagraph (b)(2) of this section) which meet criteria for innovative or alternative technologies in Appendix E may receive 85 percent grants (see § 35.930-5).

(i) The increase for such grants from 75 to 85 percent shall be provided only from the reserve in § 35.915-1(b) to eligible projects on the fundable portion of the State project priority list according to the chronological approval of grants.

(ii) If the project is an alternative to conventional treatment works for a small community (a municipality with a population of 3,500 or less or a highly dispersed section of a larger municipality, as defined by the Regional Administrator), the 75 percent portion of the Federal grant may be provided from the reserve in § 35.915(e).

(2) In determining the portion of the treatment works eligible for the increase from 75 to 85 percent, the following provisions apply:

(i) If the total present worth of the innovative and alternative components of the treatment works, excluding sewer-related costs, is more than 50

percent of the total present worth cost of the nonsewer-related portions of such works, the eligible cost of construction of the entire treatment works, excluding sewer related costs, is entitled to the increase from 75 to 85 percent.

(ii) If the total present worth of the innovative and alternative components of the treatment works is 50 percent or less of the total present worth cost of the nonsewer-related portions of the treatment works, only the eligible innovative and alternative components (i.e., unit processes and operations) shall be entitled to the grant increase from 75 to 85 percent.

(iii) Sewer-related costs are entitled to the grant increase from 75 to 85 percent, either as part of the entire treatment works or as components, only if they qualify as alternatives to conventional treatment works for small communities.

(3) Projects or portions of projects that receive step 2, step 3, or step 2+3 grant awards after December 27, 1977, from the fiscal year 1978 allotment may also receive the grant increase from funds allotted for fiscal year 1979 for eligible portions that meet the crtiteria for innovative or alternative technologies in Appendix E, to the extent that funds are available for such purposes under § 35.915-1(b).

(c) *Modification or replacement of innovative and alternative projects.* The Regional Administrator may award grant assistance to fund 100 percent of the eligible cost of the modification or replacement of any treatment works constructed with 85 percent grant assistance if:

(1) He determines that:

(i) The facilities have not met design performance specifications (unless such failure is attributable to negligence on the part of any person); and

(ii) The failure has significantly increased capital or operating and maintenance expenditures; and

(iii) Such failure has occurred within the two year period following completion of construction; and

(2) The project is on the fundable portion of the State's priority list.

3. By amending § 35.915-1 of the interim/final regulations by revising paragraph (c) to read as follows:

§ 35.915-1 Reserves related to the project priority list.

* * * * *

(c) *Reserve for grant increase.* The State shall set aside not less than 5 percent of the total funds to be obligated during the priority list year, for grant increases (including any necessary funds for development of municipal pretreatment programs) for projects awarded assistance under § 35.935-11. The funds reserved for this purpose remain subject to reallotment if not obligated and should, therefore, be released for funding additional projects before the reallotment deadline.

4. By amending § 35.917-1 by adding new subparagraphs (8) and (9) to paragraph (d) and by adding new paragraphs (j) and (k) to read as follows:

§ 35.917-1 Content of facilities plan.

* * * * *

(d) * * *

(8) For facilities plans initiated after September 30, 1978, whether or not prepared under a step 1 grant, an analysis of innovative and alternative treatment processes and techniques that reclaim and reuse water, productively recycle wastewater constituents, eliminate the discharge of pollutants, recover energy or otherwise achieve the benefits described in Appendix E. The provisions of this subparagraph are encouraged in all cases. They are required in facilities plans for new treatment works and for treatment works which are being altered, modified, improved, or extended either for the purpose of handling a significant increase in the volume of treated waste or for the purpose of significantly reducing the pollutant discharges from the system. In cases where certain categories of alternative technologies may not be generally applicable because of prevailing climatic or geological conditions, a detailed analysis of these categories of alternative technologies is not required provided that the reason for such a rejection is fully substantiated in the facilities plan.

(9) For facilities plans initiated after September 30, 1978, whether or not prepared under a step 1 grant, an analysis of the primary energy requirements (operational energy inputs) for each considered system. The alternative selected shall propose adoption of measures to reduce energy consumption or increase recovery to the extent that such measures are cost-effective

* * * * *

(j) For facilities plans initiated after September 30, 1978, whether or not prepared under a step 1 grant, a description of potential recreation and open space opportunities analyzed in planning the proposed treatment works and the recommended actions. The facilities plan shall also describe measures taken to inform the public of these opportunities and to coordinate with State and local recreational programs and with recreational elements of applicable approved areawide waste management plans.

(k) A municipal pretreatment program in accordance with § 35.907.

5. By amending § 35.920-3 by adding a new subparagraph (10) to paragraph (b) and by revising paragraph (c) to read as follows:

§ 35.920-3 Contents of application.

* * * * *

(b) * * *

(10) After December 31, 1979, for grantees subject to pretreatment requirements under § 35.907(b), the items required by § 35.907 (d)(1), (d)(2), and (d)(4).

(c) *Step 3.* Building and erection of a treatment works. Prior to the award of a grant or grant amendment for a step 3 project, each of the items specified in paragraph (b) of this section, and in addition: (1) Two sets of construction drawings and specifications, suitable for bidding purposes, and (2) either a schedule for or evidence of compliance with §§ 35.925-10 and 35.935-12 concerning an operation and maintenance program, must have been furnished. In addition, after June 30, 1980; grantees subject to pretreatment requirements under § 35.907(b) shall submit the items required by § 35.907 (d)(1) through (d)(9) as applicable.

6. By amending § 35.929-2 of the interim/final regulations by adding a new paragraph (h) to read as follows:

§ 35.929-2 General requirements for all user charge systems.

* * * * *

(h) *Costs of pretreatment program.* A user charge system submitted by a municipality with an approved pretreatment program shall provide that the costs necessary to carry out the procedures of that approved municipal pretreatment program and to comply with any applicable requirements of section 405 of the Act and related regulations are included within the costs of operation and maintenance of the system and paid through user charges, or are paid in whole or in part by other available sources of funds identified for the user charge system.

7. By revising § 35.930-5 to read as follows:

§ 35.930-5 Federal share.

(a) *General.* The grant shall be 75 percent of the estimated total cost of construction of the project approved by the Regional Administrator in the grant agreement, except as otherwise provided in paragraphs (b) and (c) of this section and in §§ 35.925-15, 35.925-16, 35.925-17, and 35.930-1(b).

(b) *Innovative and alternative technology.* In accordance with § 35.908(b), the amount of any step 2, step 3, or step 2+3 grant made from funds allotted for fiscal years 1979, 1980, and 1981 shall be 85 percent of the estimated cost of construction for those eligible treatment works or significant portions thereof that the Regional Administrator determines meet the criteria for innovative or alternative technology set forth in Appendix E. These

grants are subject to the availability of funds under the reserve under § 35.915-1(b). The proportional State contribution to the non-Federal share of construction costs must be the same as or greater than the proportional State contribution (if any) to the non-Federal share of eligible construction costs for all treatment works receiving 75 percent grants in the State.

(c) *Modification and replacement of innovative and alternative projects.* In accordance with 35.908(c), the Regional Administrator may award grant assistance to fund 100 percent of the eligible cost of the modification or replacement of any treatment works constructed with grant assistance based upon a Federal share of 85 percent under paragraph (b) of this section.

8. By adding a new § 35.935-19 to read as follows:

§ 35.935-19 Municipal pretreatment program.

The grantee must obtain approval by the Regional Administrator of the municipal pretreatment program. Prior to granting such approval, the Regional Administrator shall not pay more than 90 percent of the Federal share of any step 3 grant or cost of step 3 work under a step 2+3 grant awarded after the effective date of these regulations, except that for any such grant awarded prior to June 30, 1980, the Regional Administrator may continue grant payments upon determining that significant progress has been made (and is likely to continue) toward the development of an approvable pretreatment program and that withholding of grant payments would not be in the best interest of protecting the environment.

9. By adding a new § 35.935-20 to read as follows:

§ 35.935-20 Innovative processes and techniques.

Where the grantee receives an 85 percent grant for innovative processes and techniques, during the 5 year period following completion of construction, the following conditions apply:

(a) The grantee shall permit EPA personnel and EPA designated contractors to visit and inspect the treatment works at any reasonable time for purposes of reviewing the operation of the innovative processes or techniques.

(b) Upon the request of the Regional Administrator, the grantee will provide EPA with a brief written report concerning the construction, operation, and costs of operation of the innovative processes or techniques.

10. By adding a new paragraph (c) to § 35.936-5 to read as follows:

§ 35.936-5 Grantee responsibility.

* * * * *

(c) In accordance with § 35.970 grantees may request technical and legal assistance from EPA for the administration and enforcement of any contract in connection with treatment works assisted by an EPA grant. The provision of such assistance by the Regional Administrator does not release the grantee from those responsibilities identified in paragraph (a) of this section.

11. By revising § 35.936-8 to read as follows:

§ 35.936-8 Privity of contract.

Neither the Environmental Protection Agency nor the United States shall be a party to any subagreement (including contracts or subcontracts), nor to any solicitation or request for proposals therefor. (See §§ 35.937-9(a), 35.938-4(c)(5), and Appendixes C-1 and C-2 to this subpart for the required solicitation statement and contract provisions.) However, in accordance with § 35.970 the Regional Administrator may, when requested by a grantee, provide technical and legal assistance in the administration and enforcement of any contract in connection with treatment works for which an EPA grant was made.

12. By adding a new paragraph (r) to § 35.940-1 to read as follows:

§ 35.940-1 Allowable project costs.

* * * * *

(r) Development of a municipal pretreatment program approvable under Part 403 of this chapter, and purchase of monitoring equipment and construction of facilities to be used by the municipal treatment works in the pretreatment program.

13. By adding a new paragraph (k) to § 35.940-2 to read as follows:

§ 35.940-2 Unallowable costs.

* * * * *

(k) Costs of studies to determine pollutant removals in existing treatment works or tolerance to pollutants which interfere with the treatment works' operation, sludge use, or disposal in development of a municipal pretreatment program as defined in § 35.907(d).

14. By adding a new § 35.970 to read as follows:

§ 35.970 Contract enforcement.

(a) *Regional Administrator authority.* Upon request by a grantee, the Regional Administrator may provide technical and legal assistance in the administration and enforcement of any contract in connection with treatment works for which an EPA grant was made. The Regional Administrator, with the concurrence of the General Counsel, is further authorized to intervene in any civil action involving the enforcement of such a contract, including a contract dispute which is the subject of either arbitration or court action. Any assistance is to be provided at the discretion of the Regional Administrator and in a manner determined to best serve the public interest. Factors which the Regional Administrator may consider in determining whether to provide assistance are:

(1) Available agency resources.

(2) Planned or ongoing enforcement action.

(3) Demonstration of good faith on the part of the grantee to resolve contract matters at issue.

(4) Adequate documentation by the grantee.

(5) The Federal interest in the contract matters at issue.

(b) *Grantee request.* A request by the grantee for technical or legal assistance should be submitted in writing and be accompanied by sufficient documentation adequately to inform the Regional Administrator of the nature and necessity of the requested assistance. A grantee may, orally request assistance from the Regional Administrator on an emergency basis.

(c) *Privity of contract.* Technical or legal involvement by the Regional Administrator in any contract dispute will not make the Environmental Protection Agency a party to any contract entered into by the grantee. (See § 35.936-8.)

(d) *Delegation to States.* The authority to provide technical assistance may be delegated to a State agency in accordance with §§ 35.1000 et. seq.

15. By adding a new Appendix E to read as follows:

APPENDIX E—INNOVATIVE AND ALTERNATIVE TECHNOLOGY GUIDELINES

1. *Purpose.* These quidelines provide the criteria for identifying and evaluating innovative and alternative wastewater treatment processes and techniques. The Administrator may from time to time publish additional information.

2. *Authority.* The guidelines contained herein are provided under section 304(d)(3) of the Clean Water Act of 1977 (the 1977 Act).

3. *Applicability.* The guidelines apply to:

a. The analysis of innovative and alternative treatment processes and techniques under § 35.917-1(d)(8);

b. Increased grants for eligible treatment works under §§ 35.930-5 (b) and (c) and 35.908(b)(1);

c. The funding available for innovative and alternative processes and techniques under § 35.915-1(b);

d. The funding available for alternatives to conventional treatment works for small communities under § 35.915-1(e);

e. The preference given innovative and alternative processes and techniques in section 7 of Appendix A to this subpart (cost effectiveness analysis guidelines);

f. The treatment works that may be given higher priority on State project priority lists under § 35.915(a)(1)(iii);

g. Alternative and innovative treatment systems in connection with Federal facilities;

h. Individual systems authorized by § 35.918, as modified in that section to include unconventional or innovative sewers;

i. The conditioning for access and reports in § 35.935-20.

4. *Alternative processes and techniques.* Alternative wastewater treatment processes and techniques are proven methods which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy.

a. In the case of processes and techniques for the treatment of effluents, these include land treatment, aquifer recharge, aquaculture, silviculture, and direct reuse for industrial and other nonpotable purposes, horticulture and revegetation of disturbed land. Total containment ponds and ponds for the treatment and storage of wastewater prior to land application and other processes necessary to provide minimum levels of preapplication treatment are considered to be part of alternative technology systems for the purpose of this section.

b. For sludges, these include land application for horticultural, silvicultural, or agricultural purposes (including supplemental processing by means such as composting or drying), and revegetation of disturbed lands.

c. Energy recovery include codisposal of sludge and refuse, anaerobic digestion (provided that more than 90 percent of the methane gas is recovered and used as fuel), and equipment which provides for the use of digester gas within the treatment works. Self-sustaining incineration may also be included provided that the energy recovered and productively used is greater than the energy consumed to dewater the sludge to an autogenous state.

d. Also included are individual and other on-site treatment systems with subsurface or other means of effluent disposal and facilities constructed for the specific purpose of septage treatment.

e. The term "alternative" as used in these guidelines includes the terms "unconventional" and "alternative to conventional" as used in the Act.

f. The term "alternative" does not include collector sewers, interceptors, storm or sanitary sewers or the separation thereof, or major sewer rehabilitation, except insofar as they are alternatives to conventional treatment works for small communities under § 35.915-1(e) or part of individual systems under § 35.918.

5. *Innovative processes and techniques.* Innovative wastewater treatment processes and techniques are developed methods which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of meeting the national goals of cost reduction, increased energy conservation or recovery, greater recycling and conservation of water resources (including preventing the mixing of pollutants with water), reclamation or reuse of effluents and resources (including increased productivity of arid lands), improved efficiency and/or reliability, the beneficial use of sludges or effluent constituents, better management of toxic materials or increased environmental benefits. For the purpose of these guidelines innovative wastewater treatment processes and techniques are generally limited to new and improved applications of those alternative processes and techniques identified in accordance with section 4 of these guidelines, including both treatment at centralized facilities, and individual and other on-site treatment. Treatment processes based on the conventional concept of treatment (by means of biological or physical/chemical unit processes) and discharge to surface waters shall not be considered innovative wastewater treatment processes and techniques except where it is demonstrated that such processes and techniques, as a minimum, meet either the cost reduction or energy reduction criterion described in section 6 of these guidelines. Treatment and discharge systems include primary treatment, suspended-growth or fixed-growth biological systems for secondary or advanced wasterwater treatment, physical/chemical treatment, disinfection and sludge processing. The term"innovative" does not include collector sewers, interceptors, storm or sanitary sewers or the separation thereof, or major sewer rehabilitation, except insofar as they meet the criteria in section 6 of these guidelines and are alternatives to conventional treatment works for small communities under § 35.915-1(e) or part of individual systems under § 35.918.

6. *Criteria for determining innovative processes and techniques.*

a. Criteria are set forth below which the Regional Adminstrator will use in determining whether a wastewater treatment process or technique is innovative. The criteria should be read in the context of section 5. These criteria do not necessarily preclude a determination by the Regional Administrator that a treatment system is innovative in relation to local variations in geographic or climatic conditions which affect treatment plant design and operation or to achieve significant public benefits through the advancement of technology which would otherwise not be possible. The Regional Administrator may consult with EPA Headquarters as to whether a particular process or technique is innovative and as to determinations made in other EPA Regions about similar processes and techniques.

b. New or improved applications of alternative wastewater treatment processes and techniques may be innovative for the purposes of this regulation if they meet one or more of the criteria in paragraphs e(1) through e(6) of this section. Treatment and discharge systems (i.e., systems which are not new or improved applications of alternative wasterwater treatment processes and techniques in accordance with section 4 of these guidelines) must meet the criteria of either paragraph e(1) or e(2) of this section as a minimum in order to be innovative for the purposes of these guidelines.

c. These six criteria are essentially the same as those used to evaluate any project proposed for grant assistance. The principal difference is that some newly developed processes and techniques may have the potential to provide significant advancements in the state of the art with respect to one or more of these criteria. Inherent in the concept of advancement of technology is a degree of risk which is necessary to initially demonstrate a method on a full, operational scale under the circumstances of its contemplated use. This risk, while recognized to be a necessary element in the implementation of innovative technology, must be minimized by limiting the projects funded to those which have been fully developed and shown to be feasible through operation on a smaller scale. The risk must also be commensurate with the potential benefits (i.e., greater potential benefits must be possible in the case of innovative technology projects where greater risk is involved).

d. Increased Federal funding under § 35.908(b) may be made only from the reserve in § 35.915-1(b) (appropriations for fiscal years 1979, 1980, and 1981). It is possible to fund a number of projects using the same type of innovative technology in a State in instances where it is desirable to encourage certain innovative processes and techniques because the potential benefits are great in comparison to the risks, or where operation under differing conditions of climate, geology, etc., is desirable to demonstrate the technology.

e. The following criteria will be used by the Regional Administrator to determine whether wastewater treatment processes and techniques are innovative:

(1) The life cycle cost of the treatment works is at least 15 percent less than that for the most cost-effective alternative which does not incorporate innovative wastewater treatment processes and techniques (i.e., is no more than 85 percent of the life cycle cost of the most cost-effective noninnovative alternative).

(2) The net primary energy requirements for the operation and maintenance of the treatment works are at least 20 percent less than the net energy requirements of the most cost-effective alternative as determined by the analysis in accordance with section 7 of the cost effectiveness analysis guidelines in Appendix A (i.e., the net energy requirements are no more than 80 percent of those for the most cost-effective alternative).

(3) The operational reliability of the treatment works is improved in terms of decreased susceptibility to upsets or interference, reduced occurrence of inadequately treated discharges, and decreased levels of operator attention and skills required.

(4) The treatment works provides for better management of toxic materials which would otherwise result in greater environmental hazards.

(5) The treatment works results in increased environmental benefits such as water conservation, more effective land use, improved air quality, improved groundwater quality, and reduced resources requirements for the construction and operation of the works.

(6) The treatment works provide for new or improved methods of joint treatment and management of municipal and industrial wastes that are discharged into municipal systems.

[FR Doc. 78-11023 Filed 4-24-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER B—GRANTS AND OTHER FEDERAL ASSISTANCE

[FRL 875-6]

PART 35—STATE AND LOCAL ASSISTANCE

SUBPART E—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

INTERIM REGULATIONS IMPLEMENTING CLEAN WATER ACT OF 1977

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: These regulations implement amendments to the Federal Water Pollution Control Act, as amended (FWPCA), contained in the Clean Water Act of 1977 (Pub. L. 95-217, hereafter the "1977 Act") which affect the wastewater treatment works construction grant program administered by the Environmental Protection Agency (EPA). These regulations deal primarily with the following subjects: State priority, grant eligible categories, land eligibility, user charges, industrial cost recovery, grants for individual systems, combined step 2 and 3 grants, training facility grants, Buy America, cost-effectiveness analysis, and reserve capacity. They are being published as interim final regulations at this time because the applicable provisions were effective upon enactment of the 1977 Act and guidance is needed to keep the program operating.

DATES: Effective date—April 25, 1978. Comments may be made on or before June 30, 1978. Public meeting for purposes of receiving comments will be held in June and July 1978. Notice of these meetings will be published in the FEDERAL REGISTER.

ADDRESSES: Comments should be sent (in triplicate, if possible) to: Mr. Alexander J. Greene, Director, Grants Administration Division, Attention: PM-216-P "Construction Interim," Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Comments may be inspected at: Public Information Reference Unit, EPA Headquarters, Room 2922, Waterside Mall, 401 M Street SW., Washington, D.C. 20460, between 8 a.m. and 4:30 p.m. business days.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael B. Cook, Chief, Facility Requirements Branch (WH-547), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-9404.

SUPPLEMENTAL INFORMATION: The Clean Water Act of 1977, enacted on December 27, 1977, made substantial changes to the Federal Water Pollution Control Act as amended (FWPCA), and to the program of grants for construction of wastewater treatment works contained in Title II of that Act. As required by statutory deadline, EPA has previously published two short amendments to the construction grants program regulations. On January 10, 1978 (43 FR 1597), fiscal year 1978-1981 authorizations were allotted. On February 23, 1978 (43 FR 7426) the reimbursement grant regulations (Subpart D) were revised to include extended eligibility dates. These regulations are being published as interim final at this time so that the construction grants program can continue to operate with guidance as to the provisions that were effective upon enactment. In this same issue of the FEDERAL REGISTER we are also publishing interim final regulations governing State management assistance grants and proposed regulations on provisions that are either effective for fiscal year 1979, or are useful but not necessary to keep the program moving. Extensive public input was obtained in the development of all of these regulations. It is described in the preamble to the proposed regulations.

Discussion of the regulatory changes being made by these amendments is grouped by subject matter. Following the discussion of each subject area, the preamble identifies those sections in the regulatory changes which are related to the subject area.

STATE PRIORITY

Section 20 and 40 of the 1977 Act modified the policy and procedures applicable to State project priority planning and clarified the intent of Congress regarding the roles and responsibilities of the States in preparation of priority lists. These new provisions of the Act require several modifications to the procedures used by the States in managing their priority lists. Established priority rating and ranking criteria that are consistent with currently applicable guidance and regulations need not be changed.

The 1977 Act gives the States exclusive authority to rank categories of projects. The categories specified in the 1977 Act are those used in the survey of the cost of needed publicly owned treatment works (the needs survey), and have been defined in detail in previously published guidance for the survey. The interim regulations have been written so that no State is required to assign a differential ranking to categories of projects, but it may do so on an optional basis. States are expected to continue to use priority criteria based on the severity of the pollution problem, the existing population affected, and other related factors necessary to meet statutory requirements. All projects on the priority list, including those benefiting from the set aside provision, must be rated according to the priority criteria and subject to the management procedures contained in the approved State priority system. States must take into account, when preparing their priority list, the work completed by designated State and areawide agencies responsible for water quality management.

The legislative history of the 1977 Act indicates that State priority list planning and management must be closely linked to meeting unfilled treatment needs before other eligible treatment works may be funded. The Act specifically requires, with one exception, that only projects resulting in compliance with the enforceable requirements of the Act may be included on the State's priority list. Projects on the State list which do not meet this requirement are to be removed and alternate projects which do meet the requirements added to use available funds.

Enforceable requirements. The enforceable requirements of the Act, as defined in this interim regulation, are limitations or conditions of a 402 or 404 permit which, if violated, could result in a civil or criminal action under section 309 of the Act. Where a permit has not been issued, the term includes any requirement that in the judgment of the Regional Administrator would be included in the permit when issued. Where a permit is not applicable the term shall include any requirement which the Regional Administrator determines is necessary to meet applicable criteria for best practicable waste treatment technology (BPWTT).

This definition covers municipal pollution of surface water and groundwater. Permits issued under section 402 of the Act incorporate surface discharge requirements imposed by sections 301 and 405. Section 301, in turn, requires BPWTT or any more stringent level of treatment determined in the water quality management planning process (authorized under sections 208 and 303) to be necessary to meet water quality standards. It also requires any more stringent level of treatment found to be necessary to meet State laws or regulations (under authority preserved by section 510).

BPWTT contains criteria which must be met by grant funded projects involving land application techniques, land utilization practices and alternatives involving reuse and recycling. These criteria, designed to protect groundwater from pollution by mu-

nicipal treatment facilities, are analogous to effluent limitations and conditions in permits designed to protect surface waters.

Two major alternatives were considered in defining the "enforceable requirements" provision. One option would simply list the sections of the FWPCA mentioned in the legislative history of the 1977 Act as containing enforceable requirements. A simple listing of these sections (201, 208, 301, 309, 402, and 405), however, provides almost no assistance with interpreting the term "enforceable requirements." Numerous comments received when these regulations were being drafted indicated that a more detailed definition was essential to expeditious and consistent national administration of the grants program.

A second option considered would have defined "enforceable requirements" in a manner similar to that in this interim regulation, but without the reference to the criteria for BPWTT where no permit is applicable. The practical effect of this shortened version would be to exclude from upgrading or replacement all treatment systems which are contaminating groundwater but are not required to obtain a permit because they have no discharge to surface waters. Such systems include existing land treatment projects, wastewater reuse and recycling projects and on-site residential treatment facilities with subsurface effluent disposal. Congress clearly intended that construction grant funds should be available when these types of facilities are contaminating groundwater and the problem cannot be corrected through improved operation and maintenance and minor improvements to the physical plants. Inclusion of BPWTT as an enforceable requirement will satisfy this intent.

New set aside for pipe-related projects. One exception to the requirement that all projects on the priority list must meet the enforceable requirements is provided in the Act. This exception is for projects involving major sewer rehabilitation, interceptor sewers, collector sewers, and correction of combined sewer overflows. States may, at their option, include on the fundable portion of their list facilities in these categories with a combined estimated EPA share of as much as 25 percent of the available allotment. Facilities in these categories which would use funds beyond the 25 percent level may be included on the list only where they are essential to meet enforceable requirements of the Act.

New set asides on priority list. The Act contains a number of new provisions that require States to set aside funds for specific purposes. Included in these set asides is a reserve for alternatives to conventional treatment for communities with populations of 3,500 or less, or the sparsely populated areas of larger communities. Rural States must set aside 4 percent of their allotment for such projects. Other States have the option of setting aside no more than 4 percent of their allotments for this purpose. In addition, 2 percent of the allotment for fiscal year 1979 and fiscal year 1980 and 3 percent of the allotment for fiscal year 1981 must be used only for grant increases for innovative and alternative treatment processes. At least one-half of 1 percent of the allotment (part of the 2 percent) must be used for grant increases for innovative technology during these years.

Nothing in this regulation is to affect existing administrative policy for the establishment of a separate funding strategy for small communities where a State chooses to set aside a reasonable percentage of its funds for the projects of such small communities.

Five-year priority list. The interim regulations for State priority list management require a 5-year priority list to ensure that projects are planned and managed in accordance with an overall multiple year operating strategy. In preparing the priority list, consideration must be given to the prioritized inventory of all needed publicly owned treatment works within a State. The most recent needs survey should be used for this purpose. Sufficient information, including cost data, is readily available from this survey allowing the development of a long-term priority list without undue additional effort on the part of the State.

Priority list management. Priority list management procedures have been clarified in the new regulation to assure that EPA, the States and municipalities each know which projects will be funded with available monies during the current year, and which projects may expect funding during subsequent years. In addition, the new procedures require documentation and notification to interested parties of any changes to the funding plans. The fundable portion of the priority list has been defined to include only projects planned for funding with available funds during the first year of the 5-year period. Procedures are established to allow a project on the fundable portion of the priority list to be bypassed when the State documents and notifies the grant applicant that it cannot be ready for award during the current year. Projects that are ranked highest on the extended portion of the priority list will be moved to replace the project which is not ready to proceed. In most cases, the project bypass procedure is not expected to constitute a significant revision to the priority list, and additional public participation should not be required.

An alternative to the bypass procedure was carefully considered but eventually rejected. This alternative would allow a State to include on the fundable portion all projects that could conceivably be ready for award during the funding year without regard to the limits of available allotments. Bypass procedures would be unnecessary, as all potential projects would be included on the fundable portion of the list. This approach was rejected because it would potentially allow high priority projects to go unfunded even though ready to proceed during the funding year in favor of lower priority projects. It also would create a great deal of uncertainty about which projects would be approved during the funding year and which would not.

There are other priority list management procedures required by the new regulations, most based on existing policy and guidance. The regulations require some increase to the project information included on the priority list and an improvement to the public participation process. Supplemental guidance will be issued to further define these requirements and provide the phasing necessary to avoid disruption of State operations.

Regulatory changes related to State priority planning and management are limited to the revision to § 35.915. Other changes pertaining to priority systems are required in Subpart B of Part 35 (§§ 35.551 et seq.). The March 3 draft of these construction grant regulations included (as an addendum to section 3) a draft of these proposed changes. Such draft will be furnished upon request to Mr. Michael Cook (address above). These changes to the section 106 program regulation will be made in the future. To the extent that existing 106 regulations are contradictory to these interim construction grant regulations, the interim construction grant regulations will be controlling.

Grant Eligible Categories

On June 21, 1977, the Agency issued program requirements memorandum 77-8 concerning the review of pending new collector sewer projects. The policy defined in detail, and requires rigorous implementation of existing Agency guidance on eligibility and cost-effectiveness of collector sewer projects. It was intended to ensure that the limited construction grant funds available are obligated for collector projects only when needed to correct a problem of public health or ground or surface water pollution. Specifically, that policy restricted grant eligibility of collector sewers to those areas with population densities of at least 1.7 persons per acre (one household for every 2 acres) on October 18, 1972. Population density of

those areas was to be evaluated on a block-by-block basis or, where typical city blocks do not exist, by areas of 5 acres or less.

Section 36 of the 1977 Act amends section 211 of FWPCA to preclude use of the population density criterion in PRM 77-8 as a test of grant eligibility for collector sewer projects but permits use of the criterion for evaluating alternatives. The Agency revised the policy of PRM 77-8 accordingly and issued, on March 3, 1978, new PRM 78-9 which supersedes PRM 77-8. PRM 78-9 was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14722). The new PRM retains the one household per 2 acre criterion only for identifying less closely populated areas where individual or other small wastewater treatment systems are likely to be more cost-effective than collector sewers and thus must be evaluated in detail if collector sewers are proposed for such areas. The Agency believes that use of the population density criterion in this manner will assist with and simplify the cost-effectiveness analysis for collector sewer projects.

The previous construction grant regulations (§ 35.925-13) require that, as a basis for eligibility, new collector sewer projects serve a community in existence on October 18, 1972, and define a community as including any area with substantial human habitation on October 18, 1972. Changes made by these interim regulations, consistent with PRM 78-9, would include a block-by-block evaluation to identify areas with substantial human habitation on October 18, 1972. As further requirements, the proposed collection system must be cost-effective and the population density of the area to be served must be considered in determining the cost-effectiveness of the project. In addition, the proposed collection system must conform with approved 208 plans, environmental laws pursuant to § 35.925-14, Executive Order on Wetlands and Floodplains and Agency policy on wetlands and prime agricultural lands.

Section 36 of the 1977 Act further amended section 211 of the FWPCA to prohibit the use of authorized construction grant funds for control of pollutants from separate storm sewers.

Regulatory changes relating to grant eligible categories have been made in §§ 35.905-23, 35.925-13, and 35.925-21.

LAND ELIGIBILITY

Section 37 of the 1977 Act amends the definition of "treatment works" under section 212(2)(A) of the FWPCA to include as eligible, under site acquisition of land that will be an integral part of the treatment process, the land used for the storage of treated wastewater in land treatment systems prior to land application. EPA has interpreted this provision to permit acquisition of land for composting sludge since such composting can be part of a treatment process. In order to implement this amendment, § 35.905-23 has been revised to include in the definition of "treatment works" the land used for composting of sludge and for the temporary storage of treated wastewater in land treatment systems. Section 35.940-3 has also been revised to include, among costs allowable if approved by the Regional Administrator, the land used for composting of sludges and for the temporary storage of treated wastewater in land treatment systems prior to land application.

Construction grant regulations promulgated on February 23, 1973, and February 11, 1974, are applicable to construction grants awarded between October 18, 1972, and December 27, 1977. The revised definition of treatment works made pursuant to the 1977 Act are applicable to all projects for which Agency approval of Step 1 facilities plans had not been given before December 27, 1977.

Changes to the regulations implementing this amendment are made in §§ 35.905-23 and 35.940-3.

INDIVIDUAL SYSTEMS

Section 14 of the 1977 Act authorizes grants for privately owned treatment works serving one or more principal residences or small commercial establishments constructed prior to the inhabited on or before December 27, 1977, to abate an existing water pollution or public health problem. A public body (municipality) must apply on behalf of a number of such units and certify that public ownership of such works is not feasible. The public body must certify that the treatment works will be properly maintained and operated. User charges are required for cost of operation and maintenance. Commercial users must pay back the Federal share of the cost of construction with no moratorium during the industrial cost recovery study, and the 25,000 gallons per day exemption does not apply. (See discussion of industrial cost recovery below.) We have decided that non-profit and non-governmental institutional entities, such as churches, schools, hospitals, and charitable organizations, for purposes of this special authority generally should be treated the same as small commercial establishments. The alternative selected must be cost-effective.

This section is intended to be utilized to construct alternative or unconventional treatment works for individual residences or clusters of residences. Alternatives include, but are not limited to, septic tanks and subsurface disposal systems, other on-site systems including dual systems, small systems serving clusters of households or commercial users, and pressure and vacuum sewers. Though small publicly-owned systems for one or more homes or small commercial establishments are not covered under § 35.918, they are covered under regulations governing grants for publicly-owned treatment works and are grant eligible. Additional guidance will be issued on the conditions under which small publicly-owned systems may be funded. As alternative systems, these individual systems are eligible for the four percent set aside. Both publicly-owned and privately owned individual systems, as alternatives to conventional technology, are eligible for an additional 10 percent of the eligible costs for those projects where funds are available from the set aside for innovative and alternative technology. However, privately-owned individual systems are not eligible for the 115 percent cost preference for alternative and innovative processes and techniques in the cost-effectiveness analysis.

Acquisition of land for individual systems is not grant eligible because there is no indication in the law or legislative history that Congress intended the limited funds available to be expended for what clearly would be a windfall to private landowners. Construction of individual systems may supplement other types of wastewater treatment works, conventional and unconventional, in the same planning area as determined to be cost-effective.

A major issue arising in the course of preparing these regulations is to what extent monitoring should be required to ensure groundwater supplies have not been contaminated by individual systems built with construction grants. Because individual systems will often be widely scattered and in remote areas, monitoring difficulties and costs could be of large magnitude. The periodic sampling of potable water wells, selected to represent the planning area, is deemed to be a minimum requirement. Large concentrations of individual systems which have soil absorption beds will require additional monitoring from existing or test wells, depending on the geology of the area and the location of those aquifers which are, or are likely to become, drinking water sources.

The monitoring program should be planned as part of the facility plan. Criteria for best practicable waste treatment technology published by EPA under § 304(d)(2) of the Act, shall be met for all individual systems. These discharges shall also comply with State and local requirements for control and abatement of groundwater pollution.

Other important issues which have arisen follow:

1. Are full construction costs, including major rehabilitation, upgrading,

installing, and enlarging, grant eligible?

Yes. These functions may meet water pollution control needs in the most economical and effective manner provided the work is properly done and adequate operation and maintenance procedures are arranged.

2. Should this special authority be used to construct septic tanks serving single residences when legislative history contains an indication that this ordinarily should not be done?

Several statements in the legislative history of the 1977 Act lead to the conclusion that septic tanks, with various further treatment and disposal features, are to be considered as individual systems. The optional solution, not to make them grant eligible, would be to eliminate from Federal funding one of the most frequently used and successful devices. "Septic tanks" rarely fail. It is the soil absorption field which fails if not properly designed, constructed, maintained and operated.

Regulatory changes relating to individual systems are found in §§ 35.905-23, 35.917-1(b), 35.917-2(a), 35.918, 35.918-2, and 35.918-3.

Combined Grants (Step 2+3)

Under new provisions added to section 203(a) of the FWPCA by section 18 of the 1977 Act, a single grant may be awarded for the combined Federal Share of the cost of Step 2 (preparation of plans and specifications) and Step 3 (actual construction) for communities of 25,000 or less population if the total estimated Step 3 cost of the treatment works is $2 million or less—$3 million in States with unusually high construction costs. At the present time, Alaska, California, Hawaii, Illinois, Minnesota and New York are designated as having high construction costs. Based upon Needs Survey standard cost curves, costs in these States were determined to be more than one standard deviation from the norm.

Step 2+3 grants were awarded by EPA in the past, but in 1974 the General Accounting Office ruled that they were not allowed under existing statute. We understand the intent of the Congress in allowing this new procedure is to accelerate the grant process. By providing limited relief from the Step 1-2-3 process to small communities, the paperwork and attendant delays incurred by separate grant applications will be minimized. Uitimately, the completion time and costs for these projects should be greatly reduced. It is necessary, however, to balance the intent to streamline these smaller projects with the minimum control necessary to assure that an acceptable pollution abatement facility is built. Plans and specification approval prior to advertising for bids on Step 3 construction is necessary for this purpose.

A new section on Step 2+3 grants has been added at § 35.909. Other sections affected by this change at §§ 35.903(b), 35.920-3(d), 35.930-1(a)(4) and deletion of (a)(5), 35.935-4, and 35.935-9.

User Charges

Section 22 of the 1977 Act amended the user charge requirements in section 204(b) of the Federal Water Pollution Control Act. This amendment permits grantees to use dedicated ad valorem tax systems for the collection of operation and maintenance costs if a portion of the grantee's ad valorem taxes was dedicated for such use on December 27, 1977, and if the grantee's system results in the distribution of operation and maintenance costs proportionally among user classes.

In implementing this amendment in the interim regulations, we have made the following changes to the regulations promulgated on February 11, 1974.

The definition of user charge in § 35.905-26 has been revised to include as a user charge that portion of the ad valorem taxes paid by a user for his share of the cost of operation and maintenance.

A new series of sections have been added in § 35.929 which describe the requirements for acceptable user charge systems, whether based on actual use or ad valorem taxes. (Similar requirements in the previous regulations were found in § 35.935-13.) There are no substantial changes to the requirements for user charge systems based on actual use.

The requirements for a user charge system based on ad valorem taxes include firm criteria for evaluating an ad valorem tax system to determine if it meets the statutory requirements of being "dedicated" on December 27, 1977.

The regulations require, in accordance with the statute, that operation and maintenance costs be distributed proportionally among the classes of users, even though ad valorem taxes may be used to collect the charge within-the-residential user and small non-residential user class. Each member of the industrial and large commercial user class must pay its share of the costs of operation and maintenance based on actual use, but ad valorem taxes may be used to collect all or part of these user charges based on actual use.

In accordance with the statute, the regulations require that each user be notified at least annually of the portion of the ad valorem taxes attributable to wastewater treatment services. The regulations apply this same requirement to user charge systems based on actual use. A grantee which has obtained approval of a user charge system based on actual use may not now substitute a system based on ad valorem taxes.

The grant condition requiring grantee development of a user charge system, a schedule for compliance with the condition, and sanctions for noncompliance, continue to be found in § 35.935-13. This section provides that grants awarded under the previously promulgated regulations will continue to be administered under those regulations unless the grantee proceeds to develop a user charge system based on ad valorem taxes under the new law and these regulations. If the grantee does wish to do so, he must demonstrate, by (insert 90 days after the effective date) that his ad valorem tax system was dedicated on December 27, 1977. If it was, any payments being held under the old regulations will be released (in accordance with the legislative history of this provision), but he must complete his user charge system and submit it to the Regional Administrator in time for approval before July 1, 1979. Failure to comply with this requirement will result in cessation of all payments under the grants, possible termination or annulment of the grant, and no new grant awards.

For grants awarded after the effective date of these regulations, grantees must obtain approval of their user charge systems (whether based on actual use or ad valorem taxes) by June 30, 1979, or similar sanctions will apply. After that date, no Step 3 grant will be awarded unless the grantee's user charge system has been approved. Although the legislative history speaks to one year after enactment, we have determined that as a practical matter, it is necessary to allow about one year after the effective date of the regulations. The June 30, 1979, date also coincides with the end of the eighteen month moratorium period for the payment of industrial cost recovery.

Regulation sections affected by the user charge amendments are §§ 35.905-26, 35.929, 35.929-1, 35.929-2, 35.929-3, and 35.935-13.

Industrial Cost Recovery

Section 24 of the 1977 Act amends section 204(b) of the FWPCA to authorize the Administrator to exempt from the industrial cost recovery requirement (ICR) any industrial user which discharges the equivalent of 25,000 gallons per day or less of domestic sanitary waste. Section 24 permits grantees to develop ICR systems on a system-wide, rather than on a project-by-project, basis. It also permits a portion of the ICR revenues retained by the grantee to be used for the administration of the ICR system, and maintains the current authority to establish a fund for future expansion or reconstruction of the grantee's treatment works.

Section 75 of the 1977 Act directs the Administrator to conduct a study of the ICR requirement. This study is not addressed in these regulations. However, during the period of the study, and ending eighteen months after enactment of the statute (June 30, 1979), EPA may not enforce the collection of industrial cost recovery payments. This is known as the "moratorium" period. At the end of the moratorium, if Congress has not acted, the requirement to make payments of industrial cost recovery attributed to this period will come back into force. Any ICR obligations incurred during the moratorium will become immediately due, but payment of these obligations may be paid in a lump sum within one year or spread out over the remaining industrial cost recovery period. PRM 78-6 on this subject was issued February 17, 1978, and published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14722).

This section implements the legislative history of section 24 of this Act which indicates that grantees must continue to develop ICR systems during the moratorium; only ICR payments are suspended.

Section 14 of the 1977 Act, which authorizes funding of individual systems (discussed above), requires payment by commercial users of the Federal share of construction costs. This aspect of the individual system amendment has been included in the ICR regulations.

In implementing these amendments in the interim regulations, we have made the following changes to the regulations promulgated on February 11, 1974.

The definition of industrial cost recovery in § 35.905-6 has been expanded by adding paragraph (b) to include recovery from a commercial user of an individual system.

The definition of industrial user has also been substantially revised to include the following: (a) a user which discharges more than the equivalent of 25,000 gallons per day of domestic sanitary waste; (b) a user which discharges any wastewater containing toxic pollutants or which has any other adverse effect on the treatment works; and (c) a commercial user of an individual system.

The series of sections in § 35.928 have been revised where necessary to incorporate requirements of the 1977 Act such as those relating to system-wide ICR, payments from commercial users of individual systems, and the moratorium. The interim regulations do not provide for the collection of ICR during the moratorium from industrial users, although grantees may collect industrial cost recovery payments from industrial users during the moratorium if they so desire. Neither the moratorium nor the 25,000 gallon per day exemption applies to commercial users of individual systems as defined in § 35.918(a)(3) of the regulations.

The grant condition requiring grantee development of an ICR system, a schedule for compliance with the condition, and sanctions for noncompliance, are found in a new § 35.935-15. The schedule closely tracks the user charge system schedule discussed above. After the effective date of these regulations, payments under the grant being held for noncompliance with the ICR requirements will be released until the end of the moratorium. (This does not authorize release of payments being withheld for other reasons such as lack of an approvable user charge system.) After June 30, 1979, no Step 3 grant will be awarded unless the grantee's ICR system has been approved.

Regulations sections affected by the industrial cost recovery amendments are §§ 35.905-6, 35.905-8, 35.928, 35.928-1, 35.928-2, 35.928-3, 35.928-4, and 35.935-15.

REQUIREMENTS FOR AMERICAN MATERIALS (BUY AMERICAN)

Section 39 of the 1977 Act amended the FWPCA by adding a new section 215 which provides that no grant (interpreted to mean Step 3 grant) for which application is received by the Regional Administrator after February 1, 1978, shall be made unless preference is given to the use of domestic construction materials in the construction of the wastewater treatment works.

Because of the early effective date of the provision, the requirement was implemented initially by a Program Requirements Memorandum, PRM 78-3, which was published in the FEDERAL REGISTER on April 7, 1978, (43 FR 14722). Grants awarded prior to the publication of these interim regulations were specially conditioned to include the Buy American requirements. These regulations contain similar requirements to those in the PRM.

A new paragraph (d) is being added to § 35.936-13 (Specifications) which require that bidding documents and construction contracts for affected projects must include a Buy American provision which requires use of domestic construction material in preference to nondomestic material. (Definitions of these terms are provided.) The regulations also establish those circumstances under which the Agency may waive the provision. Domestic construction material may be given preference if the domestic material is priced no more than 6 percent higher than the bid or offered price of foreign materials. In determining whether to waive the Buy American provision, the Regional Administrator will generally use the "protest" procedures of § 35.939.

Appendix C-2 of Subpart E is also amended by adding a new clause which implements the Buy American provision in construction contracts.

Sections of the regulations affected by this amendment are: §§ 35.936-13(d), 35.938-9(b)(5), 35.939(j)(6)(i), and Appendix C-2 Clause 17.

TRAINING GRANTS

Section 10 of the 1977 Act amends section 109(b) of the FWPCA to increase the flexibility in the expenditure of grant funds for wastewater treatment works operation and maintenance training. It also increases the authorization for such grants from $250,000 to $500,000. Under the provision, the Administrator may exempt such grants from the priority list requirement of section 204(a)(3) of the FWPCA. If the Administrator gives the grants a blanket exemption from the priority requirements of section 204(a)(3), then the grant funds will be removed from competition with the need for construction grant funds and will be available for expenditure without delay.

Changes to the regulations implementing this amendment are made in §§ 35.915(a), 35.920(e), and 35.930-1(b).

COST-EFFECTIVENESS ANALYSIS GUIDELINES AND RESERVE CAPACITY

On February 4, 1977, the Environmental Protection Agency published in the FEDERAL REGISTER proposed guidelines to amend and supplement the Cost-Effectiveness Analysis Guidelines (Appendix A to 40 CFR Part 35 Subpart E). That proposed revision was intended to provide for cost-effective sizes of and sufficient reserve capacity for wastewater treatment works and, at the same time, to avoid overdesign. Coverage included guidance and alternative procedures for forecasting growth of population, for estimating wastewater flows, for determining cost-effective construction staging periods, and for providing extra capacity beyond that determined to be cost-effective.

Most of the commenters on the proposed revision, while agreeing in principle with the proposal, raised questions or suggested modifications that convince the Agency several changes are warranted. Also, additional guidance is required to implement section 16 (Cost-Effectiveness) and section 21 (Reserve Capacity) of the 1977 Act.

Section 16 of the 1977 Act encourages the use of innovative and alternative wastewater treatment technologies by extending grant eligibility to such projects if the life cycle cost does not exceed that of the most cost-effective alternative by more than 15 percent. This provision raises the question as to whether the 15 percent increase should apply to the entire cost of the treatment facility or to only the

innovative or alternative components of the facility. The Agency has considered three options. These are:

1. Use the life cycle cost of the entire proposed waste treatment system as a base for calculating the cost difference;

2. Apply the fifteen percent increase to innovative and alternative components (and other differing portions) as compared with corresponding portions of the least costly non-innovative alternative; or

3. Use, as a base, the entire proposed waste treatment system where the system primarily (more than 50 percent of its cost) involves innovative or alternative technologies. Should innovative or alternative components comprise 50 percent or less of the system cost, the calculation base would be that for Option 2.

Option 3 has been selected because it would preclude funding a high-cost innovative technology process involving only a small portion of the waste treatment system. Under Option 1, for example, an innovative or alternative technology comprising a small share (say less than one-fifth) of the total treatment system cost could be grant eligible even though twice as costly as the least costly technology. Further, Option 3 would simplify the cost comparison through consideration of the total system life cycle costs where the proposed system substantially involves innovative or alternative technologies.

Section 21 requires the Agency, in determining the amount of reserve capacity eligible for a grant, to take into account the projected population presented in a facility plan and determined on the basis of the latest information available from the United States Department of Commerce or from the States as EPA, by regulation, determines appropriate. This provision, as well as several comments indicating that some States and 208 agencies have already completed their population projections, raise the issue of whether the approach involving disaggregation of the Department of Commerce population projections for each State as proposed on February 4, 1977, should be retained. The Agency believes this approach should be retained because, to avoid providing excessive reserve capacity, forecasts of population and economic activities for individual small areas such as facility planning areas or designated 208 areas should be reasonably consistent with State and national projections. At the same time, reasonable departures from the Department of Commerce State projections and their disaggregations to designated 208 areawide planning areas should be allowed where the State or designated 208 agency has already prepared projections. The proposed guidelines permit use of State projections already prepared by the State if the year 2000 State projection does not exceed that of the Department of Commerce projection by more than 5 percent. The Administrator may approve State population projections that exceed the Department of Commerce projections by more than 5 percent if justified by the State. Prior to the Administrator's approval of such a departure, the Regional Administrator must solicit public comment and, if serious issues are raised, hold a public hearing. Where a designated 208 agency has already prepared a population projection for its area, it may be used if the year 2000 population does not exceed that of the disaggregation, based on the Department of Commerce projection, by more than 10 percent.

Section 21 requires the Agency, in approving the amount of reserve capacity for a treatment works, to take into account efforts to reduce the flow of sewage and unnecessary water consumption. Moreover, several comments on the guidelines proposed earlier ask for more guidance for evaluation of flow reduction (water conservation) measures and their implementation. This raises a question of whether flow reduction measures should be evaluated as part of all facility plans. The Agency believes that cities and towns with effective on-going flow reduction programs or with relatively low average daily dry weather flows should be exempt from requirements for evaluating flow reduction measures because:

1. Little could be gained from planning and implementing flow reduction programs in these cases, and

2. Such an exemption would avoid for small communities the administrative burden of planning and implementing a flow reduction program.

The guidelines require a cost-effectiveness evaluation of flow reduction measures such as plastic toilet dams and low flow showerheads; changes in laws, ordinances or plumbing codes requiring installation of water saving devices in future habitations; and water pricing changes. The grantee must develop a recommended flow reduction program featuring a public information program plus measures for which the grantee has implementation authority or can obtain cooperation from an entity with such authority. Exempted from these requirements are those communities with a population less than 10,000 or with average daily base flows, excluding infiltration/inflow and industrial flows, for treatment works design of less than 70 gallons per capita per day or with on-going flow reduction programs.

The Discount (Interest) Rate

The Agency considered raising the discount rate for evaluating proposed wastewater treatment works from that used by the Agency (currently 6⅝ percent) to 10 percent. The former rate is used by the Water Resources Council (WRC) for evaluating the costs and benefits of Water Resources Projects. EPA, as a member agency, adopted this rate in 1973 when it published the Cost-Effectiveness Analysis Guidelines (Appendix A of Construction Grant Regulations), although the Construction Grants Program is not covered by the WRC "Principles and Standards" for evaluating Water Resource Projects. The latter rate (10 percent) is cited in Office of Management and Budget (OMB) circular A-94 for use in agency programs not covered by the WRC "Principles and Standards."

The 10-percent rate is believed to approximate the opportunity cost of capital. The "Opportunity Cost of Capital Concept" has the most theoretical economic justification for cost-effectiveness analysis. This concept suggests the proper discount rate to use for public investment projects should be based on the rate of return to private sector investment (before taxes and adjusted for inflation). This is because resources used for public investment have alternative uses in the production of private commodities which society foregoes for the sake of the public investment.

Use of the 10-percent discount rate would help produce a more economically efficient distribution of construction grant funds. The expected result is that the optimal (cost-effective) staging period (the number of years for which the treatment plant is designed to handle a community's growth in terms of sewerage discharge) will decrease from about 10-20 years to about 9-16 years. These shorter staging periods will result in slightly smaller treatment works and in smaller initial treatment expenditures for each proposed treatment system. This should permit a greater number of treatment systems to be funded.

Raising the discount rate to 10 percent would have the effect of lowering the total present worth cost of facilities with high operation and maintenance costs in comparison with the total present worth cost of capital intensive facilities with low operation and maintenance costs such as land treatment and energy recovery facilities. This would largely offset the 15-percent cost-effectiveness preference given to such measures under the 1977 Act and these guidelines.

These interim guidelines retain the WRC discount rate (currently 6⅝ percent). However, we are comparing the effect of increasing the discount rate to 10 percent for alternative and innovative projects. If the Agency concludes that the considered increase in the discount rate does not counteract the intent to encourage innovative and

alternative technologies, it will propose the increase. Interested persons are invited to comment on the discount rate issue.

DISCUSSION OF MAJOR COMMENTS ON PROPOSED GUIDELINES

Most of the commenters urged that the calculation of grant eligible costs for a project sized above the cost-effective capacity be calculated on an "incremental" rather than "proportional" basis because eligible costs under the latter approach would be less than the cost of the most cost-effective project. The proportional basis proposed earlier requires determination of the grant eligible cost by multiplying the actual costs of construction by the ratio of the capacity and design flow of the cost-effective project to the capacity and design flow of the proposed project. Under the incremental approach, the construction costs equivalent to those of the most cost-effective project would be grant eligible. The Agency agrees that the incremental approach is more equitable and should be adopted. The proposed guidelines allow the eligible portion of the cost of construction of a project with extra capacity to be equivalent to the estimated construction costs of the most cost-effective project.

Some commenters oppose use of substitute cost-effectiveness guidelines prepared by a State and suggest further that such guidelines could completely undermine those proposed by the Agency. The Agency disagrees, but concedes that any State guidelines on cost-effective sizing and staging of treatment works should be as stringent as the Agency guidance. Permitting the use of State guidelines should, in some cases, lead to guidance better fitted to the varying conditions present in the State. Accordingly, the interim guidelines permit the use of substitute State guidelines provided that (1) they are at least as stingent as the Federal guidelines, and (2) a public hearing on State guidance has been held.

OTHER COMMENTS

The Agency has prepared a report comprising a summary of all comments received, the issues raised by the comments, the proposed action on each issue and the rationale for the action. A copy of the report, "Cost-Effectiveness Guidelines—Summary of Comments and Issues," can be obtained by writing to Mr. Michael B. Cook, Chief, Facility Requirements Branch (WH 547), Office of Water Program Operations, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

These regulatory changes are made in Appendix A to Subpart E.

NOTE.—The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis Statement under Executive Order 11821 and OMB Circular A-107

Dated: April 18, 1978.

DOUGLAS M. COSTLE,
Administrator.

40 CFR Part 35 Subpart E is amended as follows:

1. By revising § 35.903(b) to read as follows:

§ 35.903 Summary of construction grants program.

* * * * *

(b) The Regional Administrator may award grant assistance for a step 1, step 2, or step 3 project, or, as authorized by § 35.909, for a project involving a combination of step 2 and step 3 (step 2+3 grant). For a step 1, step 2, or step 3 grant award, a "project" (see § 35.905-16) may consist of an entire step or any segment (see § 35.905-24) of construction within a step. In the case of step 2+3 grant awards, a project must consist of all step 2 and step 3 work; segmenting is not permitted.

* * * * *

2. By revising § 35.905-6 to read as follows:

§ 35.905-6 Industrial cost recovery.

(a) Recovery by the grantee from the industrial users of a treatment works of the grant amount allocable to the treatment of waste from such users under section 204(b) of the Act and this subpart.

(b) Recovery by the grantee from the commercial users of an individual system of the grant amount allocable to the treatment of waste from such users under section 201(h) of the Act and this subpart.

3. By revising § 35.905-8 to read as follows:

§ 35.905-8 Industrial user.

(a) Any nongovernmental user of publicly owned treatment works which discharges more than 25,000 gallons per day of sanitary waste, or a volume of process waste, or combined process and sanitary waste, equivalent to 25,000 gallons per day of sanitary waste. Sanitary wastes are the wastes discharged from the average residential user in the grantee's service area. The strength of the average residential waste discharge in the grantee's service area shall be defined by the grantee with the Regional Administrator's approval in terms of biological oxygen demand (BOD) and suspended solids (SS) per volume of flow, as a minimum, and those concentrations should be applied in determining equivalent volumes of process waste or combined discharges of sanitary and process wastes;

(b) Any nongovernmental user of a publicly owned treatment works which discharges wastewater to the treatment works which contains toxic pollutants or poisonous solids, liquids, or gases in sufficient quantity either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in or have an adverse effect on the waters receiving any discharge from the treatment works;

(c) All commercial users of an individual system constructed with grant assistance under section 201(h) of the Act and this subpart. (See § 35.918(a)(3).)

4. By revising § 35.905-23 to read as follows:

§ 35.905-23 Treatment works.

Any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or industrial wastes of a liquid nature to implement section 201 of the Act, or necessary to recycle or reuse water at the most economical cost over the useful life of the works including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power, and other equipment and their appurtenances; extensions, improvement, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process, or is used for ultimate disposal of residues resulting from such treatment (including land for composting sludge, temporary storage of such compost and land used for the storage of treated wastewater in land treatment systems prior to land application); or any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined storm water and sanitary sewer systems.

5. By revising § 35.905-26 to read as follows:

§ 35.905-26 User charge.

A charge levied on users of a treatment works, or that portion of the ad valorem taxes paid by a user, for the user's proportional share of the cost of operation and maintenance (including replacement) of such works under sections 204(b)(1)(A) and 201(h)(2) of the Act and this subpart.

6. By adding a new § 35.905-28 to read as follows:

§ 35.905-28 Enforceable requirements of the Act.

Those conditions or limitations of a 402 or 404 permit which, if violated,

could result in the issuance of a compliance order or initiation of a civil or criminal action under section 309 of the Act. Where a permit has not been issued, the term shall include any requirement which, in the judgment of the Regional Administrator, would be included in the permit when issued. Where no permit is applicable, the term shall include any requirement which the Regional Administrator determines is necessary to meet applicable criteria for best practicable waste treatment technology (BPWTT).

7. By adding a new § 35.909 to read as follows:

§ 35.909 Step 2+3 grants.

(a) *Authority.* The Regional Administrator may award a step 2+3 grant for the combination of design (step 2) and construction (step 3) of a wastewater treatment works or a grant amendment to a step 2 grant to change it to a step 2+3 grant.

(b) *Limitations.S. Census information or disaggregations thereof); and*

(2) The treatment works has an estimated total step 3 construction cost of $2,000,000 or less, as determined by the Regional Administrator except that for any State that has been found by the Assistant Administrator for Water and Hazardous Materials to have unusally high costs of construction, the Regional Administrator may make step 2+3 awards where the estimated total step 3 construction costs of such treatment works does not exceed $3,000,000.

(3) The subsequent step 3 project for an amendment to a step 2 project is included in the fundable range of the approved project priority list and the project meets the requirements of (1) and (2) above.

(c) Step 2+3 grants are subject to all requirements of this subpart that apply to separate step 2 and step 3 grants except compliance with § 35.920-3(c) is not required prior to grant award; only a single application is to be submitted.

(d) Further implementation of this authorization is contained in § 35.920-3(d) (contents of application), § 35.930-1(a)(4) (types of projects) and § 35.935 (grant conditions).

8. By revising § 35.915 and adding a new § 35.915-1 to read as follows:

§ 35.915 State priority system and project priority list.

Construction grants will be awarded from allotments in accordance with the State priority list, as derived from the approved State priority system.

(a) *State priority system.* The State priority system describes the methodology used to rate and rank projects that are considered eligible for assistance. It also sets forth the administrative, management, and public participation procedures required to develop and revise the State project priority list. A public hearing shall be held prior to submission of the priority system (or revision thereto) by the State. Prior to the hearing, fact sheets describing the proposed system (including rating and ranking criteria) shall be distributed to the public. A summary of State responses to public comment and to any public hearing testimony shall be prepared and included in the priority system submission. The priority system and revisions, if any, must be submitted with the annual State program under Subpart B of this part. The relationship between the State priority list and the water quality management plans shall be set forth in the State priority system, in accordance with regulations governing water quality management planning. The Regional Administrator shall review and approve the State priority system for procedural completeness and ensure that it is designed to obtain compliance with the enforceable requirements of the Act as defined in § 35.905-28 of this part. Grants for training facilities under section 109(b)(1) of the Act and § 35.930-1(b) may be exempted from these requirements by the Regional Administrator.

(1) *Project rating criteria.* (i) In developing project rating criteria the State shall consider:

(A) The severity of the pollution problem;

(B) The existing population affected;

(C) The need for preservation of high quality waters; and

(D) At the State's option, the specific category of need that is addressed.

(ii) The State will have sole authority to determine the priority for each category of need. Categories are mutually exclusive classes of facilities and shall include:

(A) Category I—Secondary treatment;

(B) Category II—More stringent treatment;

(C) Category IIIA—Infiltration/inflow correction;

(D) Category IIIB—Sewer system replacement or major rehabilitation;

(E) Category IVA—New collectors and appurtenances;

(F) Category IVB—New interceptors and appurtenances; and

(G) Category V—Correction of combined sewer overflows.

(iii) Higher priority may be granted to those step 2 and combined step 2+3 projects utilizing processes and techniques meeting the innovative and alternative guidelines in Appendix E of this part.

(iv) Other criteria, consistent with these, may be considered (including the special needs of small and rural communities); however, the State shall not consider any economic development needs of the project area not related to pollution abatement, the geographical region within the State, or future population growth projections.

(2) *Criteria assessment.* The State shall have authority to determine the relative influence of the rating criteria used for assigning project priority. The criteria must be clearly delineated in the approved State priority system and applied consistently to all projects. A project on the priority list shall generally retain its priority rating until an award is made.

(b) *State needs inventory.* The State shall maintain a listing, including costs by category, of all needed treatment works. The most recent needs inventory, prepared in accordance with section 516(b)(1)(B) of the Act, should be used for this purpose. This inventory should be the same as the needs inventory used to fulfill similar requirements for such inventory in the State water quality management planning process. The facility needs in the inventory should generally be ranked in accordance with procedures established in the approved State priority system. The State project priority list shall be consistent with the needs inventory.

(c) *State project priority list.* The State shall prepare and submit annually a priority listing of projects for which Federal assistance is expected during the 5-year planning period starting at the beginning of the next fiscal year. The fundable portion of the list shall include those projects planned for award during the first year of the 5-year period (hereafter called the funding year), and shall not exceed the total funds expected to be available during the year less all applicable reserves provided in § 39.915-1 (a) through (d) of this part. The extended portion of the list shall include all projects outside the fundable portion that may, under anticipated allotment levels, receive funding during the 5-year period. The Administrator shall provide annual guidance to the States outlining the funding assumptions and other criteria useful in developing the 5-year priority list. The State project priority list (both fundable and extended portions) shall be submitted anually and reviewed by the Regional Adminstrator as part of the State program plan under Subpart B of this part.

(1) *Project priority list development.* The development of the project priority list shall be consistent with the rating criteria established in the approved priority system. In addition to other criteria previously mentioned, when ranking projects for the fundable portion of the list, States must also consider the treatment works and step sequence; the allotment deadline; total funds available; and other manage-

ment criteria delineated in the approved State priority system. Priority list development under this section shall give full consideration to the information on municipal requirements contained in certified State and areawide water quality management plans. The Regional Administrator may request that a State provide justification for the rating established for specific project(s).

