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Federal Register

MONDAY, MAY 15, 1978

highlights

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
	CSC			CSC
	LABOR			LABOR
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	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

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

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

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

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This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

[Last Listing: May 10, 1978]

S.J. Res. 106 ..... Pub. L. 95–274
To provide for the reappointment of A. Leon Higginbotham, Junior, as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 10, 1978; 92 Stat. 233) Price: $.50.

S.J. Res. 107 ..... Pub. L. 95–275
To provide for the reappointment of John Paul Austin as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 10, 1978; 92 Stat. 234) Price: $.50.

S.J. Res. 108 ..... Pub. L. 95–276
To provide for the appointment of Anne Legendre Armstrong as citizen regent of the Board of Regents of the Smithsonian Institution. (May 10, 1978; 92 Stat. 235) Price: $.50.

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

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[3195-01]

Title 3—The President

Memorandum of May 11, 1978

Review of the Federal Statistical System

Memorandum for the Heads of Executive Departments and Agencies

THE WHITE HOUSE,
Washington, May 11, 1978.

I have directed my Reorganization Project staff to perform a comprehensive review of the organization of the system that collects, evaluates and disseminates statistical data for the Federal government.

This Nation has the most accurate and efficient statistical system in the world. But a number of persistent problems—including the burden placed upon respondents and the responsiveness of data to policy needs—indicate a pressing need to improve the coordination of Federal statistical activities, which are growing at an increasing rate.

The study will use to the maximum extent the work that has been done in previous efforts. During the course of the study the project staff will be seeking the advice and support—including staff assistance and other resources—of many of the agencies that are part of our statistical system. I trust you will cooperate to the fullest extent possible. In addition to Federal agencies, the project will need the advice and counsel of the Congress, State and local governments and the public.

To ensure that all affected parties are informed, I have directed that this memorandum be published in the FEDERAL REGISTER.

Jimmy Carter

[FR Doc. 79-13376 Filed 5-12-78; 10:58 am]

rules and regulations

[3410-90]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Assistant Secretary for Administration to reflect the establishment of the Management Staff. The Assistant Secretary has determined that Department level management responsibilities require a single staff responsible for all Department level management improvement, analysis and review programs. The Director of the Management Staff will report to the Assistant Secretary for Administration.

EFFECTIVE DATE: May 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Neil Van Vliet, Management Staff, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6111.

SUPPLEMENTARY INFORMATION:

Subpart J—Delegations of Authority by the Assistant Secretary for Administration

1. A new § 2.77 is added to read as follows:

§ 2.77 Director, Management Staff.

(a) *Delegations.* Pursuant to § 2.25(c), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Management Staff:

(1) Administer the Department's management improvement program including the provision of assistance to agencies through management studies, organization analysis and planning; review the management and operating policies and processes; search for more economical approaches to the conduct of business and provide such other assistance as will aid in improving the management effectiveness, organization, and operation of the Department's programs.

(2) Maintain, review, update, and amend departmental Delegations of Authority.

(3) Administer the Department's management review program. This authority includes the development and promulgation of departmental directives regulating the management review function.

(4) Develop, design, install, and revise systems, processes, work methods, and techniques, and undertake other system engineering efforts to improve the management and operational effectiveness of the USDA.

(5) Authorize organization changes which occur in:

(i) Departmental organizations:

(a) Service or office

(b) Division (or comparable component)

(c) Branch (or comparable component in departmental centers, only.)

(ii) Field organizations:

(a) First organization level.

(b) Next lower organization level required only for those types of field installations where the establishment, change in location, or abolition of same, requires approval in accordance with 1 AR 673.

(6) Exercises authority under the Department's Acquisition Executive to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in OMB Circular No. A-109: Major Systems Acquisitions. This delegation includes the authority to:

(i) Insure that OMB Circular No. A-109 is effectively implemented in USDA and that the management objectives of the Circular are realized.

(ii) Review the program management of each major system acquisition.

(iii) Review any departmental acquisition for designation as a major system acquisition under A-109.

(7) Formulate and promulgate department management policies, procedures and regulations.

(8) Promulgate departmental policies, standards, techniques, and procedures for the conduct of reviews and analysis of the utilization of the resources of state and local governments, other Federal agencies and of the private sector in domestic program operations; maintain the departmental inventory of government commercial or industrial activities resulting from such review in accordance with the Office of Management and Budget Circular A-76.

(b) *Reservations.* The following authority is reserved to the Assistant Secretary for Administration:

(1) Authorize organizational changes occurring in a Department service or staff office which affect the overall structure of that service or office; i.e., require a change to that service or office's overall organization chart.

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953).

Dated: May 8, 1978.

JOAN S. WALLACE,
Assistant Secretary for Administration.

[FR Doc. 78-13102 Filed 5-12-78; 8:45 am]

[3410-08]

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

[Amdt. No 1]

PART 410—FLORIDA CITRUS CROP INSURANCE

Subpart—Regulations for the 1977 and Succeeding Crop Years

CITRUS CROP INSURANCE POLICY

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Florida Citrus Crop Insurance Regulations effective with the 1978 crop year to provide for insuring white grapefruit on a fresh fruit and on a juice basis, and changes the method of juice loss determination on those types of citrus on which the amount of loss is determined by the amount of juice lost by insurable causes of loss. These amendments are made in response to many requests by producers of white grapefruit marketable as fresh fruit for such insurance.

EFFECTIVE DATE: May 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, 202-447-3325.

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking, dated Thursday, March 9, 1978, (43 FR 9616), the Federal Crop Insurance Corporation gave notice that it was considering an amendment to the Florida citrus crop insurance regulations to permit white grapefruit to be insurable as fresh fruit in addition to being insurable on a juice basis. Consideration was also being given to changing the method of juice loss determination on those types of citrus on which the amount of loss is determined by the juice lost from insurable causes. The Corporation currently has the adjuster collect a sample of fruit and make a visual juice loss determination using a cut method. This method will be replaced by relating the juice marketing records of damaged fruit to the previous production history of the individual crop, or if such records are not available, to an established juice content provided on the actuarial table on file in the Corporation's office for the county. This method of juice loss determination has been found to be more accurate than the field cutting sample method used previously in tests conducted by the Florida Department of Citrus.

No comments, data, or views for consideration in connection with the proposed amendment were received. In view of there being no comment to the contrary, the amendment as proposed in the notice of intended rulemaking (43 FR 9616, March 9, 1978) is hereby issued as a final rule.

FINAL RULE

Accordingly, the Federal Crop Insurance Corporation, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), amends the Florida citrus crop insurance regulations effective with the 1978 crop year by amending subparagraphs 1 (p) and (q), 3(a), and 9 (f), (g), and (j) of 7 CFR 410.6 the policy to read as follows:

§ 410.6 The policy.

* * * * *

1. *Meaning of terms.* * * *

(p) "Types of citrus" means any of the following seven types of fruit: Type I—Early and midseason oranges; Type II—Late oranges; Type III—Grapefruit, under which freeze damage will be adjusted on a juice basis for white grapefruit and on a fresh fruit basis for pink and red grapefruit; Type IV—Navel oranges, tangelos and tangerines; Type V—Murcott honey oranges (also known as Honey tangerines), and Temple oranges; Type VI—Lemons; and Type VII—Grapefruit, under which freeze damage will be adjusted on a fresh fruit basis for all grapefruit. Oranges commonly known as "Sour oranges" and "Clementines" shall not be included in any of the insurable types of citrus. (q) "Unit" means all insurable acreage in the county of any of the seven citrus types referred to in subsection (p) of this section located on contiguous land, on the date insurance attaches for the crop year, (1) in which the insured has a 100 percent share; (2) which is owned by one person and operated by the insured as a tenant; or (3) which is owned by the insured and rented to one tenant. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land shall be considered as owned by the lessee. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

* * * * *

3. *Citrus insured.* (a) The citrus insured shall be any of the type(s) of citrus as defined in section 1(p) elected by the insured which is located on insurable acreage as shown on the actuarial map and in which the insured has a share on the date insurance attaches: *Provided*, That (1) if grapefruit is to be insured, only one type (III or VII) can be elected, (2) the citrus fruit can be expected to mature each crop year in the normal maturity period for the variety, and (3) the trees have reached at least the tenth growing season after being set out, unless otherwise provided on the actuarial table.

* * * * *

9. *Claim for loss.* * * *

(f) Pink and red grapefruit of citrus Type III and citrus of Types IV, V, and VII, which are seriously damaged by freeze as determined by a fresh fruit cut of a representative sample of fruit in the unit in accordance with the applicable provisions of the Florida Citrus Code and could not be marketed as fresh fruit within the prescribed tolerance for freeze damage (including adulteration) shall be considered unmarketable as fresh fruit and the amount of damage shall be as follows: (1) If 15 percent or less of the fruit in a sample shows serious freeze damage, the fruit shall be considered undamaged, or (2) If 16 percent or more of the fruit in a sample shows serious freeze damage, the fruit shall be considered 50 percent damaged, except that: (i) For tangerines of citrus Type IV, damage in excess of 50 percent shall be the actual percent of damaged fruit. (ii) For other applicable varieties, if the Corporation determines that the juice loss in the fruit exceeds 50 percent, the amount so determined shall be considered the percent of damage.

(g) Any citrus of Types I, II, VI, and white grapefruit of Type III which is damaged by freeze, but may be processed by the canning or processing plants, shall be considered as marketable for juice. The percent of damage shall be determined by the Corporation by relating the juice content of the damaged fruit as determined by test house analysis to (1) the average juice content established by the Corporation based on acceptable records furnished by the insured showing the juice content of fruit produced on the unit for the three previous crop years, or (2) the juice content for that type fruit established on the actuarial table (if acceptable records are not furnished).

(j) Pink and red grapefruit of citrus Type III and citrus of Types IV, V, and VII which are unmarketable as fresh fruit due to serious damage from hail as defined in U.S. Standards for grades of Florida fruit shall be considered totally lost.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; (7 U.S.C. 1506, 1516).)

NOTE.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942. The Federal Crop Insurance Corporation 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: April 26, 1978.

PETER F. COLE,
Secretary, Federal Crop, Insurance Corporation.

Approved: May 9, 1978.

CAROL TUCKER FOREMAN,
Acting Secretary.

[FR Doc. 78-13104 Filed 5-12-78; 8:45 am]

[3128-01]

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

PART 1002—OFFICIAL SEAL AND DISTINGUISHING FLAG

Description and Use

AGENCY: Department of Energy (DOE).

ACTION: Final rulemaking.

SUMMARY: The DOE hereby prescribes the rules specifying the description and authorized use of its official seal and distinguishing flag.

DATE: Effective May 15, 1978.

FOR FURTHER INFORMATION CONTACT:

George W. Barrow, Director, Office of Administrative Services, 20 Massachusetts Avenue NW., Washington, D.C. 20545.

SUPPLEMENTARY INFORMATION:

A. BACKGROUND

On October 1, 1977, DOE was activated pursuant to the Department of Energy Organization Act of 1977, Pub. L. 95-91. That Act provides at section 654 (42 U.S.C. 7264) that the Secretary of DOE may prescribe an official seal,

which shall be noticed judicially. In accordance with that provision, the Secretary hereby adopts a seal, which shall also be displayed on the Department's distinguishing flag. These regulations describe the seal and flag, and provide for their use and display.

DOE is adopting these regulations as proposed with the addition of Subpart D—"Unauthorized Uses." This subpart clarifies provisions in the proposed regulations which limited authorized uses to certain purposes, by specifying particular uses which are not authorized. It should be noted that Subpart D is exemplary only, and that if a use is not specifically prohibited under Subpart D, but not specifically authorized elsewhere in the regulations, then such use shall be deemed to be not permissible.

B. COMMENT REVIEW

One comment was received which DOE determined not to be germane.

In consideration of the foregoing, Part 1002 of Chapter II of Title 10 of the Code of Federal Regulations is adopted as set forth below.

Issued in Washington, D.C., May 10, 1978.

WILLIAM P. DAVID,
Deputy Director of Administration, Department of Energy.

Subpart A—General

Sec.
1002.1 Purpose.
1002.2 Definitions.
1002.3 Custody of official seal and distinguishing flag.

Subpart B—Official Seal

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1002.12 Use of replicas, reproductions, and embossing seals.

Subpart C—Distinguishing Flag

1002.21 Description of distinguishing flag.
1002.22 Use of distinguishing flag.

Subpart D—Unauthorized Uses

1002.31 Unauthorized uses of the seal and flag.

AUTHORITY: 42 U.S.C. 7264.

Subpart A—General

§ 1002.1 Purpose.

The purpose of this Part is to describe the official seal and distinguishing flag of the Department of Energy, and to prescribe rules for their custody and use.

§ 1002.2 Definitions.

For purposes of this Part—

(a) "DOE" means all organizational units of the Department of Energy.

(b) "Embossing seal" means a display of the form and content of the official seal made on a die so that the seal can be embossed on paper or other medium.

(c) "Official seal" means the original(s) of the seal showing the exact form, content, and colors therof.

(d) "Replica" means a copy of the official seal displaying the identical form, content, and colors thereof.

(e) "Reproduction" means a copy of the official seal displaying the form and content thereof, reproduced in only one color.

(f) "Secretary" means the Secretary of DOE.

§ 1002.3 Custody of official seal and distinguishing flags.

The Secretary or his designee shall:

(a) have custody of:

(1) The official seal and prototypes thereof, and masters, molds, dies, and all other means of producing replicas, reproductions, and embossing seals; and

(2) Production, inventory and loan records relating to items specified in subparagraph (1); and

(b) Have custody of distinguishing flags, and be responsible for production, inventory, and loan records thereof.

Subpart B—Official Seal

§ 1002.11 Description of official seal.

The Department of Energy hereby prescribes as its official seal, of which judicial notice shall be taken pursuant to section 654 of the Department of Energy Organization Act of 1977, 42 U.S.C. 7264, the imprint illustrated below and described as follows:

(a) (1) The official seal includes a green shield bisected by a gold-colored lightning bolt, on which is emblazoned a gold-colored symbolic sun, atom, oil derrick, windmill, and dynamo. It is crested by the white head of an eagle, atop a white rope. Both appear on a blue field surrounded by concentric circles in which the name of the agency, in gold, appears on a green background. Detailing is in black.

(2) The colors used in the configuration are dark green, dark blue, gold, black, and white.

(3) The eagle represents the care in planning and the purposefulness of efforts required to respond to the Nation's increasing demands for energy. The sun, atom, oil derrick, windmill, and dynamo serve as representative technologies whose enhanced development can help meet these demands. The rope represents the cohesiveness in the development of the technologies and their link to our future capabilities. The lightning bolt represents the power of the natural forces from which energy is derived and the Nation's challenge in harnessing the forces.

(4) The color scheme is derived from nature, symbolizing both the source of energy and the support of man's existence. The blue field represents air and water, green represents mineral resources and the earth itself, and gold represents the creation of energy in the release of natural forces. By invoking this symbolism, the color scheme represents the Nation's commitment to meet its energy needs in a manner consistent with the preservation of the natural environment.

§ 1003.12 Use of replicas, reproductions, and embossing seals.

(a) The Secretary and his designees are authorized to affix replicas, reproductions, and embossing seals to appropriate documents, certifications, and other material for all purposes as authorized by this section.

(b) Replicas may be used only for:

(1) Display in or adjacent to DOE facilities, in Department auditoriums, presentation rooms, hearing rooms, lobbies, and public document rooms.

(2) Offices of senior officials.

(3) Official DOE distinguishing flags, adopted and utilized pursuant to Subpart C.

(4) Official awards, certificates, medals, and plaques.

(5) Motion picture film, video tape and other audiovisual media prepared by or for DOE and attributed thereto.

(6) Official prestige publications which represent the achievements or mission of DOE.

(7) Non-DOE facilities in connection with events and displays sponsored by DOE, and public appearances of the Secretary or other designated senior DOE Officials.

(8) For other such purposes as determined by the Director of the Office of Administrative Services.

(c) Reproductions may be used only on:

(1) DOE letterhead stationery.

(2) Official DOE identification cards and security credentials.

(3) Business cards for DOE employees.

(4) Official DOE signs.

(5) Official publications or graphics issued by and attributed to DOE, or joint statements of DOE with one or more Federal agencies, State or local governments, or foreign governments.

(6) Official awards, certificates, and medals.

(7) Motion picture film, video tape, and other audiovisual media prepared by or for DOE and attributed thereto.

(8) For other such purposes as determined by the Director of the Office of Administrative Services.

(d) Embossing seals may be used only on:

(1) DOE legal documents, including interagency or intergovernmental agreements, agreements with States, foreign patent applications, and similar documents.

(2) For other such purposes as determined by the General Counsel or the Director of Administration.

(e) Any person who uses the official seal, replicas, reproductions, or embossing seals in a manner inconsistent with this Part shall be subject to the provisions of 18 U.S.C. 1017, providing penalties for the wrongful use of an official seal, and to other provisions of law as applicable.

(f) The official seal is being registered with the World Intellectual Property Organization through the U.S. Patent and Trademark Office.

Subpart C—Distinguishing Flag

§ 1002.21 Description of distinguishing flag.

(a) The base or field of the flag shall be white, and a replica of the official seal shall appear on both sides thereof.

(b) (1) The indoor flag shall be of rayon banner, measure 4'4" on hoist by 5'6" on the fly, exclusive of heading and hems, and be fringed on three edges with yellow rayon fringe, 2½" wide.

(2) The outdoor flag shall be of heavy weight nylon, and measure either 3' on the hoist by 5' on the fly or 5' on the hoist by 8' on the fly, exclusive of heading and hems.

(c) Each flag shall be manufactured in accordance with U.S. Department of Defense Military Specification Mil-F-2692. The official seal shall be screen printed on both sides, and on each side, the lettering shall read from left to right. Headings shall be Type II in accordance with the Institute of Heraldry Drawing No. 5-1-45E.

§ 1002.22 Use of distinguishing flag.

(a) DOE distinguishing flags may be used only:

(1) In the offices of the Secretarial officers, Chairman of the Federal Energy Regulatory Commission, and heads of field locations designated below:

Power Administrations.
Regional Offices.
Operations Offices.
Certain Field Offices and other locations as designated by the Director of Administration.

(2) At official DOE ceremonies.

(3) In Department auditoriums, official presentation rooms, hearing rooms, lobbies, public document rooms, and in non-DOE facilities in connection with events or displays sponsored by DOE, and public appearances of DOE officials.

(4) On or in front of DOE installation buildings.

(5) Other such purposes as determined by the Director of Administration.

Subpart D—Unauthorized Uses

§ 1002.31 Unauthorized uses of the seal and flag.

The official seal and distinguishing flag shall not be used except as authorized by the Director of Administration in connection with:

(a) Contractor-operated facilities.

(b) Souvenir or novelty items.

(c) Toys or commercial gifts or premiums.

(d) Letterhead design, except on official Departmental stationery.

(e) Matchbook covers, calendars, and similar items.

(f) Civilian clothing or equipment.

(g) Any article which may disparage the seal or flag or reflect unfavorably upon DOE.

(h) Any manner which implies Departmental endorsement of commercial products or services, or of the user's policies or activities.

[FR Doc. 78-13155 Filed 5-12-78; 8:45 am]

[6210-01]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. H; Docket No. R-0153]

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

Loans by State Member Banks in Special Flood-Hazardous Areas; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Correction.

SUMMARY: This action corrects a previous FEDERAL REGISTER document because of certain errors of codification and punctuation. In addition, in the "Appendix A—Sample Notices section under the heading" "(1) Notice to Borrower of Special Flood-Hazards," the last sentence should read, "For example, during the life of a 30-year mortgage, a structure located in a special flood-hazardous area has a 26 percent chance of being flooded."

EFFECTIVE DATE: April 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Allen L. Raiken, Associate General Counsel, or John Walker, Attorney, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3000.

In FR Document 78-11642 appearing at page 18162 of the issue for Friday, April 28, 1978, § 208.8 "Banking practices" and "APPENDIX A—SAMPLE NOTICES" should have read,

"**§ 208.8 Banking practices.**

* * * * *

(e) *Loans by State member banks in special flood-hazardous areas.*—(1) *Property securing loan must be insured against flood* * * *

(2) *Records of compliance.* * * *

(3) (i) *Notice of special flood hazards and availability of Federal disaster relief assistance.* Each State member bank shall, as a condition of making, increasing, extending or renewing any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards, mail or deliver as soon as feasible but not less than 10 days in advance of closing of the transaction (or not later than the bank's commitment, if any, if the period between commitment and closing is less than 10 days) a written notice to the borrower stating: (a) That the property securing the loan is or will be located in an area so identified, or in lieu of such notification a State member bank may obtain satisfactory written assurances from a seller or lessor stating that such seller or lessor has notified the borrower, prior to the execution of any agreement for sale or lease, that the property securing the loan is or will be located in an area so identified; and (b) whether, in the event of damage to the property caused by flooding in a federally-declared disaster, Federal disaster relief assistance will be available for such property. Each State member bank shall require the borrower, prior to closing, to provide the bank with a written acknowledgment that the property securing the loan is or will be located in an area so identified and that the borrower has received the above-required notice regarding Federal disaster relief assistance.

(ii) *Sample notices.* A State member bank providing written notice containing the language presented in appendix A within the time limits prescribed in paragraph (a) of this section will be considered to be in compliance with the notice requirements of paragraph (a) of this section.

APPENDIX A—SAMPLE NOTICES

(1) *Notice to Borrower of Special Flood-Hazards*—Notice is hereby given to———— that the improved real estate or mobile home described in the attached instrument is or will be located in an area designated by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. This area is delineated on————'s Flood Insurance Rate Map ("FIRM") or, if the FIRM is unavailable, on the community's Flood Hazard Boundary Map ("FHBM"). This area has a 1 percent chance of being flooded within any given year. The risk of exceeding the 1 percent chance increases with time periods longer than 1 year. For example, during the life of a 30-year mortgage, a structure located in a special flood-hazardous area has a 26 percent chance of being flooded.

(2) *Notice to Borrower about Federal Disaster Relief Assistance*—(a) *Notice in participating communities.* The improved real estate or mobile home securing your loan is or will be located in a community that is now participating in the National Flood Insurance program. In the event such property is damaged by flooding in a federally-declared disaster, Federal disaster relief assistance may be available. However, such assistance will be unavailable if your community has been identified as a special flood-hazardous area for one year or longer and is not participating in the National Flood Insurance Program at the time assistance would be approved. This assistance, usually in the form of a loan with a favorable interest rate, may be available for damages incurred in excess of your flood insurance.

(b) *Notice in non-participating communities.* The improved real estate or mobile home securing your loan is or will be located in a community that is not participating in the National Flood Insurance program. This means that such property is not eligible for Federal flood insurance. In the event such property is damaged by flooding in a federally-declared disaster, Federal disaster relief assistance will be unavailable if your community has been identified as a special flood-hazardous area for 1 year or longer. Such assistance may be available only if at the time assistance would be approved your community is participating in the National Flood Insurance program or has been identified as a special flood-hazardous area for less than 1 year."

By order of the Board of Governors, May 5, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-13077 Filed 5-12-78; 8:45 am]

[4910-13]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 78-CE-5-AD; Amdt. 39-3174]

PART 39—AIRWORTHINESS DIRECTIVES

Cessna 150 and 152 Series Airplanes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects a rule issued on March 29, 1978, and appearing in FR Doc. 78-9399 on pages 14958 and 14959 in the issue of Monday, April 10, 1978 (78-CE-5-AD). A number was incorrectly cited in the body of the Airworthiness Directive which necessitates this correction.

EFFECTIVE DATE: April 13, 1978.

FOR FURTHER INFORMATION CONTACT:

William L. Schroeder, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Central Region, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3446.

SUPPLEMENTARY INFORMATION: The FAA issued a final rule with an effective date of April 10, 1978. In the final rule, in the body of the AD, Paragraph (A)1., line 10, a number was incorrectly cited as "M520365-428." It should read "MS20365-428." Action is taken herein to make this correction. Since the change is editorial in nature, notice and public procedure thereon are not considered necessary.

DRAFTING INFORMATION

The principal authors of this document are: William L. Schroeder, Flight Standards Division, Central Region, and John L. Fitzgerald, Jr., Office of the Regional Counsel, Central Region.

In FR Doc. 78-9399 appearing at pages 14958 and 14959 in the FEDERAL REGISTER of April 10, 1978, line 10 of Paragraph (A)1. appearing on page 14959 should be corrected to read "AN365-428, MS20365-428, or MS21044N4 nut."

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); § 11.89, Federal Aviation Regulations (14 CFR 11.89).)

Issued in Kansas City, Mo., on April 28, 1978.

C. R. MELUGIN, Jr.,
Director, Central Region.

[FR Doc. 78-13105 Filed 5-12-78; 8:45 am]

[4910-13]

[Docket No. 17907; Amdt. 39-3213]

PART 39—AIRWORTHINESS DIRECTIVES

Short Bros. Ltd. Model SD3-30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection, rerouting, and improved support and protection of the propeller proximity switch wiring on the Short Bros. Ltd. Model SD3-30 airplanes. The AD is needed to detect electrical shorting to ground that could cause an inadvertent feathering of the propeller in flight resulting in possible loss of control of the aircraft.

EFFECTIVE DATE: May 29, 1978. Compliance required as indicated.

ADDRESSES: The applicable service bulletins may be obtained from Product Support Department, Short Bros. Ltd., P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland.

A copy of the service bulletins is contained in the Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: D. C. Jacobsen, Chief, Aircraft Certification Staff, Europe, Africa, and Middle East Region, Federal Aviation Administration, c/o American Embassy, APO New York, N.Y. 09667.

SUPPLEMENTARY INFORMATION: There has been a report of a short circuit to ground in the propeller proximity switch wiring on certain Short Bros. Ltd. Model SD3-30 airplanes that could result in an in-flight malfunction of the propeller fine pitch control which can cause inadvertent feathering of the propeller. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require inspection, rerouting and protection as necessary, and improved support and protection of the propeller electrical wiring in the Short Brothers Limited airplanes.

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

DRAFTING INFORMATION

The principal authors of this document are M. F. Rammelsberg, Europe, Africa, and Middle East Region, F.

Kelley, Flight Standards Service, and P. Lynch, Office of the Chief Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following Airworthiness Directive:

SHORT BROS. LTD. (formerly Short Bros. & Harland, Ltd.). Applies to Model SD3-30 airplanes, Serial Nos. SH3004 to SH3013 inclusive, certificated in all categories.

Compliance is required as indicated, unless already accomplished.

To prevent unwanted propeller feathering, accomplish the following:

(a) Within the next 50 hours time in service after the effective date of this AD, visually inspect the electrical wiring between the proximity switch and the main cable loom for chafing, contact with engine case, and for security of clamping.

(b) If, during the inspection required by paragraph (a), chafing, loose clamps, or contact with engine is found, before further flight, except that the airplane may be flown in accordance with the provisions of FAR 21.197 and 21.199 to a base where the modifications required by this AD may be accomplished, correct the fault in accordance with paragraph 1.C.3. of Short Bros. Ltd. Service Bullentin No. SD3-61-A03, dated December 21, 1977, or an FAA-approved equivalent.

(c) Within 500 hours time in service after the effective date of this AD, accomplish Short Bros. Ltd. Modification No. 5471 in accordance with Shorts Service Bulletin No. SD3-61-03, dated January 19, 1978 (pages 1 through 4 are dated January 19, 1977), or an FAA-approved equivalent.

(d) Record the accomplishment of the AD in accordance with FAR 91.173.

(e) Equivalent methods of compliance with this AD or adjustment of the inspection intervals required by this AD may be approved by the Chief, Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Region, c/o American Embassy, APO New York 09667, if the request is submitted through an FAA Maintenance Inspector and contains substantiating data to justify the interval or method of compliance for that operator.

This amendment becomes effective May 29, 1978.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C., on May 4, 1978.

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

[FR Doc.78-13107 Filed 5-12-78; 8:45 am]

[4910-13]

[Docket No. 78-WE-4-AD, Amdt. 39-3210]

PART 39—AIRWORTHINESS DIRECTIVES

Beech Models D18C, D18S, E18S, E18S-9700, G18S, H-18, C-45G, TC-45G, C-45H, TC-45H, TC-45J (SNB-5), JRB-6, 3N, 3M, and 3NM, Which Have Been Modified in Accordance With STC SA1243WE, SA1016WE, or SA360WE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which provides for inspection and repair, of the lower rudder torque tube on those Beech 18 series airplanes equipped with the empennage conversion in accordance with STC SA1243WE, SA1016WE, or SA360WE. The AD is required to preclude possible failure of the rudder torque tube from ground gust induced cracks which could result in subsequent loss of controllability of the airplane.

EFFECTIVE DATE: May 17, 1978. Initial compliance required within the next 30 days after the effective date of this AD.

FOR FURTHER INFORMATION CONTACT:

Jerry J. Presba, Executive Secretary,. Airworthiness Directives Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009, telephone 213-536-6351.

SUPPLEMENTARY INFORMATION: There have been reports of cracks in the lower section of the rudder torque tube on certain Beech Model 18 airplanes which, if allowed to propagate, could result in complete failure of the tube and potential loss of airplane controllability. The cracks are believed to result from ground gust loads on the rudder under conditions of non-installation of the gust lock. Gust loads force the rudder torque tube arm to contact the surface control stop, causing fatigue cracks in the lower torque tube when the rudder gust lock is not installed.

Since this condition is likely to exist or develop on other airplanes, of the same type design, an airworthiness directive is being issued which requires repair or replacement, as necessary, and recurring inspections of the lower rudder torque tube on Beach 18 series airplanes affected by this AD.

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

DRAFTING INFORMATION

The principal authors of this document are Robert L. Salas, Aircraft Engineering Division, and Mark T. McDermott, Office of the Regional Counsel.

ADOPTION OF THE AMENDMENT

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

BEECH. Applies to Beech Models D18C, D18S, E18S, E18S-9700, G18S, H-18, C-45G, TC-45G, C-45H, TC-45J (SNB-5), JRB-6, 3N, 3M, and 3NM modified in accordance with STC SA1243WE, SA1016WE, or SA360WE.

To preclude failure of the lower rudder torque tube, accomplish the following; unless already accomplished:

(a) Within the next 30 days after the effective date of this AD visually inspect the lower rudder torque tube for cracks in the area of the access hole as noted in figure 1 of this AD. (Reference Part No. 452606-7.)

(b) If no cracks are found, reinspect at intervals not to exceed 30 days from the prior inspection.

(c) If cracks are found, prior to further flight:

(1) If any crack exceeds ½ inch in length, replace with a like serviceable unit, Part No. 452606-7, and reinspect per paragraph (d);

(2) If cracks are ½ inch or less in length, repair per a method approved by the Chief, Aircraft Engineering Division, FAA Western Region, and reinspect per paragraph (d);

(d) Reinspect at intervals not to exceed 30 days from repair, replacement, or prior inspection.

(e) The requirements of this AD may be terminated when modifications are incorporated which are approved by Chief, Aircraft Engineering Division. Submit proposed modifications schemes to:

Chief, Aircraft Engineering Division, FAA Western Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, Calif. 90009.

for review and approval.

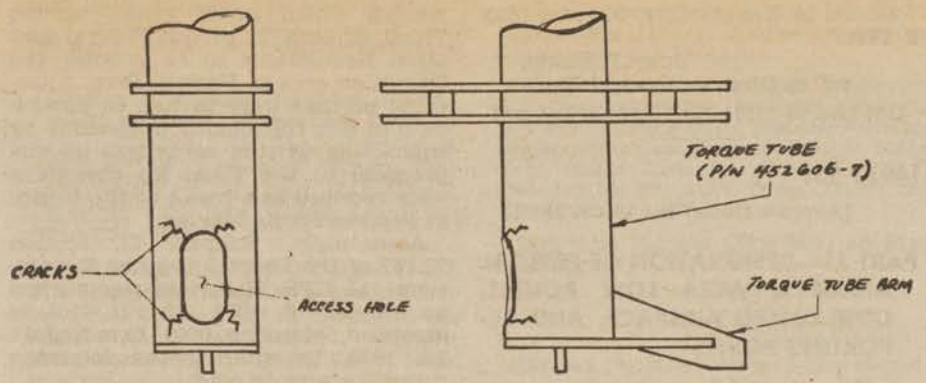
This amendment becomes effective May 17, 1978.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Los Angeles, Calif., on May 2, 1978.

ROBERT H. STANTON,
Director, FAA Western Region.



LOWER RUDDER TORQUE TUBE

FIGURE 1

DOCKET NO. 78-WE-4-AD

[FR Doc. 78-13109 Filed 5-12-78; 8:45 am]

[4910-13]

[Airspace Docket Number 77-CE-28]

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

Designation of Transition Area—Wahoo, Nebr.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Wahoo, Nebr., to provide controlled airspace for aircraft executing a new instrument approach procedure to the Wahoo, Nebr., Municipal Airport which is based on a Non-Directional Radio Beacon (NDB) navigational aid being installed on the airport.

EFFECTIVE DATE: July 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Gary W. Tucker, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-538, FAA, Central Region, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

SUPPLEMENTARY INFORMATION: The city of Wahoo, Nebr., is installing a Non-Directional Radio Beacon (NDB) on the Wahoo, Nebr., Municipal Airport. The establishment of an instrument approach procedure based on this navigational aid entails designation of a transition area at Wahoo, Nebr., at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR).

DRAFTING INFORMATION

The principal authors of this document are Gary W. Tucker, Operations, Procedures and Airspace Branch, Air Traffic Division, and John L. Fitzgerald, Jr., Office of the Regional Counsel.

DISCUSSION OF COMMENTS

On pages 7988 and 7989 of the FEDERAL REGISTER dated February 27, 1978, the Federal Aviation Administration published a notice of proposed rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Wahoo, Nebr. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 3, 1978 (43 FR 440), is amended effective 0901 G.m.t. July 13, 1978, by adding the following transition area:

WAHOO, NEBR.

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Wahoo Municipal Airport (Latitude 41°14'27" N., Longitude 96°35'15" W.) and within 3 miles each side of the 032° bearing from the Wahoo Municipal Airport extending from the 5 mile radius 8.5 miles northeast of the airport excluding that portion which lies in the Freemont, Nebr., transition area.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Kansas City, Mo., on May 1, 1978.

JOHN E. SHAW,
Acting Director,
Central Region.

[FR Doc. 78-13093 Filed 5-12-78; 8:45 am]

[4910-13]

[Airspace Docket No. 78-CE-1]

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

Alteration of Transition Area—Humboldt, Nebr.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Humboldt, Nebr., to provide additional controlled airspace for aircraft executing a new instrument procedure to the Humboldt Municipal Airport, Humboldt, Nebr., utilizing the Pawnee City, Nebr., VORTAC.

EFFECTIVE DATE: July 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Gary W. Tucker, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-

538, FAA, Central Region, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

SUPPLEMENTARY INFORMATION: A new instrument approach procedure to the Humboldt, Nebr., Municipal Airport is being established utilizing the Pawnee City, Nebr., VORTAC as a navigational aid. The establishment of a new instrument approach procedure based on the navigational aid entails the alteration of the transition area at Humboldt, Nebr., at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to insure additional adequate controlled airspace for aircraft executing this new instrument approach procedure.

DRAFTING INFORMATION

The principal authors of this document are Gary W. Tucker, Operations, Procedures and Airspace Branch, Air Traffic Division, and John L. Fitzgerald, Jr., Office of the Regional Counsel.

DISCUSSION OF COMMENTS

On page 9620 of the FEDERAL REGISTER dated March 9, 1978, the Federal Aviation Administration published a notice of proposed rulemaking which would amend section 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Humboldt, Nebr. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the notice of proposed rulemaking.

Accordingly, Subpart G, section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 3, 1978 (43 FR 440), is amended, effective 0901 G.m.t. July 13, 1978, by altering the following transition area to read:

HUMBOLDT, NEBR.

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Humboldt Municipal Airport (latitude 40°09'50" N., longitude 95°55'54" W.) and within 1.75 miles each side of the 099° radial of the Pawnee City VORTAC extending from the 5 mile radius to 7 miles west of the airport and within 4.75 miles each side of the 137° bearing from Humboldt Municipal Airport extending from the 5 mile radius to 9.5 miles southeast of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Kansas City, Mo., on May 3, 1978.

JOHN E. SHAW,
Acting Director, Central Region.

[FR Doc. 78-13094 Filed 5-12-78; 8:45 am]

[4910-13]

[Airspace Docket No. 78-CE-3]

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

Alteration of Transition Area—Harlan, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the existing transition area at Harlan, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Harlan Municipal Airport which is based on a Non-Directional Radio Beacon (NDB) navigational aid installed at the airport.

EFFECTIVE DATE: July 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

SUPPLEMENTARY INFORMATION: The city of Harlan, Iowa, has installed a Non-Directional Radio Beacon (NDB) on the Harlan Municipal Airport. This navigational aid will provide new navigational guidance for aircraft utilizing this airport. The establishment of an instrument approach procedure based on this navigational aid entails alteration of the existing Harlan, Iowa, transition area at and above 700 feet above ground level (AGL) within which aircraft will be provided additional controlled airspace protection.

DRAFTING INFORMATION

The principal authors of this document are Dwaine E. Hiland, Operations, Procedures and Airspace Branch, Air Traffic Division, and John L. Fitzgerald, Jr., Office of the Regional Counsel.

DISCUSSION OF COMMENTS

On pages 9618 and 9619 of the FEDERAL REGISTER dated March 9, 1978, the Federal Aviation Administration published a notice of proposed rulemaking which would amend section 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Harlan, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 3, 1978 (43 FR 440), is amended, effective 0901 G.m.t. July 13, 1978, by altering the following transition area to read:

HARLAN, IOWA

That airspace extending upward from 700 feet above the surface within a seven mile radius of Harlan Municipal Airport (latitude 41°35'15" N., longitude 95°20'15" W.) and within five miles each side of the Neola, Iowa VORTAC 064° radial extending from the seven mile radius to eight miles northeast of the VORTAC and three miles each side of the 136° bearing from the Harlan NDB to eight and one-half miles southeast excluding that portion which overlies the Atlantic, Iowa 700 foot transition area.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).I

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Kansas City, Mo., on May 3, 1978.

JOHN E. SHAW,
Acting Director, Central Region.

[FR Doc. 78-13095 Filed 5-12-78; 8:45 am]

[4910-13]

[Airspace Docket No. 78-CE-2]

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

Designation of Transition Area—Milford, Iowa

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a transition area at Milford, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Fuller Municipal Airport, Milford, Iowa, utilizing the Spirit Lake, Iowa, Non-Directional Radio Beacon (NDB) navigational aid.

EFFECTIVE DATE: July 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

SUPPLEMENTARY INFORMATION: The city of Milford, Iowa, is establishing a new instrument approach to the Fuller Municipal Airport, Milford, Iowa, based on the Spirit Lake, Iowa, Non-Directional Radio Beacon (NDB), a navigational aid. The establishment of an instrument approach procedure based on this navigational aid entails designation of a transition area at Milford, Iowa, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR).

DRAFTING INFORMATION

The principal authors of this document are Dwaine E. Hiland, Operations, Procedures and Airspace Branch, Air Traffic Division, and John L. Fitzgerald, Jr., Office of the Regional Counsel.

DISCUSSION OF COMMENTS

On pages 9619 and 9620 of the FEDERAL REGISTER dated March 9, 1978, the Federal Aviation Administration published a notice of proposed rule making which would amend section 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Milford, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, Section 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 3, 1978 (43 FR 440), is amended, effective 0901 GMT July 13, 1978, by adding the following transition area:

MILFORD, IOWA

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Fuller Municipal Airport (Latitude 43°19'57" N., Longitude 95°09'29" W.) and within 3 miles each side of the 019° bearing from the Fuller Municipal Airport extending from the 5 mile radius to 11.5 miles north of the airport excluding that portion which lies in the Spirit Lake, Iowa, Transition Area.

Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.61 of the Federal Aviation Regulations (14 CFR 11.61).

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Kansas City, Mo., on May 3, 1978.

JOHN E. SHAW,
Acting Director,
Central Region.

[FR Doc. 78-13096 Filed 5-12-78; 8:45 am]

[6740-02]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION DEPARTMENT OF ENERGY

[Docket No. RM78-13]

PART 1—RULES OF PRACTICE AND PROCEDURE

PART 3—ORGANIZATION; OPERATION; INFORMATION AND REQUESTS

Order Permitting Recording and Photographing of Open Commission Meetings

MAY 9, 1978.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: This rule amends the Federal Energy Regulatory Commission's (Commission) regulations under the Government in the Sunshine Act to allow public observers at the Commission's open meetings to use tape recorders and other recording equipment and cameras without lighting aids. Restrictions in the regulations are designed so that this type of activity will not interfere with the orderly conduct of Commission meetings.

EFFECTIVE DATE: May 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Lois Cashell, Assistant Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, 202-275-4166.

SUPPLEMENTARY INFORMATION: On March 11, 1977, in Order No. 562, the Federal Power Commission (FPC) issued regulations to conform its open meeting procedures to the requirements of section 3 of the Government in the Sunshine Act, 5 U.S.C. 552b. The regulations invited the public to observe and listen to meetings, but not to participate or "record any of the discussions by means of electronic or other devices or cameras." (18 CFR 1.3a (b)(1)). Under section 705(a) of the Department of Energy Organization Act, (Pub. L. No. 95-91, 91 Stat. 565, 605) and Order No. 1, issued by the Federal Energy Regulatory Commission (FERC) on October 6, 1978, those regulations apply to meetings of the FERC.

In declining to allow such recording, the FPC cited the logistical difficulties involved and the potential for disruption, stating that ample provision is made for members of the press desiring to report on open meetings. The Federal Energy Regulatory Commission by this order amends its regulations to allow the use of tape recorders and other recording equipment and still and movie cameras without lighting aids. The Commission believes that these amendments are in the public interest by enhancing the opportunity for public observation of the decisionmaking process. Through the procedures established by this order, the Commission believes that this type of activity will not interfere with the orderly conduct of its meetings.

The Commission stresses that the expanded right to observe Commission meetings (and the possibility of obtaining transcripts or recordings of discussion at closed meetings) should not be viewed as creating new grounds for challenging the basis and rationale for Commission action. Observations made by individual members of the Commission during the course of deliberations may not necessarily reflect the reasoning underlying the Commission's final action on a given matter. Thus, the legal sufficiency of Commission action must, as in the past, be judged solely on the basis of the action itself and any official supporting statement released by the Commission—not on the basis of remarks or observations made prior thereto.

The Commission finds: (1) The amendments prescribed herein concern matters of agency organization and procedure which do not require notice or hearing under 5 U.S.C. 553.

(2) In view of the purpose, intent and effect of the amendments herein ordered, good cause exists for making them effective upon issuance of this order.

(3) It is appropriate and in the public interest in administering the Federal Power Act, the Natural Gas Act and the Department of Energy Organization Act to adopt the amendments hereinafter set forth.

The Commission, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 308 and 309 (49 Stat. 858, 859; 16 U.S.C. 825g, 825h), the provisions of the Natural Gas Act, particularly sec-

tions 15 and 16 (52 Stat. 829, 830; 15 U.S.C. 717n, 717o), and the provisions of the Department of Energy Organization Act, particularly sections 401, 402, and 403 (91 Stat. 582-585), *orders:*

(A) Part 1, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations is amended as set forth below:

Section 1.3a is amended in paragraph (b) by revising the third sentence of subparagraph (1) by redesignating subparagraph (2) as subparagraph (4) and by inserting new subparagraphs (2) and (3) to read as follows:

§ 1.3a Notice and procedures for Commission meetings.

* * * * *

(b) Open meetings. (1) * * * The public is invited to observe and listen to the meeting but not to participate. * * *

(2) The recording of discussions at Commission meetings by means of electronic or other devices (including tape recorders, stenotype, stenomask, or shorthand) and the photographing of Commission meetings by still and movie cameras, without lighting aids, is permitted. The Commission reserves the right to suspend the operation of this part of its regulations with respect to the consideration of a particular item on its agenda upon the motion of a member of the Commission and the affirmative vote of the Commission.

(i) Due to the limited space of the Commission meeting room, use of recording or photographic equipment which would require the user to move about the room during the meeting is not allowed. Recording and photographic equipment may be set up and used only in the public areas of the Commission meeting room as designated by the Commission.

(ii) Except for portable equipment which is used at an individual's seat in the audience, equipment must be in place and ready to use prior to the start of the meeting or set up during a recess of the meeting. Such equipment may be removed only at the conclusion of the meeting or during a recess. A pre-arranged recess for the set up or removal of equipment may be requested through the Commission's Director of Public Information.

(iii) No microphones may be placed on the tables used by the Commissioners and Staff.

(iv) Any deviation from the regulations in subparagraph (2) will require a waiver of the rules by the Commission.

(3) Transcripts of Commission meetings are not part of the "formal record" as defined in section 1.1(19) of this Part nor the "public records" of the Commission as defined in § 1.36(c)(2) of this Part.

(4) * * *

* * * * *

(B) Part 3, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations is amended as set forth below:

Section 3.8 is amended in paragraph (j) by deleting the "." at the end of subparagraph (4) and inserting in lieu thereof a ";" and new subparagraph (5) to read as follows:

§ 3.8 Public information and submittals.

* * * * *

(j) * * *; (5) regulations pertaining to the use of television, movie and still cameras and recording equipment in connection with the Commission's open public meetings under the Government in the Sunshine Act are found in Section 1.3a of this Chapter.

(C) The amendments adopted herein shall be effective upon issuance of this order.

(D) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNNETH F. PLUMB,
Secretary.