(2) *Project priority list information.* The project priority list (both fundable and extended portions) shall include, as a minimum, the information for each project that is set out below. Specific guidance on meeting these information requirements, including phase-in procedures for fiscal year 1979 priority planning process, shall be issued by the Administrator.

(i) State assigned EPA project number;

(ii) Legal name and address of applicant;

(iii) Short project name or description;

(iv) Priority rating and rank of each project, based on the approved priority system;

(v) Project step number (step 1, 2, 3, or (2+3));

(vi) Relevant needs authority/facility number(s);

(vii) Parent project number (i.e., EPA project number for predecessor project);

(viii) For step 2, 3, or 2+3 projects, indication of alternative system for small community;

(ix) For step 2, 3, or 2+3 projects, that portion (if any) of eligible cost to apply to alternative techniques;

(x) For step 2, 3, or 2+3 projects, that portion (if any) of eligible cost to apply to innovative processes;

(xi) Date project is expected to be certified by State to EPA for funding;

(xii) For step 3 or 2+3 projects, the total eligible cost subdivided by needs categories;

(xiii) Estimated EPA assistance (not including potential grant increase from the reserve in § 35.915-1(b)); and

(xiv) Enforceable requirement to be satisfied by this project, including (as appropriate) the relevant NPDES number(s).

(d) *Public participation.* Prior to annual submission of the State project priority list to the Regional Administrator, the State shall ensure that adequate public participation (including a public hearing) has taken place as required by Subpart B of this part. Prior to the public hearing, the State shall circulate information concerning the priority list which includes a description of each proposed project and identification of the relationship between the project and the enforceable requirements of the Act that it will satisfy. The information on the proposed priority list under paragraph (c)(2) of this section may be used to fulfill these requirements. This public hearing may be conducted jointly with any regular public meeting of the State agency, provided that adequate and timely statewide notice of the meeting (including publication of the proposed priority list) is given and attendees at the meeting are afforded adequate opportunity to express their views concerning the list. A public hearing is also required with respect to any revision to the priority list (including project bypass and the deletion or addition of projects), unless the State agency and the Regional Administrator make a determination that the revision is not significant. The public participation policy and procedures to determine the significance of any proposed revision to the priority list shall be delineated in the approved State priority system. Circulation for public comment is also required with respect to any significant revision to the priority list.

(e) *Submission and review of project priority list.* The State shall submit the priority list as part of the annual State program plan under Subpart B of this part. A summary of State agency response to public comment and hearing testimony shall be prepared and submitted with the priority list. A priority list will not be considered final by the Regional Administrator until the public participation requirements are met and all information required for each project has been received. The Regional Administrator will review the final priority list within thirty days to ensure compliance with the approved State priority system. No project may be funded until this review is complete.

(f) *Revision of the project priority list.* The State may modify the project priority list at any time during the program planning cycle in accordance with the public participation requirements and the procedures established in the approved State priority system. Any modification (other than clerical) to the priority list must be clearly documented and promptly reported to the Regional Administrator. As a minimum, each State's priority list management procedure must provide for the following conditions:

(1) *Project bypass.* A State may bypass a project on the fundable portion of the list if it determines that the bypassed project will not be ready to proceed during the funding year. Projects that are bypassed shall retain their relative priority rating for consideration in the future year allotments. Projects bypassed will be replaced by the highest ranked priority projects on the extended portion that are ready to proceed during the funding year.

(2) *Additional allotments.* Upon receipt of any additional allotment(s), a State may move projects on the extended portion of the priority list onto the fundable portion without further public participation if: (i) Additional projects are expected to be ready for funding during the funding year; (ii) the projects on the extended portion have met all administrative and public participation requirements outlined in the approved State priority system; and, (iii) the projects moved into the fundable range are the highest priority projects on the extended portion ready to proceed. If sufficient projects meeting these conditions are not available on the extended list, then the State shall follow the procedures outlined in paragraph (e) of this section to add projects to the fundable portion of the priority list.

(3) *Project removal.* A State may remove a project from the priority list only if: (i) The project has been fully funded, (ii) the project is no longer entitled to funding under the approved priority system, (iii) the Regional Administrator has determined that the project does not comply with the enforceable requirements, or (iv) the project is otherwise ineligible under the requirements of the Act.

(g) Regional Administrator review for compliance with enforceable requirements of the Act. (1) Except as otherwise provided in paragraph (g)(2) of this section, the Regional Administrator may propose the removal of a specific project or portion thereof from the State project priority list during or subsequent to the initial review where there is reason to believe that it will not result in compliance with the enforceable requirements of the Act. Before making a final determination, the Regional Administrator will initiate a public hearing on the question of compliance with the enforceable requirements of the Act. Questionable projects shall not be funded during this administrative process. Consideration for grant award for those projects not in question will continue, in accordance with all other requirements of this section.

(i) The procedures for the public notice and conduct of any such hearing shall be established by the Regional Administrator, or, as appropriate, may be adopted from existing agency procedures such as § 6.400 or § 125.32 and § 125.34 of this chapter. The procedures used must conform to minimum Agency guidelines for public hearings under Part 105 of this chapter.

(ii) The Regional Administrator shall transmit a written determination regarding the questioned projects within 30 days after the date of the hearing, to the appropriate State agency. Additional public notice of the determination will be made at the discretion of the Regional Administrator. If the Regional Administrator deter-

mines that the project will not result in compliance with the enforceable requirements of the Act, the State shall remove the project from the priority list and modify the priority list to reflect this action. The determination of the Regional Administrator will constitute the final agency action, unless the State or municipality files a notice of appeal under Part 30 Subpart J of this subchapter.

(2) Twenty-five percent of each allotment may be used by the State for eligible projects or portions thereof in categories IIIB, IVA, IVB, and V (see § 35.915(a)(1)(ii)). For these projects or portions, there generally will be no EPA review under paragraph (g)(1) of this section. The Regional Administrator will, however, review all projects or portions thereof which would use funds beyond the 25 percent level in accordance with the criteria stated in paragraph (g)(1).

(h) *Regional Administrator review for eligibility.* If the Regional Administrator determines that a project on the priority list is not eligible for assistance under this subpart, the State and municipality will be promptly advised and the State will be required to modify its priority list accordingly. Elimination of any project from the priority list shall be final and conclusive unless the State or municipality files a notice of appeal under Part 30 Subpart J of this subchapter.

§ 35.915-1 Reserves related to the project priority list.

In developing the fundable portion of the priority list, the State shall make provision for establishing the several reserves required or allowed under this section. A statement specifying the amount to be set aside for each reserve shall be submitted by the State with the final project priority list.

(a) *Reserve for State management assistance grants.* The State may (but need not) propose that the Regional Administrator set aside from each allotment a reserve not to exceed two percent or $400,000, whichever is greater, for State management assistance grants under Subpart F of this part. Grants may be made from these funds to cover the reasonable costs of administering activities delegated to a State. Funds reserved for this purpose that are not obligated by the end of the allotment period will be added to the amounts last allotted to a State and will be immediately available for obligation to projects in the same manner and to the same extent as the last allotment.

(b) *Reserve for innovative and alternative technology project grant increase.* Each State shall set aside from its annual allotment, a specific percentage for increasing the Federal share of grant awards from 75 percent to 85 percent of the eligible cost of construction (under § 35.908(b)(1)) for construction projects utilizing innovative or alternative wastewater treatment processes and techniques. The amount to be set aside shall be two percent of the State's allotment for fiscal year 1979 and fiscal year 1980, and three percent for fiscal year 1981. Of this amount, not less than one-half of one percent of the State's allotment shall be set aside for increasing the Federal grant share for projects utilizing innovative processes and techniques. Funds reserved under this section may be expended on projects for which facilities plans were initiated prior to fiscal year 1979. These funds are subject to reallotment if not used for this purpose during the allotment period.

(c) *Reserve for grant increases.* Each State shall set aside not less than five percent of the total funds to be obligated during the funding year, for grant increases for projects awarded assistance under § 35.935-11. The funds reserved for this purpose are subject to reallotment if not obligated and should, therefore, be released for funding additional projects before the reallotment deadline if not needed for grant increases.

(d) *Reserve for Step 1 and Step 2 projects.* The State may (but need not) set aside up to ten percent of the total funds available in order to provide grant assistance to Step 1 and Step 2 projects that may be selected for funding subsequent to the final submission of the project priority list. The funds reserved for this purpose are subject to reallotment if not obligated and should, therefore, be released for funding additional projects before the reallotment deadline.

(e) *Reserve for alternative systems for small communities.* Each State with a rural population of 25 percent or more (as determined by population estimates of the Bureau of Census) shall set aside an amount equal to four percent of the State's annual allotment, beginning with the fiscal year 1979 allotment, to be used for funding alternatives to conventional treatment works for small communities. The Regional Administrator may authorize, at the request of the Governor of any non-rural State, a reserve of up to four percent of that State's allotment for alternatives to conventional treatment works for small communities. For the purposes of this paragraph, small communities are defined as municipalities with a population of 3,500 or less, or highly dispersed sections of larger municipalities, as defined by the Regional Administrator. In States where the reserve is mandatory these funds are subject to reallotment if not obligated during the allotment period. In States where the reserve is optional, these funds are subject to reallotment if not obligated and should, therefore, be released for funding projects before the reallotment deadline.

9. By amending § 35.917-1 by revising paragraph (b) in its entirety and by adding a new subparagraph (d)(5)(iv) to read as follows:

§ 35.917-1 Content of facilities plan.

* * * * *

(b) A description of the selected complete waste treatment system(s) of which the proposed treatment works is a part. The description shall cover all elements of the system, from the service area and collection sewers, through treatment, to the ultimate discharge of treated wastewaters and management disposal of sludge. Planning area maps must include major components of existing and proposed treatment works. For individual systems, planning area maps must include those individual systems which are proposed for funding under § 35.918.

* * * * *

(d) * * *

(5) * * *

(iv) Subsurface treatment and disposal

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10. By adding a new subparagraph (a)(4) to § 35.917-2 to read as follows:

§ 35.917-2 State responsibilities.

* * * * *

(a) * * *

(4) Where individual systems are likely to be cost-effective delineate a planning area large enough to take advantage of economies of scale and efficiencies in planning and management.

* * * * *

11. By adding new §§ 35.918 through 35.918-3 to read as follows:

§ 35.918 Individual systems.

(a) For purposes of this section and other references to individual systems, the following definitions apply:

(1) *Individual systems.* Privately owned alternative wastewater treatment works (including dual waterless/graywater systems) serving one or more principal residences or small commercial establishments which are neither connected into nor a part of any conventional treatment works. Normally, these are on-site systems with localized treatment and disposal of wastewater with minimal or no conveyance of untreated wastewater. Limited conveyance of treated or partially treated effluents to further treatment or disposal sites can be a function of individual systems where cost-effective.

(2) *Principal residence.* Normally the voting residence, the habitation of the family or household occuping the space for at least 51 percent of the time annually. Not included in this are second homes, vacation or recreation residences. Commercial establishments with wastewater flow equal to or smaller than one user equivalent (generally 300 gallons per day dry weather flows) are included.

(3) *Small commercial establishments.* Private establishments normally found in small communities such as restaurant, hotels, stores, filling stations, recreational facilities, etc., with dry weather wastewater flows less than 25,000 gallons per day. Private, non-profit entities such as churches, schools, hospitals, charitable organizations, etc., are considered small commercial establishments. Commercial establishments with wastewater flow equal to or smaller than one user equivalent (generally 300 gallons per day dry weather flow) shall be treated as residences.

(4) *Conventional system.* A collection and treatment system consisting of minimum size (six or eight inch) gravity collector sewers normally with manholes, force mains, pumping and lift stations, and interceptors leading to a central treatment plant.

(5) *Alternative wastewater treatment works.* A wastewater conveyance and/or treatment system other than a conventional system. Includes small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.

(b) A public body otherwise eligible for a grant under § 35.920–1, is eligible for a grant to construct privately owned treatment works serving one or more principal residences or small commercial establishments if the requirements of §§ 35.918–1, 35.918–2, and 35.918–3 are met.

(c) All individual systems qualify as alternative systems under § 35.908 and for the 4 percent set aside (§ 35.915–1(e)) where cost effective.

§ 35.918–1 Additional limitations on awards for individual systems.

In addition to those limitations set forth in § 35.925, the grant applicant shall:

(a) Certify that the principal residence or small commercial establishment was constructed prior to December 27, 1977, and inhabited or in use on or before that date;

(b) Demonstrate in the facility plan that the solution chosen is cost-effective and selected in accordance with the cost-effectiveness guidelines for the construction grants program (See Appendix A to this subpart);

(c) Apply on behalf of a number of individual units located in the facility planning area;

(d) Certify that public ownership of such works is not feasible and list the reasons in support of such certification;

(e) Certify that such treatment works will be properly installed, operated and maintained and that the public body will be responsible for such actions;

(f) Certify prior to the Step 2 grant award that the project will be constructed, and an operation and maintenance program established to meet local, State, and Federal requirements including those protecting present or potential underground potable water sources;

(g) Establish a system of user charges and cost recovery in accordance with §§ 35.928, 35.929, 35.935–13, and 35.935–15;

(h) Obtain assurance (such as an easement or other covenant running with the land), prior to the Step 2 grant award, of unlimited access to each individual system at all times for such purposes as inspection, monitoring, construction, maintenance, operation, rehabilitation and replacement. An option will satisfy this requirement provided it is exercisable not later than the initiation of construction;

(i) Establish a comprehensive program for regulation and inspection of individual systems prior to EPA approval of the plans and specifications. Planning for this comprehensive program shall be completed as part of the facility plan. The program shall include as a minimum, periodic testing of water from existing potable water wells in the area. Where a substantial number of on-site systems exist, appropriate additional monitoring of the aquifer(s) shall be provided;

(j) Comply with all other applicable limitations and conditions which publicly-owned treatment works projects funded under this subpart must meet.

§ 35.918–2 Eligible and ineligible costs.

(a) Acquisition of land in which the individual system treatment works are located is not grant eligible.

(b) Only the treatment and treatment residue disposal portions of toilets with composting tanks, oil-flush mechanisms or similar in-house systems are grant eligible.

(c) Commodes, sinks, tubs and drains and other wastewater generating fixtures and associated plumbing are not grant eligible. Modifications to homes or commercial establishments are also excluded from grant eligibility.

(d) Only reasonable costs of construction site restoration to preconstruction conditions are eligible. Costs of improvement or decoration occasioned by the installation of individual systems are not eligible.

(e) Conveyance pipes from wastewater generating fixtures to the treatment unit connection flange or joint are not eligible where the conveyance pipes are located on private property.

§ 35.918–3 Requirements for discharge of effluents.

Best practicable waste treatment criteria published by EPA under section 304(d)(2) of the Act shall be met for disposal of effluent on or into the soil from individual systems. Discharges to surface waters shall meet effluent discharge limitations for publicly-owned treatment works.

12. By revising paragraphs (d) and (e) of § 35.920–3 to read as follows:

§ 35.920–3 Contents of application.

* * * * *

(d) *Step 2+3.* Combination design and construction of a treatment works. Prior to the award of a grant or grant amendment for a Step 2+3 project, the grantee must furnish: (1) each of the items specified in paragraph (b) of this section, and (2) a schedule for submission of plans and specifications, operation and maintenance manual, user charge and industrial cost recovery systems, sewer use ordinance, and a preliminary plan of operation.

(e) *Training facility project.* An application for grant assistance for construction and support of a training facility, facilities or training programs under section 109(b) of the Act shall include (1) a statement concerning the suitability of the treatment works facility, facilities or training programs for training operations and maintenance personnel for treatment works throughout one or more States; (2) a written commitment from the State agency or agencies to carry out at such facility a program of training approved by the Regional Administrator; (3) an engineering report (required only if a facility is to be constructed) including facility design data and, cost estimates for design and construction; (4) a detailed outline of the training programs, which would include, for 1, 3 and 5 year projections, (i) an assessment of need for training, (ii) how the need was determined, (iii) who would be trained, (iv) what curriculum and materials would be used, (v) what type of delivery system will be used to conduct training, (i.e., State vocational education system, State environmental agency, universities or private organizations), (vi) what resources are available for the program, (vii) a budget breakdown on the cost of the program, and (viii) the relationship of the facility or programs to other training programs.

13. By revising § 35.925–13 to read as follows:

§ 35.925–13 Sewage collection system.

That, if the project is for, or includes sewage collection system work, such work (a) is for replacement or major rehabilitation of an existing sewer system under § 35.927–3(a) and is necessary to the total integrity and

performance of the waste treatment works servicing such community, or (b) is for a new sewer system in a community in existence on October 18, 1972, with sufficient existing or planned capacity to adequately treat such collected sewage. Replacement or major rehabilitation of an existing sewer system may be approved only if cost-effective and must result in a sewer system design capacity equivalent only to that of the existing system plus a reasonable amount for future growth. A community, for purposes of this section, would include any area with substantial human habitation on October 18, 1972, as determined through evaluation of each tract (city blocks or parcels of five acres or less where city blocks do not exist). No award may be made for a new sewer system in a community in existence on October 18, 1972, unless the Regional Administrator further determines that:

(a) The bulk (generally two-thirds) of the expected flow (flow from existing plus projected future habitations) from the collection system will be for wastewaters originating from the community (habitations) in existence on October 18, 1972;

(b) The collection system is cost-effective;

(c) The population density of the area to be served has been considered in determining the cost-effectiveness of the proposed project;

(d) The collection systems conforms with approved 208 plans, other environmental laws in accordance with § 35.925-14, Executive Orders on Wetlands and Floodplains and Agency policy on wetlands and agricultural lands; and

(e) The system would not afford capacity to new habitations or other establishments to be located on environmetally sensitive land such as wetlands, floodplains or prime agricultural lands.

14. By adding a new § 35.925-21 to read as follows:

§ 35.925-21 Storm sewers.

That the allowable project costs do not include costs of treatment works for control of pollutant discharges from a separate storm sewer system (as defined in § 35.905-22).

15. By revising §§ 35.928, 35.928-1 and 35.928-2, and by adding new §§ 35.928-3 and 35.928-4 to read as follows:

§ 35.928 Requirements for an industrial cost recovery system.

(a) A system for industrial cost recovery shall be approved by the Regional Administrator and shall be implemented by the grantee in accordance with § 35.935-15 and the requirements in §§ 35.928-1 through 35.928-4.

(b) Grantees who have obtained approval of their industrial cost recovery systems prior to (insert effective date of this regulation) may amend their systems to reflect the definition of industrial users in § 35.905-8 or to provide for system wide industrial cost recovery under § 35.928-1(g).

§ 35.928-1 Approval of the industrial cost recovery system.

The Regional Administrator may approve an industrial cost recovery system if it meets the following requirements:

(a) *General.* Each industrial user of the treatment works shall pay an annual amount equal to its share of the total amount of the Step 1, 2, and 3 grants and any grant amendments awarded under this subpart, divided by the recovery period. An industrial user's share shall be based on all factors which significantly influence the cost of the treatment works. Volume of flow shall be considered in determining an industrial user's share in all industrial cost recovery systems; other factors such as strength, volume, and delivery flow rate characteristics shall be included to insure a proportional distribution of the grant assistance allocable to industrial use to all industrial users of the treatment works.

(b) *Industrial cost recovery period.* The industrial cost recovery period shall be equal to 30 years or to the useful life of the treatment works, whichever is less.

(c) *Frequency of payment.* Except as provided in § 35.928-3; payment shall be made by each industrial user no less often than annually. The first payment by an industrial user shall be made not later than one year after the user begins use of the treatment works.

(d) *Reserve capacity.* If an industrial user enters into an agreement with the grantee to reserve a certain capacity in the treatment works, the industrial cost recovery payments of the user shall be based on the total reserved capacity in relation to the design capacity of the treatment works. If the discharge of an industrial user exceeds the reserved capacity in volume, strength or delivery flow rate characteristics the user's industrial cost recovery payment shall be increased to reflect the actual use. If there is no agreement between the industrial user and the grantee regarding reserve capacity, and there is a substantial change in the strength, volume, or delivery flow rate characteristics of an industrial user's discharge, such user's share shall be adjusted proportionately.

(e) *Upgrading and expansion.* (1) If there is an upgrading of the treatment works, each existing industrial user's share shall be adjusted proportionately.

(2) If there is an expansion of the treatment works, each industrial user's share shall be adjusted proportionately, except that a user with reserved capacity under paragraph (d) of this section shall incur no additional industrial cost recovery charges unless the user's actual use exceeded its reserved capacity.

(g) *Systemwide industrial cost recovery.* The industrial cost recovery system may be developed on a systemwide or on a project-by-project basis. If the cost recovery system is system wide, the total industrial cost recovery payments of all industrial users shall not exceed the total payments which would be paid if the industrial cost recovery system applied only to a particular treatment works.

(h) Adoption of system. The industrial cost recovery system must be incorporated in one or more municipal legislative enactments or other appropriate authority. If the project is a regional treatment works accepting wastewaters from other municipalities, the subscribers receiving waste treatment services from the grantee shall have adopted industrial cost recovery systems in accordance with section 204(b)(1)(B) of the Act and these regulations. Such industrial cost recovery systems shall also be incorporated in the appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing waste to the system.

(i) *Inconsistent agreements.* The industrial cost recovery system shall disregard any terms or conditions of agreements or contracts between the grantee and industrial users which address the reservation of capacity in the grantee's treatment works or the charges to be collected by the grantee in providing wastewater treatment services or reserving such capacity and which are inconsistent with the requirements of section 204(b)(1)(B) of the Act and these industrial cost recovery regulations.

§ 35.928-2 Use of industrial cost recovery payments.

(a) The grantee shall use industrial cost recovery payments received from industrial users as follows:

(1) Fifty percent of the amounts received from industrial users, together with any interest earned thereon, shall be returned to the U.S. Treasury annually.

(2) The grantee shall retain fifty percent of the amount recovered from industrial users.

(i) A minimum of 80 percent of the amounts retained by the grantee, together with any interest earned thereon, shall be used for the allowable costs (see § 35.940) of any expansion, upgrading or reconstruction of treatment works necessary to meet the requirements of the Act. The grantee shall obtain the written approval of the Regional Adminstrator prior to

the commitment of the amounts retained for expansion, upgrading or reconstruction, or for use as provided in paragraph (a)(2)(iii) of this section.

(ii) The remainder of the amounts retained by the grantee may be used as the grantee sees fit, except that they may not be used for construction of industrial pretreatment facilities or rebates to industrial users for costs incurred in complying with user charge or industrial cost recovery requirements.

(iii) A portion of the amounts retained by the grantee may be used to pay the incremental costs of administration of the industrial cost recovery system. The incremental costs of administration are those costs remaining after allocating all costs reasonably attributable to the administration of the user charge system to that system, and the incremental costs shall be segregated from all other administration costs of the grantee. Any amounts used for the incremental costs of administration shall be first drawn from amounts available under paragraph (a)(2)(ii) of this section. To the extent that the incremental costs of administration exceed the amounts in paragraph (a)(2)(ii), those costs may be paid from amounts retained under paragraph (a)(2)(i) of this section.

(b) Pending the use of industrial cost recovery payments, as described in paragraph (a) of this section, the grantee shall:

(1) Invest the amounts received in obligations of the U.S. Government or in obligations guaranteed as to principal and interest by the U.S. Government or any agency thereof; or

(2) Deposit the amounts received in accounts fully collateralized by obligations of the U.S. Government or any agency thereof.

§ 35.928-3 Implementation of the industrial cost recovery system.

(a) Upon approval of a grantee's industrial cost recovery system, implementation of the approved system shall become a condition of the grant and the grantee shall be subject to the non-compliance provisions of § 35.965 of this subpart.

(b) The grantee shall maintain such records as are necessary to document compliance with these regulations.

(c) Federal guidelines for industrial cost recovery systems (MCD-45) containing illustrative examples of acceptable systems may be obtained from: General Services Administration (8FFS), Centralized Mailing List Services, Building 4, Denver Federal Center, Denver, Colo. 80225.

§ 35.928-4 Moratorium on industrial cost recovery payments.

(a) EPA shall not require the payment of industrial cost recovery by industrial users defined in § 35.905-8(a) and (b) which are incurred for the period between January 1, 1978, and June 30, 1979. Any industrial cost recovery charges incurred for ICR accounting periods or portions of such periods ending before January 1, 1978, shall be paid by industrial users and used as described in § 35.928-2.

(b) Grantees may either defer industrial cost recovery payments, or require industrial users as defined in § 35.905-8(a) and (b) to pay industrial cost recovery payments for the period between January 1, 1978, and June 30, 1979. If grantees require payment, the amount to be returned to the U.S. Treasury under § 35.928-2(a)(1) shall be invested as required under § 35.928-2(b) until EPA advises how such sums shall be distributed. Grantees shall implement or continue operating apaproved ICR systems and maintain their activities of monitoring flows, calculating payments due, and submitting bills to industrial users informing them of their current or deferred obligation.

(c) Industrial cost recovery payments of industrial users as defined in § 35.905-8 (a) and (b) served by grantees who defer payment during the 18-month period ending June 30, 1979, shall be paid by the industrial users either in a lump sum by June 30, 1980, or in equal annual installments prorated from July 1, 1979, over the remaining cost recovery period.

16. By adding new §§ 35.929, 35.929-1, 35.929-2, and 35.929-3 to read as follows:

§ 35.929 Requirements for user charge system.

The user charge system shall be approved by the Regional Administrator and shall be implemented and maintained by the grantee in accordance with § 35.935-13 and the requirements in §§ 35.929-1 through 35.929-3.

§ 35.929-1 Approval of the user charge system.

The Regional Administrator may approve a user charge system based upon either actual use in accordance with the requirements in paragraph (a) of this section or ad valorem taxes in accordance with the requirements in paragraph (b) of this section, provided the general requirements in §§ 35.929-2 and 35.929-3 are also satisfied.

(a) *User charge system based on actual use.* A grantee's user charge system based on actual use (or estimates of use of wastewater treatment services) may be approved if it meets the following requirements:

(1) The user charge system must result in the distribution of the cost of operation and maintenance (including replacement) of treatment works within the grantee's service area to each user (or user class) in proportion to such user's contribution to the total wastewater loading by all users (or user classes) of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to ensure a proportional distribution of operation and maintenance costs to each user (or user class).

(2) The grantee may require nonresidential users to pay, as a minimum, the same rate per volume of wastewater as that paid by residential users.

(b) *User charge system based on ad valorem taxes.* A grantee's user charge system (or the user charge system of a subscriber, e.g., a constituent community receiving waste treatment services from the grantee) which is based on ad valorem taxes may be approved if it meets the requirements of paragraph (b)(1) through (b)(7) of this section. If the Regional Administrator determines that the grantee did not have a dedicated ad valorem tax system on December 27, 1977, which meets the requirements of paragraphs (b)(1) through (b)(3) of this section, the grantee shall develop a user charge system based on actual use under § 35.929-1(a).

(1) The grantee (or subscriber) had in existence on December 27, 1977, a system of ad valorem taxes which collected revenues to pay the cost of operation and maintenance of wastewater treatment works within the grantee's service area and the grantee (or subscriber) has continued to use that system.

(2) The grantee (or subscriber) has not previously obtained approval of a user charge system based on actual use.

(3) The system of ad valorem taxes in existence on December 27, 1977, was a dedicated ad valorem tax system.

(i) A system of a grantee will be deemed to be dedicated if the Regional Administrator determines that the system meets all of the following criteria:

(A) The ad valorem tax system provided for a separate tax rate or for the allocation of a portion of the taxes collected for payment of the costs of wastewater treatment services of the grantee;

(B) The budgeting and accounting procedures of the grantee assured that a specified portion of the tax funds would be used for the payment of the costs of operation and maintenance.

(C) The ad valorem tax system collected tax funds for the costs of wastewater treatment services which could not be, or historically were not, used for other purposes; and

(D) The authority responsible for the operation and maintenance of the treatment works established the budget for the costs of operation and maintenance and used those specified

amounts solely to pay the costs of operation and maintenance.

(ii) A subscriber's system based on ad valorem taxes will be deemed to be dedicated if a contractual agreement or a charter established under State law existed on December 27, 1977, which required the subscriber to pay its share of the cost of wastewater treatment services.

(4) A user charge system funded by dedicated ad valorem taxes shall establish, as a minimum, the classes of users listed below:

(i) Residential users, including single-family and multi-family dwellings and small non-residential users, including non-residential commercial and industrial users which introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment works;

(ii) Industrial and large commercial users, including industrial users defined in § 35.905-8(a) and (b); and

(iii) Users which pay no ad valorem taxes or receive substantial credits in paying such taxes, such as tax exempt institutions, but excluding publicly-owned facilities performing local governmental functions (e.g., city office building, police station, school) which discharge solely domestic wastes.

(5) The grantee must be prepared to demonstrate for the approval of the Regional Administrator that its system of evaluating the volume, strength and characteristics of the discharges from users or categories of users classified within the sub-class of small non-residential users is sufficient to assure that such users or the average users in such categories do not discharge either toxic pollutants or more than the equivalent of 25,000 gallons per day of domestic wastewater.

(6) The ad valorem user charge system shall distribute the operation and maintenance costs for all treatment works in the grantee's jurisdiction to the residential and small non-residential user class, in proportion to the use of the treatment works by this class. The proportional allocation of costs for this user class shall take into account the total wastewater loading of the treatment works, the constituent elements of the wastes from this user class, and other appropriate factors. The grantee may assess one ad valorem tax rate to this entire class of users or, if permitted under State law, the grantee may assess different ad valorem tax rates for the subclass of residential users and the subclass of small non-residential users provided the operation and maintenance costs are distributed proportionally between these subclasses.

(7) Each member of the industrial and large commercial user class described under paragraph (b)(4)(ii) of this section and of the user class which pays no ad valorem taxes or receives substantial credits in paying such taxes described under paragraph (b)(4)(iii) of this section shall pay its share of the costs of operation and maintenance of the treatment works based upon charges for actual use (in accordance with § 35.929-1(a)(1), and (a)(2) if applicable). The grantee may use its ad valorem tax system to collect, in whole or in part, those charges from members of the industrial and large commercial class where the following conditions are met:

(i) a portion of all or the ad valorem tax rate assessed to members of this class has been specifically designated to pay the costs of operation and maintenance of the treatment works, and that designated rate is uniformly applied to all members of this class;

(ii) a system of surcharges and rebates is employed to adjust the revenues from the ad valorem taxs collected from each user of this class in accordance with the rate designated under paragraph (b)(7)(i) of this section, such that each member of the class pays a total charge for its share of the costs of operation and maintenance based upon actual use.

§ 35.929-2 General requirements for all user charge systems.

User charge systems based on actual use under § 35.929-1(a) or ad valorem taxes under § 35.929-1(b) shall also meet the following requirements:

(a) *Initial basis for operation and maintenance charges.* For the first year of operation, operation and maintenance charges shall be based upon past experience for existing treatment works or some other method that can be demonstrated to be appropriate to the level and type of services provided.

(b) *Annual review of operation and maintenance charges.* The grantee shall review annually the wastewater contribution of users and user classes, the total costs of operation and maintenance of the treatment works, and its approved user charge system, and annually revise the charges for users or user classes to accomplish the following:

(1) Maintain the proportional distribution of operation and maintenance costs among users and user classes as required herein;

(2) Generate sufficient revenue to pay the total operation and maintenance costs necessary to the proper operation and maintenance (including replacement) of the treatment works; and

(3) Apply excess revenues collected from a class of users to the costs of operation and maintenance attributable to that class for the next year and adjust the rate accordingly.

(c) *Toxic pollutants.* The user charge system shall provide that each user which discharges any toxic pollutants which cause an increase in the cost of managing the effluent or the sludge of the grantee's treatment works shall pay for such increased costs.

(d) *Charges for operation and maintenance for extraneous flows.* The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users (i.e., infiltration/inflow) be distributed among all users of the grantee's treatment works system based upon either of the following:

(1) In the same manner that it distributes the costs of operation and maintenance among users (or user classes) for their actual use, or

(2) Under a system which uses one or any combination of the following factors on a reasonable basis:

(i) Flow volume of the users;

(ii) Land area of the user;

(iii) Number of hookups or discharges to the users;

(iv) Property valuation of the users, if the grantee has a user charge system based on ad valorem taxes approved under § 35.929-1(b).

(e) *Adoption of system.* The user charge system must be incorporated in one or more municipal legislative enactments or other appropriate authority. If the project is a regional treatment works or part of a regional system accepting wastewaters from other municipalities, the subscribers receiving waste treatment services from the grantee shall have adopted user charge systems in accordance with section 204(b)(1)(A) of the Act and §§ 35.929 through 35.929-3. Such user charge systems shall also be incorporated in the appropriate municipal legislative enactments or other appropriate authority of all municipalities contributing waste to the system.

(f) *Notification.* Each user charge system must provide that each user be notified, at least annually, with a regular bill, of the rate and that portion of the user charges or ad valorem taxes which are attributable to wastewater treatment services.

(g) *Inconsistent agreements.* The user charge system shall disregard any terms or conditions of agreements or contracts between the grantee and users (including industrial users, special districts, other municipalities, or Federal agencies or installations) which address the reservation of capacity in the grantee's treatment works or the charges to be collected by the grantee in providing wastewater treatment services and which are inconsistent with the requirements of section 204(b)(1)(A) of the Act and §§ 35.929 through 35.929-3.

§ 35.929-3 Implementation of the user charge system.

(a) Upon approval of a grantee's user charge system, implementation of the approved system shall become a condi-

tion of the grant and the grantee shall be subject to the noncompliance provisions of § 35.965 of this subpart.

(b) The grantee shall maintain such records as are necessary to document compliance with these regulations.

(c) Guidelines containing illustrative examples of acceptable user charge systems are contained in Appendix B to this subpart.

(d) The Regional Administrator may review, no more often than annually, a grantee's user charge system to assure that it continues to meet the requirements of §§ 35.929-1 through 35.929-3.

17. By amending § 35.930-1 by revising subparagraph (a)(4), by deleting subparagraph (a)(5), and by revising paragraph (b) to read as follows:

§ 35.930-1 Types of projects.

(a) * * *

(4) *Step 2+3.* A combination of design (step 2) and construction (step 3) for a treatment works as provided under § 35.909 after submission of the items required under § 35.920-3(d).

(b) The Regional Administrator may award Federal assistance by a grant or grant amendment from any allotment or reallotment available to a State under § 35.910 for payment of 100 percent of any cost of construction of treatment works required to train and upgrade waste treatment works operations and maintenance personnel and for the costs of other operator training programs, which are limited to mobile training units, classroom rental, specialized instructors, and instructional material, pursuant to section 109(b) of the Act.

(1) Where a grant is made to serve two or more States, the Administrator is authorized to make an additional grant for a supplemental facility in each State. The Federal funds available under section 109(b) to any State for all training facilities or programs shall not exceed $500,000.

(2) Any grantee who received a grant under section 109(b) prior to enactment of the Clean Water Act of 1977 shall be eligible to have the grant increased by funds made available under the Act, not to exceed 100 percent of eligible costs.

18. By adding a new § 35.935-4 to read as follows:

§ 35.935-4 Step 2+3 grants.

A grantee which has received a step 2+3 grant must make submittals required by § 35.920-3(c) together with approvable user charge and industrial cost recovery systems and a preliminary plan of operation and receive written approval by the Regional Administrator of these submittals prior to advertising for bids on the step 3 construction portion of the step 2+3 grant. The cost of step 3 work initiated prior to such approval is not allowable. Failure to make the above submittals as required may result in suspension or termination of grant under § 36.965.

19. By revising § 35.935-9 to read as follows:

§ 35.935-9 Project completions.

The grantee agrees to initiate and complete the project or cause it to be designed, constructed, and completed expeditiously in accordance with the grant agreement and application approved by the Regional Administrator. The Regional Administrator must terminate the grant if initiation of construction for a step 3 project has not occurred within 1 year of award of a step 3 grant or approval of plans and specifications for step 2+3 grant. The Regional Administrator may defer termination for not more than 6 additional months if he determines that there is good cause for the delay in initiation of project construction.

20. By revising § 35.935-13 to read as follows:

§ 35.935-13 Submission and approval of user charge systems.

The grantee shall obtain the approval of the Regional Administrator of its system of user charges. (See also §§ 35.929 through 35.929-3.)

(a) *Step 3 grants awarded under regulations promulgated on February 11, 1974.* (1) Except as provided in paragraph (a)(2) of this section, the grantee must obtain the approval of the Regional Administrator of its system of user charges based on actual use which complies with § 35.929-1(a). The Regional Administrator shall not pay more than 50 percent of the Federal share of any step 3 project unless the grantee has submitted adequate evidence of timely development of its system of user charges nor more than 80 percent of the Federal share unless the Regional Administrator has approved the system.

(2) A grantee which desires approval of a user charge system based on ad valorem taxes in accordance with § 35.929-1(b) shall submit evidence of compliance of its system with the criteria in § 35.929-1 (b)(1) through (b)(3) to the Regional Administrator by (90 days after the effective date of this interim regulation). The Regional Administrator shall advise the grantee if the system complies with § 35.929-1(b)(1) as soon as possible. The determination of the Regional Administrator may be appealed in accordance with Subpart J, "Disputes," of Part 30 of this subchapter.

(i) *Grantees whose ad valorem tax systems meet the criteria of § 35.929-1 (b)(1) through (b)(3).* Any step 3 payments being held by the Regional Administrator at 50 percent or 80 percent for failure to comply with the requirement for development of a user charge system shall be released. However, the grantee shall obtain approval of its user charge system by June 30, 1979, or no further payments will be made until the system is approved and the grants may be terminated or annulled.

(ii) *Grantees whose ad valorem tax systems do not meet the criteria of § 35.929-1 (b)(1) through (b)(3).* Step 3 grants will continue to be administered in accordance with paragraph (a)(1) of this section.

(b) *Step 3 grants awarded on or after (insert effective date of this regulation) but before July 1, 1979.* The grantee must obtain approval of its user charge system before July 1, 1979. The Regional Administrator shall not make any payments on these grants, may terminate or annul these grants, and shall not award any new step 3 grants to the same grantee after June 30, 1979, if the user charge system has not been approved. The grantee's user charge or ad valorem tax rates and the ordinance required under § 35.929-2(e) shall be approved by the Regional Administrator and enacted by the grantee before the treatment works constructed with the grant is placed into operation.

(c) *Step 3 grants awarded after June 30, 1979.* The user charge system must be approved by the Regional Administrator prior to grant award. The grantee's user charge or ad valorem tax rates and the ordinance required under § 35.929-2(e) shall be approved by the Regional Administrator and enacted by the grantee before the treatment works constructed with the grant is placed into operation.

21. By adding a new § 35.935-15 to read as follows:

§ 35.935-15 Submission and approval of industrial cost recovery.

The grantee shall obtain the approval of the Regional Administrator of its system of industrial cost recovery. (See also §§ 35.928 through 35.928-4.)

(a) *Step 3 grants awarded under regulations promulgated on February 11, 1974.* (1) The grantee must obtain the approval of the Regional Administrator for the system of industrial cost recovery (see § 35.928). The Regional Administrator shall not pay more than 50 percent of the Federal share of any step 3 project unless the grantee has submitted adequate evidence of timely development of its system of industrial cost recovery nor more than 80 percent of the Federal share unless the Regional Administrator has approved the system.

(2) Payments of grantees held under paragraph (a)(1) of this section shall be released after April 25, 1978. However, the grantee shall obtain approval of its industrial cost recovery system by June 30, 1979, or no further payments will be made until the system is approved.

(b) *Step 3 grants awarded on or after April 25, 1978, but before July 1, 1979.*

The grantee must obtain approval of its industrial cost recovery system before July 1, 1979. The Regional Administrator shall not make any payments on these grants and shall not award any new step 3 grants to the same grantee after June 30, 1979, if the industrial cost recovery system has not been approved. However, the grantee's industrial cost recovery system rates and the ordinance required under § 35.928-1(h) shall be approved by the Regional Administrator and enacted by the grantee before the treatment works constructed with the grant is placed in operation.

(c) *Step 3 grants awarded after June 30, 1979.* The industrial cost recovery system must be approved by the Regional Administrator prior to grant award. The grantee's industrial cost recovery system rates and the ordinance required under § 35.928-1(h) shall be approved by the Regional Administrator and enacted by the grantee before the treatment works constructed with the grant is placed in operation.

22. By adding a new paragraph (d) to § 35.936-13 to read as follows:

§ 35.936-13 Specifications.

* * * * *

(d) *Buy American.*—(1) *Definitions.* As used in this subpart, the following definitions apply:

(i) "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work.

(ii) "Component" means any article, material, or supply directly incorporated in construction material.

(iii) "Domestic construction material" means an unmanufactured construction material which has been mined or produced in the United States, or a manufactured construction material which has been manufactured in the United States if the cost of its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(iv) "Nondomestic construction material" means a construction material other than a domestic construction material.

(2) *Domestic Preference.* Domestic construction material may be used in preference to nondomestic materials if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic materials including all costs of delivery to the construction site, including any applicable duty, whether or not assessed. Computations will normally be based on costs on the date of opening of bids or proposals.

(3) *Waiver.* The Regional Administrator may waive the Buy American provision based upon those factors that he deems relevant, including:

(i) Such use is not in the public interest;

(ii) The cost is unreasonable;

(iii) The available resources of the Agency are not sufficient to implement the provision, subject to the concurrence of the Deputy Administrator;

(iv) The articles, materials or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(v) Application of this provision is contrary to multilateral government procurement agreements, subject to the concurrence of the Deputy Administrator.

(4) *Contract provision.* Notwithstanding any other provision of this subpart, bidding documents and construction contracts for any step 3 project for which application is received by the Regional Administrator after February 1, 1978, shall contain the "Buy American" provision which requires use of domestic construction materials in preference to nondomestic construction materials.

(5) *Substitution.* If a nondomestic construction material or component is proposed for use, a bidder, contractor, subcontractor, or vendor may substitute a domestic material or component, to the extent necessary to comply with this subsection.

(6) *Procedures.* The Regional Administrator may utilize the appropriate procedures of § 35.939 in making the determinations in respect to this subsection and he shall generally observe the Buy American procedures, regulations, precedents, and requirements of other Federal departments and agencies.

23. By adding a new subparagraph (b)(5) to § 35.938-9 to read as follows:

§ 35.938-9 Subcontracts under construction contacts.

* * * * *

(b) * * *

(5) Applicable specification requirements of § 35.936-13.

* * * * *

24. By revising § 35.939(j)(6)(i) to read as follows:

§ 35.939 Protests.

* * * * *

(j) * * *

(6) * * *

(i) Specification requirements of § 35.936-13.

* * * * *

25. By revising § 35.940-3 to read as follows:

§ 35.940-3 Costs allowable, if approved.

Certain direct costs are sometimes necessary for the construction of a treatment works and are allowable if reasonable and approved by the Regional Administrator in the grant agreement or a grant amendment. Such costs include, but are not limited to:

(a) Land acquired after October 17, 1972, that will be an integral part of the treatment process, or that will be used for ultimate disposal of residues resulting from such treatment (for example, land for spray irrigation of sewage effluent).

(b) Land acquired after December 26, 1977, that will be used for storage of treated wastewater in land treatment systems prior to land application.

(c) Land acquired after December 26, 1977, that will be used for the purpose of composting or temporary storage of compost residues resulting from wastewater treatment provided that EPA has approved a program for use of the compost.

(d) Acquisition of an operable portion of a treatment works.

(e) Rate determination studies required under § 35.925-11.

26. By revising Appendix A to Subpart E to read as follows:

APPENDIX A—COST-EFFECTIVENESS ANALYSIS GUIDELINES

1. *Purpose.* These guidelines represent Agency policies and procedures for determining the most cost-effective waste treatment management system or component part thereof.

2. *Authority.* The guidelines contained herein are provided pursuant to section 212(2)(C) of the Federal Water Pollution Control Act, as amended.

3. *Applicability.* These interim guidelines, except as noted otherwise herein, shall be effective and apply to all facility plans prepared under Step 1 grants awarded after (insert 60 days after publication). The guidelines shall be effective (insert 60 days after publication) for State or locally financed facility plans which form the basis for subsequent step 2 or 3 Federal grant assistance.

4. *Definitions.* Definitions of terms used in these guidelines are as follows:

a. *Waste treatment management system.* A system used to restore the integrity of the Nation's waters. "Waste treatment management system" is used synonymously with "complete waste treatment system" as defined in § 35.905-3 of this subpart.

b. *Cost-effectiveness analysis.* An analysis performed to determine which waste treatment management system or component part thereof will result in the minimum total resources costs over time to meet the Federal, State, or local requirements.

c. *Planning period.* The period over which a waste treatment management system is evaluated for cost-effectiveness. The planning period commences with the initial operation of the system.

d. *Service life.* The period of time during which a component of a waste treatment management system will be capable of performing a function.

e. *Useful life.* The period of time during which a component of a waste treatment management system will be required to perform a function which is necessary to the system's operation.

f. *Disaggregation.* The result of breaking down a sum total of population or economic activity for a State or other jurisdiction (i.e., designated 208 area or SMSA) into portions, each representing a smaller area or jurisdiction.

5. *Identification, selection, and screening of alternatives.*—a. *Identification of alternatives.* All feasible alternative waste management systems shall be initially identified. These alternatives should include systems discharging to receiving waters, systems using land or subsurface disposal techniques, systems including revenue generating facilities, and systems employing the reuse of wastewater and recycling of pollutants. In identifying alternatives, the possibility of staged development of the system shall be considered.

b. *Screening of alternatives.* The identified alternatives shall be systematically screened to define those capable of meeting the applicable Federal, State and local criteria.

c. *Selection of alternatives.* The identified alternatives shall be initially analyzed to determine which systems have cost-effective potential and which should be fully evaluated according to the cost-effective analysis procedures established in these guidelines.

d. *Extent of effort.* The extent of effort and the level of sophistication used in the cost-effective analysis should reflect the size and importance of the project.

6. *Cost-effective analysis procedures.*—a. *Method of analysis.* The resources costs shall be evaluated through the use of opportunity costs. For those resources that can be expressed in monetary terms, the interest (discount) rate established in section 6e will be used. Monetary costs shall be calculated in terms of present worth values or equivalent annual values over the planning period as defined in section 6b. Nonmonetary factors (e.g., social and environmental) shall be accounted for descriptively in the analysis in order to determine their significance and impact. Nonmonetary factors include primary and secondary environmental effects, implementation capability, use and recovery of energy and scarce resources, recycling of nutrients, operability, performance reliability and flexibility. The most cost-effective alternative shall be the waste treatment management system determined from the analysis to have the lowest present worth and/or equivalent annual value without overriding nonmonetary costs and to realize at least identical minimum benefits in terms of applicable effluent limitations.

b. *Planning period.* The planning period for the cost-effective analysis shall be 20 years.

c. *Elements of costs.* The cost to be considered shall include the total value of the resources attributable to the waste treatment management system or to one of its component parts. To determine these values, all monies necessary for capital construction costs and operation and maintenance costs shall be identified.

(1) Capital construction costs used in a cost-effective analysis shall include all contractors' costs of construction including overhead and profit; costs of land, relocation, and right-of-way and easement acquisition; costs of design engineering, field exploration and engineering services during construction; costs of administrative and legal services including costs of bond sales; startup costs such as operator training; and interest during construction. Contingency allowances consistent with the level of precision and detail of the cost estimates shall be included.

(2) Annual costs for operation and maintenance (including routine replacement of equipment and equipment parts) shall be included in the cost-effective analysis. These costs shall be adequate to ensure effective and dependable operation during the planning period for the system. Annual costs shall be divided between fixed annual costs and costs which would be dependent on the annual quantity of wastewater collected and treated.

d. *Prices.* The various components of costs shall be calculated on the basis of market prices prevailing at the time of the cost-effective analysis. Inflation of wages and prices shall not be considered in the analysis. The implied assumption is that all prices involved will tend to change over time by approximately the same percentage. Thus, the results of the cost-effective analysis will not be affected by changes in the general level of prics.

e. *Interest (discount) rate.* The rate established annually by the Water Resources Council for evaluation of water resource projects shall be used.

f. *Interest during construction.* (1) In cases where capital expenditures can be expected to be fairly uniform during the construction period, interest during construction may be calculated at $I \times \frac{1}{2}P \times C$ where:

I=the interest (discount rate in section 6e)
P=the construction period in years
C=the total capital expenditures

(2) In cases where expenditures will not be uniform, or when the construction period will be greater than 4 years, interest during construction shall be calculated on a year-by-year basis.

g. *Service life.* (1) The service life of treatment works for a cost-effective analysis shall be as follows:

Land—Permanent.
Wastewater conveyance structures (includes collection systems, outfall pipes, interceptors, force mains, tunnels, etc.)—50 years.
Other structures (includes plant buildings, concrete process tankage, basins, lift stations structures, etc.)—30-50 years.
Process equipment—15-20 years.
Auxiliary equipment—10-15 years.

(2) Other service life periods will be acceptable when sufficient justification can be provided. Where a system or a component is for interim service and the anticipated useful life is less than the service life, the useful life shall be substituted for the service life of the facility in the analysis.

h. *Salvage value.* (1) Land for treatment works, including land used as part of the treatment process or for ultimate disposal of residues, shall be assumed to have a salvage value at the end of the planning period equal to its prevailing market value at the time of the analysis. Right-of-way easements shall be considered to have a salvage value not greater than the prevailing market value at the time of the analysis.

(2) Structures will be assumed to have a salvage value if there is a use for such structures at the end of the planning period. In this case, salvage value shall be estimated using straightline depreciation during the service life of the treatment works.

(3) For phased additions of process equipment and auxiliary equipment, salvage value at the end of the planning period may be estimated under the same conditions and on the same basis as described above for structures.

(4) When the anticipated useful life of a facility is less than 20 years (for analysis of interim facilities), salvage value can be claimed for equipment where it can be clearly demonstrated that a specific market or reuse opportunity will exist.

7. *Innovative and alternative wastewater treatment processes and techniques.* Beginning October 1, 1978, publicly owned treatment works using processes and techniques meeting the criteria of Appendix E to this subpart may be grant eligible if the cost-effective analysis demonstrates that the total present worth cost of such works does not exceed the present worth of what would otherwise be the most cost-effective pollution control alternative by more than 15 percent. This percentage increase shall apply to the total present worth cost of the proposed waste treatment system where more than 50 percent of its cost involves innovative or alternative technologies. Should innovative or alternative components comprise 50 percent or less of the waste treatment system costs, the percentage increase shall apply only to the innovative and alternative unit processes and operations (and other differing portions) of the project as compared with corresponding portions of the least costly non-innovative alternative. The above provisions exclude individual systems pursuant to § 35.918. The Regional Administrator may allow a grantee to apply the 15 percent preference authorized by this section to facility plans prepared under Step 1 grants made prior to October 1, 1978.

8. *Cost-effective staging and sizing of treatment works.*—a. *Population projections.* (1) The population forecasts presented in individual facility plans shall, except as noted herein, be based upon disaggregation of State projections of population. These State projections shall be those developed in 1977, or subsequently, by the Bureau of Economic Analysis (BEA), Department of Commerce, unless, as of (insert the date these guidelines become effective), the State has already prepared projections. These State projections may be used instead of the BEA projections if the year 2000 State population does not exceed that of the BEA projection by more than 5 percent. Should the departure exceed this amount, the State-prepared projection must either be revised and subsequently approved by the Regional Administrator or be justified on the basis of historical and current trends (energy and industrial development, military base openings, etc.) not taken into account in the BEA projections. The request for departure from the BEA projections, together with the justification, must be submitted for approval to the Administrator. At or before that time, the State shall issue a public notice of the request. Prior to the Administrator's approval of the State-prepared projection, the Regional Administrator shall solicit public comments and hold a public hearing if important issues are raised or if serious questions arise concerning the validity of the State projections.

(2) Each State, working with designated 208 planning agencies and other regional

planning agencies in nondesignated areas of the State, shall disaggregate the State population projection among its designated 208 areas, other Standard metropolitan stratistical areas (SMSA's) not included in the 208 area, or other appropriate urban units, and its remaining counties or other appropriate jurisdictions. When disaggregating the State population total, the State shall take into account the projected population and economic activities identified in facility plans, areawide 208 plans and municipal master plans. The sum of the disaggregated projections shall not exceed the State projection. Where a designated 208 area has, as of (insert the date these guidelines become effective), already prepared a population projection, it may be used if the year 2000 population does not exceed that of the disaggregated projection by more than 10 percent. Should the departure exceed this allowance, the 208 area-prepared projection shall be revised and submitted for approval to the State and the Regional Administrator.

(3) The State projection totals and the disaggregations will be submitted as an output of the statewide water quality management process. The submission shall include a list of designated 208 areas, all SMSA's and counties or other units outside the 208 areas. For each unit the disaggregated population shall be shown for the years 1980, 1990, 2000. The State projection totals and the disaggregations will be reviewed by the Regional Administrator for approval prior to October 1, 1979.

(4) Upon approval of the State projection totals and disaggregations, they shall be used thereafter for areawide water quality management planning as well as for facility planning and the "needs" surveys. Within areawide 208 planning areas, the designated agencies, in consultation with the States, shall disaggregate the 208 area projections among the SMSA and non-SMSA areas and then disaggregate these SMSA and non-SMSA projections among the facility planning areas and the remaining areas. For those SMSA's not included within designated 208 planning areas, each State, with assistance from appropriate regional planning agencies, shall disaggregate the SMSA projection among the facility planning areas and the remaining areas within the SMSA. The State shall check the facility planning area forecasts to ensure their reasonableness and consistency with the SMSA projections.

(5) For non-SMSA facility planning areas not included in designated areawide 208 areas, the State may disaggregate population projections for non-SMSA countries among facility planning areas and remaining areas. Otherwise, the grantee is to forecast future population growth for the facility planning area by linear extrapolation of the recent past (1960 to present) population trends for the planning area, use of correlations of planning area growth with population growth for the township, county or other larger parent area population, or another appropriate method. A population forecast may be raised above that indicated by the extension of past trends where likely impacts of significant new energy developments, large new industries, Federal installations, or institutions would justify such departures, and such justification is documented in the facility plan. In such cases, population forecasts should be based on estimates of new employment to be generated. The State shall check individual population forecasts to ensure consistency with overall projections for non-SMSA counties and justification for any departures from past trends.

(6) Facility plans prepared under step 1 grants awarded later than 6 months after Agency approval of the State disaggregations shall follow population forecasts developed in accordance with these guidelines.

b. *Wastewater flow estimates.* (1) In determining total average daily flow for the design of treatment works, the flows to be considered include the average daily base flows expected from residential sources, commercial sources, institutional sources, and industries to be served by the works plus allowances for future industries and nonexcessive infiltration/inflow. The amount of nonexcessive infiltration/inflow, not included in the base flow estimates presented herein, is to be determined in accordance with the appropriate Agency guidance for sewer system evaluation or Agency policy on treatment and control of combined sewer overflows (PRM 75-34).

(2) The estimation of existing and future average daily base flows (ADBF), exclusive of flow reduction from combined residential, commercial and institutional sources, shall be based upon one of the following methods:

(a) *Preferred method.* Existing ADBF would be estimated based upon a fully documented analysis of water use records adjusted for consumption and losses or on records of wastewater flows for extended dry periods less estimated dry weather infiltration. Future flows for the treatment works design should be estimated by determining the existing per capita flows based on existing sewered resident population and multiplying this figure by the future projected population to be served. Seasonal population can be converted to equivalent full-time residents using the following multipliers:

Day-use visitor (0.1-0.2).
Seasonal visitor (0.5-0.8).

The preferred method shall be used wherever water supply records or wastewater flow data exist. Allowances for future increases of per capita flow over time will not be approved.

(b) *Optional method.* Where water supply and wastewater flow data are lacking, existing and future ADBF shall be estimated by multiplying a gallon per capita per day (gpcd) allowance not exceeding those in the following table, except as noted below, by the estimated total of the existing and future resident populations to be served. The tabulated ADBF allowances, based upon several studies of municipal water use, include estimates for commercial and institutional sources as well as residential sources. The Regional Administrator may approve exceptions to the tabulated allowances where large (more than 25 percent of total estimated ADBF) commercial and institutional flows are documented.

Description	Gallons per capita per day
Non-SMSA cities and towns with projected total 10-yr populations of 5,000 or less	60-70
Other cities and towns	65-80

c. *Flow reduction.* The cost-effective analysis for each facility planning area shall include an evaluation of the costs, cost-savings, and effects of flow reduction measures unless the existing ADBF from the area is less than 70 gpcd, or the current population of the applicant municipality is under 10,000, or the area is exempted by the Regional Administrator for having an effective existing flow reduction program. Flow reduction measures include public education, pricing and regulatory approaches or a combination of these. In preparing the facility plan and cost-effective analysis included therein the grantee shall, as a minimum:

(1) Estimate the flow reductions implementable and cost-effective when the treatment works become operational and 10 and 20 years hence. The measures to be evaluated shall include a public information program; pricing and regulatory approaches; installation of water meters, and retrofit of toilet dams and low-flow showerheads for existing homes and other habitations; and specific changes in local ordinances, building codes or plumbing codes requiring installations of water saving devices such as water meters, water conserving toilets, showerheads, lavatory faucets, and appliances in new homes, motels, hotels, institutions, and other establishments.

(2) Estimate the costs of the proposed flow reduction measures over the 20-year planning period, including costs of public information, administration, retrofit of existing buildings and the incremental costs, if any, of installing water conserving devices in new homes and establishments.

(3) Estimate the energy reductions; total cost savings for wastewater treatment, water supply, and energy use; and the net cost savings (total savings minus total costs) attributable to the proposed flow reduction measures over the planning period. The estimated cost savings shall reflect reduced sizes of proposed wastewater treatment works plus reduced costs of future water supply facility expansions.

(4) Develop and provide for implementing a recommended flow reduction program. This shall include a public information program highlighting effective flow reduction measures, their costs, and the savings of water and costs for a typical household and for the community. In addition, the recommended program shall comprise those flow reduction measures which are cost-effective, are supported by the public and are within the implementation authority of the grantee or another entity willing to cooperate with the grantee.

(5) Take into account in the design of the treatment works the flow reduction estimated for the recommended program.

d. *Industrial flows.* (1) The total design flow capacity of the treatment works may include allowances for industrial flows. The allowances may include capacity needed for industrial flows presently served by the existing treatment works. However, such flows shall be carefully reviewed and means of reducing them shall be considered. Capacity needs for existing flows from significant industrial users and for future flows from all industries intending to increase their flows or relocate in the area must be documented by letters of intent to the grantee. Requirements for letters of intent from significant industrial dischargers are set forth in § 35.925-12 (industrial cost recovery).

(2) There are many uncertainties in forecasting future industrial flows, but there is a need to allow for some unforeseeable future industrial growth. Thus, the cost-effective (grant eligible) design capacity and flow of the treatment works may include in addition to the existing industrial flows and future industrial flows which are document-

ed by letters of intent, a nominal flow allowance for future nonidentifiable industries or for unforeseeable industrial expansions, provided that 208 plans, land-use plans and zoning provide for such industrial growth. This additional allowance for future unforeseen industrial flow shall not exceed 5 percent (or 10 percent for towns with less than 10,000 population) of the total design flow of the treatment works exclusive of the allowance or 25 percent of the total industrial flow (existing plus documented future), whichever is greater.

e. *Staging of treatment plants.* (1) The capacity of treatment plants (i.e., new plants, upgraded plants, or expanded plants) to be funded under the construction grants program shall not exceed that necessary for wastewater flows projected during an initial staging period determined pursuant to one of the following methods:

(a) *First method.* At least three alternative staging periods (10 years, 15 years, and 20 years) shall be analyzed and the least costly (i.e., total present worth or average annual cost) staging period should be selected.

(b) *Second method.* The staging period shall not exceed the period which is appropriate according to the following table.

STAGING PERIODS FOR TREATMENT PLANTS

Flow growth factors (20 yr)[1]	Maximum initial staging period	
	Qo≤ 1MGD (yr)	Qo> 1MGD (yr)
Less that 1.3	20	20
1.3 to 1.8	20	15
Greater than 1.8	10	10

[1]Ratio of wastewater flow expected at end of twenty (20) yr. planning period to initial flow when plant is expected to become operational (Q20/Qo).

(2) A municipality may stage the construction of a treatment plant for a shorter period than the maximum allowed under this policy. A shorter staging period might be based upon environmental factors (secondary impacts, compliance with other environmental laws pursuant to § 35.925–14, energy conservation, water supply), an objective concerning planned modular construction, the utilization of temporary treatment plants, or attainment of consistency with locally adopted plans including comprehensive and capital improvement plans. However, in no case should the staging period be less than 10 years, because of associated cost penalties and the time necessary to plan, apply for and receive funding, and construct later stages.

(3) The design parameters for the proposed treatment plant shall be presented in the facility plan. Whenever the size or capacities of proposed treatment plant components would exceed the minimum reliability requirements suggested in the EPA technical bulletin, "Design Criteria for Mechanical, Electric, and Fluid System and Component Reliability," a complete justification, including supporting data, shall be provided to the Regional Administrator for his approval.

f. *Staging of interceptors.* Since the location and length of interceptors will influence growth, interceptor routes and staging of construction shall be planned carefully; shall be consistent with approved 208 plans, growth management plans and other environmental laws pursuant to § 35.925–14; and shall be consistent with Executive Orders for floodplains and wetlands.

(1) An interceptor may be provided in the initial stage to phase out or eliminate existing point source discharges and to accommodate flows from existing habitations. Unless necessary to meet those objectives, interceptors should not be extended into environmentally sensitive areas, prime agricultural lands and other undeveloped areas (density less than one household per two acres). Where extension of an interceptor through such areas would be necessary to interconnect two or more communities, the grantee shall reassess the need for the interceptor through further consideration of alternative wastewater treatment systems, analyze primary and secondary environmental impacts of the interceptor, and provide for appropriate mitigating measures such as re-routing the pipe to minimize adverse impacts or restricting connections to the pipe. Conditions to ensure implementation of the mitigating measures shall be included in NPDES permits when new permits are issued to the affected treatment facilities in those cases where the measures are required to protect the treatment facilities against overloading.

(2) Interceptor pipe sizes (diameters for circular pipes) allowable for construction grant funding shall be based upon a staging period of 20 years, unless the grantee can demonstrate that a longer staging period not to exceed 40 years would be consistent with projected land use patterns in Water Quality Management Plans or plans developed for compliance with other laws in accordance with § 35.925–14, where such plans have been approved, and would reduce overall (primary plus secondary) environmental impacts based on the evaluation of factors such as the following:

(a) Primary impacts.

(i) Short-term disruption of traffic, business and other daily activities.

(ii) Destruction of flora and fauna, noise, erosion and sedimentation.

(b) Secondary impacts.

(i) Pressure to rezone or otherwise facilitate unplanned development.

(ii) Pressure to accelerate growth for quicker recovery of the non-Federal share of the interceptor investments.

(iii) Effects on air quality and environmentally sensitive areas by cultural changes.

(3) The estimation of peak flows in interceptors shall be based upon the following considerations:

(a) Daily and seasonal variations of pipe flows, the timing of flows from the various parts of the tributary area and pipe storage effects.

(b) The feasibility of off-pipe storage to reduce peak flows.

(c) The use of an appropriate peak flow factor that decreases as the average daily flow to be conveyed increases.

9. *State guidelines.* In the event a State has developed or chooses to develop comprehensive guidelines on cost-effective sizing and staging of treatment works, the Regional Administrator may approve all or portions of the State guidance for application to Step 1 facility plans. Approved State guidance may be used in lieu of corresponding portions of these guidelines, subject to the following conditions:

a. The State guidance must be at least as stringent as the provisions of these guidelines.

b. The State must have held at least one public hearing upon proposed State guidance, pursuant to regulations in Part 105 of this chapter prior to submitting the guidance for Agency approval.

10. *Additional capacity beyond the cost-effective capacity.* Treatment works projects which propose to include additional capacity beyond the cost-effective capacity determined in accordance with these guidelines may receive Federal grant assistance if the following requirements are met:

a. The facility plan shall determine the most cost-effective project and its associated capacity in accordance with these guidelines. The facility plan shall also determine the actual characteristics of the project to be built and its total capacity.

b. Only a portion of the cost of the entire proposed project including the additional capacity shall be deemed eligible for Federal funding. The portion of the cost of construction which shall be deemed eligible for Federal funding under Sections 203(a) and 202(a) of the Act shall be equivalent to the estimated construction costs of the most cost-effective project. For the eligibility determination, the costs of construction of the actual project and the most cost-effective project must be estimated on a consistent basis. Up-to-date Agency cost curves or other cost estimating guidance shall be used to determine the cost ratios between cost-effective project components and those of the actual project. These cost ratios shall be multiplied by the Step 2 costs and Step 3 contract costs of actual project components to determine the eligible Step 2 and Step 3 costs.

c. The entire proposed project to be built shall be assessed and determinations must be made that it is in compliance with the National Environmental Policy Act and all other applicable laws, regulations and guidance. Particular attention should be given to assessing the potential secondary environmental effects of the project and to ensuring that air quality standards will not be contravened. The discharge of the entire project must not cause violations of water quality standards.

d. The plans, specifications, and estimates for the entire proposed project shall be approved by the Regional Administrator pursuant to Section 203(a) of the Act, notwithstanding that EPA will be funding only a portion of the designed capacity of the proposed project.

e. The grantee shall provide satisfactory assurances to the Agency that the funds for the costs of construction associated with the additional capacity beyond the capacity of the cost-effective treatment works as determined by EPA (the ineligible portion of the project) as well as the local share of the grant eligible portion of the cost of construction of the project, will be available.

f. Appropriate grant conditions or releases shall be executed by the grantee providing that the Federal Government is protected from any further claim by the grantee, the State, or any other party for any of the costs of construction associated with the additional capacity.

g. Industrial cost recovery shall be based upon the portion of the Federal grant allocable to the treatment of industrial wastes.

h. The grantee must implement a user charge system which is applicable to the entire service area of the grantee including the additional capacity of the proposed project.

27. By amending Appendix C-2 to Subpart E by adding the following new clause 17:

17. BUY AMERICAN

In accordance with the Buy American provision in Public Law 95-217 (section 215 of the Federal Water Pollution Control Act, as amended), and implementing EPA regulations and guidelines, the Contractor agrees that preference will be given to domestic construction material by the Contractor, subcontractors, materialmen, and suppliers in the performance of this contract.

(Secs. 9, 10, 12, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 27, 31, 32, 34, 36, 38, 39, 40, 41, and 75 of the Clean Water Act, Public Law 95-217.)

[FR Doc. 78-11024 Filed 4-24-78; 8:45 am]

[FRL 875-7]

PART 35—STATE AND LOCAL ASSISTANCE

Subpart F—State Management Assistance Grants

AGENCY: Environmental Protection Agency.

ACTION: Interim/final rule.

SUMMARY: This interim regulation implements section 205(g) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (the "Act"). These regulations make funds available to States to manage the construction grant program, and, as needed, to hire qualified staff and provide training necessary to effectively carry out delegated functions. These regulations supplement the EPA general grant regulations in Part 30 and other requirements set forth in Part 35 of this chapter.

DATES: Effective date: April 25, 1978. Comments may be made on or before June 30, 1978. Public hearings for purposes of receiving comments will be held in June and July 1978. Notice of these meetings will be published in the FEDERAL REGISTER.

ADDRESSES: Comments (in triplicate, if possible) should be sent to: Mr. Alexander J. Greene, Director, Grants Administration Division, Attention: PM-216-P Interim SMAG, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Comments may be inspected at: Public Information Reference Unit, EPA Headquarters, Room 2922 Waterside Mall, 401 M Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mr. Albert Pelmoter, Construction Operations Branch (WH-547), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-426-8902.

SUPPLEMENTARY INFORMATION: In January 1978, a task force and work groups comprised of EPA Headquarters and Regional representatives were organized to formulate regulations and guidelines for the implementation of the requirements to the Clean Water Act of 1977. Four drafts of these regulations have been circulated extensively for comment by State, regional and local officials as well as by the public and interested organizations. Numerous meetings were conducted to solicit public input. These included four days of open meetings in Washington, D.C., six briefings for State and local officials held at EPA regional offices, and meetings with representatives of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), the Association of Metropolitan Sewerage Agencies (AMSA), Water Pollution Control Federation (WPCF) and various EPA advisory groups. Representatives of Federal agencies were consulted informally. Important questions and issues raised in these meetings are discussed in later paragraphs of this preamble.

GENERAL

The purpose of these regulations is to implement section 205(g) of the Act and thus make funds available to States to manage the construction grant program, and, as needed, to hire qualified staff and provide training necessary to effectively carry out delegated functions.

Section 205(g)(1) of the Act authorizes the Administrator to reserve each fiscal year a sum not to exceed 2 percent of the allotment made to each State for construction grants. Sums so reserved shall be available for making grants to States under section 205(g)(2) to cover the reasonable costs of administering any aspects of the construction grants program which the Administrator delegates to a State. Section 205(g)(2) also provides that these funds may also be used to increase the amount made available to the States for administering an approved program under sections 402, 404, or 208(b)(4), and managing waste treatment construction grants for small communities. Reserved funds that are not used for making State management assistance grants by the end of the two year allotment period will be added to the construction grant amounts last allotted to a State and shall be immediately available for awarding grants for the construction of wastewater treatment projects.

The delegation agreement is to be the mechanism for implementation of the construction management assistance grant program and shall address both the functions to be delegated and the State's capability to conduct those functions.

These regulations also provide that State programs funded under § 35.913 prior to the effective date of these regulations may continue to be funded under that regulation until one year after that date, or until a construction management assistance grant is awarded to a State, whichever occurs first.

ISSUES

In drafting these regulations, substantive issues arose in connection with: (1) interfacing a State's construction management assistance grants with its sections 402, 404 and 208(b)(4) programs; (2) maintaining continuity in a State construction grant program in the face of uncertain timing of Federal appropriations; and (3) satisfying public participation requirements for delegation of the construction grants program. A discussion of these topics and issues follows.

1. INTERFACING OF PROGRAMS

Discussions of the interface between State management assistance grants and the administration of its section 208(b)(4), 402 and 404 programs centered around three concerns. First, the need for a separate grant for managing the State's construction grants program; second, the timing of the release of 205(g) funds for administering sections 402, 404 and 208(b)(4) programs; and third, the need to maintain current levels of a State's financial support for existing water pollution control programs.

a. *Separate Grants.* The thrust of this new legislative amendment is to decentralize the management of the construction grants program, i.e., to shift the management from the Federal Government to the State government. Since the Federal Government has been performing this management function since the program's inception in 1956, this shift represents a major operational change. A whole new body of policy issuances will be required to insure that, in carrying out the provisions of section 205(g), the national characteristics of this program will be maintained, high standards of conduct will not be compromised and, in the long run, applicants and grantees will benefit by the removal of one layer of government from the grant approval process.

Construction management assistance funds will be awarded under a separate grant to insure that this important shift can be carried out without being encumbered by policies and procedures of other grant programs.

Section 205(g) funds for use in administering sections 208(b)(4), 402 and 404 programs are to be awarded in conjunction with sections 106 and 208 State grants. Amendment of these grants will facilitate use of section 205(g) funds since the basic mechanism for providing support for permit and planning activities, together with regulations governing their conduct, already exist in the sections 106 and 208 grant programs.

b. *Timing.* The legislative history of section 205(g) clearly establishes that

the State's management of the construction grants program is the number one priority for the use of section 205(g)(2) funds. Funds in excess of those required to properly manage the construction grant program are to be made available for administering sections 208(b)(4), 402 and 404 activities as necessary. Accordingly, these regulations provide that the award of the construction management assistance grant is a first order of priority and that funds in support of a substantial delegation would have to be made available through that grant prior to increasing section 106 or 208 grants with section 205(g) funds. Therefore, before section 205(g) monies will be made available for section 106 or 208 Grant Program purposes, the level of funding required for proper management of a State's construction grants program must be determined.

However, it is important to recognize that, upon receipt of section 205(g) grant funds, most States will be in a position to release section 106 grant funds which were being used to support construction grant management activities. Since such funds would be immediately available to support additional activities customarily funded under the section 106 grant (e.g., permitting, planning, etc.), plans for using such funds should be incorporated in the delegation agreement.

States are expected to begin negotiating delegation agreements with EPA regional officials as soon as possible so that the award of construction management assistance grants can be expedited.

c. *State level of support.* Funds provided to a State under section 205(g) must not be used to reduce the level of Federal or State expenditures on water pollution control programs; rather, these funds will be used to supplement (not supplant) State funding. To do otherwise would be contrary to Congressional intent.

2. CONTINUITY

In order to assure continuity in State programs from one fiscal year to the next, funds obligated under construction management assistance grants shall be available for expenditure for a period of 5 years. The grant may be amended annually as subsequent allotments are appropriated by Congress. It is believed that, States will have sufficient funding stability to hire, train and maintain qualified staff under this provision regardless of the timing or amounts of future Congressional appropriations.

The award of a construction management assistance grant after the execution of a delegation agreement between the State and EPA constitutes the State's obligation of the funds under the management assistance grant for purposes of the requirements of 205(g)(1).

3. PUBLIC PARTICIPATION

Section 35.1033 of these regulations provides for public participation during the development, review, and approval of a new delegation agreement or modification of an existing agreement and requires a public hearing to be conducted on a draft delegation agreement whenever the Regional Administrator determines that there is significant public interest in such a hearing. States already operating under delegation agreements under § 35.913 must conduct a public hearing or public meeting on the first application for a construction management assistance grant. In addition, these regulations provide that any interested citizen adversely affected by a State decision or omission under a delegation agreement may appeal to the Regional Administrator for review of the State's determination.

RELATED REGULATIONS

In this same issue of the FEDERAL REGISTER, EPA is publishing interim/final amendments to Subpart E of Part 35, governing award of grants for construction of wastewater treatment projects. Also in this issue are proposed regulations affecting Subpart E. The reader's attention is directed to these related regulatory changes resulting from the Clean Water Act of 1977.

Other changes pertaining to State water pollution control programs are required in Subpart B of Part 35 (§ 35.551 et seq.). The March 3, 1978 draft of these construction grant regulations included (as an addendum to section 3) a draft of these proposed changes which we will be happy to furnish on request to Mr. Albert Pelmoter (address above). These changes to the section 106 program regulations will be made in the future. To the extent that existing section 106 regulations are contradictory to these interim construction grant regulations, the interim construction grant regulations will be controlling.

NOTE.—The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis Statement under Executive Order 11821 and OMB Circular A-107.

Dated: April 18, 1978.

DOUGLAS M. COSTLE,
Administrator.

1. 40 CFR Part 35 is amended by deleting § 35.913 from Subpart E.

2. 40 CFR Part 35 is amended by adding a new Subpart F to read as follows:

Subpart F—State Management Assistance Grants

Sec.
35.1000 Purpose and scope.
35.1005 Policy.
35.1010 Application for grant.
35.1015 Eligibility for funding.
35.1016 Limitations on award.
35.1020 Grant amount and award.
35.1025 Payment.
35.1030 Delegation agreement.
35.1030-1 Scope of delegation agreement.
35.1030-2 Certification procedures.
35.1030-3 Limitation upon delegation.
35.1030-4 Terms of delegation agreement.
35.1030-5 Implementation of the delegation agreement.
35.1030-6 State assurance.
35.1030-7 Determination of competency.
35.1030-8 Amendments.
35.1030-9 Right of review; appeal.
35.1033 Public participation.
35.1035 Adherence to budget estimates.
35.1040 Program evaluation and reporting.
35.1045 Reduction of grant amount; suspension or termination of grants.
35.1050 Disputes.

AUTHORITY: Sec. 26 of the Clean Water Act, Public Law 95-217.

§ 35.1000 Purpose and scope.

These regulations establish policies and procedures for grants under section 205(g) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (the Act). That section authorizes the Administrator to reserve each fiscal year a sum not to exceed 2 percent of the allotment made to each State under section 205 of the Act, or $400,000, whichever is greater, for the purpose of making State management assistance grants. These regulations supplement the EPA general grant regulations in Part 30 and other requirements set forth in Part 35 of this Chapter.

(a) Financial assistance to States for reasonable costs of administering any elements of the construction grants program under sections 201, 203, 204 and 212 of the Act and managing waste treatment construction grants for small communities will be provided through the award of construction management assistance grants.

(b) Financial assistance to States under section 205(g) of the Act for administration of the permit program under section 402 and 404 of the Act and the Statewide waste treatment management planning program under section 208(b)(4) may be provided to the States in conjunction with the section 106 or section 208 grants and will be administered under the regulations governing those programs. Regional Administrators will coordinate the funding of construction management assistance grants with section 106 State program grants and section 208 statewide water quality management grants consistent with requirements of paragraph (c) of this section.

(c) Financial assistance will be granted under this subpart for the adminis-

tration of sections 402, 404, and 208(b)(4) programs only after a construction management assistance grant has been awarded to provide for the management of a substantial portion of the construction grants program as determined by the Regional Administrator. The amount of funds that will be made available under a section 205(g)(2) grant for these programs will be limited to those funds remaining in the reserved portion of each State's allotment after the Regional Administrator's determination of the amount of grant funds reasonably necessary to provide for the management of the ultimate delegation of the contruction grants program under this subpart.

§ 35.1005 Policy.

It is EPA policy to decentralize management of the wastewater treatment construction grant program to the maximum extent possible consistent with carrying out environmental objectives of the Act and prudent fiscal management. This is to be accomplished through a formal delegation agreement between the State and the Regional Administrator specifying those functions which the State will perform and certify to EPA, thereby preventing Federal-State duplication in the management of the construction grants program and increasing operating efficiency. Through the section 205(g)(1) construction management assistance grant, States can be compensated for the reasonable cost of performing the functions specified in the delegation agreement.

§ 35.1010 Application for grant.

Application for a grant shall be made on EPA Form 5700-31, Application for Federal Assistance (Short Form). Part III, Program Narrative Statement, will reference the delegation agreement.

§ 35.1015 Eligibility for funding.

(a) A State may apply for Federal financial assistance to cover the allowable costs of administering or preparing to administer functions which are necessary to manage the construction grant program and which are identified in a accompanying delegation agreement. An application may be made by the State water pollution control agency or another agency designated by the Governor.

(b) Construction management assistance grant funds may also be used for administering that segment of a State's construction grant program implemented without Federal assistance provided the Regional Administrator determines that such program segment is administered consistent with Subpart E and this Chapter.

§ 35.1016 Limitations on Award.

(a) *Maintenance of effort.* (1) No construction management assistance grant will be awarded in any fiscal year unless the Regional Administrator is satisfied that the expenditure of non-Federal funds for recurrent expenses of its water pollution control programs in that year will be at least equal to the non-Federal expenditures for recurrent expenses for water pollution control programs during fiscal year 1977, unless the Regional Administrator determines that a reduction in State expenditures is attributable to a general nonselective reduction in the programs of all executive branch agencies of the State.

(2) The limitation in paragraph (a)(1) of this section does not apply to a construction management assistance grant awarded in any fiscal year for which, as of (insert the effective date of this regulation), a State budget for environmental protection which contains lower recurrent expenditures than those of fiscal year 1977, was (i) already adopted by the State legislature, or (ii) already formally submitted to the State legislature by the Governor, provided that the State makes no further reduction in that budget.

(b) State programs funded under § 35.913 prior to the effective date of these regulations may continue to be funded under that provision for a period of 1 year after that effective date, or until a construction management assistance grant is awarded under these regulations, whichever occurs first. In addition, States charging fees under § 35.913 may, with the approval of the Administrator, be reimbursed for efforts carried out under those agreements for the period between October 1, 1977, and the date of execution of an initial construction management assistance grant if the State demonstrates that insufficient funds were available under § 35.913 to support its delegated activities during that period.

(c) Funds for State management assistance grants may be obligated by a grant award at any time during the 2-year period in which the construction grant allotment is available for obligation.

(d) Funds from initial and subsequent construction management assistance grants which have been awarded will remain available for expenditure for a period not to exceed 5 years from the date of award of each grant.

(e) Unobligated balances in paragraph (c) of this section and unliquidated balances in paragraph (d) of this section remaining at the end of the period for which they are available will be added to the amount last allotted to a State under section 205(c) of the Act, and will be immediately available for funding the construction of treatment works in the same manner and to the same extent as the last allotment.

§ 35.1025 Payment.

Payment under construction management assistance grants will normally be made in keeping with anticipated expenditures under § 30.615 of this subchapter. Payment may be made in advance or by letter of credit, under § 30.615-1 (b) or (c), as determined by the Regional Administrator.

§ 35.1030 Delegation agreement.

(a) A delegation agreement under § 35.1030-1 between the Regional Administrator and the State Water Pollution Control Agency, or another agency designated by the Governor, must be executed prior to the award of the initial construction management assistance grant. Following the end-of-year review (see § 35.1040(b)). The delegation agreement will be revised and/or amended as necessary. The award of additional funds, based upon subsequent fiscal year allotments, must be preceded by the Regional Administrator's approval of any necessary amendments to the delegation agreement.

(b) Notwithstanding the existance of delegation agreements previously approved under § 35.912, no construction management assistance grant will be awarded unless the Regional Administrator approves a new delegation agreement meeting the requirements of this subpart. The State may include in its new delegation agreement those elements of its prior agreement which the Regional Administrator determines will meet the requirement of this subpart.

§ 35.1030-1 Scope of delegation agreement.

(a) *Development of State capability.* The delegation agreement shall include a statement specifying the State organization responsible for implementing the delegation agreement and the goals and timetable for staffing that organization to accept responsibility for the effective administration of the construction grants program.

(b) *Delegation of grant management activities.* The Regional Administrator may delegate to the State agency authority to review and certify grant documents required before and after grant award and to perform grant review and management activities, which may include, but not be limited to, the following:

(1) *Step 1:* preapplication conference, plan of study, subagreements subagreement cost analysis, infiltration inflow analysis, facility plan, environmental assessment and related documents, public participation, relocation plans, cost-effectiveness analysis, and analysis of BPWTT and innovative and alternative wastewater treatment technology application;

(2) *Step 2:* subagreements, subagreement cost analysis, plans and specifications for construction, plans and

schedules for implementation of user charge and industrial cost recovery systems, preliminary plan of operation, and draft Operation and Maintenance Manual;

(3) *Step 3:* subagreements, subagreement cost analysis, bid solicitation and contract documents, contract change orders and amendments, final operation and maintenance manuals, final plans of operation, interim and final inspections, sewer use ordinances, user charge and industrial cost recovery systems and audits.

(c) *Small community assistance.* In addition, the delegation agreement may include authority to manage a waste treatment construction grant program for small communities. Managing this program would require the State to become the community's contracting agent with responsibility for negotiating and administering planning, design and construction subagreements, or acquire the capability and authority to act in that capacity. In particular, State staff should be expert in (1) reviewing plans and specifications, (2) providing technical advice (especially on cost-effective and innovative alternatives), and (3) assisting grantees in exercising their resident engineering reponsibilities.

§ 35.1030–2 Certification procedures.

The State shall furnish a written certification to the Regional Administrator, on a project by project basis, stating that applicable Federal requirements within the scope of authority delegated to the State under the delegation agreement have been met. The certification must be supported by documentation specified in the delegation agreement which will be made available to the Regional Administrator upon his request. The Regional Administrator shall accept the certification unless he determines that the State has failed to adequately establish the basis for its certification or that applicable requirements have not been met.

§ 35.1030–3 Limitation upon delegation.

The Regional Administrator shall retain responsibility and primary authority, notwithstanding the provisions of any delegation agreement, for the following:

(a) Award of Step 1, Step 2, Step 3 and Step 2+3 grants and amendments thereto;

(b) Review of projects for determination regarding whether Environmental Impact Statements will be required under the National Environmental Policy Act of 1969, 42 U.S.C. 4321, and the preparation and issuance of such statements or of negative declarations required by Part 6 of this Chapter;

(c) Civil rights determinations, and enforcement, related to the Civil Rights Act of 1964 and Executive Order 11246 and other Federal requirements related to discrimination;

(d) Final dispute determinations under § 35.960;

(e) Determinations of protests under § 35.939;

(f) Review of construction grant audit exceptions and proper resolution; and

(g) Determination that an overriding Federal interest exists in a particular project which requires greater Federal oversight or participation.

§ 35.1030–4 Terms of delegation agreement.

(a) The initial delegation agreement shall cover State activities necessary for the orderly implementation of the construction management assistance program, including:

(1) The designation and maintenance of an organizational unit within the State agency responsible for the implementation of the program;

(2) The determination of necessary staffing and the hiring and training of new personnel;

(3) The establishment of an accounting system and audit process, acceptable to the Regional Administrator, which will properly identify and relate State costs to the conduct of specific delegated functions;

(4) The scheduling for the assumption of delegated functions over the term of the agreement;

(5) The detailed estimates of program costs for the initial year, and general estimates for succeeding years;

(6) The plan for correlating the implementation of the construction management assistance program with the section 106 program;

(7) The proposed detailed procedures to be followed by the State in carrying out each delegated function; and

(8) The frequency, method and extent of EPA reviews.

(b) The term of the delegation agreement and the budget shall generally be five years. However, as each subsequent construction management assistance grant is awarded, the term of the delegation agreement may be extended.

§ 35.1030–5 Implementation of the delegation agreement.

Upon approval of the delegation agreement by the Regional Administrator the construction management assistance grant may be awarded. Upon receipt of the award, the State will promptly proceed to carry out the delegated functions and, as necessary, to hire staff and organize in accordance with the terms of the delegation agreement.

§ 35.1030–6 State assurance.

In the delegation agreement the State agency will assure the Regional Administrator that in performing all of its management responsibilities under the construction management assistance and the delegation agreement executed grant pursuant to these regulations, it will execute its responsibilities in conformance with the intent and substance of all applicable Federal laws, regulations, orders, policy issuances and guidelines.

§ 35.1030–7 Determination of Competency.

The Regional Administrator shall review the State's organizational unit charged with implementing the agreement with respect to: numbers, levels, technical expertise and training of existing and proposed staff; management and organization; and the quality and quantity of past efforts in the construction grant program. Based on this review, the Regional Administrator shall determine the capability of the State to carry out the functions identified in the delegation agreement. Until an affirmative determination of capability is made, no delegation agreement shall be executed.

§ 35.1030–8 Amendments.

The delegation agreement may be amended at any time by mutual agreement in writing, and funding adjustments will be reflected in grant amendments.

§ 35.1030–9 Right of review; appeal.

An aggrieved applicant or grantee may request the Regional Administrator to review findings, recommendations and certifications made and actions taken by the State agency under the delegation agreement in accordance with procedures established in or issued under the delegation agreement. The Regional Administrator may also review such findings, recommendations, certifications and actions on his own initiative. A Regional Administrator's final decision in such matters may be appealed by the State agency, applicant, or grantee as provided in § 35.1050.

§ 35.1033 Public participation.

(a) *New and Revised Agreements.* Public participation during the development, review, and approval of the delegation agreement shall be in accordance with the requirements of section 101(e) of the Act, Part 105 of this chapter, and this subpart.

(1) Informal consultation with members of the public shall take place while the draft delegation agreement is being negotiated. This consultation may involve any of the following:

(i) Task forces;

(ii) Public meetings;

(iii) Advisory groups;

(iv) Workshops or conferences; or

(v) Contact with interested citizens and public interest groups.

(2) A copy of the draft delegation agreement shall be available and dis-

tributed to the public 45 days before its approval by EPA, together with a fact sheet adequately describing, in layman's language, the importance of the functions being considered for delegation. If a public hearing is held, the draft agreement and fact sheet shall be available 30 days prior to the hearing. These time periods may overlap.

(3) A public hearing must be held by the Regional Administrator on a draft delegation agreement if he determines that there is significant public controversy or substantial interest in a public hearing. In a large State, hearings should be held at more than one location. The purpose of the hearing will be to determine:

(3) Whenever a Regional Administrator determines that the public hearing requirement described in paragraphs (c)(1) and (c)(2) of this section has been met prior to the execution of the delegation agreement, a requirement for further public hearings may be waived.

(d) *Public participation in delegated programs.* (1) The State's performance of delegated construction grant program functions and activities shall comply with all applicable Federal public participation requirements.

(2) The State must assure that the delegation agreement and the State's construction grants program provides for adequate resources, including competent personnel, to oversee public participation requirements.

(e) *Citizen request for Regional Administrator review.* Nothing in this subpart or the terms of the delegation agreement shall preclude interested citizens who have been adversely affected by a State agency's decision or omission under the delegation agreement to request the Regional Administrator to review or investigate the circumstances resulting in the State agency's decision or action. The Regional Administrator will respond promptly to written complaints and will hold a public meeting if he deems it appropriate.

§ 35.1035 Adherence to budget estimates.

(a) Grant expenditures shall be based on costs incurred in the conduct of delegated functions and in the hiring and training of staff personnel in accordance with the provisions of the delegation agreement and shall be consistent with the budget approved in the grant agreement and the terms of the delegation agreement. Other expenditures will not be allowable.

(b) In the event that rebudgeting of funds among program elements becomes necessary, the provisions of § 30.610 of this subchapter apply.

§ 35.1040 Program evaluation and reporting.

The Regional Administrator will monitor the performance of the State under the delegation agreement. In addition, each Regional Administrator shall review and evaluate each State delegation program as follows:

(a) *Mid-year evaluation.* Semiannually, the Regional Administrator will conduct reviews necessary to ensure that State expenditures under the construction management assistance grant are directly related to the conduct of activities and functions delegated to that State under the delegation agreement.

(b) *End-of-year review.* Annually, the Regional Administrator will conduct an evaluation with appropriate State officials to review the accomplishments of the program year and the work projected for the next program period. Upon completion of this evaluation the delegation agreement may be renewed. Such renewal will reflect changes resulting from the evaluation and will be the basis for approving a construction management assistance grant amendment to cover the subsequent years' program. The Regional Administrator shall hold a public meeting (which may be in conjunction with any other relevant State hearing or meeting), or workshop, in order to obtain public input regarding this review. Public notice containing relevant information should be given prior to the meeting.

§ 35.1045. Reduction of grant amount; suspension or termination of grants.

If the Regional Administrator's evaluation of the State agency's performance of the management of the program or any of the activities authorized by the delegation agreement reveals that the State agency will not achieve agreed-upon goals or that the agency's performance is otherwise unsatisfactory, the Regional Administrator shall seek to achieve satisfactory performance through mutual agreement. If such an agreement is not achieved, the Regional Administrator may unilaterally amend the delegation agreement, thereby making costs associated with continued performance of such activities unallowable. He may reduce the grant amount on a proportional basis or suspend or terminate the grant, in whole or in part, in accordance with § 30.915 or 30.920 of this subchapter and any other provisions in the delegation agreement. A Regional Administrator's final decision in such matters may be appealed by the State agency as provided for in § 35.1050.

§ 35.1050 Disputes.

Determinations by the Regional Administrator concerning denial of an application for a State management assistance grant and determinations by the Regional Administrator concerning disputes arising under a State management assistance grant, including suspension or termination of grant assistance, shall be final and conclusive unless appealed by the applicant or grantee or State within thirty days from the date of receipt of such final determination in accordance with the "Disputes" provisions of Part 30 Subpart J of this subchapter.

[FR Doc. 78-11022 Filed 4-24-78; 8:45 am]

Federal Register

TUESDAY, APRIL 25, 1978
PART IV

DEPARTMENT OF LABOR

Employment Standards Administration

■

STANDARDS FOR DETERMINING COAL MINER'S TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS; AND REVIEW OF AND CLAIMS FOR BENEFITS

Proposals Implementing Federal Mine Safety and Health Act of 1977, As Amended

[4510-27]

DEPARTMENT OF LABOR

Employment Standards Administration

[20 CFR Part 718]

FEDERAL MINE SAFETY AND HEALTH ACT OF 1977, AS AMENDED

Standards for Determining Coal Miner's Total Disability or Death Due to Pneumoconiosis

AGENCY: Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This part revises Part 718 to set forth the standards to be applied by the Secretary of Labor, pursuant to the authority conferred upon him by Section 402(f) of Title IV of the Federal Mine Safety and Health Act of 1977 as amended, in determining whether a coal miner is or was totally disabled due to pneumoconiosis or dies from pneumoconiosis. It also specifies the procedures and requirements to be followed in conducting medical examinations and in administering various tests relevant to such determinations.

DATES: Public hearings on this proposed rulemaking will be held in Washington, D.C., on June 14, 1978, and if necessary on June 15, 1978, and in Charleston, W. Va., on June 20, 1978, and if necessary on June 21, 1978. Public hearings in Washington, D.C., will be held in Hearing Room A-800, Vanguard Building, 1111 20th Street NW., beginning at 10 a.m. Public hearings in Charleston, W. Va., will be held in the West Virginia State Capitol House of Delegates Chambers, Kanawha Blvd. and Washington Street, beginning at 10 a.m. Persons wishing to appear and present their views at either public hearing should notify the contact person specified below on or before May 31, 1978. Persons desiring to testify should submit a listing and, if practicable, copies of resources and references to be relied upon in support of their testimony. Such material should be reveived by the contact person at least one week prior to the hearing. Persons will be permitted to testify only if they have prior approval and will be allowed a maximum of one hour within which to present testimony. If time permits, other persons who have not notified the contact person prior to May 31, 1978, may nevertheless be allowed a period of 10 minutes within which to present testimony.

Written comments may also be submitted by interested persons on or before June, 1978. Such written comments will be available for inspection between the hours of 8:15 a.m. and 4:45 p.m. at the office indicated below.

FOR FURTHER INFORMATION CONTACT:

Robert B. Dorsey, Chief, Branch of Claims Determination, Division of Coal Mine Workers' Compensation, Employment Standards Administration, U.S. Department of Labor, Room C3526, NDOL Building, 200 Constitution Avenue NW., Washington, D.C. 20210, Tel. 202-523-6727.

SUPPLEMENTARY INFORMATION: Under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by by the Black Lung Benefits Act of 1972, and the Black Lung Benefits Reform Act of 1977, Pub. L. 95-239, benefits are provided to miners who are totally disabled due to pneumoconiosis and to certain survivors of a miner who died due to or while totally disabled by pneumoconiosis. Before the enactment of the Black Lung Benefits Reform Act of 1977, the authority for establishing standards of eligiblility for miners and their survivors was placed with the Secretary of Health, Education, and Welfare. These standards were set forth by the Secretary of Health, Education, and Welfare in subpart D of Part 410 of this title, and adopted by the Secretary of Labor for application to all claims filed with the Secretary of Labor. Amendments made to Section 402(f) of the Act by the Black Lung Benefits Reform Act of 1977 authorize the Secretary of Labor to establish criteria for determining total or partial disability or death due to pneumoconiosis to be applied in the processing and adjudication of claims filed under Part C of Title IV of the Act. Section 402(f) of the Act as amended further authorizes the Secretary of Labor, in consultation with the National Institute for Occupational Safety and Health to establish criteria for all appropriate medical tests administered in connection with a claim for benefits. Section 413(b) of the Act also authorizes the Secretary of Labor to establish criteria for the techniques to be used to take chest roentgenograms (X-rays) in connection with a claim for benefits under the Act.

Particular attention is directed to Tables B1, B2, B3, and B4 in Appendix B, which set forth ventilatory test criteria for determining total disability due to pneumoconiosis. It is hoped that expert medical opinion will assist the Department in determining the validity of the values reflected in these tables. Scientific information relating to the effect of altitude on the values in Tables B1, B2, B3 and B4, would also be of particular interest.

The Black Lung Benefits Reform Act of 1977 provides that with respect to a claim filed prior to the effective date of that law or reviewed under Section 435 of the Act, the standards to be applied in the adjudication of such claim shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973 with the Social Security Administration, whether or not the final disposition of the claim occurs after the effective date of this part.

DRAFTING INFORMATION

This document was prepared under the direction and supervision of Donald Elisburg, Assistant Secretary of Labor for Employment Standards.

The principal author of this document is Mark E. Solomons, Counsel for Black Lung, Employee Benefits Division, Office of the Solicitor, U.S. Department of Labor. However, personnel from the Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, participated in the development of this document. Officials of the National Institute for Occupational Safety and Health were contacted and their comments and suggestions have been incorporated herein.

As proposed, 20 CFR Chapter VI, Subchapter B, Part 718 would be revised to read as follows:

PART 718—STANDARDS FOR DETERMINING COAL MINER'S TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

Subpart A—General

Sec.

718.1 Statutory provisions.
718.2 Applicability of this part.
718.3 Scope and intent of this part.

Subpart B—Criteria for the Development of Medical Evidence

718.101 General.
718.102 Chest roentgenograms (X-rays).
718.103 Pulmonary function tests.
718.104 Physical examinations.
718.105 Arterial blood-gas studies.
718.106 Autopsy; biopsy.
718.107 Other medical tests.

Subpart C—Determining Entitlement to Benefits

718.201 Definition of pneumoconiosis.
718.202 Determining the existence of pneumoconiosis.
718.203 Establishing relationship of pneumoconiosis to coal mine employment.
718.204 Criteria for determining total disability.
718.205 Death due to pneumoconiosis.
718.206 Effect of findings by persons or agencies.

Subpart D—Presumptions Applicable to Eligibility Determinations

718.301 Establishing length of employment as a miner.
718.302 Relation of pneumoconiosis to coal mine employment.
718.303 Death from a respiratory disease.
718.304 Irrebuttable presumption of total disability due to pneumoconiosis.
718.305 Presumption of pneumoconiosis.
718.306 Presumption of entitlement applicable to certain death claims.
718.307 Application of 33 U.S.C. 920(a).

Subpart E—Miscellaneous Provisions

718.401 Right to obtain evidence.

Sec.
718.402 Failure to obtain required medical evidence.
718.403 Burden of proof.
718.404 Cessation of disability.
Appendix A Standards for administration and interpretation of chest roentgenograms (X-rays).
Appendix B Standards for administration and interpretation of pulmonary function tests. Tables B1, B2, B3, B4
Appendix C Blood gas tables.

AUTHORITY: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 936, 945; 33 U.S.C. 901 et seq.

Subpart A—General

§ 718.1 Statutory provisions.

(a) Under Title IV of the Federal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, the Federal Mine Safety and Health Act of 1977, and the Black Lung Benefits Reform Act of 1977, benefits are provided to miners who are totally disabled due to pneumoconiosis and to certain survivors of a miner who died due to or while totally disabled by pneumoconiosis. Before the enactment of the Black Lung Benefits Reform Act of 1977, the authority for establishing standards of eligibility for miners and their survivors was placed with the Secretary of Health, Education, and Welfare. These standards were set forth by the Secretary of Health, Education, and Welfare in subpart D of Part 410 of this title, and adopted by the Secretary of Labor for application to all claims filed with the Secretary of Labor. Amendments made to Section 402(f) of the Act by the Black Lung Benefits Reform Act of 1977, authorize the Secretary of Labor to establish criteria for determining total or partial disability or death due to pneumoconiosis to be applied in the processing and adjudication of claims filed under Part C of Title IV of the Act. Section 402(f) of the Act further authorizes the Secretary of Labor, in consultation with the National Institute for Occupational Safety and Health, to establish criteria for all appropriate medical tests administered in connection with a claim for benefits. Section 413(b) of the Act authorizes the Secretary of Labor to establish criteria for the techniques to be used to take chest roentgenograms (X-rays) in connection with a claim for benefits under the Act.

(b) The Black Lung Benefits Reform Act of 1977, provides that with respect to a claim filed prior to the effective date of this part or reviewed under Section 435 of the Act, the standards to be applied in the adjudication of such claim shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, with the Social Security Administration, whether or not the final disposition of the claim occurs after the effective date of this part.

§ 718.2 Applicability of this part.

This part is applicable to the adjudication of all claims considered by the Secretary of Labor under Section 422 of the Act and Part 725 of this subchapter. If a claim subject to the provisions of Section 435 of the Act and subpart C of Part 727 of this subchapter cannot be approved under that subpart such claim may be approved if appropriate under the provisions contained in this part. The provisions of this part shall to the extent appropriate be construed together in the adjudication of all claims.

§ 718.3 Scope and intent of this part.

(a) This part sets forth the standards to be applied in determining whether a coal miner is or was totally or (in the case of a claim subject to § 718.306) partially disabled due to pneumoconiosis or died due to pneumoconiosis. It also specifies the procedures and requirements to be followed in conducting medical examinations and in administering various tests relevant to such determinations.

(b) This part is designed to interpret the presumptions contained in Section 411(c) of the Act, evidentiary standards and criteria contained in Section 413(b) of the Act and definitional requirements and standards contained in Section 402(f) of the Act within a coherent framework for the adjudication of claims. It is intended that these enumerated provisions of the Act be construed as provided in this part.

(c) In enacting Title IV of the Act, Congress intended that claimants be given the benefit of all reasonable doubt as to the existence of total or partial disability or death due to pneumoconiosis. This part shall be construed and applied in that spirit and is designed to reflect that intent. However, no claim shall be approved unless the record considered as a whole, in light of any applicable presumptions, provides a reasonable basis for determining that the criteria for eligibility under the Act and this part have been met.

Subpart B—Criteria for the Development of Medical Evidence

§ 718.101 General.

The Office shall develop the medical evidence necessary for a determination with respect to each claimant's entitlement to benefits. Each miner who files a claim for benefits under the Act shall be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation including, in all appropriate cases, a chest roentgenogram (X-ray), physical examination, pulmonary function tests and a blood gas study.

§ 718.102 Chest roentgenograms (X-rays).

(a) A chest roentgenogram (X-ray) shall be of suitable quality for proper classification of pneumoconiosis and shall conform to the standards for administration and interpretation of chest X-rays as described in Appendix A.

(b) A chest X-ray to establish the existence of pneumoconiosis shall be classified as Category 1, 2, 3, A, B, or C, according to the International Labour Organization Union Internationale Contra Cancer/Cincinnati (1971) International Classification of Radiographs of the Pneumoconioses (ILO/UC-1971), or subsequent revisions thereof. A chest X-ray classified as Category Z under the ILO Classification (1958) or Short Form (1968) shall be reclassified as Category O or Category 1 as appropriate, and only the latter accepted as evidence of pneumoconiosis. A chest X-ray classified under any of the foregoing classifications as Category O, including subcategories O/-, O/O, or O/1 under the UICC/Cincinnati (1968) Classification and the ILO/UC-1971 Classification does not constitute evidence of pneumoconiosis.

(c) A description and interpretation of the findings in terms of the classifications described in paragraph (b) of this section shall be submitted by the physician in the field along with the film. The report shall specify the name and qualifications of the person who took the film and the name and qualifications of the physician interpreting the film. If the physician interpreting the film is a board-certified or board-eligible radiologist (see § 718.202) or a certified "B" reader, he or she shall so indicate. The report shall further specify that the film was interpreted in compliance with this paragraph.

(d) Except where the chest X-ray of a deceased miner has been lost, destroyed or is otherwise unavailable, no report of a chest X-ray submitted by any party in connection with a claim shall be considered in connection with the claim unless the original film on which said report is based has been supplied to the Office for review.

(e) No chest X-ray or report of a chest X-ray shall constitute evidence of the presence or absence of pneumoconiosis unless it is in substantial compliance with the requirements of this section and Appendix A. Special consideration may be given in the case of a deceased miner where the only available X-ray or X-ray report is of sufficient quality for determining the presence or absence of pneumoconiosis and was interpreted by a board-certified or board-eligible radiologist.

§ 718.103 Pulmonary function tests.

(a) Any report of pulmonary function tests submitted in connection with a claim for benefits shall record the results of at least the forced expiratory volume in one second ($FEV_{1.0}$)

and the maximum voluntary ventilation (MVV), obtained separately. Such tests shall be administered and reported in accordance with the standards for the administration and interpretation of pulmonary function tests as described in Appendix B.

(b) Any pulmonary function test results submitted in connection with a claim for benefits shall be accompanied by three tracings each of the $FEV_{1.0}$ and MVV and shall include a statement signed by the physician or technician conducting the test setting forth the following:

(1) Date and time of test,

(2) Name, DOL claim number, age, height, and weight of claimant at the time of the test,

(3) Name of technician,

(4) Name and signature of physician supervising the test,

(5) Claimant's ability to understand the instructions, his or her ability to follow directions, and his or her degree of cooperation in performing the tests,

(6) Paper speed of the instrument used,

(7) Name of the instrument used,

(8) Whether and why a bronchodilator was administered, and the impact its administration had on the test results, and

(9) That the requirements of paragraphs (b) and (c) of this section have been complied with.

(c) No results of pulmonary function tests shall constitute evidence of a respiratory or pulmonary impairment unless such tests are conducted and reported in compliance with this section and Appendix B and demonstrate technically valid results. Special consideration may be given in the case of a deceased miner where in the opinion of the Office the only available tests demonstrate technically valid results obtained with good cooperation of the miner.

§ 718.104 Physical examinations.

Any physical examination conducted in connection with a claim shall include the miner's medical and employment history. A medical report form supplied by the Office or a report containing substantially the same information shall be completed for all physical findings. In addition to the chest X-ray and pulmonary function tests, the physician shall use his or her judgment in the selection of other procedures such as electrocardiogram, blood-gas studies, and other blood analyses in his or her evaluation of the miner. All manifestations of chronic respiratory diseases shall be noted. Any pertinent findings not specifically listed in the form shall be added by the examining physician. If heart disease secondary to lung disease is found, all symptoms and significant findings shall be noted.

§ 718.105 Arterial blood-gas studies.

(a) Blood-gas studies are performed to detect an impairment in the process of alveolar gas exchange. This defect will manifest itself primarily as a fall in arterial oxygen tension either at rest or during exercise. No blood-gas study shall be performed if medically contraindicated.

(b) A blood-gas study shall initially be administered at rest and in a sitting position. If the results of the blood-gas test at rest do not satisfy the requirements of Appendix C, an exercise blood-gas test shall be offered to the miner unless medically contraindicated. Blood shall be drawn during exercise, if an exercise blood-gas test is administered.

(c) Any report of a blood-gas study submitted in connection with a claim shall specify:

(1) Date and time of test,

(2) Altitude and barometric pressure at which the test was conducted,

(3) Name and DOL claim number of the claimant,

(4) Name of technician,

(5) Name and signature of physician supervising the study,

(6) The recorded values for pCO_2, pO_2, and pH, which have been collected simultaneously (specify values at rest and, if performed, during exercise),

(7) Duration and type of exercise,

(8) Pulse rate at the time the blood sample was drawn,

(9) Time between drawing of sample and analysis of sample, and

(10) Whether equipment was calibrated before and after each test.

§ 718.106 Autopsy; biopsy.

(a) A report of an autopsy or biopsy submitted in connection with a claim shall include a detailed gross macroscopic and microscopic description of the lungs or visualized portion of a lung. If a surgical procedure has been performed to obtain a portion of a lung, the evidence shall include a copy of the surgical note and the pathology report of the gross and microscopic examination of the surgical specimen. If an autopsy has been performed, a complete copy of the autopsy report shall be submitted.

(b) No report of an autopsy or biopsy submitted in connection with a claim shall be considered unless the report complies with the requirements of this section. Special consideration may, however, be given to the report of a biopsy of a miner who died before the effective date of this part, where such report does not comply with the requirements of this section.

§ 718.107 Other medical tests.

The results of any medically accepted test or procedure reported by a physician not addressed in this subpart which test or procedure tends to demonstrate the presence or absence of pneumoconiosis or the sequelae of pneumoconiosis or the presence or absence of a respiratory or pulmonary impairment may be submitted in connection with a claim and shall be considered as appropriate.

Subpart C—Determining Entitlement to Benefits

§ 718.201 Definition of pneumoconiosis.

For the purpose of the Act "pneumoconiosis" means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthrosilicosis, massive pulmonary fibrosis, progressive massive fibrosis, and silicosis, arising out of coal mine employment. For purposes of this definition, a disease "arising out of coal mine employment" includes any chronic pulmonary disease resulting in respiratory or pulmonary impairment significantly related to or aggravated by dust exposure in coal mine employment. Pneumoconiosis does not include cancer or any disease of bacteriological or viral origin.

§ 718.202 Determining the existence of pneumoconiosis.

(a) A finding of the existence of pneumoconiosis may be made as follows:

(1) A chest X-ray conducted and classified in accordance with § 718.102 may form the basis for a finding of the existence of pneumoconiosis. Except as otherwise provided in this section, where two or more X-ray reports are in conflict, in evaluating such X-ray reports consideration shall be given to the radiological qualifications of the physicians interpreting such X-rays.

(i) In all claims where there is other evidence of pulmonary or respiratory impairment, a board-certified or board-eligible radiologist's interpretation of a chest X-ray shall be accepted by the Office if the X-ray is in compliance with the requirements of § 718.102 and if such X-ray has been taken by a radiologist or qualified radiologic technologist or technician and there is no evidence that the claim has been fraudulently represented.

(ii) Nothing in this section shall preclude the consideration of any other relevant evidence including other X-rays and X-ray interpretations in determining the presence or absence of pneumoconiosis.

(iii) The following definitions shall apply when making a finding in accordance with this paragraph:

(A) The term "other evidence" means medical tests such as blood-gas studies, pulmonary function studies or physical performance tests, and physical examinations or medical histories

which establish the presence of a chronic respiratory or cardio-pulmonary condition, and in the case of a deceased miner, in the absence of medical evidence to the contrary, affidavits of persons with knowledge of the miner's physical condition.

(B) "Pulmonary or respiratory impairment" means an inability of the human respiratory apparatus to perform satisfactorily one or more of the three components of respiration, viz., ventilation, perfusion and diffusion.

(C) "Board-certified" means certification in radiology or diagnostic roentgenology by the American Board of Radiology, Inc.

(D) "Board-eligible" means that the necessary requirements for admission to the certification examination conducted by the American Board of Radiology, Inc., have been met.

(E) "Qualified radiologic technologist or technician" means an individual who is either certified as a registered technologist by the American Registry of Radiologic Technologists or licensed as a radiologic technologist by a state licensing board.

(2) A biopsy or autopsy conducted and reported in compliance with § 718.106 may be the basis for a finding of the existence of pneumoconiosis. A finding in an autopsy of anthracotic pigmentation, however, shall not be sufficient, by itself, to establish the existence of pneumoconiosis. A report of autopsy shall be accepted unless there is evidence that the report is not accurate or that the claim has been fraudulently represented.

(3) If the presumptions described in § 718.304, 718.305 or 718.306 are applicable it shall be presumed, that the miner is or was suffering from pneumoconiosis.

(4) A determination of the existence of pneumoconiosis may also be made if a physician, exercising sound medical judgment, notwithstanding a negative X-ray, finds that the miner suffers or suffered from pneumoconiosis as defined in § 718.201. Any such finding shall be based on objective medical evidence such as blood-gas studies, electrocardiograms, pulmonary function studies, physical performance tests, physical examination, and medical and work histories. Such a finding shall be supported by a reasoned medical opinion.

(b) No claim for benefits shall be denied solely on the basis of a negative chest X-ray.

(c) A determination of the existence of pneumoconiosis shall not be made solely on the basis of a living miner's statements or testimony.

§ 718.203 Establishing relationship of pneumoconiosis to coal mine employment.

(a) In order for a claimant to be found eligible for benefits under the Act, it must be determined that the miner's pneumoconiosis arose at least in part out of coal mine employment. The provisions in this section set forth the criteria to be applied in making such a determination.

(b) If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines there shall be a rebuttable presumption that the pneumoconiosis arose out of such employment.

(c) If a miner who is suffering from pneumoconiosis was employed less than ten years in the nation's coal mines, it shall be determined that such pneumoconiosis arose out of that employment only if competent medical evidence establishes such a relationship or, in the case of a deceased miner, if the claimant by affidavit, testimony or otherwise demonstrates substantial dust exposure in the miner's coal mine employment and no other substantial source of the pneumoconiosis is apparent.

§ 718.204 Criteria for determining total disability.

(a) Except as provided in §§ 718.205 and 718.306 benefits under the Act are provided for or on behalf of miners who are totally disabled due to pneumoconiosis or were totally disabled due to pneumoconiosis at the time of death. The criteria in this section shall be applied in determining whether a miner is or was "totally disabled" for the purposes of the Act.

(b) Except as provided in § 718.304, a miner shall be considered totally disabled if such miner is or was unable to engage in gainful work in the immediate area of his or her residence requiring the skills and abilities comparable to those of any work in a mine or mines in which such miner previously engaged with some regularity and over a substantial period of time (that is, "comparable and gainful work").

(c) A miner shall be considered to be or have been totally disabled if:

(1) Pulmonary function tests show values equal to or less than the values listed in Tables B2 and B3 (males) or Tables B1 and B4 (females) in Appendix B to this part for an individual of the miner's age and height for both the $FEV_{1.0}$ and the MVV tests; or

(2) The results of the miner's arterial blood-gas test produce the values specified in Appendix C to this part; or

(3) He or she has pneumoconiosis and, in the absence of rebutting evidence, has been diagnosed by competent medical authority as suffering from cor pulmonale with right-sided congestive heart failure; or

(4) The presumption described in § 718.304 is applicable; or

(5) Where total disability cannot be established under paragraphs (c) (1), (2), (3), or (4) of this section, or where pulmonary function tests and/or blood-gas studies are medically contraindicated, total disability may nevertheless be found if a physician exercising reasoned medical judgment based on medically accepted clinical and laboratory diagnostic techniques concludes that a miner's respiratory or pulmonary condition prevents (or prevented) the miner from engaging in "comparable and gainful work" (see paragraph (b) of this section). However, in the case of a miner's claim a finding of total disability shall not be made solely on the basis of the miner's statements or testimony. In the case of a claim filed by the survivor of a miner, a finding of total disability may be made on the basis of a survivor's affidavit or testimony if appropriate. Statements made before death by a deceased miner relating to his or her disability shall be considered, as appropriate, in the adjudication of a claim filed by the survivor of such miner.

(d) In the case of a miner who is working in coal mine employment or was employed in a coal mine at the time of death, the following shall apply:

(1) A deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled. In the case of a deceased miner who was employed in a coal mine at the time of death, all relevant evidence, including the circumstances of such employment and the statements of the miner's spouse shall be considered in determining whether the miner was totally disabled due to pneumoconiosis at the time of death. In the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her coal mine work, the miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled.

(2) Notwithstanding any other provision of this section, and except as provided in § 718.304, no miner shall be found to be totally disabled if the miner is found to be doing his or her customary coal mine work or "comparable and gainful work" (see paragraph (b) of this section) and there are no changed circumstances of employment indicative of reduced ability to perform coal mine work.

(3) No miner who is engaged in coal mine employment shall (except as provided in § 718.1304) be entitled to any benefit under this part while so employed. Any miner who has been determined to be eligible for benefits shall be entitled to benefits only if the miner's employment terminates within one year after the date such determination becomes final.

718.205 Death due to pneumoconiosis.

(a) Benefits are provided to eligible survivors of a deceased miner whose death was due to pneumoconiosis.

(b) Death will be considered due to pneumoconiosis if any of the following criteria is met:

(1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, or

(2) Where death was due to multiple causes including pneumoconiosis and it is not medically feasible to distinguish which disease caused death or the extent to which pneumoconiosis contributed to the cause of death, or

(3) Where either of the presumptions found §§ 718.303 or 718.305 is applicable and has not been rebutted.

(c) For the purpose of this section, death shall be considered to be due to pneumoconiosis where the cause of death is significantly related to or aggravated by pneumoconiosis.

§ 718.206 Effect of findings by persons or agencies.

(a) The function of deciding whether or not an individual is or was totally (or partially) disabled due to pneumoconiosis is the responsibility of the appropriate adjudication officer. A statement by a physician that a miner is, or is not, "disabled", "permanently disabled", "totally disabled", "totally and permanently disabled", "unable to work", or a statement of similar import, being a conclusion upon the ulitimate issue to be decided by the adjudication officer, shall not be conclusive of whether or not an individual is or was disabled.

(b) The decision of any organization or agency that an individual is, or is not, disabled for purposes of any contract, schedule, regulation, or law, or that such individual's death or disability is or is not due to a particular cause, shall not be considered by the adjudication officer.

Subpart D—Presumptions Applicable to Eligibility Determinations

§ 718.301 Establishing length of employment as a miner.

(a) The presumptions set forth in §§ 718.302, 718.303, 718.305 and 718.306 apply only if a miner has been employed in one or more coal mines for specified periods. The claimant shall have the burden of submitting evidence to establish the requisite periods of employment necessary to invoke these presumptions.

(b) For the purposes of the presumptions described in this subpart, a year of employment means a calendar year during which the miner was regularly employed as a miner (§ 725.202(a)). No miner shall be determined to have been regularly employed as a miner in any calendar year during which he or she was employed as a miner for fewer than 150 working days in that year. A "working day" means any day or part of a day for which a miner received income for work in or around a coal mine. If a miner worked in or around one or more coal mines for fewer than 150 days in a calendar year he or she shall be credited with a fractional year based on the ratio of the actual number of days worked to 150. No periods of coal mine employment occurring outside the United States shall be credited toward the use of any presumption contained in this part.

§ 718.302 Relation of pneumoconiosis to coal mine employment.

If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines, there shall be a rebuttable presumption that the pneumoconiosis arose out of such employment (see 718.203).

§ 718.303 Death from a respiratory disease.

(a) If a deceased miner was employed for ten or more years in one or more coal mines and died from a respiratory disease, there shall be a rebuttable presumption that his or her death was due to pneumoconiosis.

(b) Death shall be found due to a respiratory disease in cases where the evidence establishes that death was due to multiple causes, including a respiratory disease, and it is not medically feasible to distinguish which disease caused death or the extent to which the respiratory disease contributed to the cause of death.

(c) Where death was not caused or significantly hastened by a respiratory disease arising in whole or in part out of dust exposure in the miner's coal mine employment (e.g., lung cancer or a bacteriological or viral disease) and there is no evidence indicative of the existence of pneumoconiosis, the presumption shall be considered rebutted.

§ 718.304 Irrebuttable presumption of total disability due to pneumoconiosis.

There is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis, or that a miner was totally disabled due to pneumoconiosis at the time of death, if such miner is suffering or suffered from a chronic dust disease of the lung which:

(1) When diagnosed by chest X-ray (see § 718.202 concerning the standards for X-rays and the effect of interpretations of X-rays by physicians) yields one or more large opacities (greater than 1 centimeter in diameter) and would be classified in Category A, B, or C in:

(i) The ILO-U/C International Classification of Radiographs of the Pneumoconioses, 1971; or

(ii) The International classification of the Radiographs of the Pneumoconioses of the International Labour Office, Extended Classification (1968) (which may be referred to as the "ILO Classification (1968)"); or

(iii) The Classification of the Pneumoconioses of the Union Internationale Contra Cancer/Cincinnati (1968) (which may be referred to as the "UICC/Cinncinati (1968) Classification"); or

(2) When diagnosed by biopsy or autopsy, yields massive lesions in the lung. The report of biopsy or autopsy shall be accepted as evidence of the condition described in this section if the histological findings show simple pneumoconiosis and progressive massive fibrosis; or

(3) When diagnosed by means other than those specified in paragraphs (1) and (2) of this section, would be a condition which could reasonably be expected to yield the results described in paragraph (1) or (2) of this section had diagnoses been made as therein described; *Provided, however,* That any diagnosis made under this paragraph shall accord with generally accepted medical procedures.

§ 718.305 Presumption of pneumoconiosis

(a) If a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest X-ray submitted in connection with such miner's or his or her survivor's claim and it is interpreted as negative with respect to the requirements of § 718.304, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that such miner's death was due to pneumoconiosis, or that at the time of death such miner was totally disabled by pneumoconiosis. In the case of a miner's claim, a spouse's affidavit or testimony may not be used by itself to establish the applicability of the presumption. The Secretary shall not apply all or a portion of the requirement of this paragraph that the miner work in an underground mine where it is determined that conditions of the miner's employment in a coal mine were substantially similar to conditions in an underground mine. The Secretary may rebut such presumption only by establishing that the miner does not, or did not have pneumoconiosis, or that his or her respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

(b) In the case of a deceased miner where there is no medical or other relevant evidence, affidavits of persons having knowledge of the miner's condition may be sufficient to establish the existence of a totally disabling respiratory or pulmonary impairment for purposes of this section.

(c) The determination of the existence of a totally disabling respiratory or pulmonary impairment for purposes of applying the presumption described in this section shall be made in accordance with § 718.204.

(d) Where the cause of death or total disability did not arise in whole or in part out of dust exposure in the miner's coal mine employment (e.g., lung cancer or bacteriological or viral infection) and there is no other evidence indicative of the existence of pneumoconiosis, the presumption will be considered rebutted. However, in no case shall the presumption be considered rebutted on the basis of evidence demonstrating the existence of a totally disabling obstructive respiratory or pulmonary disease of unknown origin.

§ 718.306 Presumption of entitlement applicable to certain death claims.

(a) In the case of a miner who dies on or before March 1, 1978, who was employed for 25 or more years in one or more coal mines prior to June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, unless it is established that at the time of death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Office, furnish such evidence as is available with respect to the health of the miner at the time of death, and the length of the miner's coal mine employment.

(b) For the purpose of this section a miner will be considered to have been "partially disabled" if he or she had reduced ability to engage in "comparable and gainful work" (see § 718.204(b)).

(c) In order to rebut this presumption the evidence must demonstrate that the miner's ability to perform his or her usual and customary work or "comparable and gainful work" was not reduced at the time of his or her death or that the miner did not have pneumoconiosis.

(d) The following evidence alone shall not be sufficient to rebut the presumption:

(1) Evidence that a deceased miner was employed in a coal mine at the time of death;

(2) Evidence pertaining to a deceased miner's level of earnings prior to death;

(3) A chest X-ray interpreted as negative for the existence of pneumoconiosis;

(4) A death certificate which makes no mention of pneumoconiosis.

§ 718.307 Application of 33 U.S.C. 920(a).

(a) Section 20(a) of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 920(a), provides that in any claim for benefits under the Longshoremen's Act it shall be presumed, in the absence of substantial evidence to the contrary, that the claim comes within the provisions of the Act. Section 422(a) of the Act incorporates such provision except as the Secretary provides by regulation.

(b) Where one or more of the presumptions contained §§ 718.302-718.306 of this part is applicable to a claim, or would be applicable but for the absence of sufficient coal mine employment, the provisions of Section 20(a) of the Longshoremen's Act shall not apply to the factual matters governed by any such presumption.

Subpart E—Miscellaneous Provisions

§ 718.401 Right to obtain evidence.

Each miner who files a claim for benefits under the Act shall upon request be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation. Accordingly, the Office shall assist each claimant in obtaining the evidence, including medical evidence, necessary for a complete adjudication of a claim considered under Parts 725 and 727 of this subchapter. In the case of a miner's claim, initial medical tests and examinations shall be arranged for the miner by the Office, at no cost to the miner (see §§ 725.405 and 725.406 of this subchapter). If a conflict in medical evidence is determined to exist by the deputy commissioner or if a miner is dissatisfied with the results of medical evidence obtained by the deputy commissioner, additional medical evidence may be obtained by the miner or the deputy commissioner, as provided in § 725.407 of this subchapter.

§ 718.402 Failure to obtain required medical evidence.

(a) An individual shall not be determined entitled to benefits unless he or she furnishes such medical and other evidence as is reasonably required to establish his or her claim. Religious or personal scruples against medical examinations, tests, or treatment shall not excuse an individual from submitting relevant evidence or from undergoing such medical examinations or tests as the Office may reasonably require.

(b) A miner who unreasonably refuses to submit to an examination or test requested by the deputy commissioner or a coal mine operator which may be liable for the payment of a claim, shall not be found eligible for benefits under either Part 725 or Part 727 of this subchapter (see §§ 725.408 and 725.414 of this subchapter).

§ 718.403 Burden of proof.

Except as provided herein by presumption or inference the burden of proving a fact alleged in connection with any provision of this part, shall rest with the party making such allegation.

§ 718.404 Cessation of disability.

(a) An individual who has been determined to be totally disabled due to pneumoconiosis shall promptly notify the Office and, where appropriate, the responsible coal mine operator, if:

(1) His or her respiratory or pulmonary condition improves, or

(2) He or she engages in any coal mine employment or "comparable and gainful work" (see § 718.204(b)).

(b) An individual who has been determined to be totally disabled due to pneumoconiosis shall, if requested to do so upon reasonable notice (e.g., where there is an issue pertaining to the validity of the original adjudication of disability), present himself or herself for and submit to examinations or tests as provided in § 718.101, and shall submit medical reports and other evidence necessary for the purposes of determining whether such individual continues to be under a disability.

(c) Except as provided in § 718.304, where it has been previously determined that a miner is totally disabled due to pneumoconiosis (see § 718.204) such disability shall be found to have ceased in the month in which the impairment, as established by medical or other relevant evidence, is no longer of such severity as to prevent such miner from engaging in "comparable and gainful work." (see § 718.204(b)).