[FR Doc. 78-13078 Filed 5-12-78; 8:45 am]

[4830-01]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 7548]

PART 301—PROCEDURE AND ADMINISTRATION

Public inspection of written determinations issued in response to requests submitted before November 1, 1976

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the public inspection of written determinations issued in response to requests submitted before November 1, 1976. Written determinations are rulings, determination letters, and technical advice memoranda. Provisions for public inspection of these written determinations were added by the Tax Reform Act of 1976. The regulations would affect taxpayers who requested these written determinations and persons who want to inspect any of these written determinations.

DATE: The regulations are effective on May 3, 1978, with respect to written determinations issued in response to requests submitted before November 1, 1976.

FOR FURTHER INFORMATION CONTACT:

James Edward Maule of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (attention: CC:LR:T), 202-566-3299 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 16, 1977, proposed amendments to the regulations on procedure and administration (26 CFR Part 301) under section 6110(h) of the Internal Revenue Code of 1954 were published in the FEDERAL REGISTER (42 FR 63431). The amendments were proposed to conform the regulations to section 1201(a) of the Tax Reform Act of 1976 (90 Stat. 1660). A detailed description of the regulations appears in the preamble to the notice of proposed rulemaking published on December 16, 1977 in the FEDERAL REGISTER (42 FR 63431), and therefore is not repeated here. No public hearing was requested. After consideration of the several comments regarding the proposed amendments, those amendments are adopted without change by this Treasury decision.

COMMENTS RECEIVED

One comment was received which suggested that background file documents related to documents open to inspection under section 6104 be open to public inspection under section 6110. The comments expressed dissatisfaction with the rule in § 301.6110-6(a)(3)(B) of the regulations which states that background file documents related to written determinations that are not open to or available for public inspection are themselves not open to or available for public inspection. The rule in the regulations is retained because it is reasonable, is in accord with the legislative history, and avoids conceptual and administrative burdens and problems that otherwise would be raised.

Another comment suggested that the Internal Revenue Service send individual notices to recipients of written determinations issued in response to requests submitted before November 1, 1976, in addition to the FEDERAL REGISTER notice required by section 6110(h). To do so would impose financial and administrative burdens on the Internal Revenue Service, a fact that was recognized by Congress when it enacted section 6110(h). The comment also suggested that ruling recipients should be permitted to bring actions to restrain disclosure in the Tax Court without exhausting their administra-

tive remedies. However, the procedures for administrative remedies in the notice of proposed rulemaking are not changed because they are fair to ruling requesters, will prevent congested dockets in the Tax Court, and have proved to be an exceptionally efficient pre-judicial means of resolving disagreements with respect to restraint of disclosure in current written determinations.

This same comment also contained a series of suggestions relating to the maintenance of taxpayer addresses by the Internal Revenue Service, the information needed to request inspection of rulings issued before July 5, 1967, persons permitted to represent ruling recipients, certain automatic deletions, and informal information requests. Most of the suggested procedures, or ones very similar to them, are or will be followed by the Internal Revenue Service, but are not detailed in the regulations. To do so would complicate and lengthen the regulation, and would impair the flexibility of the rulings disclosure process.

DRAFTING INFORMATION

The principal author of this regulation was James Edward Maule of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, the proposed amendments of the regulations under 26 CFR Part 301 are adopted.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: May 3, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

§ 301.6110-6 Written determinations issued in response to requests submitted before November 1, 1976.

(a) *Inspection of written determinations and background file documents*—(1) *General rule.* Except as provided in this section, the text of any written determination issued in response to a request postmarked or hand delivered before November 1, 1976 and any related background file document shall be open or subject to inspection in accordance with the rules in §§ 301.6110-1 through 301.6110-5 and 301.6110-7. However, the rules in § 301.6110-4 do not apply to inspection under this section. The rules in § 301.6110-5 (a), (b) and (c) also do not apply, except with respect to background file documents.

(2) *Exclusions.* The Following written determinations are not open or subject to inspection under this section.

(i) Written determinations with respect to matters for which the determination of whether public inspection should occur is made under section 6104. Some of these matters are listed in § 301.6110-1(a).

(ii) Written determinations issued before September 2, 1974, dealing with the qualification of a plan described in section 6104(a)(1)(B)(i) or the exemption from tax under section 501(a) of an organization forming part of such a plan.

(iii) Written determination issued pursuant to requests submitted before November 1, 1976 with respect to the exempt staus under section 501(a) of organizations described in section 501 (c) or (d), the status of organizations as private foundations under section 509(a), or the status of organizations as operating foundations under section 4942(j)(3).

(iv) General written determinations that relate solely to accounting or funding periods and methods, as defined in § 301.6110-1(b)(3).

(v) Determination letters.

(3) *Items that may be inspected only under certain circumstances*—(i) *Background file documents.* A background file document relating to a particular written determination issued in response to a request submitted before November 1, 1976 shall not be subject to inspection until the related written determination is open to public inspection or available for inspection, and then only if a written request pursuant to § 301.6110-1(c)(4) is made for inspection of the background file document. However, the following background file documents are not open or subject to inspection:

(A) Background file documents relating to general written determinations issued before July 5, 1967.

(B) Background file documents relating to written determinations described in paragraph (a)(2) of this section.

(ii) *General written determinations issued before July 5, 1967.* General written determinations issued before July 5, 1967 shall not be subject to inspection until all other written determinations issued in response to requests postmarked or hand delivered before November 1, 1976 that are open to inspection under this section have been made open to public inspection, and then only if a written request pursuant to § 301.6110-1(c)(4) is made for inspection of the written determination. In this regard, the request for inspection must also contain the section of the Internal Revenue Code in which the requester is interested and the dates of issuance of the written determinations.

(b) *Notice and time requirements, and actions to restrain disclosure*—(1) *Notice*—(i) *General rule.* Before a written determination is made open to public inspection and before a particular written determination is subject to inspection in response to the first written request therefor, the Commissioner shall publish in the FEDERAL REGISTER a notice that the written determination is to be made open or subject to inspection. Notices with respect to written determinations, other than those described in paragraph (a)(3)(ii) of this section, shall be published at the earliest practicable time after this regulation is adopted as a Treasury decision. Notices with respect to written determinations subject to inspection upon written request shall be published within a reasonable time after the receipt of the first written request for inspection thereof, but no sooner than the day as of which all other written determinations open to public inspection under this section have been made open to public inspection. Notices with respect to background file documents shall be sent in accordance with the rules in § 301.6110-5(a) and will be mailed by the Internal Revenue Service to the most recent addresses of the persons to whom the background file document relates that are in the written determination file.

(ii) *Sequence of notices.* Notices with respect to written determinations, other than general written determinations issued before July 5, 1967, shall be published in the following order. The first category is notices with respect to reference written determinations issued under the Internal Revenue Code of 1954. The second category is notices with respect to general written determinations issued after July 4, 1967. The third category is notices with respect to reference written determinations issued under the Internal Revenue Code of 1939 or corresponding provisions of prior law. Within a category, the Commissioner may publish notices individually or for groups of written determinations arranged according to the jurisdictions of the ruling branches in the Office of the Assistant Commissioner (Technical) and the Assistant Commissioner (Employee Plans and Exempt Organizations), as the Commissioner may find reasonable. To the extent practicable, notices published individually shall be published in the reverse order of the issuance of the written determinations for which they are published, starting with the most recent written determination issued. To the extent practicable, each group shall consist of consecutively issued written determinations. Notices for groups shall be pub-

lished, to the extent practicable, in the reverse order of the time period of issuance of the written determinations in each group, starting with the most recent time period.

(iii) *Contents of notice.* The notice required by paragraph (b)(1)(i) of this section shall:

(A) Identify by subject matter description and dates of issuance the written determinations that the Commissioner proposes to make open or subject to inspection.

(B) State that the written determinations will be made open or subject to inspection pursuant to section 6110(h),

(C) State that the persons to whom the written determinations pertain have the right to seek administrative remedies under paragraph (b)(2)(ii) of this section and to commence judicial proceedings under section 6110(h)(4) within indicated time periods,

(D) State that there exist the possibilities that someone might request additional disclosure under section 6110(f)(4) and that someone might request inspection of a related background file document, and

(E) State that any notice that must be mailed by the Internal Recenue Service will be sent to the most recent address of the person to whom the notice must be sent that is in the relevent written determination file.

(2) *Actions to restrain disclosure*—(i) *Information on written determinations described by notice.* Any person may, within 15 days after the Commissioner publishes in the FEDERAL REGISTER a notice of intention to disclose a written determination under section 6110(h), request the Internal Revenue Service to provide certain information. This information includes whether any of the written determinations described by the notice is one that was issued to the person requesting this information. The Internal Revenue Service will also inform the person whether any of the written determinations described by the notice is one that was issued to a person with respect to whom the person requesting this information is a successor in interest executor or authorized representative. However, in order to do so, the Internal Revenue Service must be given the name and taxpayer identifying number of this other person and documentation of the relationship between that person and the person requesting the information. If the person requesting this information is a person to whom a written determination described by the notice pertains, or a successor in interest, executor, or authorized representative of that person, the Internal Revenue Service will also provide the person with a copy of the written determination on which is indicated the material that the Commissioner proposes to delete under section 6110(c) and any substitution proposed to be made therefor.

(ii) *Administrative remedies.* Any person to whom a written determination described by the notice in the FEDERAL REGISTER pertains, and any successor in interest, executor or authorized representative of that person may pursue the administrative remedies described in this paragraph (b)(2)(ii). If after receiving the information described in paragraph (b)(2)(i) of this section, the person pursuing these administrative remedies desires to protest the disclosure of certain information in the written determination, that person must within 35 days after the notice is published submit a written statement identifying those deletions not made by the Internal Revenue Service which the person believes should have been made. The person pursuing these administrative remedies must also submit a copy of the version of the written determination proposed to be open or subject to inspection on which that person indicates, by the use of brackets, the deletions which the person believes should have been made. The Internal Revenue Service shall, within 20 days after receipt of the response by the person pursuing these administrative remedies, mail to that person its final administrative conclusion with respect to the deletions to be made.

(iii) *Judicial remedy.* Except as provided in paragraph (b)(2)(iv) of this section, any person permitted to resort to administrative remedies under paragraph (b)(2)(ii) of this section may, if that person proposed any deletion not made under section 6110 (c) by the Commissioner, file a petition in the United States Tax Court under section 6110(h)(4) for a determination with respect to the proposed deletion. If appropriate, the petition may be filed anonymously. Any petition filed under section 6110(h)(4) must be filed within 75 days after the date on which the Commissioner publishes in the FEDERAL REGISTER the notice of intention to disclose required under section 6110(h)(4).

(iv) *Limitations on right to bring judicial actions.* No petition shall be filed under section 6110(h)(4) unless the administrative remedies provided by paragraph (b)(2)(ii) of this section have been exhausted. However, under two circumstances the petition may be filed even though the administrative remedies have not been exhausted. The first circumstance is if the petitioner requests the information described in paragraph (b)(2)(i) of this section within 15 days after the notice of intention to disclose is published in the FEDERAL REGISTER, but does not receive it within 30 days after the notice is published. The other circumstance is if the petitioner submits the statement of deletions within 35 days after the notice is published, but does not receive the final administrative conclusion of the Internal Revenue Service within 65 days after the notice is published. No judicial action with respect to any written determination shall be commenced under section 6110(h)(4) by any person who has received a notice with respect to the written determination under paragraph (b)(2)(v) of this section.

(v) *Required notice.* If a proceeding is commenced under section 6110(h)(4) with respect to any written determination, the Secretary shall send notice of the commencement of the proceeding to any person to whom the written determination pertains. No notice is required to be sent to persons who have filed the petition that commenced the proceeding under section 6110(h)(4) with respect to the written determination. The notice shall be sent, by registered or certified mail, to the last known address of the persons described in this paragraph (b)(2)(v) within 15 days after notice of the petition filed under section 6110(h)(4) is served on the Secretary.

(vi) *Intervention.* Any person who is entitled to receive notice under paragraph (b)(2)(v) of this section has the right to intervene in any action brought under this paragraph (b)(2). If appropriate, this person shall be permitted to intervene anonymously.

(vii) *Background file documents.* The following qualifications of the rules in § 301.6110-5(b) apply with respect to the restraint of disclosure of background file documents related to written determinations to which this section applies. First, the administrative remedies described in §§ 601.105 (b)(5)(iii)(*i*) and 601.201(e)(11) of this chapter do not apply. Second, the rule in §§ 601.105(b)(5)(vi)(*f*) and 601.201(e)(16) that the Internal Revenue Service will not consider the deletion of material not proposed for deletion prior to the issuance of the written determination does not apply.

(3) *Time at which open to public inspection*—(i) *General rule.* Except as otherwise provided in paragraph (b)(3)(ii) of this section, the text of any written determination open to public inspection or available for inspection upon written request under section 6110(h) shall be made open to or available for inspection no earlier than 90 days and no later than 120 days after the date on which the Commissioner publishes in the FEDERAL REGISTER the notice of intention to disclose required under section 6110(h)(4). However, if an action is brought under section 6110(h)(4) to restrain disclosure of any portion of a written determination, the disputed portion of that written determination shall be made open to or available for inspection under paragraph (b)(3)(ii) of this section.

(ii) *Limitation on account of court order.* The portion of the text of any written determination that was subject to an action under section 6110(h)(4) to restrain disclosure in which the court determined that the disclosure should not be restrained shall be made open to or available for inspection within 30 days of the date that the court order becomes final. However, in no event shall that portion of the text of that written determination be made open to or available for inspection earlier than 90 days after the date on which the Commissioner publishes in the FEDERAL REGISTER the notice of intention to disclose required by section 6110(h)(4) and paragraph (b)(1) of this section. This 30-day period may be extended for such time as the court finds necessary to allow the Commissioner to comply with its decision. Any portion of a written determination which a court orders open to public inspection or subject to inspection upon written request under section 6110(f)(4) shall be open or subject to inspection within such time as the court provides.

(iii) *Background file documents.* The rules in § 301.6110-5(c)(2)(ii) do not apply with respect to the time at which background file documents related to written determinations to which this section applies are subject to inspection.

[FR Doc. 78-13063 Filed 5-12-78; 8:45 am]

[4410-01]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

Subpart Y—Authority to Compromise and Close Civil Claims and Responsibility for Judgments, Fines, Penalties, and Forfeitures

[Order No. 781-78]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Delegating Increased Settlement Authority to Assistant Attorneys General

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order increases the settlement authority of the Assistant Attorneys General in claims filed in behalf of the United States and in claims against the United States, and authorizes the Assistant Attorneys General to redelegate certain of their authority to subordinate division officials and to U.S. Attorneys. The purpose of the order is to enable more cases to be settled at the Assistant Attorney General level or below.

EFFECTIVE DATE: May 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Frances M. Green, Deputy Associate Attorney General, U.S. Department of Justice, Washington, D.C. 20530, 202-739-3117.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Subpart Y of Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

1. Section 0.160 is revised to read as follows:

§ 0.160 Offers which may be accepted by Assistant Attorneys General.

Each Assistant Attorney General is authorized with respect to matters assigned to his division, to accept offers in compromise of claims in behalf of the United States in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $250,000 or 10 percent of the original claim, whichever is greater, and of claims against the United States in all cases, or in administrative actions to settle, in which the amount of the proposed settlement does not exceed $500,000 except:

* * * * *

2. Section 0.168(a) is revised to read as follows:

§ 0.168 Redelegation by Assistant Attorneys General.

(a) The Assistant Attorneys General are authorized to redelegate to subordinate division officials and U.S. Attorneys any of the authority delegated by §§ 0.160, 0.162, 0.164, and 0.172, except that when a disagreement between a U.S. Attorney or other Department attorney and a client agency over the terms of a proposed settlement cannot be resolved below the Assistant Attorney General level, the settlement must be presented to the appropriate Assistant Attorney General for approval.

Dated: May 8, 1978.

GRIFFIN B. BELL,
Attorney General.

[FR Doc. 78-13150 Filed 5-12-78; 8:45 am]

[4310-05]

Title 30—Mineral Resources

CHAPTER VII—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

PART 837—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

Establishment of an Interest Rate for Delinquent Reclamation Fee Payments and Method of Interest Computation

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Final rulemaking.

SUMMARY: These rules revise the reclamation fee payment regulations to establish an interest rate to be assessed against delinquent fee payments and to provide a method for computing interest on late payments.

EFFECTIVE DATE: June 14, 1978.

ADDRESSES: Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

M. Richard Nalbandian, Chief, Division of Reclamation Planning and Standards, Abandoned Mine Land Reclamation, 202-343-4057.

SUPPLEMENTARY INFORMATION: Proposed rules establishing an interest rate for delinquent fee payments and providing a method of computation were published in the FEDERAL REGISTER on February 21, 1978. (43 FR 7305). At the close of the comment period on March 23, 1978, comments had been received from four commenters.

The purpose of these rules is to provide a financial inducement for operators to comply with the statutory requirement in section 402(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(b)) that reclamation fees must be paid no later than 30 days after the end of the calendar quarter for which they were due. The rules are issued under the Secretary's authority to promulgate rules and regulations that may be necessary or expedient to implement and administer the provisions of Title IV (section 412(a), 30 U.S.C. 1242(a)). The rule is deemed necessary to provide an administratively effective method for encouraging operators to make accurate and timely reclamation fee payments on coal produced each calendar quarter. The rate is established at a sufficiently high level to discourage

operators from withholding payments in order to realize financial gains by using money due and payable for other purposes. Under this rule, interest assessed on delinquent payments will become part of the debt owed the federal government in the event legal action is necessary to compel payment.

The Office of Surface Mining Reclamation and Enforcement (OSM) has made a few changes of a non-substantive editorial nature. A change also has been made in response to one of the public comments.

Editorial Changes

1. In § 837.15(d), the phrase "Except as provided in paragraph (e)," has been inserted at the beginning of the third sentence to clarify the time when interest shall first begin to accrue on delinquent payments. Paragraph (e) establishes the date when payments due on first and second calendar quarter coal production must be received to avoid being delinquent and the date when interest shall begin to accrue on those payments once they become delinquent.

2. The dates in § 837.15(e) establishing the times when interest shall begin to accrue, and when payments due on coal produced from October 1, 1977 through March 31, 1978 must be received to avoid an interest charge, have been changed to produce a result consistent with the effective date of this final rule.

3. In § 837.15(e), the word "on" before the date "April 1, 1978" has been deleted because it is unnecessary.

Summary of Comments Received on Proposed Rulemaking

1. One commenter stated that OSM does not have any statutory authority to impose, by rule, an interest charge of one percent per month on delinquent fee payments. This comment was not accepted. Section 412(a) of the Act authorizes the Secretary of the Interior to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of the Act relating to Abandoned Mine Reclamation (Title IV). Section 402(b) of the Act requires payment of reclamation fees on produced coal no later than thirty days after the end of each calendar quarter in which the coal was produced. Therefore, this rule is promulgated under the authority of Section 412(a) of the Act to provide the Secretary, through OSM, with an administratively effective method of assuring timely compliance with Section 402(b) of the Act.

2. One commenter suggested that the proposed amendments did not distinguish between an operator who had attempted, in good faith, to submit the appropriate fee and an operator who simply did not meet the payment deadline. The commenter argued that failure to distinguish between those two groups of operators would be inequitable. The commenter therefore proposed amending § 837.14(b) to provide that interest charged on fees subsequently redetermined by the Director should be at the prevailing prime interest rate and that the interest should not begin to accrue until the end of the calendar quarter in which the determination of a higher fee was made. To complete the distinction, the commenter also suggested amending § 837.15(d) by substituting "delinquent" for "late" in the last sentence of the paragraph, and amending § 837.15(e) by adding the word "delinquent" to modify the phrase "reclamation fee payments" found in the first sentence. The latter comment was partially accepted by substituting "delinquent" for "late" in the last sentence of paragraph (d) of § 837.15. That change provides consistency of word usage throughout the paragraph. However, for effective administration of Section 402(b) of the Act, it is necessary to provide a uniform rule applicable to all operators. It would be virtually impossible to distinguish between those operators who in good faith attempted to pay the appropriate fee and those who might use this commenter's proposed changes to avoid accurate reporting and timely payments required by the Act and the rules. Furthermore, a charge based on the prevailing prime interest rate would not provide sufficient incentive for operators to submit accurate production figures, although such a rule would allow operators to avoid a higher rate if they did report something on time. The Act and the rules requires both accurate reporting of production figures and timely payments.

3. Two commenters argued that the interest charge was unduly burdensome or punitive and that an interest charge greater than that paid by the Federal government on its general obligations and bonds would be unconscionable. This comment was not accepted. A sufficient financial inducement to encourage compliance within the time specified by Congress is necessary. OSM's goal is to collect the reclamation fee in an orderly and timely manner and, of course, the burden imposed by an interest charge will only fall on those operators who neglect their legal responsibility to pay on time.

4. Another commenter suggested that, with respect to coal mined during reclamation of previously abandoned areas, interest on delinquent fees should be eliminated entirely or should not begin to accrue until after reclamation is completed or until after an extended grace period of 90 days from the end of the applicable calendar quarter. No change was made because section 402(b) of the Act requires payment of reclamation fees "no later than thirty days after the end of each calendar quarter." Moreover, section 402(a) of the Act requires that "all operators of coal mining operations * * *" must pay a reclamation fee on coal produced, whether or not coal is produced during reclamation activities.

5. One commenter argued that he found no consideration given for the usury laws of various States and that the proposed interest charge would, in many cases, exceed statutory limits. To constitute usury, there must be a loan of money or an agreement by the lender to refrain during a given period of time from requiring the borrower to repay a loan or debt which is due and payable. Here, the annual percentage charged, although possibly in excess of some statutory rates of interest, cannot be regarded as usury, since the essential borrowing and lending are not present. The Act establishes an obligation to pay a reclamation fee by a certain date and interest is charged only if the payment is not received on time. The interest charge is not a condition of such an agreement between the operators liable for the fee and OSM, but, rather it is an inducement for operators to meet their financial obligations under the Act.

6. A comment was received suggesting that OSM had not carefully reviewed the economic consequences of this proposal. OSM did consider the economic impact of the proposed rule, as noted in the Federal Register notice of proposed rulemaking (43 FR 7305), and determined in accordance with Departmental regulations that the anticipated consequences would not be of the magnitude required for the preparation of an Economic Impact Statement.

Effective Date

Consistent with Department of the Interior policy, this final rulemaking will be effective June 14, 1978.

Drafting Information

The principal authors of this rulemaking are Paul Reeves, Office of Surface Mining Reclamation and Enforcement, and John Beattie, Office of the Solicitor, Department of the Interior.

In consideration of the comments received and pursuant to the authority of sections 201(c) and 412(a) of the Surface Mining Control and Reclamation Act of 1977, 30 CFR Part 837 is amended as follows:

1. Paragraph (b) of § 837.14 is revised to read as follows:

§ 837.14 Determination of percentage based fees.

* * * * *

(b) If the Director determines that a higher fee shall be paid, the operator shall submit the additional fee together with interest computed under § 837.15(d).

2. In § 837.15 paragraph (d) is revised, paragraph (e) is redesignated as paragraph (f) and a new paragraph (e) is added. Revised paragraph (d) and new paragraph (e) read as follows:

§ 837.15 Reclamation fee payment.

* * * * *

(d) The reclamation fee payment for each calendar quarter shall be paid no later than 30 calendar days after the end of the calendar quarter. Delinquent payments are subject to interest at the rate of 1 percent per month, or any part thereof, on any amounts due. Except as provided in paragraph (e), interest shall begin to accrue on the 31st day following the end of the calendar quarter and will run until the date of payment, or until judgment is rendered by a court of competent jurisdiction in an action to compel payment of debts. The Office of Surface Mining Reclamation and Enforcement will then compute the interest on delinquent payments and bill the operator in accordance with procedures followed by the Department of the Interior for the collection of debts.

(e) Interest shall begin to accrue (31 days after publication) on reclamation fee payments due on coal produced from October 1, 1977 through March 31, 1978 for which payments have not been received by (30 days after publication). For reclamation fee payments due on coal produced during succeeding calendar quarters, beginning with the quarter commencing April 1, 1978, interest, at the prescribed rate, shall accrue in accordance with paragraph (d) of this section.

(Secs. 201 and 412(a), Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201, 1242(a)).)

NOTE.—The Department of the Interior 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: May 9, 1978.

JOAN M. DAVENPORT,
Assistant Secretary,
Energy and Minerals.

[FR Doc. 78-13072 Filed 5-12-78; 8:45 am]

[3910-01]

Title 32—National Defense

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

SUBCHAPTER G—ORGANIZATION AND MISSION—GENERAL

PART 865—PERSONNEL REVIEW BOARDS

Subpart B—Air Force Discharge Review Board

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: This rule is revised to include changes necessitated by the passing on October 8, 1977, of a recent amendment to Section 301 of the Serviceman's Readjustment Act of 1944, and the resultant revision of Department of Defense Directive 1332.28, March 29, 1978. It establishes policies for the review of discharges and dismissals under DOD Directive 1332.28 "Discharge Review Boards", and explains the jurisdiction, authority and actions of the Air Force Discharge Review Board. It applies to all Air Force activities. These revised procedures are intended to result in better understanding by former Air Force members desiring amendment to their military records.

EFFECTIVE DATE: May 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Colonel Robert H. Lee, Principal Assistant for Discharge Review Matters, Office of the Secretary of the Air Force (Personnel Council), Commonwealth Building, 1300 Wilson Boulevard, Room 920, Arlington, Va. 22209, 202-694-5418.

SUPPLEMENTARY INFORMATION: Title 32, Chapter VII, Subchapter G, Subpart B is revised to implement DOD Directive 1332.28. This revision incorporates the uniform procedures and standards for the review of discharges or dismissals set forth in DOD Directive 1332.28 "Discharge Review Boards" dated March 29, 1978; provides definitions of terms used in the regulation; amplifies Secretarial responsibilities in discharge review board matters; provides for the review of applications from former members with discharges under other than honorable conditions without regard to the normal 15-year statute of limitations; establishes discharge review standards and outlines the procedural rights of an applicant who appeals his discharge to the Discharge Review Board.

The legal authority for this subpart is Sec. 8012, 70A Stat. 488, sec. 1553, 72 Stat. 1267, 10 U.S.C. 8012, 1553.

Accordingly, 32 CFR Part 865, Subpart B is revised as follows:

Subpart B—Air Force Discharge Review Board

AUTHORITY: Sec. 8012, 70A Stat. 488 Sec. 1553, 72 Stat. 1267, 10 U.S.C. 8012, 1553.

Subpart B—Air Force Discharge Review Board

§ 865.100 Purpose.

This subpart establishes policies for the review of discharges and dismissals under DOD Directive 1332.28 "Discharge Review Boards", dated March 29, 1978, and explains the jurisdiction, authority and actions of the Air Force Discharge Review Board. It applies to all Air Force activities. This subpart is affected by the Privacy Act of 1974. The system of records cited in this subpart is authorized by 10 U.S.C. 1553 and 8012. Each data gathering form or format which is required by this subpart contains a Privacy Act statement, either incorporated in the body of the document or in a separate statement accompanying each such document.

§ 865.101 References.

(a) Title 10, U.S.C. 1553.

(b) Title 38, U.S.C. 101, 3103, 3103a, as amended by Pub. L. 95-126, October 8, 1977.

(c) Stipulation of Dismissal, Civil Action No. 76-530, United States Court for the District of Columbia, *"Urban Law Institute of Antioch College, Inc., et al,* Plaintiffs v. *Secretary of Defense, et al,* Defendants," January 31, 1977.

(d) DOD Directive 5400.11, "Personal Privacy and Rights of Individuals Regarding their Personal Records," August 4, 1975.

(e) DOD Directive 1332.14, "Enlisted Administrative Separations," December 29, 1976.

(f) DOD Directive 1332.28, "Discharge Review Boards," March 29, 1978.

(g) Air Force Regulation 35-41, Vol III, Separation Procedures for USAFR Members, October 30, 1975.

(h) Air Force Regulation 36-2, Officer Personnel, Administrative Discharge Procedures, August 2, 1976.

(i) Air Force Regulation 36-3, Officer Personnel, Administrative Discharge Procedures, August 2, 1976.

(j) Air Force Regulation 36-12, Officer Personnel, Administrative Separation of Commissioned Officers and Warrant Officers, July 15, 1977.

(k) Air Force Regulation 39-10, Separation Upon Expiration of Term of Service, for Convenience of Government, Minority, Dependency and Hardship, January 3, 1977.

(l) Air Force Manual 39-12, Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program, September 1, 1966.

(m) Air National Guard Regulation 39-10, Enlisted Personnel—Separation, December 30, 1971.

§ 865.102 Statutory authority.

The Air Force Discharge Review Board (DRB) was established within the Department of the Air Force under section 301 of the Serviceman's Readjustment Act of 1944, as amended (now 10 U.S.C. 1553) and further amended by Pub. L. 95-126 dated October 8, 1977.

§ 865.103 Definition of terms.

(a) *Discharge Review Board (DRB).* An administrative Board constituted by the Secretary of the Air Force and vested with discretionary authority to review discharges and dismissals under the provisions of Title 10, U.S.C. 1553.

(b) *DRB Panel.* An element of the DRB, consisting of five members, convened to review discharges and dismissals.

(c) *Applicant.* A former member of the Air Force who has been discharged or dismissed administratively in accordance with the directives of the Air Force or by sentence of a special court-martial under Title 10, U.S.C., 801 et seq. (Uniform Code of Military Justice) and, in accordance with statutory and regulatory provisions: (1) Whose case is heard by the DRB at the request of the former member, or, if he or she is dead, or mentally incompetent, the (surviving) spouse, next-of-kin, or legal representative; or (2) whose case is heard on the DRB's own motion, which includes reviews requested by the Veterans Administration under Title 38, U.S.C. 101 and 3103, as amended by Pub. L. 95-126.

(d) *Counsel/Representative.* An individual or agency designated by the applicant who agrees to represent the applicant in a case before the DRB. It includes, but is not limited to: A lawyer who is a member of the bar of a federal Court or of the highest court of a state; an accredited representative designated by an organization recognized by the Administrator of Veterans Affairs; a representative from a state agency concerned with veterans affairs; and representatives from private organizations or local government agencies.

(e) *Discharge.* A general term which includes dismissal and separation or release from active or inactive military status, as well as actions which accomplish a complete severance of all military status. This term also includes the assignment of a reason for such discharge and characterization of service.

(f) *Discharge Review.* The process by which the reason for separation, the procedures followed in accomplishing separation, and the characterization of service are evaluated. This includes determinations made under the provisions of 3103(e)(2) (§ 865.101 (b)).

(g) *Presiding Officer.* The senior line officer of any DRB panel convened for the purpose of conducting discharge reviews.

§ 865.104 Secretarial responsibilities.

(a) The Secretary of the Air Force is responsible for the overall operation of the discharge review program within the Department of the Air Force. The following delegations of authority have been made:

(1) To the Office of the Assistant Secretary of the Air Force (Manpower, Reserve Affairs and Installations) to act for the Secretary of the Air Force in all discharge review actions specified in paragraph (b) of this section.

(2) To the Director, Air Force Personnel Counsel, for operation of all phases of the discharge review program and authority to take action in the name of the Secretary of the Air Force in all discharge review actions except those specified in paragraph (b) of this section.

(b) The following categories of discharge review requests are subject to the review of the Secretary of the Air Force or his designee (see paragraph (a)(1) of this section).

(1) All cases in which a minority of the DRB Panel requests their submitted opinion be forwarded for consideration (see § 865.113 (h)).

(2) Cases when required in order to provide information to the Secretary on specific aspects of the discharge function or of the discharge review function which are of interest to the Secretary.

(i) Any specific case in which the Secretary has an interest.

(ii) Any case which the Director, Air Force Personnel Council believes is of significant interest to the Secretary.

(c) Consideration by the Secretary in such cases will be in accordance with DOD Directive 1332.28 dated March 29, 1978, and § 865.121.

§ 865.105 Jurisdiction and authority.

The DRB has jurisdiction and authority in cases of former military personnel who, at the time of their separation from the Service, were members of the U.S. Army aviation components (Aviation Section, Signal Corps; Air service; Air Corps; or Air Forces) or the U.S. Air Force. The DRB does not have jurisdiction and authority concerning personnel of other arms and services who, at the time of their separation, were assigned to duty with the Army Air Forces or the U.S. Air Force.

(a) The DRB's review is based on the former member's available military records, contentions submitted by the applicant, and on any other evidence that is presented to the DRB. The DRB determines whether the type of discharge or dismissal the former member received is equitable and proper; if not, the DRB instructs the USAF Military Personnel Center (AFMPC) to change the discharge or to issue a new discharge according to the DRB's findings.

(b) The DRB is not authorized to revoke any discharge, to reinstate any person who has been separated from the military service, or to recall any person to active duty.

(c) The DRB, on its own motion, may review a case that appears likely to result in a decision favorable to the former military member, without the member's knowledge or presence. In this case, if the decision is:

(1) Favorable, the DRB directs AFMPC to notify the former member accordingly at the member's last known address.

(2) Unfavorable, the DRB returns the case to the files without any record of formal action. If the former member later files an application for review, the DRB then reconsiders the case without prejudice.

§ 865.106 Application for review.

(a) An applicant may submit a written request for review with such statements, affidavits, or documentation as desired. The request for review shall be made on DD Form 293, Application for Review of Discharge or Separation from the Armed Forces of the United States, which is available at most military installations and regional offices of the Veterans Administration.

(b) A motion or request for review must be made within 15 years after

the date of discharge or dismissal except that, in accordance with Pub. L. 95-126, any former member administratively discharged under other than honorable conditions, and otherwise eligible to make application for review may do so without regard to the 15-year limitation period in Title 10, U.S.C. 1553, if such application is received prior to January 1, 1980.

(c) If the member is deceased or mentally incompetent, the spouse, next-of-kin, or legal representative may, as agent for the member, submit the application for the review along with proof of the member's death or mental incompetency.

(d) Applicants forward their requests for review to the National Personnel Records Center—mailing address: NPRC/MPR-AF, 9700 Page Boulevard, St. Louis, Mo. 63132. The National Personnel Records Center forwards all available military records of the former members to AFMPC for further processing to the DRB.

(e) Withdrawal of Application. An applicant shall be permitted to withdraw an application without prejudice at any time before the scheduled review.

§ 865.107 DRB Panel composition and meeting location.

(a) The Panel consists of five members, with the senior line officer acting as the presiding officer. The presiding officer convenes, recesses and adjourns the Panel.

(b) In addition to holding hearings in Washington, D.C., the DRB, as a convenience to applicants, periodically conducts hearings at selected locations throughout the Continental United States. Reviews are conducted at locations central to those areas with the greatest number of applicants. A continuing review and appraisal is conducted to ensure the selected hearing locations are responsive to a majority of applicants. Administrative details and responsibilities for traveling panels are outlined in § 865.123.

§ 865.108 Availability of records.

(a) Prior to a review, applicants or other designated representatives may obtain copies of military records by submitting a Standard Form 180, Request Pertaining to Military Records, to the National Personnel Records Center (NPRC), 9700 Page Boulevard, St. Louis, Mo. 63132. The request must be submitted prior to the time the DD Form 293 is submitted, since, once the DD Form 293 is submitted, the records will be transferred to AFMPC and will not be available to NPRC for reproduction.

(b) If the DRB is not authorized to provide copies of documents that are under the cognizance of another governmental department, office or activity, applications for such information must be made by the applicant to the cognizant authority. The DRB shall advise the applicant of the mailing address of the governmental department, office, or activity to which the request should be submitted.

(c) In the event that the military records relevant to the discharge review are not available at the agency having custody of the records, the applicant shall be notified of the situation and requested to provide such information and documents as may be desired in support of the request for discharge review. A period of not less than 30 days shall be allowed for such documents to be submitted. At the expiration of this time, the review may be conducted with information available to the DRB.

(d) The DRB may take steps to obtain additional evidence material to the discharge review under consideration beyond that found in the military records or submitted by the applicant, if a review of available evidence suggests certain aspects of the review would be incomplete without the additional information or when the applicant presents testimony or documents which require additional information to evaluate properly. Such information shall be made available to the applicant, upon request, with appropriate modifications regarding classified material.

(e) Prior to initiation of the decision process specified in § 865.113 the applicant and/or counsel/representative is entitled to request access to the records to be considered by the DRB in the discharge review.

(1) At a reasonable time prior to the initiation of the decision process, in any case heard on request of an applicant, the DRB shall provide the applicant and/or counsel/representative with a notice of the availability of all regulations and documents to be considered in the discharge review, except for documents in the military records and any documents submitted by the applicant when the DRB has taken action under § 865.108(d) to obtain such documents for use on the discharge review. The DRB shall also notify the applicant and/or counsel/representative: (*a*) Of the right to examine such documents or to be provided with copies of the documents upon request, (*b*) of the date by which such requests must be received, and (*c*) of the opportunity to respond within a reasonable period of time to be set by the DRB.

(2) When necessary to acquaint the applicant with the substance of a classified document, the classifying authority, on the request of the DRB, shall prepare a summary of or extract from the document deleting all references to sources of information and other matters, the disclosure of which, in the opinion of the classifying authority, would be detrimental to the national security interests of the United States. Should preparation of such summary be deemed impracticable by the classifying authority, information from the classified source shall not be considered by the DRB in its review of the case.

(f) Air Force regulations may be obtained, for a fee, by contacting the Chief, Central Base Administration at any major Air Force installation, or by writing the Armed Forces Discharge Review/Correction Board Reading Room, The Pentagon Concourse, Washington, D.C. 20310.

§ 865.109 Procedures for hearings.

(a) The applicant is entitled, by law, to appear in person at his or her request before the DRB in open session and to be represented by counsel of his or her own selection. The applicant also may present such witnesses as he or she may desire.

(1) There are three methods of presenting a case before the Discharge Review Board. These are:

(i) Nonpersonal appearance cases—when an applicant indicates that he or she does not desire to appear at the DRB, and does not desire to be represented by counsel.

(ii) Personal appearance cases—when an applicant desires to appear in person with or without counsel.

(iii) Nonpersonal appearance with counsel—when an applicant does not desire to appear in person but does want to be represented by counsel.

(2) The Government does not compensate or pay the expenses of the applicant, applicant's witnesses, or counsel.

(3) All applicants are provided a guidance sheet (§ 865.124), which suggests various types of information which could assist in the presentation of his/her case to the DRB.

(4) A summary of the available military records of the applicant is prepared for use by the DRB in the review process. A copy of this summary is available to the applicant and/or his or her counsel upon request.

(5) When an applicant has requested a personal appearance, the DRB sends the applicant (and designated counsel, if any) written notice of the hearing time and place. Evidence of such notification will be placed in the applicant's record.

(6) Personal appearance hearings shall be conducted with recognition of the rights of the individual to privacy. Accordingly, presence at hearings of individuals other than those whose presence is required will be limited to persons authorized by the presiding officer and/or expressly requested by the applicant, subject to reasonable limitations based upon available space.

(7) Except as authorized or directed by the Secretary of the Air Force, fur-

ther opportunity for personal appearance shall not be made available to an applicant who requests a hearing and who, after being duly notified of the time and place of the hearing, fails to appear at the appointed time, either in person or by representative, not having made a prior, timely request for a continuance or withdrawal of the application. In such cases, the applicant shall be deemed to have waived the right to a personal appearance and the DRB shall complete its review of the discharge based upon the evidence of record. Further request for a personal hearing shall not be granted unless the applicant can demonstrate that the prior failure to appear or to request continuance or withdrawal of the application was due to circumstances beyond the applicant's control.

(8) Continuances and postponements:

(i) A continuance of a discharge review hearing may be authorized by the presiding officer of the panel concerned, provided that such continuance is of reasonable duration and is essential to achieving a full and fair hearing. Where a proposal for continuance is indefinite, the pending application shall be returned to the applicant with the option to resubmit when the case is fully ready for review.

(ii) Postponements of scheduled reviews normally shall not be permitted other than for demonstrated good and sufficient reason set forth by the applicant in a timely manner, or for the convenience of the government.

(b) The presiding officer ensures that hearings are conducted to afford full and fair inquiries by the DRB panel.

(1) The panel members and recorder are sworn as are the applicant and witnesses if they decide to testify under oath.

(2) All parts of an applicant's military record that may be viewed by the panel members are made available to the applicant and his or her counsel.

(c) Formal rules of evidence shall not be applied in DRB proceedings. The presiding officer shall rule on matters of procedure and shall insure that reasonable bounds of relevancy and materiality are maintained in the taking of evidence and presentation of witnesses. Witnesses may present evidence to the DRB panel either in person or by affidavit. If a witness testifies under oath or affirmation, he or she is subject to examination by panel members.

(d) There is a presumption of regularity in the conduct of Governmental affairs. This presumption can be applied in any review unless there is substantial credible evidence to rebut the presumption.

§ 865.110 Contentions.

(a) Applicants must state clearly and specifically any contention(s) and/or issue(s) of fact, law or discretion having a bearing on their case in order for a written determination to be made in accordance with § 865.114(b)(4). A DD Form 293 provided for this purpose must be completed or amended prior to the DRB's decision.

(b) In addition, the DRB shall consider such issues of fact, law, or discretion as are discerned by the DRB in the discharge review process.

(c) The DRB shall make findings and conclusions with respect to the contentions and issues as required by § 865.114(b)(4).

§ 865.111 Decisions.

On the basis of its findings and conclusions, the DRB shall record its decision as to whether relief should be granted. The nature of any change shall be specified clearly.

§ 865.112 Implementation of discharge review decisions.

A written notification shall be issued to implement the decision of the DRB, or that of higher authority, in each discharge review case.

§ 865.113 Decision process.

(a) The DRB panel shall meet in plenary session to review discharges and exercise its discretion on a case-by-case basis in applying the standards set forth in this subpart.

(b) The presiding officer is responsible for the conduct of the discharge review. The presiding officer shall convene, recess, and adjourn the DRB panel, as appropriate, and shall maintain an atmosphere of dignity and decorum at all times.

(c) Each panel member shall act under oath or affirmation requiring careful, objective consideration of the application. Panel members are responsible for eliciting all facts necessary for a full and fair hearing. They shall consider all relevant material and competent information presented to them by the applicant. In addition, they shall consider available military records, together with such other records as may be in the files and relevant to the issues before the DRB.

(d) If the applicant does not appear in person and the designated counsel/representative does not appear in the applicant's behalf, the DRB shall review the application on the basis of available military records, documentary evidence submitted by or on behalf of the applicant, and any other relevant evidence.

(e) Application of Standards.

(1) When the DRB determines that an applicant's discharge was improper, the DRB will determine which reason for discharge should have been assigned based upon the facts and circumstances properly before the discharge authority in view of the regulations governing reasons for discharge at the time the applicant was discharged. Unless it is also determined that the discharge was inequitable, any change will be based on the evaluation of the applicant's overall record of service and the relevant Air Force regulations.

(2) When the board determines that an applicant's discharge was inequitable, any change will be based on the evaluation of the applicant's overall record of service and relevant regulations.

(f) Voting shall be conducted in closed session, a majority of the five members' votes constituting the DRB panel's decision.

(g) Details of closed session deliberations of a DRB panel are privileged information and shall not be divulged.

(h) A formal minority opinion may be submitted in instances of disagreement between members of a panel. The opinion must cite findings, conclusions and reasons which are the basis for the opinion. The complete case with the majority and minority recommendations will be submitted to the Director, Air Force Personnel Council. If requested, the Director will forward the complete case with his recommendation to the Office of the Assistant Secretary of the Air Force (Manpower, Reserve Affairs and Installations) for final resolution.

(i) The DRB may request advisory opinions from staff offices of the Air Force. These opinions are advisory in nature and are not binding on the DRB in its decision making process.

§ 865.114 Decisional document.

(a) A decisional document shall be prepared for each review conducted by the DRB.

(b) At a minimum, this decisional document shall contain:

(1) The date, character of, and reason for the discharge or dismissal certificate issued to the applicant upon separation from military service, including the specific regulatory authority under which the discharge or dismissal certificate was issued.

(2) The circumstances and character of the applicant's service as extracted from military records and information provided by other government authority or the applicant, such as, but not limited to:

(i) Date of enlistment.
(ii) Period of enlistment.
(iii) Age at enlistment.
(iv) Length of service.
(v) Periods of unauthorized absence.
(vi) Conduct and efficiency ratings (numerical or narrative).
(vii) Highest rank achieved.
(viii) Awards and decorations.
(ix) Educational level.
(x) Aptitude test scores.
(xi) Incidents of punishment pursuant to Article 15, Uniform Code of

Military Justice (including nature and date of offense or punishment).

(xii) Conviction by court-martial.

(xiii) Prior military service and type of discharge received.

(3) Reference to the written brief, documentary evidence, and testimony presented to the DRB by or on behalf of the applicant.

(4) A statement of findings, conclusions, and reasons consisting of:

(i) Findings of all issues of fact, law, or discretion upon which the decision on the application is based, including those factors required by applicable Air Force regulations to be considered for determination of the character of and reason for the discharge or dismissal certificate in question.

(ii) Findings and conclusions on all other issues of fact, law, or discretion raised by the applicant, including claims by the applicant that statutory, regulatory, and/or constitutional provisions were violated, and such other claims made by the applicant, which in the opinion of the DRB would have warranted greater relief than that afforded the applicant by the DRB's decision if resolved in the applicant's favor.

(iii) Conclusions as to whether or not any change, correction, or modification should be made in the type or character of the discharge or dismissal and/or the reason and authority for the discharge or dismissal; and, if so concluded, the particular changes, corrections, or modifications that should be made.