Appendix A—Standards for Administration and Interpretation of Chest Roentgenograms (X-rays)

The following standards are established in accordance with Sections 402(f)(1)(D) and 413(b) of the Act. They were developed in consultation with the National Institute for Occupational Safety and Health. These standards are promulgated for the guidance of physicians and medical technicians to insure that uniform procedures are used in administering and interpreting X-rays and that the best available medical evidence will be submitted in support of a claim for black lung benefits. Notwithstanding the provisions of § 718.102 of this part, for purposes of adjudication of a claim, it shall be presumed in the absence of evidence to the contrary that these standards have been met. If it is established that one or more standards have not been met, the claims adjudicator may consider such fact in determining the evidentiary weight to be assigned to the physician's report of an X-ray.

(1) Every chest roentgenogram shall be a single posteroanterior projection at full inspiration on a 14 by 17 inch film. Additional chest films or views shall be obtained if they are necessary for clarification and classification. The film and cassette shall be capable of being positioned both vertically an horizontally so that the chest roentgenogram will include both apices and costophrenic angles. If a miner is too large to permit the above requirements, then a projection with minimum loss of costophrenic angle shall be made.

(2) Miners shall be disrobed from the waist up at the time the roentgenogram is given. The facility shall provide a dressing area and, for those miners who wish to use

one, the facility shall provide a clean gown. Facilities shall be heated to a comfortable temperature.

(3) Roentgenograms shall be made only with a diagnostic X-ray machine having a rotating anode tube with a maximum of a 2 mm source (focal spot).

(4) Except as provided in paragraph (5) roentgenograms shall be made with units having generators which comply with the following: (a) the generators of existing roentgenographic units acquired by the examining facility prior to July 27, 1973, shall have a minumum rating of 200 mA at 100 kVp; (b) generators of units acquired subsequent to that date shall have a minimum rating of 300 mA at 125 kVp.

NOTE. A generator with a rating of 150 kVp is recommended.

(5) Roentgenograms made with battery-powered mobile or portable equipment shall be made with units having a minimum rating of 100 mA at 110 kVp at 500 Hz, or 200 mA at 110 kVp at 60 Hz.

(6) Capacitor discharge, and field emission units may be used.

(7) Roentgenograms shall be given only with equipment having a beam-limiting device which does not cause large unexposed boundaries. The use of such a device shall be discernible from an examination of the roentgenogram.

(8) To insure high quality chest roentgenograms:

(i) The maximum exposure time shall not exceed 1/20 of a second except that with single phase units with a rating less than 300 mA at 125 kVp and subjects with chest over 28 cm postero-anterior, the exposure may be increased to not more than 1/10 of a second;

(ii) The source or focal spot to film distance shall be at least 6 feet;

(iii) Only medium-speed film and medium-speed intensifying screens shall be used;

(iv) Film-screen contact shall be maintained and verified at 6 months or shorter intervals;

(v) Intensifying screens shall be inspected at least once a month and cleaned when necessary by the method recommended by the manufacturer;

(vi) All intensifying screens in a cassette shall be of the same type and made by the same manufacturer;

(vii) When using over 90 kV, a suitable grid or other means of reducing scattered radiation shall be used;

(viii) The geometry of the radiographic system shall insure that the central axis (ray) of the primary beam is perpendicular to the plane of the film surface and impinges on the center of the film.

(9) Radiographic processing:

(i) Either automatic or manual film processing is acceptable. A constant time-temperature technique shall be meticulously employed for manual processing.

(ii) If mineral or other impurities in the processing water introduce difficulty in obtaining a high-quality roentgenogram, a suitable filter or purification system shall be used.

(10) Before the miner is advised that the examination is concluded, the roentgenogram shall be processed and inspected and accepted for quality by the physician, or if the physician is not available, acceptance may be made by the radiologic technologist. In a case of a substandard roentgenogram, another shall be immediately made. All substandard roentgenograms shall be clearly marked as rejected and promptly sent to the Department of Labor.

(11) An electric power supply shall be used which complies with the voltage, current, and regulation specified by the manufacturer of the machine.

(12) A densitometric test object may be required on each roentgenogram for an objective evaluation of film quality at the discretion of the Department of Labor.

(13) Each roentgenogram made hereunder shall be permanently and legibly marked with the name and address of the facility at which it is made, the miner's DOL claim number, the date of the roentgenogram, and left and right side of film. No other identifying markings shall be recorded on the roentgenogram.

(14) Miners known to be pregnant shall not be examined except when the examination is specifically requested in writing by the pregnant miner. Miners who are pregnant shall be provided with appropriate shielding, according to 21 CFR 1000.

APPENDIX B—STANDARDS FOR ADMINISTRATION AND INTERPRETATION OF VENTILATORY FUNCTION TESTS

The following standards are established in accordance with Section 402(f)(1)(D) of the Act. They were developed in consultation with the National Institute for Occupational Safety and Health (NIOSH). These standards are promugated for the guidance of physicians and medical technicians to insure that uniform procedures are used in administering and interpreting ventilatory function tests and that the best available medical evidence will be submitted in support of a claim for black lung benefits. Notwithstanding the provisions of § 718.103 of this part, for purposes of adjudication of a claim, it shall be presumed in the absence of evidence to the contrary that these standards have been met. If it is established that one or more standards have not been met, the claims adjudicator may consider such fact in determining the evidentiary weight to be given to the results of the ventilatory function test.

(1) Instruments to be used for the administration of pulmonary function tests shall be approved by NIOSH and shall conform to the following criteria:

(i) The instrument shall be accurate within ±50 ml or within ±3 percent of reading whichever is greater.

(ii) The instrument shall be capable of measuring vital capacity from 0 to 7 liters BTPS.

(iii) The instrument shall have a low inertia and offer low resistance to airflow such that the resistance to airflow at 12 liters per second must be less than 1.5 cm H_2O/ liter/ sec.

(iv) The xero time point for the purpose of timing the $Fev_{1.0}$ shall be determined by extrapolating the steepest portion of the volume-time curve back to the maximal inspiration volume or by an equivalent method.

(v) Instruments incorporating measurements of airflow to determine volume shall conform to the same volume accuracy stated in subparagraph (1)(i) of this Appendix B when presented with flow rates from at least 0 to 12 liters per second.

(vi) The instrument or user of the instrument must have a means of correcting volumes to body temperature saturated with water vapor (BTPS) under conditions of varying ambient spirometer temperatures and barometric pressures.

(vii) The instrument used shall provide a tracing of either flow versus volume or volume versus time during the entire forced expiration and volume versus time during the MVV maneuver. A tracing is necessary to determine whether the patient has performed the test properly. The tracing must be of sufficient size that hand measurements may be made within the requirement of subparagraph (1)(i) of this Appendix B. If a paper record is made it must have a paper speed of at least 2 cm/sec and a volume sensitivity of at least 10.0 mm of chart per liter of volume.

(viii) The instrument shall be capable of accumulating volume for a minimum of 10 seconds and shall not stop accumulating volume before (1) the volume change for a 0.5 sec interval is less than 25 ml, or (2) the flow is less than 50 ml per second for a 0.5 sec interval.

(ix) The forced expiratory volume in 1 sec ($FEV_{1.0}$) measurements shall comply with the accuracy requirements stated in subparagraph (1)(i) of this Appendix B. That is, they shall be accurately measured to within ±50 ml or within ±3 percent of reading, whichever is greater.

(x) The instrument must be capable of being calibrated in the field with respect to the $FEV_{1.0}$. This calibration of the $FEV_{1.0}$ may be done either directly or indirectly through volume and time base measurements. The volume calibration source shall provide a volume displacement of at least 3 liters and shall be accurate to within ±30 ml.

(xi) For measuring maximum voluntary ventilation (MVV) the instrument shall have a response which is flat within ±10 percent up to 4 Hz at flow rates up to 12 liters per second over the volume range. The time for exhaled volume integration or recording shall be no less than 12 sec. and no more than 15 sec. The indicated time shall be accurate to within ±3 percent.

A recording of the spirometer tracing is required, and the volume sensitivity shall be such that 10 mm or more deflection corresponds to 1 liter volume.

(2) The administration of pulmonary function tests shall conform to the following criteria:

(i) Tests shall not be performed during or soon after an acute respiratory illness.

(ii) For the $FEV_{1.0}$, use of a nose clip is required. The procedures shall be explained in simple terms to the patient who shall be instructed to loosen any tight clothing and stand in front of the apparatus. The subject may sit, or stand, but care should be taken on repeat testing that the same position be used. Particular attention shall be given to insure that the chin is slightly elevated with the neck slightly extended. The patient shall be instructed to make a full inspiration from a normal breathing pattern and then blow into the apparatus, without interruption, as hard, fast, and completely as possible. At least three forced expirations shall be carried out. During the maneuvers, the patient shall be observed for compliance with instructions. The expirations shall be checked visually for reproducibility from the flow-volume or volume-time tracings. The effort shall be judged unacceptable when the patient:

(A) Has not reached full inspiration preceding the forced expiration; or

(B) Has not used maximal effort during the entire forced expiration; or

(C) Has not continued the expiration for at least 5 sec. or until an obvious plateau in the volume-time curve has occurred; or

(D) Has coughed or closed his glottis; or

(E) Has an obstructed mouthpiece or a leak around the mouthpiece (obstruction due to tongue being placed in front of mouthpiece, false teeth falling in front of mouthpiece, etc.); or

(F) Has an unsatisfactory start of expiration, one characterized by excessive hesitation (or false starts), and therefore not allowing back extrapolation of time 0 (extrapolated volume on the volume-time tracing must be less than 10 percent of the FVC); or

(G) Has an excessive variability between the three acceptable curves. The variation between the two largest $FEV_{1.0}$'s of the three satisfactory tracings should not exceed 10 percent or 100 ml, whichever is greater.

(iii) For the MVV, the subject shall be instructed before beginning the test that he will be asked to breathe as deeply and as rapidly as possible for approximately 15 seconds.

The test shall be performed with the subject in the standing position, if possible. Care shall be taken on repeat testing that the same position be used. The subject shall breathe normally into the mouthpiece of the apparatus for 10 to 15 seconds to become accustomed to the system. He shall then be instructed to breathe as deeply and as rapidly as possible, and he shall be encouraged during the remainder of the maneuver. Subject shall continue the maneuver for 15 seconds. At least 5 minutes of rest shall be allowed between maneuvers. At least three MVV's shall be carried out. During the maneuvers the patient shall be observed for compliance with instructions. The effort shall be judged unacceptable when the patient:

(A) Has not maintained consistent effort for a least 15 seconds; or

(B) Has coughed or closed his glottis; or

(C) Has an obstructed mouthpiece or a leak around the mouthpiece (obstruction due to tongue being placed in front of mouthpiece, false teeth falling in front of mouthpiece, etc.); or

(D) Has an excessive variability between three acceptable curves. The variation between the two largest MVV's of the three satisfactory tracings shall not exceed 10 percent.

(iv) The instrument shall be recalibrated each day before use. The procedure described here shall be performed as well as any other procedures suggested by the manufacturer of the spirometer being used. Using a volume source of 3 liters accurate to within ±30 ml, 3 liters of air is introduced into the spirometer. These 3 liters shall be introduced in a period of approximately ½ second and a second trial done with a time of approximately two seconds. The volume measured by the spirometer shall be between 2.90 and 3.10 liters for both trials. Accuracy of the time measurement used in determining the $FEV_{1.0}$ shall be checked using the manufacturer's stated procedure and shall be within ±3 percent of actual.

(v)(A) The first step in evaluating a spirogram for the $FEV_{1.0}$ shall be to determine whether or not the patient has performed the test properly or as described in (2)(ii) above. From the three satisfactory tracings, the forced expiratory volume in one second ($FEV_{1.0}$ shall be measured and recorded. The largest observed $FEV_{1.0}$ shall be used in the analysis, corrected to BPTS.

(B) Only MVV maneuvers which demonstrate consistent effort for at least 12 seconds shall be considered acceptable. The largest accumulated volume for a 12 second period corrected to BPTS and multiplied by five is to be reported as the MVV.

TABLES B1, B2, B3, AND B4

The following tables B1, B2, B3, and B4 set forth the values to be applied in determining whether total disability may be established under § 718.204(c)(1). Table B1 and B2 set forth values which reflect 60 percent of predicted normal ventilatory volumes for women and men respectively as determined by a measure of an individual's Forced Expiratory Volume in One Second ($FEV_{1.0}$), in liters, adjusted for body temperature saturated with water vapor (BTPS), as a function of age and height. Tables B3 and B4 set forth values for men and for women which reflect 60 percent of predicted normal Maximum Voluntary Ventilation (MVV), also know equivalently as Maximum Breathing Capacity, (MBC), in liters per minute, adjusted for BTPS, as a function of age and height.

In order to establish total disability in accordance with § 718.204(c)(1), both the $FEV_{1.0}$ and MVV must be decreased to the extent indicated, although any negative deviation from normal may be indicative of a respiratory or pulmonary impairment which may be considered in light of all other evidence in the adjudication of a claim for benefits under the Act.

Table B1 $FEV_{1.0}$/FEVALES(L) Source: Knudson et al.: Am. Rev. Resp. Dis., 1976, 113, 587.

Ht in CM	Ht in IN	Age (Years) 26 & under	27-28	29-30	31-32	33-34	35-36	37-38	39-40	41-42	43-44	45-46	47-48	49-50	51-52	53-54	55-56	57-58	59-60	61-62	63-64	65-66	67-68	69-70	71-72	73 and over
132	52	1.35	1.33	1.30	1.27	1.25	1.22	1.20	1.17	1.15	1.12	1.10	1.07	1.04	1.02	1.00	.97	.95	.92	.89	.87	.85	.82	.79	.77	.74
135	53	1.39	1.36	1.34	1.31	1.29	1.27	1.24	1.21	1.19	1.16	1.14	1.11	1.09	1.06	1.04	1.01	.98	.96	.94	.91	.89	.86	.83	.81	.79
137	54	1.43	1.40	1.38	1.36	1.33	1.30	1.28	1.25	1.23	1.21	1.18	1.15	1.13	1.10	1.08	1.05	1.03	1.00	.98	.95	.92	.90	.88	.85	.83
140	55	1.47	1.45	.142	1.40	1.37	1.34	1.32	1.30	1.27	1.24	1.22	1.19	1.17	1.15	1.12	1.09	1.07	1.04	1.02	.99	.97	.94	.92	.89	.86
142	56	1.51	1.49	1.46	1.44	1.41	1.39	1.36	1.34	1.31	1.28	1.26	1.24	1.21	1.19	1.16	1.13	1.11	1.09	1.06	1.03	1.01	.98	.96	.94	.91
145	57	1.55	1.53	1.51	1.47	1.45	1.43	1.40	1.38	1.35	1.33	1.30	1.28	1.25	1.22	1.20	1.18	1.15	1.13	1.10	1.07	1.05	1.03	1.00	.97	.95
147	58	1.60	1.57	1.54	1.52	1.49	1.47	1.45	1.42	1.39	1.37	1.34	1.32	1.29	1.27	1.24	1.22	1.19	1.16	1.12	1.09	1.09	1.07	1.04	1.01	.99
150	59	1.64	1.61	1.58	1.56	1.54	1.51	1.49	1.46	1.43	1.41	1.39	1.36	1.33	1.31	1.28	1.26	1.24	1.21	1.18	1.16	1.13	1.11	1.08	1.06	1.03
152	60	1.68	1.65	1.63	1.60	1.58	1.55	1.52	1.50	1.48	1.45	1.43	1.40	1.37	1.35	1.33	1.30	1.27	1.25	1.22	1.20	1.18	1.15	1.12	1.10	1.07
155	61	1.72	1.69	1.67	1.64	1.62	1.59	1.57	1.54	1.52	1.49	1.46	1.44	1.42	1.39	1.37	1.34	1.31	1.29	1.27	1.24	1.21	1.19	1.16	1.14	1.12
157	62	1.76	1.73	1.71	1.69	1.66	1.63	1.61	1.58	1.56	1.53	1.51	1.48	1.46	1.43	1.40	1.38	1.36	1.33	1.31	1.28	1.25	1.23	1.21	1.19	1.15
160	63	1.80	1.78	1.75	1.73	1.70	1.67	1.65	1.63	1.60	1.57	1.55	1.52	1.50	1.48	1.45	1.42	1.40	1.37	1.35	1.32	1.30	1.27	1.25	1.22	1.19
163	64	1.84	1.82	1.79	1.76	1.74	1.72	1.69	1.67	1.64	1.61	1.59	1.57	1.54	1.51	1.49	1.46	1.44	1.42	1.39	1.36	1.34	1.31	1.29	1.26	1.24
165	65	1.88	1.86	1.83	1.81	1.78	1.76	1.73	1.70	1.68	1.66	1.63	1.61	1.58	1.55	1.53	1.51	1.48	1.45	1.43	1.40	1.38	1.36	1.33	1.30	1.28
168	66	1.93	1.90	1.87	1.85	1.82	1.80	1.78	1.75	1.72	1.70	1.67	1.65	1.62	1.60	1.57	1.55	1.52	1.49	1.47	1.45	1.42	1.40	1.37	1.34	1.32
170	67	1.97	1.94	1.91	1.89	1.87	1.84	1.81	1.79	1.76	1.74	1.72	1.69	1.66	1.64	1.61	1.59	1.56	1.54	1.51	1.49	1.46	1.43	1.41	1.39	1.36
173	68	2.00	1.98	1.96	1.93	1.91	1.88	1.85	1.83	1.81	1.79	1.75	1.73	1.70	1.68	1.66	1.63	1.60	1.58	1.55	1.53	1.50	1.48	1.45	1.43	1.40
175	69	2.05	2.02	2.00	1.97	1.95	1.92	1.90	1.87	1.85	1.82	1.79	1.77	1.75	1.72	1.70	1.67	1.64	1.62	1.60	1.57	1.54	1.52	1.49	1.47	1.45
178	70	2.09	2.06	2.04	2.02	1.99	1.96	1.94	1.91	1.89	1.86	1.84	1.81	1.79	1.76	1.73	1.71	1.69	1.66	1.64	1.61	1.58	1.56	1.54	1.51	1.48
180	71	2.13	2.11	2.08	2.05	2.03	2.00	1.98	1.96	1.93	1.90	1.88	1.85	1.83	1.80	1.78	1.75	1.73	1.70	1.67	1.65	1.63	1.60	1.58	1.55	1.52
183	72	2.17	2.15	2.12	2.09	2.07	2.05	2.02	1.99	1.97	1.94	1.92	1.90	1.87	1.84	1.82	1.79	1.77	1.74	1.72	1.69	1.67	1.64	1.61	1.59	1.57

TABLE B2 ($FEV_{1.0}$ FOR MALES) SOURCE: Knudson, et al., American Review of Respiratory Disease, 1976, 113, 587.

HT in CM	HT in IN	Age (Years) 26 & under	27-28	29-30	31-32	33-34	35-36	37-38	39-40	41-42	43-44	45-46	47-48	49-50	51-52	53-54	55-56	57-58	59-60	61-62	63-64	65-66	67-68	69-70	71-72	73 and over
152	60	1.83	1.79	1.76	1.73	1.70	1.67	1.63	1.60	1.57	1.54	1.51	1.47	1.44	1.41	1.37	1.34	1.31	1.28	1.25	1.21	1.18	1.15	1.12	1.09	1.05
155	61	1.91	1.88	1.84	1.81	1.78	1.75	1.72	1.68	1.65	1.61	1.58	1.55	1.52	1.49	1.45	1.42	1.39	1.36	1.33	1.29	1.26	1.23	1.19	1.16	1.13
157	62	1.99	1.96	1.92	1.89	1.86	1.82	1.79	1.76	1.73	1.70	1.66	1.63	1.60	1.57	1.54	1.50	1.47	1.43	1.40	1.37	1.34	1.31	1.27	1.24	1.21
160	63	2.06	2.03	2.00	1.97	1.94	1.90	1.87	1.84	1.81	1.78	1.74	1.71	1.68	1.64	1.61	1.58	1.55	1.52	1.48	1.45	1.42	1.39	1.36	1.32	1.29
163	64	2.15	2.11	2.08	2.05	2.02	1.99	1.95	1.92	1.88	1.85	1.82	1.79	1.76	1.72	1.69	1.66	1.63	1.60	1.56	1.53	1.50	1.46	1.43	1.40	1.37
165	65	2.23	2.19	2.16	2.13	2.09	2.06	2.03	2.00	1.97	1.93	1.90	1.87	1.84	1.81	1.77	1.74	1.70	1.67	1.64	1.61	1.58	1.54	1.51	1.48	1.45
168	66	2.30	2.27	2.24	2.21	2.17	2.14	2.11	2.08	2.05	2.01	1.98	1.95	1.91	1.88	1.85	1.82	1.79	1.75	1.72	1.69	1.66	1.63	1.59	1.56	1.52
170	67	2.38	2.35	2.32	2.29	2.26	2.22	2.19	2.15	2.12	2.09	2.06	2.03	1.99	1.96	1.93	1.90	1.87	1.83	1.80	1.77	1.73	1.70	1.67	1.64	1.61
173	68	2.46	2.43	2.40	2.36	2.33	2.30	2.27	2.24	2.20	2.17	2.14	2.11	2.08	2.04	2.01	1.97	1.94	1.91	1.88	1.85	1.81	1.78	1.75	1.72	1.69
175	69	2.54	2.51	2.48	2.44	2.41	2.38	2.35	2.32	2.28	2.25	2.22	2.18	2.15	2.12	2.09	2.06	2.02	2.99	1.96	1.93	1.90	1.86	1.83	1.79	1.76
178	70	2.62	2.59	2.56	2.53	2.49	2.46	2.43	2.39	2.36	2.33	2.30	2.27	2.23	2.20	2.17	2.14	2.11	2.07	2.04	2.00	1.97	1.94	1.91	1.88	1.84
180	71	2.70	2.67	2.63	2.60	2.57	2.54	2.51	2.47	2.44	2.41	2.38	2.35	2.31	2.28	2.25	2.21	2.18	2.15	2.12	2.09	2.05	2.02	1.99	1.96	1.93
183	72	2.78	2.75	2.72	2.68	2.65	2.62	2.59	2.56	2.52	2.49	2.45	2.42	2.39	2.36	2.33	2.29	2.26	2.23	2.20	2.17	2.13	2.10	2.07	2.03	2.00
185	73	2.86	2.83	2.80	2.76	2.73	2.70	2.66	2.63	2.60	2.57	2.54	2.50	2.47	2.44	2.41	2.38	2.34	2.31	2.27	2.24	2.21	2.18	2.15	2.11	2.08
187	74	2.94	2.90	2.87	2.84	2.81	2.78	2.74	2.71	2.68	2.65	2.62	2.58	2.55	2.52	2.48	2.45	2.42	2.39	2.36	2.32	2.29	2.26	2.23	2.20	2.16
190	75	3.02	2.99	2.95	2.92	2.89	2.86	2.83	2.79	2.76	2.72	2.69	2.66	2.63	2.60	2.56	2.53	2.50	2.47	2.44	2.40	2.37	2.34	2.30	2.27	2.24
193	76	3.10	3.07	3.03	3.00	2.97	2.93	2.90	2.87	2.84	2.81	2.77	2.74	2.71	2.68	2.65	2.61	2.58	2.54	2.51	2.48	2.45	2.42	2.38	2.35	2.32

TABLE B-3 MVV/MALES (L/M) DER SOURCE: The MVV values are derived from Knuson, et. al. American Review Respiratory Disease, 1976, 113, 587, by multiplying FEV 1.0 by a factor of 40.

Ht (cm)	Ht (in)	Age (Years)																							
		26 & under	27-28	29-30	31-32	33-34	35-36	37-38	39-40	41-42	43-44	45-46	47-48	49-50	51-52	53 54	55 56	57 58	59 60	61 62	63 64	65 66	67 68	69 70	71 72	73 and over
152	60	122	120	118	116	113	111	109	107	105	102	100	98	96	94	92	90	87	85	83	81	79	76	74	72	70
155	61	127	125	123	121	118	116	114	112	110	108	106	104	101	99	97	95	93	90	88	86	84	82	80	78	75
157	62	132	130	128	126	124	122	120	117	115	113	111	109	106	104	102	100	98	96	94	92	89	87	85	83	81
160	63	138	136	134	131	129	127	125	123	120	118	116	114	112	110	108	105	103	101	99	97	94	92	90	88	86
163	64	143	141	139	136	134	132	130	128	126	124	122	119	117	115	113	111	108	106	104	102	100	98	96	93	91
165	65	148	146	144	142	140	138	135	133	131	129	127	124	122	120	118	116	114	112	110	107	105	103	101	99	96
168	66	154	152	149	147	145	143	141	138	136	134	132	130	128	126	123	121	119	117	115	112	110	108	106	104	102
170	67	159	157	154	152	150	148	146	144	142	140	137	135	133	131	129	126	124	122	120	118	116	114	111	109	107
173	67	164	162	160	158	156	153	151	149	147	145	142	140	138	136	134	132	130	128	125	123	121	119	117	114	112
175	69	170	167	165	163	161	159	156	154	152	150	148	146	144	141	139	137	135	133	130	128	126	124	122	120	118
178	70	175	173	170	168	166	164	162	160	158	155	153	151	149	147	144	142	140	138	136	134	132	130	127	125	123
180	71	180	178	176	174	172	169	167	165	163	161	158	156	154	152	150	148	146	143	141	139	137	135	132	130	128
183	72	185	183	181	179	177	174	172	170	168	166	164	162	160	157	155	153	151	149	146	144	142	140	138	136	134
185	73	191	188	186	184	182	180	178	176	173	171	169	167	165	162	160	158	156	154	152	150	148	145	143	141	139
187	74	196	194	192	190	187	185	183	181	179	176	174	172	170	168	166	164	161	159	157	155	153	150	148	146	144
190	75	201	199	197	195	192	190	188	186	184	182	180	178	175	173	171	169	167	164	162	160	158	156	154	152	149
193	76	206	204	202	200	198	196	194	191	189	187	185	183	180	178	176	174	172	170	168	166	163	161	159	157	155

TABLE B-4 MVV/FEMALES (L/M) DER SOURCE: The MVV values are derived from K.Jonson, et. al. American Review Respiratory Disease, 1976, 113, 587, by multiplying the respective FEV 1.0 by a factor of 40.

Ht (cm)	Ht (in)	Age (Years)																							
		26 & under	27-28	29-30	31-32	33-34	35-36	37-38	39-40	41-42	43-44	45-46	47-48	49-50	51-52	53-54	55-56	57-58	59-60	61-62	63-64	65-66	67-68	69-70	71-72	73 and over
132	52.0	54	53	52	51	50	49	48	47	46	45	44	43	42	41	40	39	38	37	36	35	34	33	32	31	30
135	53.0	56	54	54	53	52	51	49	48	48	47	46	44	43	42	42	41	39	38	37	36	36	34	33	32	31
137	54.0	57	56	55	54	53	52	52	50	49	48	47	46	45	44	43	42	41	40	39	38	37	36	35	34	33
140	55.0	59	58	57	56	55	54	53	52	51	50	49	48	47	46	45	44	43	42	41	40	39	38	37	36	35
142	56.0	60	60	59	58	56	55	54	54	53	51	50	49	48	48	46	45	44	43	42	41	40	39	38	37	36
145	57.0	62	61	60	59	58	57	56	55	54	53	52	51	50	49	48	47	46	45	44	43	42	41	40	39	39
147	58.0	64	63	62	61	60	59	58	57	56	55	54	53	52	51	50	49	48	47	46	45	44	43	42	41	40
150	59.0	66	65	63	62	61	60	60	58	57	56	55	54	53	52	51	50	49	48	47	46	45	44	43	42	41
152	60.0	67	66	65	64	63	62	61	60	59	58	57	56	55	54	53	52	51	50	49	48	47	46	45	44	43
155	61.0	69	68	67	66	65	64	63	62	61	60	59	58	57	56	55	54	53	52	51	50	48	48	47	46	45
157	62.0	70	69	68	67	66	65	64	63	62	61	60	59	58	57	56	55	54	53	52	51	50	49	48	47	46
160	63.0	72	71	70	69	68	67	66	65	64	63	62	61	60	59	58	57	56	55	54	53	52	51	50	49	48
163	64.0	74	73	72	71	70	69	68	67	66	65	64	63	62	60	60	59	58	57	55	54	54	53	52	50	49
165	65.0	75	74	73	72	71	70	69	68	67	66	65	64	63	62	61	60	59	58	57	56	55	54	53	52	51
165	66.0	77	76	75	74	73	72	71	70	69	68	67	66	65	64	63	62	61	60	59	58	57	56	55	54	53
170	67.0	79	78	77	76	75	74	72	72	71	70	69	68	66	66	65	64	62	61	60	60	59	57	56	55	54
173	68.0	80	79	78	77	76	75	74	73	72	71	70	69	68	67	66	65	64	63	62	61	60	59	58	57	56
175	69.0	82	81	80	79	78	77	76	75	74	73	72	71	70	69	68	67	66	65	64	63	62	61	60	59	58
178	70.0	84	83	82	81	79	78	78	77	76	74	73	72	72	71	69	68	67	66	65	64	64	63	62	61	60
180	71.0	85	84	83	82	81	80	79	78	77	76	75	74	73	72	71	70	69	68	67	66	65	64	63	62	61
183	72.0	87	86	85	84	83	82	81	80	79	78	77	76	75	74	73	72	71	70	69	68	67	66	65	64	63

APPENDIX C

The following table sets forth the values to be applied in determining whether total disability may be established in accordance with §§ 718.204(c)(2) and 718.305 (a), (c). The values contained in this table are indicative of impairment only. They do not establish a degree of disability except as provided in §§ 718.204(c)(2) and 718.305 (a), (c) of this subchapter, nor do they establish standards for determining normal alveolar gas exchange values for any particular individual.

A miner who meets the following medical specifications shall be found to be totally disabled, in the absence of rebutting evidence, if the values specified in one of the following tables are met:

(1) For arterial blood-gas studies performed at test sites up to 4,000 feet above sea level:

Arterial pCO_2 (mm Hg)	Arterial pO_2 equal to or than (mm Hg)
25 or below	75
26	74
27	73
28	72
29	71
30	70
31	69
32	68
33	67
34	66
35	65
36	64
37	63
38	62
39	61
40–45	60
Above 45	(1)

[1]Any value.

For arterial blood-gas studies performed at test sites between 4,000 and 6,000 feet above sea level,

(i) Any pO_2 value which is equal to or below 60 mm Hg, or

(ii) Any pCO_2 value which is equal to or above 42 mm Hg.

Signed this 18th day of April, 1978, at Washington, D.C.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-11086 Filed 4-24-78; 8:45 am]

[4510-27]

[20 CFR Part 725]

CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

Federal Mine Safety and Health Act of 1977, as amended

AGENCY: Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This part revises the regulations contained in Part 725 to establish comprehensive procedures for the handling and adjudication of claims for black lung benefits filed with the Secretary of Labor and repeals the provisions of Parts 715, 717, and 720 which are superseded by these revised regulations.

DATES: Written comments on this proposed rulemaking may be submitted by interested persons to the person specified below on or before May 25, 1978. Such written comments will be available for inspection during regular business hours at the office indicated below:

ADDRESS: Comments should be sent to Mr. Robert B. Dorsey (see For Further Information Contact).

FOR FURTHER INFORMATION CONTACT:

Robert B. Dorsey, Chief, Branch of Claims Determination, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room C 3526, NDOL Building, 200 Constitution Ave., N.W., Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION: The Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Revenue Act of 1977, enacted March 1, 1978, significantly amend the Black Lung Benefits Act of 1972. Among other things, the 1977 amendments establish the black lung disability trust fund for the payment of all claims predicated upon coal mine employment which terminated prior to January 1, 1970, and for other claims for which no operator liability can be established. This fund is financed by a tax upon coal produced by individual coal mine operators.

Other provisions of the act as now amended substantially amend the standards for determining eligibility for benefits, modify the evidentiary requirements necessary to establish entitlement to benefits, eliminate certain restrictions on the filing of claims, establish penalties to be imposed if a coal mine operator fails to meet its obligations, and make technical, correcting, and other administrative, and procedural, and substantive changes which make it necessary to repeal Parts 715, 717, and 720 and completely revise Part 725 of this Subchapter.

Prior to publication of this document officials of the Employment Standards Administration met with representatives of the persons affected by the recent amendments to the Black Lung Benefits Act, advised the representatives of the needs for revisions in the regulations to implement these amendments, and received comments and suggestions from them. Some suggestions have been incorporated into this document. In order to avoid undue delay in the implementation of the provisions of the Black Lung Benefits Reform Act of 1977, approved March 1, 1978, and the adjudication of the pending and newly filed claims, it has been determined that it is impracticable and unnecessary to afford interested persons more than 30 days to submit written comments on this proposal.

DRAFTING INFORMATION: This document was prepared under the direction and supervision of Donald Elisburg, Assistant Secretary of Labor for Employment Standards.

The principal author of this document is Mark E. Solomons, Counsel for Black Lung, Employee Benefits Division, Office of the Solicitor, U.S. Department of Labor. However, personnel of the Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor have participated in its development.

As proposed, 20 CFR Chapter VI, Subchapter B, would be revised as follows:

1. Parts 715, 717, and 720 are repealed.

2. Part 725 is revised to read as follows:

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

Subpart A—General

Sec.
725.1 Statutory provisions.
725.2 Purpose and applicability of this part.
725.3 Contents of this part.
725.4 Applicability of other parts in this title.
725.101 Definitions and use of terms.
725.102 Disclosure of program information.

Subpart B—Persons Entitled to Benefits, Conditions and Duration of Entitlement

725.201 Who is entitled to benefits, contents of this subpart.
725.202 Miner defined, condition of entitlement; miner.
725.203 Duration of entitlement; miner.
725.204 Determination of relationship—spouse.
725.205 Determination of dependency; spouse.
725.206 Determination of relationship; divorced spouse.
725.207 Determination of dependency; divorced spouse.
725.208 Determination of relationship; child.
725.209 Determination of dependency; child.
725.210 Duration of augmented benefits.
725.211 Time of determination of relationship and dependency of spouse or child for purposes of augmentation of benefits.
725.212 Conditions of entitlement; surviving spouse or surviving divorced spouse.
725.213 Duration of entitlement; surviving spouse or surviving divorced spouse.
725.214 Determination of relationship; surviving spouse.
725.215 Determination of dependency; surviving spouse.
725.216 Determination of relationship; surviving divorced spouse.

Sec.
725.217 Determination of dependency; surviving spouse.
725.218 Conditions of entitlement; child.
725.219 Duration of entitlement; child.
725.220 Determination of relationship; child.
725.221 Determination of dependency; child.
725.222 Conditions of entitlement; parent, brother, or sister.
725.223 Duration of entitlement; parent, brother, or sister.
725.224 Determination of relationship; parent, brother, or sister.
725.225 Determination of dependency; parent, brother, or sister.
725.226 "Good cause" for delayed filing of proof of support.
725.227 Time of determination of relationship and dependency of survivors.
725.228 Effect of conviction of felonious and intentional homicide on entitlement to benefits.
725.229 Intestate personal property.
725.230 Legal impediment.
725.231 Domicile.
725.232 Member of the same household—"living with," "living in the same household," and "living in the miner's household," defined.
725.233 Support and contributions.

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725.301 Who may file a claim.
725.302 Evidence of authority to file a claim on behalf of another.
725.303 Date and place of receipt of claims.
725.304 Forms and initial processing.
725.305 When a written statement is considered a claim.
725.306 Withdrawal of a claim.
725.307 Cancellation of a request for withdrawal.
725.308 Time limits for filing claims.
725.309 Duplicate claims.
725.310 Modification of awards and denials.
725.311 Communications with respect to claims, time computations.

Subpart D—Adjudication of Claims; Adjudication Officers

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725.351 Powers of adjudication officers.
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725.401 General.
725.402 Approved State workers' compensation law.
725.403 Requirement to file under State workers' compensation law—section 415 claims.
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725.405 Development of medical evidence; scheduling of medical examinations and tests.
725.406 Medical examinations and tests.
725.407 Additional medical evidence.
725.408 Refusal to submit to medical examinations or tests.
725.409 Denial of a claim by reason of abandonment.
725.410 Initial findings by the Deputy Commissioner.
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725.411 Adjudication upon initial findings of eligibility and no operator responsibility.
725.412 Identification and notification of responsible operator.
725.413 Operators response to notification.
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725.415 Action by the Deputy Commissioner after development of operator's evidence.
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725.417 Action at the conclusion of conference.
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725.491 Operator defined.
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725.514 Certification to dependent of augmentation portion of benefit.
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725.522 Payments prior to final adjudication.
725.530 Operator payments; generally.
725.531 Receipt for payment.
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725.534 Reduction of State benefits.
725.535 Reduction; receipt of State or Federal benefit.
725.536 Reductions; excess earnings.
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725.539 More than one reduction event.
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725.542 When waiver of adjustment or recovery may be applied.
725.543 Standards for waiver of adjustment or recovery.
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Subpart H—Enforcement of Liability, reports

725.601 Enforcement generally.
725.602 Reimbursement of the fund.
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725.705 Authorization to provide medical services.
725.706 Reports of physicians and supervision of medical care.
725.707 Disputes concerning medical benefits.
725.710 Objective of vocational rehabilitation.
725.711 Requests for and referral to vocational rehabilitation assistance.

AUTHORITY: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq.

Subpart A—General

§ 725.1 Statutory provisions.

(a) *General.* Title IV of the Federal Coal Mine Health and Safety Act of 1969 as amended by the Black Lung Benefits Act of 1972, the Mine Safety and Health Act of 1977, the Black Lung Benefits Reform Act of 1977 and the Black Lung Benefits Revenue Act of 1977 provides for the payment of benefits to a coal miner who is totally disabled due to pneumoconiosis (black lung disease) and to certain survivors of a miner who was totally (or in accordance with Section 411(c) (5) of the Act, partially) disabled due to pneumoconiosis, or who died due to pneumoconiosis.

(b) *Part B.* Part B of Title IV of the Act provides that all claims filed between December 30, 1969 and June 30, 1973 are to be filed with, processed and paid by the Secretary of Health, Education, and Welfare through the Social Security Administration; claims filed by the survivor of a miner before January 1, 1974 or within 6 months of the miner's death if death occurred before January 1, 1974, and claims filed by the survivor of a miner who was receiving benefits under Part B of Title IV of the Act at the time of death, if filed within 6 months of the miner's death, are also adjudicated and paid by the Social Security Administration.

(c) *Section 415.* Claims filed by a miner between July 1 and December 31, 1973 are adjudicated and paid under Section 415. Section 415 provides that a claim filed between the appropriate dates shall be filed with and adjudicated by the Secretary of Labor under certain incorporated provisions of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.). A claim approved under Section 415 is paid under Part B of Title IV of the Act for periods of eligibility occurring between July 1 and December 31, 1973, and for periods of eligibility thereafter, is paid by a coal mine operator which is determined liable for the claim or the Black Lung disability Trust Fund if no operator is identified or if the miner's last coal mine employment terminated prior to January 1, 1970. An operator which may be found liable for a Section 415 claim is notified of the claim and allowed to participate fully in the adjudication of such claim. A claim filed under Section 415 is for all purposes considered as if it was a Part C claim (see paragraph (d) of this section) and the provisions of Part C of Title IV of the Act are fully applicable to a Section 415 claim except as is otherwise provided in Section 415.

(d) *Part C.* Claims filed by a miner or survivor on or after January 1, 1974 are filed, adjudicated, and paid under the provisions of Part C of Title IV of the Act. Part C requires that a claim filed on or after January 1, 1974 shall be filed under an applicable approved State workers' compensation law or if no such law has been approved by the Secretary of Labor, the claim may be filed with the Secretary of Labor under Section 422 of the Act. Claims filed with the Secretary of Labor under Part C are processed and adjudicated by the Secretary and paid by a coal mine operator. If the miners last coal mine employment terminated before January 1, 1970, or, if no responsible operator can be identified benefits are paid by the Black Lung Disability Trust Fund. Claims adjudicated under Part C are subject to certain incorporated provisions of the Longshoremen's and Harbor Workers' Compensation Act.

(e) *Section 435.* Section 435 of the Act affords each person who has filed a claim for benefits under Part B, Section 415, or Part C, and whose claim has been denied or is still pending as of the effective date of the Black Lung Benefits Reform Act of 1977 the right to have his or her claim reviewed on the basis of the 1977 amendments to the Act, and under certain circumstances to submit new evidence in support of the claim.

(f) *Changes made by the Black Lung Benefits Reform Act of 1977.* In addition to those changes which are reflected in paragraphs (a)-(e) of this section the Black Lung Benefits Reform Act of 1977 contains a number of significant amendments to the Act's standards for determining eligibility for benefits. Among these are (1) a provision which clarifies the definition of "pneumoconiosis" to include any "chronic dust disease of the lung or its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment", (2) a provision which defines "miner" to include any person who works or has worked in or around a coal mine or coal preparation facility and in coal mine construction or coal transportation under certain circumstances, (3) a provision which limits the denial of a claim solely on the basis of employment in a coal mine, (4) a provision which authorizes the Secretary of Labor to establish standards and develop criteria for determining total disability or death due to pneumoconiosis with respect to a Part C claim, (5) a new presumption which requires the payment of benefits to the survivors of a miner who was employed for 25 or more years in the mines under certain conditions, (6) provisions relating to the treatment to be accorded affidavits in the case of a deceased miner, certain X-ray interpretations, and certain autopsy reports in the development of a claim, and (7) other clarifying, procedural, and technical amendments.

(g) *Changes made by the Black Lung Benefits Revenue Act of 1977.* The Black Lung Benefits Revenue Act of 1977 establishes the Black Lung Disability Trust Fund which is financed by a specified tax imposed upon each ton of coal (except lignite) sold in the United States after March 31, 1978. The Secretary of the Treasury is the managing Trustee of the Fund and benefits are paid from the Fund upon the direction of the Secretary of Labor. The Fund is liable for the payment of all claims approved under Section 415, Part C and Section 435 of the Act for all periods of eligibility occurring on or after January 1, 1974, with respect to claims where the miner's last coal mine employment terminated before January 1, 1970, or where individual liability cannot be assessed against a coal mine operator for such reasons as bankruptcy or insolvency. The Fund is also authorized to pay certain claims which a responsible operator has refused to pay within a reasonable time, and seek reimbursement from such operator. The purpose of the Fund and the Black Lung Benefits Revenue Act of 1977 is to ensure that coal operators or the coal industry will fully bear the cost of black lung disease for the present time and in the future. The Black Lung Benefits Revenue Act of 1977 also contains other provisions relating to the Fund and authorizes a coal mine operator to establish its own trust fund for the payment of certain claims.

(h) *Longshoremen's Act provisions.* The adjudication of claims filed under Sections 415, 422, and 435 of the Act is governed by various procedural and other provisions contained in the Longshoremen's and Harbor Workers' Compensation Act (LHWCA) as amended from time to time which are incorporated within the Act by Sections 415 and 422. The incorporated LHWCA provisions are applicable under the Act except as is otherwise provided by the Act or as provided by regulations of the Secretary. The LHWCA is designed primarily to provide for the payment of workers' compensation benefits to persons employed in maritime and certain other types of employment. The Black Lung Act provides benefits on account of a latent and sometimes progressive, occupationally related disease. Although occupational disease benefits are also payable under the LHWCA, the primary focus of the procedures set forth in that Act is upon a time definite of traumatic injury or death. Because of this and other significant differences between a black lung and longshore claim, it is determined, in accordance with the authority set forth in Section 422 of the Act, that certain of the incorporated procedures prescribed by the LHWCA must be altered to fit the circumstances ordinarily confronted in the adjudication of a black lung claim. The changes made are based upon the

Department's experience in processing black lung claims gained since July 1, 1973 and all such changes are specified in this part or Part 727 of this subchapter. No other departure from the incorporated provisions of the LHWCA is intended.

§ 725.2 Purpose and applicability of this part.

(a) It is the purpose of this part to set forth the procedures to be followed and standards to be applied in the filing, processing, adjudication and payment of claims filed under Part C of Title IV of the Act.

(b) This part is applicable to all claims filed under Part C of Title IV of the Act on or after the effective date of this part and shall also be applicable to claims pending on the effective date of this part as provided in Part 727 of this subchapter.

(c) This part is applicable to claims considered under Section 435 of the Act and Part 727 of this subchapter as provided in part 727 of this subchapter.

§ 725.3 Contents of this part.

(a) This Subpart A describes the statutory provisions which relate to claims considered under this part, the purpose and scope of this part, definitions and usages of terms applicable to this part, and matters relating to the availability of information collected by the Department of Labor in connection with the processing of claims.

(b) Subpart B contains criteria for determining who may be found entitled to benefits under this part and other provisions relating to the conditions and duration of eligibility of a particular individual.

(c) Subpart C describes the procedures to be followed and action to be taken in connection with the filing of a claim under this part.

(d) Subpart D of this part sets forth the duties and powers of the persons designated by the Secretary of Labor to adjudicate claims, provisions relating to the rights of parties and representatives of parties, and the procedure to be followed in the informal processing and adjudication of a claim under this part.

(e) Subpart E describes the procedures to be followed if a hearing is required with respect to a claim.

(f) Subpart F contains provisions governing the identification of a coal mine operator which may be liable for the payment of a claim under this part.

(g) Subpart G contains provisions governing the payment of benefits with respect to an approved claim.

(h) Subpart H describes the statutory mechanisms provided for the enforcement of a coal mine operator's liability, sets forth the penalties which may be applied in the case of a defaulting coal mine operator, and describes the obligation of coal operators and their insurance carriers to file certain reports.

(i) Subpart I describes the right of certain beneficiaries to receive medical treatment benefits and vocational rehabilitation under the Act.

§ 725.4 Applicability of other parts in this title.

(a) *Part 718.* Part 718 of this subchapter, which contains the criteria and standards to be applied in determining whether a miner is or was totally disabled due to pneumoconiosis or whether a miner died due to pneumoconiosis shall be applicable to the determination of claims under this part. Until a revised Part 718 is promulgated by the Secretary in accordance with Section 402(f)(1) of the Act, the criteria contained in subpart C of Part 727 of this subchapter shall be applicable in determining claims for benefits under this part, and such criteria shall be applicable at all times with respect to claims filed under this Part under Section 11 of the Black Lung Benefits Reform Act of 1977.

(b) *Parts 715, 717, 720.* Parts 715, 717 and 720 of this subchapter, which established the procedures for the filing, processing, and payment of claims filed under Section 415 of the Act are repealed and pertinent provisions of these parts which retain significance are incorporated within this part as appropriate.

(c) *Part 726.* Part 726 of this subchapter, which sets forth the obligations imposed upon a coal operator to insure or self-insure its liability for the payment of benefits to certain eligible claimants is applicable to this part as appropriate.

(d) *Part 727.* Part 727 of this subchapter which governs the review, adjudication and payment of pending and denied claims under Section 435 of the Act is applicable to this part as provided in such Part 727. The criteria contained in subpart C of Part 727 for determining a claimant's eligibility for benefits shall be applicable under this part with respect to all claims filed before a revised Part 718 of this subchapter is promulgated by the Secretary in accordance with Section 402(f)(1) of the Act, and shall also be applicable to all claims filed under this part under Section 11 of the Black Lung Benefits Reform Act of 1977.

(e) *Part 410.* Part 410 of this title which sets forth provisions relating to a claim for black lung benefits under Part B of Title IV of the Act is inapplicable to this part except as is provided in this part, or in Part 718 of this subchapter.

§ 725.101 Definitions and use of terms.

(a) *Definitions.* For purposes of this subchapter, except where the content clearly indicates otherwise, the following definitions apply:

(1) The "Act" means the Federal Coal Mine Health and Safety Act, Pub. L. 91-173, 83 Stat. 742, 30 U.S.C. 801-960, as amended by the Black Lung Benefits Act of 1972, the Mine Safety and Health Act of 1977, the Black Lung Benefits Reform Act of 1977, and the Black Lung Benefits Revenue Act of 1977.

(2) The "Longshoremen's Act" or "LHWCA" means the Longshoremen's and Harbor Worker's Compensation Act of March 4, 1927, c. 509, 44 Stat. 1424, 33 U.S.C. 901-950, as amended from time to time.

(3) The "Social Security Act" means the Social Security Act, Act of August 14, 1935, c. 531, 49 Stat. 620, 42 U.S.C. 301-431, as amended from time to time.

(4) A "workers' compensation law" means a law providing for payment of benefits to employees, and their dependents and survivors, for disability on account of injury including occupational disease or death suffered in connection with their employment.

(5) "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and prior to January 3, 1959, and August 21, 1959, respectively, the territories of Alaska and Hawaii.

(6) "Department" means the United States Department of Labor.

(7) "Secretary" means the Secretary of Labor, United States Department of Labor, or a person authorized by him or her to perform his or her functions under Title IV of the Act.

(8) "Office" or "OWCP" means the Office of Workers' Compensation Programs, United States Department of Labor.

(9) "Director" means the Director, OWCP, or his or her designee.

(10) "Division" or "DCMWC" means the Division of Coal Mine Workers' Compensation in the OWCP, United States Department of Labor.

(11) "Deputy Commissioner" means a person appointed as provided in Sections 39 and 40 of the LHWCA, or his or her designee, who is authorized to develop and adjudicate claims as provided in this subchapter (see § 725.350).

(12) "Office of Administrative Law Judges" means the Office of Administrative Law Judges, United States Department of Labor.

(13) "Chief Administrative Law Judge" means the Chief Administrative Law Judge of the Office of Administrative Law Judges, United States Department of Labor, 1111 20th Street NW., Washington, D.C. 20036.

(14) "Administrative law judge" means a person qualified under 5

U.S.C. 3105, to conduct hearings and adjudicate claims for benefits filed pursuant to Section 415 and Part C of the Act. Until March 1, 1979, it shall also mean an individual appointed to conduct such hearings and adjudicate such claims under Pub. L. 94-504.

(15) "Benefits Review Board" or "Board" means the Benefits Review Board, United States Department of Labor, an appellate tribunal appointed by the Secretary of Labor pursuant to the provisions of Section 21(b)(1) of the LHWCA. See Parts 801, 802 of this title.

(16) "Claim" means a written assertion of entitlement to benefits under Section 415 or Part C of Title IV of the Act, submitted in a form and manner authorized by the provision of this subchapter.

(17) "Claimant" means an individual who files a claim for benefits under this part.

(18) "Benefits" means all money or other benefits paid or payable under Section 415 or Part C of Title IV of the Act on account of disability or death due to pneumoconiosis.

(19) "Beneficiary" means a miner or any surviving spouse, divorced spouse, child, parent, brother or sister, who is entitled to benefits under Section 415 and Part C of Title IV of the Act.

(20) "Pneumoconiosis" means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment (see Part 718 of this subchapter).

(21) "Total disability" and "partial disability", for purposes of this part, have the meaning given them as provided in Part 718 of this subchapter.

(22) "The Nation's coal mines" means all coal mines located in any State.

(23) "Coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations and other property, real or personal, placed upon, under or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite or anthracite from its natural deposits in the earth by any means or method, and in the work of preparing the coal so extracted, and includes custom coal preparation facilities.

(24) "Underground coal mine" means a coal mine in which the earth and other materials which lie above and around the natural deposit of coal (i.e., overburden) are not removed in mining; including all land, structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations and other property, real or personal, appurtenant thereto.

(25) "Coal preparation" means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal, lignite or anthracite, and such other work of preparing coal as is usually done by the operator of a coal mine.

(26) "Miner" or "coal miner" means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. The term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment (see §725.202(a)).

(27) "Operator" means any owner, lessee, or other person who operates, controls or supervises a coal mine, including a prior or successor operator as defined in Section 422 of the Act, and certain transportation and construction employers (see subpart F of this part).

(28) "Responsible operator" means an operator which has been determined to be liable for the payment of benefits to a claimant for periods of eligibility after December 31, 1973, with respect to a claim filed under Section 415 or Part C of Title IV of the Act or reviewed under Section 435 of the Act.

(29) "Person" means an individual, partnership, association, corporation, firm, subsidiary or parent of a corporation, or other organization or business entity.

(30) "Insurer" or "carrier" means any private company, corporation, mutual association, reciprocal or interinsurance exchange, or any other person or fund, including any state fund, authorized under the laws of a State to insure employers' liability under workers' compensation laws. The term also includes the Secretary of Labor in the exercise of his or her authority under Section 433 of the Act.

(31) "Black Lung Disability Trust Fund" or the "Fund" means the Black Lung Disability Trust Fund established by the Black Lung Benefits Revenue Act of 1977 for the payment of certain claims adjudicated under this part. (See Subpart G of this part).

(b) *Statutory terms.* The definitions contained in this section shall not be construed in derogation of terms of the Act.

(c) *Dependents and survivors.* Dependents and survivors are those persons described in subpart B of this part.

§725.102 Disclosure of program information

(a) All reports, records, or other documents filed with the OWCP with respect to claims are the records of the OWCP. The Director shall be the official custodian of those records maintained by the OWCP at its national office.

(b) Any party may be permitted to examine the record of the case in which he or she is interested. The official custodian of the record sought to be inspected shall permit or deny inspection in accordance with the Department of Labor's regulations pertaining thereto (see 29 CFR Part 70). The original record in any such case shall not be removed from the Office of the custodian for such inspection. The custodian may, in his or her discretion, deny inspection of any record or part thereof which is of a character specified in 5 U.S.C. 552(b) if in his or her opinion such inspection may result in damage, harm, or harassment to the beneficiary or to any other person. For special provisions concerning release of information regarding injured employees undergoing vocational rehabilitation, see §702.508, of this title.

(c) Any party may request copies of records he or she has been permitted to inspect. Such requests shall be addressed to the official custodian of the records sought to be copied. The official custodian shall provide the requested copies under the terms and conditions specified in the Department of Labor's regulations relating thereto (see 29 CFR Part 70).

Subpart B—Persons Entitled to Benefits, Conditions and Duration of Entitlement

§725.201 Who is entitled to benefits, contents of this subpart.

(a) Section 415 and Part C of the Act provide for the payment of periodic benefits in accordance with this part to:

(1) A miner (see §725.202) who is determined to be totally disabled due to pneumoconiosis; or

(2) The surviving spouse or surviving divorced spouse or, where neither exists, the child of a deceased miner, where the deceased miner:

(i) Was receiving benefits under Section 415 or Part C of Title IV of the Act; or

(ii) Is determined to have been totally disabled due to pneumoconiosis at the time of his or her death, or to have died due to pneumoconiosis (see Part 718 of this chapter).

(3) The child of a miner's surviving spouse who was receiving benefits under Section 415 or Part C of Title IV of the Act at the time of such spouse's death, or

(4) The surviving dependent parents, where there is no surviving spouse or child or the surviving dependent brothers or sisters, where there is no surviving spouse, child or parent of a miner who was receiving benefits under Section 415 or Part C of Title IV of the Act at the time of his or her death; or who was totally or partially disabled due to pneumoconiosis at the

time of his or her death; or whose death was due to pneumoconiosis.

(b) Section 411(c)(5) of the Act provides for the payment of benefits to the eligible survivors of a miner employed for 25 or more years in the mines prior to June 30, 1971 if the claim for benefits was filed before March 1, 1978, unless it is established that at the time of his or her death, the miner was not totally or partially disabled due to pneumoconiosis. For the purposes of this part the term "total disability" shall mean partial disability with respect to a claim for which eligibility is established under Section 411(c)(5) of the Act.

(c) The provisions contained in this subpart describe the conditions of entitlement to benefits applicable to a miner or a surviving spouse, child, parent, brother or sister, and the events which establish or terminate entitlement to benefits.

(d) In order for an entitled miner or surviving spouse to qualify for augmented benefits because of one or more dependents, such dependents must meet relationship and dependency requirements with respect to such beneficiary prescribed by or pursuant to the Act. Such requirements are also set forth in this subpart.

Conditions and Duration of Entitlement

§ 725.202 Miner defined, condition of entitlement; miner.

(a) *Miner defined.* A "miner" for the purposes of this part is any person who works or has worked in or around a coal mine or coal preparation facility in the extraction, preparation, or transportation of coal, and any person who works or has worked in coal mine construction or maintenance in or around a coal mine or coal preparation facility. A coal mine construction or transportation worker shall be considered a miner to the extent such individual is or was exposed to coal dust as a result of his or her employment in or around a coal mine or preparation facility. In the case of an individual employed in coal transportation or coal mine construction, there shall be a rebuttable presumption that such individual was exposed to coal dust during all periods of such employment occurring in or around a coal mine or coal preparation facility for purposes of (1) determining whether such individual is or was a miner; (2) establishing the applicability of any of the presumptions described in Section 411(c) of the Act and Part 718 of this subchapter; and (3) determining the identity of a coal mine operator liable for the payment of benefits in accordance with § 725.493. The presumption may be rebutted by evidence which demonstrates (1) that the individual was not regularly exposed to coal dust during his or her employment in or around a coal mine or preparation facility or (2) that the individual was not regularly employed in or around a coal mine or coal preparation facility. An individual employed by a coal mine operator, regardless of the nature of such individual's employment, shall be considered a miner unless such individual was not employed in or around a coal mine or coal preparation facility.

A person who is or was a self-employed miner or independent contractor, and who otherwise meets the requirements of this paragraph, shall be considered a miner for the purposes of this part (see § 725.494).

(b) *Conditions of entitlement; miner.* An individual is eligible for benefits under this subchapter if the individual:

(1) Is a miner as defined in this section; and

(2) Is totally disabled due to pneumoconiosis (see Part 718 of this subchapter) (See also § 725.503A); and

(3) Has filed a claim for benefits in accordance with the provisions in this part.

§ 725.203 Duration of entitlement; miner.

(a) An individual is entitled to benefits as a miner for each month beginning with the first month in which all of the conditions for entitlement prescribed in § 725.202 are satisfied.

(b) The last month for which such individual is entitled to benefits is the month before the month during which either of the following events first occurs:

(1) The miner dies; or

(2) the miner's total disability ceases (See § 725.503A).

Benefits on Account of Living Dependents (Augmented Benefits)

§ 725.204 Determination of relationship—spouse.

For the purpose of augmenting benefits, and individual will be considered to be the spouse of a miner if:

(a) The courts of the State in which the miner is domiciled would find that such individual and the miner validity married; or

(b) The courts of the State in which the miner is domiciled would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual is the miner's spouse; or

(c) Under State law, such individual would have the right of a spouse to share in the miner's intestate personal property; or

(d)(1) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment, would have been a valid marriage, unless the individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household in the month in which a request is filed that the miner's benefits be augmented because such individual qualifies as the miner's spouse. The provisions of this paragraph shall not apply, however, if the miner's benefits are to have been augmented under 725.520(c) because another person qualifies or has qualified as the miner's spouse and such other person is, or is considered to be, the spouse of such miner under paragraph (a), (b), or (c) of this section at the time such request is filed.

(2) The qualification of an individual for augmentation purposes under this paragraph shall end with the month before the month in which:

(i) the Office determines that the benefits of the miner should be augmented on account of another person, if such other person is (or is considered to be) the spouse of the miner under paragraph (a), (b), or (c) of this section, or

(ii) if the individual who previously qualified as a spouse for purposes of § 725.520(c), entered into a valid marriage without regard to this paragraph, with a person other than the miner.

§ 725.205 Determination of dependency; spouse.

For the purpose of augmenting benefits, an individual who is the miner's spouse (see § 725.204) will be determined to be dependent upon the miner if:

(a) The individual is a member of the same household as the miner (see § 725.232); or

(b) The individual is receiving regular contribution from the miner for support (see § 725.233(c));

(c) The miner has been ordered by a court to contribute to such individual's support (see 725.233(c));

(d) The individual is the natural parent of the son or daughter of the miner; or

(e) The individual was married to the miner (see § 725.204) for a period of not less than 1 year.

§ 725.206 Determination of relationship; divorced spouse.

For the purpose of augmenting benefits, an individual will be considered to be the divorced spouse of a miner if the individual's marriage to the miner has been terminated by a final divorce on or after the 10th anniversary of the marriage (20th, if the claim was filed before the effective date of this part) unless, if such individual was married to and divorced from the miner more than once, such individual was married to the miner in each calendar year of the period beginning 10 years (20 years, if the claim was filed before the effective date of this part) immediately before the date

on which any divorce became final and ending with the year in which that divorce became final.

§ 725.207 Determination of dependency; divorced spouse.

For the purpose of augmenting benefits, an individual who is the miner's divorced spouse (§ 725.206) will be determined to be dependent upon the miner if:

(a) The individual is receiving at least one-half of his or her support from the miner (see § 725.233(g)); or

(b) The individual is receiving substantial contributions from the miner pursuant to a written agreement (see § 725.233(c), (f)); or

(c) A court order requires the miner to furnish substantial contributions to the individual's support (see § 725.233(c)).

§ 725.208 Determination of relationship; child.

As used in this section, the term "beneficiary" means only a surviving spouse entitled to benefits at the time of death (see § 725.212), or a miner. An individual will be considered to be the child of a beneficiary if:

(a) The courts of the State in which the beneficiary is domiciled (see § 725.231) would find, under the law they would apply that the individual is the beneficiary's child; or

(b) The individual is the legally adopted child of such beneficiary; or

(c) The individual is the stepchild of such beneficiary by reason of a valid marriage of the individual's parent or adopting parent to such beneficiary; or

(d) The individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) The individual is the natural son or daughter of a beneficiary but is not a child under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section, the individual shall nevertheless be considered to be the child of the beneficiary if the beneficiary and the mother or the father, as the case may be, of the individual went through a marriage ceremony resulting in a purported marriage between them which but for a legal impediment (see § 725.230) would have been a valid marriage.

(f) The individual is the natural son or daughter of a beneficiary but is not a child under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of the beneficiary if:

(1) The beneficiary, prior to his or her entitlement to benefits has acknowledged in writing that the individual is his or her son or daughter, or has been decreed by a court to be the father of the individual, or has been ordered by a court to contribute to the support of the individual (see § 725.233(c)) because the individual is his or her son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father of the individual and was living with or contributing to the support of the individual at the time the beneficiary became entitled to benefits.

§ 725.209 Determination of dependency; child.

(a) For purposes of augmenting the benefits of a miner or surviving spouse, the term "beneficiary" as used in this section means only a miner or surviving spouse entitled to benefits (see § 725.202 and § 725.212). An individual who is the beneficiary's child (§ 725.208) will, be determined to be, or to have been dependent on the beneficiary, if the child:

(1) Is unmarried; and

(2)(i) Is under 18 years of age; or

(ii) Is 18 years of age or older and is under a disability as defined in Section 223(d) of the Social Security Act, 42 U.S.C. 423(d); or

(iii) Is 18 years of age or older and is a student.