(iv) A statement of the reasons for the findings and conclusions made in accordance with paragraph (b)(4) (i) through (iii) of this section.

(5) Advisory opinions, including those containing factual information, where such opinions have been relied upon for final decision or have been accepted as a basis for rejecting any of the applicant's claims. Such advisory opinions or relevant portions thereof that are not fully set forth in the statement of findings, conclusions, and reasons shall be incorporated by reference therein. A copy of such opinions shall be appended to the decision and included in the record of proceedings.

(6) A record of the DRB panel members' names and votes.

(7) The DRB's decision and written minority opinions or reports, if any.

(8) A listing of the contentions or issues presented by the applicant, if not included elsewhere.

(9) An authentication of the document by an appropriate official.

(10) Issuance of decisions following discharge review. The applicant and counsel/representative, if any, shall be provided with a copy of the decisional document and of any further action in review. Final notification of decisions shall be issued to the applicant with a copy to the counsel/representative, if any.

(i) Notification to applicants, with copies to counsel/representative, shall normally be made through the U.S. Postal Services. Such notification shall consist of a notification of decision, together with a copy of the decision document.

(ii) Notification to AFMPC shall be for the purpose of appropriate action and inclusion of review matter in military records. Such notification shall bear appropriate certification of completeness and accuracy.

(iii) Actions on review by the Secretary of the Air Force, when occurring, shall be provided to the applicant and counsel/representative in the same manner as the notification of the review decision.

§ 865.115 Records of DRB proceedings.

(a) When the proceedings in any review have been concluded, a record thereof will be prepared. Records may include written records, electromagnetic records, or a combination thereof.

(b) At a minimum, the record will include the following:

(1) The application for review.

(2) A record of the testimony in verbatim, summarized, or recorded form at the option of the DRB.

(3) Documentary evidence or copies thereof considered by the DRB other than the military record.

(4) Briefs/arguments submitted by or on behalf of the applicant.

(5) Advisory opinions considered by the DRB, if any.

(6) The findings, conclusions, and reasons developed by the DRB.

(7) Notification of the DRB's decision to the cognizant custodian of the applicant's records, or reference to the notification document.

(8) Minority reports, if any.

(9) A copy of the decisional document.

§ 865.116 Cases reviewed by the Secretary or his designee.

Cases reviewed by the Secretary or his designee shall be considered in accordance with the standards set forth in the DOD Directive and this subpart.

(a) On every decision of the DRB that is reviewed by the Secretary or his designee, the decision on review shall be made in writing.

(b) In every case, the decision of the DRB and the reviewing authority, if any, shall include a statement of findings, conclusions, and reasons, except where the reviewing authority expressly adopts, in whole or in part, the statement of findings, conclusions and reasons of the DRB. Similarly, where the reviewing authority adopts the DRB's statement of findings, conclusions and reasons, there is no requirement for duplicative publication and indexing.

§ 865.117 Final disposition of the record of proceedings.

The original record of proceedings and all appendices thereto shall in all cases be incorporated in the military record of the applicant and returned to the custody of the NPRC, St. Louis, Mo.

§ 865.118 Reconsideration.

A discharge review shall not be subject to reconsideration except:

(a) Where the only previous consideration of the case was on the motion of the DRB.

(b) When the original discharge review did not involve a personal hearing and a personal hearing is now desired, and the provisions of § 865.109(a)(7) do not apply.

(c) Where changes in discharge policy are announced subsequent to an earlier review of an applicant's discharge, and the new policy is made expressly retroactive.

(d) Where the DRB determines that policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration: *Provided*, That such changes in policies or procedures represent a substantial enhancement of the rights afforded an applicant in such proceedings.

(e) Where an individual is to be represented by a counsel/representative, and was not so represented in any previous consideration of the case.

(f) Where the case was not previously considered under uniform standards published pursuant to Pub. L. 95-126 and application for such consideration is received before January 1, 1980, or within 15 years after the date of discharge.

(g) On the basis of presentation of new, substantial, relevant evidence not available to the applicant at the time of the original review. The decision as to whether evidence offered by an applicant in support of a request for reconsideration is in fact new, substantial, relevant, and was not available to the applicant at the time of the original review will be based on a comparison of such evidence with the evidence considered in the previous discharge review. If this comparison shows that the evidence submitted would have had a probable effect on matters concerning the propriety or equity of the discharge, the request for reconsideration shall be granted.

§ 865.119 Availability of Discharge Review Board documents for public inspection and copying.

(a) A copy of the decisional document prepared in accordance with § 865.114 shall be made available for public inspection and copying promptly after a notice of final decision is sent to the applicant.

(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from documents made available for public inspection and copying. Names, addresses, social security numbers, and military service numbers must be deleted. Written justification shall be made for all other deletions and shall be available for public inspection.

(c) Any other privileged or classified material contained in or appended to any documents required to be furnished the applicant and counsel/representative or made available for public inspection and copying may be deleted therefrom only if a written statement of the basis for the deletions is provided the applicant and counsel/representative and made available for public inspection. It is not intended that the statement be so detailed as to reveal the nature of the withheld material.

(d) DRB documents made available for public inspection and copying shall be located in the Armed Forces Discharge Review/Correction Boards Reading Room. The documents shall be indexed in usable and concise form so as to enable the public and those who represent applicants before the DRBs to isolate from all these decisions that are indexed those cases that may be similar to an applicant's case and that indicate the circumstances under and/or reasons for which the DRB or the Secretary of the Air Force granted or denied relief.

(1) The reading file index shall include, in addition to any other items determined by the DRB, the case number, the date, character of, reason for, and authority for the discharge. It shall further include the decisions of the DRB and reviewing authority, if any, and the issues addressed in the statement of findings, conclusions and reasons.

(2) The index need be permanently maintained only at permanent DRB regional locations. This index will be made available at sites selected for traveling board hearings for such periods as the DRB is present and in operation. Applicants at such sites will be so advised in the notice of scheduled hearings.

(3) The Armed Forces Discharge Review/Correction Boards Reading Room shall publish indexes quarterly. The DRB will be responsible for timely submission to the Reading Room of individual case information required for update of the indexes. These indexes shall be available for public inspection and/or purchase at the Reading Room. This information will be provided to applicants in the notice of scheduled hearings.

(4) Correspondence relating to matters under the cognizance of the Reading Room (including requests for purchase of indexes) shall be addressed to:

Armed Forces Discharge Review/Correction Board Reading Room, The Pentagon Concourse, Washington, D.C. 20310.

§ 865.120 Privacy Act information.

Information protected under the Privacy Act is involved in discharge review functions. The provisions of 32 CFR 286a will be observed throughout the processing of a request for review of discharge or dismissal.

§ 865.121 Discharge review standards.

(a) *Objective review.* The objective of a discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of review and the underlying factors which aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established which require automatic change or denial of a change in a discharge. Neither the DRB or the Secretary of the Air Force shall be bound by any methodology of weighting of the factors in reaching a determination. In each case, the DRB or Secretary of the Air Force shall give a full, fair, and impartial consideration to all applicable factors prior to reaching a decision.

(b) *Propriety.* A discharge shall be deemed to be proper unless, in the course of discharge review, it is determined that:

(1) There exists an error of fact, law, procedures, or discretion associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby, (such error shall constitute prejudicial error, if there is substantial doubt that the discharge would have remained the same if the error had not been made); or

(2) A change in policy by the Air Force made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.

(c) *Equity.* A discharge shall be deemed to be equitable unless: (1) In the course of a discharge review, it is determined that the policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration: *Provided,* That: (i) Current policies or procedures represent a substantial enhancement of the rights afforded an applicant in such proceedings; and (ii) There is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration; (2) At the time of issuance, the discharge was inconsistent with standards of discipline in the Air Force; or (3) In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's military record and other evidence presented to the DRB viewed in conjunction with the factors listed in this subsection and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance. Areas of consideration include, but are not limited to:

(i) Quality of Service, as evidenced by factors such as:

(*a*) Service history, including date of enlistment, period of enlistment, highest rank achieved, conduct or efficiency ratings (numerical or narrative).

(*b*) Awards and decorations.

(*c*) Letters of commendation or reprimand.

(*d*) Combat service.

(*e*) Wounds received in action.

(*f*) Record of promotions and demotions.

(*g*) Level of responsibility at which the applicant served.

(*h*) Other acts or merit that may not have resulted in a formal recognition through an award or commendation.

(*i*) Length of service during the period which is the subject of the discharge review.

(*j*) Prior military service and type of discharge received or outstanding post-service conduct to the extent that such matters provide a basis for a more thorough understanding of the performance of the applicant during the period of service which is the subject of the discharge review.

(*k*) Convictions by court-martial.

(*l*) Record of non-judicial punishment.

(*m*) Convictions by civil authorities while a member of the Air Force, reflected in the discharge proceedings or otherwise noted in military records.

(*n*) Record of periods of unauthorized absence.

(*o*) Records relating to a discharge in lieu of courtmartial.

(ii) Capability to serve, as evidenced by factors such as:

(*a*) *Total capabilities.* This includes an evaluation of matters such as age, educational level, and aptitude scores. Consideration may also be given to whether the individual met normal military standards of acceptability for military service and similar indicators of an individual's ability to serve satisfactorily, as well as ability to adjust to the military service.

(*b*) *Family/personal problems.* This includes matters in extenuation or mitigation of the reason for discharge that may have affected the applicant's ability to serve satisfactorily.

(c) *Arbitrary or capricious actions.* This includes actions by individuals in authority which constitute a clear abuse of such authority and which, although not amounting to prejudicial error, may have contributed to the decision to discharge or to the characterization of service.

(d) *Discrimination.* This includes unauthorized acts as documented by records or other evidence.

§ 865.122 Approval of exceptions to directive.

Only the Secretary of the Air Force may authorize or approve a waiver of, or exception to, any part of this subpart.

§ 865.123 Procedures for regional hearings.

(a) Composition of the panel for these hearings consists of three members from Washington with augmentation by two members from nearby local Air Force resources.

(b) The major commands of the Air Force installation selected are required to task subordinate units to provide two colonels on an additional duty basis, to serve as members of the DRB. Detailed information must be provided to the Chief, Personnel Division, of the installation involved before each hearing date.

(c) The administrative staff in Washington processes all cases for regional hearings, establishes hearing dates, and returns the records to the Military Personnel Center at Randolph AFB, Tex., when the case is finalized. Detailed information for the local panel members if provided to the Directors of Personnel of the bases involved approximately four weeks before each hearing date.

(d) Travel and per diem for all DRB panel members are funded by the Secretary of the Air Force Personnel Council (SAF/PC). The funding cite number is included in the information provided to the local panel members before each hearing date.

§ 865.124 Guidance sheet.

Regardless of the reason for your discharge, the suggested evidence listed below under No. 1 would assist in the presentation of your case to the Discharge Review Board. If you can recall the specific reason for discharge (types are shown in left hand column), additional suggested evidence is shown by the corresponding number in the right-hand column.

Reason for Discharge	Evidence Needed by the Board
1. Discharge for any reason.	1. Your statement on what happened that caused your discharge, what motivated you. Current police record (statement from local police department). Statement from schools and colleges (if you are attending or have completed any school or college since discharge, provide a copy of your transcript, diploma or letter of accomplishment from the school). Employment record (be specific—list jobs in order held—who supervisor was—reason for leaving job). Participation in civic or community affairs. Character references (frank statements about your character from members of your family, family friends, employer(s), family doctor or pastor, and other responsible people in the community).
2. General ineffectiveness (unsuitability, unfitness).	2. Indication that your attitude, ability, bearing and behavior are now improved. Indication that your capacity towards organizational loyalty, willingness to work and dedication are improved.
3. Financial irresponsibility.	3. Verification of good credit (statements from banks, lending institutions, department stores, etc., that would attest to your financial condition). Statement from you on how your previous debts were resolved (paid off, bankruptcy, etc.).
4. Alcoholism	4. Verification of good credit (statement from banks, lending institutions, department stores, etc. that would attest to your financial condition). Membership in Alcoholics Anonymous—how long. Medical statement (statement by competent authority on your physical condition).
5. Character and behavior disorder.	5. Medical statement (statement by competent authority on your physical and mental condition).
6. Hardship	6. If discharge was for financial reasons: Verification of good credit (statement from banks, lending institutions, department stores, etc., that would attest to your financial condition). If discharge was for medical reasons: A medical statement from competent medical authority disclosing the hardship no longer exists.
7. Civil convictions	7. If applicable: Statement by competent authority that a pardon has been granted.
8. Homosexuality	8. Circumstances surrounding act or acts for which discharged: Was the applicant seduced or coerced by someone in authority? Was alcohol a factor? Were there any familial or pre-service factors? Medical statement, if you have been receiving psychotherapy.
9. Drug abuse	9. Statement concerning the underlying causes of the offense: Was it because of youthful curiosity? Did you have a need to be a member of the gang? Did you have the habit prior to enlistment? Medical statement by competent medical authority if you have been receiving pyschiatric treatment. Verification of good credit (statements from banks, lending institutions, department stores, etc., that would attest to your financial condition).
10. Conscientious objector.	10. Statement from applicant concerning past views and what has happened to change them.
11. Enuresis	11. Medical statement by competent medical authority on the applicant's physical condition.
12. Exceeding weight standards.	12. Medical statement by competent medical authority on the applicant's physical condition—specifically, your present weight and height.

Fire-related case: If you are advised that all or part of your records were destroyed by the fire in July 1973 at the National Personnel Records Center, it is doubly important that you provide as much evidence as possible to support your request. In these cases the Board may have limited or no record evidence available to it and must rely heavily on evidence presented by the applicant.

§ 865.125 Report requirement, RCS: DD–M (SA) 1489.

(a) Semi-annual reports will be submitted by the 20th day of April and October for the preceding six-month reporting period (October 1 through March 31 and April 1 through September 30).

(b) The reporting period will be inclusive from the first through the last days of each reporting period.

(c) The report will contain four parts: (1) Part I—Regular Cases; (2) Part II—Reconsideration of President Ford's memorandum of January 19, 1977/Special Discharge Review Program Cases; (3) Part III—Cases heard under Pub. L. 95–126 by waiver of Title 10, U.S.C. 1553 with regard to the statute of limitations; and (4) Part IV—Total Cases Heard.

(d) Report will be prepared by the Air Force Discharge Review Board and submitted to the Army Discharge Review Board (executive agent for DRB matters).

§ 865.126 Sample report format.

SAMPLE REPORT FORMAT

SUMMARY OF STATISTICS FOR

AIR FORCE DISCHARGE REVIEW BOARD

(FY ———)

RCS: DD-M(SA) 1489

	Nonpersonal Appearance			*Personal Appearance*			*Total*		
Name of Board	*Appl.*	No. *Approved*	% *Appr.*	*Appl.*	No. *Approved*	% *Appr.*	*Appl.*	No. *Approved*	% *Appr.*

NOTES: Identify numbers separately for traveling panels, regional panels or hearing examiners, as appropriate. Use of additional footnotes to clarify or amplify the statistics being reported is encouraged.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison,
Directorate of Administration.

[FR Doc. 78-13181 Filed 5-12-78; 8:45 am]

[3710-92]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 204—DANGER ZONE REGULATIONS

Pacific Ocean, Vandenberg AFB, Calif.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This rule amends regulations which establish a danger zone in the Pacific Ocean between Point Arguello and Point Conception, Calif., by extending the period of use to February 15, 1980. Continuation of the danger zone is necessary to provide maximum security for sensitive test operations and for the protection of life and property.

DATE: Effective on May 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Ralph T. Eppard, 202-693-5070, or write: Office of the Chief of Engineers, Forrestal Building, Washington, D.C. 20314. Attn: DAEN-CWO-N.

SUPPLEMENTARY INFORMATION: The Commander, Space and Missile Test Center, Vandenberg Air Force Base, Calif., has requested that the danger zone located in the Pacific Ocean between Point Arguello and Point Conception, Calif., be continued until February 15, 1980, unless terminated by the Secretary of the Army at an earlier date. The General Counsel has reviewed this matter and is of the opinion that notice of proposed rulemaking and public procedures thereto are unnecessary since this amendment only extends an existing restriction which is in the public interest by the continued protection of life and property and national security. Accordingly, pursuant to section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), and chapter XIX of the Army Appropriations Act of July 9, 1918 (40 Stat. 892; 33 U.S.C. 3), we are hereby amending the regulations in 33 CFR 204.202a by revising paragraph (b)(9) as set forth below:

§ 204.202a Pacific Ocean, Space and Missile Test Center (SAMTEC) Vandenberg AFB, Calif.; danger zone.

* * * * *

(b) *The regulation.* * * *

(9) The regulations in this section shall be in effect until February 15, 1980, unless terminated by the Secretary of the Army at an earlier date.

AUTHORITY: (40 Stat. 266; 33 U.S.C. 1) (40 Stat. 892; 33 U.S.C. 3).

NOTE.—The Department of the Army 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: April 24, 1978.

CLIFFORD L. ALEXANDER, Jr.,
Secretary of the Army.

[FR Doc. 78-13149 Filed 5-12-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[PP 7F2003/R147; FRL 896-4]

SUBCHAPTER E—PESTICIDE PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Gossyplure

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the insecticide gossyplure. The amendment to the regulations was submitted by Conrel, Inc. This rule exempts gossyplure from the requirement of a maximum permissible level for residues on cottonseed.

EFFECTIVE DATE: May 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles T. Mitchell, Product Manager (PM-17), Registration Division (WM-567), Office of Pesticide Programs, 401 M Street SW., Washington, D.C. 20460, 202-426-9426.

SUPPLEMENTARY INFORMATION: On January 12, 1978, notice was given (43 FR 1835) that Conrel, Inc., an Albany International Co., 735 Providence Highway, Norwood, Mass. 02062, had filed a pesticide petition (PP 7F2003) with the EPA. This petition proposed that 40 CFR 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the insecticide gossyplure (1:1 mixture of (*Z,Z*)- and (*Z,E*)-7,11-hexadecadien-1-ol, acetate) in or on the raw agricultural commodity cottonseed.

The data submitted in the petition and other relevant material have been

evaluated, and the pesticide is considered useful for the purpose for which the exemption is sought. In support of the proposed exemption, the petitioner submitted an acute oral test in rats showing a lethal dose (LD_{50}) of greater than 15 g/kg, an acute inhalation test in rats showing a lethal concentration (LC_{50}) of greater than 3.3 mg/l, an Ames mutagenicity study (negative), and 90-day feeding studies in rats and dogs showing no observable effect levels (NOEL) of greater than 3,000 parts per million (ppm). Based on factors, e.g., the mode of application (i.e., the dispensing of the insect pheromone gossyplure by slow evaporation from capillary fibers) and the very low dosage rate involved, it can reasonably be concluded that no residues of gossyplure are expected to be present in or on cottonseed.

Thus, acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition.

Exemptions from the requirement of a tolerance have previously been established (40 CFR 180.1036, 180.1037, and 180.1038) for residues of hydrogenated castor oil, polybutenes, and polyoxymethylene copolymer on cottonseed when used in gossyplure formulations to control the mating of the pink bollworm. There is no reasonable expectation of residues in eggs, meat, milk, or poultry as delineated in 40 CFR 180.6(a)(3). The nature of the gossyplure residue on cotton plants and cottonseed is adequately understood, and an adequate analytical method (gas chromatography using flame ionization) is available for monitoring incidents of gross misuse. No data is currently considered desirable but lacking to support the requested exemption, nor are there any pending actions against continued registration of gosspylure.

The active ingredient of gossyplure (*Z,Z*)- and (*Z,E*)-7,11-hexadecadien-1-ol, acetate is the acetic acid ester of an alcohol of the same chain length and similar configuration as common fatty acids naturally occurring in fats and oils (as triglycerides) in the human diet. Based on the preceding considerations, it has been determined that establishment of the exemption from the requirement of a tolerance by amending 40 CFR 180 will protect the public health.

Any person adversely affected by this regulation may, on or before June 14, 1978, file written objections with the Hearing Clerk, EPA, Room M-3708, 401 M Street SW., Washington, D.C. 20460. Such objections should be submitted and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by the grounds legally sufficient to justify the relief sought.

Effective on May 15, 1978, 21 CFR 561 is amended as set forth below.

Dated: May 8, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

AUTHORITY: Sec. 409(c)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(1)).

Part 180, Subpart D, is amended by adding the new section 180.1043 to read as follows:

§ 180.1043 Gossyplure; exemption from the requirement of a tolerance.

The pheromone gossyplure, a 1:1 mixture of (*Z,Z*- and (*Z,E*)-7,11-hexadecadien-1-ol, acetate) is exempt from the requirement of a tolerance in or on the raw agricultural commodity cottonseed when applied to cotton from capillary fibers.

[FR Doc. 78-13206 Filed 5-12-78; 8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 87—AVIATION SERVICES

Editorial Amendments Concerning Application for Renewal of License

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Part 87 of the Commission's rules contains two sections with the same heading. These sections also deal with the same subject matter. This action will combine these two sections into one.

EFFECTIVE DATE: May 22, 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: May 5, 1978.

Released: May 8, 1978.

In the matter of editorial amendment of §§ 87.33 and 87.125 of the Commission's rules.

1. Part 87 of the Commission's rules contains two sections entitled "Application for renewal of license." in two separate locations. Since these sections both deal with the same subject matter it is only appropriate that they be combined under one section.

2. Accordingly, the Commission's rules are being amended to combine section 87.125 with section 87.33 of the rules and to delete section 87.125. 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 22, 1978.

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

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

APPENDIX

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. Section 87.33 is amended to read as follows:

§ 87.33 Application for renewal of license.

(a) Application for renewal of station license without modification shall be submitted on FCC Form 405-A, except in the case of aircraft stations which shall be submitted on FCC Form 405-B. Where a modification of license is also sought, the application form applicable for a modification of such station shall be used for both the modification and renewal.

(b) All applications for renewal of license must be made during the license term and should be filed within 90 days but not later than 30 days prior to the end of the license term. In any case in which the licensee has, in accordance with the provisions of this chapter, made timely and sufficient application for renewal of license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined.

2. Section 87.125 is deleted.

§ 87.125 [Deleted]

[FR Doc. 78-13074 Filed 5-12-78; 8:45 am]

[4910-59]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 73-19; Notice 23]

PART 581—BUMPER STANDARD

Interpretation

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Interpretation.

SUMMARY: This notice compiles and publishes the NHTSA's previously announced interpretations of the bumper damageability requirements of the part 581, Bumper Standard, and is issued to clarify what damage will be permissible under the terms of the standard.

DATE: This interpretation is effective immediately.

FOR FURTHER INFORMATION CONTACT:

Mr. Dick Hipolit, Office of Chief Counsel, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-9511.

SUPPLEMENTARY INFORMATION: It has come to the attention of the NHTSA that some misunderstanding may exist with regard to the agency's interpretations to date of the damageability requirements of 49 CFR part 581, Bumper Standard. Those requirements impose limitations on damage resulting from low-speed front and rear collisions.

"Phase I" of the standard, effective September 1, 1978, allows unlimited damage to the "bumper face bar" and the components that directly attach the face bar to the chassis frame, including (by interpretation) filler panels and stone shields (shielding panel). The "Phase I" requirements have not been the source of interpretational confusion and are not discussed in this notice.

"Phase II" of the standard, effective September 1, 1979, requires in relevant part that:

(10) * * * the exterior surfaces, except for the bumper face bar, shall have no separation of * * * materials from the surface to which they are bonded and no permanent deviations from their original contours * * *

(11) * * * the bumper face bar shall have—

(i) No permanent deviation greater than ¾ inch from its original contour and position relative to the vehicle frame; and

(ii) No permanent deviation greater than ⅜ inch from its original contour on areas of contact with the barrier face or the impact ridge of the pendulum test device * * *

Interpretation of these Phase II requirements has become an issue since the agency's recent decision to terminate rulemaking that would have allowed shielding panels to undergo unlimited damage or, in the alternative, the same amount of damage as the bumper face bar (43 FR 12049; March 23, 1978). The agency's shorthand reference to shielding panel "no damage" requirements may have led some manufacturers to believe that the agency would not honor its earlier interpretations of "damage" as "normally observable changes in the stated areas following the prescribed test procedures" (42 FR 24058; May 12, 1977). In the interests of ensuring a fair and enforceable standard of performance, the agency therefore complies its previous interpretations in this notice and adds clarification of them as necessary.

Exterior Surfaces Other Than the Bumper Face Bar

A threshold question is whether a particular surface qualifies as an exterior surface and must therefore meet applicable requirements. Interpretations of this question have been made in a letter of March 27, 1978, to Volkswagen of America, Inc., and in a rulemaking preamble (42 FR 24056; May 12, 1977). The agency stated that a load bearing component in the bumper system that lies under a covering of rubber, plastic, or another material and is not visible when the bumper is mounted on the vehicle would not qualify as an exterior surface subject to the requirements of § 581.5(c) (10) or (11) of the standard. Also, internal deformation or internal cracking of the bumper face bar component would not violate (c) (10) or (11) of the standard.

The critical question has been whether a particular component qualifies as "bumper face bar" entitled to the allowable damage set forth in (c)(11). "Bumper face bar" is defined in § 581.4 to mean any component of the bumper system that contacts the impact ridge of the pendulum test device. The components in question are: (1) the bumper "end cuffs" that are attached to the extreme ends of the metal bumper face bar, (2) any part of the bumper system that underlies bumper guards, "nerf strips", or other plastic or rubber moulding along the leading edge of the metal surface (typically known as the bumper), (3) portions of multipiece bumpers which are not contacted by the impact ridge although the metal surfaces that they connect to do contact the ridge, and (4) shielding panels.

As noted in an earlier preamble, bumper end cuffs "are part of the bumper face bar if they conform to its definition, i.e., if 'they contact the impact ridge of the pendulum test device'" (42 FR 12049; March 23, 1978). Bumper guards, "nerf strips", and other plastic or rubber mouldings are considered "bumper face bar" if they contact the impact ridge of the pendulum (41 FR 9346; March 4, 1976).

Metal components of a multipiece bumper, either small fasteners between major surfaces or a major surface such as the upper flange of a multipiece bumper, are not technically "bumper face bar" if they do not contact the pendulum impact ridge. Chrysler Corp. raised this question in a request for interpretation and recommendation for rulemaking dated April 10, 1978, which is filed in the public docket. The agency concludes that this would be an arbitrary interpretation in the case of structural portions of multipiece bumpers, in that it would discriminate without purpose between one-piece and multipiece systems. Therefore, the agency interprets a bumper face bar to mean any component that contacts the impact ridge and any component that is connected as a part of the same load bearing structure.

Shielding panels typically lie between the body sheet metal and the bumper face bar. Because of their location near or against the bumper face bar, they are likely to suffer damage during bumper stroke and are thus of particular concern to manufacturers and the insurance industry.

Shielding panels are constructed in many different ways, either underlying or overlying the bumper face bar, in single or several pieces, and attached either to the bumper or the body of the vehicle. Some designs do contact the impact ridge in whole or part during impact and others do not.

When the agency terminated its proposal to permit unlimited damage to filler panels or, in the alternative, ¾-inch damage, it became significant to manufacturers whether or not these shielding components qualify as bumper face bar entitled to the "set" and "dent" deviations of (c)(11). Chrysler posed numerous hypotheticals in its April 10 letter, and Ford and General Motors posed numerous other questions in their April 5 and April 6 meetings with the agency. While some of these components do contact the impact ridge of the pendulum during testing, the companies pointed out many cases where this would not be so.

Those shielding panels that contact the impact ridge qualify as "bumper face bar" and are entitled to the "dent" and "set" deviations of (c)(11). As noted in an earlier preamble, which is discussed below, some additional blemishes in the exterior surfaces of these shielding panels as "bumper face bar" would also be allowed.

The many shielding panel designs that do not contact the impact ridge must be categorized as exterior sur-

faces subject to the damage criteria of (c)(10), i.e., no separation of materials from the surface to which bonded and no permanent deviation from original contours. Chrysler noted that bumper "set" could hold a shielding panel somewhat out of its original contour or permit it to "follow" the bumper, technically violating the rule against "permanent deviation" although the movement in fact enhances the appearance of the displaced bumper. Ford described cases in which a minute amount of nicking of the shielding panel surface could occur during bumper stroke, apparently violating the rule against separation of materials from the surface to which they are bonded. Chrysler and Ford also noted cases where simple movement of a resilient shielding panel during bumper stroke could result in imperceptible deviation of the surface.

The agency has already stated that the damage limitations do not apply to microscopic levels of displacement of surface coating or contours but to "normally observable changes in the stated areas following the prescribed test procedure" (42 FR 24058; May 12, 1977). A shielding panel that moves with the "set" of a bumper would not be "normally observable", even in the case where bumper movement leaves a gap which is closed only in part by movement of the shielding panel with the bumper. The "normally observable changes" interpretation applies as well to movement of small patches covering manufacturing process cut-outs on the face bar, and to Ford's concern about surface nicking or scuffs.

In deciding not to provide special damage levels for shielding panels, the agency relied on its own compliance testing of 20 1977 models and that of the Insurance Institute for Highway Safety as a basis for judging what is "normally observable." In the NHTSA testing, three insurance adjusters were used to make the observations because of their expertise in the automotive damage field. The manufacturers, however, point out that they would rely at their peril on the judgment of their three insurance adjusters while the agency relies on the judgment of other insurance adjusters. While such judgments are inherent in enforcement of any type, the agency believes that a simple expression of its means to judge deviations and surface nicks would resolve any such concerns, whether or not justified.

The agency has studied photographs contained in "FMVSS 215 Damage Appraisal Summary Report Front and Rear Pendulum and Barrier Impact Tests", May 1977, taken of vehicles before and immediately following compliance testing. This examination indicated that any significant damage to shielding panels was visible in the good quality, 8 by 10 inch prints used in the summary report. At the same time, certain minor damage, which appeared on close visual inspection of the subject vehicles, was undetectable in the photographs.

Such damage, although outside the reach of the regulation, may be a source of uncertainty to manufacturers in testing their bumper designs for compliance with the standard. Therefore, in order to simplify the evaluation process, the agency has concluded that deviations or surface separations not visible to the unaided eye in standard 8 by 10 inch photographic prints taken of the suspect area at a distance of 6 feet will not be considered "normally observable" and in violation of (c)(10). The Office of Standards Enforcement will establish standard procedures for the taking of evaluative photographs. The agency emphasizes that this technique seeks solution of a problem unique to shielding panels and will not be used for judging the body of the vehicle.

Chrysler asked whether a component qualifies as "bumper face bar" if it is attached to the vehicle, rather than the lateral metal component typically known as the bumper. As noted in an earlier preamble, these shielding panels are sufficiently identified with the bumper design to qualify as part of the "bumper system" and thus potentially as "bumper face bar." (42 FR 24056; May 12, 1977).

Permissible Bumper Face Bar Damage

Once a component qualifies as "bumper face bar", further interpretation is necessary in determining whether the damage incurred to that component in an impact exceeds the applicable limits in (c)(11):

> (i) No permanent deviation greater than ¾ inch from its original contour and position relative to the vehicle frame; and
> (ii) No permanent deviation greater than ⅜ inch from its original contour in areas of contact with the barrier face or the impact ridge of the pendulum test device * * *

Several interpretations of these limits have already been made. In a December 1, 1977, letter to Nissan Motor Co., the agency stated that the two types of deviation are additive in an area of contact with the barrier face or impact ridge (i.e., a total deformation of 9/8 of an inch is allowed at that point). The agency also stated that the localized deviation permitted by paragraph (ii) is measured taking any contour in the area of impact and measuring its movement from its location prior-to-impact to post-impact, whether a flat or curved surface is involved. The same interpretation was established for deviation under paragraph (i) except that it would not be limited to the area of contact. It was confirmed that an abrupt deviation outside the area of contact could only qualify as deviation under paragraph (i). Finally, it was noted in a further interpretation letter of April 18, 1978, that the "area of contact" for paragraph (ii) would include any surface that contacts the barrier surface or impact ridge during impact, as well as surfaces that contact at initial impact or at the completion of impact.

Two questions were raised by Ford about cracks that could occur in rubber or plastic components used in either hard or soft-face bumper designs. While the agency has already stated in the December 1, 1977, Nissan interpretation that a crack which does not have a measurable separation would not qualify as deviation, Ford asked about cracks which "open up" measurably, or which leave the surfaces on each side of the crack at different levels 30 minutes after impact. The latter situation apparently arises during impact of soft-face systems, and might generally conform to the outer edge of the pendulum impact ridge.

If measurable separation exists, a deviation in contour would be considered to exist and such a deviation would have to meet the ⅜ inch dent limitation of § 581.5(c)(11)(ii) when measured along any dimension, i.e., width, length, depth, from any line connecting the bumper contours adjacent to the crack. Cracks which leave surfaces at different levels would likewise be required to meet the ⅜ inch test when measured along any dimension.

The agency has also earlier stated in a preamble, that "[w]hile both barrier and pendulum impacts can cause some chipping or flaking of chrome or soft-face material (depending on the type of systems being tested), such damage is insignificant." (41 FR 9348; March 4, 1976). The same preamble also noted that "a dent ⅜ inch in depth would be inconsequential" in deciding that requiring a "dishing effect" as a necessary element of compliance "would not take into account the various types of impacts to which a vehicle is subject." Thus the type of surface dislocation described by Ford would be permissible up to ⅜ of an inch, despite the fact that this leaves an abrupt change of contour.

This notice responds to Chrysler's recommendation for rulemaking, dated April 10, 1978, and Ford's request for clarification, dated April 24, 1978. Except to the extent granted in this notice, the recommendations made are denied.

The program official and lawyer principally responsible for this document are Nelson Gordy and Tad Herlihy, respectively.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); sec. 102, Pub. L. 92-513, 86 Stat. 947 (15 U.S.C. 1912); delegation of authority at 49 CFR 1.50).

Issued on May 9, 1978.

JOAN CLAYBROOK,
Administrator.

[FR Doc. 78-13148 Filed 5-12-78; 8:45 am]

proposed rules

[1620-01]

COST ACCOUNTING STANDARDS BOARD

[4 CFR Part 416]

ACCOUNTING FOR INSURANCE COSTS

Cost Accounting Standards

AGENCY: Cost Accounting Standards Board.

ACTION: Proposed rule.

SUMMARY: This proposed Standard, if adopted, would provide criteria for the measurement of insurance costs, the assignment of such costs to cost accounting periods, and the allocation of insurance costs to cost objectives. It is intended to resolve recurring problems involving the accounting for insurance premiums, self-insurance provisions, and insurance reserves, and the allocation of insurance costs among corporate segments. It is one of a series of Cost Accounting Standards which the Board is promulgating "to achieve uniformity and consistency in the cost accounting principles followed by defense contractors and subcontractors under Federal contracts." (See sec. 719(g) of the Defense Production Act of 1950, as amended.) It is anticipated that any contractor receiving an award of a contract subject to the rules, regulations, and Standards of the Cost Accounting Standards Board on or after the effective date of this Standard will be required to follow it in accordance with the provisions of § 416.80. The proposed Standard was originally published October 5, 1977. It is being republished today for further comments. The Board solicits comments which will assist the Board in its consideration of the proposal.

DATE: Written comments must be received on or before June 30, 1978.

ADDRESSES: Written comments should be sent to the Cost Accounting Standards Board, 441 G Street NW., Room 4836, Washington, D.C. 20548.

NOTE.—All written submissions made pursuant to this Notice will be made available for public inspection at the Board's Office during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Robert Straith, Associate Director, Cost Accounting Standards Board, 441 G Street NW., Room 4836, Washington, D.C. 20548, 202-275-6136.

SUPPLEMENTARY INFORMATION: (1) *Need for a Standard.* Work on a potential Standard on accounting for insurance costs was initiated for a number of reasons; these included (1) differences between Armed Services Procurement Regulation (ASPR) provisisons governing self-insurance and Financial Accounting Standards Board (FASB) Statement No. 5, (2) Armed Services Board of Contract Appeals (ASBCA) cases or other disputes related to insurance accounting, and (3) knowledge of unresolved problems obtained by discussions with contractors and audit agencies.

In 1962, the Air Force reviewed the insurance coverages, practices, and costs of 23 contractors. Their examination disclosed a number of problems, examples of which are cited in the following paragraphs.

In 1969, the Defense Contract Audit Agency (DCAA) conducted a special study of insurance procedures of 34 defense contractors and noted the continuing existence of the same problems. Recent staff discussions with the Contract Insurance Branch of Defense Contract Administrative Services (DCAS), with contract audit agencies, and with contractors, and a review of ASBCA cases disclosed that these problems still exist. Examples of specific problems are the following:

Premiums on multi-year insurance policies charged to a single cost accounting period.

Divergent practices among contractors in charging "deposit" premiums on experience-rated policies.

The holding by insurers of substantial "reserves" or funds on behalf of contractors. The Government has found, in numerous instances, that the purpose for which the fund is being accumulated is not clearly stated, that the obligation for which the fund was ostensibly established is highly contingent on decisions within the contractor's control, that payments are being made to accomplish the stated purpose of the fund out of current earnings rather than from the fund, that the amount actually necessary to fund the stated obligation has not been actuarially determined or the fund is in excess of the actuarial liability, and that the existence of the fund is not disclosed in the contractor's records.

Uncertainty regarding the proper method of recognizing the costs of self-insurance for contract costing purposes, and a corresponding lack of guidance on this point in contemporary cost accounting literature.

A statement of issues related to accounting for insurance and a preliminary draft Standard were developed by the Staff and circulated to contractors, agencies, and others. Responses to these Staff papers and information obtained in subsequent meetings with respondents and other interested persons were considered in developing the proposed Standard which was published in the FEDERAL REGISTER of October 5, 1977, with an invitation to interested parties to submit written views and comments to the Board. All comments (48) received in response to the FEDERAL REGISTER publication have been considered by the Board and those addressing areas of significance are discussed below, together with explanations of the changes made in the Cost Accounting Standard being proposed today from the proposal published in the FEDERAL REGISTER of October 5, 1977, or the Board's reasons for not making a suggested change. The Standard which is being proposed today has been revised from the previous version in such a way as to minimize or eliminate the administrative costs which were envisioned by some respondents.

The Board wishes to take this opportunity to express its appreciation for the helpful suggestions and constructive criticisms it has received, and for the time devoted to assisting the Board in this endeavor by the many organizations and individuals involved.

(2) *Coverage of Standard.* Some respondents stated that the coverage of the Standard was too broad and suggested the issuance of several Standards, each dealing with a specific type of insurance. In its research, the Board did not find significant differences in the applicable accounting practices which depended upon the type of risk or insurance. There is one exception—insurance on "retired lives"—and the Board has dealt with that exception in the proposed Standard.

Two respondents suggested that the Standard address the subject of "captive" insurers. However, one of these suggested that the Standard explicitly recognize payments to "captive" insurers as equivalent to premiums paid to unaffiliated insurers while the other cautioned against the unqualified acceptance of such payments. The Board believes that the proper amount of a premium paid to any insurer is a question of reasonableness rather than a matter of cost accounting. Consequently, no change has been made in the October 5, 1977, proposal.

(3) *Cost Accounting for Self-Insurance.* When the business entity purchases insurance coverage from an un-

derwriter, the cost to the business—for the covered risk—is the premium. Where the business entity does not purchase insurance, the best method of assignment of cost to current activities is a matter of possible disagreement.

A contractor who self-insures can recognize the cost of self-insurance for product pricing purposes in either of two ways: (1) by recognizing actual losses as they occur and allocating them to the products of some time period, usually the cost accounting period in which the loss occurred, or (2) by estimating the long-term average loss per time period and allocating it to the products of each time period.

The proposal which was published in the October 5, 1977, FEDERAL REGISTER included criteria for selecting between these two approaches to cost recognition. A charge which would represent the projected average loss was required except in those situations where the actual losses in a cost accounting period could be expected to serve as a good representative of the long-term average loss for that period. The recognition of actual losses, rather than the use of a predetermined charge, would be expected where many units are exposed to loss and the maximum loss related to any one unit would be relatively small. Examples are the losses falling within the deductible portion of the automobile collision coverage for a fleet of vehicles or the worker's compensation claims of a large work force. The proposal was based on the belief that there would be little point in calculating a special self-insurance charge in such circumstances.

Some respondents to the FEDERAL REGISTER proposal suggested that only actual losses be recognized unless the contractor had a "self-insurance plan"; some suggested that the use of a self-insurance charge be optional. Some persons suggested that the crucial distinction should be whether the contractor voluntarily refrains from purchasing insurance. Finally, some suggested that uninsured losses should be regarded as distribution of profit rather than costs.

After considering all of these comments, the Board proposes to retain the requirement for the use of a self-insurance charge, as contained in the FEDERAL REGISTER proposal. As between the recognition of actual losses or the use of a self-insurance charge which represents the projected average loss, the Board believes that either method should produce the same long-term total cost but the second method is conceptually preferable. A reasonable assignment of cost should be made to products of each period in which there is exposure to the risk. The cost of each loss should be allocated to all work accomplished in that facility and its successors over the life of the enterprise, not just to the work of the day, month, or year in which the loss happened to occur. This can be accomplished by charging each period with a self-insurance charge which is equal to the projected average loss. This averaging is, in effect, what an outside insurer does in developing a premium charge.

In addition to its being conceptually preferable, the use of such a self-insurance charge has other advantages. The usual way to allow for losses in a fixed-price contract is to include an average of actual past losses. This alternative is inferior to the use of a self-insurance charge because it omits the cost of possible but infrequent large losses which may not yet have occurred. Although the Government's contracting base is sufficiently large that either the recognition of actual losses or the use of a self-insurance charge should provide the same total costs measured over all contractors and all contracts, the recognition of actual losses could result in misallocating costs among contracts.

The proposed Standard also retains the provision of the FEDERAL REGISTER proposal which permitted the recognition of actual losses in those limited circumstances in which the actual losses in any cost accounting period may be expected not to differ significantly from the projected average loss for that period.

Some respondents also suggested that the Board prescribe criteria for determining the existence of a "self-insurance plan", e.g., deposits in a fund, a resolution of the Board of Directors, maintenance of specified financial statement ratios. These are factors for the Contracting Officer to consider in determining whether the Government's interests are adequately protected if the contractor self-insures, but they are not considerations in determining the costs of self-insurance.

(4) *Limitation on Self-Insurance Charge.* The proposal which was published in the FEDERAL REGISTER provided that the self-insurance charge plus insurance administration expenses could be equal to, but could not exceed, the cost of comparable purchased insurance plus the associated administration expenses. Several respondents saw this as a question of allowability which was not within the jurisdiction of the Board. These respondents misconstrued the Board's intent, i.e., to permit the cost of comparable purchased insurance to be used as a means of estimating the projected average loss. The alternative would be to require such contractors to incur the costs of employing actuaries to perform for them the same kinds of computations as the actuaries have already performed for the insurance company in setting the premium.

Some respondents asked that contractors be permitted to adjust the self-insurance charge retroactively for actual losses. The self-insurance charge must, of necessity, be based on an estimate. Because the experience of an individual contractor may depart from the average of the industry, most insurance provides for rating of premiums based on individual experience. Similarly, the proposed Standard provides that contractor's actual loss experience shall be reviewed regularly and that self-insurance charges for subsequent periods shall reflect such experience in the same manner as would premiums for purchased insurance.

(5) *Terminology.* A few respondents suggested that the Standard contain a definition of "insurance" or otherwise describe what kinds of insurance are covered by the Standard, and one respondent suggested that the Standard define "purchased insurance." The Board has used these words in their usual, commonly understood meaning and, therefore, does not see a need to further define them.

Some respondents suggested that the definition of "insurance administration expenses" was too broad; others said that it was too narrow. The Board recognizes that there are costs related to the operation of an insurance program which represent the costs of specific services rather than payment of losses. In order to facilitate comparability among contractors, the Board intends that where such insurance-related costs are material, they be properly recognized as "insurance costs" and accounted for accordingly. The definition is not intended to be either restrictive or exhaustive; rather, it offers examples of costs which, if material, should be recognized as insurance costs. However, the Board does not intend to create excessive administrative expense by requiring the identification and segregation of immaterial amounts of contractors' salaries, space costs, etc., where the significant insurance services are purchased from outside sources. The proposed Standard specifically permits alternative treatment for immaterial amounts of insurance administration expenses.

Several respondents suggested that the word "theoretical" be removed from the definition of "projected average loss" and replaced by "estimated". It is true that, because the long-term average loss is measured over the life of the enterprise, it cannot be known with certainty at any interim time; it can only be estimated by various means. The definition, therefore, has been changed. However, it should be noted that the definition refers to the estimated *average* loss per period, not to an estimate of the specific losses which may occur in any particular period.

Several respondents suggested the use of the term "self-insurance provision" rather than "self-insurance charge" because the suggested wording conforms more closely to that of ASPR § 15-205.16 which refers to "provisions for a reserve under an approved self-insurance program". The ASPR provision has historically been construed as refering to a formal accounting entry. The "self-insurance charge" referred to in the proposed Standard is a memorandum charge which is used to represent the projected average loss. Therefore, the proposed Standard has retained the use of the term "self-insurance charge." Other respondents suggested that the word "accrued" be deleted from the definition of "self-insurance charge" on the grounds that "accrued" connotes a formal accounting entry, whereas the "self-insurance charge" will be reflected in memorandum records. This change has been made.

(6) *Applicability to Purchased Insurance.* Some respondents asked that the fundamental requirement be clarified to state whether premiums on purchased insurance were included or excluded. The intention was to include premiums. Rather than change the fundamental requirement, § 416.50(a)(1) has been modified to clarify the way in which the premium payment represents the projected average loss.

(7) *Premiums and Refunds.* The proposed Standard provides that a premium refund or dividend shall become an adjustment to the pro rata premium cost for the earliest cost accounting period in which the refund or dividend is actually or constructively received. However, the Standard also permits the contractor the option of using estimated net premiums instead. Some respondents suggested that the Standard provide (in § 416.50(a)(1)(i)) that refunds be credited when received except in instances where the results would not be "equitable". "Equity" is not an objective criterion. The Board believes that the recognition of refunds or assessments as adjustments to current costs, as incorporated in the present Standard, is preferable because it is objective and fundamentally unbiased.

One respondent suggested that the words "becomes receivable" be substituted for the words "is constructively received", on the grounds that "this should avert any confusion about the interpretation of the term 'constructively received.'" The principle of "constructive receipt" is in common usage and is unlikely to cause confusion. Therefore, the proposed Standard has not been changed in this regard.

One respondent pointed out that if a contractor were to change his accounting practice from the gross premium to the net premium method, then a double charge or credit would occur in the year of change, and the respondent suggested that this situation be recognized and condoned in the Standard because the effect would always be minor. Either method is acceptable under the proposed Standard. However, the Board does not agree that the effect of the change will always be minor; therfore, each change should be evaluated in accordance with existing procedures governing changes to cost accounting practices.

(8) *Direct Charging of Premiums.* Paragraph 416.50(a)(1)(ii) provides that where insurance is purchased specifically for, and directly allocated to, a single final cost objective, the premiums need not be prorated. Some respondents suggested that this provision be deleted because it appeared too contrary to the concept of prorating insurance over the policy period which was embodied in § 416.50(a)(1)(i). The cost of insurance such as property and casualty insurance is proportionate to the length of the policy period. Such insurance is normally charged to overhead and prorated over the policy period because the work mix, i.e., the mix of final cost objectives, may be expected to change during the policy period. Therefore, the relationship between the risks insured against and the final cost objectives which benefit from the insurance or cause the risk will change, and the resulting allocation should reflect such changes. In contrast, the cost of insurance such as a special liability policy is not normally proportionate to the length of the policy period, and when such insurance is purchased for a single contract and allocated directly to that contract, the charge is to work in process, not overhead. There is no change in the beneficial or casual relationship over the policy period, and the amount of insurance cost allocated to the final cost objective is the same whether the entire insurance cost is allocated directly or first prorated over the policy period.

(9) *Deposits and Reserves.* Insurance agreements frequently provide for substantial amounts to be held by the insurer for various contingencies. Such amounts may be negotiated in advance or may represent the unrefunded excess of premiums over losses; in either event they are not arrived at by actuarial computations of known risks. The contractor typically retains a significant amount of interest in, and control over such funds. FASB Statement No. 5 provides that amounts which do not represent transfers of risk from the insured to the insurer are deposits and should be accounted for as such. The proposed Standard requires that anything which would be a deposit under that Statement be treated as a deposit for contract costing purposes.

Some respondents suggested that the provisions in the proposed Standard regarding "reserves" be deleted. The problems which these sections of the Standard 416.50(a)(1)(iv) and (v) were intended to address have already been cited under the heading "Need for a Standard." The Board believes that the proposed provisions are necessary in order to correct these problems.

One respondent objected to the requirement that reserves be actuarially determined. The Board believes that allowances for future losses should be based on established mathematical forecasting principles.

One respondent objected to the requirement that costs which represent additions to a "retired lives" reserve be evidenced by payments to an insurer or trustee. Retired lives benefits are analogous to pension costs in that a contract cost is to be recognized in the present but payment of the benefit is to take place in the relatively distant future. In most such programs, the employer reserves the right to discontinue the program at any time, and benefits are limited to those which can be provided by amounts already funded. If an amount is to be recognized currently as a cost of a retired lives program, there should be some evidence that a contractor has, in fact, incurred a liability which he cannot subsequently avoid by a unilateral decision.

Some respondents suggested the deletion of the requirement that the contractor have no right of recapture of the fund as long as any active or retired participant in the program remains alive. Under some fully prefunded programs, a substantial portion of the fund is to provide for liability to active employees. Without the cited provision, it would be possible for the contractor, at any time, to terminate the program as to employees who had not yet retired, thereby creating a surplus in the fund and obtaining a windfall.

Some respondents pointed out that where a contractor changes from a pay-as-you-go retired lives program to a terminal-funded program, or initially establishes a terminal-funded program, a liability arises to those employees who have already retired. The respondents suggested that the Standard provide a transition mechanism to deal with the newly recognized liability. The proposed Standard now provided in § 416.50(a)(1)(v)(C), that for such transitions, the actuarial present value of benefits applicable to employees already retired shall be amortized over a period of fifteen years.

One respondent suggested that the Board clarify its intent that in order to be recognized as costs, all payments to insurers or trustees for all funded reserves must be irrevocable. This was

not the intent. For example, a self-insured contractor might be required to fund the actuarial present value of a long-term worker's compensation claim.

If the claim was subsequently to be settled for less, the contractor should be entitled to reclaim the excess from the fund. Except for retired lives reserves, as discussed above, the title to the funds is a matter for agreement between the parties.

Several respondents have asked the Board to explain or clarify its intent in requiring that the cost of retired lives benefits be spread over the working lives of the active employees in the plan. The Board believes that the cost of a retired lives program is, like other fringe benefits, a cost attributable to the use of labor; therefore, it is properly allocable to the cost objectives which benefited from that labor. In order to accomplish this *cost accounting* objective the contractor, ideally, would determine by accepted actuarial methods an annual premium for each employee. These premiums, if funded and accumulated over the working lives of all employees, would accumulate to the present value of a paid-up life insurance policy for each employee at retirement. Many contractors presently offer retired lives benefits in other ways, e.g., direct payment of death benefits to beneficiaries or purchase of annual term life insurance policies for retirees (pay-as-you-go), funding of the present value of future term life insurance premiums at the time of retirement (terminal funding). Full prefunding of retired lives benefits over the working lives of the individual employees requires current investment of large sums, far in advance of payment of benefits. If full prefunding were to be required, many contractors might discontinue their retired lives program. Other methods of providing these benefits will, in the long run, produce the same total costs if followed consistently. Therefore, the proposed Standard accepts these other methods as fairly allocating the costs of the coverage over the working lives of the active employees and contains illustrations (§ 416.60 (c), (d), and (e)) to emphasize the point.

(10) *Materiality of Self-Insured Losses and Administrative Expenses.* Some respondents asked that the reference to "insurance administration expenses" be deleted from the fundamental requirement; other respondents asked that the words "material amounts" be added to "insurance administration expenses"; still others asked that the Standard define "minor losses" or set a dollar limit on such losses. The respondents' comments appeared to reflect a concern that they would be required to identify and segregate immaterial amounts of losses or expenses. The Board did not so intend. The proposed Standard has been modified by the addition of § 416.50(a)(4) and § 416.50(b)(3) to make it clear that the identification and allocation provisions of the Standard apply only to self-insured losses and insurance administration expenses which are material in relation to total insurance costs.

(11) *Amount of a Loss.* The proposal which was published in the FEDERAL REGISTER provided, in part, that "the amount of an incurred loss shall be measured by (a) the net book value of property destroyed * * *." A number of respondents disagreed with this provision. Some suggested that the proper measure of the loss was "fair value"; other respondents suggested "replacement cost, net of depreciation", which normally approximates "fair value"; still others suggested "replacement cost"; and one respondent suggested "replacement cost if replaced and net book value if not replaced". Three principal arguments were advanced for these other bases; first, that premiums for purchased insurance would be allowable in full even if they covered replacement cost or fair market value (and a contractor would never insure only for book value); second, that the measure of the loss should reflect the economic value of the asset; and, third, that the purpose of insurance is to replace the asset, so that any lesser basis is unjustified.

The proposed Standard now embodies the concept that the measure of the loss should be related to the market value of similar assets; the insurance term "actual cash value", which is commonly defined as "replacement cost less depreciation," appears to achieve this objective. Therefore, § 416.50(a)(3)(i) has been changed to provide that "the amount an incurred loss shall be measured by (a) the actual cash value of property destroyed * * *" and a definition of "actual cash value" has been added to the Standard.

Contract audit agencies have reported occasional problems with contractors who charge the maximum potential loss for contract costing purposes and report a more conservative amount for published financial statements; therefore, the proposed Standard provides that where the amount of the loss is uncertain, the estimate of the loss shall be the amount includable in published financial statements. Some respondents suggested that this requirement be deleted. These respondents have offered no reasons, other than "materiality", for these amounts to differ and "materiality" is always implicit in the Board's pronouncements. FASB Interpretation No. 14 provides detailed guidance for the recognition of losses in published financial statements when the amounts thereof are uncertain. The Board believes this guidance is adequate.

Some respondents interpreted the proposed Standard as forbidding actuarially-determined loss reserves under self-insured welfare benefit plans. This interpretation is erroneous. The Standard does not restrict such cost recognition to a "claims paid" basis. To the extent that accruals for "incurred but not reported" or "claims in process" are acceptable methods of recognizing incurred losses under FASB Statement No. 5 and Interpretation No. 14, they are not precluded by the Standard. The contractor may elect to recognize such losses on a "claims paid" basis or on an accrual basis in accordance with his established practice.

(12) *Present Value of Future Losses.* Some respondents objected to the requirement for discounting amounts of losses to be paid in the future. The time value of money is a recognized economic and cost accounting principle which the Board has incorporated in other Standards.

Other respondents said that the Standard should prescribe the same discount rate as that used in ASPR, i.e., six percent. The Board believes that the additional computational effort received in using a rate for contracting costing different from that required by the various States is not warranted. Where no rate is prescribed by a State, the use of the rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97, as required by the Standard, is consistent with the Board's requirement in CAS 415 to use that rate in discounting deferred compensation awards.

(13) *Insurance Administration Expenses.* The October 5 proposal required that insurance administration expenses which are material in amount be combined with the projected average loss to determine the total insurance cost. A number of respondents expressed doubts as to the need for the provision. Because the Contracting Officer can request whatever cost information he believes will facilitate his evaluation of the contractor's self-insurance program, an explicit provision for this comparison is unnecessary and has been deleted.

(14) *Allocation of Insurance Costs from a Home Office to Segments.* The October 5 proposal contained criteria for the allocation of insurance costs from a home office to segments. The proposal provided in essence that costs incurred or refunds and dividends received by a home office on behalf of a segment were to be allocated directly to the segment. Where costs or refunds and dividends were identified with more than one segment, the proposal required an allocation on the basis of the beneficial or causal relationship existing between the insurance coverage and the segments. It

further provided that the allocation is to give reasonable weight to both the exposure to risk and the loss experience by segment.

Various respondents questioned the need for this Standard to deal with the allocation of insurance costs from a home office to segments on the grounds that the provisions of CAS-403 are adequate for this purpose. CAS-403 requires that home office expenses shall be allocated on the basis of the beneficial or causal relationship between supporting and receiving activities. Specifically, with respect to central payments or accruals made by a home office on behalf of its segments, CAS-403 requires that these shall be allocated directly to segments to the extent that they can be identified. CAS-403 provides further that payments or accruals which cannot be identified with individual segments are to be allocated by means of an allocation base representative of the factors on which the total payment is based. Under the circumstances, the Board agrees that CAS-403 contains, in substance, the same allocation criteria as were included in the October 5, 1977, proposal for CAS-416. Accordingly, this provision has been deleted from the Standard being proposed today.

(15) *§ 416.50(b)(1)(ii) Home Office Reinsurance.* The proposed Standard permits a home office to share in catastrophic losses of a segment. Two respondents suggested that the home office absorb all losses in excess of each segment's self-insurance charge. The purpose of the home office loss-sharing is to cushion the impact of catastrophic losses on segment costs and avoid extreme cost fluctuations. The self-insurance charge is based on the projected *average* loss. If the home office were to absorb all losses in excess of the projected average loss in each segment, then the cost accounting effect of differences in segment experience would be recognized only over long time periods and differences in experience attributable to current work would tend to disappear. Accordingly, the proposed Standard was not changed in this regard.

(16) *Records.* Various respondents have questioned the need for a specific Standard provision stating the acceptability of memorandum records in view of the Board's previous pronouncements on the subject. A contractor who elects to make a self-insurance charge should be expected to provide sufficient documentation to support the amount of the charge. In addition, the proposed Standard requires that the contractor's own loss experience be evaluated regularly. Finally, the Standard requires the identification of losses to the segment in which they occur. While the cost of losses is already reflected in the contractor's formal accounting records, the data on loss frequency, amount, and location which may be necessary to comply with the proposed Standard may not be a normal part of such accounting records. The "records" provision of the proposed Standard recognizes both the need for such records and the probable memorandum nature of the records.

Some respondents suggested that the Standard require that a "self-insurance plan" be reflected in some formal commitment by the company. It should clearly establish the basis for estimating losses and the obligation undertaken to absorb the losses. The obligation could be represented by periodic deposits in a fund, maintenance of a specified liquidity or working capital ratio, or some other act which gives recognition to the existence and extent of the program. The Board agrees with the respondents that the plan should "clearly establish the basis for estimating losses and the obligation undertaken to absorb the losses." However, the other proposed criteria deal with the contractor's ability to withstand a loss should one occur; they deal with whether the contractor *should* self-insure and whether the government's interests are sufficiently protected when he does self-insure. They do not deal with cost accounting matters and, therefore, are not proper for inclusion in a Standard.

(17) *Illustrations.* The October 5 publication included an illustration (§ 416.60(f)) dealing with a fire loss under circumstances where there were a number of physical units at dispersed locations. The illustration was designed to show the applicability of the provision of § 416.50(a)(2)(ii) which deals with circumstances "where it is probable that the actual amount of losses which will occur in a cost accounting period will not differ significantly from the projected average loss for that period . . ." Some respondents criticized the inclusion in the illustration of the phrase "and the contracting officer approves this plan in accordance with existing procurement regulations," on the basis that such approval should not be an essential determinant of cost accounting treatment. The reference to contracting officer approval, in this and in other illustrations, was merely for purposes of describing a realistic set of events as they might occur in the course of contract administration. The presence or absence of such approval is not essential to the determination of the measurement or allocability of cost under the proposed Standard. References to such approvals have been deleted.

An illustration (§ 416.60(g)) in the October 5 publication included the statement that "the contractor has sufficient financial resources" to act as a self-insurer. Some respondents criticized this illustration on the basis that it seemed to impose a requirement for financial capability. No such requirement was intended; the illustration has been modified to delete this reference.

Some respondents objected to the dollar amounts used in the illustration of catastrophic losses (§ 416.60(i)) and suggested that the amounts be changed or the illustration deleted. The Board did not intend to establish dollar criteria to determine what would constitute a "catastrophic" loss. The example has been changed to avoid this implication.

(18) *Costs and Benefits.* A number of respondents suggested that the implementation costs of the Standard would be excessive or would exceed the benefits. Of these, some based their concern on the allocation provisions, some cited the self-insurance provisions, and some merely cited increased administrative costs.

The allocation provision with which the respondents were concerned has been deleted. In addition, the proposed Standard has been modified to specifically provide that immaterial amounts of losses or insurance administration expenses need not be identified or segregated.

Some respondents were concerned about the recordkeeping which they envisioned would be necessary to support a self-insurance provision, and they envisioned the Standard thereby driving contractors away from self-insurance toward purchased insurance at a higher ultimate cost to the government. The Standard provides for several methods of recognizing the costs of self-insurance.

First, the contractor may recognize actual losses in those situations in which the distribution of actual losses may be expected to not differ significantly from the projected average loss. This will normally be expected where there are many units exposed to loss and the potential loss per unit is low in relation to the total exposure, as, for example, with worker's compensation, group insurance, and the deductible portion of property and casualty insurance. In most such cases, contractors already charge actual losses, so no change will be necessary. Second, the contractor may use the premium cost of purchased insurance for comparable coverage as the basis for the self-insurance charge. This method would be appropriate when, for example, the contracator proposed to substantially increase a deductible provision for property and casualty insurance; he might propose to make a self-insurance charge equal to the premium reduction for the decreased coverage. Only in the event that neither of these two methods is appropriate would the contractor have to resort to the third method, that of actuarial

review of his own or industry experience to develop a self-insurance charge, and this should occur infrequently. Therefore, in most instances the task of developing and supporting a self-insurance provision should not be difficult and the proposed Standard should not drive contractors either toward or away from self-insurance.

In summary, the majority of contracators will already be in compliance with the proposed Standard and the costs of compliance for the remainder should not be significant. Therefore, the Standard should have no significant inflationary impact.

Accordingly, it is proposed to publish 4 CFR Part 416 as follows:

PART 416—ACCOUNTING FOR INSURANCE COSTS

Sec.
416.10 General applicability.
416.20 Purpose.
416.30 Definitions.
416.40 Fundamental requirement.
416.50 Techniques for application.
416.60 Illustrations.
416.70 Exemptions.
416.80 Effective date.

AUTHORITY: 84 Stat. 796 Sec. 103; 50 U.S.C. App. 2168.

§ 416.10 General applicability.

General applicability of this Cost Accounting Standard is established by § 331.30 of the Board's regulations on applicability, exemption, and waiver of the requirement to include the Cost Accounting Standards contract clause in negotiated defense prime contracts and subcontracts (4 CFR 331.30).

§ 416.30 Definitions.

The following are definitions of terms which are prominent in this Standard.

Actual cash value. The cost of replacing damaged property with other of like kind and quality in the same physical condition; commonly defined as replacement cost less depreciation.

Insurance administration expenses. The contractor's costs of administering an insurance program, e.g., the costs of operating an insurance or risk-management department, processing claims, actuarial fees, and service fees paid to insurance companies, trustees, or technical consultants.

Projected average loss. The estimated long-term average loss per period for periods of comparable exposure to risk of loss.

Self-insurance. The assumption or retention of the risk of loss by the contractor, whether voluntarily or involuntarily. Self-insurance includes the deductible portion of purchased insurance.

Self-insurance charge. A cost which represents the projected average loss under a self-insurance plan.

§ 416.40 Fundamental requirement.

(a) The amount of insurance cost to be assigned to a cost accounting period is the projected average loss for that period plus insurance administration expenses in that period.

(b) The allocation of insurance costs to cost objectives shall be based on the beneficial or causal relationship between the insurance costs and the benefiting or causing cost objectives.

§ 416.50 Techniques for application.

(a) Measurement of projected average loss.

(1) For exposure to risk of loss which is covered by the purchase of insurance or by payments to a trusteed fund, the premium or payment, adjusted in accordance with the following criteria, shall represent the projected average loss:

(i) The premium cost applicable to a given policy term shall be assigned pro rata among the cost accounting periods covered by the policy term, except as provided in paragraghs (a)(1) (ii) through (vi) of this section. A refund, dividend or additional assessment shall become an adjustment to the pro rata premium costs for the earliest cost accounting period in which the refund or dividend is actually or constructively received or in which the additional assessment is payable.

(ii) Where insurance is purchased specifically for, and directly allocated to, a single final cost objective, the premium need not be prorated among cost accounting periods.

(iii) Any part of a premium or payment to an insurer or trustee, or any part of a dividend or premium refund retained by an insurer or trustee which would be includable as a deposit in published financial statements shall be accounted for as a deposit for the purpose of determining insurance costs.

(iv) Any part of a premium or payment to an insurer or to a trustee, or any part of a dividend or premium refund retained by an insurer, for inclusion in a reserve or fund established and maintained on behalf of the insured or the policyholder or trustor shall be accounted for as a deposit unless the following conditions are met:

(A) The objectives of the reserve or fund are clearly stated in writing;

(B) Measurement of the amount required for the reserve or fund is actuarially determined and is consistent with the objectives of the reserve or fund;

(C) Payments and additions to the reserve or fund are made in a systematic and consistent manner; and,

(D) If payments to accomplish the stated objectives of the reserve or fund are made from a source other than the reserve or fund, the payments into the reserve or fund shall be reduced accordingly.

(v) If an objective of an insurance program is to prefund insurance coverage on retired lives, then, in addition to the requirements imposed by subparagraph (iv) of this paragraph:

(A) Payments must be made to an insurer or trustee to establish and maintain a fund or reserve for that purpose;

(B) The policyholder or trustor must have no right of recapture of the reserve or fund so long as any active or retired participant in the program remains alive; and

(C) The amount added to the reserve or fund in any cost accounting period must not be greater than an amount which would be required to fairly apportion the cost of the insurance coverage provided over the working lives of the active employees in the plan. If a contractor establishes a terminal-funded plan for retired lives or converts from a pay-as-you-go plan to a terminal-funded plan, the actuarial present value of benefits applicable to employees already retired shall be amortized over a period of 15 years.

(vi) The contractor may adopt and consistently follow a practice of determining insurance costs based on the estimated premium and assessments net of estimated refunds and dividends. If this practice is adopted, then any difference between an estimated and actual refund, dividend, or assessment shall become an adjustment to the pro rata net premium costs for the earliest cost accounting period in which the refund or dividend is actually or constructively received or in which the additional assessment is payable.

(2) For exposure to risk of loss which is not covered by the purchase of insurance or by payments to a trusteed fund, the contractor shall follow a program of self-insurance accounting according to the following criteria:

(i) Except as provided in paragraph (a)(2) (ii) and (iii) of this section, actual losses shall not become a part of insurance costs. Instead, the contractor shall make a self-insurance charge for each period for each type of self-insured risk which shall represent the projected average loss for that period. If insurance could be purchased against the self-insured risk, the self-insurance charge plus insurance administration expenses may be equal to, but shall not exceed, the cost of comparable purchased insurance plus the associated insurance administration expenses. However, the contractor's actual loss experience shall be evaluated regularly, and self-insurance charges for subsequent periods shall reflect such experience in the same manner as would purchased insurance. If insurance could not be purchased against the self-insured risk, the amount of the self-insurance charge for each period shall be based

on the contractor's experience, relevant industry experience, and anticipated conditions in accordance with accepted actuarial principles.

(ii) Where it is probable that the actual amount of losses which will occur in a cost accounting period will not differ significantly from the projected average loss for that period, the actual amount of losses in that period may be considered to represent the projected average loss for that period in lieu of a self-insurance charge.

(iii) Under self-insurance programs on retired lives, only actual losses shall be considered to represent the projected average loss unless a reserve or fund is established in accordance with § 416.50(a)(1)(v).

(iv) The self-insurance charge shall be determined in a manner which will give appropriate recognition to any indemnification agreement which exists between the contracting parties.

(3) In measuring the projected average loss under paragraph (a)(2) of this section:

(i) The amount of an incurred loss shall be measured by (A) the actual cash value of property destroyed, (B) amounts paid or accrued to repair damage, (C) amounts paid to estates and beneficiaries, and (D) amounts paid or accrued to compensate claimants, including subrogation. Where the amount of a loss which is represented by a liability to a third party is uncertain, the estimate of the loss shall be the amount which would be includable in published financial statements.

(ii) If a loss has been incurred and the amount of the liability to a claimant is fixed or reasonably certain, but actual payment of the liability will not take place for more than one year after the loss is incurred, the amount of the loss to be recognized currently shall not exceed the present value of the future payments, determined by using a discount rate equal to that prescribed for settling such claims by the State having jurisdiction over the claim. If no such rate is prescribed by the State, then the rate shall be equal to the interest rate as determined by the Secretary of the Treasury pursuant to Pub. L. 92-41, 85 Stat. 97, in effect at the time the loss is recognized. Alternatively, where settlement will consist of a series of payments over an indefinite time period, as in worker's compensation, the contractor may follow a consistent policy of recognizing only the actual amounts paid in the period of payment.

(4) The contractor may elect to recognize immaterial amounts of self-insured losses or insurance administration expenses as part of other expense categories rather than as "insurance costs."

(b) Allocation of insurance costs:

(1) Where actual losses are recognized as an estimate of the projected average loss, in accordance with § 416.50(a)(2), or where actual loss experience is determined for the purpose of developing self-insurance charges by segment, a loss which is incurred in a given segment shall be identified with that segment. However, if the contractor's home office is, in effect, a reinsurer of its segments against catastrophic losses, a portion of such catastrophic losses shall be allocated to, or identified with, the home office.

(2) Insurance costs incurred by a segment or allocated to a segment from a home ofice may be combined with costs of other indirect cost pools if the resultant allocation to each final cost objective is substantially the same as it would be if the insurance costs were allocated on the basis of the factors used to determine the premium, assessment, refund, dividend, or self-insurance charge.

(3) Insurance administration expenses which are material in relation to total insurance costs shall be allocated on the same bases as the related premium costs or self-insurance charge.

§ 416.60 Illustrations.

(a) Contractor A paid a company-wide property and casualty insurance premium for the policy term July 1, 1976, to July 1, 1979, and charged the entire amount to expense in its cost accounting period which ended December 31, 1976. This is a violation of § 416.50(a)(1)(i) in that only one-sixth of the policy term fell within the cost accounting period which ended December 31, 1976, and therefore only one-sixth of the premium should have been charged to expense in that cost accounting period.

(b)(1) Contractor B has a retrospectively-rated worker's compensation insurance program. The policy term corresponds with the contractor's cost accounting period. Premium refunds are normally received and applied in the following cost accounting period. The contractor's practice is to charge the entire gross premium to insurance expense in the cost accounting period in which it is paid and to credit the refund against insurance expense in the cost accounting period in which it is received. This practice conforms with § 416.50(a)(1)(i).

(2) Under the provisions of § 416.50(a)(1)(vi), the contractor could have followed a practice of estimating such refunds in advance and charging the estimated net premium to insurance expense. If the contractor were to follow this practice, he would recognize the difference between the estimated and the actual refund as an adjustment to insurance costs in the period of receipt.

(c) Contractor C establishes a self-insured program of life insurance for active and retired employees. The contractor pays death benefits directly to the beneficiaries of deceased employees and charges such payments to insurance costs at the time of payment. This practice complies with § 416.50(a)(2)(iii) which requires that only the actual losses be recognized unless a trusteed reserve or fund is established in accordance with § 416.50(a)(1)(v).

(d) Instead of paying death benefits directly, Contractor D purchases annual group term life insurance on active and retired employees and charges the premiums to insurance costs (with proper recognition for refunds and dividends). Contractor D's retired employees wish to be protected against possible discontinuance of the program. Contractor D, therefore, establishes a trusteed fund. As each employee retires, Contractor D deposits in the fund an amount which is equal to the premium on a paid-up policy for that employee, and he advises the trustee that the fund is to be used to continue to pay premiums on retired lives in the event the program is discontinued. The contractor also continues to purchase group term insurance on both active and retired employees and charges both the premiums and the deposits to insurance costs. This practice does not comply with § 416.50(a)(1)(iv)(D) which requires that if payments to accomplish the stated objectives of the reserve or funds are made from a source other than the reserve or fund, the payments into the fund shall be reduced accordingly.

NOTE.—In this instance the contractor could comply with the Standard by paying from the fund that portion of the group term premium which represented the retired lives or by reducing the deposits to the fund by an equivalent amount in accordance with § 416.50(a)(1)(iv)(D). This method would also comply with the requirement of § 416.50(a)(1)(v)(C) that the amount added to the fund not be greater than an amount which would be required to fairly allocate the cost over the working lives of the active employees in the plan.

(e) Contractor E wishes to provide assurance of his life insurance program continuance to both active and retired employees. He establishes a trusteed fund in accordance with § 416.50(a)(1) (iv) and (v) and thereafter pays into the fund each year for each active employee an actuarially-determined amount which will accumulate to the equivalent of the premium on a paid-up life insurance policy at retirement. He charges the annual payments to insurance costs. Benefits are paid directly from the fund (or the fund is used to pay the annual premiums on group term life insurance for all employees). This practice also complies with the requirement of § 416.50(a)(1)(v)(C) that the amount added to the fund not be greater than an amount which would be required to

fairly allocate the cost over the working lives of the active employees in the plan.

(f) Contractor F has a fire insurance policy which provides that the first $50,000 of any fire loss will be borne by the contractor. Because the risk of loss is dispersed among many physical units of property and the average potential loss per unit is relatively low, the actual losses in any period may be expected not to differ significantly from the projected average loss. Therefore, the contractor intends to let the actual losses represent the projected average loss for this exposure to risk. Property with an actual cash value of $80,000 is destroyed in a fire. The contractor charges $50,000 of the loss to insurance costs for contract costing purposes. The practice complies with the requirement of § 416.50(a)(2). However, had the contractor's plan been to make a self-insurance charge for such losses, then any difference between the self-insurance charge and actual losses in that cost accounting period would not have been allocable as an insurance cost.

(g) Contractor G is preparing to enter into a Government contract to produce explosive devices. the contractor is unable to purchase adequate insurance protection and must act as a self-insurer. There is a significant possibility of a major loss, against which the Government will not undertake to indemnify the contractor. The contractor, therefore, intends to make a self-insurance charge for this exposure to risk. The contractor may use data obtained from other contractors or any other reasonable method of estimating the projected average loss in order to determine the self-insurance charge.

(h) Contractor H purchases liability insurance for all of its motor vehicles in a single, company-wide policy which contains a $50,000 deductible provision. However, the company's management policy provides that when a loss is incurred in a segment, only the first $5,000 of the loss will be charged to the segment; the balance of the loss will be absorbed at the home-office level and reallocated among all segments. Because the risk of loss is dispersed among many physical units and the maximum potential loss per occurrence is limited, the actual losses in any cost accounting period may be expected not to differ significantly from the project average loss. Therefore, the contractor intends to let the actual losses represent the projected average loss for this exposure to risk. An analysis of the loss experience shows that many past losses exceeded $5,000. Contractor H's practice of allocating the loss in excess of $5,000 to the home office is a violation of § 416.50(b)(1)(ii). The limit of $5,000 cannot realistically be considered a measure of a "catastrophic" loss when losses frequently exceed this amount, and the use of a limit this low would obscure segment loss experience.

§ 416.70 Exemptions.

None for this Standard.

§ 416.80 Effective date.

(a) The effective date of this Standard is [————].

(b) This Standard shall be followed by each contractor on or after the start of his next cost accounting period beginning after the receipt of a contract to which this Cost Accounting Standard is applicable.

ARTHUR SCHOENHAUT,
Executive Secretary.

[FR Doc. 78-13169 Filed 5-12-78; 8:45 am]

[3410-01]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[7 CFR Part 6]

IMPORT QUOTAS AND FEES

Licensing Entry of Sugar Exempt From Fees

AGENCY: Foreign Agricultural Service.

ACTION: Proposed rule.

SUMMARY: The proposed rule would establish procedures and conditions for the issuance of licenses which will permit the importation of sugar exempt from the fees imposed by Presidential Proclamation 4547 of January 20, 1978, on sugar, sirups, and molasses. Sugar imported under such a license must be used solely for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption.

DATES: Comments must be received on or before: June 14, 1978. (It has been determined that it is impractical and contrary to the public interest to delay the implementation of this rule by providing a longer period for public comments. Given the size of the industry that shall be affected by this rule, it is felt that 30 days is a reasonable period of time to provide an adequate opportunity for public participation.)

ADDRESS: Mail comments to Director, Sugar and Tropical Products Division, Foreign Agricultural Service, USDA, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Robert M. McConnell, 202-447-3423.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 4547 of January 20, 1978, imposed fees on sugars, sirups, and molasses as provided for in items 956.05, 956.15, 957.15 of the Tariff Schedules of the United States (TSUS). Proclamation 4547 amended Headnote 4 of Part 3 of the Appendix to the TSUS to read as follows:

> Licenses may be issued by the Secretary of Agriculture or his designee authorizing the entry of articles exempt from the fees provided for in items 956.05, 956.15, and 957.15 of this part on the condition that such articles will be used only for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption. Such licenses shall be issued under regulations of the Secretary of Agriculture which he determines are necessary to insure the use of such articles only for such purposes.

Polyhydric alcohols are organic solvents containing two or more hydroxyl groups. Such alcohols are used in the production of other chemicals.

Under the proposed rule, a license may only be issued to a manufacturer of polyhydric alcohols. The license shall be effective for no more than one year, and is not assignable. However, the manufacturer may employ an agent to import sugar under the license on behalf of the manufacturer.

In order to guarantee that sugar imported under the license is used for the production of polyhydric alcohols, it is required that a bond be posted for each license that is issued. The monetary obligation under the bond automatically increases with the entry of sugar under the license, and is decreased as quantities of sugar are utilized for the production of polyhydric alcohols.

Sugar imported under a license must be used for the production of polyhydric alcohols within six months after the expiration of the license under which it was imported. Certificates of use are to be filed on a monthly basis, but in no case later than seven months after the expiration of the import license. These time limitations may be extended at the discretion of the Secretary.

It is anticipated that licenses will ordinarily be issued on a yearly basis, and that succeeding licenses shall be issued effective the day following the expiration of the previous license. A new license, however, may be issued at any time. In that case, the prior license shall be deemed to have expired upon the effective date of the succeeding license. Thus, no more than one effective license may be outstanding to a given manufacturer at any one time.

The public is invited to submit to the above address written comments, suggestions or objections regarding the proposed regulations. Each person submitting comments, suggestions, or objections regarding the proposed rule shall include his name and address and should give reasons for suggested changes. Copies of all written communications received will be available for examination by interested persons in

Room 6095 South Building, USDA, during regular business hours.

In accordance with the above, it is proposed to amend 7 CFR Part 6 by adding the following subpart:

Subpart-Section 22 Import Fees

AUTHORITY: Sec. 22, 49 Stat. 773, as amended, 62 Stat. 1247, 64 Stat. 261 (7 U.S.C. 624); Presidential Proclamation 4547, January 20, 1978 (43 FR 3251).

EXEMPTION FROM FEES—SUGAR

§ 6.50 Definitions.

As used in this part: (a) The term "person" means an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity, and, wherever applicable, any unit, instrumentality, or agency of a government, domestic or foreign.

(b) The term "Department" means the U.S. Department of Agriculture.

(c) The term "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has delegated the authority or to whom authority may herafter be delegated to act in his place.

(d) The term "Collector" means the District Director of Customs, or any other Customs officer of similar authority and responsibility, for the Customs District in which the port of entry is located.

(e) The term "import License" means a license issued by the Secretary permitting the entry of sugar exempt from the fees provided for in items 956.05, 956.15, and 957.15 of the Tariff Schedules of the United States, on condition that such sugar will be used solely for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption.

(f) The term "manufacturer" means a person that is engaged in the production (other than by distillation) of polyhydric alcohols from sugar.

(g) The term "agent" means a person that is engaged in the business of importing and/or refining sugar for eventual delivery to a manufacturer which has employed the agent for that purpose.

(h) The term "sugar" means sugars, sirups, and molasses as defined in items 956.05, 956.15, 957.15 of the Tariff Schedules of the United States.

§ 6.51 Issuance of an Import License.

(a) An import license may be issued to a manufacturer which complies with the provisions of this part. The license shall state the time period during which the license shall be effective and the maximum amount of sugar which may be imported under the license. In no case shall the effective period of a license exceed one year, nor shall the maximum amount of sugar which may be imported under the license exceed the anticipated requirements of the manufacturer for the twelve month period following the effective date of the license. The license may contain such other conditions as the Secretary, in his discretion, seem necessary.

(b) No more than one effective license may be outstanding at any one time to any one manufacturer. In order to ensure a dependable and orderly supply of sugar, a manufacturer may apply for a license prior to the expiration of a prior license. The prior license shall be deemed to have expired on its stated expiration date, or on the effective date of the succeeding license, whichever is earlier.

§ 6.52 Transferability of an Import License

An import license may not be transferred or assigned by the manufacturer to any other person. Any attempt to transfer or assign an import license shall be null and void, and shall constitute grounds for the revocation of the license by the Secretary.

§ 6.53 Entry of Sugar.

(a) A manufacturer or its agent may enter sugar into the United States exempt from the fees contained in items 956.05, 956.15, 957.15 of the Tariff Schedules of the United States under an import license issued pursuant to this Part. The Collector shall allow the entry of the sugar only in conformity with the conditions of the import license, if any.

(b) The Collector shall enter on the license (1) the amount of sugar entered; (2) the time of entry; and (3) the name of the person entering the sugar.

(c) A copy of the license, as marked by the Collector, shall be transmitted to the Sugar and Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250, by the person entering the sugar, within 10 business days after each entry of sugar.

§ 6.54 Entry of Sugar by an Agent.

(a) In those cases where sugar is to be entered by an agent of the manufacturer, the agent shall produce for inspection by the Collector a written authorization by the manufacturer designating such person to act as the agent of the manufacturer for the purpose of entering sugar.

(b) A copy of such authorization shall be attached to the relevant copy of the import license that is transmitted to the Sugar and Tropical Products Division pursuant to § 6.53(c).

§ 6.55 Application for an Import License.

(a) Only manufacturers are eligible to receive an import license.

(b) Each application for an import license shall contain the following information:

(1) Name and address of the manufacturer.

(2) A statement of the anticipated requirements of the manufacturer for sugar to be used in the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, during the effective period of the license.

(3) The anticipated amount of sugar to be imported during the specified effective period.

(4) The effective period of the import license (but not to exceed one year).

(c) Each application for an import license shall contain a certification that the manufacturer shall use the quantity of sugar entered under an import license solely for the production (other then by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption.

(d) Each application for an import license shall be accompanied by a bond meeting the requirements of § 6.56.

§ 6.56 Bond Requirements.

(a) An import license may not be issued until the Secretary has accepted a bond meeting the requirements of this section.

(b) The principal on the bond shall be the manufacturer to whom the import license is issued.

(c) The surety or sureties shall be from among those listed by the Secretary of the Treasury as acceptable on Federal bonds.

(d) Obligation. (1) The obligation under the bond shall be made effective by the Secretary's issuance of the import license.

(2) The monetary amount of the obligation under the bond shall be the sum of the amount applicable to each quantity of sugar entered under the import license, less the amount applicable to quantities of sugar accounted for by certificates of use submitted in accordance with § 6.58. The monetary amount applicable to each quantity of sugar entered under an import license shall be two times the applicable fee as set forth in items 956.05, 956.15, and 957.15 of the Tariff Schedule of the United States.

(e) The bond shall be subject to the following conditions;

(1) The sugar entered under an import license shall be used for the production of polyhydric alcohols as

stated in § 6.50(e) within six months of the expiration of the import license. Such use shall be established by a certificate of use, as provided for in § 6.50.

(2) The bond shall become effective upon the issuance of an import license by the Secretary and notice need not be given the surety of this action. The obligations of the bond shall remain in full force and effect until the Secretary notifies the principal and surety of release from the obligation.

(f) The Secretary may release all or any part of the monetary amount of the obligation under the bond to the extent that quantities of sugar entered under an import license are accounted for by certificates of use. The Secretary may, in his discretion, extend the period of time specified in § 6.56(e)(1) for the use of the sugar. The Secretary may also release all or part of the monetary amount of the obligation if the Secretary determines that the destruction or other disposition of a quantity of sugar entered under an import license renders performance under the bond impossible or inequitable.

§ 6.57 Default.

Upon a failure to comply with the provisions of this subpart, and the expiration of the time limit contained in § 6.56(e)(1), payment shall be made to the United States of the monetary amount of the obligation under the bond which is, at the time of expiration, still outstanding.

§ 6.58 Certificate of Use.

(a) The certificate of use shall be a certification by the manufacturer that a quantity of sugar entered under an import license has been used for the purpose stated in § 6.1(e). Certificates of use shall be transmitted to the Sugar and Tropical Products Division by the manufacturer on a monthly basis. In no case shall a certificate of use be accepted more than 30 days after the expiration of the time limit contained in § 6.56(e)(1), unless the Secretary, in his discretion, extends the time period in which a certificate may be filed.

(b) The certificate of use shall be signed by the manufacturer and shall contain the following certification:

> The undersigned hereby certifies that between ————, 19—, and ————, 19—, the undersigned has used —— pounds of sugar for the sole purpose of producing (other than by distillation) polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption. The undersigned further certifies that the quantity of sugar shown on this certificate of use does not include any sugar previously covered by another certificate of use.

§ 6.59 Revocation.

If, at any time, the Secretary determines that the manufacturer has failed to comply with the requirements of this subpart, the Secretary may, in his discretion, revoke an import license issued pursuant to this subpart.

MAY 9, 1978.

CAROL TUCKER FOREMAN,
Acting Secretary.

[FR Doc. 78-13103 Filed 5-12-78; 8:45 am]

Agricultural Marketing Service

[7 CFR Part 929]

[Docket No. AO-341-A4]

CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Decision on Proposed Further Amendment of the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision would amend the Federal marketing agreement and order for cranberries grown in certain States. Cranberry producers and processors will be given the opportunity to vote in a referendum to determine if they favor the proposed changes in the marketing order.

The principal change would provide for updating the allotment bases of existing producers and entry of new producers by allocation of base quantity from a reserve. Other changes would provide for a public member and alternate member on the committee, and allow funds representing unclaimed shares of deposits to secure release of withheld cranberries to accrue to the committee's account.

DATE: The representative period for purposes of the referendum herein ordered is September 1, 1977, through April 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued October 7, 1977; published October 13, 1977 (42 FR 55094); and Notice of Recommended Decision—Issued March 17, 1978; published March 23, 1978 (43 FR 12020).

PRELIMINARY STATEMENT

A public hearing was held upon proposed further amendment of the marketing agreement, as amended, and Order No. 929, as amended (7 CFR Part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The hearing was held, 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 (7 CFR Part 900), at New Bedford, Mass., on November 1; Cherry Hill, N.J., on November 3; Wisconsin Rapids, Wis., on November 8; Bandon, Oreg., on November 11; and Long Beach, Wash., on November 14, 1977, pursuant to notice thereof.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, on March 17, 1978, filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing the notice of the opportunity to file written exceptions thereto.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, on March 17, 1978, filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing the notice of the opportunity to file written exceptions thereto.

One exception was filed by Mr. William B. Stearns, Jr., Plymouth, Mass. He expressed the view that the proposed base quantity reserve equal to 2 percent of total base quantities may be insufficient and recommended that in allocating such base quantity priority consideration be given to growers who have registered production gains from cranberry acreage established during the representative period (1968-1973). The recommended decision provides for a base quantity reserve equal to 2 percent of total base quantities, and such reserve will be established annually. Furthermore, provision is made for increasing or decreasing the reserve percentage to permit adjustment to changing market conditions. The method of allocation of base quantity would be set forth in a uniform rule and such rule should recognize sales of cranberries. However, the order makes no distinction between sales of cranberries produced on acreage established during the representative period and sales of cranberries from later planted acreage. The decision correctly concluded that it would be appropriate to include all sales of record, including sales from acreage planted subsequent to the end of the representative period, in any formula recommended by the committee for distributing reserve base quantity to existing producers. Therefore, the exception is denied.

The material issues, findings and conclusions, rulings and general findings of the recommended decision published Thursday, March 23, 1978, in the FEDERAL REGISTER (43 FR 12020) are hereby incorporated by reference herein and made a part hereof, subject

to correction of inadvertent, grammatical or obvious errors.

Ruling on exception. In arriving at the findings and conclusions and the regulatory provisions of this decision, the exception to the recommended decision was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with the exception, such exception is hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, as Further Amended, Regulating the Handling of Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York," and "Order amending the order, as amended, regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the annexed marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the annexed order which is published with this decision.

Referendum order. Pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), it is hereby directed that a referendum be conducted:

(1) Among the producers who, during the period September 1, 1977, through April 30, 1978 (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged, in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, in the production of cranberries for market; and

(2) Among processors who, during the aforesaid representative period, canned or froze within the production area cranberries for market, to ascertain whether such producers and processors favor the issuance of said annexed order amending the order, as amended, regulating the handling of cranberries grown in the aforesaid production area.

William J. Doyle and Ronald L. Cioffi, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, are hereby designated agents of the Secretary of Agriculture to conduct said referendum severally or jointly.

The procedure applicable to this referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400 et seq.).

Signed at Washington, D.C., on May 10, 1978.

JERRY C. HILL,
Deputy Assistant Secretary.

Order[1] amending the order, as amended, regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington and Long Island in the State of New York.

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 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 proposed amendment of the marketing agreement, as amended, and Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

Upon the basis of the record it is found that:

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

(2) The order, as amended, and as hereby further amended, regulates the handling of cranberries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of cranberries grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of cranberries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof the handling of cranberries grown in the production area shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended, as follow:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator on March 17, 1978, and published in the FEDERAL REGISTER on March 23, 1978 (43 FR 12020) shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

1. Section 929.20 *Establishment and membership* is revised by deleting the first two sentences and submitting in lieu thereof the following. As amended § 929.20 reads as follows:

§ 929.20 Establishment and membership.

There is hereby established a Cranberry Marketing Committee consisting of seven members, each of whom shall have an alternate. Except as hereafter provided, members and their alternates shall be growers or employees, agents, or duly authorized representatives of growers. Persons filling grower positions may be referred to as industry members. The committee may be increased by one public member and alternate nominated by the committee and selected by the Secretary. The public member and alternate shall be neither a grower nor a handler. Persons filling these positions may be referred to as non-industry members. The Committee, with the approval of the Secretary, shall prescribe qualifications and the procedure for nominating the public member. * * *

[1]This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

2. Section 929.27 *Alternate members* is revised by amending the last sentence thereof to read as follows:

§ 929.27 Alternate members.