(b)(1) The term " student" means a "full-time student" as defined in Section 202(d)(7) of the Social Security Act, 42 U.S.C. 402(d)(7) (see § 404.320(c) of this title), or an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(i) A school, college, or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof; or

(ii) A school, college, or university which has been accredited by a State or by a State-recognized or nationally-recognized accrediting agency or body; or

(iii) A school, college, or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal or a State government or any political subdivision thereof, providing courses of not less than 3 months' duration that prepare the student for a livelihood in a trade, industry, vocation, or profession.

(2) A student will be considered to be "pursuing a full-time course of study or training at an institution" if the student is enrolled in a noncorrespondence course of at least 13 weeks duration and is carrying a subject load which is considered full-time for day students under the institution's standards and practices.

A student beginning or ending a full-time course of study or training in part of any month will be considered to be pursuing such course for the entire month.

(3) A child is considered not to have ceased to be a student:

(i) During any interim between school years, if the interim does not exceed 4 months and the child shows to the satisfaction of the Office that he or she has a bona fide intention of continuing to pursue a full-time course of study or training; or

(ii) During periods of reasonable duration in which, in the judgment of the Office, the child is prevented by factors beyond the child's control from pursuing his or her education.

(4) A student whose 23d birthday occurs during a semester or other enrollment period in which such student is pursuing a full-time course of study or training shall continue to be considered a student until the end of such period, unless eligibility is otherwise terminated.

§ 725.210 Duration of augmented benefits.

Augmented benefits payable on behalf of a spouse or divorced spouse, or a child, shall begin with the first month in which the dependent satisfies the conditions of relationship and dependency set forth in this subpart. Augmentation of benefits on account of a dependent continues through the month before the month in which the dependent ceases to satisfy these conditions except in the case of a child who qualifies as a dependent because such child is a student. In the latter case, benefits continue to be augmented through the month before the first month during no part of which such child qualifies as a student.

§ 725.211 Time of determination of relationship and dependency of spouse or child for purposes of augmentation of benefits.

With respect to the spouse or child of a miner entitled to benefits, and with respect to the child of a surviving spouse entitled to benefits, the determination as to whether an individual purporting to be a spouse or child is related to or dependent upon such miner or surviving spouse shall be based on the facts and circumstances present in each case.

SURVIVORS' ENTITLEMENT

§ 725.212 Conditions of entitlement; surviving spouse or surviving divorced spouse.

An individual who is the surviving spouse or surviving divorced spouse of

a miner is eligible for benefits if such individual:

(1) Is not married;

(2) Was dependent on the miner at the pertinent time, and

(3) The deceased miner either

(i) Was receiving benefits under Section 415 or Part C of Title IV of the Act at the time of death; or

(ii) Is determined to have been totally disabled due to pneumoconiosis at the time of death, or that his or her death was due to pneumoconiosis (see Part 718 of this chapter).

§ 725.213 Duration of entitlement; surviving spouse or surviving divorced spouse.

(a) An individual is entitled to benefits as a surviving spouse, or as a surviving divorced spouse, for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 725.212 are satisfied.

(b) The last month for which such individual is entitled to such benefits is the month before the month in which either of the following events first occurs:

(1) The surviving spouse or surviving divorced spouse marries; or

(2) The surviving spouse or surviving divorced spouse dies; or

(3) Where the individual qualifies as the surviving spouse of a miner under § 725.212(d), such individual ceases to qualify as provided in that paragraph.

§ 725.214 Determination of relationship; surviving spouse

An individual shall be considered to be the surviving spouse of a miner if:

(a) The courts of the State in which the miner was domiciled (see § 725.231) at the time of his or her death would find that the individual and the miner were validly married; or

(b) The courts of the State in which the miner was domiciled (see § 725.231) at the time of the miner's death would find that the individual was the miner's surviving spouse; or

(c) Under State law, such individual would have the right of the spouse to share in the miner's interstate personal property; or

(d) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which but for a legal impediment (see § 725.330) would have been a valid marriage, unless such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household at the time of the miner's death. The provisions of this paragraph shall not apply if another person is or has been entitled to benefits as the surviving spouse of the miner and such other person is, or is considered to be, the surviving spouse of such miner under paragraph (a), (b), or (c) of this section at the time such individual files a claim for benefits.

§ 725.215 Determination of dependency; surviving spouse.

An individual who is the miner's surviving spouse (see § 725.214) shall be determined to have been dependent on the miner if, at the time of the miner's death:

(a) The individual was living with the miner (see § 725.232); or

(b) The individual was dependent upon the miner for support or the miner has been ordered by a court to contribute to such individual's support (see § 725.233); or

(c) The individual was living apart from the miner because of the miner's desertion or other reasonable cause; or

(d) The individual is the natural parent of the miner's son or daughter; or

(e) The individual had legally adopted the miner's son or daughter while the individual was married to the miner and while such son or daughter was under the age of 18; or

(f) The individual was married to the miner at the time both of them legally adopted a child under the age of 18; or

(g)(1) The individual was married to the miner for a period of not less than 9 months immediately before the day on which the miner died, unless the miner's death—

(i) Is accidental (as defined in paragraph (2) of this subsection), or

(ii) Occurs in line of duty while the miner is a member of a uniformed service serving on active duty (as defined in § 404.1013(f) (2) and (3) of this title), and the surviving spouse was married to the miner for a period of not less than 3 months immediately prior to the day on which such miner died.

(2) For purposes of paragraph (h)(1)(i) of this section, the death of a miner is accidental if such individual receives bodily injuries solely through violent, external, and accidental means, and as a direct result of the bodily injuries and independently of all other causes, dies not later than 3 months after the day on which such miner receives such bodily injuries. The term "accident" means an event that was unpremeditated and unforeseen from the standpoint of the deceased individual. To determine whether the death of an individual did, in fact, result from an accident the adjudication officer will consider all the circumstances surrounding the casualty. An intentional and voluntary suicide will not be considered to be death by accident; however, suicide by an individual who is so incompetent as to be incapable of acting intentionally and voluntarily will be considered to be death by accident. In no event will the death of an individual resulting from violent and external causes be considered a suicide unless there is direct proof that the fatal injury was self-inflicted.

(3) *Applicability.* The provisions of this section shall not apply if the adjudication officer determines that at the time of the marriage involved, the miner would not reasonably have been expected to live for 9 months.

§ 725.216 Determination of relationship; surviving divorced spouse.

An individual will be considered to be the surviving divorced spouse of a deceased miner if such individual's marriage to the miner had been terminated by a final divorce on or after the 10th anniversary (20th, if the claim was filed before the effective date of this part) of the marriage: unless, if such individual was married to and divorced from the miner more than once, such individual was married to such miner in each calendar year of the period beginning 10 years (20 years, if the claim was filed before the effective date of this part) immediately before the date on which any divorce became final and ending with the year in which the divorce became final.

§ 725.217 Determination of dependency; surviving divorced spouse

An individual who is the miner's surviving divorced spouse (see § 725.216) shall be determined to have been dependent on the miner if, for the month before the month in which the miner died:

(1) The individual was receiving at least one-half of his or her support from the miner (see § 725.733(g)); or

(2) The individual was receiving substantial contributions from the miner pursuant to a written agreement (see § 725.233 (e) and (f)); or

(3) A court order required the miner to furnish substantial contributions to the individual's support (see § 725.233 (c) and (f)).

§ 725.218 Conditions of entitlement; child.

(a) An individual is entitled to benefits where he or she meets the required standards of relationship and dependency under this subpart (see § 725.220 and § 725.221) and is the child of a deceased miner who:

(1) Was receiving benefits under Section 415 or Part C of Title IV of the Act; or

(2) Is determined to have been totally disabled due to pneumoconiosis at the time of his or her death, or to have died due to pneumoconiosis (see Part 718 of this chapter).

(b) A child is not entitled to benefits for any month for which a miner or the surviving spouse or surviving divorced spouse of a miner establishes entitlement to benefits.

§ 725.219 Duration of entitlement; child.

(a) An individual is entitled to benefits as a child for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 725.218 are satisfied.

(b) The last month for which such individual is entitled to such benefits is the month before the month in which any one of the following events first occurs:

(1) The child dies;

(2) The child marries;

(3) The child attains age 18; and

(i) Is not under a disability at that time; and

(ii) Is not a student (as defined in § 725.221) during any part of the month in which the child attains age 18;

(4) If the child's entitlement is based on his or her status as a student, the earlier of:

(i) The first month during no part of which the individual is a student, or

(ii) The month in which the individual attains age 23 and is not under a disability at that time;

(5) If a child's entitlement is based on disability, the first month in no part of which such individual is under a disability.

(c) A child whose entitlement to benefits terminated with the month before the month in which the child attained age 18, or later, may thereafter (provided such individual is not married) again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month after termination of benefits in which such individual is a student and has not attained the age of 23.

§ 725.220 Determination of relationship; child.

For the purposes of determining whether an individual may qualify for benefits as the child of a deceased miner, the provisions of § 725.208 shall be applicable. As used in this Section, the term "beneficiary" means only a surviving spouse entitled to benefits at the time of such surviving spouse's death (see § 725.212), or a miner. For purposes of a survivor's claim, an individual will be considered to be a child of a beneficiary if:

(a) The courts of the State in which such beneficiary is domiciled (see § 725.231) would find, under the law they would apply in determining the devolution of the beneficiary's intestate personal property, that the individual is the beneficiary's child; or

(b) Such individual is the legally adopted child of such beneficiary; or

(c) Such individual is the step child of such beneficiary by reason of a valid marriage of such individual's parent or adopting parent to such beneficiary; or

(d) Such individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) Such individual is the natural son or daughter of a beneficiary but does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if the beneficiary and the mother or the father, as the case may be, of such individual went through a marriage ceremony resulting in a purported marriage between them which but for a legal impediment (see § 725.230) would have been a valid marriage.

(f) Such individual is the natural son or daughter of a beneficiary but does not have the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if:

(1) Such beneficiary, prior to his or her entitlement to benefits has acknowledged in writing that the individual is his or her son or daughter, or has been decreed by a court to be the father or mother of the individual, or has been ordered by a court to contribute to the support of the individual (see § 725.233(a)) because the individual is a son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father or mother of the individual and was living with or contributing to the support of the individual at the time such beneficiary became entitled to benefits.

§ 725.221 Determination of dependency; child.

For the purposes of determining whether a child was dependent upon a deceased miner the provisions of § 725.209 shall be applicable, except that for purposes of determining the eligibility of a child who is under a disability as defined in Section 223(d) of the Social Security Act, such disability must have begun before the child attained age 18, or in the case of a student, before the child ceased to be a student.

§ 725.222 Conditions of entitlement; parent, brother, or sister.

(a) An individual is eligible for benefits as a surviving parent, brother or sister if all of the following requirements are met:

(1) The individual is the parent, brother, or sister of a deceased miner;

(2) The individual was dependent on the miner at the pertinent time;

(3) Proof of support is filed within 2 years after the miner's death, unless the time is extended for good cause (§ 725.226).

(4) In the case of a brother or sister, such individual also:

(i) Is under 18 years of age; or

(ii) Is 18 years of age or older and is under a disability as defined in Section 223(d) of the Social Security Act, 42 U.S.C. 423(d), which began before such individual attained age 18, or in the case of a student, before the student ceased to be a student; or

(iii) Is a student (see § 725.209(b)); or

(iv) Is under a disability as defined in Section 223(d) of the Social Security Act, 42 U.S.C. 423(d), at the time of the miner's death;

(5) The deceased miner:

(i) Was entitled to benefits under Section 415 or Part C of title IV of the Act, or

(ii) Is determined to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis (see Part 718 of this chapter).

(b)(1) A parent is not entitled to benefits if the deceased miner was survivied by a spouse or child at the time of such miner's death.

(2) A brother or sister is not entitled to benefits if the deceased miner was survivied by a spouse, child, or parent at the time of such miner's death.

§ 725.223 Duration of entitlement; parent, brother, or sister

(a) A parent, sister, or brother is entitled to benefits beginning with the month all the conditions of entitlement described in § 725.222 are met.

(b) The last month for which such parent is entitled to benefits is the month in which the parent dies.

(c) The last month for which such brother or sister is entitled to benefits is the month before the month in which any of the following events first occurs:

(1) The individual dies;

(2) (i) The individual marries or remarries; or

(ii) If already married, the individual received support in any amount from his or her spouse;

(3) The individual attains age 18, and

(i) Is not under a disability at that time, and

(ii) Is not a student (see § 725.209(b)) during any part of the month in which such individual attains age 18;

(4) If the individual's entitlement is based on his or status as a student, the earlier of:

(i) The first month during no part of which he or she is a student; or

(ii) The month in which he or she attains age 23 and is not under a disability at that time;

(5) If the individual's entitlement is based on disability the first month in

no part of which the individual is under a disability.

§ 725.224 Determination of relationship; parent, brother, or sister.

(a) An individual will be considered to be the parent, brother, or sister of a miner if the courts of the State in which the miner was domiciled (see § 225.231) at the time of death would find, under the law they would apply that the individual is the miner's parent, brother, or sister.

(b) Where, under State law, the individual is not the miner's parent, brother, or sister, but would, under State law, have the same status (i.e., right to share in the miner's intestate personal property) as a parent, brother, sister, the individual will be considered to be the parent brother or sister as appropriate.

§ 725.225 Determination of dependency; parent, brother, or sister.

An individual who is the miner's parent, brother, or sister will be determined to have been dependent on the miner if, during the 1-year period immediately prior to the miner's death;

(a) The individual and the miner were living in the same household (see § 725.232); and

(b) The individual was totally dependent on the miner for support (see § 725.232(b)).

§ 725.226 "Good cause" for delayed filing of proof of support.

(a) *What constitutes "good cause".* "Good cause" may be found for failure to file timely proof of support where the parent, brother, or sister establishes to the satisfaction of the Office that such failure to file was due to:

(1) Circumstances beyond the individual's control, such as extended illness, mental, or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished the individual by the Office; or

(3) Efforts by the individual to secure supporting evidence without a realization that such evidence could be submitted after filing proof of support.

(b) *What does not constitute "good cause".* "Good cause" for failure to file timely proof of support (see § 725.222(a)(3)) does not exist when there is evidence of record in the Office that the individual was informed that he or she should file within the prescribed period and he or she failed to do so deliberately or through negligence.

§ 725.227 Time of determination of relationship and dependency of survivors.

The determination as to whether an individual purporting to be an entitled survivor of a miner or beneficiary was related to or dependent upon the miner is made after such individual files a claim for benefits as a survivor. Such determination is based on the facts and circumstances with respect to the time of the miner's death. A prior determination that such individual was, or was not, a dependent for the purposes of augmenting the miner's benefits for a certain period, is not determinative of the issue of whether the individual is a dependent survivor of such miner.

§ 725.228 Effect of conviction of felonious and intentional homicide on entitlement to benefits.

An individual who has been convicted of the felonious and intentional homicide of a miner or other beneficiary shall not be entitled to receive any benefits payable because of the death of such miner or other beneficiary, and such person shall be considered nonexitent in determining the entitlement to benefits of other individuals.

TERMS USED IN THIS SUBPART

§ 725.229 Intestate personal property.

References in this subpart to the "same right to share in the intestate personal property" of a deceased miner (or surviving spouse) refer to the right of an individual to share in such distribution in the individual's own right and not by right of representation.

§ 725.230 Legal impediment.

For purposes of this subpart, "legal impediment" means an impediment resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution or resulting from a defect in the procedure followed in connection with the purported marriage ceremony—for example, the solemnization of a marriage only through a religious ceremony in a country which requires a civil ceremony for a valid marriage.

§ 725.231 Domicile.

(a) For purposes of this subpart, the term "domicile" means the place of an individual's true, fixed, and permanent home.

(b) The domicile of a deceased miner or surviving spouse is determined as of the time of his or her death.

(c) If an individual was not domiciled in any State at the pertinent time, the law of the District of Columbia is applied.

§ 725.232 Member of the same household—"living with," "living in the same household," and "living in the miner's household," defined.

(a) *Defined.* (1) The term "member of the same household" as used in Section 402(a)(2) of the Act (with respect to a spouse); the term "living with" as used in Section 402(e) of the Act (with respect to a surviving spouse); and the term "living in the same household" as used in this subpart, means that a husband and wife were customarily living together as husband and wife in the same place.

(2) The term "living in the miner's household" as used in Section 412(a)(5) of the Act (with respect to a parent, brother, or sister) means that the miner and such parent, brother, or sister were sharing the same residence.

(b) *Temporary absence.* The temporary absence from the same residence of either the miner, or the miner's spouse, parent, brother, or sister (as the case may be), does not preclude a finding that one was "living with" the other, or that they were "members of the same household." The absence of one such individual from the residence in which both had customarily lived shall, in the absence of evidence to the contrary, be considered temporary:

(1) If such absence was due to service in the Armed Forces of the United States; or

(2) If the period of absence from his or her residence did not exceed 6 months and the absence was due to business or employment reasons, or because of confinement in a penal institution or in a hospital, nursing home, or other curative institution; or

(3) In any other case, if the evidence establishes that despite such absence they nevertheless reasonably expected to resume physically living together.

(c) *Relevant period of time.* (1) The determination as to whether a surviving spouse had been "living with" the miner shall be based upon the facts and circumstances as of the time of death of the miner.

(2) The determination as to whether a spouse is a "member of the same household" as the miner shall be based upon the facts and circumstances with respect to the period or periods of time as to which the issue of membership in the same household is material.

(3) The determination as to whether a parent, brother, or sister was "living in the miner's household" shall take account only of the 1-year period immediately prior to the miner's death.

§ 725.233 Support and contributions.

(a) *"Support" defined.* The term "support" includes food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for the maintenance of the person supported.

(b) *"Contributions" defined.* The term "contributions" refers to contributions actually provided by the contributor from such individual's own property, or the use thereof, or by the use of such individual's own credit.

(c) *"Regular contributions" and "substantial contributions" defined.*

The terms "regular contributions" and "substantial contributions" mean contributions that are customary and sufficient to constitute a material factor in the cost of the individual's support.

(d) *Contributions and community property.* When a spouse receives and uses for his or her support, income from services or property and such income, under applicable State law, is the community property of the wife and her husband, no part of such income is a "contribution" by one spouse to the other's support regardless of the legal interest of the donor. However, when a spouse receives and uses for support, income from the services and the property of the other spouse and, under applicable State law, such income is community property, all of such income is considered to be a contribution by the donor to his or her spouse's support.

(e) *"Court order for support" defined.* References to a support order in this subpart means any court order, judgment, or decree of a court of competent jurisdiction which requires regular contributions that are a material factor in the cost of the individual's support and which is in effect at the applicable time. If such contributions are required by a court order, this condition is met whether or not the contributions were actually made.

(f) *"Written agreement" defined.* The term "written agreement" in the phrase "substantial contributions pursuant to a written agreement" as used in this subpart means an agreement signed by the miner providing for substantial contributions by the miner for the individual's support. It must be in effect at the applicable time but it need not be legally enforceable.

(g) *"One-half support" defined.* The term "one-half support" means that the miner made regular contributions, in cash or in kind, to the support of a divorced spouse or of a surviving divorced spouse at the specified time or for the specified period, and that the amount of such contributions equalled or exceeded one-half the total cost of such individual's support at such time or during such period.

(h) *"Totally dependent for support" defined.* The term "totally dependent for support" as used in § 725.225(b) means that the miner made regular contributions to the support of the miner's parent, brother, or sister, as the case may be, and that the amount of such contributions at least equalled the total cost of such individual's support.

Subpart C—Filing of Claims

§ 725.301 Who may file a claim.

(a) Any person who believes he or she may be entitled to benefits under the Act may file a claim in accordance with this subpart.

(b) A claimant who has attained the age of 18, is mentally competent and physically able, may file a claim on his or her own behalf.

(c) If a claimant is unable to file a claim on his or her own behalf because of a legal or physical impediment, the following rules shall apply:

(1) A claimant between the ages of 16 and 18 years who is mentally competent and not under the legal custody or care of another person, or a committee or institution, may, upon filing a statement to that effect, file a claim on his or her own behalf. In any other case where the claimant is under 18 years of age, only a person, or the manager or principal officer of an institution, having legal custody or care of the claimant may file a claim on his or her behalf.

(2) If a claimant over 18 years of age has a legally appointed guardian or committee, only the guardian or committee may file a claim on his or her behalf.

(3) If a claimant over 18 years of age is mentally incompetent or physically unable to file a claim and is under the care of another person, or an institution, only the person, or the manager or principal officer of the institution, responsible for the care of the claimant, may file a claim on his or her behalf.

(4) For good cause shown, the Office may accept a claim executed by a person other other than one described in paragraphs (2) or (3) of this section.

(b) Except as provided in § 725.305 of this part, in order for a claim to be considered, the claimant must be alive at the time the claim is filed.

§ 725.302 Evidence of authority to file a claim on behalf of another.

A person filing a claim on behalf of a claimant shall submit evidence of his or her authority to so act at the time of filing or at a reasonable time thereafter in accordance with the following:

(1) A legally appointed guardian or committee shall provide the Office with certification of appointment by a proper official of the court.

(2) Any other person shall provide a statement describing his or her relationship to the claimant, the extent to which he or she has care of the claimant, or his or her position as an officer of the institution of which the claimant is an inmate. The Office may, at any time, require additional evidence to establish the authority of any such person.

§ 725.303 Date and place of receipt of claims.

(a) (1) Claims for benefits shall be delivered, mailed to or presented at any of the various district offices of Social Security Administration, or any of the various offices of the Department of Labor authorized to accept claims, or, in the case of a claim filed by or on behalf of a claimant residing outside the United States, mailed or presented to any office maintained by the Foreign Service of the United States. A claim shall be considered filed on the day it is received by the office in which it is first filed.

(2) A claim submitted to a Foreign Service Office or any other agency or subdivision of the United States Government shall be forwarded to the Office and considered filed as of the date it was received at the Foreign Service Office or other governmental agency or unit.

(b) *Date of mailing.* A claim submitted by mail shall be considered filed as of the date of delivery unless a loss or impairment of benefit rights would result, in which case a claim shall be considered filed as of the date of its postmark. In the absence of a legible postmark, other evidence may be used to establish the mailing date.

§ 725.304 Forms and initial processing.

(a) Claims shall be filed on forms prescribed and approved by the Office. The district office at which the claim is filed will assist claimant in completing their forms.

(b) If the place at which a claim is filed is an office of the Social Security Administration, such office shall forward the completed claim form to an office of the DCMWC, which is authorized to process the claim.

§ 725.305 When a written statement is considered a claim.

(a) The filing of a statement signed by an individual indicating an intention to claim benefits shall be considered to be the filing of a claim for the purposes of this part under the following circumstances:

(1) The claimant or a proper person in his or her behalf (see § 725.301) executes and files a prescribed claim form with the Office during the claimant's lifetime within the period specified in paragraph (b) of this section.

(2) Where the claimant dies within the period specified in paragraph (b) of this section without filing a prescribed claim form, and a person acting on behalf of the deceased claimant's estate executes and files a prescribed claim form within the period specified in paragraph (c) of this section.

(b) Upon receipt of a written statement indicating an intention to claim benefits, the Office shall notify the signer in writing that to be considered the claim must be executed by the claimant or a proper party on his or her behalf on the prescribed form and filed with the Office within six months from the date of mailing of the notice.

(c) If before the notice specified in paragraph (b) of this section is sent, or

within six months after such notice is sent, the claimant dies without having executed and filed a prescribed claim form, or without having had one executed and filed in his or her behalf, the Office shall upon receipt of notice of the claimant's death advise his or her estate or those living at his or her last known address in writing that for the claim to be considered, a prescribed claim form must be executed and filed by a person authorized to do so on behalf of the claimant's estate within six months of the date of the later notice.

(d) Claims based upon written statements indicating an intention to claim benefits not perfected in accordance with this section shall not be processed.

§ 725.306 Withdrawal of a claim.

(a) A claimant or an individual authorized to execute a claim on a claimant's behalf or on behalf of claimant's estate under § 725.305, may withdraw a previously filed claim provided that:

(1) He or she files a written request with the appropriate adjudication officer indicating the reasons for seeking withdrawal of the claim;

(2) The appropriate adjudication officer approves the request for withdrawal on the grounds that it is in the best interests of the claimant or his or her estate, and;

(3) Any benefits previously paid with respect to the claim are reimbursed.

(b) When a claim has been withdrawn under paragraph (a) of this section, the claim will be considered not to have been filed.

§ 725.307 Cancellation of a request for withdrawal.

At any time prior to approval, a request for withdrawal may be cancelled by a written request of the claimant or a person authorized to act on the claimant's behalf or on behalf of the claimant's estate.

§ 725.308 Time limits for filing claims.

(a) A claim for benefits filed under this part by or on behalf of a miner shall be filed within three years after a medical determination of total disability due to pneumoconiosis or within three years after the date of enactment of the Black Lung Benefits Reform Act of 1977 whichever is later. There is no time limit on the filing of a claim by the survivor of a miner.

(b) A miner who is receiving benefits under Part B of Title IV of the Act may file a claim for medical benefits and such other benefits are available under Part C of Title IV of the Act and this part. The Secretary of Health, Education, and Welfare is required to notify each miner receiving benefits under Part B of this right. Notwithstanding the provisions of paragraph (a) of this section a miner notified of his or her rights under this paragraph may file a claim under this part within 6 months from the date such notice was mailed unless the period is extended for good cause shown.

(c) There shall be a rebuttable presumption that every claim for benefits is timely filed. However, the time limits in this section are mandatory and may not be waived or tolled for any reason.

§ 725.309 Duplicate claims.

(a) A claimant whose claim for benefits was previously approved under Part B of Title IV of the Act may file a claim for benefits under this part as provided in § 725.308(b).

(b) A claimant who has filed a claim for benefits under both Parts B and C of Title IV of the Act or who has filed more than one claim for benefits under Part C of Title IV of the Act before March 1, 1978 and whose claims are pending or have been denied (§ 727.102 of this subchapter) shall have his or her claims considered in accordance with § 727.103 of this subchapter.

(c) A claimant who filed a claim for benefits under Part B of Title IV of the Act or Part C of Title IV of the Act before March 1, 1978 and whose previous claim(s) are pending or have been denied, who files an additional claim under this part shall have the later claim merged with any earlier claim subject to review under Part 727 of this subchapter, for all purposes. If an earlier claim subject to review under Part 727 of this subchapter has been denied after review, a new claim filed under this part shall also be denied, on the grounds of the prior denial, unless the deputy commissioner determines that the later claim is a request for modification and the requirements of § 725.310 are met.

(d) In the case of a claimant who files more than one claim for benefits under this part, the later claim shall be merged with the earlier claim for all purposes, if the earlier claim is still pending. If the earlier claim has been denied the later claim shall also be denied, on the grounds of the prior denial, unless the deputy commissioner determines that the later claim is a request for modification and the requirements of § 725.310 are met.

(e) Notwithstanding any other provision of this part of Part 727 of this subchapter, if a claimant elects to pursue a previously pending claim filed under Part B of Title IV of the Act and in addition elects review of such claim by the Social Security Administration or the Office, no benefits shall be paid to such individual under this part or Part 727 of this subchapter until the adjudication of the Part B claim is completed and no further consideration of such claim by the Social Security Administration or a United States court is being pursued.

(f) In a case involving duplicate claims, under no circumstances are duplicate benefits payable for concurrent periods of eligibility. Any duplicate benefits paid shall be subject to collection or offset under subpart G of this part.

§ 725.310 Modification of awards and denials.

(a) Upon his or her own initiative, or upon the request of any party, on the ground of a change in conditions or because of a mistake in a determination of fact, the deputy commissioner may, at any time before one year from the date of the last payment of benefits, or at any time before one year after the denial of a claim, reconsider the terms of an award or denial of benefits. (See also § 725.503(f).)

(b) Modification proceedings shall be conducted in accordance with the provisions of this part as appropriate. Additional evidence may be submitted by any party or requested by the deputy commissioner. Modification proceedings shall not be initiated before an administrative law judge or the Benefits Review Board.

(c) At the conclusion of modification proceedings the deputy commissioner may issue a proposed decision and order (§ 725.418), forward the claim for a hearing in accordance with (§ 725.421) or, if appropriate, proceed in accordance with § 725.409.

(d) An order issued following the conclusion of modification proceedings may terminate, continue, reinstate or decrease benefit payments or may award benefits. Such order shall not affect any benefits previously paid, except that an order increasing or decreasing the amount of benefits payable may be made effective on the date from which benefits were determined payable by the terms of an earlier award. In the case of an award which is decreased, any payment made in excess of the decreased rate shall be subject to collection or offset under subpart G of this part.

§ 725.311 Communications with respect to claims, time computations.

(a) Unless otherwise specified by this part all requests, responses, notices, decisions, orders, or other communications required or permitted by this part shall be in writing.

(b) If required by this part, any document, brief, or other statement submitted in connection with the adjudication of a claim under this part shall be sent to each party to the claim by the submitting party. If proof of service is required with respect to any communication, such proof of service shall be submitted to the appropriate adjudication officer and filed as part of the claim record.

(c) Whenever any notice, document, brief or other statement is served by mail, three days shall be added to the time within which a reply or response is required to be submitted.

(d) In computing any period of time described in this part, by any applicable statute, or by the order of any adjudication officer, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period extends until the next day which is not a Saturday, Sunday or legal holiday. "Legal holiday" includes New Years Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or the Congress of the United States.

Subpart D—Adjudication of Claims; Adjudication Officers

§ 725.350 Who are the adjudication officers.

(a) *General.* The persons authorized by the Secretary of Labor to accept evidence and decide claims on the basis of such evidence are called "adjudication officers". This section describes the status of black lung claims adjudication officers.

(b) *Deputy commissioner.* The deputy commissioner is that official of the DCMWC or his designee who is authorized to perform functions with respect to the development, processing and adjudication of claims in accordance with this part.

(c) *Administrative Law Judge.* An administrative law judge is that official appointed pursuant to 5 U.S.C. 3105 (or Pub. L. 94-504) who is qualified to preside at hearings under 5 U.S.C. 557 and is empowered by the Secretary to conduct formal hearings with respect to and adjudicate claims in accordance with this part. A person appointed under Pub. L. 94-504 shall not be considered an administrative jaw judge for purposes of this part for any period after March 1, 1979.

§ 725.351 Powers of adjudication officers.

(a) *Deputy commissioner.* the deputy commissioner is authorized to (1) make determinations with respect to claims as is provided in this part; (2) conduct conferences and informal discovery proceedings as provided in this part; (3) to compel the production of documents by the issuance of a subpoena, with the written approval of the Director; (4) prepare documents for the signature of parties; (5) issue appropriate orders as provided in this part; and (6) do all other things conformable to law necessary to enable him or her to discharge the duties of the office.

(b) *Administrative law judge.* An administrative law judge is authorized to (1) conduct formal hearings in accordance with the provisions of this part; (2) administer oaths and examine witnesses; (3) compel the production of documents and appearance of witnesses by the issuance of subpoenas; (4) issue decisions and orders with respect to claims as provided in this part; and (5) do all other things conformable to law necessary to enable him or her to discharge the duties of the office.

(c) If any person in proceedings before an adjudication officer disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the adjudication officer shall certify the facts to the Federal district court having jurisdiction in the place in which he or she is sitting (or to the U.S. District Court for the District Court of Columbia if he or she is sitting in the District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to the process or in the presence of the court.

§ 725.352 Disqualification of adjudication officer.

(a) No adjudication officer shall conduct any proceedings in a claim in which he or she is prejudiced or partial, or where he or she has any interest in the matter pending for decision. A decision to withdraw from the consideration of a claim shall be within the discretion of the adjudication officer. If that adjudication officer withdraws, another officer shall be designated by the Director or the Chief Administrative Law Judge as the case may be, to complete the adjudication of the claim.

(b) No adjudication officer shall be permitted to appear or act as a representative of a party under this part while such individual is employed as an adjudication officer or within two years after the termination of such employment. No fee or reimbursement shall be awarded under this part to an individual who acts in violation of this paragraph.

(c) No adjudication officer shall act in any claim involving a party which employed such adjudication officer within one year before the adjudication of such claim.

(d) Notwithstanding paragraph (a) of this section, no adjudication officer shall be permitted to act in any claim involving a party who is related to the adjudication officer by consanguinity or affinity within the third degree as determined by the law of the place where such party is domiciled. Any action taken by an adjudication officer in knowing violation of this paragraph shall be void.

Parties and Representatives

§ 725.360 Parties to proceedings.

(a) Except as provided in § 725.361 no person other than the Secretary of Labor and authorized personnel of the Department of Labor shall participate at any stage in the adjudication of a claim for benefits under this part unless such person is determined by the appropriate adjudication officer to qualify under the provisions of this section as a party to the claim. The following persons shall be parties:

(1) The claimant;

(2) A person other than a claimant authorized to execute a claim on such claimant's behalf pursuant to § 725.301;

(3) Any coal mine operator notified pursuant to § 725.412 of its possible liability for the claim; and

(4) Any insurance carrier of such operator.

(5) The Director shall be a party in all proceedings relating to a claim for benefits under this part.

(b) A widow, child, parent, brother, or sister, or representative of a decedent's estate, who makes a showing in writing that his or her rights with respect to benefits may be prejudiced by a decision that may be made, may be made a party.

(c) Any coal mine operator or prior operator or insurance carrier which has not been notified pursuant to § 725.412 and which makes a showing in writing that its rights may be prejudiced by a decision of an adjudication officer may be made a party.

(d) Any other individual may be made a party if that individual's rights with respect to benefits may be prejuciced by a decision to be made.

§ 725.361 Party amicus curiae.

At the discretion of the Chief Administrative Law Judge or the administrative law judge assigned to the case, a person or entity which is not a party may be allowed to participate amicus curiae, in a formal hearing only as to an issue of law. A person may participate amicus curiae in a formal hearing upon written request submitted with supporting arguments prior to the hearing. If the request is granted, the administrative law judge

hearing the case will inform the party of the extent to which participation will be permitted. The request may, however, be denied summarily and without explanation.

§ 725.362 Representation of parties.

(a) Except for the Secretary of Labor whose interests shall be represented by the Solicitor of Labor or his or her designee, each of the parties may appoint an individual to represent his or her interest in any proceeding for determination of a claim under this part. Such appointment shall be made in writing or on the record at the hearing. A written notice appointing a representative shall be signed by the party or his or her legal guardian and shall be sent to the Office or, for representation at a formal hearing, to the Chief Administrative Law Judge. In any case such representative must be qualified under § 725.363.

(b) Any party may waive his or her right to be represented in the adjudication of his or her claim or defense. If an adjudication officer determines that a claimant who has been informed of his or her right to representation, does not wish to obtain the services of a representative, such adjudication officer shall proceed to consider the claim in accordance with this part, unless it is apparent that the claimant is, for any reason, unable to continue without the help of a representative. Unless a hearing is to be conducted at which the claimant's appearance is required, it shall not be necessary for an adjudication officer to inquire as to the ability of a claimant to proceed without representation, and in any adjudication taking place without a hearing, the failure of a claimant to obtain representation shall be considered a waiver of the claimant's right to representation. Prior to the closing of the record, however, any claimant may revoke such waiver and obtain a representative.

§ 725.363 Qualification of representative.

(a) *Attorney.* Any attorney in good standing who is admitted to practice before a court of a State, territory, district, or insular possession, or before the Supreme Court of the United States, or other Federal court and is not, pursuant to any provision of law, prohibited from acting as a representative may be appointed as a representative.

(b) *Other person.* Any other person with the approval of the adjudication officer may be appointed as a representative so long as that person is not, pursuant to any provision of law, prohibited from acting as a representative.

§ 725.364 Authority of representative.

A representative, appointed and qualified as provided in §§ 725.362 and 725.363 may make or give, on behalf of the party he or she represents, any request or notice relative to any proceeding before an adjudication officer including formal hearing and review, except that such representative may not execute a claim for benefits, unless he or she is a person designated in § 725.301 as authorized to execute a claim. A representative shall be entitled to present or elicit evidence and make allegations as to facts and law in any proceeding affecting the party represented and to obtain information with respect to the claim of such party to the same extent as such party. Notice given to any party of any administrative action, determination, or decision, or request to any party for the production of evidence shall be sent to the representative of such party and such notice or request shall have the same force and effect as if it has been sent to the party represented.

§ 725.365 Approval of representative's fees; lien against benefits.

No fee charged for representation services rendered with respect to any claim under this part shall be valid unless approved pursuant to this subpart. No contract or prior agreement for a fee shall be valid. In cases where the obligation to pay the attorney's fee is upon the claimant, the amount of the fee awarded may be made a lien upon the benefits due under an award and the adjudication officer shall fix, in the award approving the fee, such lien and the manner of payment of the fee. Any representative who is not an attorney may be awarded a fee for services under this subpart except that no lien may be imposed with respect to such representative's fee.

§ 725.366 Fees for representatives.

(a) A representative seeking a fee for services performed on behalf of a claimant shall make application therefor to the Deputy Commissioner, Administrative Law Judge, or appropriate appellate tribunal, as the case may be, before whom the services were performed. The application shall be filed and served upon the claimant and all other parties within the time limits allowed by the Deputy Commissioner, Administrative Law Judge, or appropriate appellate tribunal. The application shall be supported by a complete statement of the extent and character of the necessary work done, and shall indicate the professional status (e.g., attorney, paralegal, law clerk, lay representative, clerical, or other person) of the person performing such work, and the customary billing rate for each such person. The application shall also include a listing of reasonable unreimbursed expenses, including those for travel, incurred by the representative or an employee of a representative in establishing the claimant's case. Any fee requested under this paragraph shall also contain a description of any fee requested, charged, or received for services rendered to the claimant before any State or Federal court or agency in connection with a similar matter.

(b) Any fee approved under paragraph (a) of this section shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the complexity of the legal issues involved, the level of administrative proceedings to which the claim was raised, the level at which the representative entered the proceedings, and any other information which may be relevant to the amount of fee requested. No fee shall be approved for work done on claims filed between December 30, 1969, and June 30, 1973, under Part B of Title IV of the Act except for services rendered on behalf of the claimant in regard to the review of the claim under section 435 of the Act.

(c) In awarding a fee the appropriate adjudication officer shall consider and shall add to the fee the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. Reimbursement for travel expenses incurred by an attorney shall be determined in accordance with the provisions of § 725.459(a). No reimbursement shall be permitted for expenses incurred in obtaining medical or other evidence which has previously been submitted to the Office in connection with the claim.

(d) Upon receipt of a request for approval of a fee such request shall be reviewed and evaluated by the appropriate adjudication officer and a fee award issued. Only a party adversely affected by such award, or a petitioning attorney or representative who believes the fee to be inadequate, may request reconsideration thereof by the adjudication officer making the fee award. A revised or modified fee award may then be issued, if appropriate.

(e) Each request for reconsideration or review of a fee award shall be in writing and shall contain supporting statements or information pertinent to any increase or decrease requested. If a fee awarded by a deputy commissioner is disputed, such award shall be appealed directly to the Benefits Review Board for a determination of whether the Deputy Commissioner's fee determination is supported by substantial evidence and is in accordance with law. In a fee dispute case the record before the Board shall consist of the order of the deputy commissioner awarding or denying the fee, the application for a fee, and the documentary evidence contained in the file which verifies or refutes any item claimed in the fee application.

§ 725.367 Payment of a claimant's attorney's fee by responsible operator.

If an operator declines to pay any benefits on or before the 30th day after receiving written notice of its liability for a claim on the ground that there is no liability for benefits within the provisions of the Act, and the person seeking benefits shall thereafter have utilized the services of an attorney in the successful prosecution of his or her claim, there shall be awarded, in addition to the award of benefits, in an order, a reasonable attorney's fee against the operator or carrier in an amount approved by the deputy commissioner, administrative law judge, Board, or court, as the case may be which shall be paid directly by the operator or carrier to the claimant's attorney in a lump sum after the order becomes final.

CLAIM DEVELOPMENT

§ 725.401 General.

After a claim has been received by the Deputy Commissioner, the Deputy Commissioner shall take such action as is necessary to develop, process, and make determinations with respect to the claim as provided in this subpart.

§ 725.402 Approved State workers' compensation law.

If a Deputy Commissioner determines that any claim filed under this part is one subject to adjudication under a workers' compensation law approved under Part 722 of this subchapter, he or she shall advise the claimant of this determination and of the Act's requirement that the claim must be filed under the applicable State workers' compensation law. The Deputy Commissioner shall then prepare a proposed decision and order dismissing the claim for lack of jurisdiction pursuant to § 725.418 and proceed as appropriate.

§ 725.403 Requirement to file under state workers' compensation law—Section 415 claims.

(a) No benefits shall be payable to or on behalf of a claimant who has filed a claim under section 415 of Part B of Title IV of the Act, for any period of eligibility occurring between July 1 and December 31, 1973, unless the claimant has filed and diligently pursued a claim for benefits under an applicable State workers' compensation law. A State workers' compensation claim need not be filed where filing would be futile. It shall be determined that the filing of a State claim would be futile when:

(1) The period within which the claim may be filed under such law has expired; or

(2) Pneumoconiosis as defined in Part 718 of this subchapter is not compensable under such law; or

(3) The maximum amount of compensation or the maximum number of compensation payments allowable under such law has already been paid; or

(4) The claimant does not meet one or more conditions of eligibility for workers' compensation payments under applicable State law; or

(5) The claimant otherwise establishes to the satisfaction of the Office that the filing of a claim under State law would be futile.

(b) Where the Office determines that a claimant is required to file a State claim under this section, the Office shall so notify the claimant. Such notice shall instruct the claimant to file a State claim within 30 days of such notice. If no such State claim is filed within the 30-day period no benefits shall be payable under this part to the claimant for any period between July 1 and December 31, 1973.

(c) The failure of a claimant to comply with paragraph (a) of this section shall not absolve any operator of its liability for the payment of benefits to a claimant for periods of eligibility occurring on or after January 1, 1974.

(d) The Deputy Commissioner may determine that a claimant is ineligible for benefits under section 415 of Part B of Title IV of the Act without requiring the claimant to file a claim under a State workers' compensation law.

§ 725.404 Development of evidence—General.

(a) *Employment history.* Each claimant shall furnish the deputy commissioner with a complete and detailed history of the coal miner's employment and, upon request, supporting documentation.

(b) *Matters of record.* Where it is necessary to obtain proof of age, marriage or termination of marriage, death, family relationship, dependency (see subpart B of this part), or any other fact which may be proven as a matter of public record, the claimant shall furnish such evidence to the Deputy Commissioner upon request.

(c) *Documentary evidence.* If a claimant is required to submit documents to the Deputy Commissioner, the claimant shall submit the original or a certified copy thereof unless neither is available.

(d) *Submission of insufficient evidence.* In the event a claimant submits insufficient evidence regarding any matter, the Deputy Commissioner shall inform the claimant of what further evidence is necessary and request that such evidence be submitted within a specified reasonable time which may upon request be extended for good cause.

§ 725.405 Development of medical evidence; scheduling of medical examinations and tests.

(a) Upon receipt of a claim, the Deputy Commissioner shall ascertain whether the claim was filed by or on account of a miner as defined in § 725.202(a), and in the case of a claim filed on account of a deceased miner, whether the claim was filed by an eligible survivor of such miner as defined in subpart B of this part.

(b) In the case of a claim filed by or on behalf of a miner, the Deputy Commissioner shall, where necessary or appropriate, schedule the claimant for a medical examination and testing under § 725.406.

(c) In the case of a claim filed by or on behalf of a survivor of a miner the Deputy Commissioner shall obtain whatever medical evidence is necessary and available for the development and evaluation of the claim.

(d) After receipt of evidence obtained under paragraphs (b) and (c) of this section, the Deputy Commissioner shall, where appropriate, collect other evidence necessary to establish:

(1) The nature and duration of the miner's employment; and

(2) All other matters relevant to the determination of the claim.

(e) If at any time during the processing of the claim by the Deputy Commissioner the evidence establishes that the claimant is not entitled to benefits under the Act, the Deputy Commissioner may terminate evidentiary development of the claim and proceed as appropriate.

§ 725.406 Medical examinations and tests.

(a) Medical examinations and tests authorized by the Deputy Commissioner shall be conducted, if possible, in the vicinity of the miner's residence by physicians or in medical facilities selected from a list compiled by the Secretary, or approved by the deputy commissioner.

(b) If any medical examination or test conducted under paragraph (a) of this section is not administered or reported in compliance with the provisions of Part 718 of this subchapter, the deputy commissioner shall schedule the miner for further examination and testing where necessary and appropriate.

(c) The cost of any medical examination or test authorized under this section shall be paid by the Fund. The Fund shall be reimbursed for such payments by an operator, if any, found liable for the payment of benefits to the claimant.

§ 725.407 Additional medical evidence.

(a) If, at any time after the completion of initial medical examinations and tests, unresolved medical questions remain, the deputy commissioner may cause the claimant to be exam-

ined by a physician selected by the deputy commissioner.

(b) Any miner dissatisfied with the results of the medical examinations or tests conducted under §725.406 may obtain further medical examinations or tests and submit them to the deputy commissioner. Such further examination or tests shall be reimbursable by the Fund, or by a responsible coal operator where appropriate, if the claimant is finally adjudicated entitled to benefits and if such further examinations or tests were relevant to the determination of the claim.

(c) If additional medical evidence is obtained in accordance with paragraph (a) of this section, the deputy commissioner may order the physician selected to retest or reexamine the miner to do so without the presence or participation of any other physician who previously examined the miner, and without benefit of the conclusions of any other physician who has examined the miner.

§725.408 Refusal to submit to medical examinations or tests.

If an adjudication officer determines that a miner has unreasonably refused to submit to medical examinations or tests scheduled under §§725.406 or 725.407(a), all evidentiary development of the claim shall be suspended and the adjudication officer shall proceed to deny the claim by reason of abandonment (§725.409) or by dismissal (§725.465) as is appropriate.

§725.409 Denial of a claim by reason of abandonment.

(a) A claim may be denied at any time by the deputy commissioner by reason of abandonment where the claimant fails:

(1) To undergo a required medical examination without good cause; or,

(2) To submit evidence sufficient to make a determination of the claim; or,

(3) To pursue the claim with reasonable diligence.

(b) If the deputy commissioner determines that a denial by reason of abandonment is appropriate, he or she shall notify the claimant of the reasons for such denial and of the action which must be taken to avoid a denial by reason of abandonment. If there is no response to the notice within 30 days after such notice was sent, the claim shall be considered denied by reason of abandonment. If the claimant responds in a timely fashion indicating a desire to pursue the claim, by requesting a hearing or indicating the intent to submit additional evidence, the deputy commissioner shall, if a hearing is requested, proceed in accordance with §725.412 or, allow a reasonable time of not less than 60 days, for the claimant to take the specified remedial action. If the claimant completes the action requested within the time allowed the claim shall be developed, processed and adjudicated as specified in this part. If the claimant does not fully comply with the action requested by the deputy commissioner the deputy commissioner shall so notify the claimant. If the claimant does not request a hearing or fully comply with the action requested by the deputy commissioner within 30 days of such notification, the claim shall be considered denied by reason of abandonment.

(c) If a claim is denied by reason of abandonment the claimant may, within one year from the date of such denial, request a modification of the denial in accordance with §725.310. No other recourse is available in the case of a claim denied by reason of abandonment.

§725.410 Initial findings by the deputy commissioner.

(a) Based upon the evidence developed, the deputy commissioner may make an initial finding with respect to the claim.

(b) If the evidence supports an initial finding of eligibility, and it has been determined that a coal mine operator may be liable for the claim, the deputy commissioner shall proceed in accordance with §725.412. If no operator can be identified, the deputy commissioner shall proceed in accordance with §725.411.

(c) If the evidence submitted does not support an initial finding of eligibility, the deputy commissioner shall so notify the claimant in writing. This notification shall specify the reasons why the claim cannot be approved, the additional evidence necessary to establish entitlement, the right of the claimant to submit additional evidence, and the right to request a hearing. Within 60 days from the mailing of such notice, unless such period is extended by the deputy commissioner for good cause shown, the claimant may submit new evidence or request a hearing. If the claimant:

(1) Takes no action within the specified 60 day period, the claim shall be considered denied by reason of abandonment (see §725.409).

(2) Submits new evidence within the specified 60 day period, the deputy commissioner shall reconsider the initial finding, taking into account the additional evidence submitted. If the new evidence supports a finding of entitlement the deputy commissioner shall proceed in accordance with paragraph (b) of this section. If the new evidence does not support a finding of entitlement, the deputy commissioner shall notify the claimant in writing that he or she may request a hearing within 30 days after receipt of such notice. If no hearing is requested, the claim shall be deemed denied by reason of abandonment (see §725.409).

(d) Unless an earlier operator identification has been made, if a hearing is requested under paragraph (c) of this section, the deputy commissioner shall identify the coal mine operator, if any, which may be liable for the payment of benefits to the claimant and proceed in accordance with §725.412. If no such operator can be identified, the deputy commissioner may schedule a conference (see §725.416) or refer the claim to the Office of Administrative Law Judges for appropriate proceedings.

§725.411 Adjudication upon initial findings of eligibility and no operator responsibility.

(a) Where the deputy commissioner has found that the claimant is eligible and that there is no operator responsible for the payment of benefits, the deputy commissioner shall issue a proposed decision and order including findings of fact and conclusions of law under §725.418. The claimant shall have 30 days after the date of issuance of the proposed decision and order within which to reject any or all of the terms contained in the proposed decision and order. If the claimant does not reject the proposed decision and order within this 30-day period, it will become final and effective. If for any reason the claimant rejects a proposed decision and order, the deputy commissioner may take such actions as is appropriate.

§725.412 Identification and notification of responsible operator.

(a) At any time during the processing of a claim under this part after sufficient evidence has been made available to the deputy commissioner, the deputy commissioner may identify a coal miner operator (see §725.491) which may be liable for the payment of the claim in accordance with the criteria contained in subpart F of this part. As a general rule such identification shall be made after the deputy commissioner has made an initial finiding that the claimant is eligible for benefits or after the deputy commissioner has made an initial finding that the claimant is ineligible, and a hearing has been requested. The general rule shall apply unless sufficient evidence of the operator's identity is submitted to the deputy commissioner and in the opinion of the deputy commissioner, the earlier identification and notification of an operator will significantly aid in the prompt adjudication of a claimant's entitlement to benefits.

(b) After the deputy commissioner identifies an operator which may be found liable for payment of benefits, the deputy commissioner shall notify such operator in writing. Such notification shall include a copy of the claimant's claim form and a copy of all

documentary evidence pertaining to the claim obtained by the deputy commissioner, if any, and the initial findings of the deputy commissioner, if any.

(c) If within one year after the final adjudication of a claim, the adjudication officer determines that an operator which may be liable for the payment of benefits has not been notified under this section, such adjudication officer shall give notice of possible liability and an opportunity to respond to such operator. The adjudication officer shall then take such further action on the claim as may be appropriate. There shall be no time limit applicable to a later identification of an operator under this paragraph if the operator fraudulently concealed its identity as an employer of the miner.

(d) If, in any case, there is a dispute between two or more operators as to which may be liable for the payment of benefits to the claimant, all such operators shall be notified under this section and the issue of which operator is liable shall be determined by the appropriate adjudication officer.

§ 725.413 Operator's response to notification.

(a) Within 30 days after receipt of notification issued under § 725.412, unless such period is extended by the deputy commissioner for good cause shown, or in the interest of justice, a notified operator shall indicate an intent to accept or contest liability. If notice is given to the operator after initial findings have been made, the operator shall indicate its agreement or disagreement with each such finding.

(b) (1) If the operator accepts liability for the claim, the deputy commissioner shall issue a proposed decision and order under § 725.418.

(2) If the operator contests its liability or any of the initial findings of the deputy commissioner, if any, or if the deputy commissioner has determined the claimant to be ineligible for benefits, the deputy commissioner shall proceed to adjudicate the claim in accordance with this subpart.

(3) If the operator fails to respond within the specified period such operator shall be deemed to have accepted the initial findings of the deputy commissioner when made and shall not, except as provided in § 725.463, be permitted to raise issues or present evidence with respect to issues inconsistent with the initial findings in any further proceeding conducted with respect to the claim. In a case where an operator has failed to respond to notification such failure shall be considered a waiver of such operator's right to present evidence to the deputy commissioner in connection with the claim, unless the operator's failure to respond to notice is excused for good cause, and the deputy commissioner may proceed to issue a proposed decision and order pursuant to § 725.418, undertake further development, hold a conference, or refer the claim for a hearing.

§ 725.414 Development of operator's evidence, claimant's rebuttal evidence.

(a) If an operator notified of its possible liability for a claim after the deputy commissioner has made initial findings (§ 725.410) with respect to the claim contests the claim, such operator shall have 60 days from the date on which the notice of contest is sent within which to submit to the deputy commissioner and exchange with all other parties all available evidence relevant to any contested issue in the claim. During this 60 day period, a notified operator may have a miner examined by a physician selected by such operator except that, no miner shall be required to travel more than 100 miles from his or her place of residence for the purpose of submitting to a medical examination requested by an operator, unless a trip of greater distance is authorized in writing by the deputy commissioner.

(b) If an operator is notified of its possible liability for a claim before the deputy commissioner has made initial findings with respect to the claim or if no initial findings are made, and if such operator indicates its intent to contest the claim, such operator shall promptly undertake the development of its evidence, including any medical evidence which may be obtained if the operator seeks to have the miner examined by a physician which it selects. Any evidence obtained by an operator shall be sent to the deputy commissioner and all other parties to the claim. On the basis of the operator's evidence and all other evidence submitted to the deputy commissioner, the deputy commissioner may make initial findings with respect to the claim or may take such other action as is appropriate. If the deputy commissioner makes an initial finding that the claimant is ineligible for benefits, the deputy commissioner shall proceed to consider the claim as provided in § 725.410(c). If the deputy commissioner makes an initial finding that the claimant is eligible for benefits and that the notified operator is liable for such benefits, the parties shall be so notified. Within 30 days from the date on which notice of the deputy commissioner's initial findings of eligibility and liability is sent to the parties, each party shall either accept or contest any or all of such initial findings and shall except as provided in paragraph (d) of this section submit any available evidence not previously submitted, to the deputy commissioner. The deputy commissioner shall then proceed to adjudicate the claim under § 725.415. The failure by an operator to respond to initial findings of eligibility made under this paragraph shall have the same consequences as an operator's failure to respond to notice of a claim (see § 725.413(b)(3)).

(c) The report of any medical examination or test conducted under this section shall be submitted to the deputy commissioner and sent to the other parties to the claim within the applicable period set forth in this section, unless the deputy commissioner enlarges such period for good cause shown or in the interest of justice.

(d) Upon receipt of a medical report obtained by an operator under this section, a claimant shall, upon request, be allowed 30 days from the date on which the operator's report is received to obtain additional evidence in support of the claim. Such evidence shall be obtained, submitted to the deputy commissioner, and exchanged with the other parties within the 30 day period described in this paragraph, unless the period is enlarged by the deputy commissioner for good cause.

(e) Except as provided in §§ 725.417(d) and 725.456, evidence not submitted to the deputy commissioner and exchanged with all parties by the time proceedings under this section are concluded, shall not be considered in connection with a claim, unless during the time a claim is within the jurisdiction of the deputy commissioner, the deputy commissioner determines that the interest of justice requires the reopening of the period permitted for the submission of evidence.

§ 725.415 Action by the deputy commissioner after development of operator's evidence.

(a) Upon the expiration of the period permitted under § 725.414 for the submission of evidence, the deputy commissioner shall review the claim on the basis of all evidence submitted.

(b) After review of all evidence submitted, the deputy commissioner may schedule a conference in accordance with § 725.416, issue a proposed decision and order in accordance with § 725.418, forward the claim to the Office of Administrative Law Judges in accordance with § 725.421, or take such other action as the deputy commissioner considers appropriate.

§ 725.416 Conferences.

(a) At the conclusion of the period permitted by § 725.414, for the submission of evidence, the deputy commissioner may conduct an informal conference in any claim where it appears that such conference will assist in the voluntary resolution of any issue raised with respect to the claim. The conference proceedings shall not be stenographically reported and sworn testimony shall not be taken.

(b) The deputy commissioner shall notify the parties of a definite time

and place for a conference and may in his or her discretion or on the motion of any part cancel or reschedule a conference.

(c) Any representative of an operator or of an operator's insurance carrier must have sufficient authority to effect settlement.

(d) Procedures to be followed at a conference shall be within the discretion of the deputy commissioner.

§ 725.417 Action at the conclusion of conference.

(a) At the conclusion of a conference, the deputy commissioner shall prepare a stipulation of contested and uncontested issues which shall be signed by the parties and the deputy commissioner. If a hearing is conducted with respect to the claim, this stipulation shall be submitted to the Office of Administrative Law Judges, and placed in the claim record.

(b) In any case, where appropriate, the deputy commissioner may permit a reasonable time for the submission of additional evidence following a conference.

(c) Within 20 days after the termination of all conference proceedings the deputy commissioner shall prepare and send to the parties a memorandum of conference on a form prescribed by the Office summarizing the conference and including the following:

(1) Date, time, and place of conference;

(2) Names, addressed, telephone numbers, and status (i.e., claimant, attorney, operator, carrier's representatives, etc.);

(3) Issues discussed at conference;

(4) Additional material presented (i.e., medical reports, employment reports, marriage certificates, birth certificates, etc.);

(5) Issues resolved at conference; and

(6) Deputy commissioner's recommendation.

(d) Each party shall, in writing, either accept or reject in part or in whole the deputy commissioner's recommendation, stating the reasons for such rejection. If no reply is received within 20 days from the date on which the recommendation was sent to the parties, the recommendation shall be deemed accepted.

§ 725.418 Proposed decision and order.

(a) A proposed decision and order is a document issued by the deputy commissioner which purports to resolve each contested issue in a claim on the basis of the evidence submitted to or obtained by the deputy commissioner. A proposed decision and order shall be considered a final adjudication of a claim only as provided in § 725.419. A proposed decision and order may be issued by the deputy commissioner in any claim and at any time during the adjudication of a claim if:

(1) Issuance is authorized or required by this part; or,

(2) The deputy commissioner determines that issuance will expedite the adjudication of the claim.

(b) A proposed decision and order shall contain findings of fact and conclusions of law, and an appropriate order based thereupon and shall be served on all parties to the claim. The proposed decision and order shall reflect the initial determination of the deputy commissioner, if any (see § 725.420).

§ 725.419 Response to proposed decision and order.

(a) Within 30 days after the date of issuance of a proposed decision and order, any party may in writing request a revision of the proposed decision and order or a hearing. If a hearing is requested, the deputy commissioner shall refer the claim to the Office of Administrative Law Judges (see § 725.421).

(b) Any response made by a party to a proposed decision and order shall specify the findings and conclusions with which the responding party disagrees, and shall be served on the deputy commissioner and all other parties to the claim.

(c) If a timely request for revision of a proposed decision and order is made, the deputy commissioner may amend the proposed decision and order, as circumstances require, and serve the revised proposed decision and order on all parties or take such other action as is appropriate. If a revised proposed decision and order is issued each party to the claim shall have 30 days from the date of issuance of that revised proposed decision and order within which to request a hearing. The deputy commissioner may, in any case, forward a claim for hearing without having received a request to so act, after the issuance of a proposed decision and order or revised proposed decision and order.

(d) If no response to a proposed decision and order is sent to the deputy commissioner within the period described in paragraph (a) of this section, or if no response to a revised proposed decision and order is sent to the deputy commissioner within the period described in paragraph (b) of this section, and the deputy commissioner does not consider it appropriate to transfer the claim for a hearing, the proposed decision and order shall become a final decision and order which is effective upon the expiration of the applicable 30 day period. Once a proposed decision and order or revised proposed decision and order becomes final and effective all rights to further proceedings with respect to the claim shall be considered waived, except as provided in § 725.310.

§ 725.420 Initial determinations.

(a) An "initial determination" is a decision which may be made only by the deputy commissioner for the purpose of determining the date from which benefits may be paid to certain claimants prior to a final adjudicaton of a claim (see § 725.522). An initial determination is not itself a formal document but shall be reflected in the proposed decision and order or revised proposed decision and order, if any, issued by the deputy commissioner in accordance with §§ 725.418 and 725.419, or if no proposed decision and order is issued, the initial determination shall be reflected in the document which transfers the claim for hearing. (§ 725.421)

(b) Except as provided in § 727.105 of this subpart a claim is in a posture for initial determination only after all of the following conditions are met:

(1) The deputy commissioner has determined based upon all the evidence presented by a claimant, coal operator or any other other party that the claimant is eligible for benefits.

(2) The deputy commissioner has identified and notified an operator which may be liable for the payment of the claim in accordance with this subpart;

(3) The deputy commissioner's determination of eligibility and of the notified operator's liability is reflected in a proposed decision an order or revised proposed decision and order issued in accordance with §§ 725.418 and 725.419 or in the document which refers the claim to the Office of Administrative Law Judges (§ 725.421); and,

(5) It has been determined by the deputy commissioner that a hearing will be necessary to resolve contested issues raised by any party to the claim.

(c) An initial determination shall be considered made with respect to a claim on the date the deputy commissioner refers the claim for hearing or issues a proposed decision and order in such claim, unless the claimant requests a revision of the proposed decision and order in accordance with § 725.419 in which case the initial determination shall be considered made on the date of issuance of a revised proposed decision and order or on the date of the deputy commissioner refuses to revise the original proposed decision and order.

(d) If a notified operator refuses to commence payment of a claim within 30 days from the date on which an initial determination is made under this section, benefits shall be paid by the Fund to the claimant in accordance with § 725.522, and the operator shall be liable to the Fund, if such operator is determined liable for the claim, for all benefits paid by the Fund on behalf of such operator, and such penalties and interest as are appropriate.

§ 725.421 Referral of claim to the office of administrative law judges.

(a) In any claim for which a formal hearing is requested or ordered, and with respect to which the deputy commissioner has completed his or her development and adjudication without having resolved all contested issues in the claim, the deputy commissioner shall refer the claim to the Office of Administrative Law Judges for a hearing. If the deputy commissioner with jurisdiction over the claim is located at any place outside Washington, D.C., such deputy commissioner shall forward a claim with respect to which a hearing is required by this part, to the DCMWC in Washington, D.C. which shall refer the claim to the Office of Administrative Law Judges for appropriate proceedings.