* * * In the event both a grower member of the committee and his alternate are unable to attend a committee meeting, the committee may designate any other grower alternate member to serve in such member's place and stead at that meeting: *Provided,* That not more than four members and alternate members selected from those nominated pursuant to § 929.22(b)(1) shall serve as members at the same meeting. *And provided, further,* That grower alternates' shall not serve in place of an absent non-industry member.

3. Section 929.32 *Procedure* is revised by amending paragraph (a) to read as follows:

§ 929.32 Procedure.

(a) Five members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require at least five concurring votes: *Provided,* That if the committee is increased by the addition of a public member and such public member or alternate is present at a meeting, 6 members shall constitute a quorum and any action of the committee on which the public member votes shall require 6 concurring votes. If the public member abstains from voting on any particular matter, 5 concurring votes shall be required for an action of the committee.

* * * * *

4. Section 929.48 *Base quantities* is revised by deleting paragraph (b) and adding a new paragraph (b) to read as follows:

§ 929.48 Base quantities.

(a) * * *

(b)(1) A base quantity reserve equal to 2 percent of the total base quantities shall be established annually: *Provided,* That upon recommendation of the committee the Secretary may increase or decrease such percentage except in no event shall the reserve be less than 2 percent. Such reserve shall include any base quantity that becomes available due to any reduction or invalidation because of non-use of base quantity under subparagraph (4) of this paragraph. Such reserve shall be used for the issuance of base quantities to new producers and adjustments in base quantities for existing producers with 25 percent being made available for new producers and 75 percent available for adjustments for existing producers. Any unallocated portion of the 25 percent available to new producers may at the discretion of the committee be prorated among eligible existing producers on an equitable basis.

(2) The committee shall, subject to approval of the Secretary; establish rules and procedures governing the issuance of base quantities under paragraph (b)(1) of this section. Such rules shall define the terms "new producer" and "existing producer" and specify standards for equitable and thorough consideration of pertinent factors relating to each case, including but not limited to, on-site inspection of applicant's acreage, past production of cranberries by applicant, acreage planted, average yields, and other economic and marketing factors.

(3) Each person filing an application hereunder for new base quantity or adjustment in an established base quantity shall be notified by the committee of its determination thereon.

(4) A condition for the continuing validity of a producer's base quantity is production of cranberries thereunder in a proprietary capacity. If no bona fide effort is made to produce and sell cranberries thereunder for five consecutive seasons, commencing with the 1978-79 season, the base quantity may be reduced or declared invalid due to lack of use and cancelled at the end of the fifth season of nonproduction. The committee shall establish criteria, subject to approval by the Secretary, whereby the committee may determine whether a bona fide effort has been made to produce and sell cranberries produced on the producer's own acreage.

(5) Each producer shall file with the committee such reports as may be necessary for the committee to perform its duties under this section.

* * * * *

5. Section 929.56 *Special provisions relating to withheld (restricted) cranberries* is revised by amending paragraph (d) to read as follows:

§ 929.56 Special provisions relating to withheld (restricted) cranberries.

* * * * *

(d) In the event any portion of the funds deposited with the committee pursuant to paragraph (a) of this section cannot, for reasons beyond the committee's control, be expended to purchase unrestricted (free percentage) cranberries to replace those released, such unexpended funds shall, after deducting expenses incurred by the committee in connection with the purchase and disposition of cranberries pursuant to paragraph (c) of this section, be offered and paid or credited proportionately to handlers on the basis of the volume of cranberries withheld by each handler. In the event that the offer is not accepted or directions given by a handler to credit the funds within 90 days, the funds will accrue to the committee's general account.

* * * * *

Subpart—Rules and Regulations

6. Section 929.105 *Reporting* is revised by amending paragraph (a) to read as follows:

§ 929.105 Reporting.

(a) Each report required to be filed with the committee pursuant to § 929.60 and § 929.48 shall be mailed to the committee office at Middleboro, Massachusetts, or delivered to that office. If the report is mailed, it shall be deemed filed when postmarked.

(b) * * *

[FR Doc. 78-13162 Filed 5-12-78; 8:45 am]

[3410-02]

[7 CFR Part 1079]

MILK IN THE IOWA MARKETING AREA

Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend an order provision affecting the regulatory status of milk supply plants. The action was requested by three cooperative associations to allow a cooperative association's direct delivery of milk from producers' farms to its own pool distributing plant to be included as a qualifying shipment for pooling the cooperative association's supply plant. The proposed suspension would be for the period of May 1978 through April 1979.

DATE: Comments are due by May 23, 1978.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), the suspension of the following provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for the months of May 1978 through April 1979:

In § 1079.7(b)(1) the words "pursuant to § 1079.9(c)".

All persons who want to comment about the proposed suspension should send four copies of them to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, on or before May 23, 1978.

The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include the month of May 1978 in the period of suspension.

The comments that are sent will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

STATEMENT OF CONSIDERATION

The proposed suspension would remove for one year some pool supply plant provisions that prevent a cooperative association from earning pool plant shipping credit for milk which it causes to be delivered directly from producers' farms to its own pool distributing plant. Presently, only direct deliveries of milk by a cooperative association to the pool distributing plant of another handler are fully creditable as qualifying shipments for the cooperative's supply plant.

The suspension was requested by Land O'Lakes, Inc., Mid-America Dairymen, Inc., and Mississippi Valley Milk Producers Association, Inc. The cooperativers claim that uneconomic shipments of milk are required to maintain pool status for supply plants. This results because direct deliveries from farms to their pool distributing plants do not earn credit toward qualifying their supply plants.

Land O'Lakes states that occasionally it must make shipments from its Pine Island, Minn., supply plant to its Cedar Rapids, Iowa, distributing plant solely for the purpose of qualifying the Pine Island supply plant, even though sufficient direct shipped milk is available to the Cedar Rapids plant.

Mid-America Dairymen operates a pool distributing plant at Iowa City, Iowa, and supply plants at Twin Lakes, Minn., and Des Moines and Sully, Iowa. It states that although it supplies other distributing plants regulated under the Iowa order, its Iowa City distributing plant is the largest single fluid outlet for its member producer milk under the order. The cooperative claims that if sales to the other outlets decreased, the present order provisions could require unnecessary shipments from its supply plants to distributing plants for the sole purpose of meeting the supply plant pooling provisions of the order.

Mississippi Valley Milk Producers Association operates a supply plant at Dubuque, Iowa, and pool distributing plants at Rock Island, Ill., and Waterloo, Iowa. It states that at times in order to make room at the Rock Island distributing plant for qualifying shipments of milk from the Dubuque supply plant, the cooperative must reload the milk that is normally picked up on farms near Rock Island for direct delivery to pool distributing plants and ship it to another market. These procedures, to assure pooling for the supply plant, entail a substantial amount of uneconomic hauling.

It is the cooperatives' position that the requested suspension will remove the necessity of supplying milk through a supply plant simply to keep the plant qualified for pooling when milk can be more economically supplied direct from producers' farms. In their view, the suspension will provide the flexibility needed in supplying milk to pool plants and in disposing of reserve milk supplies during the period of suspension. It is anticipated that during the period of suspension a general hearing may be held at which proposed amendments to the supply plant provisions may be considered.

Signed at Washington, D.C., on May 10, 1978.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.

[FR Doc 78-13163 Filed 5-12-78; 8:45 am]

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 17906]

AIRWORTHINESS DIRECTIVES

Airbus Industrie (AI) Type A300 Airplanes, All Models

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt an Airworthiness Directive (AD) that would require periodic inspection for cracks in wing slat closing plate assemblies of AI Type A300 airplanes, and modification or replacement thereof as appropriate. The AD is needed to prevent in-flight loss of a closing plate which could jeopardize persons and property on the ground, and safety of flight by interfering with proper operation of the airplane's high-lift devices.

DATES: Comments must be received on or before June 30, 1978.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24) Docket No. 17906, 800 Independence Avenue SW., Washington, D.C. 20591. The applicable service bulletins may be obtained from: Airbus Support Division, Avenue Lucien Servanty, Boite Postale 33, 31700 Blagnac, France. A copy of each of the service bulletins is contained in the Rules Docket, Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

D.C. Jacobsen, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, telephone 513.38.30.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed with the Rules Docket.

There have been reports of cracks in hinges and spring strut attachment brackets of No. 1 L.H. and R.H. wing slat closing plates on Airbus Industrie Type A300 airplanes, and in-flight loss of one closing plate has occurred. In-flight detachment of a slat closing plate could endanger persons and property on the ground, and could jeopardize safe operation of the airplane by interfering with normal operation of the airplane's high-lift devices. Since this condition is likely to exist or develop on other airplanes of the same type design, the proposed AD would require repetitive visual inspections, and modification as necessary, of No. 1 L.H. and R.H. wing slat closing plate assemblies on AI Type A300 airplanes until modified in accordance with AI Service Bulletin No. A300-57-065.

DRAFTING INFORMATION

The principal authors of this document are M. E. Gaydos, Europe, Africa, and Middle East Region, F. Kelley, Flight Standards Service, and P. Lynch, Office of the Chief Counsel.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend

§ 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

AIRBUS INDUSTRIE (AI). Applies to Type A300 airplanes, all models certificated in all categories, not incorporating AI Modification No. 1909/AI Service Bulletin No. A300-57-065, dated December 15, 1977.

Compliance required as indicated.

To prevent in-flight loss of wing slat closing plates, accomplish the following:

(a) Within the next 20 flights after effective date of this AD, or prior to accumulation of 800 flights since new, whichever occurs later, and at intervals thereafter not exceeding 800 flights since the previous inspection until modified in accordance with AI Service Bulletin No. A300-57-065, dated December 15, 1977, or an FAA-approved equivalent, visually inspect No. 1 L.H. and R.H. wing slat closing plate assemblies for cracks in the piano hinges, for failure of rivets, and for cracks or distortion at spring strut attachment lugs, in accordance with Accomplishment Instructions, subparagraph 2.A., Inspection, of AI Alert Service Bulletin No. A300-57-063, Revision No. 1, dated September 5, 1977, or an FAA-approved equivalent.

(b) If, during any inspection required by paragraph (a) of this AD, piano hinge cracks of less than 2 inches in length are found, verify that the pin of the piano hinge is complete and correctly installed and repeat the inspection required by paragraph (a) of this AD within the next 800 flights and at intervals thereafter not exceeding 800 flights since the previous inspection, or, alternatively, proceed as prescribed in paragraph (c) of this AD.

(c) If, during any inspection required by this AD, hinge rivet failures, piano hinge cracks of 2 inches in length or greater, or cracks or distortion of the spring strut attachment brackets are found, before further flight, except that the airplane may be flown in accordance with FAR 21.197 and 21.199 to a place where the work can be performed, accomplish the following:

(1) Incorporate the modification specified in AI Service Bulletin No. A300-57-065, dated December 15, 1977, or an FAA-approved equivalent;

(2) For hinge rivet failures, and for hinge cracks of or greater than 2 inches in length, replace rivets or replace hinge, as appropriate, in accordance with subparagraph 2.C, Replacement of Cracked Hinges, of AI Service Bulletin No. A300-57-063, Revision No. 1, dated September 5, 1977, or an FAA-approved equivalent; and

(3) For cracks or distortion of the spring strut attachment brackets, replace in accordance with applicable portions of paragraph 2, Accomplishment Instructions, of AI Alert Service Bulletin No. A300-57-063, Revision 1, dated September 5, 1977, or an FAA-approved equivalent, the closing plate with serviceable plate of the same part number.

For purpose of this AD, one flight is one takeoff and landing cycle.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.85.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C., on May 5, 1978.

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

[FR Doc. 78-13108 Filed 5-12-78; 8:45 am]

[4910-13]

[14 CFR Part 71]

[Airspace Docket No. 78-NE-07]

CONCORD, N.H., CONTROL ZONE

Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice (NPRM) proposes to alter the Concord, N.H., control zone so as to provide more controlled airspace for aircraft executing a new VOR/DME instrument approach procedure which has been developed for the Concord Municipal Airport.

DATES: Comments must be received on or before June 28, 1978.

ADDRESSES: Send comments to the Federal Aviation Administration, Office of the Regional Counsel, ANE-7, Attention: Rules Docket Clerk, Docket No. 78—NE-07, 12 New England Executive Park, Burlington, Mass. 01803. A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Mass. 01803.

FOR FURTHER INFORMATION CONTACT:

Richard G. Carlson, Operation Procedures and Airspace Branch, ANE-536, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Mass. 01803, telephone 617-273-7285.

COMMENTS INVITED

Interested persons may participate in the proposed rulemaking process by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted to the Office of the Regional Counsel, ANE-7, Attention: Rules Docket Clerk, Docket No. 78-NE-07, Federal Aviation Administration, 12 New England Executive Park, Burlington, Mass. 01803. All communications received on or before June 28, 1978, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF COMMENTS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of the Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 202-426-8085. Communications must identify the notice of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSAL

The FAA is considering an amendment to Subpart F of the Federal Aviation Regulations (14 CFR Part 71) to alter the control zone at Concord, N.H. This amendment would add an extension area of approximately three (3) miles in depth and four (4) miles in width northwest of the Concord, N.H., VORTAC. This action will provide additional controlled airspace for aircraft executing the new VOR/DME instrument approach procedure to Concord Municipal Airport, Concord, N.H.

DRAFTING INFORMATION

The principal authors of this document are Richard G. Carlson, Air Traffic Division, New England Region, and George L. Thompson, Associate Regional Counsel, New England Region.

THE PROPOSED AMENDMENT

Accordingly, the FAA proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations by adding the following:

SECTION 71.171

CONCORD, N.H. CONTROL ZONE

And within two (2) miles each side of the Concord, N.H., VORTAC, 284° radial, extending from the five (5) mile radius zone to three (3) miles northwest of the VORTAC.

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

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Burlington, Mass., on May 1, 1978.

ROBERT E. WHITTINGTON,
Director, New England Region.

[FR Doc. 78-13106 Filed 5-12-78; 8:45 am]

[4910-13]

[14 CFR PART 71]

[Airspace Docket No. 78-EA-22]

BECKLEY, W. VA.

Proposed Alteration of Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This notice proposes to alter the Beckley, W. Va., Control Zone over Raleigh County Memorial Airport, Beckley, W. Va. This alteration will provide protection to aircraft executing the new VOR/DME RWY 19 instrument approach which has been developed for the airport. An instrument approach procedure requires the designation of controlled airspace to protect instrument aircraft utilizing the instrument approach.

DATES: Comments must be received on or before June 29, 1978.

ADDRESSES: Send comments on the proposal in triplicate to: Chief, Airspace and Procedures Branch, AEA-530, Eastern Region, Federal Aviation Administration, Federal Building, Jamaica, N.Y. 11430. The docket may be examined at the following location: FAA, Office of Regional Counsel, AEA-7, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430.

FOR FURTHER INFORMATION CONTACT:

Frank Trent, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430, telephone 212-995-3391.

COMMENTS INVITED

Interested parties may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, N.Y. 11430. All communications received on or before June 29, 1978, will be considered before action is taken on the proposed amendment. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, AEA-530, Eastern Region, Federal Aviation Administration, Federal Building, Jamaica, N.Y. 11430, or by calling 212-995-3391.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSAL

The FAA is considering an amendment to Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the control zone over Raleigh County Memorial Airport, Beckley, W. Va. The zone will be altered by establishing an extension approximately 3 miles each side of the Beckley VORTAC 002° radial extending 2 miles from the control zone.

DRAFTING INFORMATION

The principal authors of this document are Frank Trent, Air Traffic Division, and Thomas C. Halloran, Office of the Regional Counsel.

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations by adding the following to the description of the Beckley, W. Va., control zone:

"; within 3 miles each side of the Beckley VORTAC 002° radial, extending from the 6.5-mile radius zone to 8.5 miles north of the VORTAC.".

(Sec. 307(a), Federal Aviation Act of 1958 (72 Stat. 749 (49 U.S.C. 1348(a))) sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 as amended by Executive Order 11949 and OMB Circular A-107.

Issued in Jamaica, N.Y., on April 24, 1978.

L. J. CARDINALI,
Acting Director, Eastern Region.

[FR Doc. 78-13110 Filed 5-12-78; 8:45 am]

[4910-61]

Saint Lawrence Seaway Development Corporation

[33 CFR Part 403]

RULES OF PROCEDURE OF THE JOINT TOLLS ADVISORY BOARD

Proposed Amendments

AGENCY: Saint Lawrence Seaway Development Corporation.

ACTION: Proposed rule.

SUMMARY: The Joint Tolls Advisory Board which was originally established to hear complaints regarding the interpretation of the Tariff of Tolls and alleged unjust discrimination arising from the administration of that tariff will henceforth be called the Joint Tolls Review Board. The proposed rule reflects this name change and is necessary due to a revised Memorandum of Agreement between the Governments of Canada and the United States which was finalized on March 20, 1978, through an Exchange of Notes. Section 6 of the revised Agreement indicates the name change and also assigns additional responsibilities to the Board. Amendment of part 403 will result in consistency between the Seaway Regulations and the aforementioned Memorandum of Agreement.

DATE: Comments received not later than June 30, 1978, will be considered.

ADDRESS: Comments should be directed to Mr. Robert D. Kraft, Deputy General Counsel, Saint Lawrence Seaway Development Corporation, Department of Transportation, 800 Independence Avenue SW., Washington, D.C. 20591; 202-426-3574.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert D. Kraft, 202-426-3574.

SUPPLEMENTARY INFORMATION: On March 20, 1978, a revised Memorandum of Agreement between the Governments of Canada and the United States was finalized relative to the jointly administered Tariff of Tolls and other matters concerning the St. Lawrence Seaway. Section 6 of the revised Agreement provides for the establishment of a Joint Tolls Review Board to hear complaints regarding the interpretation of the Tariff of Tolls and alleged unjust discrimination arising from the administration of that tariff. The Board also has an added responsibility to conduct an annual review of the tariff and the revenues generated by that tariff in order to evaluate and monitor its sufficiency in meeting the requirements of the two Seaway entities. Essentially the Board is an appeal and review body and it is felt that its new name will more accurately reflect its functions.

After a thorough review, it has been determined that the proposed amendments will not result in any added cost to or impact on the private sector, consumers, or Federal, State or local governments.

For the stated reasons, the Saint Lawrence Seaway Development Corporation proposes to amend part 403 as follows:

1. The title to part 403 is amended to read:

PART 403—RULES OF PROCEDURE OF THE JOINT TOLLS REVIEW BOARD

2. § 403.1 is amended to read as follows:

§ 403.1 Scope of rules [Rule 1].

These rules govern practice and procedure before the Joint Tolls Review Board unless the Board directs or permits a departure therefrom in any proceeding [Rule 1].

3. § 403.2 is revised to read as follows:

§ 403.2 Definitions [Rule 2].

* * * * *

(c) "Board" means the Joint Tolls Review Board;

(d) Words in the singular include the plural and words in the plural include the singular [Rule 2].

§ 403.3 [Amended]

4. In § 403.3, paragraph (c), substitute "Review" for "Advisory" wherever it appears.

(68 Stat. 92-97, 33 U.S.C. 981-990, as amended; Agreement between the Governments of the United States and Canada finalized on March 20, 1978.)

NOTE.—The Corporation 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.

For the Saint Lawrence Seaway Development Corporation.

D. W. OBERLIN,
Administrator.

[FR Doc. 78-13151 Filed 5-12-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Chapter 1]

[FRL 872-8]

IMPLEMENTATION OF THE CLEAN WATER ACT AMENDMENTS OF 1977

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to develop rulemaking.

SUMMARY: This notice announces that the Environmental Protection Agency is developing regulations to implement the Clean Water Act of 1977 (P.L. 95-217). Because of the broad range of regulation amendments required by the new Act, they will be published as several separate documents at different times. This notice provides the status of the various regulations. Interested persons are invited to participate in the development of these rules and may do so by contacting the individuals listed below.

DATES: Comments on this Notice of Intent are invited from other Federal agencies and the public. In order to be considered, comments must be received on or before July 14, 1978.

ADDRESS: Comments should be sent to John D. Harris, Office of Analysis and Evaluation, (WH-586), EPA, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Regarding general implementation procedures: John D. Harris, Office of Analysis and Evaluation, (WH-586), EPA, 401 M Street SW., Washington, D.C., Telephone Number 202-755-6885. Regarding specific subjects: Contact the individual named below. Written inquiries must include the Mail Code, followed by EPA, Washington, D.C. 20460. The Area Code for all telephone numbers listed is 202.

SUPPLEMENTARY INFORMATION: Because of the short time frames involved in developing some of these regulations, public input has already been solicited on many of these through informal channels. Early drafts of the construction grant regulations, in particular, have been circulated widely. In addition, there have been several public meetings, announced in the FEDERAL REGISTER, As well as other meetings with States and other interested parties. Interested persons and groups are invited to continue to participate.

The construction grant amendments are (as indicated below) to be published as interim final and proposed rules very shortly. It is anticipated that the changes will be incorporated in a complete republication as final rulemaking of Subpart E in September 1978. In that republication, various other technical changes (which experience with the current regulations indicates is necessary to improve program administration) will be made to Subpart E.

The Clean Water Act Amendments concerning the National Pollutant Discharge Elimination System (N.P.D.E.S.) are being incorporated into a comprehensive re-write of the existing N.P.D.E.S. regulations. For further information contact Edward Kramer, Office of Water Enforcement (EN-336), EPA, 401 M Street SW., Washington, D.C. 20460, Telephone Number 202-755-0750.

Dated: May 5, 1978.

DOUGLAS M. COSTLE,
Administrator.

Short title and section of act	Brief description	Estimated date of publication	Contact name	Mail code	Telephone
Proposed amendments to 40 CFR pt. 35 subpt. E (construction grants) covers the following topics:					
CONSTRUCTION GRANT REGULATIONS					
Recreational use, 201(g)(6).	Future State, interstate, and intermunicipal grantees must demonstrate that project planning has analyzed potential recreation and open space opportunities.	May 1, 1978	M. Cook	WH-547	426-9404
Innovative technology, 201 (g)(5), (l), 202(a)(2), (3), and 304(d)(3).	Several provisions to encourage the use of innovative and unconventional waste water treatment systems.	...do	...do	WH-547	427-9404
Contract enforcement, 203(e).	Upon request, EPA may provide technical and legal assistance to administer and enforce contracts related to EPA grant-assisted treatment works.	...do	...do	WH-547	426-9404
Interim/final amendments to 40 CFR pt. 35 subpt. E covering the following topics:					
State priority, 201(i)(j), 203, 204, 216, 201(g)(5), (6), and 201(h)/205(h)(2).	Establishes State authority to determine relative priority of their eligible project categories.	...do	...do	WH-547	426-9404

Short title and section of act	Brief description	Estimated date of publication	Contact name	Mail code	Telephone
Proposed amendments to 40 CFR pt. 35 subpt. E (construction grants) covers the following topics:					
CONSTRUCTION GRANT REGULATIONS					
Grant eligibilities, 211	Restricts the use of population data as test of eligibility of collector sewers; limits eligibility of these sewers and also makes separate storm sewers ineligible.	do	do	WH-547	426-9404
Land eligibility, 212	Land for the storage of waste water in a land treatment system is now grant eligible.	do	do	WH-547	426-9404
Industrial cost recovery, 204 (b)(3) and (b)(6).	Under certain conditions, small industrial dischargers with flows up to 25,000 gpd (requiring treatment comparable to domestic waste) may be exempted from industrial cost recovery.	do	do	WH-547	426-9404
User charges, 204(b) (1) and (5).	Specifies conditions where an ad valorem system may be used for user charges for residential and small nonresidential users.	do	do	WH-547	426-9404
Individual systems, 201(h).	Will make available grants to privately owned treatment works where such projects will be more cost-effective than a central publicly owned treatment works.	do	do	WH-547	426-9404
Step 2 and 3 combined, 203(a).	Construction grants for steps 2 and 3 may be combined for projects under $2,000,000 serving grantee population up to 25,000.	do	do	WH-547	426-9404
Buy America, 215	Requires preference for the use of American-made products in treatment works funded by construction grants.	do	do	WH-547	426-9404
Training grants, 109(b) (1), (2), and (3).	Will provide for grants to cover expenses of State treatment works operator training programs, and raise the maximum grant to $500,000.	do	do	WH-547	426-9404
Cost effectiveness guidelines, 201(j) and 217.	Regulations to provide for cost-effectiveness guidelines that emphasize identification of alternatives, e.g., recycling of wastes, use of sludge, and preference for innovative and alternative processes.	do	do	WH-547	426-9404
Reserve capacity, 204(a)(5).	Criteria for determining reserve capacity include reduction of unnecessary water consumption and sewage flows and the use of population data from 208 plans.	do	do	WH-547	426-9404
The water quality management regulations will be revised to: (1) incorporate the Clean Water Act Amendments, and (2) to consolidate and simplify the regulations in accordance with the Mar. 23, 1978, Executive order on improving Government regulations:					
WATER QUALITY MANAGEMENT REGULATIONS					
Open space and recreation, 208(b)(2)(A).	Water quality management plan must analyze open space and recreation opportunities.	June 23, 1978	J. Krivak	WH-554	755-4911
State best management practices (related to 404), 208(b)(4).	Authorizes States to establish regulatory programs for discharge of dredge and fill material.	do	do	WH-554	755-4911
Agricultural cost sharing, 208(j).	Department of Agriculture will provide up to 50 pct grant to install BMP's for soil conservation to improve water quality.	do	do	WH-554	755-4911
OTHER REGULATIONS					
Ocean discharge, 301(h)	Will provide for modification of secondary treatment requirements for existing deep marine dischargers if they meet specified conditions.	Apr. 18, 1978	T. O'Farrell	WH-547	426-8976
BCT definition and pollutant removals, 304(b).	Development of conventional pollutant effluent limitations.	Not scheduled	J. Denit	WH-552	426-2707
BMP's for industry, 304(e).	Control indirect discharges of toxic pollutants from various industrial point sources.	do	do	WH-552	426-2707
Pretreatment removal credit regulations, 307(b)(1).	Promulgated regulations allow modification of national toxic pretreatment standard if joint industry/treatment works treatment will meet direct discharge requirements.	May 8, 1978	S. Heare	WH-586	755-6885
Oil spill liability, 311 (a)-(d), (i)-(k), (p), (q), (r).	Will extend liability for oil spills to a 200 mi limit and provide for use of funds if there is a substantial threat of a discharge.	Not scheduled	K. Biglane	WH-548	245-3048
Marine sanitation devices, 312.	Prohibit waste water discharges from commercial vessels on the Great Lakes and provide protection for drinking water intake areas.	November 1978	J. Amson	WH-585	245-3036
Clean lakes, 314	Provides EPA assistance to States for the preparation of surveys on the quality of freshwater lakes.	December 1978	L. Guarraia	WH-585	245-3042
Dredge or fill, 404 (a-f), (k) (1) (n).	Final EPA site selection guidelines for disposal of dredge or fill material will be developed along with guidance for approval of State programs.	May 15, 1978	J. Lewis	WH-585	245-0581
Guidelines for sludge disposal, 405(b)(d).	EPA guidelines will address uses for sludge, costs of usage and disposal, and pollutant concentrations that interfere with use and disposal.	do	B. Weddle	WH-564	755-9120

[FR Doc. 78-12929 Filed 5-12-78; 8:45 am]

[6560-01]

[FRL 896-3]

[40 CFR Part 52]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to the Glenn County Air Pollution Control District's Rules and Regulations in the State of California

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to take action on revisions to the Glenn County Air Pollution Control District's (APCD) rules and regulations which were submitted to EPA by the California Air Resources Board for the purpose of revising the California State Implementation Plan (SIP). In addition, EPA is proposing to disapprove a portion of a rule which is now part of the applicable SIP. The intended effect of this proposal is to update the rules and regulations and to correct deficiencies in the SIP. The EPA invites public comments on these rules, especially as to their consistency with the Clean Air Act.

DATE: Comments may be submitted by July 14, 1978.

ADDRESSES: Comments may be sent to: Regional Administrator, Attention: Air and Hazardous Materials Division, Air Programs Branch, California SIP Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, Calif. 94105.

Copies of the proposed revisions are available for public inspection during normal business hours at the EPA Region IX office at the above address and at the following locations: Glenn County Air Pollution Control District, 777 North Colusa Street, Willows, Calif. 95988; California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, Calif. 95814; or Public Information Reference Unit, Room 2922 (EPA library), 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Wayne A. Blackard, EPA, Region IX, 415-556-7288.

SUPPLEMENTARY INFORMATION: The California Air Resources Board submitted the following rules and regulations on November 4, 1977:

Section 78, Nuisance.
Section 79, Exceptions.
Section 82, Burning of Garbage.
Section 152, Analysis Fees.
Section 154, Authorization to Construct Fees.

Regulations were also submitted concerning new source review. Those regulations will be considered in a separate FEDERAL REGISTER action.

In addition, we have reevaluated rules concerning agricultural operations and found that a portion of Glenn County APCD's rule was approved in error. We are now proposing to disapprove section 77(e), *Exceptions*, submitted on June 30, 1972, and previously approved in 40 CFR 52.223. Paragraph (e) exempts "the use of other equipment in agricultural operations" from the visible emissions rule. Because the term "other equipment" is not defined, the rule is vague and unenforceable.

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations submitted as revisions to the SIP. The Regional Administrator hereby issues this notice setting forth these revisions, including rule deletions caused thereby, as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Public comments are also invited on the proposed disapproval of section 77(e). Comments received on or before July 14, 1978, will be considered. Comments received will be available for public inspection at the EPA Region IX Office and the EPA Public Information Reference Unit.

AUTHORITY: Secs. 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).

Dated: May 5, 1978.

SHEILA M. PRINDIVILLE,
Acting Regional Administrator.

[FR Doc. 78-13207 Filed 5-12-78; 8:45 am]

[6560-01]

[FRL 896-2]

[40 CFR Part 55]

STATE AND FEDERAL ADMINISTRATIVE ENFORCEMENT OF IMPLEMENTATION PLAN REQUIREMENTS AFTER STATUTORY DEADLINES

Proposed Delayed Compliance Order for Avtex Fibers Inc.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency proposes to issue an administrative order to Avtex Fibers Inc. requiring its Boiler Numbers 1, 2, and 3 at Front Royal, Va. to achieve compliance with air pollution requirements under the Virginia State Implementation Plan by June 30, 1980.

DATE: Written comments and requests for a public hearing (and reasons therefore) must be received no later than June 14, 1978.

ADDRESS: All comments and requests for a public hearing should be submitted to: U.S. Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pa. 19106. Attn: Director, Air & Hazardous Materials Division.

FOR FURTHER INFORMATION CONTACT:

Mr. Bernard E. Turlinski, Regional Energy coordinator, Environmental Protection Agency, 6th and Walnut Streets, Philadelphia, Pa. 19106, 215-597-8176.

SUPPLEMENTARY INFORMATION: EPA has developed an administrative order it proposes to issue under section 113(d)(5) of the Clean Air Act (the Act), 42 U.S.C. 7401 et. seq., to Avtex Fibers Incorporated requiring its Boiler Numbers one (1), two (2), and three (3) at Front Royal, Va. to achieve compliance with Virginia State Air Pollution Control Board, Part IV, Rules Ex-2 and Ex-3 of the Virginia State Implementation Plan by June 30, 1980. The order would require the Avtex Front Royal manufacturing plant to install control equipment according to the schedule set forth below, and, also contains interim emission reduction requirements, specifies emission limitations, coal pollutant characteristics, and requires monitoring and reporting of air quality and air pollutant emissions data. If the order is issued, source compliance with its terms will preclude any further EPA enforcement action under section 113 of the Act, and any citizens suits under section 304 of the Act, against the source for violations of the Virginia Implementation Plan provisions covered by the order. The purpose of this notice is to invite public comments on whether or not EPA should issue this order under section 113(d)(5) and to offer an opportunity for public hearing, if significant public interest exists, to discuss this issue.

The actual terms of the order, as set forth below, may be modified prior to final EPA issuance. Background information applicable to Avtex Fibers Inc., may be viewed during normal business hours at the address provided above.

All interested persons are invited to submit written comments on the proposed order. Comments, submitted in person or by mail, on or before June 14, 1978, will be considered in determining whether EPA shoud issue the order. Any person may request a public hearing on the subject order by submitting a request in writing, and reasons, therefore, to the above Regional office on or before June 14, 1978. If there is significant public interest in holding such a hearing, it will be conducted by the Region III Office following 30 days prior notice of the time and place of the hearing.

The Clean Air Act Amendments (the Amendments) of 1977 have changed

the authority of the Administrator to issue extensions of compliance dates to sources which receive orders from the Department of Energy prohibiting the use of oil or gas as a primary energy source under section 2 (a) of the energy Supply and Environmental Coordination Act (ESECA). Such extensions were issued under section 119 of the Clean Air Act (the Act) as in effect prior to the amendments, and regulations implementing section 119 were codified under 40 CFR Part 55. Section 112 of the amendments repealed section 119 and added a new section 113 (d) which provides for the issuance of extensions to all sources generally and to prohibited sources specifically [113(d)(5)]. Regulations promulgated in 40 CFR Part 55 under the authority of section 119 are being revised to reflect this statutory change and any extensions granted under the new authority of 113(d)(5) will be promulgated in Part 55. Because of the shorter time period necessary for promulgation of a delayed compliance order (DCO) as compared to the time necessary for revision of the regulations under 40 CFR Part 55, a small number of DCO's will be promulgated under Part 55 before the revised regulations are published.

The Clean Air Act Amendments of 1977 have changed the ESECA program in four major respects. These changes are: (1) Sources able to comply with the applicable State implementation plan by December 31, 1985 may be eligible for an extension as opposed to the previous date of January 1, 1979; (2) Extensions are to be provided for via section 113(d)(5) Delayed Compliance Orders, rather than section 119 Compliance Date Extensions; (3) The regional limitation of old section 119(c)(2)(D) has been made a rebuttable presumption by new section 113(d)(5)(D); and (4) Written consent of the Governor of the appropriate State must be obtained on any date EPA proposes to certify to the Department of Energy as the earliest date a prohibited source can convert to coal in compliance with applicable air pollution requirements.

Therefore, if the subject order is issued by EPA, 40 CFR Part 55 would be amended based upon the actual term of Order No. R-III—CC—003 appearing below:

[ORDER NO. R-III-CC-003]

In the matter of the Avtex Fibers Inc.

This order is issued pursuant to subsection 113(d)(5) of the Clean Air Act, as amended, 42 U.S.C. 7413(d) ["the Act"]. This order contains a schedule for compliance, interim requirements, monitoring and reporting requirements, and other requirements of this subsection of the Act. Public notice has been provided pursuant to subsection 113(d)(1) of the Act and a copy of this order has been provided to the Governor of the Commonwealth of Virginia to seek his concurrence.

FINDINGS

On June 30, 1977, Avtex Fibers Inc. ("Company") received a Prohibition Order from the Federal Energy Administration ("FEA") pursuant to section 2 of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 792 (Supp. V, 1975), as implemented by 10 CFR Parts 303 and 305 (1976), as amended, 42 FR 23132 (1977). Said order prohibited, upon receipt of a Notice of Effectiveness, any further burning of natural gas or petroleum products as the primary energy source for the Company's Numbers one (1), two (2), and three (3) boilers ("source").

The Company's Numbers one (1), two (2), and three (3) boilers were burning petroleum products at the time the FEA Prohibition Order was issued, and, if converted to coal with no interim emissions reduction, would exacerbate the existing plant violation of the applicable particulate matter requirements under the Virginia State Implementation Plan ("SIP"). A violation of the annual primary ambient air quality standard for particulate matter in Roanoke County Va. resulted in a finding by the United States Environmental Protection Agency ("EPA") that the Valley of Virginia Intrastate Air Quality Control Region is a nonattainment region with respect to particulate matter and that regional limitation was applicable.

The Company, on September 27, 1977, sucessfully rebutted regional limitation, pursuant to section 113(d)(5)(D), by demonstrating that converting Numbers one (1), two (2), and three (3) boilers to coal would have an insignificant effect on the air quality concentrations in that portion of the region where particulate matter is being exceeded. The further demonstrated that conversion to coal would not contribute to the exceedance of the national primary ambient air quality standard for particulate matter in Roanoke County Va. The Company, therefore, formally requested from the EPA an order to allow the burning of coal as the primary energy source. After a thorough investigation of the information obtained from all sources, including public comment, the Administrator of EPA has determined that the emission limitations, coal pollution characteristics, and other enforceable measures contained in the order below, satisfy the requirements of subsection 113(d)(5)(B) of the Act. Further, pursuant to subsection 113(d)(5)(B), the Administrator has determined that compliance with the requirements of this order will assure that, during the period of the order before final compliance is achieved, the burning of coal by the source will not result in emissions which will cause or contribute to concentrations of any air pollutant in excess of any national primary ambient air quality standard for such pollutant.

Pursuant to subsection 113(d)(6) of the Act, the Administrator has determined that the schedule for compliance set forth below is as expeditious as practicable.

Finally, pursuant to subsection 113(d)(7) of the Act, the Administrator has determined that the order provides that the source shall use the best practicable system or systems of continuous emission reduction, taking into account the requirement with which the sources must ultimately comply, during the period of said order. The source shall also be required to comply with interim requirements, set forth in said order, and determined to be necessary to comply with the requirements of the Virginia State Implementation Plan ("SIP") insofar as the Administrator has determined that the source is able to do so.

ORDER

Therefore, it is hereby ordered:

I. That the Company's boiler numbers one (1), two (2), and three (3) ("source") will comply with the requirements of the Virginia SIP, as specified in Part IV, Rules Ex-2 and Ex-3 of the federally approved Regulations for the Control and Abatement of Air Pollution in the Commonwealth of Virginia, as expeditiously as practicable, but in no event later than the dates specified in the following schedule:

A. Not later than December 31, 1977: Complete on-site construction of high efficiency multicyclone collector on Boiler Number three (3).

B. Not later than April 30, 1978: Complete on-site construction of efficiency multicyclone collector on Boiler Number one (1).

C. Not later than June 30, 1978: Complete on-site construction of high efficiency multicyclone collector on Boiler Number two (2).

D. Not later than April 30, 1978: Enter into contracts for particulate emission controls and other equipment necessary for final compliance.

E. Not later than May 10, 1978: Submit for approval to the EPA Region III, Air and Hazardous Materials Division Director, contracts for continuous particulate emission reduction systems and other equipment necessary for final compliance.

F. Not later than April 30, 1979: Initiate on-site construction or installation of continuous particulate control systems.

G. Not later than April 30, 1980: Complete on-site construction or installation of continuous particulate control systems.

H. Not later than June 30, 1980: Perform emission tests in accordance with 40 CFR Part 60 and submit reports demonstrating final compliance with the Regulations of the Commonwealth of Virginia State Air Pollution Control Board, Part IV, Rules Ex-2 and Ex-3 as approved by EPA.

II. With respect to the schedule increments set out in subparagraphs (A) through (H) of Paragraph I hereinabove, the Company shall notify the Division Director, Air and Hazardous Materials Division, EPA Region III within ten (10) days after each incremental requirement has been satisfied, or within ten (10) days after the final date set for achieving each such requirement, if such requirement has not been achieved.

III. That the Company's boiler numbers one (1), two (2), and three (3) ("the source") shall comply with the following interim requirements which are determined to be the best reasonable and practicable interim system of continuous emission reduction (taking into account the requirements of Paragraph I, above), and which are necessary to assure compliance with the federally approved Regulations, Ex-2 and Ex-3, of Part IV of the Virginia Regulations for the Control and Abatement of Air Pollution, insofar as the source referred to above is able during the period this order is in effect:

A. During the period of the order's effectiveness, prior to the date set for final compliance or the date on which final compliance is achieved (whichever is earlier), the source shall not burn coal with an ash content exceeding ten percent (10 percent) and a high heating value of less than 12,500 British Thermal Units (BTU's) per pound;

B. During the same period specified in subparagraph A hereinabove, the source

shall not emit in excess of 218 pounds of particulate matter per hour at maximum load from either boiler numbers one (1), two (2), or three (3); and

C. During the same period specified in subparagraph A hereinabove, the source shall not emit in excess of 275 pounds of particulate matter per hour at maximum load from either boiler numbers four (4) or five (5).

The above conditions have been determined by the Administrator to be the best practicable interim system or systems of emission reduction for the period during which this order will be in effect. The conditions of this paragraph are also ordered to meet the requirements of subsection 113(d)(5) (B) of the Act, and are, therefore, subject to modification from time to time pursuant to said provision. Any modifications, if made, shall be accompanied by a determination of the Administrator that such modifications continue to meet the best practicable interim system of emission reduction, and other interim requirements of subsection 113(d)(7) of the Act, or shall include requirements to comply with said subsection.

IV. That the Avtex Fibers Inc. is not relieved by this order from compliance with any requirements imposed by the applicable State Implementation Plan, EPA, and/or the courts pursuant to section 303 of the Act during any period of imminent and substantial endangerment to the health of persons.

V. That the period of effectiveness of this order shall not include any interval in which a national primary ambient air quality standard for particulate matter is being exceeded, which Avtex Fibers is causing or contributing to, in the Valley of Virginia Air Quality Control Region. During such intervals, if any, full compliance with the standards and limitations of the Virginia State Implementation Plan (excluding said order) shall be required of Avtex Fibers, and violations by Avtex Fibers of said SIP shall be subject to enforcement under any or all authorities of section 113 of the Act.

VI. That the Avtex Fibers Inc. shall comply with the following emission monitoring and reporting requirements on or before the dates specified below:

A. EMISSION MONITORING

1. Within thirty (30) days of receipt of this order, the Avtex Fibers Inc. shall submit to the Director, Air and Hazardous Materials Division, EPA Region III, a proposal for a complete air quality monitoring network to be set up by the Company in the vicinity of the Source. Said network shall include monitors capable of measuring 24-hour average particulate concentrations. EPA Region III may, on its own initiative, direct that continuous sulfur dioxide monitors be located with particulate samplers and operated by the Company.

2. Within ninety (90) days of receipt of this order, the Company shall complete installation and begin operation of the network proposed under subparagraph A.1 of this paragraph, as approved, and with any modifications made by the Director, Air and Hazardous Materials Division, EPA Region III.

3. Within ninety (90) days of receipt of this order, the Company shall submit in writing for his approval to the Director, Air and Hazardous materials Division, EPA Region III, the methods, procedures and devices the Company intends to use to obtain the information required by subparagraph B of this paragraph.

4. Within thirty (30) days of approval by EPA of the monitoring and information gathering system proposed under subparagrah A.3 of this paragraph, the Company shall implement such system as may be modified by the Director, Air and Hazardous Materials Division, EPA Region III in his approval.

5. Within sixty (60) days of commencing the use of coal in the Company's boiler number two (2), the Company shall perform source testing for particulate emissions using EPA method five (5) as specified in Appendix A of Part 60, Title 40 of the Code of Federal Regulations, as amended. The Company shall perform such tests in a manner approved in writing by EPA Region III and shall provide to the EPA Region III Regional Energy Coordinator a minimum of fifteen (15) days written notice prior to conducting such tests. The Company shall provide to said Regional Energy Coordinator a complete report containing all information pertinent to the performance and results of said stack tests within thirty (30) days of completing such tests.

6. Within sixty (60) days of installation of the continuous opacity monitor required under subparagraph B.1 of this paragraph, the Company shall conduct a Performance Specification Test (PST) in accordance with Performance Specification 1, Appendix B of Part 60, Title 40 of the Code of Federal Regulations. The Company shall notify the Regional Energy Coordinator, EPA Region III, of the date on which the PST will be conducted at least thirty (30) days prior to such date.

7. Within forty-five (45) days of the PST required under subparagraph A.6 of this paragraph, the Company shall submit a complete report containing all information pertinent to the PST to the Regional Energy Coordinator, EPA Region III.

B. RECORDKEEPING AND REPORTING

1. The Company shall keep monthly records both of air quality monitoring data and of air pollutant emissions, of which records the Company shall submit copies to the EPA Region III Regional Energy Coordinator within fifteen (15) days of the end of each calendar month. Said air pollutant emission records shall detail daily emission for all combustion units of the Company and shall at a minimum, include: (a) For each steam generating unit, a breakdown of the fuel consumed each day of the preceding month: (b) For each steam generating unit, an analysis of the fuel consumed each week to include sulfur content, ash content and high heating value; and (c) For the stacks serving boiler numbers one (1), two (2), and three (3) only, a record of the hourly measurement of opacity, acquired by means of a continuous opacity monitoring device. Such device shall be installed, calibrated, and maintained in accordance with Performance Specification 1 of Appendix B, Part 60, Title 40 of the Code of Federal Regulations.

2. If, for any reason, the Company does not comply or will be unable to comply with the requirements of this order, the Company shall provide in writing to the Director, Air and Hazardous Materials Division, EPA region III, within five (5) days of becoming aware of such situation: (a) A description of the violation and its cause; and (b) The period during which noncompliance has occurred and/or is expected to occur, and the steps taken to reduce, eliminate and prevent recurrence of the violation.

3. If the air quality monitoring data collected by the Company pursuant to Section A of this paragraph indicates that the National Primary Ambient Air Quality Standards for particulates are being exceeded in the area, the Company shall notify the Director, Air and Hazardous Materials Division, EPA Region III of such occurrence by telephone or letter or other means, within seventy-two (72) hours of the collection of such data.

4. The requirement of subparagraph three (3) hereinabove shall apply with respect to monitoring data and the National Ambient Air Quality Standard for Sulfur Dioxide, if such monitoring requirements are imposed pursuant to Section A of this paragraph.

VII. Nothing herein shall affect the responsibility of Avtex Fibers to comply with State, local or other federal regulations.

VIII. Avtex Fibers Inc. is hereby notified that its failure to achieve final compliance at its boiler numbers one (1), two (2), and three (3) with the applicable particulate emission regulations of the Virginia SIP by June 30, 1980, or such other date as may be specified in a second order pursuant to subsection 113(d) of the Act, if issued, may result in a requirement to pay a noncompliance penalty under section 120 of the Act. Such requirement may be imposed at an earlier date, which is subsequent to July 1, 1979, as provided by subsection 113 (d) and Section 120 of the Act, either in the event that this order is terminated as provided in paragraph IX, below, or in the event that any requirement of this order is violated as provided in paragraph X, below. In any event, the Company will be formally notified, pursuant to subsection 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

IX. This order shall be terminated in accordance with subsection 113(d)(8) of the Act if the Administrator or his delegatee determines, on the record, after notice ad hearing, that an inability of the Company to comply with Rules Ex-2 and Ex-3, Part IV of the Virginia Regulations for the Control and Abatement of Air Pollution, as approved by EPA, no longer exists with respect to its boiler numbers one (1), two (2), and three (3).

X. Violation of any requirement of this order shall result in one or more of the following actions: (A) Enforcement of such requirement pursuant to subsection 113(a), (b), or (c) of the Act, including possible judicial action for an injunction and/or penalties and in appropriate cases, criminal prosecution; (B) Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of the Virginia SIP in accordance with the preceding paragraph; and (C) If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of Act.

XI. This order is effective upon promulgation in the FEDERAL REGISTER and after having received concurrence from the Governor of the Commonwealth of Virginia.

Date: _____

_____

Administrator or Delegatee
U.S. Environmental Protection Agency

WAIVER OF RIGHTS TO CHALLENGE ORDER

The Avtex Fibers Inc., by the duly authorized undersigned, hereby consents to the

terms of this Order and waives any and all rights under any provision of law to challenge this Order.
Date:

AUTHORITY: 42 U.S.C. 7413(d).

Dated: April 4, 1978.

A. R. MORRIS,
Acting Regional Administrator.

[FR Doc. 78-13205 Filed 5-12-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Parts 3200, 3220]

GEOTHERMAL RESOURCES LEASING; GENERAL COMPETITIVE LEASES

Miscellaneous Amendments

AGENCY: Land Management Bureau, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking amends the procedures for leasing geothermal resources. Experience in the leasing program has led to more efficient procedures. Changes in lease acreage limitations, credit procedures for diligent exploration, plans required, readjustment of terms and conditions of leases, and bonus payment requirements will allow for greater efficiency in administrering the geothermal leasing program.

DATE: Comments are invited through July 14, 1978.

ADDRESS: Send comments to: Bureau of Land Management, Director (210), 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Billy R. Templeton, 202-343-8735.

SUPPLEMENTARY INFORMATION: 1. Section 3203.2 covering lease acreage limitations is amended to clearly state the discretionary authority of the Secretary to issue geothermal leases of less than 640 acres. This discretion may be exercised in cases where the resource is to be used for non-electrical purposes.

2. Section 3203.5 dealing with diligent exploration is amended to allow a lessee to credit expenditures for diligent exploration performed on a lease to another lease, as long as both leases are part of the same geothermal reservoir.

3. Section 3203.6 is amended to allow a lessee to conduct exploratory operations, such as drilling of shallow temperature gradient wells, on leased lands under a notice of intent rather than a formal plan of operation. However, such plan of operation will be required before deep drilling operations may be conducted.

4. Section 3204.3 dealing with readjustment of terms and conditions is amended to provide for the first readjustment of a geothermal lease beginning 10 years after geothermal resources are produced commercially.

5. Section 3220.5 pertaining to bidding requirements is amended to allow for deferred bonus payments. One-fifth of the bonus bid will be required at the time the bid is submitted, with the remainder of the bonus due in two installments on or before the second and third lease anniversary dates, respectively.

Doris Koivula and Richard Champney of the Division of Upland Minerals, Bureau of Land Management, are the principal authors of this proposed rulemaking.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

It is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is required.

Copies of comments, suggestions, or objections made pursuant to this notice will be available for public inspection in the Division of Legislation and Regulatory Management (Room 5555), Interior Building, Washington, D.C., during regular business hours (7:45 a.m. to 4:15 p.m.).

Under the authority of the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025) it is proposed to amend parts 3200 and 3220, group 3200, subchapter C, chapter II, title 43 of the Code of Federal Regulations as set forth below.

1. Section 3203.2 is revised to read as follows:

3203.2 Lease acreage limitation.

(a) A geothermal lease may not embrace more than 2,560 acres in a reasonably compact area, except where a departure is occasioned by an irregular subdivision or subdivisions, entirely within an area of 6 miles square or within an area not exceeding six surveyed or protracted sections in length or width measured in cardinal directions. A lease offer may not exceed 2,560 acres except where the rule of approximation applies.

(b) No lease will be issued for less than 640 acres, except at the discretion of the Secretary, or where geothermal resources will be utilized for non-electrical purposes, or as provided for in part 3230 of this chapter with respect to "conversion rights." Where a departure is occasioned by an irregular subdivision, the leased acreage may be less than 640 acres by an amount which is smaller than the amount by which the area would be more than 640 acres if the irregular subdivision were added.

(c) The authorized officer may add isolated tracts of more or less than 640 acres in nearby sections, to a lease application where it is determined that such addition is necessary for the proper management of the resource, provided the additional lands will not cause the lessee to exceed the maximum acreage limitation as provided in § 3201.2(a) of this chapter. However, prior to the issuance of such a lease based on the application as amended by the authorized officer, the applicant will be given the option to refuse such a lease. Failure of the applicant to execute and return the lease within 30 days after receipt thereof will constitute a withdrawal of the application, as amended, without further notice.

2. Section 3203.5 is revised to read as follows:

§ 3203.5 Diligent exploration.

(a) Each geothermal lease will include provisions requiring diligent exploration of the leased resources until there is production in commercial quantities applicable to the lands subject to the lease, and stating that failure to perform such exploration may subject the lease to termination. (1) Diligent exploration means exploration operations (subsequent to the issuance of the lease) on or related to the leased lands, including, but not limited to, operations such as geochemical surveys, heat flow measurements, core drilling or drilling of a test well. (2) Exploration operations, in order to qualify as diligent exploration, must be approved by the Supervisor. Evidence of all expenditures and the results thereof must be submitted annually to the Supervisor in compliance with applicable regulations and Geothermal Resources Operational (GRO) Orders or upon his request.

(b) After the fifth year of the primary lease term, exploration operations, to qualify as diligent exploration for any year, must entail expenditures during that year equal to at least two times the sum of (1) the minimum annual rental required by statute, and (2) the amount of rental for that year in excess of the fifth year's rental; however, the required expenditures cannot exceed twice the rental for the 10th year.

(c) Any expenditures for diligent operations during the first 5 years of the lease and any expenditures for diligent operations during any subsequent year in excess of the minimum required ex-

penditures for that year may be credited, in such proportions as the lessee may designate, against (1) expenditures needed to qualify exploration operations as diligent operations for future years, or (2) any escalating rental required for that or any future years pursuant to § 3205.3-3 of this chapter.

(d) The lessee may designate a portion of excess expenditures as credit against expenditures needed to qualify as diligent operations or against escalating rental requirements on any other geothermal lease/leases held, the development of which will extract energy from the same geothermal reservoir. Where the extent of the reservoir is unknown, such lease/leases must be no further than 5 miles from the site where the diligent operations were conducted. In all cases, the lessee must pay the basic annual rental specified in the lease until there is production of geothermal resources in commercial quantities on the leased lands.

3. Section 3203.6 is revised to read as follows:

§ 3203.6 Plans of development and operation.

No entry upon the leased lands for purposes other than casual use as defined in § 3209.0-5(d) of this chapter will be permitted until either a notice of intent or a plan of operation has been approved.

(a) The lessee will be required to submit a notice of intent in accordance with 30 CFR 270.78 prior to entry upon the lands for purposes of conducting exploration operations as defined in § 3209.0-5 of this chapter.

(b) The lessee will be required to submit a plan of operation pursuant to 30 CFR 270.34, prior to entry upon the leased lands for purposes of drilling exploratory and development wells, including construction of testing and production facilities, except as provided in (a) of this section.

4. Section 3204.3 is revised to read as follows:

§ 3204.3 Readjustment of terms and conditions.

(a) (1) Except as otherwise provided by law, the terms and conditions of any geothermal lease may be readjusted as determined by the authorized officer at not less than 10-year intervals beginning 10 years after the date the geothermal resource is produced and utilized commercially for any purpose including the generation of electricity.

(2) At such time as the geothermal resource is being commercially produced, the authorized officer shall give notice to the lessee, by written decision, of any proposed readjustment of the terms and conditions of the lease and the nature thereof, and unless the lessee files with the authorized officer an objection to the proposed terms and conditions or relinquishes the lease within 30 days after receipt of such notice, the lessee shall be deemed conclusively to have agreed to such terms and conditions. If the lessee files objections, and agreement cannot be reached between the authorized officer and the lessee within a period of 60 days, the lease may be terminated by either party, subject to the provisions of § 3000.4 of this chapter. If the lessee files objections to the proposed readjusted terms and conditions, the existing terms and conditions will remain in effect until there has been an agreement between the authorized officer and the lessee on the new terms and conditions to be applied to the lease or until the lease is terminated. The readjustment of any terms concerning rental and royalty rates will be subject to § 3205.3 of this chapter.

(b) Any readjustment of the terms and conditions of any lease of lands withdrawn or acquired in aid of a function of a Federal department or agency may be made only with the approval of that other agency.

5. Section 3220.5 is revised to read as follows:

§ 3220.5 Bidding requirements.

(a) A separate identified sealed bid shall be submitted for each lease unit. Each bidder shall submit with the bid a certified or cashier's check, bank draft, money order, or cash in the amount of one-fifth of the amount bid, together with proof of qualifications as required by these regulations. The balance of the bonus bid shall be paid in two equal annual installments due and payable on the next two anniversary dates.

(b) All bidders are warned against violation of the provisions of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

(c) If the lease is terminated by relinquishment, or for failure to make timely payment of annual rentals or for any other reason, any unpaid installments of the bonus bid shall be immediately due and payable to the lessor.

6. Section 3220.6 is revised to read as follows:

§ 3220.6 Award of lease.

(a) All sealed bids shall be opened at the place, date, and hour specified in the notice. No bids will be accepted or rejected at that time.

(b) Leases will be awarded to the highest responsible qualified bidder, except as required under part 3230 of this chapter.

(c) The right to reject any and all bids is reserved. If the authorized officer fails to accept the highest bid for a lease within 30 days after the date on which the bids are opened (or such longer period as may be needed to comply with § 3230.1-6 of this chapter), all bids for that lease will be considered rejected. Deposits on rejected bids will be returned.

(d) If the lease is awarded, three copies of the lease will be sent to the successful bidder who shall be required to execute them within 30 days from receipt thereof, to pay the first year's rental, file the required bond or bonds; and submit the proposed plan of operation as required by § 3210.2-1(d) of this chapter. When the three copies of the lease are executed by the successful bidder and returned to the authorized officer, the lease will be executed by the authorized officer and a copy will be mailed to the lessee.

(e) If the successful bidder fails to execute the lease or otherwise comply with the applicable regulations, the deposit will be forfeited and disposed of as provided in section 20 of the Act. In this event, the lands will be reoffered when it is determined, in the opinion of the Secretary, that sufficient interest exists to justify a competitive lease sale.

GUY R. MARTIN,
Assistant Secretary of the Interior.

MAY 10, 1978.

[FR Doc. 78-13128 Filed 5-12-78; 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.

[4310-10]

ADVISORY COUNCIL ON HISTORIC PRESERVATION

PUBLIC INFORMATION MEETING

Notice is hereby given in accordance with § 800.5(c) of the Council's "Procedures for the Protection of Historic and Cultural Properties" (36 CFR Part 800) that on May 31, 1978, at 7 p.m., a public information meeting will be held at the Veteran's Memorial Hall, City Hall, 1211 South Main, Angels Camp, Calif. The purpose of this meeting is to provide an opportunity for representatives of public and private organizations, and interested citizens to receive information and express their views on the New Melones Lake Cultural Resources Program, an undertaking of the U.S. Army Corp. of Engineers, that is proposed to mitigate the adverse effect of the Lake project on extant cultural properties.

The following is a summary of the agenda of the public information meeting:

I. An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.

II. An explanation of the undertaking and an evaluation of its effects on the properties by the Corps of Engineers.

III. A statement by the California State Historic Preservation Officer.

IV. Statements from local officials, private organizations and the public on the effects of the undertaking on the property.

V. A general question period.

Speakers should limit their statements to approximately 10 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, P.O. Box 25085, Denver, Colo. 80225, or at 303-234-4946.

ROBERT M. UTLEY,
Deputy Executive Director.

[FR Doc. 78-13183 Filed 5-12-78; 8:45 am]

[1505-01]

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

GRAIN STANDARDS

Utah and Idaho Inspection Points

In FR Doc. 78-11308 appearing at page 17847 in the issue of Wednesday, April 26, 1978, the deadline date was inadvertently not computed. Please insert "May 26, 1978" in place of "(30 days after publication)" where it appears in the second full paragraph in the second column.

[1505-01]

Forest Service

FOREST SERVICE POLICY ON PESTICIDE USE

Revised Policy

Correction

In FR Doc 78-11949 appearing at page 18725 in the issue of Tuesday, May 2, 1978 on page 18726, first column, paragraph 6, in the first and second line, the word, "Wildlife" should be corrected to read, "Wilderness".

[3410-16]

Soil Conservation Service

CRITICAL AREA TREATMENT RC&D MEASURES PANHANDLE RC&D AREA, NEBR.

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 Panhandle RC&D Area Critical Area Treatment RC&D Measures in Sioux, Dawes, Sheridan, Box Butte, Scotts Bluff, Banner, Morrill, Garden, Kimball, Cheyenne, and Deuel Counties, Nebr.

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. Benny Martin, 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 small grade stabilization structures, diversions, critical area plantings, 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. Benny Martin, State Conservationist, Soil Conservation Service, Federal Building-U.S. Courthouse, Room 345, Lincoln, Nebr. 68508, 402-471-5300. 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 June 14, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program, Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

Dated: May 8, 1978.

EDWARD E. THOMAS,
Assistant Administrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-13112 Filed 5-12-78; 8:45 am]

[3410-16]

FOWLER AND PRAIRIE CREEK PARK CRITICAL AREA TREATMENT RC&D MEASURE, IND.

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 Fowler and Prairie Creek Park Critical Area Treatment RC&D Measure, Vigo County, Ind.

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 the findings, Mr. Buell M. Ferguson, 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 installation of one corrugated metal pipe grade stabilization structure in each of the two county parks. Grass seeding, fertilizing, and mulching will be performed on all 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. Buell M. Ferguson, State Conservationist, Soil Conservation Service, Atkinson Square-West, Suite 2200, 5610 Crawfordsville Road, Indianapolis, Ind. 46224, 317-269-6515. 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 June 14, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program, Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

Dated: May 8, 1978.

EDWARD E. THOMAS,
Assistant Administrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-13113 Filed 5-12-78; 8:45 am]

[3410-16]

HIGHWAY DISTRICT NO. 9 CRITICAL AREA TREATMENT RC&D MEASURE, VT.

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 Highway District No. 9 Critical Area Treatment RC&D Measure, Orleans and Essex Counties, Vt.

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 R. Shaw, 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 of 10 eroding areas which are adversely affecting State highways. The planned works of improvement include grading and shaping, placement of stone riprap, cribbing, revegetation, and fencing where necessary.

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 R. Shaw, State Conservationist, Soil Conservation Service, 1 Burlington Square, Suite 205, Burlington, Vt. 05401, 802-862-6501, extension 6261. 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 June 14, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program, Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

Dated: May 8, 1978.

EDWARD E. THOMAS,
Assistant Administrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-13114 Filed 5-12-78; 8:45 am]

[3410-16]

JACKS CREEK FLOOD PREVENTION RC&D MEASURE AND BULLBEGGER CREEK FLOOD PREVENTION AND DRAINAGE RC&D MEASURE, VA.

Intent 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 being prepared for the Jacks Creek Flood Prevention and Bullbegger Creek Flood Prevention and Drainage RC&D Measures, Accomack County, Va.

The environmental assessment of these federally assisted actions indicates that the projects may cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. David N. Grimwood, State Conservationist, has determined that the preparation and review of environmental impact statements are needed for these projects.

Jacks Creek is a plan for watershed protection and flood prevention. The planned works of improvement include land treatment and approximately 1 mile of channel enlargement.

Bullbegger Creek is a plan for watershed protection, flood prevention, and drainage. The planned works of improvement include land treatment, enlarging seven railroad culverts, five highway culverts, and enlarging about 13 miles of channel.

Draft environmental impact statements 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 statements. The draft environmental impact statements will be developed by Mr. David N. Grimwood, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Room 9201, Richmond, Va. 23240, 804-782-2455.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program, Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

Dated: May 8, 1978.

EDWARD E. THOMAS,
Assistant Administrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-13115 Filed 5-12-78; 8:45 am]

[3410-16]

MOON LAKE CRITICAL AREA TREATMENT RC&D MEASURE, MISS.

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 Moon Lake Critical Area Treatment RC&D Measure, Coahoma County, Miss.

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. Chester F. Bellard, 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 lake bank stabilization. The planned works of improvement include the stabilization of approximately 5,756 feet of eroding shoreline on the eastern and southern banks of Moon Lake.

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. Chester F. Bellard, State Conservationist, Soil Conservation Service, P.O. Box 610, 210 South Lamar Street, Jackson, Miss. 39205, 601-969-4335. 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 June 14, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program, Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

Dated: May 8, 1978.

EDWARD E. THOMAS,
Assistant Administrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-13116 Filed 5-12-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket No. 31044; Order 78-5-32]

HAZARDOUS ARTICLES RULES AND PRACTICES INVESTIGATION

Order Asking for Comments

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 5th day of May 1978.

The general issues in this case will be: (1) The lawfulness of surcharges for hazardous articles—i.e., whether those charges are unjustly discriminatory, unduly preferential or prejudicial, predatory or otherwise unlawful; and (2) whether rules on acceptance of hazardous materials that are more restrictive than DOT requirements violate the carriers' duty to provide service upon reasonable request.[1]

The order instituting the case makes "all certificated carriers" parties. Order 77-6-116. After we issued that order, Congress amended the Act creating a new class of certificated all-cargo carriers operating pursuant to section 418, and the Board has issued interim rules governing those operations. Pub. L. 95-163; ER-1037, 41 FR 65139, December 30, 1977.

At the prehearing conference, Administrative Law Judge Janet D. Saxon ruled that carriers operating pursuant to section 418 should be served and made parties. The Board's Docket Section, however, would not serve them without a Board order expressly making them parties. Judge Saxon has referred the matter to the Board for a decision. See, Prehearing Conference Report of Administrative Law Judge Janet D. Saxon, Docket 31044, served April 7, 1978.

By way of background, domestic air freight is carried by several classes of carriers: (1) Those holding 401 certificates and operating all-cargo and/or passenger/cargo aircraft; and (2) those holding 418 certificates and operating all-cargo aircraft; and (3) those operating under to Part 298 of the Board's Regulations (14 CFR Part 298) and not operating "large aircraft" as defined in that part. Not all carriers' operations fall into a single category. For example, a carrier holding a 401 certificate may qualify for and operate under a 418 certificate, and the same is true for carriers operating small aircraft under Part 298. Finally, many carriers operating small aircraft have applied for and received 418 certificates even though they do not yet operate large aircraft. So far, only carriers holding 401 certificates are on the service list to this case. Judge Saxon has asked the Board whether to expand that list to make the new 418 carriers parties.

The significance of party status is that any final decision in the case directly can bind only the parties. Also, the Judge can order parties to supply information responses.[2] In deciding the question certified by Judge Saxon, we have at least three options. First, we could decide not to make any of the new 418 carriers parties. The problem with that approach is that if any of the 401 carriers' practices or tariffs are found to be unlawful, the corrective order would bind only those carriers. If section 418 carriers that have large aircraft operations have similar practices or tariffs, corrective action would require additional proceedings.[3] Second, only the 418 carriers now operating large aircraft would be made parties. This would solve the problem of binding those carriers, but not carriers who hold unused 418 authority they might decide to use later. If those carriers want to operate large aircraft in the future, we would need additional procedures to bind them to the decision in this case. Third, we could make all 418 certificated holders parties.[4] This would give those carriers notice that they may be bound and would force them to decide whether to participate to protect their rights in case they want to operate large aircraft in the future.[5]

We will give interested persons 15 days to comment on the issue of whether carriers newly certificated pursuant to section 418 of the Act should be made parties to this case.

Accordingly it is ordered, That:

1. Interested persons may comment on the issue outlined above by May 25, 1978; and

2. A copy of this order shall be served on all parties to this docket and all carriers holding certificates pursuant to section 418 of the Act, and shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[6]
Secretary.

[FR Doc. 78-13138 Filed 5-12-78; 8:45 am]

[6320-01]

[Docket Nos. 28848, etc.]

IMPROVED AUTHORITY TO WICHITA CASE, ET AL.

Omnibus Oral Argument

Improved Authority to Wichita Case, Docket 28848; Las Vegas-Dallas/Fort Worth Nonstop Service Investiga-

[1] The surcharges were investigated at the request of various shippers. (See, Order 77-6-116.) The acceptance practices were investigated in response to a court case holding that the lawfulness of tariff rules on the carriers' obligation to carry hazardous materials must be resolved in a hearing pursuant to section 1002 of the Act. See, *Delta Air Lines* v. *C.A.B.*, 543 F. 2d 247 (D.C. Cir. 1976).

[2] In this case, Judge Saxon has indicated that, even if all 418 carriers were made parties, only the three that operate large aircraft would be required to file information responses.

[3] Under our interim regulations governing 418 operations, 418 carriers are subject to the same statutory common carrier duty and prohibition against discriminatory rates as 401 carriers. We will be instituting shortly a proceeding to establish permanent rules governing those operations, and issues of common carrier and other statutory obligations will be considered there.

[4] No one suggests that all Part 298 carriers should be required to be parties.

[5] In any event, those carriers may want to intervene even if we do not force them to be parties, because any decision in this case will be likely to have strong precedential value in any later proceeding directed to them.

[6] All Members concurred.

tion, 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.

Dated: May 10, 1978.

An omnibus oral argument in these cases will be held on May 17 and 18 to consider the value and extent of multiple permissive awards and the related options of delayed entry and backup authority. The Board's focus will be on the general policy and legal implications of these options. Among the issues will be:

1. Whether the Board can and should adopt a policy of granting route authority to all fit applicants, either generally or in certain categories of cases? Are environmental considerations a barrier to adopting such a policy at this time?

2. If such a policy is desirable and lawful, generally, can it be applied in the six cases specifically in issue, where it was not actually litigated by the parties at the trial stage of the proceedings?

3. On the other hand, if a general policy of open entry is not adopted, should the Board continue to make limited multiple awards as in the *Wichita* and *Ohio/Indiana Points* cases (and, tentatively, in *Las Vegas-Dallas/Fort Worth and Midwest-Atlanta*)? What standards should it apply in deciding how many carriers to certificate? Should awards be limited to the number that the market can support?

4. What role, if any, should delayed multiple authority or conditional backup awards play in the Board's routes policy? Are there any legal barriers to such awards, apart from those generally raised by multiple grants?

5. Should all new route awards be permissive? If not, when should they be permissive and when mandatory?

As announced earlier, the cases under formal consideration will provide varied factual contexts for a discussion of the general policy and legal issues. However, the Board will not hear arguments on narrow issues peculiar to individual cases—including, for example, the traffic forecasts for specific markets or the carrier or carriers to be selected if the Board decides not to grant all applications. Participants should be especially careful to avoid comment on the specific issues in cases in which they are not parties.

Turning to the format of the oral argument, participants will be divided into eight panels as indicated below:

PANEL 1

The Bureau of Pricing and Domestic Aviation
Delta Air Lines
Hughes Airwest
The Indianapolis Airport Authority

PANEL 2

Eastern Air Lines
The Federal Trade Commission
The Memphis Parties
North Central Airlines

PANEL 3

Aviation Consumer Action Project
Continental Air Lines
The Kansas Parties
Ozark Air Lines

PANEL 4

Allegheny Airlines
American Airlines
The City of Birmingham
The Columbus Parties
The Massachusetts Port Authority

PANEL 5

The Department of Justice
The Minnesota Department of Transportation
National Airlines
Southern Airways

PANEL 6

The Las Vegas Parties
Texas International Airlines
Trans International Airlines
Western Air Lines

PANEL 7

Braniff Airways
The Cincinnati Parties
Frontier Airlines
The Department of Transportation

PANEL 8

The Cleveland Parties
Northwest Airlines
Trans World Airlines
United Air Lines

The first four panels will be heard on May 17 and last four on May 18. On each day, two will be heard in the morning and two in the afternoon. Each panel, except No. 4, will be allotted a total of 70 minutes; each participant will have 8 minutes for an opening statement and the rest of the time will be devoted to questions by the Board, and to participants' answers to those questions and to each other's statements and comments. Panel 4, which has 5 participants rather than the usual 4, will be allotted an extra 20 minutes.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-13140 Filed 5-12-78; 8:45 am]

[6320-01]

[Docket Nos. 31003, 32276; Order 78-5-28]

NATIONAL AIRLINES, INC. AND PIEDMONT AVIATION, INC.

Order to Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 5th day of May 1978.

Application of National Airlines, Inc., for deletion of Newport News-Hampton - Williamsburg - Yorktown, Va., Docket 31003; application of Piedmont Aviation, Inc., for removal of restriction between New York and Newport News-Hampton-Williamsburg-Yorktown, Va., Docket 32276.

By Order 77-11-108, November 22, 1977, the Board denied an application by National Airlines to suspend service at Newport News-Hampton-Williamsburg-Yorktown, Va. (Newport News), deferred action on its application to delete the point from its certificate, and invited interestred carriers to file applications for Newport News-Washington/New York authority. The Board indicated in its order that such applications would be processed by show-cause procedures.

On March 20, 1978, Piedmont filed a certificate amendment application requesting removal of a two-stop restriction in the Newport News-New York market. The application was accompanied by a consolidated petition of Piedmont and the Peninsula Airport Commission for an order to show cause why the requested amendment should not be made without a formal hearing. The petitioners request that the application be given the highest possible priority.

In support of their petition, Piedmont and the Commission state that the carrier has discussed this matter extensively with the community and desires to replace National's services between Patrick Henry International Airport at Newport News and New York;[1] that Piedmont's request involves merely the removal of a restriction whose purpose no longer exists;[2] that the initial service pattern will consist of one daily nonstop flight in each direction between Patrick Henry and Newark Airport;[3] and that prompt action is required so that the service void created by National's abrupt reduction in service in September can be filled. The petitioners state further that the community has discussed this matter with all other carriers which

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[1] Piedmont's authority between Newport News and New York is subject to a two-stop restriction imposed originally to protect National's interest in the market.

[2] Petitioners indicate that Piedmont's application would be eligible for processing under subpart M of the Board's Rules of Practice. However, since the Board has already indicated that it proposes to process any application for Newport News-New York authority by show-cause procedures, the carrier has filed under subpart A of the Board's Rules.

[3] Two existing Norfolk-Newark flights would be routed to stop at Newport News. Piedmont is in the process of preparing a major revision in its system schedule, and intends to add a second round trip in the market as soon as is feasible.

might be affected, and no opposition is anticipated.[4]

National has filed an answer in support of the petition for an order to show cause, as well as the expedited time frame requested by the petitioners.

The Commission filed a contingent motion for leave to file an otherwise unauthorized document.[5] It has no objection to grant of National's deletion application in Docket 31003, once Piedmont's application has been approved. However, it is concerned that only the Newport News-New York market will receive improved service under Piedmont's proposal, and it therefore requests that in granting National's application, the Board leave open the possibility of certificating a carrier to operate between the Patrick Henry Airport at Newport News and Washington and beyond to New York (with local Washington-New York traffic rights, subject to a long-haul restriction).

We have tentatively concluded, for the reasons discussed below, that the public convenience and necessity require (1) the modification of Piedmont's two-stop restriction in the Newport News-New York market to nonstop authority,[6] and (2) that National's Newport News authority be made permissive. We have also tentatively concluded that the applications present no questions of fact or law requiring a full evidentiary hearing complete with the opportunity for oral cross-examination; that all interested persons should be directed to show cause why the Board's tentative findings and conclusions should not be made final; and that Piedmont and National are citizens of the United States within the meaning of the Federal Aviation Act and are fit, willing, and able properly to perform the transportation proposed here and to conform to the provisions of the Act and the Board's rules, regulations and requirements. Since Piedmont has demonstrated that its proposal will not result in any substantial increase in air carrier operations at Newport News, we also tentatively find that the proposed action will not constitute a major Federal action significantly affecting the quality of the environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, and will not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975 (EPACA), as defined in § 313.4(a)(1) of the Board's Regulations.

In support of our determination, we tentatively find that the proposed amendment of Piedmont's certificate is consistent with the Board's policy of eliminating or modifying certificate restrictions absent an affirmative showing that their continuance is required. Here, we specifically invited any interested carrier to file an application for new or improved authority between Newport News, on the one hand, and New York and Washington, on the other. Our intent was to permit an orderly transition from the limited services being provided by National under its certificate to the services of a more willing carrier or carriers. In response to that invitation, Piedmont has requested that the two-stop restriction now in effect between New York and Newport News be lifted so as to permit nonstop operations.[7] The proposal is the result of months of discussions between community representatives and various carriers, and as such it represents a long sought-after solution to the air service needs of the area that warrants prompt action. Since September 1, 1977, Newport News has been without direct service to New York, causing inconvenience to a substantial number of passengers traveling to and from the Newport News/Hampton - Williamsburg - Yorktown area.[8] It is, therefore, in the public interest to authorize Piedmont to provide nonstop service in the market as expeditiously as possible. As requested by the Commission, we will certainly leave open the possibility of acting quickly and favorably upon any application for improved Newport News-Washington authority.

We further conclude that the public convenience and necessity require that National's authority to serve Newport News be made permissive. The carrier is providing only a token service at the point and has indicated its desire to eliminate all service, intending to concentrate its service at the nearby Norfolk airport. In view of our findings that the public convenience and necessity require the amendment of Piedmont's certificate to permit nonstop service between Newport News and New York, and given the losses National has been experiencing, we tentatively conclude that the amendment of National's certificate to make its authority at Newport News permissive is required.[9]

Because of the desirability of quick relief, we will grant the petitioners' request to limit the period for filing responses to this order to ten days; replies, if any, will be due five days later.

Accordingly, it is ordered, That: 1. All interested persons be directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated here and amending (1) the certificate of public convenience and necessity of Piedmont Aviation, Inc. for Route 87 to eliminate the two-stop restriction between New York, N.Y.-Newark, N.J., and Newport News-Hampton-Williamsburg-Yorktown, Va., and (2) the certificate of public convenience and necessity of National Airlines, Inc., for Route 31 to make its authority at Newport News-Hampton-Williamsburg-Yorktown, Va. permissive;

2. Any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions or certificate amendments set forth in this order shall, within 10 days of the date of service, file with the Board and serve upon all persons listed in paragraph 6 a statement of objections together with a summary of testimony, statistical data and other evidence expected to be relied upon to support the stated objections, and answers to such objections shall be filed five days later;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised by the objections, together with any answers timely filed, before action is taken by the Board;

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth in this order;

5. The motion filed by the Peninsula Airport Commission in Docket 31003 for leave to file an otherwise unauthorized document be granted; and

6. This order shall be served on National Airlines, Inc.; Allegheny Airlines, Inc.; American Airlines, Inc.; Braniff Airways, Inc.; Delta Air Lines, Inc.; Eastern Air Lines, Inc.; Northwest Airlines, Inc.; Ozark Air Lines, Inc.; Piedmont Aviation, Inc.; Southern Airways, Inc.; Trans World Airlines, Inc.; United Air Lines, Inc.; the City Managers of Hampton and Newport News; the Mayors of Newport News, Hampton, and Williamsburg; the Williamsburg Area Chamber of Commerce; the Peninsula Chamber of Commerce; the Peninsula Airport Commission; the Hampton Depart-

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[4]The parties suggest that the Board provide for an abbreviated period of 10 days in which any interested party could respond.

[5]We will grant the motion.

[6]We have also concluded that if the authority is granted it will be a Category II subsidy-ineligible award.

[7]The carrier has a long-haul restriction on Newport News-Washington service, but has chosen not to request removal of that condition at this time.

[8]During the twelve months ended March 31, 1977, there were 44,660 O&D passengers in the New York-Newport News market.

[9]This action will permit National to exit the point, as it wishes, but it will also be able to resume service should its assessment of the traffic potential change, without the costly delay otherwise required if the point had been deleted from its certificate. As we noted in the *Improved Service to Wichita Case,* Order 78-3-78, we view the possible preemptive effect of such dormant authority as small, and counterbalanced by its use as a competitive spur.

ment of Development; the James City County Board of Supervisors; the Norfolk Port and Industrial Authority; the General Services Administration; the Veterans Administration Center at Hampton; the Secretary of the Army; the United States Coast Guard; and the Postmaster General.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[10]
Secretary.

[FR Doc. 78-13137 Filed 5-12-78; 8:45 am]

[6320-01]

[Docket No. 26817; Order 78-5-44]

TEXAS INTERNATIONAL AIRLINES, INC.

Statement of Tentative Findings and Conclusions and Order To Show Cause Regarding Amendment of Its Certificate of Public Convenience and Necessity for Route 82-F

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 9th day of May 1978.

On December 30, 1977, Texas International Airlines, Inc. (TXIA) filed an application for amendment of its certificate of public convenience and necessity for Segment 1 of Route 82-F so as to add Guadalajara, Mexico, as a coterminal point on its existing Houston, Mission/McAllen/Edinburg-Monterrey, Mexico City route. On March 22, 1978, TXIA filed a petition requesting that the Board process the application by show cause procedures and consolidate its petition with similar petitions filed by Braniff Airways, Inc. (Docket 32037), Western Air Lines, Inc. (Docket 32050), and Pan American World Airways, Inc. (Docket 32193).[1]

In support of its application TXIA states, among other things, that it was designated under the U.S.-Mexico Air Transport Services Agreement for U.S. Route K (Houston, Mission/McAllen/Edinburg-Monterrey, Mexico City); that on January 20, 1978, the United States and Mexico agreed to amend the Agreement to describe U.S. Route K as U.S. Route B.6 and to add Guadalajara to that route;[2] that in order to implement service to Guadalajara, its certificate for Route 82-F must be amended to reflect the changes agreed to by the U.S. and Mexican Governments.

TXIA plans to operate a daily round-trip flight between Houston and Guadalajara if its application is approved. TXIA forecasts it will carry 40,000 passengers during its first year of operations to Guadalajara. The carrier estimates that its proposed operations will result in a net profit of $383,946 from revenues of $2,646,561. Since the route will be profitable from the outset, TXIA believes that it will reduce its subsidy need for the immediate future as well as over the long run. TXIA proposes to offer a Guadalajara peanuts fare which provides for a discount of 30 percent on Tuesdays and Wednesdays to stimulate traffic on these off-peak days.

No answers have been received.

In view of the foregoing and all the facts of record, we have decided to issue an order to show cause why TXIA's certificate should not be amended to add Guadalajara as an additional point on Segment 1 of its Route 82-F.[3] The new authority shall be placed in subsidy ineligible, Category II, of the list of subsidy ineligible points appended to Order 78-2-115 and shall be permissive. We tentatively find and conclude that the public convenience and necessity requires such an amendment and that an oral hearing is not required.[4]

It is therefore ordered, That: 1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated in this order and amend the certificate of public convenience and necessity of Texas International Airlines, Inc. for Segment 1 of Route 82-F to read as follows:[5]

Between the coterminal points Houston and Mission-McAllen-Edinburg, Tex., and the coterminal points Monterrey, Guadalajara, and Mexico City, Mexico.

2. All interested persons having objections to the issuance of an order making final the proposed findings and conclusions, or to the proposed certificate amendment set forth in this order shall, within 15 days[6] after service of this order, file with the Board and serve upon all persons listed in paragraph 7 below, a statement of objections together with a summary of testimony, statistical data, and other evidence expected to be relied upon to support the stated objections. If an oral hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevant or material facts would be expected to be established through such hearing which cannot be established in written pleadings;

3. If timely and properly supported objections are filed, further consideration will be given the matters and issues raised by the objections before further action is taken by the Board: *Provided*, That the Board may proceed to enter an order if it is determined that there are no factual issues present that warrant the holding of oral hearing.[7]

4. In the event no objections are filed, all further procedural steps will be waived, and the Secretary shall enter an order which, subject to the approval of the President, (1) makes final the Board tentative findings and conclusions set forth in this order, and (2) issues an amended certificate of public convenience and necessity for Route 82-F to Texas International Airlines, Inc. in the form attached;

5. The petition of Texas International Airlines, Inc. for issuance of an order to show cause is granted;

6. The petition of Texas International Airlines, Inc. for consolidation is denied; and

7. A copy of this order shall be served upon all air carriers certificated to serve Houston; the Governors of Texas and Jalisco, the Mayors of Houston and Guadalajara; and the Airport Directors of Houston Intercontinental Airport and Miguel Hidalgo International Airport in Guadalajara.

This order shall be published in the FEDERAL REGISTER.

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[10] All Members concurred.

[1] We will grant the petition for issuance of an order to show cause and deny the petition for consolidation as we have decided to handle each application individually, e.g., Western Air Lines, Inc., Order 78-3-156, adopted March 31, 1978.

[2] New Route B.6 reads: Houston, Mission/McAllen/Edinburg-Monterrey, Mexico City, Guadalajara.

[3] Based upon a review of TXIA's Environmental Evaluation, we find that the addition of one daily take-off and landing cycle at Houston does not constitute a "major" federal action within the meaning of the National Environmental Policy Act of 1969. Moreover, since TXIA's proposed operations will not result in the near-term consumption of 10 million gallons of fuel, our action here will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975 (EPACA).

[4] We also tentatively find that TXIA is fit, willing, and able properly to perform the air transportation authorized by the proposed certificate amendment and to conform to the provisions of the Act and the Board's rules, regulations, and requirements thereunder.

[5] In order to give TXIA maximum flexibility in scheduling its services, we will make the new authority to Guadalajara permissive.

[6] In order for TXIA to commence operations as quickly as possible, and considering the absence of objections to the applicant's petition for show cause procedures, we find that the public interest requires the allowance of only 15 days for objections to this order.

[7] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[8]
Secretary.

SPECIMEN CERTIFICATE

UNITED STATES OF AMERICA CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (AS AMENDED) FOR ROUTE 82-F

Texas International Airlines, Inc. is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation of persons, property, and mail, as follows:

1. Between the coterminal points Houston and Mission-McAllen-Edinburg, Tex., and the coterminal points Monterrey, Guadalajara, and Mexico City, Mexico;
2. Between the terminal point Harlingen-San Benito, Tex., the intermediate point Tampico, Mexico, and the terminal point Veracruz, Mexico.

The service here authorized is subject to the following terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements, and to any other orders of the Board issued pursuant to, or for the purpose of requiring compliance with them.

(2) The holder shall render service to the points named here, except as temporary suspensions of service may be authorized by the Board; and may begin or terminate, or begin and terminate, trips at points short of terminal points on all segments. The authority to serve Guadalajara is permissive.

(3) The holder may continue to serve reguarly any point named through the airport last used regularly to serve such point before the effective date of this certificate. Upon compliance with such procedures as the Board may prescribe, the holder may in addition regularly serve the points named here through any convenient airport any may operate nonstop service between any two points not consecutively named here.

(4) The exercise of the authority granted here shall be subject to the carriers first obtaining the required operating rights from the Government of Mexico.

(5) The holder's authority to engage in the transportation of mail in the operations listed in Appendix A, categories I and II of Order 78-2-115, is limited to carriage on a nonsubsidy basis, i.e., on a service mail rate to be paid entirely by the Postmaster General; the authority listed in these categories shall, for purposes of profit sharing, be treated separately. The authority to operate over the segments listed in category II is conditioned upon compliance with the interim accounting procedures for profit sharing adoped in Docket 28800.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

In accepting this certificate the holder acknowledges and agrees that it is only entitled to receive service mail pay, as specified here, for the mail service rendered or to be rendered and that it is not authorized to request or receive any compensation for mail service rendered or to be rendered in excess of the amount payable by the Postmaster General.

This certificate shall become effective on ——: *Provided, however,* That the continuing effectiveness of the authority to Guadalajara granted here shall be conditioned upon the timely payment, by the holder, of such license fees as may be prescribed by the Board.

The Civil Aeronautics Board has directed its Secretary to execute this certificate, and affix the Board's seal, on ——.

(SEAL)

Secretary.

Issuance of this certificate to the holder approved by the President of the United States
On ——————————
In Order ———— ——————————

[FR Doc. 78-13139 Filed 5-12-78; 8:45 am]

[8]All Members concurred.

[3510-25]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

COMPUTER PERIPHERALS, COMPONENTS AND RELATED TEST EQUIPMENT TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held on Wednesday, May 31, 1978, at 9:30 a.m. in room 6802, Main Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. The meeting will continue June 1 in room 3817, Main Commerce Building to its conclusion.

The Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974 and January 13, 1977, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer peripherals, components and related test equipment, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee meeting agenda has six parts:

GENERAL SESSION

(1) Opening remarks by the Chairman.
(2) Presentation of papers or comments by the public.
(3) Review of membership status and suggestion for new members.
(4) Discussion of the list of critical technologies developed by the Department of Defense which are applicable to the Committee's scope of interest.
(5) New business.
(6) Discussion of matters properly classified under Executive Order 11652, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be presented at any time before or after the meeting.

With respect to agenda item (6), the Acting Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 27, 1977, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652. All Committee members have appropriate security clearances.

Copies of the minutes of the open portion of the meeting will be available upon written request addressed to the Freedom of Information Officer, room 3012, Industry and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Ad-

ministration, Industry and Trade Administration, room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: 202-377-4196.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on February 8, 1977 (42 FR 7978).

Dated: May 10, 1978.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation, Department of Commerce.

[FR Doc. 78-13156 Filed 5-12-78; 8:45 am]

[3510-03]

MARITIME ADMINISTRATION

CONSTRUCTION OF THREE/FOUR MA DESIGN C7-S-131A ROLL-ON/ROLL-OFF CONTAINERSHIPS

Computation of Foreign Cost; Intent

Notice is hereby given of the intent of the Maritime Subsidy Board, pursuant to the provisions of Section 501(a) of the Merchant Marine Act, 1936, as amended, to compute the estimated foreign cost of the construction of three/four MA Design C7-S-131a roll-on/roll-off containerships.

Any person, firm or corporation having any interest (within the meaning of Section 501(a)) in such computations may file written statements by the close of business on June 28, 1978, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commerce Building, 14th and E Streets NW., Washington, D.C. 20230.

Dated: May 10, 1978.

By order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-13160 Filed 5-12-78; 8:45 am]

[3510-03]

RECONSTRUCTION OF FOUR MA DESIGN C4-S-LU CARGO VESSELS

Computation of Foreign Cost; Intent

Notice is hereby given of the intent of the Maritime Subsidy Board, pursuant to the provisions of Section 501(a) of the Merchant Marine Act, 1936, as amended, to compute the estimated foreign cost of the reconstruction of four MA Design C4-S-lu cargo vessels, for Moore-McCormack Lines, Inc., to correct design deficiencies in hatch cover systems.

Any person, firm or corporation having any interest (within the meaning of Section 501(a)) in such computations may file written statements by the close of business on May 24, 1978, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commerce Building, 14th and E Streets NW., Washington, D.C. 20230.

Dated: May 10, 1978.

By order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-13159 Filed 5-12-78; 8:45 am]

[1505-01]

COMMODITY FUTURES TRADING COMMISSION

PROPOSED FUTURES CONTRACTS

Notice of Availability

Corrections

In FR Docs. 78-11838, 78-11839, and 78-11840 appearing at page 18738 in the issue for Tuesday, May 2, 1978, the telephone number appearing in the final paragraph of each document now reading, "202-254-6316," should read, "202-254-6314."

[3810-71]

DEPARTMENT OF DEFENSE

Department of the Navy

COMMAND, CONTROL, AND COMMUNICATIONS SUB-PANEL OF THE CHIEF OF NAVAL OPERATIONS EXECUTIVE PANEL ADVISORY COMMITTEE

Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Command, Control, and Communications Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on June 7-8, 1978, at the Pentagon, Washington, D.C. Sessions of the meeting will commence at 8:30 a.m. and terminate at 5:30 p.m. on both days. All sessions of the meeting will be closed to the public.

The agenda will consist of matters required by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order, including discussions of command, control, and communications long-range systems planning and related intelligence. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Commander Robert B. Vosilus, United States Navy, Executive Secretary of the CNO Executive Panel Advisory Committee, 1401 Wilson Boulevard, Room 405, Arlington, Va. 22209, telephone number 202-894-3191.

Dated: May 8, 1978.

K. D. LAWRENCE,
Captain, JAGC, U. S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 78-13117 Filed 5-12-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF ADMINISTRATIVE REVIEW

Week of February 6 through February 10, 1978

Notice is hereby given that during the week of February 6 through February 10, 1978, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Administrative Review and the basis for the dismissal.