(b) In any case referred to the Office of Administrative Law Judges under this section, the deputy commissioner shall transmit the following to the Office of Administrative Law Judges which shall be placed in the record at the hearing: (1) Copies of the claim form or forms; (2) any statement, document, or pleading submitted by a party to the claim; (3) a copy of the notification to an operator of its possible liability for the claim; (4) all evidence submitted to the deputy commissioner under this part; (5) any written stipulation of law or fact entered into by the parties; (6) any pertinent pleadings or forms submitted to the deputy commissioner; (7) the memorandum of Conference, if a conference was held; (8) the statement by the deputy commissioner of contested and uncontested issues in the claim; and (9) the deputy commissioner's initial determination of eligibility, if appropriate.

(c) A party may at any time request and obtain from the deputy commissioner copies of evidence transmitted to the Office of Administrative Law Judges under paragraph (b) of this section. If the party has previously been provided with such evidence, additional copies may be sent to the party upon the payment of a copying fee to be determined by the deputy commissioner.

§ 725.422 Legal assistance.

The Secretary or his or her designee may, upon request, provide a claimant with legal assistance in processing a claim under the Act. Such assistance may be made available to a claimant in the discretion of the Solicitor of Labor or his or her designee at any time prior to or during the time in which the claim is being adjudicated and shall be furnished without charge to the claimant. Representation of a claimant in adjudicatory proceedings shall not be provided by the Department of Labor unless it is determined by the Solicitor of Labor that such representation is in the best interests of the Black Lung Benefits Program. In no event shall representation be provided to a claimant in a claim with respect to which the claimant's interests are adverse to those of the Secretary of Labor or the Fund.

Subpart E—Hearings

§ 725.450 Right to a hearing.

Any party to a claim (see § 725.360) shall have a right to a hearing concerning any contested issue of fact or law unresolved by the deputy commissioner. There shall be no right to a hearing until the processing and adjudication of the claim by the deputy commissioner has been completed. There shall be no right to a hearing in a claim with respect to which a determination of the claim made by the deputy commissioner has become final and effective in accordance with this part.

§ 725.451 Request for hearing.

After the completion of proceedings before the deputy commissioner or as is otherwise indicated in this part, any party may in writing request a hearing on any contested issue of fact or law. A deputy commissioner may on his or her own initiative refer a case for hearing. If a hearing is requested or if a deputy commissioner determines that a hearing is necessary to the resolution of any issue, the claim shall be referred to the Chief Administrative Law Judge for a hearing under § 725.421.

§ 725.452 Type of hearing; parties.

(a) A hearing held under this part shall be conducted by an administrative law judge designated by the Chief Administrative Law Judge. Except as otherwise provided by this part, all hearings shall be conducted in accordance with the provisions of 5 U.S.C. 554 et seq.

(b) All parties to a claim shall be permitted to participate fully at a hearing held in connection with such claim.

(c) A full evidentiary hearing need not be conducted if a party moves for summary judgment and the administrative law judge determines that there is no genuine issue as to any material fact and that the moving party is entitled to the relief requested as a matter of law. All parties shall be entitled to respond to the motion for summary judgment prior to decision thereon.

§ 725.453 Notice of hearing.

All parties shall be given at least 10 days written notice of the date and place of a hearing and the issues to be resolved at the hearing. Such notice shall be sent to each party or representative by certified mail.

§ 725.453A Time and place of hearing.

(a) The Chief Administrative Law Judge shall assign a definite time and place for a formal hearing, and shall, where possible, schedule the hearing to be held at a place within 75 miles of the claimant's residence.

(b) If the claimant's residence is not in any State, the Chief Administrative Law Judge may in his or her discretion schedule the hearing in the country of the claimant's residence.

(c) The Chief Administrative Law Judge or the administrative law judge assigned the case may in his or her discretion direct that a hearing with respect to a claim shall begin at one location and then later be reconvened at another date and place.

§ 725.454 Change of time and place for hearing; transfer of cases.

(a) The Chief Administrative Law Judge or administrative law judge assigned the case may change the time and place for a hearing, either on his or her own motion or for good cause shown by a party. The administrative law judge may adjourn or postpone the hearing, or reopen the hearing for the receipt of additional evidence for good cause shown at any time prior to the mailing to the parties of the decision in the case. Unless otherwise agreed, at least 10 days, notice shall be given to the parties of any change in the time or place of hearing.

(b) The Chief Administrative Law Judge may for good cause transfer a claim from one administrative law judge to another.

§ 725.455 Hearing procedures—generally.

(a) *General.* The purpose of any hearing conducted under this subpart shall be to resolve contested issues of fact or law. Any findings or determinations made with respect to a claim by a deputy commissioner shall not be considered by the administrative law judge.

(b) *Evidence.* The administrative law judge shall at hearing inquire fully into all matters at issue, and shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure except as provided by 5 U.S.C. 554 and this subpart. The administrative law judge shall receive into evidence the testimony of the witnesses and parties, the evidence submitted to the Office of Administrative Law Judges by the deputy commissioner under § 725.421, and such additional evidence as may be submitted in accordance with the provisions of this subpart. The administrative law judge may entertain the objections of any party to the evidence submitted under this section.

(c) *Procedure.* The conduct of the hearing and the order in which allegations and evidence shall be presented shall be within the discretion of the

administrative law judge and shall afford the parties an opportunity for a fair hearing.

§ 725.456 Introduction of evidence.

(a) All documents transmitted to the Office of Administrative Law Judges pursuant to § 725.421 shall be placed into evidence by the administrative law judge as exhibits of the Director, subject to objection by any party.

(b) Except as is otherwise provided in this section, evidence not submitted to the deputy commissioner and the parties within the time period described in subpart D of this part shall not be admissible into evidence unless such evidence was not reasonably obtainable during such period.

(c) No medical records or reports shall be admissible into evidence unless such records or reports have first been reviewed by the Office for the purpose of determining whether such records or reports are in compliance with the quality standards contained in Part 718 of this subchapter.

(d) Evidence which was requested by the deputy commissioner or any other party which was not supplied in accordance with such request may be admitted into evidence by the administrative law judge if submitted by the requesting party.

(e) Any evidence previously submitted to the deputy commissioner may be admitted into evidence at the hearing at the request of any party, whether or not such evidence was transmitted to the Office of Administrative Law Judges under paragraph (a) of this section.

(f) Evidence obtained by deposition or interrogatory may be admitted into evidence at the hearing, whether or not such evidence was previously submitted to the deputy commissioner, except that no deposition or interrogatory of a medical witness, shall be admissible unless such witness previously filed a written report of his or her findings concerning the claim, to the deputy commissioner within the time limits imposed under §§ 725.406–725.421.

(g) If new evidence is submitted to the administrative law judge in accordance with paragraphs (b) or (f) of this section such evidence shall be submitted to the administrative law judge and all parties to the claim no later than 20 days before the hearing, in order for such evidence to be considered admissible.

(h) If during the course of a hearing it is determined by the administrative law judge that the documentary evidence submitted in accordance with this section is incomplete as to any issue which must be adjudicated, the administative law judge may, in his or her discretion, remand the claim to the deputy commissioner with instructions to develop only such additional evidence as is required, or allow the parties a reasonable time to obtain and submit such evidence before the termination of the hearing.

(i) The work product of the Director or his or her staff shall not be subject to discovery by any party.

§ 725.457 Witnesses.

(a) Witnesses at the hearing shall testify under oath or affirmation. The administrative law judge and the parties may question witnesses with respect to any matters relevant and material to any contested issue. No employee of the Department of Labor shall be compelled to appear at a hearing in his or her capacity as such an employee as a witness in any proceeding conducted in connection with a claim.

(b) No person shall be required to attend as a witness in any proceeding before an administrative law judge at a place more than 100 miles from his or her place of residence, unless lawful mileage and fee for 1 day's attendance is paid in advance of the hearing date.

§ 725.458 Depositions; interrogatories.

The testimony of any witness or party may be taken by deposition or interrogatory according to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the U.S. District Court for the District of Columbia if the case is pending in the District or outside the United States), except that at least thirty days prior notice of any deposition shall be given to all parties. No post-hearing deposition or interrogatory shall be permitted unless ordered by the administrative law judge.

§ 725.459 Witness fees.

(a) A witness summoned to hearing before an administrative law judge or whose deposition is taken shall receive the same fees and mileage as witnesses in courts of the United States. Except as provided in paragraph (c) of this section, such fees shall be paid by the party summoning the witness.

(b) No claimant shall be required to bear the financial responsibility for producing an expert witness for cross examination if such expert witness, regardless of his or her availability to attend the hearing, has previously submitted depositions, interrogatories, or medical reports. Such expert witness, if he or she is required to attend the hearing, shall be summoned and shall have his or her expert witness fee paid by the party who summons such witness.

(c) If a claimant is determined entitled to benefits, there may be assessed against a responsible operator, if any, as costs, fees and mileage for necessary witnesses attending the hearing at the request of the claimant. Both the necessity for the witness and the reasonableness of the fees of any expert witness shall be approved by the administrative law judge. The amounts awarded against a responsible operator as attorney's fees, or costs, fees and mileage for witnesses shall not in any respect affect or diminish benefits payable under the Act.

§ 725.459A Oral argument and written allegations.

The parties, upon request, may be allowed a reasonable time for the presentation of oral argument at the hearing. Briefs or other written statements or allegations as to facts or law may be filed by any party with the permission of the administrative law judge. Copies of any brief or other written statement shall be filed with the administrative law judge and served on all parties by the submitting party.

§ 725.460 Consolidated hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing the Chief Administrative Law Judge may upon motion by any party, or on his or her own motion, order that a consolidated hearing shall be conducted. Where consolidated hearings are held, a single record of the proceedings shall be made and the evidence introduced in one claim may be considered as introduced in the others and a separate or joint decision shall be made, as appropriate.

§ 725.461 Waiver of right to appear.

(a) If all parties waive their right to appear before the administrative law judge it shall not be necessary for the administrative law judge to give notice of or conduct an oral hearing. A waiver of the right to appear shall be made in writing and filed with the Chief Administrative Law Judge or the administrative law judge. Such waiver may be withdrawn by a party at any time for good cause prior to the mailing of notice of the decision in the claim. Even though all of the parties have filed a waiver of the right to appear, the administrative law judge may, nevertheless, after giving notice of the time and place, conduct a hearing if he or she believes that the personal appearance and testimony of the party or parties would assist in ascertaining the facts in issue in the claim. Where a waiver has been filed by all parties, and they do not appear before the administrative law judge personally or by representative, the administrative law judge shall make a record of the relevant documentary evidence submitted in accordance with this part and any further written stipulations of the parties. Such documents and stipulations shall be considered the evidence of record in the case and the de-

cision shall be based upon such evidence.

(b) Except as provided in §725.456, the unexcused failure of any party to attend a hearing shall constitute a waiver of such party's right to present evidence at the hearing.

§725.462 Withdrawal of controversion of issues set for formal hearing—effect.

A party may on the record withdraw his or her controversion of any or all issues set for hearing. If a party withdraws his or her controversion of all issues, the administrative law judge shall remand the case to the deputy commissioner for the issuance of an appropriate award.

§725.463 Issues to be resolved at hearing; new issues.

(a) Except as otherwise provided in this section, the hearing shall be confined to those contested issues which have been identified by the deputy commissioner (see §725.421) or any other issue raised in writing before the deputy commissioner.

(b) An administrative law judge may consider a new issue only if such issue was not reasonably ascertainable by the parties at the time the claim was before the deputy commissioner. Such new issue may be raised upon application of any party or upon an administrative law judge's own motion with notice to all parties, at any time after a claim has been transmitted by the deputy commissioner to the Office of Administrative Law Judges and prior to decision by an administrative law judge. If a new issue is raised, the administrative law judge may in his or her discretion either remand the case to the deputy commissioner with instructions for further proceedings, hear and resolve the new issue, or refuse to consider such new issue.

(c) If a new issue is to be considered by the administrative law judge, a party may upon request be granted an appropriate continuance.

§725.464 Record of hearing.

All hearings shall be open to the public and shall be mechanically or stenographically reported. All evidence upon which the administrative law judge relies for decision shall be contained in the transcript of testimony either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record either in whole or in material part introduced as evidence shall be marked for identification and incorporated into the record.

§725.465 Dismissals for cause.

(a) The administrative law judge may, at the request of any party, or on his or her own motion, dismiss a claim:

(1) Upon the failure of a claimant or his or her representative to attend a hearing without good cause;

(2) Upon to failure of the claimant to comply with a lawful order of the administrative law judge; or

(3) Where there has been a prior final adjudication of the claim or defense to the claim under the provisions of this subchapter (except as provided in Part 727 of this subchapter).

(b) A party, who is not a proper party to the claim, (see §725.360) shall be dismissed by the administrative law judge.

(c) In any case where a dismissal of a claim, defense, or party is sought, the administrative law judge shall issue an order to show cause why the dismissal should not be granted, and afford all parties a reasonable time to respond to such order. After the time for response has expired, the administrative law judge shall take such action as is appropriate to rule on the dismissal, which may include an order dismissing the claim, defense or party.

(d) No claim shall be dismissed in a case with respect to which payments prior to final adjudication have been made to the claimant in accordance with §725.522, except upon the motion or written agreement of the Director.

§725.466 Order of dismissal.

(a) An order dismissing a claim shall be served on the parties in accordance with §725.477. The dismissal of a claim shall have the same effect as a decision and order disposing of the claim on its merits, except as provided in paragraph (b) of this section. Such order shall advise the parties of their right to request review by the Benefits Review Board.

(b) Where the Chief Administrative Law Judge or the administrative law judge issues a decision and order dismissing the claim after a show cause proceeding the deputy commissioner shall terminate any payments being made to the claimant under §725.522, and the order of dismissal shall, if appropriate, order the claimant to reimburse the Fund for all benefits paid to the claimant.

§725.475 Termination of hearings.

Hearings are officially terminated when all the evidence has been received, witnesses heard, pleadings and briefs submitted to the administrative law judge, and the transcript of the proceedings has been printed and delivered to the administrative law judge.

§725.476 Issuance of decision and order.

Within 20 days after the official termination of the hearing (see §725.475), the administrative law judge shall issue a decision and order with respect to the claim making an award to the claimant, rejecting the claim, or taking such other action as is appropriate.

§725.477 Form and contents of decision and order.

(a) Orders adjudicating claims for benefits shall be designated by the term "decision and order" or "supplemental decision and order" as appropriate, followed by a descriptive phrase designating the particular type of order, such as "award of benefits," "rejection of claim," "suspension of benefits," "modification of award."

(b) A decision and order shall contain a statement of the basis of the order, the names of the parties, findings of fact, conclusions of law, and an award, rejection or other appropriate paragraph containing the action of the administrative law judge, his or her signature and the date of issuance. A decision and order shall be based upon the record made before the administrative law judge.

§725.478 Filing and service of decision and order.

On the date of issuance of a decision and order under §725.477 the administrative law judge shall serve the decision and order on all parties to the claim by certified mail. On the same date the original record of the claim shall be returned to the deputy commissioner and the decision and order shall be considered to be filed in the office of the deputy commissioner.

§725.479 Finality of decisions and orders.

(a) A decision and order shall become effective when filed in the office of the deputy commissioner (see §725.478), and unless proceedings for suspension or setting aside of such order are instituted within 30 days of such filing, the order shall become final at the expiration of the 30th day after such filing (see §725.481).

(b) Any party may within thirty days after the filing of a decision and order under §725.478 request a reconsideration of such decision and order by the administrative law judge. The procedures to be followed in the reconsideration of a decision and order shall be determined by the administrative law judge.

(c) The time for appeal to the Benefits Review Board shall be suspended during the consideration of a request for reconsideration. After the administrative law judge has issued and filed a denial of the request for reconsideration, or a revised decision and order in accordance with this part, any dissatisfied party shall have 30 days within which to institute proceedings to set aside the new decision and order or affirmance of the original decision and order.

§725.480 Modification of decisions and orders.

A party who is dissatisifed with a decision and order which has become final in accordance with §725.479 may

request a modification of the decision and order if the conditions set forth in § 725.310 are met.

§ 725.481 Right to appeal to the Benefits Review Board.

Any party dissatisfied with a decision and order issued by an administrative law judge may, before the decision and order becomes final (see § 725.479) appeal the decision and order to the Benefits Review Board. A notice of appeal shall be filed with the Board. Proceedings before the Board shall be conducted in accordance with Part 802 of this title.

§ 725.482 Judicial review.

(a) Any person adversely affected or aggrieved by a final order of the Benefits Review Board may obtain a review of that order in the U.S. Court of Appeals for the circuit in which the injury occurred by filing in such court within 60 days following the issuance of such Board order a written petition praying that the order be modified or set aside. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless the court finds that irreparable injury would otherwise ensue to an operator or carrier.

(b) The Director, Office of Workers' Compensation Program, as designee of the Secretary of Labor responsible for the administration and enforcement of the Act, shall be considered the proper party to appear and present argument on behalf of the Secretary of Labor in all review proceedings conducted pursuant to this part and the Act, either as petitioner or respondent.

§ 725.483 Costs in proceedings brought without reasonable grounds.

If a United States court having jurisdiction of proceedings in respect of any claim or final decision and order determines that the proceedings in respect of such claim or order have been instituted or continued before such court without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

Subpart F—Responsible Coal Mine Operators

GENERAL PROVISIONS

§ 725.490 Statutory provisions and scope.

(a) One of the major purposes of the black lung benefits amendments of 1977 is to provide a more effective means of transferring the responsibility for the payment of benefits from the Federal government to the coal industry with respect to claims filed under this part. In furtherance of this goal, a Black Lung Disability Trust Fund financed by the coal industry was established by the Black Lung Benefits Revenue Act of 1977. The primary purpose of the Fund is to pay benefits with respect to all claims in which the last coal mine employment of the miner on whose account the claim was filed occurred before January 1, 1970. With respect to claims in which the miner's last coal mine employment occurred after January 1, 1970, individual coal mine operators will be liable for the payment of benefits. Where no such operator exists or the operator determined to be liable is in default in any case, the Fund shall pay the benefits due and seek reimbursement as is appropriate. In addition, the Black Lung Benefits Reform Act of 1977 amended certain provisions affecting the scope of coverage under the Act and describing the effects of particular corporate transactions on the liability of operators.

(b) The provisions of this subpart define the term "operator," prescribe the manner in which the identity of an operator which may be liable for the payment of benefits—referred to herein as a "responsible operator"—will be determined, and briefly describe the obligations of operators to secure the payment of benefits. (See also Part 726 of this subchapter.)

§ 725.491 Operator defined.

(a) *Generally.* In accordance with Section 3(d) of the Act, an operator for purposes of this part is "any owner, lessee or other person who operates, controls, or supervises a coal mine or any independent contractor performing services or construction at such mine". In accordance with Sections 402(d) and 422(b) of the Act, certain other employers including those engaged in coal mine construction, maintenance, and transportation shall also be considered to be operators for purposes of this part.

An independent contractor or self-employed miner, construction worker, coal preparation worker, or transportation worker may also be considered a coal mine operator for purposes of this part. It is Congress' intent that any employer of a miner as defined in § 725.202(a) shall, to the extent appropriate, be considered an operator for the purposes of this part, and the provisions of this part shall be construed in keeping with this intent.

(b) (1) In determining which operator or other employer is the employer of a particular miner primary consideration shall be given to the identity of the employer which is directly responsible for the supervision, operation and control of the mine or mines or other facilities where the miner was employed. However, Congress has made it clear that such supervision or control may be directly or indirectly exercised. Therefore, in appropriate cases where for example, the individual or business entity most directly connected with the mine site is not capable of assuming liability for the payment of benefits (§ 725.492(d)) or is no longer in business and such individual or business entity is a subsidiary of a parent company, a member of a joint venture, a partner in a partnership, or is substantially owned or controlled by another business entity, such parent entity or other member of a joint venture or partner or controlling business entity may be considered an operator for purposes of this part, regardless of the primary or diverse nature of its business activities.

(2) Where a coal mine is leased, and the lease empowers the lessor to make decisions with respect to the terms and conditions under which coal is to be extracted or prepared, such as but not limited to the manner of extraction or preparation or the amount of coal to be produced, the lessor may be considered an operator with respect to employees of the lessee. Where a lessor previously operated a coal mine, it may be considered an operator with respect to employees of any lessee of such mine, particularly where the leasing arrangement was executed or renewed after the effective date of this part and does not require the lessee to secure benefits provided by the Act.

(c)(1) An independent contractor which performs or performed services or engages or engaged in construction at a mine or preparation or transportation facility may be held liable for the payment of benefits under this part as a coal mine operator with respect to its employees who work or have worked in or around a coal mine or coal preparation or transportation facility in the extraction, preparation, or transportation of coal or in coal mine construction in any period during which such employees were exposed to coal dust during their employment with such contractor. Such contractor's status as an operator shall not be contingent upon the amount or percentage of its work or business related to activities in or around a mine, nor upon the number or percentage of its employees engaged in such activities.

(2)(i) Any individual who works or has worked as a sole proprietor, a partner in a partnership, a member of a family business or who is otherwise self-employed in or around a coal mine or coal preparation or transportation facility in the extraction, preparation, or transportation of coal or in coal mine construction during any period such individual was exposed to coal dust may be considered an operator under this part.

(ii) A self-employed operator, depending upon the facts of the case, may be considered an employee of any other operator, person, or business

entity which substantially controls, supervises, or is financially responsible for the activities of the self-employed operator.

(iii) For the purposes of this part a lessor of a coal mine which leases such mine to a self-employed operator, shall be considered the employer of such self-employed operator and its employees if the lease or agreement is executed or renewed after the effective date of this part and such lease or agreement does not require the lessee to guarantee the payment of benefits which may be required under this part.

§ 725.492 Responsible operator defined.

(a) A "responsible operator" is the operator which is determined liable for the payment of benefits under this part for any period after December 31, 1973. In order for an employer to be considered a responsible operator in any case, the following shall be established.

(1) The miner's disability or death shall have arisen at least in part out of employment in or around a mine or other facility during a period when the mine or facility was operated by such operator except as provided in § 725.493(a)(2);

(2) The operator shall have been an operator of a coal mine or other facility for any period after June 30, 1973;

(3) The miner's employment with the operator or other employer shall have included at least one working day (§ 725.493(b)) after December 31, 1969; and

(4) The operator or the employer shall be capable of assuming its liability for the payment of continuing benefits under this part, through any of the following means:

(i) By obtaining a policy or contract of insurance under Section 423 of the Act and Part 726 of this subchapter; or

(ii) By qualifying as a self-insurer under Section 423 of the Act and Part 726 of this subchapter; or

(iii) By possessing any assets that may be available for the payment of benefits under this part or through an action under subpart H of this part.

(b) In the absence of evidence to the contrary, a showing that a business or corporate entity exists shall be deemed sufficient evidence of an operator's capability of assuming liability under this part.

(c) For the purposes of determining whether an employer is or was an operator or other employer covered by the Act which may be found liable for the payment of benefits to an employee of such employer under this part, there shall be a rebuttable presumption that during the course of an individual's employment such individual was regularly and continuously exposed to coal dust during the course of employment. The presumption may be rebutted by a showing that the employee was not exposed to coal dust for significant periods during such employment. For purposes of § 725.493(a) a year of coal mine employment may be established by accumulating intermittent periods of coal mine employment.

§ 725.493 Criteria for identifying a responsible operator.

(a) *Determination of responsible operator.* (1) Subject to the provisions of paragraph (2) and (3) of this section and provided that the conditions of § 725.492(a)(2)-(a)(4) are met, the operator or other employer with which the miner had the most recent periods of cumulative employment of not less than one year as determined in accordance with paragraph (b) of this section shall be the responsible operator.

(2)(i) Except as otherwise provided in this paragraph if the operator described in paragraph (a)(1) of this section was an operator of a mine or mines or the owner of the assets thereof on or after January 1, 1970 (a "prior operator") and on or after January 1, 1970 transferred such mine or mines or substantially all of the assets thereof to another operator (a "successor operator"), such successor operator shall be liable for and shall secure the payment of all benefits which would have been payable by the prior operator with respect to miners previously employed by such prior operator as if the acquisition had not occurred and the prior operator had continued to be a coal mine operator. A lessor of a coal mine may be considered a prior or successor operator in accordance with this subpart.

(ii) The stated congressional objective supporting Section 422(i) of the Act is to prevent a coal operator from circumventing liability under this part by entering into corporate or other business transactions which make the assessment of liability against that operator a financial or legal impossibility. Accordingly, a prior operator under paragraph (a)(2)(i) of this section which transfers a mine or mines or substantially all the assets thereof shall remain primarily liable for the payment of benefits under this part predicated on employment with the prior operator if such prior operator meets the conditions of § 725.492(a)(2) and (a)(4). If the conditions in § 725.492(a)(2) and (a)(4) are not met, the successor operator shall, if appropriate, be liable for the payment of such benefits.

(iii) Except as is provided in paragraph (a)(2) (ii) of this section if the operator described in paragraph (a)(1) of this section is a prior operator which, on or after January 1, 1970, transferred its coal mining business or substantially all the assets thereof to a successor operator, or if such business or assets was subsequently transferred to a successor of such successor operator, such successor operator which has most recently acquired the coal mining operations in question or substantially all of the assets thereof shall be deemed the responsible operator if it meets the conditions of § 725.492(a)(2) and (a)(4). If such successor operator fails to meet such conditions, any prior operator or any operator in the chain of succession, beginning with the most recent operator, which acquired the coal mining business in question or substantially all of the assets thereof on or after January 1, 1970, and which meets the conditions of § 725.492(a)(2) and (a)(4), may be determined to be the responsible operator. Wherever possible the employer of the miner shall be considered the responsible operator. However, any successor operator may be determined to be the responsible operator with respect to a claim whether or not the miner on whose total disability or death the claim is predicated was employed by such successor operator for any period of time.

(3) For purposes of paragraph (a)(2) of this section, the following shall apply to corporate reorganizations, liquidations, and such other transactions as are enumerated in this section, occurring on or after January 1, 1970:

(i) If an operator ceases to exist by reason of a reorganization which involves a change in identity, form, or place of business or organization, however effected, the resulting entity shall be treated as the operator to which this section applies.

(ii) If an operator ceases to exist by reason of a liquidation into a parent corporation, the parent or successor corporation shall be treated as the operator to which this section applies.

(iii) If an operator ceases to exist by reason of a sale of substantially all its assets, merger, consolidation, or division, the successor operator or corporation, or business entity shall be treated as the operator to which this section applies.

(4) If there is no operator which meets the conditions of paragraphs (a)(1) or (2) of this section, the responsible operator shall be considered to be the operator with which the miner had the latest periods of cumulative employment of not less than one year, subject to the provisions of paragraph (a)(2) of this section and provided that the conditions of § 725.492(a)(2)-(a)(4) are met.

(5) No determination of responsibility made under paragraph (a)(1)-(b)(4) of this section shall be construed to limit the authority of the Secretary to determine that any individual or business entity is an operator under the Act.

(6) In the event an operator or other employer is determined to be a respon-

sible operator under the provisions of paragraph (a)(1)–(b)(4) of this section, there shall be a rebuttable presumption that the miner's pneumoconiosis arose in whole or in part out of his or her employment with such operator. Unless this presumption is rebutted, the responsible operator shall be liable to pay benefits to the claimant on account of the disability or death of the miner in accordance with this part. A miner's pneumoconiosis or total disability therefrom shall be considered to have arisen in whole or in part out of work in or around a mine if such work contributed to or aggravated the progression or advancement of a miner's loss of ability to perform his or her regular coal mine employment or comparable employment.

(b) From the evidence presented the identity of the operator or other employer with which the miner had the most recent periods of cumulative employment of not less than one year and, to the extent the evidence permits, the beginning and ending dates of such periods, shall be ascertained. For purposes of this section, a year of employment means a period of one year or partial periods totalling one year during which the miner was regularly employed in or around a coal mine. Where the evidence demonstrates that a miner was employed for fewer than 150 working days during such period or periods, such miner may not be determined to have been regularly employed during that year. A "working day" means any day or part of a day for which a miner received pay for work as a miner (see § 725.202(a)).

§ 725.494 Insurance coverage.

(a) Any operator which may be liable for the payment of benefits under this part shall secure such liability pursuant to Section 423 of the Act by:

(1) Qualifying as a self-insurer or establishing a qualified self-insurance trust as provided in Part 726 of this chapter, or

(2) Insuring and keeping insured the payment of such benefits with an authorized insurance carrier or fund in accordance with the provisions of Part 726 of this chapter.

(b) A coal mine construction or transportation employer which is not also a coal mine operator shall not be required to purchase insurance or qualify as a self-insurer in accordance with this part and Part 726 of this subchapter, except that such employer shall be liable for the payment of benefits to any of its employees who are exposed to coal dust in the course of their employement, if eligibility is established under this part or Part 727 of this subchapter and it is determined that such employer is a responsible operator within the meaning of this part. An employer other than a coal mine operator which may be liable for the payment of benefits under this part or Part 727 of this subchapter shall take such action as may be appropriate to guarantee the discharge of such liability. In connection with the liability of an employer described in this paragraph, the deputy commissioner may require a deposit of security in accordance with § 725.606. A coal mine construction or transportation employer which also operates a coal mine or coal preparation facility shall not be excused from its obligation to purchase insurance or self-insure its potential liability under the Act with respect to all covered employees, as described in paragraph (a) of this section. Any attempt by a coal mine operator to alter its corporate structure or reassign employees within such structure for the purpose of avoiding the insurance obligation of the Act shall be considered void for the purpose of determining whether such operator is in compliance with the insurance requirements of the Act, or is the employer of such employees.

§ 725.495 Penalty for failure to insure.

(a) Any employer required to secure the payment of benefits under the Act and § 725.494 which fails to secure such benefits shall be subject to a civil penalty to be assessed by the Secretary of Labor of not more than $1,000 for each day during which such failure occurs; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable for such civil penalty as herein provided for the failure of such corporation to secure the payment of benefits; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any payments or other benefit which may accrue under the Act in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by the Act.

(b) If the Director determines that an operator has not fully discharged its insurance obligations imposed by the Act, the Director shall notify the operator and its officers of the violations and, if corrective action is not taken within a reasonable time specified by the Director, the Director shall forward the case of the Chief Administrative Law Judge for appropriate proceedings. The administrative law judge assigned the case shall schedule and conduct a hearing with respect to the liability of the operator for the penaly described in this section. A penalty hearing conducted in accordance with the paragraph shall be subject to the provisions of 5 U.S.C. 554 and proceedings shall be determined in the discretion of the administrative law judge.

(c) An action may be commenced under this section at any time after information supporting such action becomes known to the Director.

(d) In determining the amount of any penalty assessed under this section the administrative law judge shall consider the circumstances of the failure of an operator to comply with paragraph (a) of this section and shall, in the absence of mitigating circumstances assess the maximum penalty allowed.

(e) Any penalty owed under this section shall be paid to the Fund and may be enforced by the Secretary on behalf of the Fund as appropriate.

(f) An appeal from a decision issued by an administrative law judge under this section shall be taken in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 553 et seq. The Board shall not have jurisdiction to consider an appeal of a case adjudicated under this part.

Subpart G—Payment of Benefits

§ 725.501 Payment provisions generally.

The provisions of this subpart govern the payment of benefits to claimants whose claims are approved for payment under Section 415 and Part C of Title IV of the Act or approved after review under Section 435 of the Act and Part 727 of this subchapter.

§ 725.502 Manner of payment, payment periods.

(a) Benefits under the Act shall be paid periodically, promptly, and directly to the person entitled thereto or his or her representative payee (see § 725.510).

(b) Benefits are payable for monthly periods. Benefits shall be paid to an eligible claimant beginning with the month during which eligibility begins and shall terminate with the month before the month during which eligibility terminates. If a claimant dies in the first month during which all requirements for eligibility are met, benefits shall be paid for that month.

(c) Except as is otherwise provided in this part, all past due benefits shall be paid during the month in which the first benefit payment is made.

§ 725.503 Date from which benefits are payable.

(a) In accordance with the provisions of Section 6(a) of the Longshoremen's Act as incorporated by Section 422(a) of the Act, and except as provided in § 725.503A, the provisions of this section shall be applicable in determining the date from which benefits are payable to an eligible claimant.

(b) In the case of a miner who is totally disabled due to pneumoconiosis benefits are payable to such miner beginning with the month of onset of

total disability. Where the evidence does not establish the month of onset benefits shall be payable to such miner beginning with the month during which the claim was filed, or the month during which the claimant elected review under Part 727 of this subchapter.

(c) Except as is provided in Part 727 of this subchapter, in the case of a survivor of a miner who died due to or while totally disabled by pneumoconiosis benefits shall be payable beginning with the month of the miner's death, or January 1, 1974 whichever is later.

(d) No benefits shall be payable with respect to a claim filed between July 1 and December 31, 1973 (a Section 415 claim) for any period of eligibility prior to July 1, 1973 (or January 1, 1974 if the claim is approved under Part 727 of this subpart) nor shall any benefits be payable with respect to such claim pursuant to the provisions of Part B of Title IV of the Act for any period of eligibility after December 31, 1973. Where in the case of a Section 415 claim, eligibility continues beyond December 31, 1973, benefits for periods of eligibility occurring after such date shall be payable under Part C of Title IV of the Act.

(e) No benefits shall be payable with respect to a claim filed after December 31, 1973 (a Part C claim) for any period of eligibility occurring before January 1, 1974.

(f) Each decision and order awarding benefits shall indicate the month from which benefits are payable to the eligible claimant.

§ 725.503A Payments to a claimant employed as a miner.

(a) In the case of a claimant who is employed as a miner (see § 725.202(a)) at the time of a final determination of such miner's eligibility for benefits, no benefits shall be payable unless (1) the miner's eligibility is established under Section 411(c)(3) of the Act; or (2) the miner terminates his or her coal mine employment within one year from the date of the final determination of the claim.

(b) If eligibility is established under Section 411(c)(3) of the Act, benefits shall be payable as is otherwise provided in this part, in the claim of a working miner. If eligibility cannot be established under Section 411(c)(3), and the miner continues to be employed as a miner in any capacity for a period of less than one year after a final determination of the claim, benefits shall be payable beginning with the month during which the miner ends his or her coal mine employment. If the miner's employment continues for more than one year after a final determination of eligibility, such determination shall be considered a denial of benefits on the basis of the miner's continued employment and the miner may seek benefits only as provided in § 725.310, if applicable, or by filing a new claim under this part. The provisions of subparts D and E of this part shall be applicable to claims considered under this section as is appropriate.

(c) In any case, if the miner returns to coal mine or comparable and gainful work the payments to such miner shall be suspended and no benefits shall be payable (except as provided in Section 411(c)(3) of the Act) for the period of during which the miner continues to work. If the miner again terminates employment the deputy commissioner may require the miner to submit to further medical examination before authorizing the payment of benefits.

§ 725.504 Payees.

Benefits may be paid, as appropriate, to a beneficiary, to a qualified dependent, or to a representative authorized under this subpart to receive payments on behalf of such beneficiary or dependent.

§ 725.505 Payment on behalf of another; "legal guardian" defined.

Benefits are paid only to the beneficiary, his or her representative payee (see § 725.510) or his or her legal guardian. As used in this section, "legal guardian" means an individual who has been appointed by a court of competent jurisdiction or otherwise appointed pursuant to law, to assume control of and responsibility for the care of the beneficiary, the management of his or her estate, or both.

§ 725.506 Guardian for minor or incompetent.

An adjudication officer may require that a legal guardian or representative be appointed to receive benefit payments payable to any person who is mentally incompetent or a minor and to exercise the powers granted to, or to perform the duties otherwise required of such person under the Act.

§ 725.510 Representative payee.

(a) If the deputy commissioner determines that the best interests of a beneficiary are served thereby, the deputy commissioner may certify the payment of such beneficiary's benefits to a representative payee.

(b) Before any amount shall be certified for payment to any representative payee for and on behalf of a beneficiary, such representative payee shall submit to the deputy commissioner such evidence as may be required of his or her relationship to, or his or her responsibility for the care of, the beneficiary on whose behalf payment is to be made, or of his or her authority to receive such payment. The deputy commissioner may, at any time thereafter, require evidence of the continued existence of such relationship, responsibility, or authority. If a person requesting representative payee status fails to submit the required evidence within a reasonable period of time after it is requested, no further payments shall be certified to him or her on behalf of the beneficiary unless the required evidence is thereafter submitted.

(c) All benefit payments made to a representative payee shall be available only for the use and benefit of the beneficiary, as defined in § 725.511.

§ 725.511 Use and benefit defined.

(a) Payments certified to a representative payee shall be considered as having been applied for the use and benefit of the beneficiary when they are used for the beneficiary's current maintenance—i.e., to replace current income lost because of the disability of the beneficiary. Where a beneficiary is receiving care in an institution, current maintenance shall include the customary charges made by the institution and charges made for current and foreseeable needs of the beneficiary which are not met by the institution.

(b) Payments certified to a representative payee which are not needed for the current maintenance of the beneficiary except as they may be used under § 725.512, shall be conserved or invested on the beneficiary's behalf. Preferred investments are U.S. savings bonds which shall be purchased in accordance with applicable regulations of the U.S. Treasury Department (31 CFR 316.5-315.8). Surplus funds may also be invested in accordance with the rules applicable to investment of trust estates by trustees. For example, surplus funds may be deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association if the account is either Federally insured or is otherwise insured in accordance with State law requirements. Surplus funds deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association must be in a form of account which clearly shows that the representative payee has only a fiduciary, and not a personal, interest in the funds. The preferred forms of such accounts are as follows:

Name of beneficiary———————

by (Name of representative payee) representative payee, or (Name of beneficiary)

by (Name of representative payee) trustee.

U.S. savings bonds purchased with surplus funds by a representative payee for an incapacitated adult beneficiary should be registered as follows:

(Name of beneficiary) (Social Security No.), for whom (Name of payee) is representative payee for black lung benefits.

§ 725.512 Support of legally dependent spouse, child, or parent.

If current maintenance needs of a beneficiary are being reasonably met, a relative or other person to whom payments are certified as representative payee on behalf of the beneficiary may use part of the payments so certified for the support of the legally dependent spouse, a legally dependent child, or a legally dependent parent of the beneficiary.

§ 725.513 Accountability, transfer.

(a) The deputy commissioner may require a representative payee to submit periodic reports including a full accounting of the use of all benefit payments certified to a representative payee. If a requested report or accounting is not submitted within the time allowed, the deputy commissioner shall terminate the certification of the representative payee and thereafter payments shall be made directly to the beneficiary. A certification which is terminated under this section may be reinstated for good cause, provided that all required reports are supplied to the deputy commissioner.

(b) A representative payee who has conserved or invested funds from payments under this part shall upon the direction of the deputy commissioner, transfer any such funds (including interest) to a successor payee appointed by the deputy commissioner or, at the option of the deputy commissioner, shall transfer such funds to the Office for recertification to a successor payee or the beneficiary.

§ 725.514 Certification to dependent of augmentation portion of benefit.

(a) If the basic benefit of a miner or of a surviving spouse is augmented because of one or more dependents and it appears to the deputy commissioner that the best interest of such dependent would be served thereby or that the augmented benefit is not being used for the use and benefit (as defined in this subpart) of the augmentee, the deputy commissioner may certify payment of the amount of such augmentation (to the extent attributable to such dependent) to such dependent directly, or to a legal guardian or a representative payee for the use and benefit of such dependent.

(b) Any request to the deputy commissioner to certify separate payment of the amount of an augmentation in accordance with paragraph (a) of this section, shall be in writing on such form and in accordance with such instructions as are prescribed by the Office.

(c) The deputy commissioner shall specify the terms and conditions of any certification authorized under this section and may terminate any such certification where appropriate.

(d) Any payment made under this section, if otherwise valid under the Act, is a complete settlement and satisfaction of all claims, rights, and interests in and to such payment, except that such payment shall not be construed to abridge the rights of any party to recoup any overpayment made.

§ 725.515 Assignment and exemption from claims of creditors.

Except as provided by the Act no assignment, release, or commutation of benefits due or payable under this part shall be valid, and all benefits shall be exempt from claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

BENEFIT RATES

§ 725.520 Computation of benefits.

(a) *Basic rate.* The amount of benefits payable to a beneficiary for a month is determined, in the first instance, by computing the "basic rate." The basic rate is equal to 50 percent of the minimum monthly payment to which a totally disabled Federal employee in Grade GS-2 would be entitled for such month under the Federal Employees' Compensation Act, Chapter 81, Title 5, United States Code. That rate for a month is determined by:

(1) Ascertaining the lowest annual rate of pay (step 1) for Grade GS-2 of the General Schedule applicable to such month (see 5 U.S.C. 5332);

(2) Ascertaining the monthly rate thereof by dividing the amount determined in paragraph (a)(1) of this section by 12;

(3) Ascertaining the minimum monthly payment under the Federal Employees' Compensation Act by multiplying the amount determined in paragraph (a)(2) of this section by 0.75 (that is, by 75 percent) (see 5 U.S.C. 8112); and

(4) Ascertaining the basic rate under the Act by multiplying the amount determined in paragraph (a)(3) of this section by 0.50 (that is, by 50 percent).

(b) *Basic benefit.* When a miner or surviving spouse is entitled to benefits for a month for which he or she has no dependents who qualify under this part and when a surviving child of a miner or spouse, or a parent, brother, or sister of a miner, is entitled to benefits for a month for which he or she is the only beneficiary entitled to benefits, the amount of benefits to which such beneficiary is entitled is equal to the basic rate as computed in accordance with this section (raised, if not a multiple of 10 cents, to the next high multiple of 10 cents). This amount is referred to as the "basic benefit."

(c) *Augmented benefit.* (1) When a miner or surviving spouse is entitled to benefits for a month for which he or she has one or more dependents who qualify under this part, the amount of benefits to which such miner or surviving spouse is entitled is increased. This increase is referred to as an "augmentation."

(2) The benefits of a miner or surviving spouse are augmented to take account of a particular dependent beginning with the first month in which such dependent satisfies the conditions set forth in this part, and continues to be augmented through the month before the month in which such dependent ceases to satisfy the conditions set forth in this part, except in the case of a child who qualifies as a dependent because he or she is a student. In the latter case such benefits continue to be augmented through the month before the first month during no part of which he or she qualifies as a student.

(3) The basic rate is augmented by 50 percent for one such dependent, 75 percent for two such dependents, and 100 percent for three or more such dependents.

(d) *Survivor benefit.* (1) As used in this section, "survivor" means a surviving child of a miner or surviving spouse, or, a surviving parent, brother, or sister of a miner, who establishes entitlement to benefits under this part.

(e) *Computation and rounding.* (1) Any computation prescribed by this section is made to the third decimal place.

(2) Monthly benefits are payable in multiples of 10 cents. Therefore, a monthly payment of amounts derived under paragraph (c)(3) of this section which is not a multiple of 10 cents is increased to the next higher multiple of 10 cents.

(3) Since a fraction of a cent is not a multiple of 10 cents, such an amount which contains a fraction in the third decimal place is raised to the next higher multiple of 10 cents.

(f) *Eligibility based on the coal mine employment of more than one miner.* Where an individual, for any month, is entitled (and/or qualifies as a dependent for purposes of augmentation of benefits) based on the disability or death due to pneumoconiosis arising out of the coal mine employment of more than one miner, the benefit payable to or on behalf of such individual shall be at a rate equal to the highest rate of benefits for which entitlement is established by reason of eligibility as a beneficiary, or by reason of his or her qualification as a dependent for augmentation of benefit purposes.

§ 725.521 Commutation of payments—lump sum awards.

(a) Whenever the Deputy Commissioner determines that it is in the interest of justice, the liability for benefits or any part thereof as determined

by a final adjudication, may, with the approval of the Director, be discharged by the payment of a lump sum equal to the present value of future benefit payments commuted, computed at 4-percent true discount compounded annually.

(b) Applications for commutation of future payments of benefits shall be made to the Deputy Commissioner in the manner prescribed by the Deputy Commissioner. If the Deputy Commissioner determines that an award of a lump sum payment of such benefit would be in the interest of justice, he or she shall refer such application, together with the reasons in support of such determination, to the Director for consideration.

(c) The Director shall, in his or her discretion, grant or deny the application for commutation of payments. Such decision may be appealed to the Benefits Review Board.

(d) The computation of all commutations of such benefits shall be made by the OWCP. For this purpose the file shall contain the date of birth of the person on whose behalf commutation is sought, as well as the date upon which such commutation shall be effective.

(e) For purposes of determining the amount of any lump sum award, the probability of the death of the disabled miner and/or other persons entitled to benefits before the expiration of the period during which he or she is entitled to benefits, shall be determined in accordance with the most current U.S. Life Tables, as developed by the Department of Health, Education, and Welfare, and the probability of the remarriage of a surviving spouse shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

(f) In the event that an operator or carrier is adjudicated liable for the payment of benefits, such operator or carrier shall be notified of and given an opportunity to participate in the proceedings to determine whether a lump sum award shall be made. Such operator or carrier shall, in the event a lump sum award is made, tender full and prompt payment of such award to the claimant as though such award were a final payment of monthly benefits. Except as provided in paragraph (g) of this section, such lump sum award shall forever discharge such operator or carrier from its responsibility to make monthly benefit payments under the Act to the person who has requested such lump-sum award. In the event that an operator or carrier is adjudicated liable for the payment of benefits, such operator or carrier shall not be liable for any portion of a commuted or lump-sum award predicated upon benefits due any claimant prior to January 1, 1974.

(g) In the event a lump-sum award approved under this section, such award shall not operate to discharge an operator, carrier, or the fund from any responsibility imposed by the Act for the payment of medical benefits to an eligible miner.

§ 725.522 Payments prior to final adjudication.

(a) Unless a stay of payments is ordered by the Board or appropriate court under section 21 of the LHWCA, the payment of benefits to a claimant who has been determined eligible therefor by a Deputy Commissioner, Administrative Law Judge, the Board, or a court shall commence within no more than 30 days following an initial determination of eligibility by such Deputy Commissioner, or the filing of an award of benefits by such administrative law judge, Board, or court, notwithstanding the pendency of further proceedings before an Administrative Law Judge or an appeal to the Board or court.

(b) If an operator or carrier has been initially determined liable for the payment of benefits to an eligible claimant by the deputy commissioner (see § 725.420), or ordered to pay benefits by an administrative law judge, the Board, or an appropriate court, and such operator or carrier fails or refuses to commence the payment of benefits (including all past due benefits and medical expenses), within the 30-day period specified in paragraph (a) of this section, the fund shall commence the payments due and owing and shall continue such payments as appropriate. In the event that the fund undertakes the payment of benefits on behalf of an operator or carrier the provisions of §§ 725.601–725.608 shall be applicable to such operator or carrier.

(c) If benefit payments are commenced prior to the final adjudication of the claim and it is later determined by an administrative law judge, the Board, or court that the claimant was ineligible to receive such payments, such payments shall be considered overpayments pursuant to § 725.540 of this subpart which may be recovered in accordance with the provisions of this subpart.

Special Provisions for Operator Payments

§ 725.530 Operator payments; generally.

(a) An operator or carrier which has been initially determined liable for the payment of benefits to a claimant by the deputy commissioner, or ordered to pay such benefits by an Administrative Law Judge, the Board, or a court, or an operator who has agreed that it is liable for the payment of benefits to a claimant, shall commence the payment of benefits (including past due benefits, medical costs, penalties, and interest, if any) within 30 days of such initial determination, order, or agreement. Thereafter monthly benefit payments shall be made for the duration of the claimant's eligibility. Arrangements for the payment of medical costs shall be made by such operator or carrier in accordance with the provisions of subpart I of this part.

(b) Benefit payments made by an operator or carrier shall be made directly to the person entitled thereto or a representative payee if authorized by the Deputy Commissioner. The payment of a claimant's attorney's fee if any is awarded, shall be made directly to such attorney. Reimbursement of the fund including interest shall be paid directly to the Secretary on behalf of the fund.

§ 725.531 Receipt for payment.

Any individual receiving benefits under the Act in his or her own right, or as a representative payee, or as the duly appointed agent for the estate of a deceased beneficiary, shall execute receipts for benefits paid by any operator which shall be produced by such operator for inspection whenever the deputy commissioner requires.

§ 725.532 Suspension of payments.

(a) No suspension in the payment of benefits is permitted unless authorized by the Deputy Commissioner, Administrative Law Judge, Board, or court. No suspension shall be authorized except upon the occurrence of an event which terminate a claimant's eligibility for benefits (see subpart B of this part) or as is otherwise provided in this subpart (see also § 725.533).

(b) Any unauthorized suspension in the payment of benefits by an operator or carrier shall be treated as provided in subpart H.

Increases and Reductions of Benefits

§ 725.533 Modification of benefit amounts; general.

(a) Under certain circumstances the amount of monthly benefits as computed in § 725.520 shall be modified to determine the amount actually to be paid to a beneficiary. With respect to any benefits payable for all periods of eligibility after January 1, 1974, a reduction of the amount of benefits payable shall be required on account of:

(1) Any compensation or benefits received under any State workers' compensation law because of death or partial or total disability due to pneumoconiosis; or

(2) Any compensation or benefits received under or pursuant to any Federal workers' compensation law including Part B of Title IV of the Act be-

cause of death or partial or total disability due to pneumoconiosis; or

(3) In the case of benefits payable to a parent, brother, or sister, the excess earnings from wages and from net earnings from self-employment (see §410.530 of this title) of such parent, brother, or sister, respectively; or

(4) The fact that a claim for benefits from an additional beneficiary is filed, or that such claim is effective for a payment during the month of filing, or a dependent qualifies under this part for an augmentation portion of a benefit of a miner or widow for a period in which another dependent has previously qualified for an augmentation.

(b) With respect to periods of eligibility occurring after June 30, 1973, but before January 1, 1974, benefits shall be reduced in months of eligibility occurring during such period only;

(1) By an amount equal to any payment received under the workers' compensation, unemployment compensation, or disability insurance laws of any State on account of the disability or death of the miner due to pneumoconiosis; and

(2) On account of excess earnings under section 203 (b) through (l) of the Social Security Act; and

(3) For failure to report earnings from work in employment and self-employment within the prescribed period of time; and

(4) By reason of the fact that a claim for benefits from an additional beneficiary is filed, or that such a claim is effective for a month prior to the month of filing, or a dependent qualifies under this part or this chapter for an augmentation portion of a benefit of a miner or surviving spouse for a month for which another dependent has previously qualified for an augmentation.

(c) With respect to claims filed between July 1 and December 31, 1973, and paid for periods of eligibility occurring during such period, there shall be no retroactive adjustment of benefits paid in light of the amendments enacted by the Black Lung Benefits Reform Act of 1977 insofar as such amendments affect events which cause a reduction in benefits.

(d) An adjustment in a beneficiary's monthly benefit may be required because an overpayment or underpayment has been made to such beneficiary (see §§ 725.540–725.546).

(e) A suspension of a beneficiary's monthly benefits may be required when the Office has information indicating that reductions on account of excess earnings may reasonably be expected.

(f) Monthly benefit rates are payable in multiples of 10 cents. Any monthly benefit rate which, after the applicable computations, augmentations, and reductions is not a multiple of 10 cents, is increased to the next higher multiple of 10 cents. Since a fraction of a cent is not a multiple of 10 cents a benefit rate which contains such a fraction in the third decimal is raised to the next higher multiple of 10 cents.

(g) Any individual entitled to a benefit who is aware of any circumstances which could affect entitlement to benefits, eligibility for payment, or the amount of benefits, or result in the termination, suspension, or reduction of benefits, shall promptly report these circumstances to the Office. The Office may at any time require an individual receiving, or claiming entitlement to receive a benefit, either on his or her own behalf or on behalf of another, to submit a written statement giving pertinent information bearing upon the issue of whether or not an event has occurred which would cause such benefit to be terminated, or which would subject such benefit to reductions or suspension under the provisions of the Act. The failure on the part of an individual to submit any such report or statement properly executed to the Office shall subject such benefit to reductions, suspension, or termination as the case may be.

§ 725.534 Reduction of State benefit.

No benefits under section 415 of Part B of Title IV of the Act shall be payable to the residents of a State which, after December 31, 1969, reduces the benefits payable to persons eligible to receive benefits under section 415 of the Act under State laws applicable to its general work force with regard to workers' compensation (including compensation for occupational disease), unemployment compensation, or disability insurance benefits which are funded, in whole or in part, out of employer contributions.

§ 725.535 Reduction; receipt of state or federal benefit.

(a) As used in this section the term "State or Federal benefit" means a payment to an individual on account of total or partial disability or death due to pneumoconiosis only under State or Federal laws relating to workers' compensation. With respect to a claim for which benefits are payable for any month between July 1 and December 31, 1973, "State benefit" means a payment to a beneficiary made on account of disability or death due to pneumoconiosis under State laws relating to workers' compensation (including compensation for occupational disease), unemployment compensation, or disability insurance.

(b) Benefit payments to a beneficiary for any month are reduced (but not below zero) by an amount equal to any payments of State or Federal benefits received by such beneficiary for such month.

(c) Where a State or Federal benefit is paid periodically but not monthly, or in a lump sum as a commutation of or a substitute for periodic benefits, the reduction under this section is made at such time or times and in such amounts as the Office determines will approximate as nearly as practicable the reduction required under paragraph (b) of this section. In making such a determination, a weekly State or Federal benefit is multiplied by 4⅓ and a biweekly benefit is multiplied by 2⅙ to ascertain the monthly equivalent for reduction purposes.

(d) Amounts paid or incurred or to be incurred by the individual for medical, legal, or related expenses in connection with this claim for State or Federal benefits (defined in paragraph (a) of this section) are excluded in computing the reduction under paragraph (b) of this section, to the extent that they are consistent with State or Federal law. Such medical, legal, or related expenses may be evidenced by the State or Federal benefit awards, compromise agreement, or court order in the State or Federal benefit proceedings, or by such other evidence as the Office may require. Such other evidence may consist of:

(1) A detailed statement by the individual's attorney, physician, or the employer's insurance carrier; or

(2) Bills, receipts, or canceled checks; or

(3) Other evidence indicating the amount of such expenses; or

(4) Any combination of the foregoing evidence from which the amount of such expenses may be determinable. Such expenses shall not be excluded unless established by evidence as required by the Office.

§ 725.536 Reductions; excess earnings.

In the case of a surviving parent, brother, or sister, benefit payments are reduced as appropriate by an amount equal to the deductions which would be made with respect to excess earnings under the provisions of Sections 203 (b), (f), (g), (h), (j), and (l) of the Social Security Act (42 U.S.C. 403 (b), (f), (g), (h), (j), and (l)), as if such benefit payments were benefits payable under Section 202 of the Social Security Act (42 U.S.C. 402). (See §§ 404.428–404.456 of this title).

§ 725.537 Reductions; retroactive effect of an additional claim for benefits.

Beginning with the month in which a person other than a miner files a claim and becomes entitled to benefits, the benefits of other persons entitled to benefits with respect to the same miner, are adjusted downward, if necessary, so that no more than the permissible amount of benefits (the maximum amount for the number of beneficiaries involved) will be paid.

§ 725.538 Reductions; effect of augmentation of benefits based on subsequent qualification of individual.

(a) Ordinarily, a written request that the benefits of a miner or surviving spouse be augmented on account of a qualified dependent is made as part of the claim for benefits. However, it may also be made thereafter.

(b) In the latter case, beginning with the month in which such a request is filed on account of a particular dependent and in which such dependent qualifies for augmentation purposes under this part, the augmented benefits attributable to other qualified dependents (with respect to the same miner or surviving spouse), if any, are adjusted downward, if necessary, so that the permissible amount of augmented benefits (the maximum amount for the number of dependents involved) will not be exceeded.

(c) Where, based on the entitlement to benefits of a miner or surviving spouse, a dependent would have qualified for augmentation purposes for a prior month of such miner's or surviving spouse's entitlement had such request been filed in such prior month, such request is effective for such prior month. For any month before the month of filing such request, however, otherwise correct benefits previously certified by the Office may not be changed. Rather, the amount of the augmented benefit attributable to the dependent filing such request in the later month is reduced for each month of the retroactive period to the extent that may be necessary. This means that for each month of the retroactive period, the amount payable to the dependent filing the later augmentation request is the difference, if any, between:

(1) The total amount of augmented benefits certified for payment for other dependents for that month, and

(2) The permissible amount of augmented benefits (the maximum amount for the number of dependents involved) payable for the month for all dependents, including the dependent filing later.

§ 725.539 More than one reduction event.

If a reduction for receipt of State or Federal benefits and a reduction on account of excess earnings are chargeable to the same month, the benefit for such month is first reduced (but not below zero) by the amount of the State or Federal benefits, and the remainder of the benefit for such month, if any, is then reduced (but not below zero) by the amount of excess earnings chargeable to such month.

OVERPAYMENTS; UNDERPAYMENTS

§ 725.540 Overpayments.

(a) *General.* As used in this subpart, the term "overpayment" includes:

(1) Payment where no amount is payable under this part;

(2) Payment in excess of the amount payable under this part;

(3) A payment under this part which has not been reduced by the amounts required by the Act (see § 725.533);

(4) A payment under this part made to a resident of a State whose residents are not entitled to benefits (see §§ 725.402 and 725.403);

(5) Payment resulting from failure to terminate benefits of an individual no longer entitled thereto.

(6) Duplicate benefits paid to a claimant on account of concurrent eligibility under this part and Parts 410 or 727 of this title or as provided in § 725.309.

(b) *Overpaid beneficiary is living.* If the beneficiary to whom an overpayment was made is living at the time of a determination of such overpayment, is entitled to benefits at the time of the overpayment, or at any time thereafter becomes so entitled, no benefit for any month is payable to such individual, except as provided in paragraph (c) of this section, until an amount equal to the amount of the overpayment has been withheld or refunded.

(c) *Adjustment by withholding part of a monthly benefit.* Adjustment under paragraph (b) of this section may be effected by withholding a part of the monthly benefit payable to a beneficiary where it is determined that:

(1) Withholding the full amount each month would deprive the beneficiary of income required for ordinary and necessary living expenses;

(2) The overpayment was not caused by the beneficiary's intentionally false statement or representation, or willful concealment of, or deliberate failure to furnish, material information; and

(3) Recoupment can be effected in an amount of not less than $10 a month and at a rate which would not extend the period of adjustment beyond 3 years after the initiation of the adjustment action.

(d) *Overpaid beneficiary dies before adjustment.* If an overpaid beneficiary dies before adjustment is completed under the provisions of paragraph (b) of this section, recovery of the overpayment shall be effected through repayment by the estate of the deceased overpaid beneficiary, or by withholding of amounts due the estate of such deceased beneficiary, or both.

§ 725.541 Notice of waiver of adjustment or recovery of overpayment.

Whenever a determination is made that more than the correct amount of payment has been made, notice of the provisions of Section 204(b) of the Social Security Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual, to any other individual against whom adjustment or recovery of the overpayment is to be effected, and to any operator or carrier which may be liable to such overpaid individual.

§ 725.542 When waiver of adjustment or recovery may be applied.

There shall be no adjustment or recovery of an overpayment in any case where an incorrect payment has been made with respect to an individual:

(a) Who is without fault, and where

(b) Adjustment or recovery would either:

(1) Defeat the purpose of Title — of the Act, or

(2) Be against equity and good conscience.

§ 725.543 Standards for waiver of adjustment or recovery.

The standards for determining the applicability of the criteria listed in Section 725.542 shall be the same as those applied by the Social Security Administration under §§410.561-410.561h of this title.

§ 725.544 Collection and compromise of claims for overpayment.

(a) *General effect of the Federal Claims Collection Act of 1966.* In accordance with the Federal Claims Collection Act of 1966 and applicable regulations, claims by the Office against an individual for recovery of an overpayment under this part not exceeding the sum of $20,000, exclusive of interest, may be compromised, or collection suspended or terminated where such individual or his or her estate does not have the present or prospective ability to pay the full amount of the claim within a reasonable time (see paragraph (c) of this section), or the cost of collection is likely to exceed the amount of recovery (see paragraph (d) of this section), except as provided under paragraph (b) of this section.

(b) *When there will be no compromise, suspension, or termination of collection of a claim for overpayment.* (1) In any case where the overpaid individual is alive, a claim for overpayment will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such individual or on the part of any other party having an interest in the claim.

(2) In any case where the overpaid individual is deceased:

(i) A claim for overpayment in excess of $5,000 will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such deceased individual, and

(ii) A claim for overpayment regardless of the amount will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication that any person other than the deceased overpaid individual had a part in the fraudulent action which resulted in the overpayment.

(c) *Inability to pay claim for recovery of overpayment.* In determining whether the overpaid individual is unable to pay a claim for recovery of an overpayment under this part, the Office shall consider the individual's age, health, present and potential income (including inheritance prospects), assets (e.g., real property, savings account), possible concealment or improper transfer of assets, and assets or income of such individual which may be available in enforced collection proceedings. The Office will also consider exemptions available to such individual under the pertinent State or Federal law in such proceedings. In the event the overpaid individual is deceased, the Office shall consider the available assets of the estate, taking into account any liens or superior claims against the estate.

(d) *Cost of collection or litigative probabilities.* Where the probable costs of recovering an overpayment under this part would not justify enforced collection proceedings for the full amount of the claim or there is doubt concerning the Office's ability to establish its claim as well as the time which it will take to effect such collection, a compromise or settlement for less than the full amount may be considered.

(e) *Amount of compromise.* The amount to be accepted in compromise of a claim for overpayment under this part shall bear a reasonable relationship to the amount which can be recovered by enforced collection proceedings giving due consideration to the exemption available to the overpaid individual under State or Federal law and the time which collection will take.

(f) *Payment.* Payment of the amount the Office has agreed to accept as a compromise in full settlement of a claim for recovery of an overpayment under this part shall be made within the time and in the manner set by the Office. A claim for such recovery of the overpayment shall not be considered compromised or settled until the full payment of the compromised amount has been made within the time and manner set by the Office. Failure of the overpaid individual or his or her estate to make such payment as provided shall result in reinstatement of the full amount of the overpayment less any amounts paid prior to such default.

§ 725.545 Underpayments.

(a) *General.* As used in this subpart, the term "underpayment" includes a payment in an amount less than the amount of the benefit due for such month, and nonpayment where some amount of such benefits is payable.

(b) *Underpaid individual is living.* If an individual to whom an underpayment was made is living, the deficit represented by such underpayment shall be paid to such individual either in a single payment (if he or she is not entitled to a monthly benefit) or by increasing one or more monthly benefit payments to which such individual becomes entitled.

(c) *Underpaid individual dies before adjustment of underpayment.* If an individual to whom an underpayment was made dies before receiving payment of the deficit or negotiating the check or checks representing payment of the deficit, such payment shall be distributed to the living person (or persons) in the highest order of priority as follows:

(1) The deceased individual's surviving spouse who was either:

(i) Living in the same household with the deceased individual at the time of such individual's death, or

(ii) In the case of a deceased miner, entitled for the month of death to black lung benefits as his or her surviving spouse, or surviving divorced spouse.