APPEALS

Cotten, Day & Doyle, Washington, D.C., DFA-0099, Freedon of Information

Cotten, Day & Doyle (Cotten) appealed from a partial denial by the DOE Information Access Officer of a request for information which the firm submitted under the Freedom of Information Act (the Act). In its request for information, Cotten sought material deleted from the Responses to Requests for Additional Information submitted by the Guam Oil & Refining Co. (Gorco) to the FEA Office of Exceptions and Appeals on August 19, 1977 in Case No. FEE-4105. In the Order which was issued to Cotten, the Information Access Officer withheld portions of certain documents under Exemption 4 of the Act on the grounds that release of the material involved could cause substantial harm to the competitive position of Gorco. Cotten contended in its Appeal that the Information Access Officer erred in refusing to release the deleted material because it had already been made public. In considering Cotten's Appeal, the DOE determined that certain deleted information concerning Gorco's participation in a contracting program of the Small Business Administration and the regulations under which that participation is governed was a matter of public record. The DOE accordingly held that this material should be released to Cotten. However, with

respect to the remainder of Cotten's Appeal, the DOE determined that none of the other deleted material had previously appeared in the public record, and that its release would cause substantial harm to the competitive position of Gorco. Cotten's Appeal was accordingly granted in part and denied in part.

Florida Gas Exploration Co., Winter Park, Fla., FRA-1329, Crude Oil

Florida Gas Exploration Co. filed an Appeal from a Remedial Order which was issued to the firm by the Regional Administrator of FEA Region IV on April 19, 1977. The Remedial Order found that during the period September 1, 1973 through December 31, 1974, Florida Gas had charged unlawful prices for crude oil produced from two properties. The Appeal, if granted, would result in the rescission of the Remedial Order and thereby relieve Florida Gas of the refund obligations specified in the Remedial Order. In its Appeal, Florida Gas contended that contrary to the findings of the Remedial Order, each of the two wells on the Discorbis 15 unit should be considered as a separate "property" for the purpose of the crude oil price regulations. In considering this contention, the DOE found that a significant alteration in producing patterns occurred subsequent to the date of unitization of the Discorbis property and therefore under the provisions of Ruling 1977-2 Florida Gas was required to treat the unit as one "property" for purposes of Part 212, Subpart D. In addition, Florida Gas contended that the applicable posted price in effect for the crude oil which it sold from the Unknown Pass Field on May 15, 1973 should not have been adjusted to reflect a "transportation allowance" which the firm accorded to the purchaser of the crude oil on that date. In considering this aspect of the firm's appeal, the DOE found that the price bulletin applicable to the Unknown Pass Field on May 15, 1973 specified prices for crude oil delivered to the purchaser at its facilities. The DOE also found that if delivery of the crude oil was made at the Field rather than at the purchaser's facilities, Florida Gas was required to reduce the price of the crude oil to reflect delivery costs incurred by the purchaser. Consequently, the DOE concluded that the Remedial was correct in finding that the elimination of a transportation allowance by Florida Gas constituted the unlawful receipt of a price in excess of the maximum permissible selling price computed under Section 212.73(b). On the basis of these considerations, the DOE denied the Florida Gas Appeal.

Fuels, Inc., Marietta, Ga., FRA-1261, Propane

Fuels, Inc. (Fuels) appealed from a Remedial Order which FEA Region IV issued to the firm on March 30, 1977. In the Remedial Order, Region IV found that during the period November 1973 through October 1975 Fuels had sold propane at unlawful prices. In considering the Appeal, the DOE determined that contrary to the contentions presented by Fuels, additional compliance action against the firm was not barred by the fact that a Remedial Order relating to propane pricing violations had previously been issued to Fuels by the Internal Revenue Service. The DOE also rejected the firm's contention that it should be permitted to offset certain undercharges against the refunds specified in the March 30 Remedial Order. In this connection, the DOE found that Fuels had failed to demonstrate that any undercharges were in fact made, or that they were made for the purpose of making restitution for prior overcharges. In addition, the DOE determined that FEA Region IV had properly calculated the firm's May 15, 1973 product-in-inventory cost and had properly accounted for increased transportation costs which Fuels had incurred since May 15, 1973 in bringing propane into its inventory. Finally, the DOE found that the March 30 Remedial Order did not set forth sufficient findings with respect to the manner in which an early payment discount which Fuels offered was accounted for in determining the amount of overcharges. Consequently, the Fuels Appeal was granted in part and the March 30 Remedial Order was remanded to the Regional Office for an explicit determination of the manner in which these overcharges were computed.

Kaye J. Maupin d.b.a. Maupin Retail Sales, Eaton Rapids, Mich., FRA-1320, Propane

Kaye J. Maupin d.b.a. Maupin Retail Sales (Maupin) filed an Appeal from a Remedial Order which was issued to him on May 3, 1977. The Remedial Order found that during the period November 1, 1973 through July 31, 1976 Maupin charged unlawful prices for propane. Based upon this finding, the Remedial Order directed Maupin to make refunds to his customers. In his Appeal Maupin challenged the calculation of the firm's maximum allowable selling prices. Specifically, Maupin asserted that an early payment discount which the firm offers to customers was erroneously included in the calculation of Maupin's maximum allowable selling prices. Maupin also stated that he was financially unable to comply with the refund requirements of the Order. In considering the Appeal the DOE found that the Maupin submission satisfied the criteria set forth in *Mobil Oil Corp.*, 4 FEA Par. 80,541 (September 24, 1976) under which contentions of hardship and irreparable injury will be evaluated in the context of a Remedial Order Appeal proceeding. Based upon an analysis of the financial and other operating material submitted by Maupin, the DOE determined that the Maupin business enterprise would be seriously jeopardized if Maupin were required to comply with the refund requirements of the Remedial Order, and that retroactive exception relief was warranted to permit Maupin to establish the prices which it actually charged in its propane sales during the November 1, 1973 through July 31, 1976 period. In view of the determination that retroactive exception relief was warranted which would eliminate the violations found to exist, the May 3, 1977 Remedial Order issued to Maupin was rescinded and the Appeal was granted.

W. E. Riley Oil Co., Petersburg, Va., FRA-1364, motor gasoline; middle distillates

The W. E. Riley Oil Co. (Riley) filed an Appeal from a Remedial Order which was issued to the firm by FEA Region III on May 9, 1977. In the Remedial Order, the FEA found that Riley has sold motor gasoline and middle distillates at unlawful prices. On the basis of the determination, the Remedial Order directed the firm to make appropriate refunds to its customers. In its Appeal, Riley claimed that since the firm had established its prices in reliance upon certain advice which it had received from an FEA official, the Remedial Order should be rescinded. After considering the record in this matter, the DOE concluded that although Riley had received certain incorrect information from an FEA auditor in May 1977, Riley had failed to substantiate its claim that it established its price levels in accordance with this advice. In this connection, the DOE noted that Riley failed to present any evidence which established the nature of the advice which it claimed it received or the specific action the firm allegedly took in direct reliance on that advice. Moreover, the DOE noted that unless extenuating circumstances are present, advice given by an auditor does not form a proper basis for a firm to adopt a course of conduct that is contrary to applicable regulatory requirements. Finally, the DOE determined that an Appeal was not the appropriate proceeding in which consider Riley's claim that compliance with the terms of the Remedial Order would have a material adverse effect on its financial condition. The Riley Appeal was therefore denied.

PETITIONS FOR SPECIAL REDRESS

Lamar Oil Co., Lamar, Colo., DSG-0011, DES-0018 reporting requirements

Lamar Oil Co., filed a Petition for Special Redress in which it sought rescission of Special Report Order issued to the firm by DOE Region VIII on October 5, 1977. Lamar also requested a stay of the provisions of the Special Report Order pending a determination on the merits of its Petition. In considering the Lamar Petition, the DOE noted 10 CFR Section 210.91(d) sets forth the procedures and criteria governing the consideration by the Office of Administrative Review of a Petition seeking rescission of a Special Report Order. Under those procedures, a preliminary review of the Petition is made in order to determine whether a reasonable probability exists that the petitioner will be able to satisfy the criteria for relief. Unless it is determined that the circumstances are so exceptional that immediate review is warranted to correct substantial errors of law, or to prevent substantial injury to legal rights or cure a gross abuse of administrative discretion, the petition is dismissed. 41 FR 55322 (1976). Upon review of the contentions which Lamar advanced in its Petition, the DOE concluded that the firm had failed to make the required threshold showing. The Lamar Petition for Special Redress was therefore dismissed and the Application for Stay was denied.

Romaco, Inc., Montgomery, AL, DSG-0009, motor gasoline

Romaco, Inc. filed a Petition for Special Redress in which it requested that the DOE reimburse the firm for costs incurred in attending a hearing on December 19, 1977. The hearing involved a prior petition for Special Redress in which Romaco sought review of the denial of its Motion to Quash a Special Order under 10 CFR 210.91(c). In its Petition, Romaco stated that on the basis of its expectation that it would have an opportunity to make an oral presentation on the merits at the December 19 hearing, the firm incurred substantial expense in sending representatives to the hearing. In considering the Romaco Petition, the DOE found that due to a jurisdictional question raised at the December 19 hearing by the Office of Enforcement of the DOE, the Office of Administrative Review had determined that a presentation on the merits by Romaco could not be heard at that time.

The DOE concluded that Ramaco's apparent disappointment in not being able to present substantial arguments at the hearing did not provide a basis for reimbursing the firm for attending the hearing. The Romaco Petition was accordingly denied.

REQUESTS FOR EXCEPTION

Beacon Oil Co., Hanford, Calif., Fee-4459, crude oil

Beacon Oil Co. filed an Application for Exception which, if granted, would have resulted in the issuance of an order permitting the firm to include the crude oil which it blends with fuel oil in its "crude oil runs to stills" for purposes of the Old Oil Entitlements Program. In its Application, Beacon states that it has recently been experiencing a shortage of light crude oils and as a result the firm would have to purchase a larger than normal volume of heavy crude oil. Beacon maintained that running the heavy crude oil through its thermal unit to produce residual fuel oil would waste energy and refinery capacity and that it would be more efficient to omit the thermal unit stage and blend heavy crude oil directly with fuel oil. Since Beacon would not receive entitlements with respect to the crude oil if it were blended instead of run through the thermal unit, the firm claimed that it would not be economical to utilize the blending option unless it were issued entitlements. On January 13, 1978, after considering the Application, the DOE issued a Proposed Decision and Order which determined that Beacon's request should be denied. In the Proposed Decision, the DOE found that despite a reduction in Beacon's purchases of a certain type of light crude oil, the firm has not been adversely affected by this situation, has continued to purchase and run relatively high gravity crude oils, and has not yet found it necessary to purchase heavy crude oils to blend with its fuel oil production. The DOE also found that Beacon's runs to stills and rate of refinery capacity utilization had actually increased during the period when Beacon claimed it was experiencing difficulties in purchasing acceptable crude oils. The DOE therefore determined that the firm's claims were speculative and did not constitute a proper grounds for exception relief. Since Beacon did not file a Notice of Objection to the Proposed Decision within the prescribed period of time, the Decision and Order was issued as a final determination.

Funding Systems Refining Corp.; Crystal Oil Co., Washington, D.C., DEE-0031, crude oil

Funding Systems Refining Corp. (Funding) and Crystal Oil Co. (Crystal) filed a joint Application for Exception in which they requested that an order be issued permitting Funding to participate as a refiner in the Entitlements Program (10 CFR 211.67) as of April 1, 1977. The DOE noted that the Application arose from a March 11, 1977 transaction between Crystal and Funding involving Crystal's Adobe refinery. It was further noted that on June 17, 1977 the Office of Regulatory Programs issued a Decision and Order which denied an application for certification of the Adobe refinery capacity which Funding submitted pursuant to 10 CFR 211.67(a)(2). In considering the Application for Exception the DOE found that the only issue raised in the Application resulted from the firm's implicit assumption that Funding became a "refiner" as a result of the transaction involving the Adobe facility. The DOE further found that the principal basis for the June 17 Decision and Order was the determination that Funding is not a "refiner" as that term is defined in 10 CFR 211.67 and that the firms have already challenged this determination in the administrative Appeals which they have filed from the Order. Consequently, the DOE dismissed the exception application on the grounds that the appellate proceedings will afford a full opportunity for Funding and Crystal to present their position on the issue of whether Funding is a "refiner" to the Office of Hearings and Appeals.

Johnson Oil Co., Battle Creek, Iowa, DEE-0390, propane

Johnson Oil Co. filed an Application for Exception from the requirement that it complete Form P315-M-0 ("Monthly Survey of Propane Sales Volume to Ultimate Consumers"). In its evaluation of the exception request, the DOE observed that Johnson had failed to sumit any factual material in support of its claim that it will incur a serious hardship as a result of devoting the time and personnel necessary to file the form. The DOE also examined the data requirements of the form and concluded that Johnson should encounter little difficulty in obtaining the information elicited by the form. Finally, the DOE determined that Johnson had not demonstrated that the inconvenience which it is experiencing as a result of completing the form outweights the benefits derived from the aggregate data which is obtained from the form. On the basis of these considerations, the DOE denied Johnson's request for exception relief.

Van Fleet Brothers, Inc., Los Angeles, Calif., FEE-4127, motor gasoline

Van Fleet Brothers, Inc. filed an Application for Exception from the provisions of 10 CFR 212.93, which, if granted, would permit the firm to increase the prices it charges two classes of purchaser for motor gasoline to levels above the maximum selling prices allowed under the DOE pricing regulations. In considering the Van Fleet Application, the DOE found that as a result of substantial cost increases for motor gasoline which the firm incurred during April and May 1973 Van Fleet's May 15, 1973 markups to two classes purchaser were unrepresentative of the firm's historical levels. The DOE further found that the anomalous May 15 price levels had affected Van Fleet's operations in a significant manner. Based on these findings and financial data submitted by Van Fleet, the DOE granted the exception request to permit the firm to increase its selling prices for motor gasoline to the two classes of purchaser in question by $0.0115 and $0.0118 per gallon, respectively.

REQUEST FOR STAY

Gasco, Inc., Honolulu, Hawaii, DES-0036, propane

Gasco, Inc. (Gasco) requested that the DOE stay its consideration of an Appeal filed by Oahu Gas Service, Inc. (OGS) pending a Decision on a Freedom of Information request which Gasco filed on January 26, 1978. Gasco and OGS are the only two propane resellers in the State of Hawaii. On March 11, 1977, OGS filed an Application for Exception with FEA Region IX in which it requested that its annual base period use of propane be increased. On August 7, 1977, FEA Region IX issued a Decision and Order in which it determined that the OGS Application should be denied. OGS subsequently filed an Appeal of the August 7 Decision which is presently being considered. Since the exception relief which OGS has requested would necessarily affect Gasco in an adverse manner, Gasco has filed comments on each submission made by OGS. On January 25, 1978, the DOE convened a hearing in order to provide both OGS and Gasco with an opportunity to present oral arguments regarding the OGS Appeal. After being advised by OGS that it wished to present confidential financial data at the hearing, the DOE determined that the hearing should be divided into two portions and that the representatives of Gasco should be excluded from the portion of the hearing in which OGS presented proprietary financial data. In its Application for Stay Gasco contended that it was improperly excluded from the second portion of the hearing. The firm also stated that it had filed a Freedom of Information request in order to obtain the full transcript of the hearing. Gasco maintained that it would experience an irreparable injury if its Freedom of Information request were granted subsequent to the deadline established at the January 25 hearing for the submission of final written comments on the OGS Appeal. In considering the Gasco stay request, the DOE found that Gasco was incorrect ~~in~~ contending that it was improperly excluded from the second portion of the hearing. The DOE observed that the material submitted by OGS during that portion of the hearing certainly appeared to fall under Exemption 4 of the Freedom of Information Act. The DOE also rejected Gasco's contention that its interest in the outcome of the Appeal proceeding enhanced its position in the FOI proceeding, citing the determination reached by the Supreme Court in *NLRB* v. *Sears, Roebuck & Co.*, 421 U.S. 132 (1975). The DOE did, however, agree with Gasco that it had a legitimate need to analyze the material being withheld from it in the current Appeal proceeding. Nevertheless, the DOE concluded that a substantial question existed as to whether or not the DOE possessed the authority to authorize the release of that confidential material to Gasco. Based on these considerations, the DOE concluded that the Gasco request for stay should be denied.

SUPPLEMENTAL ORDERS

Laketon Asphalt Refining, Inc., Evansville, Ind., DEX-0032, crude oil

On February 10, 1978, the DOE issued a Decision and Order to Laketon Asphalt Refining, Inc. staying that firm's obligation to purchase entitlements to the extent specified in a Proposed Decision and Order which was issued to the firm on February 10, 1978. In granting the stay, the DOE stated that as a result of new exceptions procedures which had been adopted effective September 14, 1977, the Proposed Decision and Order would not be finalized for at least 10 days after service of the Order in proposed form. During the period between issurance of the Order in proposed form and issuance of the Order in final form, Entitlement Notices might be issued which would not take into consideration the relief proposed for Laketon. Therefore, the DOE determined that the entitlement purchase obligations of Laketon should be stayed to the extent specified in the Proposed Order until the conclusion of the pending exception proceeding.

Young Refining Corp., Douglasville, Ga., DEX-0029, crude oil

On January 13, 1978, the Department of Energy issued a Decision and Order to Young Refining Corp. (Young) in which it stayed the firm's obligation to purchase the entitlements specified in the October and November 1977 Entitlement Notices. *Young Refining Corp.*, 1 DOE Par. 82,024 (January 13, 1978). That Decision and Order was issued in order to afford Young the opportunity to assess the competitive injury, if any, which was caused by the inadvertent release of a confidential transcript of a hearing which the DOE had conducted in connection with a prior Application for Temporary Stay. In considering whether the January 13 Stay should be extended, the DOE found that the likelihood of injury is sufficiently remote so as to warrant a review of the previous determination. The DOE found that the material which the firm had submitted indicated that although Young does not have sufficient resources to purchase its outstanding October and November entitlements immediately, the firm's cash flow projections indicate that it has the ability to purchase a portion of the stayed entitlements as the firm generates cash from its operations. The DOE therefore required Young to purchase entitlements valued at $45,000 during each of the remaining eleven months of 1978. The remainder of Young's October and November 1977 entitlement obligation was stayed pending the issuance of a final determination on an Application for Exception which Young filed.

Texas American Oil Corp., Washington, D.C., DEX-0034, crude oil

On December 16, 1976, the FEA issued a Decision and Order to United Refining Co. (United) and the Texas American Oil Corp. (TAO) which approved various types of administrative relief relating to the acquisition by TAO of a refinery which had been owned and operated by United in Osceola, Mich. (the Osceola refinery). *United Refining Co; Texas American Oil Corp.*, 4 FEA Par. 83,262 (December 16, 1976). In that Decision, the FEA found that TAO should be considered a "refiner" and be permitted to earn entitlements for its crude oil receipts at the Osceola refinery beginning with December 1, 1976. That determination was upheld in a Decision and Order which was issued to TAO on April 5, 1977. *Texas American Oil Corp.*, 5 FEA Par. 80,597 (April 5, 1977). Subsequent to the issuance of the April 5 Appeal Decision, it came to the attention of the FEA that TAO had sought a hearing during the course of the Appeal proceeding but that no such hearing was ever convened. Under these circumstances, the FEA decided that a hearing should be convened and the TAO Appeal reconsidered. *Texas American Oil Corp.*, 5 FEA Par. 85,050 (April 14, 1977). The DOE observed that the definition of the term "refiner" in Section 211.62 is somewhat ambiguous and its literal application could lead to anomalous results under certain circumstances. The DOE further observed that in future cases involving the transfer of a refinery between two firms, it will be necessary to determine which one of the firms should be properly be classified as the "refiner" for the purposes of the DOE Regulations. In making this determination, the DOE will not sanction any practices which may be designed to take unwarranted advantage of the small refiner bias provisions of the Entitlements Program. The DOE determined on the basis of the factual record which had been established that TAO should be considered the "refiner" with respect to the Osceola refinery beginning September 1, 1976. In view of this determination, the April 5, 1977 Appeal Decision was rescinded and the TAO Appeal from the December 16 Decision and Order was granted.

Newhall Refining Co., Inc., Dallas, Tex., DEX-0033, crude oil

On February 10, 1978, the DOE issued a Decision and Order to Newhall Refining Co., Inc. staying that firm's obligation to purchase entitlements to the extent specified in a Proposed Decision and Order which was issued to the firm on February 10, 1978. In granting the stay, the DOE stated that as a result of new exceptions procedures which had been adopted effective September 14, 1977, the Proposed Decision and Order would not be finalized for at least 10 days after service of the Order in proposed form. During the period between issuance of the Order in proposed form and issuance of the Order in final form, Entitlement Notices might be issued which would not take into consideration the relief proposed for Newhall. Therefore, the DOE determined that the entitlement purchase obligations of Newhall should be stayed to the extent specified in the Proposed Order until the conclusion of the pending exception proceeding.

Requests for Exception Received From Natural Gas Processors

The Office of Administrative Review of the Department of Energy has issued a Decision and Order granting exception relief from the provisions of 10 CFR 212.165 to the natural gas processor listed below. The exception relief permits the firm involved to increase the prices of the production of the gas plants listed below to reflect certain non-product cost increases:

Company	Case No.	Plant	Location	Amount of price increase (per gallon)
Allied Chemical Corp.	DEE-0037	Perkins	Coke County, Tex	$0.00991

Summary Decisions

The following firms filed Applications for Stay of Remedial Orders which had been issued to them by the DOE. In considering the stay requests, the DOE referred to a recent Decision in *Rickelson Oil and Gas Co.*, 6 FEA Par. 85,029 (August 24, 1977), in which it held that a Remedial Order will generally be stayed pending the determination of an Appeal unless it appeared that the public interest required immediate compliance with the Remedial Order. Since the record in these cases did not indicate that the public interest required immediate compliance with the Remedial Orders, the DOE granted the requests for stay pending consideration of the Appeals:

Dale Cannon, DRS-0128
Victory Oil Co., DRS-0065

The following decision modified a Decision and Order which was issued on November 15, 1977 by extending the period of time for the issuance of a revised Remedial Order:

Buck's Butane & Propane Service, Inc., DRX-0031

The following decision stayed the provisions of a revised Remedial Order issues to Bassett Oil & Equipment Co., Inc., pending a determination on an Appeal of the revised Remedial Order:

Bassett Oil & Equipment Co., Inc., DRS-0139

Dismissal

The following submission was dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Hillsboro Bottled Gas Co., DRA-0119, Tampa, Fla.

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 and 5 p.m., e.d.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Melvin Goldstein,
Director, Office of Hearings and Appeals.

May 8, 1978.

[FR Doc. 78-13029 Filed 5-12-78; 8:45 am]

[3128-01]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF ADMINISTRATIVE REVIEW

Week of February 13 Through February 17, 1978

Notice is hereby given that during the week of February 13 through February 17, 1978, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Administrative Review and the basis for the dismissal.

APPEALS

Industrial Fuel Oils, Inc., Fort Wayne, Ind., FRA-1358, Nos. 2, 5, and 6, fuel oils

Industrial Fuel Oils, Inc. (IFO) appealed from a Remedial Order which the Federal Energy Administration Region V issued to the firm on May 18, 1977. The Remedial Order found that during the period November 1, 1973 through December 7, 1974, IFO had sold Nos. 2, 5, and 6 fuel oils at prices which exceeded the maximum permissible price levels specified in 10 CFR 212.93 and 6 CFR 150.359. In considering IFO's Appeal, the DOE found considerable merit to the firm's contention that maximum permissible selling prices should be determined separately for each fuel oil with distinct sulfur content characteristics. The DOE noted that the petroleum industry has historically distinguished between high and low sulfur fuel oils. The DOE also noted that the costs of production and the market demand for fuel oils vary with their sulfur content. The DOE therefore held that a reseller may treat high and low sulfur fuel oils as separate products if it demonstrates that (i) it has historically maintained separate physical inventories of high and low sulfur fuel oils; (ii) it has historically accounted for high and low sulfur fuel oils separately; and (iii) the sulfur gradations which the firm wishes to recognize as separate products are based on discrete, technical product differences which are generally recognized by the petroleum industry. Since the May 18 Remedial Order did not contain sufficient findings for a determination as to whether the fuel oils which IFO sold should be treated as separate products, the DOE remanded it to the Region V Office for further consideration.

St. Petersburg Times, St. Petersburg, Fla., DFA-0110, Freedom of Information

The St. Petersburg Times appealed from a denial by the DOE Information Access Officer of a request for information which the firm submitted under the Freedom of Information Act (the FOIA). In its request for information, the Times sought material relating to certain transactions between Tauber Oil Co. and Florida Power Corp. The Information Access Officer denied the request on the grounds that the material sought was proprietary information which was exempt from mandatory disclosure under Section (b)(4) of the FOIA. In considering the Times' Appeal, the DOE determined that the information which had been withheld by the Information Access Officer was mostly confidential financial information, the release of which would likely result in substantial economic harm to Tauber. The DOE therefore concluded that those portions of the material were properly withheld under Section (b)(4) of the FOIA. However, the DOE also concluded that the Information Access Officer erred in withholding certain aggregate overcharge figures since release of that data would not be likely to injure Tauber's competitive position. In considering the Times' additional contention that the Information Access Officer had erred in not determining whether information which was being withheld had already been publicly disclosed by Florida Power, the DOE determined that neither the FOIA, the DOE Regulations, nor DOE precedents require the Information Access Officer to determine whether requested information has been released by other sources. The DOE noted that to require the Information Access Officer to make such a determination would decrease the likelihood that information would be released in a prompt manner as required by the FOIA and the DOE Regulations. The Times' Appeal was accordingly granted in part and denied in part.

REQUEST FOR EXCEPTION

Estates of Inez and Loyce Phillips, Austin, Tex., FXE-4773, natural gas liquids

The estates of Inez and Loyce Phillips requested that exception relief previously granted to it be extended for an additional period of time. In considering the request, the DOE found that Phillips had continued to incur increased non-product costs at its Nan-Su-Gail natural gas processing plant which materially exceeded the $.005 per gallon passthrough permitted under 10 CFR 212.165. Based upon the criteria set forth in *Superior Oil Co.*, 2 FEA Par. 83,271 (August 29, 1975), the DOE determined that Phillips should be granted exception relief from the provisions of Section 212.165 for the period October 1, 1977 through March 31, 1978. The DOE provided that the amount of exception relief granted to Phillips will be reduced if Phillips begins to produce natural gas liquid products rather than natural gas liquids at the Nan-Su-Gail plant or if the passthrough amounts set forth in Section 212.165 are increased during the exception period.

Robert W. O'Meara, New Orleans, La., DXE-0439, crude oil

Robert W. O'Meara filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The request, if granted, would result in an extension of exception relief previously granted to O'Meara and would permit him to sell the crude oil produced from the Louisiana Fruit No. 2 well (the No. 2 well), located in the Tiger Pass Field of Plaquemines Parish, La., at upper tier ceiling prices. In considering the exception request, the DOE found that O'Meara had continued to incur a loss in the operation of the No. 2 well despite the exception relief previously granted. Consequently, the DOE concluded that O'Meara would have no economic incentive to produce crude oil at the No. 2 well unless additional exception relief were approved. In accordance with the precedent established in a number of previous Decisions, the DOE concluded that O'Meara should be permitted to sell at upper tier ceiling prices 100 percent of the crude oil produced from the No. 2 well for the benefit of the working interest for a period of eight months.

Stoltz, Wagner & Brown, Midland, Tex., DEE-0106, crude oil

Stoltz, Wagner & Brown filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit Stoltz to sell at upper tier ceiling prices the crude oil which it produces from two properties located in Lea County, N. Mex. In considering the exception request, the DOE found that the costs of producing crude oil from the two properties had increased significantly since May 15, 1973, and that they now exceed the revenues which Stoltz receives from the sale of the crude oil at lower tier prices. The DOE therefore determined that Stoltz no longer has an economic incentive to continue production at the two wells. The DOE further determined that if Stoltz were to terminate its operations at the properties, a substantial quantity of crude oil would not be recovered. The DOE therefore concluded that exception relief should be granted to the working interest owners of the two wells which would permit them to recover the increased operating costs.

Texaco, Inc., Atlanta, Ga., FEE-3995, motor gasoline

Texaco, Inc. filed an Application for Exception from the provisions of 10 CFR 211.9 which, if granted, would have permitted Texaco to terminate its supplier/purchaser relationship with F. E. "Jack" Glover, Inc. In its submission, Texaco alleged that Glover had defrauded it by means of a cross-billing scheme. Texaco further contended that the business relationship between the parties had deteriorated to the point where their supplier/purchaser relationship was no longer productive. In considering the Texaco request, the DOE noted that no court judgment with respect to Texaco's allegations of fraud had been reached and that Texaco therefore failed to safisfy the criteria for relief established in *Eagle Point School District No. 9*, 2 FEA Par. 80,622 (July 1, 1975). The DOE also found that although Glover may have engaged in cross-billing in the past, Texaco failed to establish that it was presently incurring damages as a result of the maintenance of its supplier/purchaser relationship with Glover or that the relationship imposed any extraordinary burden on Texaco. Consequently, the Texaco exception request was denied.

Texaco, Inc., Los Angeles, Calif., Fee-4457, crude oil

Texaco Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit the firm to sell all of the crude oil produced from an offshore drilling platform designated as Platform A in Cook Inlet, Alaska at exempt price levels. Inc considering the exception request, the DOE found that the cost of producing crude oil from Platform A had increased since 1973 to a level where those costs exceed the revenues which Texaco realizes from the sale of the crude oil at lower tier ceiling prices. The DOE therefore concluded that Texaco lacked an economic incentive to continue the production of crude oil from Platform A. Accordingly, on the basis of precedents involving similar factual matters, the DOE determined that the working interest

owners should be permitted to see 67.61 percent of the crude oil produced for their benefit from Platform A during the period October 1, 1977 through March 31, 1978 at market prices and the remainder of the crude oil produced for their benefit at upper tier ceiling prices.However, the DOE denied Texaco' request for retroactive exception relief.

SUPPLEMENTAL ORDER

Lunday-Thagard Oil Co., South Gate, Calif., DEX-0035, crude oil

On January 13, 1978, the Department of Energy issued a Decision and Order to Lunday-Thagard Oil Co. in which it stayed the firm's obligation to purchase entitlements as specified in the October and November 1977 Entitlement Notices. *Young Refining Corp.; Lunday-Thagard Oil Co.*, 1 DOE Par. —— (January 13, 1978). That Stay was issued in order to afford Lunday-Thagard the opportunity to assess the competitive injury, if any, which was caused by the release of a confidential transcript of a hearing which the DOE had conducted in connection with an Application for Temporary Stay filed by Lunday-Thagard. In reconsidering the January 13 Stay, the DOE found that the likelihood of injury to Lunday-Thagard due to the release of the transcript was sufficiently remote so as to warrant a review of the stay relief on the merits of the firm's original Application for Stay. The DOE found that financial data which Lunday-Thagard had submitted indicated that the firm did not presently have adequate resources to purchase its outstanding October and November entitlements. The DOE also determined that the firm was unlikely to generate a sufficient amount of cash from its operations to enable it to discharge even a portion of the stayed entitlement obligation. Consequently, the DOE concluded that the January 13 Stay should remain in effect pending the submission of updated cash flow data.

REQUESTS FOR EXCEPTION RECEIVED FROM NATURAL GAS PROCESSORS

The Office of Administrative Review of the Department of Energy has issued Decisions and Orders granting exception relief from the provisions of 10 CFR 212.165 to the natural gas processors listed below. The exception relief permits the firms involved to increase the prices of the production of the gas plants listed below to reflect certain nonproduct cost increases:

Company	Case No.	Plant	Location	Amount of price increase (per gallon)
Adobe Oil & Gas Corp	DXE-0183	Adobe Sale Ranch	Martin County, Tex	$0.01275
Arkansas Louisiana Gas Co	DXE-0173	Hamilton	Columbia County, Ark	.0222
Atlantic Richfield Co	DXE-0128	Adair	Gaines County, Tex	.0304
	DXE-0129	Camrick	Beaver County, Okla	.0123
	DXE-0130	Chesterville	Colorado County, Tex	.0343
	DXE-0131	Crossett	Crane and Upton Counties, Tex.	.0146
	DXE-0132	Elmwood	Beaver County, Okla	.0142
	DXE-0133	Elk Basin	Park County, Wyo	.0419
	DXE-0134	Empire Abo	Eddy County, N. Mex	.0099
	DXE-0135	Gillette	Campbell County, Wyo	.0187
	DXE-0136	Headlee	Ector County, Tex	.0132
	DXE-0137	Hull	Liberty County, Tex	.0619
	DXE-0138	Kermit	Winkler County, Tex	.0057
	DXE-0139	Knox-Bromide	Grady County, Okla	.0301
	DXE-0140	Lapeyrouse	Terrebonne County, La	.0306
	DXE-0141	Ojai Timber	Ventura County, Calif	.1361
	DXE-0142	Pledger	Brazoria County, Tex	(1)
	DXE-0143	Riverton Dome	Fremont County, Wyo	.2582
	DXE-0144	Seiling	Dewey County, Okla	.0117
	DXE-0145	Silsbee	Hardin County, Tex	.1370
	DXE-0146	South Coles Levee	Kern County, Calif	.0186
	DXE-0147	Taft	San Patricio County, Tex	.0539
	DXE-0148	West Lake	Nolan County, Tex	.0456
	DXE-0149	West Seminole	Gaines County, Tex	.0178
	DXE-0150	Worland	Washakie County, Wyo	.0437
Austral Oil Co., Inc	DXE-0151	South Thornwell	Cameron Parish, La	.0050
	DXE-0152	TSMA	Vermilion Parish, La	.0199
Beiridge Oil Co	DXE-0242	Kern County	Kern County, Calif	.1032
Breckenridge Gasoline Co	DXE-0194	Ellasville	Stephens County, Tex	.0786
	DXE-0195	Lodi	Cass County, Tex	.1467
Champlin Petroleum Co	DXE-0196	Gulf Plains	Nueces County, Tex	.0566
	DXE-0197	Mayfield	Kleberg County, Tex	.0480
	DXE-0198	Peoria	Arapahoe County, Colo	.0218
	DXE-0199	South Fullerton	Andrews County, Tex	.0382
Cities Service Co	DXE-0278	Adair	Terry County, Tex	.0363
	DXE-0279	Bluitt	Roosevelt County, N. Mex	.0913
	DXE-0281	Citronelle	Mobil County, Ala	.0352
	DXE-0282	Garrett	Kay County, Okla	.0449
	DXE-0283	Kimball	Kimball County, Nebr	.0316
	DXE-0284	May	Kleberg County, Tex	.0574
	DXE-0285	Midway	Kingman County, Kans	.0444
	DXE-0286	Moncrief	Franklin County, Tex	.0482
	DXE-0287	Myrtle Springs	Van Zandt County, Tex	.1086
	DXE-0288	Panola	Panola County, Tex	.0358
	DXE-0289	Red Fish Bay	San Patricio, Tex	.0091
	DXE-0290	Rio Grande	Starr County, Tex	.0514
	DXE-0291	Robstown	Nueces County, Tex	.0570
	DXE-0292	St. Amelia	St. James Parish, La	.0882
	DXE-0293	Seiling	Dewey County, Okla	(1)
	DXE-0294	West World	Crockett County, Tex	.0434
Continental Oil Co	DXE-0227	Chittim	Bimmit County, Tex	(1)
	DXE-0228	Elk Basin	Park County, Okla	.0350
	DXE-0229	Kettleman Hills	Kings County, Calif	.0189
	DXE-0230	Medford	Grant County, Okla	.0684
	DXE-0231	O. W. Ward	Hidalgo County, Tex	.0491
	DXE-0232	Ramsey	Reeves County, Tex	.0635
	DXE-0233	Thomas	Dewey County, Okla	.0257

Company	Case No.	Plant	Location	Amount of price increase (per gallon)
Devon Corp	DXE-0225	Dubach	Lincoln Parish, La	.0067
Sanford P. Fagadau	DXE-0171	Bluegrove	Clay County, Tex	.11787
	DXE-0172	Maryetta	Jack County, Tex	.06682
Farmland Industries, Inc.	DXE-0090	Gillette	Campbell County, Wyo	.0274
	DXE-0091	Lamont	Grant County, Okla	.0658
	DXE-0092	Mertzon	Irion County, Tex	.0232
	DXE-0093	Quitman	Wood County, Tex	.0127
Florida Gas Co	DXE-0193	Brooker	Bradford County, Fla	.0192
General Crude Oil Co	DEE-0050	Dayton	Liberty County, Tex	.0139
	DEE-0051	Grand Chenier	Cameron Parish, La	.0307
	DEE-0052	Hamlin	Fisher County, Tex	.0119
	DEE-0053	Salt Creek	Kent County, Tex	.0778
	DEE-0387	Silsbee	Hardin County, Tex	.1346
Getty Oil Co	DXE-0208	Bay Springs	Jasper County, Miss	.0228
	DXE-0209	Buena Vista Hills	Kern County, Calif	.0227
	DXE-0210	Cameron	Cameron Parish, La	.0555
	DXE-0211	Cymric	Kern County, Calif	.0275
	DXE-0212	Dollar-hide	Andrews County, Tex	(1)
	DXE-0213	Kermit	Winkler County, Tex	.0148
	DXE-0214	Kettleman Hills	King County, Calif	.0136
	DXE-0215	Marlow	Stevens County, Okla	.1234
	DXE-0216	New Hope	Franklin County, Tex	.0217
	DXE-0217	Normanna	Bee County, Tex	.0308
	DXE-0218	Old Ocean	Brazoria County, Tex	.0198
	DXE-0219	Palacios	Matagorda County, Tex	.0484
	DXE-0220	South Pecan Lake	Cameron Parish, La	.0210
	DXE-0221	Stevens-Calidon	Kern County, Calif	(1)
	DXE-0222	Ventura	Ventura County, Calif	.0250
	DXE-0223	West Bernard	Warton County, Tex	.0560
Gulf Oil Corp	DXE-0312	Azalea	Midland County, Tex	.0672
	DXE-0313	Milfay	Creek County, Okla	.0899
	DXE-0314	Sand Hills	Crane County, Tex	.0494
Hilliburton Co./Vessels Gas Processing Co	DXE-0316	Irondale	Adams County, Colo	.0597
Indian Wells Oil Co	DXE-0070	Indian Wells	Crockett County, Tex	.07021
Kansas-Nebraska Natural Gas Co, Inc.	DXE-0127	Yenter	Sterling, Colo	.0347
Kerr-McGee Corp	DXE-0153	Milfay	Lincoln County, Okla	.1382
Locust Ridge Gas Processing Co	DXE-0315	Locust Ridge	Tensas Parish, La	.06937
Marathon Oil Co	DXE-0175	Camrick	Beaver County, Okla	.0404
	DXE-0176	Cotton Valley	Webster Parish, La	.0234
	DXE-0177	Heyser	Victoria County, Tex	.2568
	DXE-0178	Indian Basin	Eddy County, N. Mex	.0086
	DXE-0179	Markham	Matagorda County, Tex	.0271
	DXE-0180	Scipio	Hillsdale County, Mich	.0240
	DXE-0181	South Coles Levee	Kern County, Calif	.0491
	DXE-0182	Stephens	Claiborne Parish, La	.0295
Matrix Land Co	DEE-0034	Piceance Creek	Rio Blanco County, Colo	(1)
	DEE-0035	Mobeetie	Wheeler County, Tex	.0415
	DEE-0036	Box-Elmdale/Tuscola	Taylor and Callahan Counties, Tex.	.1755
McCulloch Gas Processing Corp	DXE-0107	Fairview	Richland County, Mont	.0372
	DXE-0108	Hilight	Campbell County, Wyo	.0376
	DXE-0109	Jamison Prong	do	.1202
	DXE-0110	Tule Creek	Roosevelt County, Mont	.1792
	DXE-0111	Well Draw	Converse County, Wyo	.0649
Mobil Oil Corp	DXE-0264	Union-Adena	Morgan County, Colo	.0434
	DXE-0265	Bryans Mill	Cass County, Tex	.0341
	DXE-0266	Cotton Valley	Webster Parish, La	.0155
	DXE-0267	Cow Island	Vermillion Parish, La	.0052
	DXE-0268	Elwood	Santa Barbara County, Calif.	.0167
	DXE-0269	Greeley	Kern County, Calif	.0882
	DXE-0270	Hagist	Duval County, Tex	.0105
	DXE-0271	Heyser	Victoria County, Tex	.1534
	DXE-0272	Gulf-Knox	Grady County, Okla	.0154
	DXE-0273	Postle Hough	Texas County, Okla	.0131
	DXE-0274	Putnam Oswego	Dewey County, Okla	.0117
	DXE-0275	R. M. Stephens	Claiborne Parish, La	.0183
	DXE-0276	Vanderbilt	Jackson County, Tex	.0777
	DXE-0277	Wilcox	La Vaca County, Tex	.0132
Oklahoma Natural Gas Co	DXE-0073	Garvin County	Garvin County, Okla	.0234
Palo Pinto Oil & Gas Co	DXE-0226	Markley	Jack County, Tex	.03694
The Permian Corp	DXE-0378	Possum Kingdom	Stephens County, Tex	.0483
	DXE-0379	Todd Ranch	Crockett County, Tex	.0230
Phillips Petroleum Co	DXE-0254	Cimarron	Woodward County, Okla	.0911
	DXE-0255	Goldsmith	Ector County, Tex	.0060
	DXE-0256	Lusk	Lea County, N. Mex	.0183
	DXE-0257	Puckett	Pecos County, Tex	.0545
	DXE-0258	Sooner No. 1	Major County, Okla	.0515
Placid Oil Co	DXE-0326	Black Lake	Natchitoches Parish, La	.0074
	DXE-0327	Calumet	St. Mary Parish, La	.0055
	DXE-0328	Lapeyrouse	Terrebonne Parish, La	.0318

Company	Case No.	Plant	Location	Amount of price increase (per gallon)
	DXE-0329	Lake Washington	Plaquemine Parish, La	.0239
	DXE-0330	Patterson	St. Mary Parish, La	.0217
	DXE-0331	Prentice	Terry County, Tex	.0152
	DXE-0332	Promix	St. Mary Parish, La	.0069
	DXE-0333	Womack Hill	Choctaw County, Ala	.0189
Shell Oil Co	DXE-0165	Elmwood	Beaver County, Okla	.0777
	DXE-0166	Goodwater	Clark County, Miss	.0916
	DXE-0167	Indian Basin	Eddy County, N. Mex	.0125
	DXE-0168	Molino	Santa Barbara County, Calif.	.1178
	DXE-0169	Seeligson	Jim Wells County, Tex	.0086
	DXE-0170	Tippett-Crossett	Crockett County, Tex	.0101
Sid Richardson Gasoline & Carbon Co	DXE-0325	Keystone	Winkler County, Tex	.0299
Southern Natural Resources, Inc	DXE-0356	Lapeyrouse	Terrebonne Parish, La	.0215
	DXE-0357	Patterson	do.	.0204
	DXE-0358	Sea Robin	Erath Parish, La	.0172
Standard Oil Co. (Indiana)	DXE-0188	Empire Abo	Eddy County, N. Mex	.0061
	DXE-0189	Lake Boeuf	Lafourche Parish, La	.0131
	DXE-0190	Ropes	Harkley County, Tex	.0327
	DXE-0191	South Jennings	Jefferson Davis Parish, La	.0314
	DXE-0192	South Thornwell	Cameron Parish La	.0234
	DXE-0205	Prentice	Yoakum County, Tex	.0255
	DXE-0206	Third Creek	Watkins County, Colo	.0150
	DXE-0207	White Flat	Nolan County, Tex	.0237
Ruth Anne Ashby Storey	DXE-0201	R. M. Stephens	Claiborne Parish, La	.0253
Sun Co., Inc	DXE-0263	Steedman	Pontoc County, Okla	.0307
	DXE-0415	Markham	Matagorda County, Tex	.0247
	DXE-0416	Mayfield	Kleberg County, Tex	.0540
	DXE-0419	Carney	Lincoln County, Okla	.0761
	DXE-0420	Concho	Concho County, Tex	.0494
	DXE-0421	Jameson	Coke County, Tex	.0074
	DXE-0446	Maurice	Lafayette Parish, La	.0258
Upham Oil & Gas Co	DXE-0184	Chico	Wise County, Tex	.0448
Vickers Energy Corp	DXE-0185	Mayfield	Kleberg County, Tex	.0467
	DXE-0186	Patterson	St. Mary Parish, La	.0148
	DXE-0187	Putnam Oswego	Dewey County, Okla	.0059

[1]Denied.

DISMISSALS

The following submission was dismissed for failure to correct deficiencies in the firm's filing as required by the DOE Procedural Regulations:

Derby & Co., Inc., New York, N.Y., DEE-0451

The following submission was dismissed on the grounds that it failed to satisfy the applicable criteria set forth in Section 205.135 of the DOE Procedural Regulations:

Wickland Oil Co., Washington, D.C., DMR-0015

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

MAY 8, 1978.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

[FR Doc. 78-13030 Filed 5-12-78; 8:45 am]

[3128-01]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF ADMINISTRATIVE REVIEW

Week of February 20 Through February 24, 1978

Notice is hereby given that during the week of February 20 through February 24, 1978, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Administrative Review and the basis for the dismissal.