(2) In the case of a deceased miner or spouse his or her child entitled to benefits as the surviving child of such miner or surviving spouse for the month in which such miner or spouse died (if more than one such child, in equal shares to each such child).

(3) In the case of a deceased miner, his parent entitled to benefits as the surviving parent of such miner for the month in which such miner died (if more than one such parent, in equal shares to each such parent).

(4) The surviving spouse of the deceased individual who does not qualify under paragraph (c)(1) of this section.

(5) The child or children of the deceased individual who do not qualify under paragraph (c)(2) of this section (if more than one such child, in equal shares to each such child).

(6) The parent or parents of the deceased individual who do not qualify under paragraph (c)(3) of this section (if more than one such parent, in equal shares to each such parent).

(7) The legal representative of the estate of the deceased individual as defined in paragraph (e) of this section.

(d) In the event that a person who is otherwise qualified to receive payments as the result of deficit caused by an underpayment under the provisions of paragraph (c) of this section, dies before receiving payment or before negotiating the check or checks representing such payment, his or her share of the underpayment shall be divided among the remaining living person(s) in the same order or priority. In the event that there is (are) no other such person(s), the underpayment shall be paid to the living person(s) in the next lower order of priority under paragraph (c) of this section.

(e) *Definition of legal representative.* The term "legal representative," for the purpose of qualifying to receive an underpayment, generally means the executor or the administrator of the estate of the deceased beneficiary. However, it may also include an individual, institution, or organization acting on behalf of an unadministered estate, provided the person can give the Office good acquittance (as defined in paragraph (f) of this section). The following persons may qualify as legal representative for purposes of this section, provided they can give the Office good acquittance:

(1) A person who qualifies under a State's "small estate" statute; or

(2) A person resident in a foreign country who under the laws and customs of that country, has the right to receive assets of the estate; or

(3) A public administrator; or

(4) A person who has the authority, under applicable law, to collect the assets of the estate of the deceased beneficiary.

(f) *Definition of "good acquittance."* A person is considered to give the Office "good acquittance" when payment to that person will release the Office or operator from further liability for such payment.

§ 725.546 Relation to provisions for reductions or increases.

The amount of an overpayment or underpayment is the difference between the amount to which the beneficiary was actually entitled and the amount paid. Overpayment and underpayment simultaneously outstanding against the same beneficiary shall first be adjusted against one another before adjustment pursuant to the other provisions of this subpart.

§ 725.547 Applicability of overpayment and underpayment provisions to operator or carrier.

(a) The provisions of this subpart relating to overpayments and underpayments shall be applicable to overpayments and underpayments made by responsible operators or their insurance carriers, as appropriate.

(b) No operator or carrier may make an adjustment of an overpayment without prior application to and approval by the Office which shall exercise full supervisory authority over the adjustment of all overpayments.

(c) In any case involving either overpayments or underpayments the Office may take any necessary action, and the deputy commissioners may issue appropriate orders to protect the rights of the parties.

(d) Disputes arising out of orders so issued shall be resolved by the procedures set out in Subpart E of this part.

Subpart H—Enforcement of Liability, Reports

§ 725.601 Enforcement generally.

(a) The Act, together with certain incorporated provisions from the Longshoremen's and Harbor Workers' Compensation Act, contains a number of provisions which, penalize an operator or other employer, claimants and others for the failure to comply with certain provisions of the Act, or the failure to commence and continue prompt periodic payments to a beneficiary.

(b) It is the policy and intent of the Department to vigorously enforce the provisions of this part through the use of the remedies provided by the Act. Accordingly, if an operator refuses to pay benefits with respect to a claim for which the operator has been adjudicated liable, the Director shall seek on behalf of the Fund to invoke and execute the lien on the property of the operator as described in § 725.603. Enforcement of this lien shall be pursued in an appropriate United States district court. If the Director determines that the remedy provided by § 725.603 may not be sufficient to guarantee the continued compliance with the terms of an award or awards against the operator, the Director shall in addition seek an injunction in the United States district court to prohibit future non-compliance by the operator and such other relief as the court considers appropriate (see § 725.604). If an operator unlawfully suspends or terminates the payment of benefits to a claimant, the deputy commissioner shall declare the award in default and proceed in accordance with § 725.605. In all cases payments in addition to compensation (see § 725.607) and interest (see § 725.608) shall be sought by the Director or awarded by the deputy commissioner.

(c) In certain instances the remedies provided by the Act are concurrent; that is, more that one remedy might be appropriate in any given case. In such a case the Director shall select the remedy or remedies which he or she thinks appropriate for the enforcement action. In making this selection the Director shall consider the best interests of the claimant as well as those of the Fund.

§ 725.602 Reimbursement of the fund.

(a) In any case in which the Fund has paid benefits, including medical benefits, on behalf of an operator or other employer which is determined liable therefor, or liable for a part thereof, such operator or other employer shall simultaneously with the first payment of benefits made to the beneficiary, reimbuse the Fund (with interest) for the full amount of all benefit payments made by the Fund with respect to the claim.

(b) In any case where benefit payments have been made by the Fund, the Fund shall be subrogated to the rights of the beneficiary. The Secretary of Labor may exercise such subrogation rights as is appropriate.

§ 725.603 Payments by the fund on behalf of an operator, liens.

(a) If an amount is paid out of the Fund to an individual entitled to benefits under this part or Part 727 of this subchapter on behalf of an operator or other employer which is or was required to pay or secure the payment of all or a portion of such amount (see § 725.522), the operator or other employer shall be liable to the United States for repayment to the Fund of the amount of benefits the payment of which is properly attributable to such operator or other employer.

(b) If an operator or other employer liable to the Fund refuses to pay, after demand, the amount of such liability, there shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such operator or other employer. The lien arises on the date on which such liability is finally determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

(c) (1) Except as otherwise provided under this section, the priority of the lien shall be determined in the same manner as under Section 6323 of the Internal Revenue Code of 1954.

(2) In the case of a bankruptcy or insolvency proceeding, the lien imposed under this section shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the Bankruptcy Act or Section 3466 of the Revised Statutes (31 U.S.C. 191).

(3) For purposes of applying Section 6323(a) of the Internal Revenue Code of 1954 to determine the priority between the lien imposed under this section and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(4) For purposes of the section, notice of the lien imposed hereunder shall be filed in the same manner as under Section 6323(f) (disregarding paragraph (4) thereof) and (g) of the Internal Revenue Code of 1954.

(5) In any case where there has been a refusal or neglect to pay the liability imposed under this section, the Secretary of Labor may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which he has any right, title, or interest, to the payment of such liability.

(b) The liability imposed by this paragraph may be collected at a proceeding in court if the proceeding is commenced within six years after the date upon which the liability was finally determined, or prior to the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such six-year period. This period of limitation shall be suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for six months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least six months.

§ 725.604 Enforcement of final awards.

Notwithstanding the provisions of § 725.603, if an operator or other employer or its officers or agents fails to comply with an order awarding benefits, that has become final, any beneficiary of such award or the deputy commissioner may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the United States District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such operator or other employer or its officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such operator or other employer and its officers or agents compliance with the order.

§ 725.605 Defaults.

(a) Except as is otherwise provided in this part, no suspension, termination or other failure to pay benefits awarded to a claimant is permitted. If an employer found liable for the payment of such benefits fails to make such payments within 30 days after any date on which such benefits are due and payable, the person to whom such benefits are payable may, within one year after such default, make application to the deputy commissioner for a supplementary order declaring the amount of the default.

(b) If after investigation, notice and hearing as provided in subparts D and E of this part, a default is found, the deputy commissioner or the administrative law judge, if a hearing is requested, shall issue a supplementary order declaring the amount of the default, if any. In cases where a lump sum award has been made, if the pay-

ment in default is an installment, the deputy commissioner or administrative law judge, may, in his or her discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the operator has it principal place of business or maintains an office. In case such principal place of business or office is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the United States District Court for the District of Columbia. Such supplementary order shall be final, and the court shall upon the filing of the copy enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later benefits order upon presentation of a certified copy thereof to the court.

(c) In cases where judgment cannot be satisfied by reason of an insolvency or other circumstances precluding payment, the deputy commissioner shall make payment from the Fund, and in addition, provide any necessary medical, surgical, and other treatment required by subpart I of this part. A defaulting employer shall be liable to the Fund for payment of the amounts paid by the Fund under this section; and for the purpose of enforcing this liability, the Fund shall be subrogated to all the rights of the person receiving such payments or benefits.

§ 725.606 Security for the payment of benefits.

Whenever the deputy commissioner deems it advisable he or she may require any operator or other employer to make a deposit with the Treasurer of the United States to secure the prompt and convenient payment of benefits to eligible claimants. Payments may be made from such deposit, or such deposit may be returned to an operator or other employer only upon the order of the deputy commissioner. The deputy commissioner shall require the deposit of security pursuant to this section in any case where an operator or other liable employer is uninsured or has failed to secure the payment of benefits.

§ 725.607 Payments in addition to compensation.

(a) If any benefits, payable under the terms of an award of benefits, are not paid by an operator or other employer ordered to make such payments within ten days after such payments become due, there shall be added to such unpaid benefits an amount equal to 20 percent thereof, which shall be paid to the claimant at the same time as, but in addition to such benefits, unless review of the order making such award is had as provided in Section 21 of the LHWCA and an order staying payments has been issued.

(b) If, on account of an operator's or other employer's failure to pay benefits as provided in paragraph (a) of this section, benefit payments are made by the Fund, the eligible claimant shall nevertheless be entitled to receive such additional compensation to which he or she may be eligible under paragraph (a) of this section, with respect to all amounts paid by the Fund on behalf of such operator or other employer.

(c) The Fund shall not be liable for payments in addition to compensation under any circumstances.

§ 725.608 Interest.

(a) If an operator or other employer fails or refuses to pay any or all benefits due pursuant to an award of benefits such operator shall be liable for 6 percent simple annual interest on all past due benefits computed from the date on which such benefits were due and payable, in addition to such operator's or other employer's liability as is otherwise provided in this part. Except as provided in paragraph (b) of this section, interest payments owed under this pargaraph shall be made directly to the beneficiary.

(b) If an operator or other employer fails or refuses to pay any or all benefits due pursuant to an award of benefits or an initial determination of eligibility made by the deputy commissioner, and the Fund undertakes such payments, such operator or other employer shall be liable to the Fund in an amount equal to six percent simple annual interest on all payments made by the Fund for which such operator is determined liable, computed from the first date on which such benefits are paid by the Fund, in addition to such operator's liability to the Fund as is otherwise provided in this part. Interest payments owed pursuant to this paragraph shall be paid directly to the Fund.

(c) The Fund shall not be liable for the payment of interest under any circumstances.

PENALTIES

§ 725.620 Failure to secure benefits; other penalties.

(a) If an operator fails to discharge its insurance obligations under the Act the provisions of § 725.495 shall apply.

(b) Any employer of a miner who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrets, or destroys any property belonging to such employer, after any miner employed by such employer filed a claim within the purview of the Act, and with intent to avoid the payment of benefits under the Act to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(c) No agreement by a miner to pay any portion of a premium paid to a carrier by such miner's employer or to contribute to a benefit fund or deposit maintained by such employer for the purpose of providing benefits or medical services and supplies as required by this part, shall be valid; and any employer who makes a deduction for such purpose from the pay of any miner entitled to benefits under the Act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000.

(d) No agreement by a miner to waive his or her right to benefits under the Act and the provisions of this part shall be valid.

(e) This section shall not affect any other liability of the employer under this part.

§ 725.621 Reports.

(a) Upon making the first payment and upon suspension, reduction, or increase of payments for any cause, the operator or other employer responsible for making payments shall immediately notify the deputy commissioner of the action taken, accordance with a form prescribed by the Office.

(b) Within 16 days after final payment of benefits has been made by an employer, such employer shall so notify the deputy commissioner, in accordance with a form prescribed by the Office, stating that such final payment has been made, the total amount of benefits paid, the name of the beneficiary, and such other information as the Office deems pertinent.

(c) The Director may from time to time prescribe such additional reports to be made by operators, other em-

ployers, or carriers as the Director may consider necessary for the efficient administration of the Act.

(d) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty not to exceed $500 for each such failure or refusal, which penalty shall be determined in accordance with the procedures set forth in § 725.495, as appropriate.

(e) No request for information or response to such request shall be considered a report for purposes of this section or the Act, unless it is so designated by the Director or by this section.

Subpart I—Medical Benefits and Vocational Rehabilitation

§ 725.701 Availability of medical benefits.

(a) A miner who is determined to be eligible for benefits under this part or Part 727 of this subchapter is entitled to medical benefits as set forth in this subpart as of the date of his or her claim, but in no event before January 1, 1974. No medical benefits shall be provided to the survivor or dependent of a miner under this part.

(b) A responsible operator, other employer, or where there is neither the Fund, shall furnish a miner entitled to benefits under this part with such medical, surgical, and other attendance and treatment, nursing and hospital services, x-ray and other technical services, medicine and apparatus, and any other medical service or supply, for such periods as the nature of the miner's pneumoconiosis and ancillary pulmonary conditions and disability require.

(c) The medical benefits referred to in paragraphs (a) and (b) of this section shall include palliative measures useful only to prevent pain or discomfort associated with the miner's pneumoconiosis or attendant disability.

(d) The costs recoverable under this subpart shall include the reasonable cost of travel necessary for medical treatment and the reasonable documented cost to the miner or medical provider incurred in communicating with the employer, carrier, or deputy commissioner on matters connected with medical benefits.

§ 725.702 Physician defined.

The term "physician" includes only doctors of medicine (MD), and osteopathic practitioners within the scope of their practices as defined by State law. No treatment or medical services performed by any other practitioner of the healing arts is authorized by this part, unless such treatment or service is approved and supervised both by a physician as defined in this section and the deputy commissioner.

§ 725.703 Notification of right to medical benefits, authorization of treatment.

(a) Upon notification to a miner of such miner's entitlement to benefits, the Office shall provide the miner with a list of authorized treating physicians and medical facilities in the area of the miner's residence. The miner may select a physician from this list or may select another physician with approval of the Office. Where emergency services are necessary and appropriate, authorization by the Office shall not be required.

(b) The Office may, on its own initiative, or at the request of a responsible operator, order a change of physicians or facilities but only where it has been determined that the change is desirable or necessary in the best interest of the miner. The miner may change physicians or facilities subject to the approval of the Office.

(c) If adequate treatment cannot be obtained in the area of the claimant's residence, the Office may authorize the use of physicians or medical facilities outside such area.

§ 725.704 Arrangements for medical care by responsible operator.

(a) If an operator has been determined liable for the payment of benefits to a miner, the Office shall notify such operator or insurer of the names, addresses, and telephone numbers of the authorized providers of medical benefits chosen by an entitled miner, and shall require the operator or insurer to——

(1) Notify the miner and the providers chosen that such operator will be responsible for the cost of medical services provided to the miner on account of the miner's total disability due to pneumoconiosis;

(2) Designate a person or persons with decision making authority with whom the Office, the miner and authorized providers may communicate on matters involving medical benefits provided under this subpart and notify the Office, miner and providers whom to contact.

(3) Make arrangements for the direct reimbursement of providers for their services.

§ 725.705 Authorization to provide medical services.

(a) Except as provided in paragraph (b) of this section, medical services from an authorized provider which are payable under § 725.701 shall not require prior approval of the Office or the responsible operator.

(b) Except where emergency treatment is required, prior approval of the Office or the responsible operator shall be obtained before any hospitalization or surgery, or before ordering an apparatus for treatment where the purchase price exceeds $100.

(c) Payment for medical services, treatment, or an apparatus shall be made at no more than the rate prevailing in the community in which the providing physician, medical facility or supplier is located.

§ 725.706 Reports of physicians and supervision of medical care.

(a) Within 30 days following the first medical or sugical treatment provided under § 725.701, the treating physician or facility shall furnish to the Office and the responsible operator, if any, a report of such treatment.

(b) In order to permit continuing supervision of the medical care provided to the miner with respect to the necessity, character and sufficiency of any medical care furnished or to be furnished, the treating physician of facility or employer or carrier shall provide such reports in addition to those required by paragraph (a) of this section as the Office may from time to time require. Within the discretion of the deputy commissioner, reimbursement may be refused to any medical provider who fails to submit any report required by this section.

§ 725.707 Disputes concerning medical benefits.

(a) Whenever a dispute develops concerning medical services under this part the deputy commissioner shall attempt to informally resolve such dispute. In this regard the deputy commissioner may on his or her own initiative or at the request of the responsible operator, order the claimant to submit to an examination by a physician selected by the deputy commissioner.

(b) If no informal resolution is accomplished, the deputy commissioner shall refer the case to the Office of Administrative Law Judge for hearing in accordance with this part. Any such hearing shall be scheduled at the earliest possible time and shall take precedence over all other requests for hearing except for prior requests for hearing arising under this section and as is provided by § 727.405 of this subchapter. During the pendency of such adjudication, the Director may order the payment of medical benefits prior to final adjudication under the same conditions applicable to benefits awarded under § 725.522.

(c) In the development or adjudication of a dispute over medical benefits the adjudication officer is authorized to take whatever action may be necessary to protect the health of a totally disabled miner.

(d) Any interested medical provider may, if appropriate, be made a party to a dispute over medical benefits.

§ 725.710 Objective of vocational rehabilitation.

The objective of vocational rehabilitation is the return of a miner who is totally disabled for work in or around

a coal mine and who is unable to utilize those skills which were employed in the miner's coal mine employment to gainful employment commensurate with such miner's physical impairment. This objective may be achieved through a program of re-evaluation and redirection of the miner's abilities, or retraining in another occupation, and selective job placement assistance.

§ 725.711 Requests for and referral to vocational rehabilitation assistance.

Each miner who has been determined entitled to receive benefits under Part C of Title IV of the Act shall be informed by the OWCP of the availability and advisability of vocational rehabilitation services. If such miner chooses to avail himself or herself of vocational rehabilitation, his or her request shall be processed and referred by OWCP vocational rehabilitation advisors poursuant to the provisions of §§ 702.501-702.508 of this chapter as is appropriate.

Signed this 18th day of April, 1978, at Washington, D.C.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-11087 Filed 4-24-78; 8:45 am]

[4510-27]

[20 CFR Part 727]

REVIEW OF PENDING AND DENIED CLAIMS UNDER THE BLACK LUNG BENEFITS REFORM ACT OF 1977

Federal Mine Safety and Health Act of 1977, as Amended

AGENCY: Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed new Part 727 establishes procedures for the processing of pending and denied claims for black lung benefits under Part C of Title IV of the Federal Mine Safety and Health Act of 1977, as amended by the Black Lung Benefits Reform Act of 1977.

DATES: Written comments on this proposed rulemaking may be submitted by interested persons to the person specified below on or before May 25, 1978. Such written comments will be available for inspection during regular business hours at the office indicated below.

ADDRESS: Comments should be sent to Robert B. Dorsey (see For Further Information Contact).

FOR FURTHER INFORMATION CONTACT:

Robert B. Dorsey, Chief, Branch of Claims Determination, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Adminstration, U.S. Department of Labor, Room C-3526, NDOL Building, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone: 202-523-6727.

SUPPLEMENTARY INFORMATION: The Black Lung Benefits Reform Act of 1977, and the Black Lung Benefits Revenue Act of 1977, enacted on March 1, 1978, significantly amend the provisions of the Black Lung Benefits Act of 1972, to, among other things, establish the Black Lung Disability Trust Fund (The Fund) for the payment of all claims predicated upon coal mine employment which terminated prior to January 1, 1970, and for other claims for which no operator liability can be established. The Fund is financed by a tax on the coal produced by individual coal mine operators. Other provisions of the Act as now amended modify the evidentiary requirements necessary to establish entitlement to benefits, eliminate certain restrictions on the filing of claims and direct the Secretary of Health, Education, and Welfare upon request, and the Secretary of Labor, to automatically undertake a review of all previously denied and pending claims in light of the amendments made by the 1977 Act.

Under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, benefits were provided to coal miners and certain survivors of coal miners on account of total disability or death due to pneumoconiosis. Part B of Title IV of the Act as amended provided that all claims for benefits filed between December 31, 1969, and June 30, 1973, would be filed with, processed by and paid from Federal funds by the Secretary of Health, Education, and Welfare, through the Social Security Administration. The survivor of a miner was permitted to file a claim with the Secretary of Health, Education, and Welfare under Part B until January 1, 1974, or within 6 months of the miner's death, if death occurred before January 1, 1974. Section 415 of Part B of Title IV of the Act provides that a claim filed by a miner between July 1 and December 31, 1973, would be filed with, processed, and if appropriate paid, by the Secretary of Labor from Federal funds for all periods of eligibility between July 1 and December 31, 1973. For periods of eligibility after December 31, 1973, an approved Section 415 claim was to be paid by a coal mine operator found liable pursuant to the Act. Claims filed after December 31, 1973, were to be filed under an approved State workers' compensation law or, if no such law was available in an appropriate state, the claim would be filed with the Secretary of Labor under Part C of Title IV of the Act. Claims filed under Part C were to be adjudicated under certain provisions of the Longshoremen's and Harbor Workers' Compensation Act as amended, 33 U.S.C. 901 et seq., and paid by a coal mine operator found liable pursuant to the Act. If no such operator could be identified benefits were to be paid by the Secretary of Labor from Federal funds.

Under the Act as now amended the Secretary of Health, Education, and Welfare is directed to review at the request of the claimant all denied and pending claims filed under Part B of Title IV of the Act, exclusive of those claims filed under Section 415. The Secretary of Labor is directed to review automatically all denied and pending claims filed under Section 415 and Part C of Title IV of the Act, as of the effective date of the Black Lung Benefits Reform Act of 1977, and, in addition, is required to review certain claims originally filed with the Secretary of Health, Education, and Welfare.

The provisions of this part implement the requirements of new Section 435 by setting forth the scope of claims review, the procedures to be followed and the consequences which accrue depending upon the results of any particular review.

Because the Black Lung Benefits Reform Act of 1977, which this part implements, substantially liberalizes the requirements for benefits under the Act, the provisions of this part benefit the public by providing specific information to interested parties regarding the manner in which a right of review will be extended to all pending and denied claims for black lung benefits under the Act.

Prior to publication of this document officials of the Employment Standards Administration met with representatives of the persons affected by the recent amendments to the Black Lung Benefits Act, advised the representatives of the needs for revisions in the regulations to implement these amendments, and received comments and suggestions from them. Some suggestions have been incorporated into this document. In order to avoid undue delay in the implementation of the provisions of the Black Lung Benefits Reform Act of 1977, approved March 1, 1978, and the adjudication of the pending and newly filed claims, it has been determined that it is impracticable and unnecessary to afford interested persons more than 30 days to submit written comments on this proposal.

DRAFTING INFORMATION

This document was prepared under the direction and supervision of Donald Elisburg, Assistant Secretary of Labor for Employment Standards.

The principal author of this document is Mark E. Solomons, Counsel for Black Lung, Employee Benefits Division, Office of the Solicitor, U.S. Department of Labor. However, personnel from the Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, participated in its development.

As proposed, 20 CFR Chapter VI, Subchapter B, is amended by the addition of a new Part 727 which would provide as follows:

PART 727—REVIEW OF PENDING AND DENIED CLAIMS UNDER THE BLACK LUNG BENEFITS REFORM ACT OF 1977

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AUTHORITY: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq.

Subpart A—General

§ 727.1 Statutory provision, purpose of this part.

(a) Under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, benefits were provided to coal miners and certain survivors of coal miners on account of total disability or death due to pneumoconiosis. Part B of Title IV of the Act as amended provided that all claims for benefits filed between December 30, 1969, and June 30, 1973, would be filed with, processed by, and paid from Federal funds by the Secretary of Health, Education, and Welfare, through the Social Security Administration. The survivor of a miner was permitted to file a claim with the Secretary of Health, Education, and Welfare under Part B until January 1, 1974, or within 6 months of the miner's death, if death occurred before January 1, 1974, or in the case of a Part B beneficiary, within 6 months of the beneficiary's death. Section 415 of Part B of Title IV of the Act provides that a claim filed by a miner between July 1 and December 31, 1973, would be filed with and processed by the Secretary of Labor, and paid if appropriate by the Secretary of Labor from Federal funds for all periods of eligibility between July 1 and December 31, 1973. For periods of eligibility after December 31, 1973, an approved Section 415 claim was to be paid by a coal mine operator found liable pursuant to the Act or the Secretary of Labor as appropriate. Claims filed after December 31, 1973, were to be filed under an approved State workers' compensation law or, if no such law was available in an appropriate state, the claim would be filed with the Secretary of Labor under Part C of Title IV of the Act. Claims filed under Part C were to be adjudicated under certain provisions of the Longshoremen's and Harbor Workers' Compensation Act as amended, 33 U.S.C. 901 et seq., and paid by a coal mine operator found liable pursuant to the Act. If no such operator could be identified benefits were to be paid by the Secretary of Labor from Federal funds.

(b) The Black Lung Benefits Revenue Act of 1977, and the Black Lung Benefits Reform Act of 1977, enacted on March 1, 1978, significantly amend the provisions of the Black Lung Benefits Act of 1972, to among other things, establish the Black Lung Disability Trust Fund (The Fund) for the payment of all claims predicated upon coal mine employment which terminated prior to January 1, 1970, and for other claims for which no operator liability can be established. The Fund is financed by individual coal mine operators. Other provisions of the Act as amended, modify the evidentiary requirements necessary to establish entitlement to benefits, eliminate certain restrictions on the filing of claims, establish penalties to be applied if a coal operator fails to meet its obligations under the Act, and make technical, correcting and other administrative or procedural and substantive changes.

(c) Section 435 of the Black Lung Benefits Reform Act of 1977, directs the Secretary of Health, Education, and Welfare, and the Secretary of Labor to undertake a review of all previously denied and pending claims in light of the amendments made by such Act. The Secretary of Health, Education, and Welfare is directed to perform this review at the request of the claimant on all denied and pending claims filed under Part B of Title IV of the Act, exclusive of those claims filed under Section 415. The Secretary of Labor is directed to perform this review automatically on all denied and pending claims filed under Section 415 and Part C of Title IV of the Act, as of the effective date of the Black Lung Benefits Reform Act of 1977, and in addition is required to review certain claims originally filed with the Secretary of Health, Education, and Welfare.

(d) The new Section 435 contains provisions setting forth the scope of the claims review, the procedures to be followed and the consequences which accrue depending upon the results of any particular review. It is the purpose of this part to set forth and implement the provisions of Section 435 as those provisions apply to the Secretary of Labor, and inform all interested parties of the manner in which a right to review will be extended with respect to all denied and pending claims for black lung benefits under the Act by the Secretary of Labor.

§ 727.2 Applicability and content of this part.

(a) This part is designed to apply to and set forth the role of the Secretary of Labor in carrying out the provisions of Section 435 of the Act. The action to be taken and the procedure to be followed by the secretary of Health, Education, and Welfare and the social Security Administration under Section 435 is detailed elsewhere. This part will, however, describe what will be done by the Secretary of Health, Education, and Welfare and the Social Security Administration in general terms and will detail the responsibilities assigned to the Secretary of Labor with respect to a claim reviewed by the Sec-

retary of Health, Education, and Welfare.

(b) This Subpart A describes generally the statutory framework established to facilitate the review of all pending and denied black lung claims, the applicability and content of this part and other relevant parts contained in this Title 20 of the Code of Federal Regulations, and sets forth applicable definitions and usages.

(c) Subpart B of this part sets forth the procedures to be followed in the review of various types of claims subject to review under this part.

(d) Subpart C of this part contains the criteria to be applied in determining a claimant's eligibility for benefits under this part. Such criteria shall also be applicable to all claims for medical services filed under Section 11 of the the Black Lung Benefits Reform Act of 1977 (see § 725.308(b) of this subchapter), and shall also be applicable to all other claims filed under Part 725 of this subpart until such time as the Secretary promulgates new criteria for determining total disability or death due to pneumoconiosis in accordance with Section 402(f)(1) of the Act.

(e) Subpart D of this part contains provisions relating to the liability for, and conditions governing, the payment of benefits under this part.

(f) Subpart E of this part sets forth special provisions relating to the processing of claims subject to review under this part which are within the jurisdiction of an administrative law judge or the Benefits Review Board.

§ 727.3 Definitions, use of terms.

Except as is otherwise provided by this part the definitions and usages of terms contained in subpart A of Part 725 of this Title as amended from time to time, shall be applicable to this part.

§ 727.4 Applicability of other parts in this subchapter.

(a) *Part 725.* Part 725 of this subchapter, which sets forth (1) the procedure for filing a claim for black lung benefits under Part C of Title IV of the Act, (2) the procedure to be followed in the adjudication of claims so filed, (3) standards for determining whether a particular individual is a miner, or a qualified dependent or survivor of a miner, (4) the criteria to be applied in determining the liability of a coal operator or the Fund for the payment of approved claims so filed, and (5) the manner in which the payment of benefits shall be made with respect to Part C claims, shall not be applicable to the processing, adjudication or payment of claims under this part unless applicability is generally provided by Part 725 or this part.

(b) *Part 718.* Part 718 of this subchapter, which contains the criteria and standards to be applied in determining whether a miner is totally disabled due to pneumoconiosis or whether a miner died due to or while totally or partially disabled by pneumoconiosis shall not be applicable to the determination of claims under this part unless applicability is provided by Part 718 or this part. Until such time as Part 718 of this subchapter is revised in accordance with the 1977 amendments to the Act, the provisions of subpart D of Part 410 of this title, which are not inconsistent with the 1977 amendments to the Act, shall be applicable to the adjudication of claims under this part, unless otherwise provided by this part (see subpart C of this part).

(c) *Parts 715, 717, 720.* Parts 715, 717, and 720 of this subchapter, which parts established the procedures for the filing, processing, and payment of claims filed under Section 415 of the Act are repealed and pertinent provisions of those parts which retain vitality are incorporated within Part 725 of this subchapter as amended.

(d) *Part 726.* Part 726 of this subchapter, which contains provisions setting forth a coal operator's obligations to insure or self-insure its liability for the payment of benefits to certain eligible claimants is applicble to this part insofar as it bears upon the responsibility of a coal operator to secure the payment of benefits to certain claimants who may be determined eligible for benefits under this part.

Subpart B—Initial Review of Pending and Denied Claims

§ 727.101 Who is entitled to review.

(a) *By the Secretary of HEW.* Any person who has filed a claim for benefits under Part B of Title IV of the Act, excluding miners who filed under Section 415 of the Act between July 1 and December 31, 1973, and whose claim is either pending or has been denied as of March 1, 1978 (see § 727.102) may upon notification by the Secretary of Health, Education, and Welfare, elect to have his or her claim reviewed by the Secretary of Health, Education, and Welfare.

(b) *By the Secretary of Labor.* (1) Any person who elects review by the Social Security Administration under paragraph (a) of this section and whose claim cannot be approved after such review shall have his or her claim reviewed by the Secretary of Labor.

(2) Any person who is eligible to have his or her claim reviewed under paragraph (a) of this section may elect to have his or her claim referred directly to the Secretary of Labor for review.

(3) Any person who has filed a claim for benefits under Section 415 or Part C of Title IV of the Act and whose claim is pending or has been denied (see § 727.102) on or before March 1, 1978 shall have his or her claim automatically reviewed by the Secretary of Labor. (But see § 727.103)

(4) Any claimant whose claim is subject to review by the Secretary of Labor under this paragraph shall have the right to submit additional evidence to the Secretary of Labor in support of such claim.

§ 727.102 Pending and denied claim defined.

(a) *Applicability.* This section defines the terms "pending and denied" claims for purposes of this part only and the following definitions shall be applicable only to claims filed with the Secretary of Labor under Section 415 and Part C of Title IV of the Act.

(b) *Denied claim defined.* For the purposes of this part a claim filed with the Secretary of Labor shall be considered a denied claim if:

(1) The claim was filed before March 1, 1978; and,

(2) The claimant's entitlement to benefits has been denied for any reason by a deputy commissioner in the Office of Workers' Compensation Programs, United States Department of Labor, an administrative law judge assigned to determine black lung claims by the Secretary of Labor, the Benefits Review Board in the United States Department of Labor, or an appropriate United States court of appeals; and,

(3) No further proceedings before a deputy commissioner, administrative law judge, the Benefits Review Board, or a United States court of appeals are pending; and,

(4) The time has expired to seek further consideration of such denial; or,

(5) The claim has been declared abandoned by a deputy commissioner or administrative law judge (see § 725.409 of this subchapter which replaces 38 FR 26059).

(c) *Pending claim defined.* For the purposes of this part and except as provided in §§ 727.402 and 727.403 a claim filed with the Secretary of Labor shall be considered a pending claim if:

(1) The claim was filed before March 1, 1978; and,

(2) The claim is before a deputy commissioner, administrative law judge, the Board, or a United States court of appeals for consideration; or,

(3) The time permitted to seek further consideration of the claim has not expired.

(d) *Withdrawn claims.* A cliam for benefits which has been previously withdrawn at the request of the claimant (See § 725.306 of this subchapter) shall not be considered a pending or denied claim for purposes of this part. Any person who has voluntarily withdrawn his or her claim from consideration may file a new claim for benefits under Part 725 of this subchapter.

§ 727.103 Duplicate claims.

(a) A person who filed a claim for benefits with the Social Security Administration and whose claim has been approved by that agency and who has also filed a claim with the Secretary of Labor which is pending or has been denied shall be entitled to a review of such claim under this part.

(b) A person who has filed a claim with the Social Security Administration which is pending or has been denied by that agency and who has also filed a claim with the Secretary of Labor, that has been approved shall be entitled to elect review of the pending or denied claim by the Social Security Administration, subject to the provisions of § 725.309(e) of this subchapter.

(c) A person who has filed a claim both with the Social Security Administration and the Department of Labor and whose claim is either pending with or denied by both agencies shall have his or her claim reviewed by the Social Security Administration if such review is requested by the claimant pursuant to § 727.104. If the claim is not approved by the Social Security Administration it shall be forwarded in the Secretary of Labor for further review as provided in § 727.106. During the pendency of review proceedings by the Social Security Administration, if any, no action shall be taken by the Secretary of Labor with respect to the claim which is pending or has been denied by the Secretary of Labor. If the claimant does not respond to notification of his or her right to review by the Social Security Administration within 6 months of such notice (See § 727.104), unless the period is enlarged for good cause shown, the Secretary of Labor shall proceed under this part to review the claim originally filed with the Secretary of Labor. If the claimant, upon notification of his or her right to review by the Social Security Administration (See § 727.104) requests that the claim originally filed with the Administration be forwarded to the Department of Labor for review, or if more than one claim has been filed with the Secretary of Labor by the same claimant, such claim shall be merged and processed with the first claim filed with the Department of Labor.

(d) In the case of a claimant who has filed one or more claims with both Social Security and the Department of Labor under no circumstances are duplicate benefits payable for concurrent periods of eligibility. Any duplicate benefits paid shall be subject to collection or offset under subpart G of Part 725 of this subchapter.

§ 727.104 Review by the Social Security Administration.

(a) *Notification.* The Social Security Administration will notify each claimant who has filed a claim for benefits under Part B of Title IV of the Act, and whose claim is either pending or has been denied on or before March 1, 1978, that upon the request of the claimant such claim shall be either

(1) Reviewed by the Social Security Administration on the basis of the evidence contained in the claimant's file, in accordance with the amendments made by the Black Lung Benefits Reform Act of 1977; or,

(2) Referred by the Social Security Administration to the Office of Workers' Compensation Programs in the Department of Labor for review based on the evidence contained in the claimant's file and any additional evidence the claimant seeks to submit, in accordance with the amendments made by the Black Lung Benefits Reform Act of 1977.

(b) *Response to notification.* Upon receipt of a claimant's response or a response on behalf of a claimant to the notice required by paragraph (a) of this section the Social Security Administration will undertake to review the claim or refer the claimant's file to the Office for processing under § 727.107. If there is no response to notification sent in accordance with paragraph (a) of this section within 6 months from the date on which notice is sent, unless the period is enlarged for good cause shown, the claimant shall be considered to have waived the right to review afforded by this part. The date on which notice is sent and the date on which a claimant's response is received shall be noted on an appropriate form by the Social Security Administration.

(c) *Social Security Administration review procedures.* Where the Social Security Administration determines that the claimant is eligible the Administration will forward the claim file together with a copy of such determination to the Office for processing and payment in accordance with § 727.105 and shall so notify the claimant. Where it is determined that the claim cannot be approved the Social Security Administration will transfer the claimant's file to the Office for further review in accordance with § 727.106, and shall so notify the claimant.

§ 727.105 Action by the Office, Social Security Approval.

(a)(1) Where the Social Security Administration determines that the claimant is eligible upon review under § 727.104(c), the Office shall upon receipt of the claimant's file determine whether on operator may be liable for the payment of the claim. If no such operator can be identified or if the file establishes that the miner on whose total disability or death the claim is predicated was last employed in the mines before January 1, 1970, the deputy commissioner shall promptly authorize the payment of benefits to the claimant in accordance with § 725.522 of this subpart, except that in such a case the basic benefit only shall be paid (see § 725.520(b) of this subpart) until such time as an accurate amount of benefits payable can be established in accordance with the provisions of subpart G of Part 725 of this subchapter.

(2) The deputy commissioner shall request up-to-date information from the claimant pertaining to any matter affecting the amount of benefits payable or any additional information which may be necessary to establish a more detailed and complete history of the miner's employment. After receipt of such information the deputy commissioner shall determine the amount of benefits actually payable to the claimant and shall increase, decrease or terminate benefit payments as is appropriate in accordance with subpart G of Part 725 of this subchapter, and shall issue a proposed decision and order in accordance with the procedures set forth in §§ 725.418 and 725.419 of this subchapter. If the information received establishes that there has been an underpayment, such underpayment shall be corrected retroactive to January 1, 1974, if appropriate.

(3) If the information requested is not supplied to the deputy commissioner within a reasonable time following such request, the deputy commissioner shall issue an order to show cause why benefit payments should not be suspended and all benefits previously paid should not be declared an overpayment (see § 725.540 of this subchapter). If the claimant submits a satisfactory response to such order and within a reasonable time submits sufficient evidence to allow the deputy commissioner to determine the actual amount of benefits payable, the deputy commissioner shall issue a proposed decision and order awarding benefits in accordance with §§ 725.418 and 725.419 of this subchapter. If there is no satisfactory response to the deputy commissioner's order to show cause in the time allotted the deputy commissioner may issue a proposed decision and order in accordance with §§ 725.418 and 725.419 of this subchapter, forward the claim for a hearing in accordance with § 725.421 of this subchapter, or proceed in accordance with § 725.409 of this subchapter.

(b) (1) If it is determined in accordance with paragraph (a)(1) of this section that there is or may be an operator liable for the payment of benefits to a claimant whose claim has been approved by the Social Security Administration under § 727.104(c), the deputy commissioner shall promptly request up-to-date information pertaining to any matter affecting the amount of benefits payable (see sub-

part G of Part 725 of this subchapter), and any additional information or verification which may be necessary to establish a more detailed and complete history of the miner's employment.

(2) Upon receipt of any additional information requested under paragraph (b)(1) of this section or, if no additional information is necessary, upon receipt of certification of approval and the claim file, the deputy commissioner shall determine the amount of benefits payable to the claimant and the identity of any coal mine employer which may be liable for those payments.

(3) If the deputy commissioner determines that there is no operator which may be liable for the payment of the claim, the deputy commissioner shall issue a proposed decision and order awarding benefits to the claimant in accordance with the procedures set forth in §§725.418 and 725.419 of this subchapter.

The payment of benefits to the claimant shall commence upon the issuance of the proposed decision and order. If there is no objection to the proposed decision and order within 30 days after issuance, it shall become final and effective (see §725.419(d) of this subchapter). If the claimant objects to any matter contained in the proposed decision and order or disputes the amount of benefits awarded, the deputy commissioner may modify the proposed decision and order, forward the case for hearing before an administration law judge or take such other action as is appropriate.

(4) If the deputy commissioner determines that there is a coal mine employer which may be liable for the payment of benefits to the claimant the deputy commissioner shall identify and notify such operator of its possible liability as provided in §725.412 of this subchapter, and shall proceed to adjudicate the claim in accordance with the appropriate provisions of subparts D and E of Part 725 of this subchapter.

(5) An employer notified under this section shall have the right to have the claimant examined by a physician selected by such operator (see §725.414 of this subchapter). If an employer contests the claim the claimant may obtain and submit additional medical evidence to the deputy commissioner within the time permitted by §725.414 of this subchapter for the submission of the employer's evidence. Evidence submitted by a claimant under this paragraph shall be paid for by the Fund, if authorized by the deputy commissioner, and shall be reimbursable to the Fund by the employer, if the employer is found liable for the claim. (see §725.407 of this subchapter).

(c) Except as is otherwise provided in this section, a determination of entitlement made by the Social Security Administration under this section is binding on the deputy commissioner.

(d) If it is determined by an administrative law judge, the Benefits Review Board or a United States court that the determination of entitlement made by the Social Security Administration was incorrect, the payment of benefits shall terminate and any benefits paid shall be considered an overpayment subject to collection in accordance with §725.540 of this subchapter.

§727.106 Action by the Office, insufficient evidence for Social Security approval.

(a) In the case of a claim which has not been approved for benefits by the Social Security Administration under §727.105 the claim shall be transferred by the Administration to the Office and the Office shall follow the procedures set forth in this section. There shall be no further consideration of a claim described in this paragraph except as provided in this part.

(b) Upon receipt of the claimant's file from the Social Security Administration the Office shall assign the claim to a deputy commissioner who may (1) assist the claimant in obtaining additional medical evidence or request that such evidence be submitted (see §§725.405–725.408 of this subchapter); or (2) request such additional documents or information as may be necessary to establish the amount of benefits which may be payable, or to establish a more detailed and complete history of the nature and duration of the miner's employment.

(c) Based upon the evidence developed under this section, if any, and the information contained in the claimant's original file, the deputy commissioner may make an initial finding with respect to the eligibility of the claimant and shall proceed to adjudicate the claim under §§725.409–725.411 of this subchapter, which action may include the notification and participation of a coal mine employer and the submission of additional evidence as is appropriate.

§727.107 Action by the Office, Social Security referral without prior review.

(a) In the case of a claim which is referred at the claimant's request by the Social Security Administration to the Office under §727.104(a)(2) without prior review by the Social Security Administration, the Office shall follow the procedures set forth in this section.

(b) Upon receipt of a claimant's file forwarded to the Office by the Social Security Administration in accordance with a claimant's request for review by the Secretary of Labor, the claim shall be assigned to a deputy commissioner who shall examine the evidence contained in the file to determine whether the claim may be approved in light of the amendments made by the Black Lung Benefits Reform Act of 1977.

(c) If it is determined by the deputy commissioner that the evidence in the file supports a finding of entitlement to benefits the deputy commissioner may (1) request up-to-date information from the claimant pertaining to any matter affecting the amount of benefits payable (see subpart G of Part 725 of this subchapter), and (2) request any additional information or verification which may be necessary to establish a more detailed and complete history of the miner's employment, for the purpose of determining the identity of any coal mine employer which may be liable for the payment of the claim, and for such other purposes as may be appropriate. Upon receipt of any additional information requested under this paragraph, or if the claimant fails to supply such information, the deputy commissioner may make an initial finding with respect to the eligibility of the claimant, notify a coal mine employer, if any, of its possible liability for the claim and, shall proceed to adjudicate the claim under §§725.409–725.421 of this subchapter.

(d) If it is determined by the deputy commissioner that the evidence on file is insufficient to support a finding of entitlement with respect to a claim reviewed under this section the deputy commissioner may (1) assist the claimant in obtaining additional medical evidence or request that such evidence be submitted (see §§725.405–725.408 of this subchapter); or (2) request such additional documents or information as may be necessary to establish the amount of benefits which may be payable, or to establish a more detailed and complete history of the nature and duration of the miner's employment. Based upon evidence developed under this paragraph, if any, and the information contained in the claimant's original file, the deputy commissioner may make an initial finding with respect to the eligibility of the claimant and shall proceed to adjudicate the claim under §§725.409–725.421 of this subchapter.

§727.108 Action by the Office, Department of Labor pending or denied claim.

(a) In the case of a claim filed with the Office under Section 415 or Part C of Title IV of the Act which is pending or has been denied as of March 1, 1978, the Office shall follow the procedures set forth in this section.

(b) In the case of a claim reviewed under this section the deputy commissioner shall examine the evidence contained in the file to determine whether the claim may be approved in light of the amendments made by the Black Lung Benefits Reform Act of 1977.

(c) If it is determined by the deputy commissioner that the evidence in the

file supports a finding of entitlement to benefits the deputy commissioner may (1) request up to date information from the claimant pertaining to any matter affecting the amount of benefits payable (see subpart G of Part 725 of this subchapter), and (2) request any additional information or verification which may be necessary to establish a more detailed and complete history of the miner's employment, for the purpose of determining the identity of any coal mine employer which may be liable for the payment of the claim and for such other purposes as may be appropriate. Upon receipt of any additional information requested under this paragraph the deputy commissioner shall make an initial finding with respect to the eligibility of the claimant, notify a coal mine employer, if any, of its possible liability for the claim, and proceed to adjudicate the claim under §§ 725.409–725.421 of this subchapter.

(d) If it is determined by the deputy commissioner that the evidence on file is insufficient to support a finding of entitlement with respect to a claim reviewed under this section the deputy commissioner may (1) assist the claimant in obtaining additional medical evidence or require that such evidence be submitted (see §§ 725.405–725.408 of this subchapter); or (2) request such additional documents or information as may be necessary to establish the amount of benefits which may be payable, or to establish a more detailed and complete history of the nature and duration of the miner's employment. Based upon the evidence developed under this paragraph, if any, and the information contained in the claimant's original file, the deputy commissioner may make an initial finding with respect to the eligibility of the claimant and shall proceed to adjudicate the claim under §§ 725.409–725.421 of this subchapter.

§ 727.109 Hearings and appeals, parties.

(a) If a hearing before an administrative law judge is necessary in connection with a claim reviewed under this part, the hearing shall be conducted in accordance with the procedures set forth in subpart E of Part 725 of this subchapter. An appeal from a decision of an administrative law judge shall be considered by the Benefits Review Board in accordance with the procedures set forth in Parts 801 and 802 of this title.

(b) Parties to proceedings conducted in connection with a claim reviewed under this section, matters relating to the representation of parties and the right of such representative to obtain a fee for services rendered, the powers of adjudication officers and the service of papers or documents shall be governed by the appropriate provisions contained in subparts C, D, and E of Part 725 of this subchapter.

Subpart C—Criteria for Determining Eligibility for Benefits

§ 727.200 Basis for criteria.

In enacting the Black Lung Benefits Reform Act of 1977, the Congress has provided that the criteria for determining whether a miner is or was totally disabled or died due to pneumoconiosis, which are to be applied to claims reviewed under Section 435 of the Act, to all claims filed under Section 11 of the Black Lung Benefits Reform Act of 1977 and to new claims filed prior to the effective date of regulations to be promulgated in Part 718 of this subchapter which will establish permanent criteria, shall be no more restrictive than the criteria applicable to a claim filed with the Social Security Administration on or before June 30, 1973, under Part B of Title IV of the Act (the interim adjudicatory rules), regardless of the date on which the claim is finally adjudicated. The rules promulgated in this section take into account the amendments made by the Black Lung Benefits Reform Act of 1977 and the expectations of the Congress. Accordingly, these rules provide additional standards, not available in the interim adjudicatory rules, by which a claimant can take advantage of a presumption of total disability or death due to pneumoconiosis arising out of coal mine employment.

§ 727.201 Persons entitled to benefits, dependents.

Benefits are provided under the Act to a miner who is totally disabled due to pneumoconiosis, and to certain survivors of a miner who died due to or while totally (or in certain cases, partially) disabled by pneumoconiosis. The amount of benefits payable to a miner or survivor may be increased on account of certain dependents. For the purpose of determining whether a claimant is a miner or qualified survivor of a miner or a qualified dependent of a miner or survivor under this part, the provisions of Part 725 of this subchapter shall be applicable as appropriate.

§ 727.202 Definition of pneumoconiosis.

For the purposes of the Act "pneumoconiosis" means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthrosilicosis, massive pulmonary fibrosis, progressive massive fibrosis or silicosis, arising out of coal mine employment. For purposes of this definition, a disease "arising out of coal mine employment" includes any chronic pulmonary disease resulting in respiratory or pulmonary impairment significantly related to or aggravated by dust exposure in coal mine employment. Pneumoconiosis does not include cancer or any disease of bacteriological or viral origin.

§ 727.203 Interim presumption.

(a) *Establishing interim presumption.* A miner who engaged in coal mine employment for at least 10 years will be presumed to be totally disabled due to pneumoconiosis, or to have been totally disabled due to pneumoconiosis at the time of death, or death will be presumed to be due to pneumoconiosis, arising out of that employment, if one of the following medical requirements is met:

(1) A chest roentgenogram (X-ray), biopsy or autopsy establishes the existence of pneumoconiosis (see § 410.428 of this title);

(2) Ventilatory studies establish the presence of a chronic respiratory or pulmonary disease (which meets the requirements for duration in § 410.412(a)(2) of this title) as demonstrated by values which are equal to or less than the values specified in the following table:

	Equal to or less than—FEV, and	MVV
67" or less	2.3	92
68"	2.4	96
69"	2.4	96
70"	2.5	100
71"	2.6	104
72"	2.6	104
73" or more;	2.7	108;

(3) Blood gas studies which demonstrate the presence of an impairment in the transfer of oxygen from the lung alveoli to the blood as indicated by values which are equal to or less than the values specified in the following table:

Arterial $P_{a}O_2$	Arterial $P_{a}O_2$ equal to or less than (mm. Hg.)
30 or below	70
31	69
32	68
33	67
34	66
35	65
36	64
37	63
38	62
39	61
40 to 45	60
Above 45	(1)

[1] Any value.

(4) Other medical evidence, including the documented opinion of a physician exercising reasoned medical judgment, establishes the presence of a totally disabling respiratory or pulmonary impairment;

(5) In the case of a deceased miner where no medical evidence is available, the affidavit of the survivor of such miner or other persons with knowl-

edge of the miner's physical condition, demonstrates the presence of a totally disabling respiratory or pulmonary impairment.

(b) *Rebuttal of interim presumption.* In adjudicating a claim under this subpart, all relevant medical evidence shall be considered. The presumption in paragraph (a) of this section shall be rebutted if:

(1) The evidence establishes that the individual is, in fact, doing his usual coal mine work or comparable and gainful work (see §410.412(a)(1) of this title); or

(2) In light of all relevant evidence it is established that the individual is able to do his usual coal mine work or comparable and gainful work (see §410.412(a)(1) of this title); or

(3) The evidence establishes that the total disability or death of the miner did not arise in whole or in part out of coal mine employment; or

(4) The evidence establishes that the miner does not, or did not, have pneumoconiosis.

(c) *Applicability of Part 718.* Except as is otherwise provided in this section, the provisions of Part 718 of this subchapter shall also be applicable to the adjudication of claims under this section.

(d) *Failure of miner to qualify under the presumption in paragraph (a) of this section.* Where eligibility is not established under this section, such eligibility may be established under Part 718 of this subchapter.

§ 727.204 Presumption of entitlement applicable to certain death claims.

(a) In the case of a miner who died on or before March 1, 1978, who was employed for 25 or more years in one or more coal mines prior to June 30, 1971, the eligible survivors of such miner shall be entitled to the payment of benefits, unless it is established that at the time of death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request by the Office, furnish such evidence as is available with respect to the health of the miner at the time of death, and the length of the miner's coal mine employment.

(b) For the purpose of this section a miner will be considered to have been "partially disabled" if he or she had reduced ability to engage in "comparable and gainful work" (see §410.412(a)(1) of this title).

(c) In order to rebut this presumption the evidence must demonstrate that the miner's ability to perform his or her usual and customary work or "comparable and gainful work" was not reduced at the time of his or her death or that the miner did not have pneumoconiosis.

(d) The following evidence alone shall not be sufficient to rebut the presumption:

(1) Evidence that a deceased miner was employed in a coal mine at the time of death;

(2) Evidence pertaining to a deceased miner's level of earnings prior to death;

(3) A chest X-ray interpreted as negative for the existence of pneumoconiosis;

(4) A death certificate which makes no mention of pneumoconiosis.

§ 727.205 Effect of current coal mine employment or coal mine employment at the time of death.

In the case of a miner who is working in coal mine employment or was employed in coal mine employment at the time of death, the following shall apply:

(a) A deceased miner's employment in a mine at the time of death shall not be used as conclusive evidence that the miner was not totally disabled. In the case of a deceased miner who was employed in a coal mine at the time of death, all relevant evidence, including the circumstances of such employment and the statements of the miner's spouse shall be considered in determining whether the miner was totally disabled due to pneumoconiosis at the time of death. In the case of a living miner, if there are changed circumstances of employment indicative of reduced ability to perform his or her coal mine work, the miner's employment in a mine shall not be used as conclusive evidence that the miner is not totally disabled.

(b) Notwithstanding any other provision of this section, and except as provided in Section 411(c)(3) of the Act, no miner shall be found to be totally disabled if the miner is found to be doing his or her customary coal mine work or "comparable and gainful work" (see § 410.412(a)(1) of this title) and there are no changed circumstances of employment indicative of reduced ability to perform coal mine work.

(c) No miner who is engaged in coal mine employment shall (except as provided in Section 411(c)(3) of the Act be entitled to any benefits under this part while so employed. Any miner who has been determined to be eligible for benefits for any period during which such miner is engaged in coal mine employment shall be entitled to benefits if the miner's employment terminates within one year after the date such determination becomes final.

§ 727.206 Quality standards applicable to evidence.

(a) No chest X-ray or X-ray report, ventilatory study or blood-gas study which does not or did not meet the quality standards applicable at the time the evidence was submitted shall be considered sufficient evidence to invoke the interim presumption provided in § 727.203(a) of this part. With respect to evidence submitted prior to the effective date of Part 718 of this title, the standards to be applied in the evaluation of evidence are contained in subpart D of Part 410 of this title. Evidence submitted after the effective date of Part 718 shall be evaluated as provided in that part.

(b) In all claims where there is other evidence of a pulmonary or respiratory impairment, a board-certified or board-eligible radiologist's interpretation of a chest X-ray shall be accepted by the Office if the X-ray is in compliance with the requirements of § 410.428(b) of this title and if such X-ray has been taken by a radiologist or qualified radiologic technologist or technician and there is no evidence that the claim has been fraudulently represented.

(1) Nothing in this section shall preclude the consideration of any other relevant evidence including other X-rays and X-ray interpretations in determining the presence or absence of pneumoconiosis.

(2) The following definitions shall apply when making a finding in accordance with this paragraph;

(i) The term "other evidence" means medical tests such as blood-gas studies, pulmonary function studies or physical performance tests, and physical examinations or medical histories which establish the presence of a chronic respiratory or cardio-pulmonary condition, and in the case of a deceased miner, in the absence of medical evidence to the contrary, affidavits of persons with knowledge of the miner's physical condition.

(ii) Pulmonary or respiratory impairment means an inability of the human respiratory apparatus to perform satisfactorily one or more or the three components of respiration, viz., ventilation, perfusion and diffusion.

(iii) "Board-certified" means certification in radiology or diagnostic roentgenology by the American Board of Radiology, Inc.

(iv) "Board-eligible" means that the necessary requirements for admission to the certification examination conducted by the American Board of Radiology, Inc., have been met.

(v) "Qualified radiologic technologist or technician" means an individual who is either certified as a registered technologist by the American Registry of Radiologic Technologists or licensed as a radiologic technoligist by a state licensing board.

Subpart D—Payment of Benefits/Liability

§ 727.300 Conditions and duration of eligibility.

The provisions of subpart B of Part 725 of this subchapter shall be applicable in determining the conditions

and duration of eligibility applicable with respect to a claim approved under this part.

§ 727.301 Amounts payable, other payment provisions.

Except as is otherwise provided in this part (see § 727.302, provisions relating to the amount of benefits payable, the manner of payment and all other provisions contained in subpart G of Part 725 and § 725.309 of this subchapter shall be applicable to a claim approved under this part. A miner whose claim is approved under this part shall be entitled to medical benefits to be determined and administered in accordance with the provisions of subpart I of Part 725 of this subchapter.

§ 727.302 Date from which benefits are payable after review and approval.

(a) Section 435(c) of the Act provides that any individual whose claim is approved after review shall be awarded benefits on a retroactive basis for a period which begins no earlier than Jaunuary 1, 1974. This section implements Section 435(c) of the Act and sets forth provisions governing the date from which benefits shall be payable with respect to a claim reviewed under this part. (See also § 6(a) of the Longshoremen's Act as incorporated by Section 422(a) of the Act.)

(b) In the case of a claim reviewed and finally approved under § 727.105, benefits shall be payable for all periods of eligibility occuring on or after January 1, 1974.

(c) (1) In the case of a miner whose claim is reviewed and finally approved under § 727.106 benefits shall be payable for all periods of eligibility beginning with the month of onset of total disability due to pneumoconiosis or January 1, 1974, whichever is later. Where the evidence does not establish the month of onset, benefits shall be payable from the month during which the miner elected review under § 727.104.

(2) In the case of a survivor whose claim is reviewed and finally approved under § 727.106 benefits shall be payable for all periods of eligibility occurring on or after the month of the miner's death or January 1, 1974, whichever is later.

(d) (1) In the case of a miner's claim which is reviewed and finally approved under § 727.107 benefits shall be payable for all periods of eligibility beginning with the month of onset of total disability due to poneumoconiosis or January 1, 1974, whichever is later. Where the evidence does not establish the month of onset benefits shall be payable from the month during which the miner elected review under § 727.104.

(2) In the case of a survivor whose claim is reviewed and finally approved under § 727.107 benefits shall be payable for all periods of eligibility occurring on or after the month of the miner's death or January 1, 1974, whichever is later.

(e) In the case of a claim reviewed and finally approved under § 727.108 benefits shall be payable as provided in § 725.503 of this subchapter.

(f) For the purposes of this section the term "finally approved" means that an award of benefits has been made or affirmed by a deputy commissioner, administrative law judge, the Benefits Review Board, or a United States court of appeals, that no further hearing, appeal, or reconsideration is pending, and the time to request such hearing, appeal, or reconsideration has expired. (See Part 725 of this subchapter generally.) Benefit payments shall be initiated prior to final approval in accordance with the provisions of § 725.522 of this subchapter.

§ 727.303 Claims filed under section 415 of the Act.

(a) A claim filed by a miner between July 1 and December 31, 1973, with the Secretary of Labor under section 415 of the Act is subject to review under this section if it is pending or has been denied on or before March 1, 1978. Prior to the enactment of the Black Lung Benefits Reform Act of 1977 benefits with respect to a section 415 claim may have been payable by the Secretary of Labor from Federal funds for periods of eligibility occurring between July 1 and December 31, 1973. However, under section 435 of the Act as amended by the Black Lung Benefits Reform Act of 1977 no benefits may be paid with respect to a claim reviewed under that section including a section 415 claim for any period of eligibility prior to January 1, 1974. Accordingly, in the case of any claim filed under section 415 of the Act with respect to which no benefits have been awarded prior to March 1, 1978, for any period of eligibility between July 1 and December 31, 1973, no benefits which might have been awarded for this period shall be awarded in any adjudication of the claim taking place after the effective date of this part.

(b) A claim filed under section 415 of the Act which is reviewed under this part shall for all purposes be considered as if it was filed on January 1, 1974, under Part C of Title IV of the Act.

§ 727.304 Liability for benefit payments.

A claim approved under this part shall be payable either by a coal mine employer, (see subpart F of Part 725 of this subchapter) or the black lung disability trust fund. Benefits shall be payable by a responsible coal mine employer if the miner's last date of coal mine employment occurred on or after January 1, 1970, and if the miner's last coal mine employer or a successor to such employer is found liable under the provisions of subpart F of Part 725 of this subchapter. In all other cases benefits shall be payable by the fund. For the purposes of determining the liability of a coal mine employer or the fund for the payment of an approved claim, the provisions of subparts F and H of Part 725 of this subchapter shall be applicable to a claim considered under this part, including any claim originally filed under Part B of Title IV of the Act with the Social Security Administration. Nothing in this part shall be construed in derogation of the terms of Part 725 of this subchapter insofar as Part 725 affects the liability of a coal mine employer.

Subpart E—Special Review Provisions Relating to Claims Pending Before an Administrative Law Judge or the Benefits Review Board

§ 727.401 General.

Section 435 of the Act requires the Secretary of Labor to establish a consistent and effective procedure for the review of pending and denied claims in light of the amendments made by the Black Lung Benefits Reform Act of 1977. A number of the claims encompassed by section 435 are pending in the Office of Administrative Law Judges or before the Benefits Review Board. In order to ensure a fair, orderly, and uniform disposition of claims pending before an Administrative Law Judge or the Board which are subject to review under section 435 of the Act it has been determined that a return of many of these claims to the Office for expedited review is essential. In order to accomplish this goal it is necessary, in accordance with the provisions of section 422(a) of the Act, to temporarily suspend the hearing and appeals procedures incorporated from the Longshoremen's Act normally followed with respect to a claim. This suspension is authorized by the terms contained within section 422(a) of the Act which provide that the Longshoremen's Act procedures are applicable except as is otherwise provided by the Act "or by regulations of the Secretary" of Labor. This subpart sets forth the procedures to be followed with respect to claims which are within the jurisdiction of the Office of Administrative Law Judges or the Benefits Review Board for which review under section 435 of the Act is required. In order to carry out the purposes of section 435 certain of the procedures ordinarily applicable in the adjudication of a claim are changed in certain specified instances. These changes are intended exclusively to facilitate a uniform administrative review of all pending and denied claims where such review is appropriate. Once the admin-

istrative review of these claims has been completed, the hearing and appeal procedures set forth in subpart D of Part 725 of this subchapter shall be available to all parties to a claim.

§ 727.402 Claims pending in the Office of Administrative Law Judges.

(a) A claim which is pending in the Office of Administrative Law Judges may be subject to review by a deputy commissioner under this part. This section sets forth criteria to be applied by the Chief Administrative Law Judge or and Administrative Law Judge for determining whether a claim should be remanded to the deputy commissioner for review under § 727.108 or whether jurisdiction over the claim should be retained and set forth a procedure to be followed if remand is required.

(b) A claim pending in the Office of Administrative Law Judges which has been administratively denied by the deputy commissioner and with respect to which no decision has been issued shall be remanded to the deputy commissioner for consideration under § 727.108, upon the request of the Director or the claimant.

(c) A claim pending in the Office of Administrative Law Judges which has been administratively approved by the deputy commissioner and was forwarded for hearing at the request of a coal mine operator shall be remanded to the deputy commissioner for payment if the miner on whose total disability or death the claim is predicated was last engaged in coal mine employment before January 1, 1970. If the miner's last coal mine employment occurred on or after January 1, 1970, the Office of Administrative Law Judges shall retain jurisdiction over the claim and proceed to adjudicate the claimant's eligibility and the liability of the named coal mine employer in accordance with the provisions of this part. If jurisdiction over a claim is retained under this paragraph the Administrative Law Judge may on his or her own motion or at the request of the claimant remand the claim to the deputy commissioner for consideration under § 727.108 if further evidentiary development of the claim is necessary. The right to review provided by § 727.108 shall not be exercised by and is not available to a coal mine employer.

(d) A claim which has been denied by an Administrative Law Judge and with respect to which no reconsideration or appeal is pending shall be automatically reviewed under § 727.108.

(e) In the case of a claim with respect to which a decision has been issued by an Administrative Law Judge but not filed with the Deputy Commissioner or if the decision has been filed and the time for appeal to the Benefits Review Board has not expired, the provisions of this paragraph shall apply. If appropriate, such decision shall be immediately filed with the Deputy Commissioner. If the decision denies the claimant's entitlement to benefits, the claim shall be considered a pending claim subject to review by the Deputy Commissioner under § 727.108, and there shall be no right of appeal to the Benefits Review Board prior to such review. If the decision awards benefits to the claimant, the claim shall be paid as provided in Part 725 of this subchapter and an appeal to the Benefits Review Board may be taken. If such an appeal is taken the Board shall consider the appeal under the applicable provisions of this part, and may take such other action as is appropriate.

(f) A remand of a claim authorized by this section shall be made by Order of the Chief Administration Law Judge or an Administrative Law Judge on his or her own motion, or on the motion of any party to the claim as is appropriate.

§ 727.403 Claims pending before the Benefits Review Board.

(a) A claim pending before the Benefits Review Board which may be subject to review under this part shall be considered by the Board as the Board deems appropriate, in accordance with the authority given the Board by the Act.

(b) If a case subject to review under this part is pending before the Board, the Board may, on its own motion or at the request of the Director, remand such case to the Deputy Commissioner for review under § 727.108. The consent of the parties shall not be a prerequisite to a remand by the Board under this paragraph.

(c) A claimant whose claim is pending before the Board may request that his or her claim be remanded to Deputy Commissioner for consideration under § 727.108.

§ 727.404 Claims pending in a U.S. Court of Appeals.

A claim pending in a U.S. court of appeals which may be subject to review under this part shall be considered by the court as the court deems appropriate.

§ 727.405 Expedited review of Claims.

(a) A claim which is remanded to the Deputy Commissioner by an Administrative Law Judge, the Benefits Review Board, or a court, under this subpart shall be reviewed under § 727.108 and in accordance with the provisions of this part on a priority basis. Such claim shall be reviewed by the Deputy Commissioner before any other claim except for a claim remanded at an earlier date under this subpart. If no additional evidence is submitted or required with respect to a claim remanded under this subpart, the Deputy Commissioner shall make initial findings (see § 725.410 of this subchapter) on the claim within no more than 60 days from the date on which the claim was remanded.

(b) If a claim is not required to be returned to the Deputy Commissioner for review in accordance with this subpart, and no such review is ordered, or requested by the claimant, such claimant shall be ocnsidered to have waived his or her right to review under this part.

Signed this 18th day of April 1978 at Washington, D.C.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-11088 Filed 4-24-78; 8:45 am]

Federal Register

TUESDAY, APRIL 25, 1978
PART V

ENVIRONMENTAL PROTECTION AGENCY

■

PESTICIDE CHEMICALS

Manufacturing Point Source Category

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

[FRL 887-6]

PART 455—PESTICIDE CHEMICALS

Manufacturing Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: These regulations limit the discharge of pollutants into navigable waters from existing manufacturers of organic pesticide chemicals, manufacturers of metallo-organic pesticide chemicals and formulators and packagers of all pesticide chemicals. These regulations are issued under the Federal Water Pollution Control Act as amended. The effluent limitations set forth herein will be incorporated in National Pollutant Discharge Elimination System (NPDES) permits issued by the Federal EPA or by States with approved programs. The effect of these regulations will be to require treatment of waste waters discharged from the above types of operations in the Pesticide Chemicals Manufacturing Point Source Category.

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT:

George M. Jett, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-426-2497.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1976 (41 FR 48088), the EPA promulgated interim final effluent limitations guidelines based on the application of the best practicable control technology currently available (BPT) for the Pesticide Chemicals Manufacturing Point Source Category (40 CFR 455). The final regulations set forth below amend the November 1, 1976, interim final regulations, and will be applicable to existing point sources in the organic pesticide chemicals manufacturing subcategory (Subpart A), the metallo-organic pesticide chemicals manufacturing subcategory (Subpart B), and the pesticide chemicals formulating and packaging subcategory (Subpart C). These regulations include changes and clarifications which reflect comments received on the earlier rulemaking as well as the gathering and evaluation of additional data by the Agency.

The Agency is not now promulgating effluent limitations based on the application of the best available technology economically achievable (BAT) or new source performance standards (NSPS) or pretreatment standards for new or existing sources. The Agency is under court order (Natural Resources Defenses Council, Inc. et. al. v. Train, 8 ERC 2120, D.D.C. 1976) to propose those regulations by June 30, 1979 and to promulgate those regulations by December 31, 1979.

Legal Authority

These regulations are promulgated pursuant to sections 301(b)(1)(A) and 304(b) of the Federal Water Pollution Control Act as amended (33 U.S.C. 1311(b)(1)(A), 1314(b); 86 Stat. 816 et seq.) (the Act). Section 301(b)(1)(A) requires the attainment by industrial point sources of effluent limitations based on the application of the best practicable control technology currently available (BPT) by July 1, 1977. Section 304(b)(1) provides for the promulgation of guidelines for such effluent limitations and specifies the factors to be taken into account in assessing BPT in compliance with section 301(b)(1)(A).

Summary and Basis of Regulations

Effluent limitations are established in these regulations for biochemical oxygen demand (BOD5 "day"), chemical oxygen demand (COD), total suspended solids (TSS), pesticide chemicals and pH. The regulations govern discharges of process waste water pollutants by existing sources in all subcategories of the pesticide chemicals manufacturing point source category as identified in the applicability portion of the regulations. Stormwater which is segregated from process waste water is not covered by these regulations.

The best practicable control technology currently available for controlling the discharge of process waste water pollutants includes the prevention of the pesticide introduction into waste waters, removal of the pesticides chemicals in waste waters by hydrolysis systems or sorption onto materials such as activated carbon, flow equalization and biological treatment for the organic pesticide chemicals manufacturing subcategory (Subpart A); recovery and recycle and conversion to insoluble materials with approved land disposal for the metallo-organic pesticide chemicals manufacturing subcategory (Subpart B); evaporation and/or approved land disposal for the pesticide chemicals formulating and packaging subcategory (Subpart C). In nearly all cases recovery and recycle will be applicable for Subpart C. Many formulating and packaging operations are dry processes or non-aqueous solvent processes and generate no process waste water.

The methods and analysis for BOD5, COD, TSS, and pH shall conform to the methods specified in "Guidelines Establishing Test Procedures for the Analysis of Pollutants", 40 CFR Part 136 (41 FR 52780, December 1, 1976). Analytical methods for pesticide chemicals covered by these regulations can be obtained from Dr. James Lichtenburg, Chief, Organic Analysis Group, U.S. EPA, Environmental Monitoring and Support Laboratory, 26 St. Clair Street, Cincinnati, Ohio 45268.

Additional waste water pollutants that may be present at significant levels are ammonia and phenol, which either originate in feed stocks or are generated in the synthesis of intermediates which are not subject to these regulations. It is recommended that these pollutants be regulated on a case-by-case basis, since they do not appear in the waste streams of all manufacturers. Ammonia can be removed by a well-operated stripping unit to levels of less than 50 mg/l. Phenol can be removed to 1 mg/l by carbon sorption or biological treatment that has been adequately acclimated to the specific wastes. The economic effects of installing these technologies, however, has not been analyzed by the Agency.

A report entitled "Development Document for Interim Final Effluent Limitations Guidelines for the Pesticide Chemicals Manufacturing Point Source Category" was issued shortly after the interim final BPT regulations were published on November 1, 1976. A supplementary report on the possible economic effects of the regulations was also issued. Comments on both reports were solicited by the Agency.

The Agency evaluated the public comments and collected and analyzed additional data. A report entitled "Development Document for Final Effluent Limitations Guidelines for the Pesticide Chemicals Manufacturing Point Source Category" details the analyses undertaken in support of the final regulations. Another report entitled "Economic Analysis of Effluent Limitations Guidelines for the Pesticide Chemicals Manufacturing Point Source Category" details the economic analysis undertaken in support of these final regulations. Copies of both reports are available for inspection at the EPA Public Information Reference Unit, Room 2922 (EPA Library), Waterside Mall, 401 M Street SW., Washington, D.C. 20460, at all EPA regional offices, and at State water pollution control offices. Additional copies of both the economic and technical documents will be available through the National Technical Information Service, Springfield, Va. 22151.

The technical and economic analyses undertaken in support of these regulations are discussed further in Appen-

dix A to this preamble. Significant changes from the interim final regulations are discussed below under the heading: "Summary of Major Changes".

Summary of Public Participation

At the time that interim final regulations were issued, public comments on the regulations were solicited. A summary of public participation in this rulemaking, the public comments, and the Agency's consideration and response to these comments are contained in Appendix B to this preamble.

Summary of Major Changes

As a result of the comments and evaluation from additional data, a number of changes have been made from the interim final regulations.

One major change is the consolidation of the halogenated organic, organo-phosphorus, and organo-nitrogen subcategories into a single subcategory, designated as the organic pesticide chemicals manufacturing subcategory (Subpart A). On promulgating the interim final regulations, the Agency recognized certain ambiguities were present in its subcategorization based on chemical structure. Many pesticides contain more than one functional group, such as halogens, phosphorus, sulfur, nitrogen, etc., and do not fit the former subcategorization scheme. Such compounds could not be readily assigned to particular subcategories.

In order to resolve these ambiguities and in response to industry comments, the Agency thoroughly reexamined the data to determine whether there were reasons to provide different effluent limitations on the basis of chemical structure and other potential differences among plants. The Agency obtained additional raw waste load and treatability data, and additional pilot plant and laboratory data from both manufacturers and the research and development activities of the Agency. The Agency also visited and inspected all plants which installed carbon sorption treatment systems, studied hydrolysis reactions, and prepared an in depth literature review.

Review of raw waste load characteristics in the expanded data base revealed no consistent pattern between or within family groupings that would provide a basis for subcategorization. Differences in raw waste load affected the cost and often the type of treatment system found to be most effective for a specific plant. However, the quantities of pollutants in the effluents of those plants with the properly operated model technologies installed were similar regardless of the organic pesticide chemicals manufactured. The Agency has therefore concluded that the waste waters of all organic pesticide chemicals can be treated or controlled to the levels documented in the Agency's data base. Thus, the final regulations do not differentiate among halogenated organic, organo-phosphorus, or organo-nitrogen pesticide chemicals. Distinct subcategories for the manufacture of metallo-organic pesticide chemicals and formulating and packaging of pesticide chemicals are retained.

Major changes were also made in the statistical methods used to determine variability factors. Several commenters suggested that nonparametric or distribution free methods be used to dervive these factors. The variability factors express the relationship between the average discharge levels or performance of the treatment systems and the maximum allowable discharge levels. Goodness-of-fit tests failed to justify the universal use of the normal, two parameter lognormal, or three parameter lognormal distributions. Therefore, nonparametric methods were used.

The Agency used a weighted averaging method to determine the overall long term averages and variability factors. This insured that the contribution of a particular plant to the overall average is in proportion to the number of observations available from that plant. Detailed discussions of this method can be found in the Development Document.

Another major change relates to the design and costing of the pesticide treatment model (carbon sorption and hydrolysis). The interim final Development Document presented a single treatment model for both low and high flow ranges. In the final Development Document the Agency presents four treatment models, each appropriate for one of four flow ranges observed in the industrial survey. Construction and operating costs have increased because of recomputation on the basis of July 1977 dollars. The Engineering News Record Index was used as the source of cost data. Since the actual treated flows determined in the industrial survey were lower than those utilized in the interim final regulations, the overall treatment cost per plant has been reduced.

In addition, the Agency presents three flow ranges for the biological treatment model instead of the two presented in the interim final Development Document. These three sizes are representative of the ranges observed in the industrial survey. These costs have also been adjusted to July 1977 dollars.

These changes have been included to present more realistic models and costs depicting the actual flows experienced in the industry. It is expected that each plant will do a complete treatability study on its particular waste before installing any treatment system.

Another change from the interim final regulations is the deletion of the phenol and ammonia limitations. The Agency understands that these pollutants are usually generated from the manufacture of intermediates which are not covered by these regulations. Furthermore, these pollutants are not present in the effluent of all point source dischargers. It is recommended that these pollutants be controlled on a case-by-case basis when issuing NPDES (National Pollutant Discharge Elimination System) permits. Guidance for control of these pollutants is found in the "Summary and Basis of Regulations".

Another change from the interim final regulations is the exclusion of asymmetrical triazines as well as symmetrical triazines. The inclusion of asymmetrical triazines in the interim final regulations was an oversight on the part of the Agency. The Agency intends to publish triazine effluent limitations guidelines in the future.

Another change from the November 1, 1976, regulations is the elimination of the use of COD/BOD ratios to predict effluent discharge levels. This technique was utilized, as pointed out in the interim final Development Document, because of the lack of data available from the industry. Since the publication of the interim final regulations, the Agency has collected additional data and information. In some cases, as much as an additional year's data have been collected. Three plants have started up biological treatment systems and several other plants have supplied additional data from existing biological treatment systems. As a result, the final limitations for BOD5 and COD are based on effluent levels of BOD5 and COD actually being achieved by operating pesticide plants.

From an expanded data base the Agency has revised the effluent limitations guidelines for the organic pesticide chemicals manufacturing subcategory (Subpart A). The discharge levels for the metallo-organic pesticide chemicals manufacturing subcategory (Subpart B) and the formulating and packaging subcategory (Subpart C) are unchanged from the interim final regulations and remain promulgated as no discharge of process waste water pollutants.

Economic Analysis

Seven of the pesticide chemicals manufacturing plants that this regulation covers may need to install additional treatment equipment to achieve the effluent limitations. The incremental annual cost of compliance as a percentage of revenues from pesticide chemicals range from 0.2 percent to 2.0 percent for five plants. These costs will increase prices slightly and be partly absorbed by the companies. Employment and production are not ex-

pected to change due to the relatively low level of the costs.

One other plant is expected to have annual treatment costs of 3.6 percent of their annual pesticide chemicals revenues. An accurate estimate of sales revenues cannot be made for the seventh plant. This is a very small plant dedicated almost solely to the production of pesticide chemicals. This plant had temporarily ceased production of organic pesticides in May 1977, and started construction work to improve its treatment system. The additional treatment that is under construction along with the installation of a carbon sorption unit is expected to achieve the BPT limitations. While profitability of the latter two plants could be noticeably reduced, it is expected that they will continue pesticide chemicals production. The total capital expenditures for the seven manufacturers are estimated to be $9.9 million, with total annual costs of $5.1 million.

Two additional plants may also require the installation of additional treatment equipment, but the Agency has not been able to obtain adequate data from these plants to assess the economic impact of these regulations.

Agency surveys of over 100 formulators and/or packagers did not find any formulators that discharge process waste water. Therefore the Agency expects that the aggregate economic impact on this subcategory will be very small.

The Environmental Protection Agency has determined that these regulations are not a major proposal requiring preparation of an economic impact analysis as defined by Executive Orders 11821 and 11949 and OMB Circular A-107. However, the study that has been performed meets all the requirements for economic impact analyses.

Small Business Administration Loans

Section 8 of the Act authorizes the Small Business Administration, through its economic disaster loan program, to make loans to assist any small business concerns in affecting additions to or alterations in their equipment, facilities, or methods of operation so as to meet water pollution control requirements under the Act, if the plant is likely to suffer a substantial economic injury without such assistance. For further details on this Federal loan program write to EPA, Office of Analysis and Evaluation, WH-586, 401 M Street SW., Washington, D.C. 20460.

In consideration of the foregoing, 40 CFR Part 455 is hereby amended as set forth below.

Dated: April 7, 1978.

Douglas M. Costle,
Administrator.

Appendix A—Technical Summary and Basis for Regulations

(1) General methodology.

These regulations set forth the Agency's final BPT effluent limitations guidelines for the Pesticide Chemicals Manufacturing Point Source Category. The methodology used to develop these regulations is similar to that used in the development of the interim final regulations published November 1, 1976. Since that time, the Agency has gathered additional data from EPA permit applications, EPA sampling and inspections, consultant reports, industry submissions and research and development activities of the Agency. These data were evaluated to develop these regulations.

The industry was further studied to determine whether differences in raw material used, product produced, manufacturing process employed, age and size of plant, waste water constituents or other factors required development of separate limitations guidelines for different segments of the point source category. The raw waste characteristics were identified. This included an analysis of the source, flow and volume of water used in the process employed, the sources of waste and waste waters in the operation and the constituents of all waste waters. The constituents of the waste waters which should be subject to effluent limitations guidelines were identified.

The existing control and treatment technologies currently used in this industry were examined. This included an identification of each control and treatment technology, including both in-plant and end-of-process technologies. The examination included an identification of chemical, physical, and biological characteristics of pollutants, and the effluent levels resulting from the application of each of the examined technologies. A complete and thorough statistical analysis was performed on the treated waste data. The nonwater quality environmental impacts, as well as the environmental benefits which will accrue as a result of these regulations, were also considered.

The information outlined above was then evaluated in order to determine what levels of technology constitute the best practicable control technology currently available (BPT). In identifying such technologies, various factors were considered. These included the total cost of application of the technology in relation to the effluent reduction benefits to be achieved from such application, the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, nonwater quality environmental impact (including energy requirements) and other factors.

It should be emphasized that the Agency intends to issue additional regulations for this industry. These additional regulations may include advanced technologies and in-process controls which would result in substantial further reduction in pollutants discharged by plants within this industry. Additional compounds which may be subject to future regulations include triazines, glyphosate, and zinc, manganese, tin and iron metallo-organic pesticide chemicals.

(2) Summary of conclusions with respect to the Pesticides Chemicals Manufacturing Point Source Category.

(i) Subcategorization.

There are 29 known manufacturing point source dischargers, twenty-five of which are covered by these regulations. The remaining four do not make any pesticide chemicals that are covered by these regulations. The industrial profile is presented in the Development Document.

For the purpose of establishing effluent limitations guidelines, the pesticide chemicals manufacturing point source category has been divided into three subcategories: the organic pesticide chemicals manufacturing subcategory (Subpart A), the metallo-organic pesticide chemicals manufacturing subcategory (Subpart B), and the pesticide chemicals formulating and packaging subcategory (Subpart C). Factors such as type of product, raw waste loads, water requirements, type of manufacturing processing, and treatability of waste waters, were used to establish effluent limitations guidelines for each of the specific subcategories. In general, the most significant contributing factors were manufacturing operations and treatability of waste water based on production volume and specific waste treatment requirements. These cubcategories reflect similarities and differences in the character, the volume, and the treatability of waste water streams due to manufacturing process variables.

(ii) Waste characteristics.

The significant waste water pollutants and pollutant properties resulting from pesticide chemicals manufacturing were found to be pH, total suspended solids, BOD5, COD, metals, and pesticide chemicals. Phenol and ammonia are sometimes present in significant quantities in the discharges from certain plants.

(iii) Origin of waste water pollutants.

Sources of waste water pollutants from pesticide chemicals manufacturing include aqueous wastes from reactors, filtration systems, decanting sys-

tems, distillation, vacuum exhaust scrubbers, stripping systems, caustic scrubbers, process equipment cleanouts, production area washdowns, refining area washdowns, formulation equipment cleanup, and spill washdowns.

Effluent limitations guidelines for the pesticide chemicals manufacturing category apply to waste waters from process operations. Process waste water pollutants generally were found to be proportional to the level of production. It was therefore possible to establish effluent limitations guidelines on the basis of production.

(iv) Treatment and control technology.

Waste water treatment and control technologies have been studied for this industry to determine what is the best practicable control technology currently available.

Treatment models are described below which will attain the required effluent levels. These models do not preclude the selection of other waste water treatment alternatives which provide equivalent or better levels of treatment. The models are also used for the purpose of calculating costs to attain the limitations for those plants not currently at the level of the limitations.

BPT Technology Level—End-of-Pipe Treatment Model

Subcategory 1 (Subpart A) Pesticide contaminated waste waters are pretreated via gravity separation and hydrolysis or filtration and activated carbon. Incineration of concentrated waste waters is recommended. Dilute process waste water, pretreated waste water and incinerator scrubber effluent are equalized, neutralized, biologically treated, and clarified.

Subcategory 2 (Subpart B) There shall be no discharge of process waste water pollutants. Eight of the nine producers have no discharge. Existing in-plant waste water handling procedures such as recycle are acceptable and already attain no discharge.

Subcategory 3 (Subpart C) There shall be no discharge of process waste water pollutants. Existing evaporation systems and/or approved land disposal systems can handle the minimal wastes produced by these operations. the most common practice in this subcategory is recovery and recycle of waste waters, although a large portion of the subcategory uses dry processes.

Treatment methods such as incineration, carbon sorption, hydrolysis or similar processes are commonly used for the treatment of highly concentrated and difficult to treat wastes. The manufacturer is expected to determine the most economical alternatives for in-process controls and end-of-process treatment which will meet the limitations required. It should be noted that these in-process controls are commonly practiced by plants in the industry.

If thermal decomposition of waste waters is the treatment choice, provisions must be made to ensure against entry of hazardous pollutants into the atmosphere. Consideration should also be given to recovery of materials of value in the wastes.

The application of the model treatment technologies ultimately requires disposal of the pollutants removed from waste waters in the form of solid wastes and liquid concentrates. For those waste materials considered to be relatively non-hazardous and where land disposal is the choice of treatment, proper sanitary landfill technology must be followed. Some of these waste constituents are hazardous and may require special consideration in order to ensure long-term protection of the environment. All landfill sites where such hazardous wastes are disposed should be selected so as to prevent migration of contaminants to ground or surface waters. In cases where geologic conditions may not reasonably assure this, adequate mechanical precautions (i.e., impervious liners) should be taken to ensure long-term protection of the environment from hazardous materials.

Information received during this investigation indicates that greater than 90 percent of certain organic pesticide chemicals that are reportedly treated in activated sludge plants are removed by sorption by the sludge. There are indications that some of the pesticide chemicals are not substantially biooxidized and are released back to the treatment plant in the supernatant liquid from sludge digestors. This may give rise to pesticide chemical buildup and subsequent treatment plant failure if adequate pretreatment is not in service.

In-process control is a significant pollution abatement technique in this industry. Practices such as prevention and containment of spills and leaks, segregation of waste streams, monitoring of process waste water, water conservation and reuse, waste water equalization, good housekeeping, and equipment maintenance may be necessary to eliminate or reduce the volume of process waste water requiring treatment.

(v) Statistics.

Nonparametric or distribution free statistical methods were used to determine the daily maximum and 30 day maximum variability factors. Variability factors express the relationship between the average performance of the process and the maximum allowable discharge level. The methods are distribution free in the sense that a particular distribution is not assumed for the population of daily discharge measurements. Goodness-of-fit tests failed to justify the universal use of the normal, two parameter lognormal or three parameter lognormal distributions. Therefore, nonparametric methods were adopted.

The daily maximum variability factor for a pollutant from a particular plant is defined as the ratio of the nonparametric estimate of the 99th percentile value to the estimate of the mean. The estimates of the 99th percentile were chosen to have the probability of at least 0.50 of being greater than the actual 99th percentile and are referred to as 50 percent tolerance level estimates for the 99th percentile. An estimate selected according to this criterion from a certain number of observations, say n, is interpreted as the value below which 99 percent of the values of a future sample of size n will fall with probability of 0.50. The arithmetic average of the daily discharge measurements was used to estimate the mean of the daily discharge distribution.

The 30 day maximum variability factors were derived on the statistical theory which holds that the distribution of the mean of a sample drawn from a population distributed according to any one of a large class of different distributional forms will be approximately normally distributed. This approach is distribution free in the sense that no restrictive assumption is made regarding the form of the population distribution and is therefore consistent with the method used to derive the daily maximum variability factors. The 30 day maximum factor is defined as the estimate of the 99th percentile of the distribution of the mean of a sample of size 30 drawn from the population of daily discharge measurements divided by the average daily discharge.

The Agency used a weighted averaging method to determine overall averages of the long term values and variability factors. This insures that the contribution of a particular plant to the overall average is in proportion to the number of observations available at the plant. For example, if one plant supplied 455 measurements for which the variability factor was 3.4 and another plant supplied 122 measurements for which the variability factor was 2.5 the average would be calculated as follows:

$$(3.4)(455)+(2.5)(122)/455+122=3.2$$

A detailed discussion of this procedure can be found in Section IX of the Development Document.

(vi) Cost estimates for control of waste water pollutants.

Capital and annual costs were computed for each subcategory on the basis of the cost per 1,000 pounds of production. Due to the complexity and degree of integration in this industry some simplifying assumptions were

made in order to determine costs on a product-by-product basis. These assumptions, which result in conservative (larger than expected) cost estimates, were that:

(1) each facility in a subcategory is a discrete plant whose process waste water is treated in a single end-of-process waste treatment system,

(2) all waste waters are treated by the end-of-process treatment system regardless of the existence of less expensive and more efficient alternate disposal techniques and in-process changes which may be made, and

(3) the effluent discharged is relatively independent of the product manufactured within a subcategory.

Cost information was obtained directly from industry, from engineering firms, equipment suppliers, government sources, and available literature. Costs are based on actual industrial installations or engineering estimates for projected facilities as supplied by contributing companies. In the absence of such information, cost estimates have been developed from either plant-supplied costs for similar waste treatment installations at plants making other similar chemicals or general cost estimates for treatment technology. The cost for each plant not currently meeting these regulations is presented in the Development Document. These costs are presented on a plant-by-plant basis.

(vii) Potential benefits to be achieved.

It is estimated that the volume of waste waters which results from operations within this category amount to 19 billion gallons each year. The point sources in this category discharge a variety of pollutants which can seriously degrade water quality and may pose serious health problems. Besides discharging materials which reduce the oxygen in receiving waters, substances such as phenols, phosphates, oil and grease, and pesticide chemicals are released.

Pesticide chemicals by definition are designed to kill or repel "target organisms". It has been found, however, that some pesticide chemicals are toxic to plants and animals other than those for which they are intended. In recent years, research and unfortunate environmental catastrophes have demonstrated that some pesticide chemicals can cause serious environmental and human health problems. Research has also disclosed that some of these pesticide chemicals degrade very slowly and have affinity for concentration in oil and fat, including animal tissues. Pesticide chemicals have been found in meat and milk sold for human consumption, as well as in mothers' milk. Tests performed with mice, rats, and other animals have shown that some pesticide chemicals can induce tumors, cause birth defects and other reproductive abnormalities, affect genetic makeup, and cause neurological and behavioral disorders.

A significant amount of pesticide chemical pollution entering the nation's waterways results from runoff from agricultural areas. These are non-point source discharges and are not subject to these effluent limitations guidelines, which cover only the point source dischargers. While these regulations obviously will not avoid the environmental degradation which was already resulted from Endrin, Kepone, Aldrin/Dieldrin, DDT, Toxaphene, and other widely publicized pesticide chemicals pollution examples, it will limit significant point source discharges of pesticides. It may well avoid recurrences of the more infamous pollution episodes, such as the Kepone contamination in the Chesapeake Bay. It will certainly reduce the day-to-day release into the aquatic environment of man-made chemicals.

(viii) Energy requirements and nonwater quality environmental impacts.

The major nonwater quality consideration which may result from implementation of the regulations is the means of sludge and concentrated waste disposal. As the process raw waste load is reduced in volume, alternative disposal techniques become more attractive. The principles set forth in the EPA's "Guidelines for Land Disposal of Solid Wastes," 40 CFR Part 241, may be used as guidance for acceptable land disposal techniques. In addition, pursuant to the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, the Agency intends to propose rules which will regulate the transportation and the treatment, storage, and disposal of hazardous wastes. Regulations will be proposed for appropriate solid waste management. Concentrated solid wastes resulting from the manufacture of pesticide chemicals will be subject to those regulations when they become effective. In addition, the Agency has proposed regulations pursuant to the Safe Drinking Water Act, Pub. L. 93-523, governing State underground injection control programs (41 FR 36730, August 31, 1976). These regulations constitute minimum criteria for effective State programs for control of underground injection practices.

Incineration is a viable treatment for some waste streams. Associated air pollution and the need for auxiliary fuel, depending on the heating value of the waste, are considerations which must be evaluated on an individual basis.

Other nonwater quality aspects, such as noise levels, will not be perceptibly affected. Equipment associated with in-process or end-of-pipe control systems is similar to process equipment and would not add significantly to noise levels.

Energy requirements associated with treatment and control technologies in the waste water treatment model are small compared to the total energy requirements for plants in this category.

(ix) Economic and inflationary impact analysis.

The Agency has evaluated the economic effects of these regulations in terms of plant-level economic effects such as price increases, curtailments in production, and plant closures, as well as in terms of the aggregate effects of the regulations. These aggregate effects include the total additional capital requirements and total annual costs. Annual costs include operating and maintenance costs, the cost of capital, and depreciation. All dollar values are stated in July 1977 levels.

Pesticide chemicals manufacturers are primarily a part of the organic chemicals industry. Pesticide chemicals are not a homogeneous product like bulk chemicals, however, but compete among each other for a variety of crop-pest applications. There are 133 plants owned by 82 companies that produce about 1,500 registered pesticides. Formulators and packagers remix and package the chemicals before final consumption. There are approximately 5,300 formulators and packagers. The number of manufacturers and formulators that are expected to incur additional costs, is expected to be small.

Seven plants that manufacture pesticides and discharge to navigable waters may need to install additional treatment equipment to achieve these limitations. The Agency does not know whether or not two other pesticide manufacturing plants would require additional treatment, since the plants have not adequately responded to the Agency's questions. Agency surveys found none of the 100 formulators and packagers that were contacted had a discharge of process waste water. Since no formulators and packagers were uncovered that would be affected by the regulations, the aggregate economic impact is expected to be very small.

The estimated incremental annual costs as a percentage of sales revenues from pesticide chemicals range from 0.2 to 2.0 percent for five plants manufacturing pesticides. These costs will be partly passed on in the form of higher prices and partly absorbed by the corporations, but due to the small magnitude of the changes, no noticeable decreases in production or employment are expected.

The sixth plant has a somewhat higher relative cost in that the annual treatment costs are 3.6 percent of pesticide chemical revenues. This plant is likely to experience a drop in profitability if price increases cannot be easily passed on to the customers. It is not expected that this decline in prof-

its would be so great as to cause the plant to discontinue pesticide chemical production. No plant closures are anticipated by implementation of these regulations.

For the seventh plant an accurate estimate of sales revenues cannot be made. It is a very small plant dedicated almost solely to the production of pesticide chemicals. This plant had temporarily ceased production of organic pesticides in May 1977, and started construction work to improve its treatment system. The additional treatment that is under construction is expected to achieve these limitations. Most of the costs are expected to be absorbed by the company, and the plant will operate at the same production and employment levels as before its temporary shutdown.

The aggregate impacts, such as the demand for capital and the increases in overall costs of using pesticides, are fairly small due to the small number of plants that need to install additional treatment equipment. The total capital expenditures for the seven manufacturers is estimated to be $9.9 million. Sales of pesticide chemicals in 1975 were over $2.16 billion (manufacturers' value), so the increase in annual costs of $5.1 million is less than 0.25 percent of these sales.

Executive Order 11821 (November 27, 1974) as amended by Executive Order 11949 and implemented by OMB Circular A-107 requires that major proposals for legislation and promulgation of regulations and rules by agencies of the Executive Branch be accompanied by a statement certifying that the inflationary impact of the proposal has been evaluated. The Administrator has directed that all regulatory actions that are likely to result in (1) annualized costs of more than $100 million, (2) additional costs of production more than 5 percent of the selling price, (3) an energy consumption increase equivalent to 25,000 barrels of oil per day, or (4) an increase in demand or decrease in supply by more than 3 percent for certain essential products, will require a certified economic impact analysis. The limits in these criteria have not been exceeded, but the study that has been performed meets all the requirements for an economic impact analysis.

Appendix B—Summary of Public Participation

After the November 1, 1976 publication in the Federal Register of the interim final regulations for the pesticide chemicals manufacturing point source category, the Agency supplied the interim final Development Document to the industry, government agencies and the public sector for comments.

The following organizations responded with comments: American Cyanamid; BASF Wyandotte Corp.; Centec Consultants, Inc.; Chemagro Agriculture Division, Mobay Chemical Corp.; Ciba-Geigy Corp.; Diamond Shamrock Corp.; Dow Chemical Co.; E. I. du Pont de Nemours & Co., Inc.; FMC Corp.; Florida Agricultural Research Institute; 3M Co.; Monsanto Co.; M & T Chemicals, Inc.; National Agricultural Chemicals Association; Olin Corp.; Ohio State University; Reichhold Chemical, Inc.; Rohm and Haas Co.; Shell Oil Co.; Stauffer Chemical Co.; Thompson-Hayward Chemical Co.; Union Carbide Corp.; Velsicol Chemical Corp.; Vulcan Materials Co.; U.S. Department of Agriculture; and U.S. Department of Commerce.

The primary issues raised by commenters with respect to the interim final effluent limitations guidelines and the responses to these comments are as follows:

(1) Some commenters stated that the regulations for pesticides and phenol require control at levels less than current analytical capabilities. Others noted that EPA approved analytical methods do not exist for all pesticides and questioned whether EPA had examined the analytical techniques utilized by industry in developing the data which it submitted.

The limitations for pesticide chemicals in units of mass (or weight) per unit of production have been derived from analytical data supplied by manufacturers which are currently detecting pesticide chemicals levels at concentrations less than those required by these regulations. The analytical procedures utilized by each manufacturer were solicited by EPA and evaluated by the Environmental Monitoring and Support Laboratory in Cincinnati. The data utilized in establishing these limitations were derived from analytical methods which, in the opinion of the Cincinnati Laboratory, "appear capable of measuring the compound with adequate sensitivity." While analytical methods for all pesticide active ingredients have as yet neither been approved pursuant to section 304(g) of the Act nor published at 40 CFR Part 136, the Agency has determined that there are analytical methods with sufficient detection limits for all regulated active ingredients. Analytical methods for pesticide active ingredients may be obtained from the Environmental Monitoring and Support Laboratory. Phenol is not limited by these regulations.

The Agency recognizes that there may be instances where plants combine small volumes of pesticide chemicals wastes with large volumes of non-pesticide wastes prior to biological treatment. In these cases, analytical capabilities may be exceeded due to dilution of the pesticide wastes. Although pesticides can be detected prior to dilution, they may not be detectable in the treated effluent. If an NPDES permit requires monitoring of the treated discharge, current analytical methods may not detect pesticide chemicals and no permit violation would therefore be documented.

The Agency suggests that any plants which might encounter this situation should examine whether commingling of pesticide and non-pesticide streams serves a useful purpose. If pesticide chemicals do not experience additional removal as a result of commingling of pesticide and non-pesticide streams, these practices may not be beneficial and may even be detrimental to the treatment of the non-pesticide streams. To insure against permit violations which may become detectable in the future, these plants may wish to monitor pesticide streams immediately after the pesticide removal treatment unit and prior to biological treatment.

(2) One commenter stated that the ammonia found in pesticide waste water was generated primarily from production of intermediates and therefore should be excluded from these regulations since only the production of active ingredient is covered.

For this reason the Agency has removed ammonia from coverage by these regulations. Raw waste levels up to 15,000 mg/l ammonia exist at certain pesticide chemicals facilities. This parameter, however, should be controlled on a case-by-case basis. Steam stripping of specific waste streams can be expected to maintain ammonia effluent levels at less than 50 mg/l.

(3) Several commenters stated that "zero discharge" for formulators/packagers (Subpart C) is unjustified for the following reasons: (a) because EPA's survey was not representative; (b) because process waste water, leaks, spills, and surface area runoff all require disposal; (c) because the model technology ultimately requires disposal of pesticide contaminated sludge; (d) because it does not allow discharge into treatment facilities shared jointly with manufacturing operations; and (e) because there is no justification for "zero discharge" if the level of pesticide chemicals in the discharge is below surface water criteria for public water supplies or below levels which may remain on food products.

The Agency has determined that a substantial number of formulators/packagers currently practice no discharge of waste water pollutants via dry clean-up, recycle, reuse, evaporation, suitable solid waste disposal, or because no waste water is generated. The Agency randomly selected 75 formulating and packaging facilities registered under the Federal Insecticide, Fungicide and Rodenticide Act. Forty-four of these facilities were currently in operation and all were achieving no discharge of process waste waters. In

addition, one major company with 38 formulation facilities of varying size and processes (wet, dry, and solvent) achieved no discharge of process waste waters over a 13 state area through dry processing, land disposal and evaporation. Also, a majority of facilities manufacturing and formulating reported no discharge of process waste waters from formulation operations. A majority of formulators/packagers surveyed by the National Agricultural Chemical Association achieved no discharge of process waste waters.

The no discharge of process waste waters limit for formulators/packagers applies to contaminated wastes from formulating, loading and unloading, and storage areas. Leaks and spills can be avoided by use of good housekeeping practices. Cleanup waste can be disposed of at suitable land fill operations or by evaporation. The no discharge of process waste waters requirement also applies to surface area runoff which is commingled with process waste water, but does not apply to other surface area runoff.

Disposal of pesticide contaminated sludge must be accomplished in an environmentally acceptable manner such as disposal to a specifically designated landfill engineered to prevent pollution to surface or subsurface waters.

The Agency does not intend to restrict integrated manufacturing/formulation facilities from utilizing common treatment. In such cases, however, no credit will be given for that portion of the effluent attributable to formulating or packaging.

The no discharge of process waste waters requirement is justified regardless of surface water criteria or levels which are allowed to remain on food products. The Act requires the limitations to be technology based and the no discharge goal for pollutants is not conditioned on surface water criteria or other considerations.

(4) One commenter stated that the "zero discharge" limit is unattainable for the manufacturers of metallo-organic pesticide chemicals.

Available data demonstrate that "zero discharge" is currently being achieved at 2 arsenic-based, 3 mercury-based, and 3 copper-based metallo-organic pesticide chemical facilities. In several cases no waste water was generated; in others, a low flow was evaporated or contract hauled. Storm water runoff from a metallo-organic facility, if segregated from any process waste waters, is not covered by these regulations.

(5) Three commenters recommended a separate subcategory for pesticides with low toxicity.

The Act requires that limitations be based upon the availability of technology for the reduction or elimination of pollutants. They are not based upon the toxicity of those pollutants. Relatively low toxicity does not justify discharges in greater amounts than achievable through application of the best practicable control technology currently available.

(6) Two commenters recommended that specific limits be placed on each individual active ingredient.

There are over 600 individual pesticides of commercial importance and perhaps as many as 34,000 distinct major formulated products. Not only would the development of specific limits for each active ingredient be administratively impossible, it would also be contrary to the intent of Congress. In an industry where patent rights often restrict production to one manufacturer, that manufacturer's currently treated effluent would represent BPT and no further pollution reduction could be required. The Agency has compared effluent levels being achieved in the manufacture of different pesticide chemicals and has documented treatment processes which are effective for many different types of pesticides.

(7) Several commenters objected to subcategorization based on chemical structure alone, stating that reactants used, reaction media, number of unit operations, degree of purification, treatability, and variability must all be considered.

The November 1, 1976, interim final regulations provided distinct subcategories for manufacturers of halogenated organic, organo-phosphorus and organo-nitrogen compounds. The above commenters and others suggested further subcategorization on the basis of the above factors and others.

The purpose of subcategorization is not to account for all differences among plants, but only to account for those differences which affect a plant's ability to achieve particular discharge levels. Since the publication of the interim final regulations, the Agency has thoroughly re-examined the pesticide manufacturing industry to determine whether there are reasons to provide different effluent limitations guidelines on the basis of alleged differences among plants. The Agency submitted additional questionnaires to all manufacturers and obtained information on additional bench scale studies, raw waste load data, and performance data. In some cases, an additional year's data were obtained. The Agency also did a thorough literature study and conducted additional pilot plant treatability studies. In addition, the Agency visited all plants with carbon sorption technology in place and conducted a survey of hydrolysis technology. The Agency compared raw waste load and treated effluent data from all types of pesticide manufacturing. Waste water characteristics were plotted versus chemical grouping in order to determine what relationship, if any, existed.

There was no apparent relationship which held uniformly. The raw waste loads among the studied plants did not appear to correlate with the former halogenated-organic, organo-phosphorus, or organo-nitrogen categories, or with any other criteria. Differences in raw waste load do affect cost and type of treatment used, but not treatability. The effluents achieved by those plants with the model treatment technologies installed and properly operated were similar despite the pesticide grouping manufactured or other factors hypothesized. some plants which manufacture halogenated organic, organo-phosphorus and organo-nitrogen pesticides use the same treatment technology. Pilot plant treatability studies have shown that certain organo-phosphorus compounds currently being removed by hydrolysis can also be removed by carbon sorption to the same effluent levels. Likewise, certain halogenated organic and organo-nitrogen compounds can be equally well treated by hydrolysis or carbon sorption. The choice of treatment thus becomes a matter of economics.

On the basis of the foregoing reexamination, the Agency has concluded that there is no basis for distinguishing between manufacturers of halogenated organic, organo-phosphorus, or organo-nitrogen pesticides. Adequate treatment of pesticide chemicals generally requires some type of pesticide removal (carbon sorption, hydrolysis, clay adsorption, lime precipitation, chemical oxidation, etc.) followed by good equalization and biological treatment. While some pesticides may be more difficult to remove than others, these differences affect the type, amount, and cost of pesticide removal but do not affect the treatability of the pesticide chemicals to an extent that would preclude attaining the required effluent levels. Differences in cost have been taken into account and evaluated in the economic impact analysis.

The final regulations, therefore, do not differentiate among halogenated organic, organo-phosphorus, and organo-nitrogen pesticide chemicals manufacturers. Distinct subcategories for metallo-organic pesticide chemicals manufacturers and formulating and packaging are retained. This subcategorization is more rational and equitable than that set forth in the interim final regulations, and is more easily applied to those plants which manufacture several types of pesticide products. While the commenters asserted that further subcategorization was required, adequate data have not been provided or identified which suggest subcategorization on any other basis than that embodied in these regulations.

(8) Several commenters objected to the transfer of COD/BOD ratios from one waste stream to another.

COD/BOD ratios were not utilized in any way in the development of the final guidelines. In the interim final regulations, the Agency utilized these ratios in cost calculations to supplement existing raw waste load data where plants monitor BOD or COD, but not both. The Agency has greatly expanded its data base, and the final limitations for BOD and COD are based on effluent levels of BOD and COD which are actually being achieved in plants which use and properly operate the model treatment technologies.

(9) One commenter recommended that intermediate production be included in raw waste load calculations. Two commenters recommended that raw waste loads include those portions sent to alternative disposals such as land disposal, incineration, and deep well injection. Several commenters stated that raw waste loads are not necessarily related to production.

Raw waste load is relevent only to the design and cost of treatment systems and is not the basis for the effluent limitations established by these regulations. The regulations do not cover the production of intermediates, and raw waste resulting from the production of such intermediates is not included in the cost models. Plants using incineration and deep well injection techniques were not used in calculating the limitations, although the models do include the cost to incinerate concentrated or incompatible waste streams. If a plant uses a cheaper alternate disposal, the load that requires treatment would be less, resulting in a lower economic impact to meet the limitations. Accordingly, no credit is given for alternate disposal.

If process waste water from production of an active ingredient is disposed into a well, the production of that ingredient should not be included in the calculation of discharge levels for pesticide chemicals.

The Agency has concluded that in general, raw waste loads do relate to production. The Agency recognizes that in this industry, which consists primarily of batch producers, production and raw waste loads vary greatly from time to time.

(10) One commenter stated that the EPA failed to insure that raw waste load BOD values were based on acclimated seed.

The Agency has used demonstrated effluent loads, not raw waste loads in deriving its regulations. All of the data used in deriving the final regulations were supplied by the manufacturers themselves, and the Agency has assumed that steps were taken to insure adequate seed acclimation. Data have shown that proper acclimation of seed is not a particularly significant problem in well treated wastes.

(11) A number of commenters have questioned the use of COD as a regulated parameter and have suggested that it be deleted. The major reasons offered for this suggestion include: COD is not in itself a measure of the oxygen demand which will be exerted on receiving waters, since it measures both biodegradable and refractory portions of a waste; COD is not accurately measurable in wastes with high chloride content; COD does not reflect the effect of wastes on the environment; and COD is not a measure of toxicity. One commenter urged the retention of COD as a regulated parameter, and the deletion of BOD because of alleged difficulty of measurement and unreliability of BOD test results.

The Agency has concluded that both COD and BOD are desirable parameters because they represent different features of the organic waste loads. Although there is some overlap in measurement of COD and BOD5, they are essentially complementary rather than interchangeable parameters, and both are essential to measure the overall oxygen demand which will be exerted upon receiving waters.

The BOD5 test is essentially a bioassay procedure involving the measurement of oxygen consumed by living organisms, over a short period of time, while metabolizing the organic matter present in a waste water under conditions as similar as possible to those that occur in nature. While COD can be an indicator of long term biochemical oxygen demand, BOD5 measures the immediate impact on the receiving waters. The Agency's statistical treatment of the BOD data from existing plants adequately considered any variability due to variations inherent in the BOD analysis. In addition, most of the state, local and regional authorities have established water quality regulations utilizing BOD5 as a major parameter for the determination of oxygen demand on receiving waters.

The COD determination measures oxidation by a strong chemical oxidant and approximates the sum of the short term BOD5, the long term BOD and the refractory portion of the organic load. It is an important parameter than can be measured within hours, in contrast to the 5 or 6 days required to obtain the BOD5 test results. Thus, toxic discharges or treatment upsets can be quickly determined and corrected. With certain wastes containing toxic substances which interfere with BOD analysis, this test may be the best method for determination of the organic load. Since the test utilizes chemical oxidation rather than a biochemical process, the result cannot always be correlated to the BOD5 of the waste water. The test result should be considered as a complementary measurement of organic matter in the waste rather than as a substitute for the BOD5 test for this category.

Based on the data supplied it appears that the parameter most frequently measured and relied upon by industry itself is COD. The broadest data base that the industry was able to supply to the Agency was COD data. The Agency has incorporated COD as a parameter because of its availability in the data submitted and because it is such a useful tool for the control of the treatment systems employed.

The recommended technologies, pesticide removal followed by biological treatment, demonstrate COD removal. The COD limitations are based on data from plants which currently employ biological treatment. Approved methods are generally available to overcome interference in the COD measurement caused by high chloride content. If it can be demonstrated that interference caused by high salinity cannot be overcome, other analytical methods may be substituted for COD.

In certain circumstances TOD (total oxygen demand) may be substituted for COD and TOC (total organic carbon) for BOD. However, an adequate correlation between these parameters should be established.

(12) One commenter questioned whether the Agency's conclusions as to the adverse effects from long term, low level exposure to pesticides is supported by epidemiological evidence or whether it is based on extrapolation from animal studies. This commenter also suggested that the Development Document contain references to the bibliography where adverse health effects of various pollutants are noted, and recommended a discussion of the chronic effects of low levels of exposure to small amounts of pesticide chemicals and their decomposition products.

All regulated parameters display harmful effects to the environment. The Act does not require the Agency to differentiate between degrees of harm in determining the standards, but rather the standards are to be determined by the maximum degree of pollutant removal by the best practicable technology currently available. The Development Document cites sources in the bibliography when adverse health effects of various pollutants are noted.

(13) Two commenters stated that actual plants cannot achieve the percent reduction required to meet the guidelines.

Neither the interim final nor the final regulations are based on "percent reduction" but rather on effluent levels currently being achieved by plants which use the recommended technologies.

(14) Several commenters stated that carbon sorption is not a proven technology, and that its costs are too great.

Since the publication of the interim final regulations, the Agency has conducted a comprehensive review of carbon sorption technology in the pesticide manufacturing industry. There are currently at least 7 such full-scale systems in operation, treating more than 92 million gallons annually. Design criteria for five of these systems which are achieving the limitations have been utilized for estimating the costs associated with the application of this technology. The Agency has concluded that the costs of carbon sorption treatment are not wholly disproportionate to the effluent reduction benefits.

The two carbon sorption systems which are not currently achieving the pesticide chemicals limitations are failing to do so primarily because of inadequate operation, including infrequent replacement of carbon. The Agency believes that these two systems are also capable of achieving the limitations if operated properly. Costs for pesticide removal at four different retention times at three different flow rates have been provided in the Development Document. Costs have also been developed for other methods of treatment such as hydrolysis, which may be preferable for some waste streams.

(15) One commenter stated that the feasibility of the alternative treatment systems cannot be verified because the discussion of biological treatment did not include design data, reaction kinetics, sludge growth, or production rates.

The Agency has utilized data from biological treatment systems which are currently in operation within the pesticide chemicals manufacturing industry. No attempt has been made to design systems for particular manufacturing facilities. It is expected that each manufacturer will conduct a treatability study to determine specific design criteria.

(16) One commenter stated that certain active ingredients are resistant to hydrolysis and that hydrolysis of some active ingredients may yield toxic byproducts.

The Agency recognizes that the preferred method of pesticide removal may vary depending on the pesticide to be removed. For this reason, the Agency has suggested several means of pesticide removal, including carbon sorption, hydrolysis, lime precipitation, clay sorption, resin sorption and chemical oxidation. The Agency expects that a particular manufacturing facility will choose a method of pesticide removal which is best suited for its particular situation. In no case should a pesticide removal method be selected that results in the formation of a toxic pollutant that is not adequately treated by subsequent stages of treatment.

(17) Two commenters stated that evaporation of formulation waste waters may not be feasible in some geographic locations.

The Agency recognizes that in areas of net precipitation, evaporation basins may need to be covered. The cost of a cover has been included in the Agency's cost considerations. Heating and spray recirculating waste waters are viable alternatives although these methods have not been costed by the Agency.

(18) One commenter stated that incinerators cannot cope with compounds containing chlorine due to the corrosiveness of hydrochloric acid at high temperatures.

Proper design of such incinerators can minimize the corrosion damage due to hydrochloric acid which may form. The Agency has not received any data from plants currently practicing incineration which suggest that corosion is a serious problem in this industry. To the contrary, plants in the organic chemicals industry report good operation of incinerators disposing of halogenated organic chemicals. Some recover the HCl for sale. Plants which anticipate nonpreventable corrosion may elect an alternative means of treatment such as wet air oxidation.

(19) One commenter stated that highly saline waste water will result in erratic biological treatment and dilution may be required.

At least six pesticide plants currently practice dilution in order to keep salinity at suitable levels for adapted biota. At least three of these plants are currently achieving the effluent limitations for the biological parameters.

(20) One commenter requested that a discussion of reverse osmosis and ultrafiltration be included in the control technology section.

The Agency is unaware of any reverse osmosis or ultrafiltration systems currently in practice in the industry, and has not included this as a model technology for discussion in the Development Document.

(21) Several commenters stated that the costs in the interim final regulations were underestimated, and one commenter stated that total capital cost for the industry to meet the interim final limitations will be in excess of 100 million dollars.

The commenter's cost estimates are exaggerated due to faulty assumptions and changes from the interim final regulations. For instance, they included costs for removal of parameters such as ammonia, which had been regulated in the interim final but not the final regulations. In addition, they assumed that all plants must install all technologies while the Agency estimates that seven plants are expected to incur additional capital expenditures to meet these regulations. The capital cost estimate to meet this regulation is 9.9 million dollars with a total annual cost of 5.1 million dollars. The Agency's cost models are based on design criteria that will insure compliance for even the largest production, highest flow and most extensive pesticide removal required. All costs have been adjusted to July 1977, dollars using the Engineering News Record Index.

(22) One commenter stated that an economic impact based only on direct dischargers is not representative, and that indirect dischargers should be included.

The final guidelines regulate only direct dischargers, therefore the economic impact upon direct dischargers is representative. Since indirect dischargers are not affected by this regulation, they have not been included in the impact analaysis.

(23) One commenter requested that costs be expressed in terms of increases per pound of active ingredient.

For the plants for which it can be calculated, the ratio of cost per pound of active ingredient to sales price ranges from 0.2 percent to 3.6 percent to install additional treatment equipment. This is reported in a separate study entitled "Economic Analysis of Effluent Limitations Guidelines for the Pesticide Chemicals Manufacturing Point Source Category".

(24) One commenter stated that a cost/benefit ratio should be established to estimate impact on the industry.

A formal cost/benefit analysis is not required in the development of these regulations. The benefits of pollution reduction cannot be quantified precisely in monetary terms. The Agency has examined the amounts, types, and effects of the pollutants discharged by this industry and the costs of achieving the regulations. The Agency concludes that the costs associated with these regulations are not wholly disproportionate to the effluent reduction benefits.

(25) One commenter stated that costs for chemical analyses should be included in the cost models.

The Agency's cost estimates include the capital expenses of a well-equipped analytical laboratory as well as the expenses associated with monitoring the regulated parameters. No significant costs should be incurred in the development of analytical techniques for a particular active ingredient, since such techniques are available from the Environmental Monitoring and Support Laboratory.

(26) One commenter stated that the Agency failed to consider the economic impact on those formulating and

packaging plants which may not have sufficient space for extensive waste treatment installations.

Agency surveys of over 100 formulators found none that directly discharged process waste waters. The number of plants that are expected to need any additional treatment is believed to very small. Evaporation ponds for the small amount of wastes require minimal land area, and recycling and/or total containment of waste waters by suitable landfill require even less land.

(27) Several commenters stated that it is impossible for multi-product plants to determine the contribution by intermediates and non-pesticide products to the final effluent load.

These regulations cover only the production of active ingredients and explicitly exclude the production of intermediates and non-pesticide products.

The data available suggest that pesticide production contributes to the effluent load in percentages less than that from non-pesticide production. While the available data are not sufficient to develop an exact correlation between production and effluent contribution, the Agency has assumed that the pesticide production wastes contribute to the total effluent load in the same ratio of pesticide production to the total plant production. In the absence of more detailed data, the Agency has concluded that this assumption is equitable and will not discriminate against multi-product plants. For example, if 10 pounds of BOD are discharged from a plant producing 30,000 pounds of total product, of which 10,000 pounds are pesticide active ingredients, the effluent attributed to active ingredient production would be $10/30 \times 10$ or 3.3 lb or 0.33 lb/1,000 lb production. This number must meet the effluent limitations.

If a particular facility can demonstrate that pesticide production actually contributes less effluent load than derived by use of production proportions and if the calculated effluent load exceeds the limitations, plant submissions may be used to prove compliance for the pesticide production portion of the wastes.

(28) Several commenters objected to the use of statistical methods which assume a lognormal distribution. One commenter suggested that nonparametric statistical methods be used to determine variability factors.

In the revised analysis, the lognormal distribution was discarded and nonparametric methods, which do not assume a particular distributional form, were adopted. An extensive discussion of this procedure is presented in the Development Document.

(29) Several commenters objected to the averaging of variability factors from different plants and categories because of alleged differences among plants.

Averaging of variability factors is based on the mandate that the July 1, 1977, performance standards be determined by the average of the best plants. Nowhere do the commenters demonstrate that averaging variability factors is not statistically valid. One commenter claimed to show that statistically significant differences exist among variability factors through the use of a statistical hypothesis test. Documentation in support of the test, provided by the commenter in the form of a published journal article, states clearly that the results depend on the assumption of a normal population. This assumption is not justified for the effluent data and therefore the test applied by the commenter is inappropriate.

(30) Several commenters requested that data used in the analysis be provided for independent review.

Upon reviewing the comments, the Agency's statisticians reviewed the data. Many of the commenters' suggestions on the data analysis were used. All data used and the techniques employed are in the Development Document and are also available for inspection in the EPA Public Information Unit.

(31) One commenter stated that data were arbitrarily discarded.

Data were excluded that represented start up modes and situations which are not representative of a well operated or designed treatment system.

(32) One commenter suggested that limitations be based on the largest value for discharge of pounds of pollutant per 1000 pounds of production.

This suggestion is not consistent with determining standards by computing the average of the best.

(33) One commenter stated, without attempting to justify his claim statistically, that three months of data from one plant was too short a time period to characterize the discharge.

It is desirable to have more data, but it is possible to obtain statistically adequate estimates of the variability factors with three months (i.e., 90 daily measurements) of data.

(34) Several commenters stated that the limitations were based on operational data from only a few plants.

The Agency has expanded the data base since the interim final regulations. This expanded data base includes data from the majority of the point source dischargers. The data used to derive the final limitations were taken from approximately one-third of the manufacturers who are direct dischargers.

(35) One commenter stated that guidelines should be based on "attainable concentration" rather than "percent removal".

A percent removal technique has not been used. The limitations are based on lb/1,000 lb. Due to dilution practiced in the industry, the use of "attainable concentration" would not control the total pounds of pollutant discharged.

(36) One commenter suggested that pesticide chemicals produced in small quantities such as experimental products be excluded from coverage under the regulations.

The final regulations do not cover the manufacture of active ingredients which are used solely in experimental pesticides.

(37) One commenter stated that by failing to concurrently promulgate BAT (Best Available Technology Economically Achievable) limitations, the EPA has prohibited plants from planning the required 1983 control technology.

EPA intends to propose BAT limitations by June 30, 1979 and to promulgate BAT limitations by December 31, 1979. The EPA will distribute draft copies of the Development Document well before the latter date to assure that affected parties will have adequate time to comply with the regulations.

Sec.
455.10 General definitions.

Subpart A—Organic Pesticide Chemicals Manufacturing Subcategory

Sec.
455.20 Applicability; description of the organic pesticide chemicals manufacturing subcategory.
455.21 Specialized definitions.
455.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart B—Metallo-Organic Pesticide Chemicals Manufacturing Subcategory

Sec.
455.30 Applicability; description of the metallo-organic pesticide chemicals manufacturing subcategory.
455.31 Specialized definitions.
455.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Subpart C—Pesticide Chemicals Formulating and Packaging Subcategory

Sec.
455.40 Applicability; description of the pesticide chemicals formulating and packaging subcategory.
455.41 Specialized definitions. [Reserved]
455.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

AUTHORITY: Secs. 301 and 304, Federal Water Pollution Control Act, as amended (33 U.S.C. 1311, 1314, 86 Stat. 816 et seq. ("the Act").

§ 455.10 General definitions.

As used in this part:

(a)(1) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

(b) "Active ingredient" means an ingredient of a pesticide which is intended to prevent, destroy, repel, or mitigate any pest.

(c) "Pesticide chemicals" means the sum of all active ingredients manufactured at each facility covered by this part.

(d) "Pest" means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except virusus, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1) of Public Law 94-140, Federal Insecticide, Fungicide and Rodenticide Act.

(e) Except as provided in this regulation, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this part.

Subpart A—Organic Pesticide Chemicals Manufacturing Subcategory

§ 455.20 Applicability; description of the organic pesticide chemicals manufacturing subcategory.

The provisions of this subpart are applicable to discharges resulting from the manufacture of organic active ingredients, excluding the following: Allethrin, Benzyl Benzoate, Biphenyl, Bisethylxanthogen, Chlorophacinone, Coumafuryl, Dimethyl Phthalate, Diphacinone, Endothall Acid, EXD (Herbisan), Gibberellic Acid, Glyphosate, Methoprene, Naphthalene Acetic Acid, Phenylphenol, Piperonyl Butoxide, Propargite, 1, 8 Naphthalic Anhydride, Quinomethionate, Resmethrin, Rotenone, Sulfoxide, Sodium Phenylphenate, Triazine compounds (both symmetrical and asymmetrical), and Warfarin and similar anticoagulants. The intermediates used to manufacture the active ingredients and active ingredients used solely in experimental pesticides are excluded from coverage in this subpart. Insecticidal pathogenic organisms such as Bacillus thuringiensis, insect growth hormones, plant extracts such as pyrethrinis, sex attractants and botanicals such as Rotenone are also excluded from coverage in this subpart.

§ 455.21 Specialized definitions.

(a) "Organic active ingredients" means carbon-containing active ingredients used in pesticides, excluding metallo-organic active ingredients.

§ 455.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is possible, however, that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this paragraph which may be discharged from the manufacture of organic active ingredients by a point source subject to the provisions of this paragraph after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
COD	13.000	9.0000
BOD5	7.400	1.6000
TSS	6.100	1.8000
Pesticide chemicals	.010	.0018
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

NOTE.—Metric units: Kilogram/1,000 kg of pesticide chemicals; English units: Pound/1,000 lb of pesticide chemicals.

Subpart B—Metallo-Organic Pesticide Chemicals Manufacturing Subcategory

§ 455.30 Applicability; description of the metallo-organic pesticide chemicals manufacturing subcategory.

The provisions of this subpart are applicable to discharges resulting from the manufacture of metallo-organic active ingredients containing mercury, cadmium, arsenic, or copper. The manufacture of intermediates used to manufacture the active ingredients are excluded from coverage by this subpart.

§ 455.31 Specialized definitions.

(a) "Metallo-organic active ingredients" means carbon containing active ingredients containing one or more metallic atoms in the structure.

§ 455.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is possible, however, that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written find-

ing that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this paragraph which may be discharged from the manufacture of metallo-organic active ingredients by a point source subject to the provisions of this paragrah after application of the best practicable control technology currently available: There shall be no discharge of process waste water pollutants to navigable waters.

Subpart C—Pesticide Chemicals Formulating and Packaging Subcategory

§ 455.40 Applicability; description of the pesticide chemicals formulating and packaging subcategory.

The provisions of this subpart are applicable to discharges resulting from all pesticide formulating and packaging operations.

§ 455.41 Specialized definitions.

[Reserved]

§ 455.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is possible, however, that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

The following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this paragraph from the formulation and packaging of pesticides by a point source subject to the provisions of this paragraph after application of the best practicable control technology currently available: There shall be no discharge of process waste water pollutants to navigable waters.

[FR Doc. 78-11095 Filed 4-24-78; 8:45 am]

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