APPEAL

Cleary, Gottlieb, Steen & Hamilton, Washington, D.C., DFA-0121, Freedom of Information

The law firm of Cleary, Gottlieb, Steen & Hamilton appealed from a partial denial by the Information Access Officer of a Request for Information which the firm submitted under the Freedom of Information Act (the FOIA). In its initial request, Cleary, Gottlieb sought the release of documents which the FEA had furnished to a third party in response to requests for information which that person had previously filed. The Information Access Officer released certain documents to Cleary, Gottlieb, but withheld other documents and portions of documents pursuant to the provisions of 5 U.S.C. 552(b)(4), 552(b)(5) and 552(b)(7)(A). In its Appeal, Cleary, Gottlieb sought the release of only those documents which were withheld under the (b)(5) exemption. In considering the Appeal, the DOE rejected the firm's contention that the denial of information was not sufficiently specific, since the Order which the Information Access Officer issued explained that the documents were being withheld pursuant to Section 552(b)(5) and stated the basis for that finding. However, the DOE observed that the scope of review in cases involving the FOIA is broader than the scope of appellate review in other cases and concluded that it could conduct a de novo review as to the documents which were withheld. Upon making that review, the DOE determined that one of the documents which was withheld should have been released since it did not fall within the scope of the (b)(5) exemption. The Cleary, Gottlieb Appeal was accordingly granted in part.

REQUESTS FOR EXCEPTION

Dow Chemical U.S.A., Houston, Tex., FEE-4857, crude oil

Dow Chemical U.S.A. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would permit the firm to sell crude oil produced from the Rebekah Allnoch Well No. 1 in Jackson County, Tex., at upper tier ceiling prices. In considering the Application, the DOE determined that the cost of producing crude oil from the well had increased significantly since 1973 and that, as a result of these cost increases, Dow was currently operating the well at a loss. The DOE found that Dow did not have an economic incentive to continue to operate the Allnoch Well. The DOE also found that if the well were abandoned, a significant quantity of otherwise recoverable domestic crude oil would not be produced. The DOE concluded that the application of the lower tier ceiling price rule resulted in a gross inequity to DOW. Therefore, the DOE granted exception relief which permits Dow to sell 87.93 percent of the crude oil produced from the Allnoch Well for the benefit of the working interest owners at upper tier ceiling prices.

Intercoastal Operating Co., San Patricio, Tex., FEE-4013, crude oil

The Intercoastal Operating Co., filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would permit the firm to sell the crude oil produced from the J. R. Rosson Lease in San Patricio County, Tex. at prices which exceed the lower tier ceiling price level. According to Intercoastal, as a result of that price rule, the firm had no economic incentive to make the investment necessary for the continued production of crude oil from the property. In considering the request, the DOE determined that if the firm were to sell the crude oil at the lower tier ceiling price level, it would realize a negative return on the capital investment necessary to produce substantial amounts of crude oil. Therefore, the DOE granted exception relief which permits Intercoastal to sell at market price levels all of the working interest share of the crude oil which it anticipates it will produce during the 5 year estimated life of the investment project. However, the exception relief was limited to market price levels that would permit Intercoastal to earn a 15 percent rate of return on its investment.

Pearland Oil Co., Pearland, Tex., DEE-0058, crude oil

Pearland Oil Co. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would permit the firm to sell the crude oil produced from the C. H. Alexander Lease located in Brazoria County, Tex. at upper tier ceiling prices. In considering the exception request, the DOE found that the cost of producing crude oil from the Alexander Lease had increased to a level where it now exceeds the revenues which the firm realizes from the sale of the crude oil. The DOE concluded that Pearland had no economic incentive to produce crude oil from the Alexander Lease. The DOE also found that it was highly unlikely that the crude oil from the reservoir underlying the lease would be recoverable by any other firm in the absence of exception relief. The DOE concluded that the application of the lower tier ceiling price rule resulted in a gross inequity to Pearland. Therefore, the DOE granted exception relief which permits the firm to sell 39.75 percent of the crude oil produced from the Alexander Lease for the benefit of the working interest owners at upper tier ceiling prices.

REQUESTS FOR EXCEPTION RECEIVED FROM NATURAL GAS PROCESSORS

The Office of Administrative Review of the Department of Energy has issued a Decision and Order granting exception relief from the provisions of 10 CFR 212.165 to the natural gas processor listed below. The exception relief permits the firm involved to increase the prices of the production of the gas plants listed below to reflect certain nonproduct cost increases:

Company	Case No.	Plant	Location	Amount of price increase (per gallon)
Texaco, Inc.	DXE-0334	Apache	Caddo County, Okla	$0.0182
	DXE-0335	Blessing	Matagorda County, Tex	.0595
	DXE-0336	Delhi	Richland Parish, La	.0068
	DXE-0337	Elmwood	Beaver County, Okla	.0090
	DXE-0338	Houma	Terrebonne Parish, La	.0163
	DXE-0339	Humble	Harris County, Tex	.0211
	DXE-0340	Krotz Springs	St. Landry Parish, La	.0234
	DXE-0341	Old Ocean	Brazoria County, Tex	.0186
	DXE-0342	Paradis	St. Charles Parish, La	.0061
	DXE-0343	Pledger	Brazoria County, Tex	.0061
	DXE-0344	Wilcox	Lavaca County, Tex	.0129
	DXE-0366	Coalinga Nose	Fresno County, Calif	.0073
	DXE-0367	Headlee Cycling	Ector County, Tex	.0149
	DXE-0368	Headlee Gas	Ector County, Tex	.0109
	DXE-0369	Lamesa	Dawson County, Tex	.0501
	DXE-0370	Lockridge	Ward County, Tex	.0495
	DXE-0371	Mermentau	Acadia Parish, La	.0418
	DXE-0372	North Cowden	Ector County, Tex	.0121
	DXE-0373	Ozona	Crockett County, Tex	.0082
	DXE-0374	Pampa	Gray County, Tex	.0092
	DXE-0375	Toca	St. Bernard Parish, La	.0242

SUMMARY DECISION

The following firm filed an Application for Stay of a Remedial Order which had been issued to it by the DOE. In considering the stay request, the DOE referred to a recent Decision in *Rickelson Oil and Gas Co.*, 6 FEA Par. 85,029 (August 24, 1977), in which it held that a Remedial Order will generally be stayed pending the determination of an Appeal unless it appeared that the public interest required immediate compliance with the Remedial Order. Since the record in this case did not indicate that the public interest required immediate compliance with the Remedial Order, the DOE granted the request for stay pending consideration of the Appeal.

Bunting Oil Co., Washington, D.C., DRS-0067

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Mobil Oil Corp., AMF O'Hare, Ill., DEA-0115
Public Service Co. of New Hampshire, Concord, N.H., DFA-0120

The following submission was dismissed on the grounds that the request was premature:

Jay Oil Co., Inc., Tulsa, Okla., DRS-0029

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

MAY 8, 1978.

[FR Doc. 78-13031 Filed 5-12-78; 8:45 am]

[3128-01]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF ADMINISTRATIVE REVIEW

Week of February 27 Through March 3, 1978

Notice is hereby given that during the week of February 27 through March 3, 1978, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Administrative Review and the basis for the dismissal.

APPEALS

Cities Service Oil Co., Braintree, Mass., FRA-1404, FRA-1443, FRA-1444, FRA-1449, FRA-1482, motor gasoline

Cities Service Oil Co. filed Appeals from Remedial Orders for Immediate Compliance issued to it by the Director of Regulatory

Programs of FEA Region I. In the Remedial Orders, the Regional Office had ordered Cities to restore supplier/purchaser relationships with certain of its base period purchasers and to resume deliveries of motor gasoline to the purchasers' retail outlets. In considering the Cities Appeals, the DOE noted that the provisions of 10 CFR 210.62(a) require suppliers of allocated products to maintain their normal business practices, including the delivery of petroleum products to a reseller's place of business. The DOE found that the facts presented in the Cities cases were clearly distinguishable from the circumstances surrounding the court's determination in a case relied upon by Cities, *Atlantic Richfield* v. *Zarb*, 532 F. 2d 1363 (TECA 1976). The DOE observed that in contrast to the facts in the case cited, the supplier/purchaser relationships between Cities and its customers existed on the enactment date of the Emergency Petroleum Allocation Act of 1973. Moreover, also in contrast to the circumstances in *Atlantic Richfield* v. *Zarb*, there had been a judicial determination of unlawful possession with respect to only one of the dealers involved in the Remedial Orders issued to Cities. In addition, the DOE noted that the judicial determination with respect to that one dealer had been stayed and that a second trial de novo was pending. Nevertheless, the DOE found that Cities would be in violation of a preliminary injunction issued against it by the Superior Court of Suffolk County, Mass. if it were required to deliver motor gasoline to certain of the dealers' retail outlets. Consequently, with respect to those dealers, the DOE rescinded for the duration of the preliminary injunction those portions of the Remedial Orders which directed Cities to deliver motor gasoline to the service station sites. However, the DOE required Cities to make motor gasoline available to the dealers at Cities' terminals or such other locations as mutually agreed upon by the parties. The other Remedial Orders were sustained in their entirety. Accordingly, the Cities Appeals were granted in part.

Davison Oil Co., Inc., Mobile, Ala., DFA-0087, DFA-0097, DFA-0098, Freedom of Information

Davison Oil Co., Inc. appealed from a partial denial by the DEO Information Access Officer of a Request for Information which the firm had submitted under the Freedom of Information Act (the Act). In his determination, the Information Access Officer denied Davison access to certain documents or portions of documents which it requested on the grounds that they were exempt from mandatory disclosure as inter-agency and intra-agency memoranda under the provisions of 5 U.S.C. 552(b)(5), or as confidential commercial or financial information under 5 U.S.C. 552(b)(4). In considering the Appeal, the DOE found that some of the withheld material consisted of drafts of final determinations or expressions of opinions or advice made by Federal Energy Administration employees concerning the disposition of cases which were acted upon in FEA Region IV. The DOE determined that this material was predecisional in nature, and exempt from mandatory disclosure under Exemption (b)(5) of the Act. However, one of the documents which the Information Access Officer withheld was found to contain purely factual information which was easily segregable from the remaining predecisional policy discussion in the document, and this portion was therefore released to Davison. The DOE found that the material withheld pursuant to Exemption (b)(4) concerned the markups and maximum lawful selling prices for diesel fuel oil charged by a number of Davison's competitors during November 1974, as well as information concerning the supply relationships and purchase volumes of a major reseller which had been supplied by Davison. The DOE determined that the release of this material could aid Davison in undercutting the selling positions of each firm which furnished the FEA with the information, and could alert competitors of the reseller to its strengths and weaknesses in its market area. The DOE therefore concluded that the release of this material would be likely to cause substantial competitive harm to the firms which supplied the information. Accordingly, the DOE denied the Davison Appeal with respect to the documents withheld under the (b)(4) exemption.

Demartin Truck Lines, Inc., San Francisco, Calif., FRA-1373, FEA-1388, propane

DeMartin Truck Lines, Inc. appealed from a Remedial Order issued to it by the Federal Energy Administration Region IX. In the Remedial Order, Region IX determined that during the period November 1, 1973 through June 30, 1976, DeMartin had sold propane at prices in excess of the levels permitted under 6 CFR 150.359 and 10 CFR 212.93, and Region IX therefore directed the firm to refund these overcharges. DeMartin also filed a second Appeal in which it requested review of Region IX's denial of the firm's request for exception relief. The approval of this Appeal would have the effect of relieving DeMartin of any obligation to refund a portion of the overcharges specified in the Remedial Order, as well as additional overcharges which DeMartin states that it realized on its sales of butane.

In considering the DeMartin Appeal of the order denying exception relief, the Department of Energy initially found that the firm's lack of storage facilities, arguable status as a common carrier and its particular method of calculating its prices are not controlling in determining its status under the Price Regulations and that DeMartin is properly considered to be a "reseller-retailer" whose sales of covered products are governed by the price rules set forth in Part 212, Subpart F. The DOE determined, however, that the financial data submitted by DeMartin indicated that if the firm had fully complied with the Price Regulations during the 1973-76 audit period, the firm's LPG business would have been required to operate at a loss. Accordingly, the DOE concluded that there was a substantial likelihood that prospective exception relief would have been approved if the firm had submitted its request in a timely fashion. The DOE also found that DeMartin's current earnings and liquid assets were insufficient to enable the firm to refund approximately $290,000 as required by the Remedial Order, and that DeMartin would therefore experience a severe and irreparable injury in the absence of retroactive exception relief. On the basis of these findings, exception relief was approved permitting the firm to retroactively increase its LPG prices to reflect all of the non-product cost increases which it actually incurred since May 15, 1973. In considering DeMartin's Appeal of the Remedial Order, the DOE found substantial merit in the firm's claim that the Remedial Order did not contain adequate findings of fact. It was determined that the Remedial Order should have set forth DeMartin's classes of purchaser, its May 15, 1973 weighted average cost of product in inventory and its May 15, 1973 weighted average selling prices by class of purchaser. The DeMartin Appeal of the Remedial Order was therefore granted and the Remedial Order was remanded for further consideration and the issuance of a revised Remedial Order.

Duquesne Light Co., Pittsburgh, Pa., DFA-0130, Freedom of Information

The Duquesne Light Co. appealed from a partial denial of a Request for Information which the firm had submitted under the Freedom of Information Act (the Act). In its Appeal, Duquesne requested that the DOE reverse the initial determination and direct the Information Access Officer to release the information which he had deleted from a Notice of Probable Violation (NOPV) issued to the Saber Petroleum Corp. The Information Access Officer denied the firm access to this information on the ground that it was exempt from mandatory disclosure as confidential commercial or financial information under the provisions of 5 U.S.C. 552(b)(4). In considering the Duquesne Appeal, the DOE found that the information requested contained data revealing the names of Saber's customers, as well as the prices Saber charged or allegedly should have charged those customers. The DOE determined that if this material were released, it would aid competitors in attracting purchasers away from Saber and therefore be likely to cause substantial harm to Saber's competitive position. The DOE also concluded that the fact that the information sought is several years old is irrelevant, because the release of information concerning past business relationships would be likely to reveal a great deal about present and future transactions. The DOE therefore denied the Appeal.

Northern Illinois Gas Co., Chicago, Ill., DEA-0026, Natural gas liquids

Northern Illinois Gas Co. (NI-Gas) appealed from a Decision and Order which the FEA Office of Regulatory Programs issued to the firm on September 27, 1977. The September 27 Order modified and extended for an additional six-month period previous FEA Orders under which NI-Gas was assigned a supplier and a base period volume of natural gas liquids and naphtha for use in its Aux Sable, Ill., synthetic natural gas facility. In considering the NI-Gas Appeal, the DOE noted that over the course of the past two years the FEA had issued a number of similar Decisions and Orders to NI-Gas and that, in its present Appeal, NI-Gas had largely reiterated arguments which were advanced in prior proceedings and which were fully considered and rejected by the FEA. The DOE determined that NI-Gas had presented no new evidence of legal authority which would demonstrate that these prior determinations were erroneous. The only new contention which NI-Gas advanced in its Appeal was that the FEA's determination to preclude NI-Gas from purchasing a larger quantity of naphtha was arbitrary because naphtha is allegedly in abundant supply and because national energy policies favor increased SNG production. In considering this argument, the DOE determined that strong policy reasons existed for the imposition of controls on the use of naphtha as SNG feedstock, regardless of

the availability of that product. The DOE further determined that in addition to national energy policies favoring increases in SNG production, the FEA was required to evaluate the policy considerations set forth in 10 CFR 211.29. The DOE found that NI-Gas had failed to establish that the manner in which the FEA had balanced those policy considerations was in any way unreasonable. The DOE therefore concluded that NI-Gas had not shown that the September 27 Order was arbitrary or erroneous, and accordingly denied the firm's Appeal.

Prentice-Hall, Inc., Washington, D.C., DFA-0143, Freedom of Information

Prentice-Hall, Inc. appealed from a partial denial by the DOE Information Access Officer of a Request for Information which the firm had filed under the Freedom of Information Act (the Act). Prentice-Hall had sought access to a copy of the final contract awarded by the Federal Energy Administration to the Commerce Clearing House in connection with the publication of the Federal Energy Guidelines. The Information Access Officer released a copy of the contract but deleted specifications of the costs of labor and materials on the ground that that information was exempt from disclosure under Section 552(b)(4) of the Act. In considering Prentice-Hall's appeal of these deletions, the DOE determined that the information should be released because CCH, the only party who may be substantially harmed by the information's release, did not object to public disclosure. The DOE therefore granted the Prentice-Hall Appeal.

Shank, Irwin, Conant, Williamson & Grevelle, Dallas, Tex., DFA-0129, freedom of information

The law firm of Shank, Irwin, Conant, Williamson & Grevelle (Shank) appealed from a partial denial by the DOE information access officer of a request for information which the firm had submitted under the Freedom of Information Act (the Act). In its request for information, Shank had sought copies of documents which it believed would clarify agency regulations and rules relating to the importation of crude oil and refined petroleum products. The information access officer released several documents to Shank but withheld from disclosure four other documents on the ground that they were intra-agency memoranda which were exempt from disclosure under exemption 5 of the Act, 5 U.S.C. 552. In considering the Shank Appeal, the DOE found that three of the documents which were withheld were drafts of an interpretation which was subsequently issued and published by the General Counsel, and that the fourth document contained the opinions of an agency attorney regarding the sufficiency of one of the drafts. As a result of these findings, the DOE determined that the four documents were predecisional in nature and contained the type of information which exemption 5 was designed to protect from public disclosure. Accordingly, the Shank Appeal was denied.

REQUESTS FOR EXCEPTION

Caribou Four Corners, Inc., Afton, Wyo., DEE-0104, crude oil

Caribou Four Corners, Inc., filed an application for exception from the provisions of 10 CFR, part 212, which, if granted, would permit it to receive the difference between "new" and "old" oil prices for condensate which it sold to Plateau, Inc., during the months of January and February 1976. In considering the exception request, the DOE found that Caribou had failed to certify its sales of crude oil to Plateau on a timely basis in accordance with the provisions of 10 CFR 212.131. However, the DOE determined that there existed compelling reasons for approval of retroactive exception relief since Caribou's delay in making the certifications to Plateau was the result of reasonable uncertainty as to the legitimacy of price increases for crude oil which its own supplier had implemented. Caribou also acted promptly when this uncertainty was clarified by the FEA. The application for exception was accordingly granted.

Kewanee Oil Co., Tulsa, Okla., DXE-0407, crude oil

Kewanee Oil Co. filed an application for exception from the provisions of 10 CFR, part 212, subpart D. The exception request, if granted, would result in an extension of the exception relief previously granted to Kewanee and would permit the firm to sell a portion of the crude oil produced from the South Stanley field at upper tier ceiling prices. In considering the Kewanee exception application, the DOE found that the firm continued to incur increased operating expenses at the South Stanley field, and in the absence of exception relief, the working interest owners would lack an economic incentive to continue the production of crude oil from the property. In view of this determination and on the basis of the operating data which Kewanee had submitted for the most recently completed fiscal period, the DOE concluded that an extension of the exception relief should be granted permitting Kewanee to sell 46.72 percent of the crude oil produced from the South Stanley field for the benefit of the working interest owners at upper tier ceiling prices.

Independent Fuel Terminal Operators Association; Independent Terminal Operators Association; Mid-American Petroleum Marketers Association, Washington, D.C., FEE-4456, refined petroleum products

The Independent Fuel Terminal Operators Association, the Independent Terminal Operators Association, and the Mid-American Petroleum Marketers Association (the Associations) jointly filed an application for exception which, if granted, would have resulted in the certification of the Associations as representatives of a properly formed class for purposes of requesting retroactive exception relief from 10 CFR 212.92. The provisions of that regulation which were in effect prior to May 1, 1976, required resellers and retailers of refined petroleum products to calculate their cost of product in inventory on a firm-wide basis. In considering the Associations' application, the DOE observed that it had previously denied a similar request filed by the Associations since they had failed to show that the use of separate inventory practices was so pervasive among the class which they sought to represent that a class action was necessary. In analyzing the present application, the DOE found that the Associations had submitted virtually no new information or data regarding the proposed class and had again failed to provide any evidence that there are more than 17 firms within the class. The DOE therefore concluded that the class was not so large as to preclude the filing for exception relief on an individual basis and issued a proposed decision and order dismissing the Associations' application. Since no notice of objection to the proposed decision was filed within the prescribed time period, the DOE issued the decision and order in final form.

Larco Drilling Co., Inc., Jackson, Miss., FEE-4770, crude oil

Larco Drilling Co., Inc., filed an application for exception from the provisions of 10 CFR, part 212, subpart D, which, if granted, would permit the firm to sell the crude oil produced from the Mooringsport formation unit, located in Jones County, Miss., at prices which exceed the lower tier ceiling price levels specified in 10 CFR 212.73. According to Larco, under the lower tier ceiling price rule which is currently applicable to the crude oil produced from the unit, the firm has no economic incentive to make repairs which are necessary to the continued production of crude oil from the property. In considering the Larco request, the DOE determined that a substantial amount of additional crude oil could be recovered from the Mooringsport formation unit if the investments necessary to continue crude oil extraction operations were made. The DOE also determined that if the firm were to sell the crude oil involved at lower tier ceiling price levels the firm would realize a negative return on its capital investment. In accordance with precedents involving similar factual circumstances, the DOE concluded that exception relief should be granted to the extent necessary to provide Larco with an economic incentive to make the proposed investment. Exception relief was therefore granted which permits Larco to sell at upper tier ceiling prices 69.41 percent of the working interest share of the crude oil which will be produced during the first 4 years of the estimated life of the investment project. In addition, Larco was permitted to sell at upper tier ceiling prices 100 percent of the working interest share of production from the unit during the fifth year of the life of the proposed investment project.

National Helium Corp., Liberal, Kans., FXE-4474, natural gas liquid products

National Helium Corp. filed an application in which it requested that the exception relief which had been previously granted to the firm be extended for an additional period of time. In considering the request, the DOE noted that the firm was continuing to incur nonproduct cost increases which on a per gallon basis exceeded the $0.005 per gallon passthrough permitted under the provisions of section 212.165. Therefore, based upon the criteria set forth in *Sun Oil Co.*, 3 FEA par. 83,129 (March 12, 1976), the DOE determined that continued exception relief was warranted in this case. Accordingly, National Helium was permitted to increase its maximum permissible selling prices for the natural gas liquids and liquid products produced at its Liberal, Kans., plant during the period October 1, 1977, through March 31, 1978, by an amount not to exceed $0.0155 per gallon. However, the DOE also determined that in the previous exception decisions issued to the firm, National Helium received exception relief which exceeded the level to which the firm was actually entitled by $0.0091 per gallon. Nevertheless, since it appeared that National Helium may not have implemented any portion of this excessive relief, the DOE ordered the firm to make calculations which would demonstrate whether the firm had actually received any excess revenues. Na-

tional Helium was further required to reduce the exception relief granted in this decision by an appropriate amount if its calculations showed that it did in fact receive excess revenues as a result of the exception relief which was previously approved.

Southland Oil Co./VGS Corp., Memphis, Tenn., DXE-0105, crude oil

On November 3, 1977, Southland Oil Co./VGS Corp. filed an application for exception from the provisions of 10 CFR 211.67 (the old oil entitlements program) which, if granted, would relieve the firm of any obligation to purchase entitlements beginning with the month of December 1977. In support of its exception request, Southland submitted projected financial statements for its current fiscal year ending December 31, 1977, and projected monthly crude oil runs to stills and receipts of old, new, and imported crude oil for the fiscal year. In considering Southland's exception request, the DOE determined that as a result of Southland's crude oil runs and receipts during the current fiscal year, the firm would be required to purchase entitlements at a substantial cost commencing with the month of December 1977. As a result of the projected entitlements cost which Southland would incur during its current fiscal year, the firm's profit margin and return on invested capital would be below historical levels. Under the criteria set forth in *Delta Refining Co.*, 2 FEA par. 83,275 (September 11, 1975) and *Beacon Oil Co.*, 3 FEA par. 83,209 (June 8, 1976), exception relief was therefore warranted. Accordingly, on December 20, 1977, the DOE issued a proposed decision and order to Southland which expressed the preliminary determination that Southland should be granted an exception relieving it of a portion of its obligation to purchase entitlements during the 6 month period December 1977 through May 1978. Since no objection to the proposed determination was filed within the time period specified in the DOE regulations, the decision was issued to Southland in final form on February 28, 1978. In the decision and order the DOE noted that the exception relief which was granted would be reevaluated if Southland requested an extension of relief beyond May 31, 1978, and, as is the case with all entitlements program exception decisions, as a matter of course at the conclusion of the firm's fiscal year. The decision further noted that an adjustment will be made and Southland will be required to purchase or sell additional entitlements if it received excessive or insufficient exception relief as a result of a discrepancy between the financial projections it submitted and the actual financial results which it achieves.

Texas Pacific Oil Co., Inc., Dallas, Tex., DXE-0235, crude oil

Texas Pacific Oil Co., Inc., filed an application for exception from the provisions of 10 CFR, part 212, subpart D. In that application, Texas Pacific requested that the DOE increase the amount of exception relief previously granted to the firm by permitting it to sell additional quantities of the crude oil produced from the Lagrange 4,300' reservoir of the O. L. Wilson lease, located in Adams County, Miss., at upper tier ceiling prices. *Texas Pacific Oil Co., Inc.*, 5 FEA par. 83,145 (April 29, 1977). In the prior decision the FEA had found that exception relief was necessary in order to provide Texas Pacific with an economic incentive to undertake an investment which it had proposed for the Wilson 4,300' property. Exception relief was therefore approved which permitted Texas Pacific to realize a 15 percent internal rate of return on its investment. In considering Texas Pacific's current application for exception, the DOE found that the actual investment costs incurred by the firm in restoring the production of crude oil from the Wilson 4,300' property were approximately 250 percent greater than the firm's estimated investment costs. The DOE therefore concluded that the exception relief initially provided to Texas Pacific should be adjusted to permit the firm to realize a 15 percent internal rate of return on the actual investment costs which it had incurred. In accordance with the precedent established in cases of a similar nature, the DOE permitted Texas Pacific to sell at upper tier ceiling prices 72.50 percent of the crude oil produced from the Wilson 4,300' property for the benefit of the working interest during the first 4 years after the completion of its investment.

PETITIONS FOR SPECIAL REDRESS

Standard Oil Co. (Indiana), Chicago, Ill. FSG-0055, motor gasoline

The Standard Oil Co. of Indiana (Amoco) filed a petition for special redress in which it requested that the DOE rescind five assignment orders which had been issued to the McDonald Oil Co. by FEA region IV on October 29, 1976. In the assignment orders, the DOE assigned McDonald as the base period supplier of gasoline to five retail sales outlets. Under the provisions of 10 CFR 211.13(c), McDonald is entitled to receive an increased volume of gasoline from Amoco, its base period supplier, in order to supply the five outlets. In its petition, Amoco contended that FEA region IV had failed to provide Amoco with the opportunity to comment with regard to the applications for assignment as was required by 10 CFR 205.33(a). In considering this contention, the DOE found that although Amoco had not been properly informed of its right to comment with regard to the five applications for assignment, Amoco was provided with an opportunity to remedy this defect by expressing its comments regarding the five applications during the course of the appeal proceeding conducted by FEA region IV. Accordingly, the DOE determined not to invalidate the five assignment orders. In addition, the DOE found that the order which the regional office issued in the Amoco appeal proceeding fully explained to Amoco the factual and legal basis upon which the assignment orders had been issued, and corrected the deficiencies which had existed in the statement of law and fact included in the assignment orders. Finally, the DOE determined that contrary to an argument advanced by Amoco, the regional office had properly applied the criteria set forth in 10 CFR 205.35(b) in reaching a decision on the applications for assignment. The Amoco petition for special redress was therefore denied.

James L. Sweeney, Menlo Park, Calif., DSG-0002, Privacy Act

James L. Sweeney filed an Appeal from an Order issued by the FEA Privacy Act Officer denying his request for access to an investigative file which the FEA had compiled concerning Sweeney. The FEA regulations do not provide for administrative review of an Order of this type. However, the DOE determined that Sweeney's submission raised important questions and should therefore be reviewed in the context of a Petition for Special Redress. The Privacy Act Officer had denied Sweeney's request for access to the investigative report on the ground that the information sought was within the provisions of the Privacy Act which exempts from mandatory disclosure records consisting of investigatory material compiled for law enforcement purposes (the (k)(2) exemption). In his Petition, Sweeney claimed that the (k)(2) exemption was improperly applied. He asserted that his right to privacy and right to a good reputation had been violated when the columnist Jack Anderson published allegations contained in the investigative report.

In considering the Sweeney Petition, the DOE determined that the material which he sought was "investigatory material compiled for law enforcement purposes," and was therefore within the (k)(2) exemption. The DOE further determined that Sweeney had not been denied "any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material," and that therefore the proviso contained in the (k)(2) exemption did not apply. However, the DOE concluded that the public interest nevertheless favored disclosure of certain portions of the investigative file to Sweeney. The DOE therefore remanded the matter to the Privacy Act Officer for release to Sweeney of those portions of the investigative file to which Jack Anderson in all likelihood had access, except to the extent that disclosure would constitute an invasion of other individuals' privacy or reveal confidential sources.

Finally, the DOE determined that the FEA was in error when it reviewed Sweeney's request for information exclusively under the Privacy Act. The DOE accordingly instructed the Information Access Officer to consider Sweeney's request under the Freedom of Information Act, as amended.

REQUESTS FOR STAY

Caldo Oil Co., Inc., San Jose, Calif., DES-0132
Major Oil Co., Stockton, Calif., DES-0133
Miles Oil Co., Inc., Colfax, Calif., DES-0134
Olympian Oil Co., South San Francisco, Calif., DES-0135
Ramco Oil Co., Inc., West Sacramento, Calif., DES-0136
Rinehart Oil, Inc., Ukiah, Calif., DES-0137
Red Triangle Oil Co., Inc., Fresno, Calif., DES-0138, Motor Gasoline

The Caldo Oil Co., Inc., Major Oil Co., Miles Oil Co., Inc., Olympian Oil Co., Ramco Oil Co., Inc., Rinehart Oil, Inc. and Red Triangle Oil Co., Inc. filed Requests for Stay of two Decisions and Orders which were issued to the Gulf Oil Corp. by the DOE Office of Fuels Regulation. Under the terms of those orders, Gulf would be permitted to complete its withdrawal from all marketing and distribution activities in the northerwestern portion of the United States. The seven applicants are all base period purchasers of motor gasoline from Gulf who requested stays pending a final determination by the DOE on the applicants' Appeals from the two orders. In considering the applications for stay, the DOE found that the two orders issued to Gulf were designed to place the seven applicants in a competitive position similar to that of other independent marketers in the area. Therefore, any injury which might occur as

a result of such competition would not be caused by the application of DOE regulations to the firms. The DOE also determined that the seven applicants did not make a sufficiently strong showing that they were likely to succeed on the merits of their Appeals. The Applications for Stay were therefore denied.

John H. Cathey, Kimball, Nebr., DES-0030, crude oil

John H. Cathey filed an Application for Stay of a Remedial Order which FEA Region VII issued to him on March 14, 1977. On April 19, 1977, the FEA summarily denied Cathey's Appeal of the Remedial Order for failure to present any factual or legal arguments. John H. Cathey, 5 FEA Par. 80,608 (April 19, 1977). If the present stay request were granted, the refund provisions of the Remedial Order would be held in abeyance pending judicial review. In considering the Application, the DOE found that Cathey had presented no arguments which would form a proper basis for stay relief. The DOE concluded that approval of the stay in the absence of compelling circumstances would frustrate the public interest of securing timely compliance with the DOE regulations. Accordingly, the Application for Stay was denied.

Commonwealth Oil Refining Co., Inc., Washington, D.C., DES-0038, Naphtha crude oil

Commonwealth Oil Refining Co., Inc. (CORCO) requested a stay of the requirement set forth in 10 CFR, Part 213 that it pay license fees on its imports of crude oil and naphtha pending a final determination by DOE on an Application for Exception which the firm filed. If the stay which CORCO requested were granted, the Puerto Rican excise tax liability which the firm is required to pay in lieu of license fees would be reduced. In considering the CORCO request, the DOE noted that the firm had experienced substantial operating losses during the past several years, was currently operating at a substantial loss, and has filed for relief under Chapter XI of the Bankruptcy Act. In view of these factors, the DOE concluded that CORCO could well experience an irreparable injury in the absence of stay relief. It was also determined that stay relief would have the desirable effect of preserving the status quo ante pending a resolution of the exception request which CORCO filed. Accordingly, the CORCO stay request was approved.

Gulf Oil Corp., Tulsa, Okla., DES-0251 crude oil

The Gulf Oil Corp. requested that the provisions of 10 CFR, Part 212, Subpart D, be stayed in order to permit the firm to sell at upper tier ceiling prices the crude oil produced from the Northwest Graylin "D" Sand Unit as specified in a Proposed Decision and Order which the DOE issued to the firm on January 23, 1978. The stay, if granted, would remain in effect during the period of time in which the DOE is considering Gulf's Statement of Objections to the Proposed Decision. In considering the Application for Stay, the DOE found that Gulf had not presented any financial data or any other information which would demonstrate that the firm will experience an irreparable injury in the absence of a stay. Accordingly, the Gulf Application for Stay was denied.

SUPPLEMENTAL ORDERS

Beacon Oil Co., Hanford, Calif., FEX-0189, crude oil

On June 10, 1977, the FEA issued a Decision and Order with respect to an Appeal filed by the Beacon Oil Co. from a previous Decision granting the firm exception relief from its entitlements purchase obligations during its 1975 fiscal year. *Beacon Oil Co.*, 5 FEA Par. 80,653 (June 10, 1977). In that Appeal, Beacon had contended that under Special Rule No. 6, the FEA was required to exclude Beacon's operating profits for October and November 1975 in establishing the appropriate level of entitlement exception relief for 1975. In the June 10 Decision, the FEA concluded that the operating profits for those two months should be included in its review. The DOE subsequently reconsidered this issue and concluded that the FEA erred by including the firm's operating results for October and November 1975. The DOE found that the appropriate level of Beacon's entitlement exception relief for 1975 should have been based upon a comparison of the firm's historical profitability with its actual operating results for the period January 1 through September 30, 1975. The DOE noted, however, that the operating results for that period should be based on an accrual rather than a cash method of accounting for entitlements costs in order to achieve a proper matching of entitlements costs with the other revenues and expenses which beacon incurred during the same period. On the basis of the revised analysis, the DOE determined that Beacon should be permitted to sell $1,658,166 in additional entitlements during March 1978.

Husky Oil Co., of Delaware, Washington, D.C., DEX-0041, crude oil

On February 27, 1978, the DOE issued a Decision and Order to Husky Oil Company of Delaware staying that firm's obligation to purchase entitlements to the extent specified in a Proposed Decision and Order which was issued to Husky on December 20, 1977. In granting the stay, the DOE observed that as a result of new administrative procedures which had been adopted effective September 14, 1977, the December 20, 1977 Proposed Decision and Order would not be finalized until the DOE has reached a determination with respect to a Statement of Objections to the Proposed Decision which Husky filed on January 20, 1978. During the time that Husky's objections are being considered, Entitlement Notices might be issued which would not take into consideration the relief proposed for Husky in the December 20, 1977 Order. Therefore, based upon the criteria used in determining prior cases of a similar nature, the DOE determined that Husky's entitlement purchase obligations should be stayed to the extent specified in the Proposed Order until the conclusion of the pending exception proceeding.

R. W. Tyson Producing Co., Inc., Jackson, Miss., DEX-0036, crude oil

On January 20, 1978, the DOE issued a Proposed Decision and Order on an Application for Exception filed by the R. W. Tyson Producing Co., Inc. In that Proposed Decision, the DOE determined that Tyson should be permitted to sell at exempt price levels the crude oil produced from the No. 4 and No. 5 wells, located on the Stevens No. 1 Lease in the Glazier Field in Perry County, Miss. The DOE also tentatively determined that that portion of the Tyson request which pertained to the remaining wells on the Stevens Leases should be dismissed and Tyson's request that the three Stevens Leases be treated as a single property should be denied. On February 1, 1978, Tyson filed a Notice of Objection to the Proposed Decision and Order. In that submission Tyson indicated that it did not intend to object to the exception relief proposed for the No. 4 and No. 5 wells and requested that the DOE finalize those provisions of the Proposed Decision pertaining to those two wells. Since no other potentially aggrieved party filed a Notice of Objection to the January 20 Proposed Decision, the DOE concluded that the Tyson request should be granted and accordingly finalized the proposed exception relief with regard to the No. 4 and No. 5 wells.

INTERLOCUTORY ORDER

C. H. Sprague & Son Co., Boston, Mass., DRD-0111, DRS-0111, residual fuel oil

In connection with an Appeal of a Remedial Order which it submitted, C. H. Sprague & Son Co. filed a Motion for Discovery in which it sought various FEA and DOE documents which it claimed were relevant to its arguments on appeal, and it also filed an Application for Stay of the appellate proceeding pending discovery. In considering the Sprague Motion, the DOE noted that the procedural regulations which govern consideration of this particular Appeal do not contain any provision for discovery. However, in accordance with the precedent established in several previous decisions, a discovery request of this type may be granted if it appeared that access to the information requested was necessary to enable the appellant to pursue an administrative appeal effectively and that discovery would not unduly delay the proceeding. With respect to the Sprague request, the DOE determined that the documents sought did not meet this standard. The DOE found that several of the documents sought by Sprague were either unrelated to the issues on appeal or were of such a general nature that they could in no way be deemed necessary to the formulation of an appeal. With respect to the remaining documents, the DOE found that although they did pertain to the compliance proceeding instituted against Sprague, those documents were merely internal FEA memoranda containing the opinions of individuals employed by the agency and were therefore not final statements of agency policy. Furthermore, the DOE observed that since these documents were never released to the public, Sprague could not possibly have relied on them as authoritative statements of agency policy. The DOE therefore found no basis for concluding that any of these documents was sufficiently material to the effective formulation of an appeal to justify a delay in the proceedings. The Motion for Discovery was therefore denied and the Sprague Application for Stay of the appellate proceeding was dismissed.

REQUESTS FOR EXCEPTION RECEIVED FROM NATURAL GAS PROCESSORS

The Office of Administrative Review of the Department of Energy has issued Decisions and Orders granting exception relief from the provisions of 10 CFR 212.165 to the natural gas processors listed below. The exception relief permits the firms involved to increase the prices of the production of the gas plants listed below to reflect certain nonproduct cost increases:

Company	Case No.	Plant	Location	Amount of price increase (per gallon)
Continental	DEE-0065	Nueces River	Live Oak County, Tex	$0.0099
	DEE-0174	Hennessey	Kingfisher County, Okla	.0095
Dougherty Group	DEE-0061	Normanna	Bee County, Tex	.0328
Mobil Oil	DEE-0260	Dewey County Complex	Dewey County, Okla	.0071
	DEE-0261	Old Ocean	Brazoria County, Tex	.0065
Shell Oil Co	DEE-0157	Calumet	St. Mary Parish, La	.0253
	DEE-0158	Conley	Hardeman County, Tex	.0231
	DEE-0159	Cow Island	Caddo Parish, La	.0071
	DEE-0160	Grand Chenier	Cameron Parish, La	.0058
	DEE-0161	Houston Central	Colorado County, Tex	.0092
	DEE-0162	Lake Washington	Plaquemines Parish, La	.0127
	DEE-0163	North Terrebonne	Terrebonne Parish, La	.0088
Sun Co., Inc	DEE-0066	Fairway	Henderson County, Tex	.0054
	DEE-0067	Fullerton	Andrews County, Tex	.0114
	DEE-0068	Putnam-Oswego	Dewey County, Okla	.0066
	DEE-0380	Burnell	Bee County, Tex	.0258
	DEE-0381	Dragon Trail	Rio Blanco County, Colo	.0174
	DEE-0382	Okarche	Kingfisher County, Okla	.0167
	DEE-0383	Van	Van Zendt County, Tex	.0113
Union Oil Co. of California	DXE-0123	Adena	Morgan County, Colo	.0286
	DXE-0124	Dominquez	Los Angeles County, Calif	.0840
	DXE-0125	Rio Bravo	Kern County, Calif	.0050

SUMMARY DECISION

The following Application for Stay and Application for Temporary Stay were dismissed on the grounds that there is no adverse impact to the firm at the present time:

Buck's Butane and Propane Service, Inc., San Jose, Calif., DRS-0043 and DRT-0006

TEMPORARY STAY

The following Application for Temporary Stay was denied on the grounds that the applicant failed to make a compelling showing that temporary stay relief was necessary to prevent an irreparable injury:

Inter-Americas Oil Co., Washington, D.C., DST-0007

DISMISSALS

The following submissions were dismissed following a statement by the applicant indicating that the relief requested was no longer needed:

Getty Oil Co., Los Angeles, Calif., DXE-0222
Pacific Northern Oil Corp., Seattle, Wash., DEE-0094
Nell M. Weatherly, Ada, Okla., DEE-0492

The following submission was dismissed for failure to correct deficiencies in the firm's filing as required by the DOE Procedural Regulations:

Commercial Bottled Gas Co., Oxford, N.C., DEE-0361

The following submissions were dismissed on the grounds that the requests are now moot:

United Petroleum, Inc., Tampa, Fla., DRA-0116, DRS-0116

The following submissions were dismissed on the grounds that there was no basis for the relief requested:

North Pole Refining, Inc., Washington, D.C., DES-0024, DES-0045

The following submission was dismissed on the grounds that there was no foundation upon which to base the analysis of the request:

Industrial Fuel Oils, Inc., Washington, D.C., FEE-4350

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.d.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

MAY 8, 1978.

[FR Doc. 78-13032 Filed 5-12-78; 8:45 am]

[3128-01]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF ADMINISTRATIVE REVIEW

Week of March 6 through March 10, 1978

Notice is hereby given that during the week of March 6 through March 10, 1978, the Decisions and Order summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Administrative Review and the basis for the dismissal.

APPEALS

Crane Co., New York, N.Y., FEA-1233

The Crane Co. filed an Appeal from an FEA Notice in which it determined that Crane was among the 50 most energy-consumptive firms in the primary metals manufacturing industry (SIC Code 33). As a result of the Notice, Crane is required to participate in a reporting program under the provisions of Section 375 of the Energy Policy and Conservation Act (EPCA). In its Appeal, Crane challenged the FEA's requirement that it assume the responsibility for reporting the energy consumption of all subsidiaries which it controls, and proposed that its wholly-owned subsidiary, CF&I Steel Corp., replace Crane as the corporation which is required to submit energy consumption data to the DOE. In considering the Appeal, the DOE found that the requirement that the ultimate parent corporation assume the responsibility for reporting the energy consumed by all of its subsidiaries is the most practical and efficient means of ensuring that the list of the 50 most energy-consumptive corporations in a particular SIC Code is complete and accurate, and has the benefit of maximizing the amount of energy consumption included in the reporting program. The DOE concluded therefore that Crane had failed to demonstrate that the Notice which identified the firm as one of the 50 most energy-consumptive firms in SIC Code 33 was erroneous in fact or law or that it was arbitrary or capricious and the firm's Appeal was denied.

Texas City Refining, Inc., Texas City, Tex., FRA-1273 Crude Oil

Texas City Refining, Inc. (TCR) appealed from a Remedial Order which was issued to it by the Deputy Regional Administrator of FEA Region VI. The Remedial Order found that during the period September 1974 through April 1975, TCR had violated the provisions of 10 CFR 212.83(c) by overstating the cost of domestic crude oil which it received in certain foreign-domestic crude oil sales and exchanges. In its Appeal, TCR stated that it had engaged in "ticket exchange" transactions in order to realize the value of the fee-exempt import licenses accorded the firm under the Oil Import Regulations. TCR maintained that the benefits which it received as a result of the exchanges do not have to be reflected in the calculations of its crude oil costs for purposes of the Mandatory Petroleum Price Regulations. In considering the Appeal, the DOE examined the historical background of the oil import regulations and the refiner cost passthrough regulations promulgated under the Emergency Petroleum Allocation Act (the EPAA). The DOE determined that the sale or exchange of fee-exempt imports tickets has been viewed under the oil import regulations as a means of ensuring that the holder would be able to obtain a portion of its crude oil supplies at a lowered cost. The DOE further found that the refiner cost passthrough regulations were intended to limit price increases in sales of covered products to a dollar-for-dollar passthrough of net increases in the cost of crude oil. In reading the objectives of the two regulatory programs together, the DOE determined that the net reduction in crude oil costs experienced by refiners receiving fee-exempt import licenses should also be treated as a reduction in crude oil purchase costs for purposes of the refiner price regulations. The TCR Appeal was accordingly denied.

REQUESTS FOR EXCEPTION

Kenner Oil Co., Tulsa, Okla., FEE-4513, crude oil

Kenner Oil Co. filed an application for exception from the provisions of 10 CFR, part 212, subpart D, which, if granted, would have permitted the firm to sell the crude oil produced from the Lizzie-Orwig No. 1 well in Seminole County, Okla., at upper tier ceiling prices. In considering the exception request, the DOE found that Kenner's operating costs had increased to the point where the firm no longer had an economic incentive to continue the production of crude oil from the Lizzie-Orwig well if the crude oil were subject to the lower tier ceiling price rule. The DOE also determined that if Kenner abandoned its operations at the well, a substantial quantity of domestic crude oil would not be recovered. On the basis of criteria applied in previous decisions, the DOE determined that Kenner should be permitted to sell 29 percent of the crude oil produced from the Lizzie-Orwig well for the benefit of the working interest at upper tier ceiling prices.

O'Meara Bros., Lake Charles, La., New Orleans, La., FEE-4732, FEE-4750, crude oil

O'Meara Brothers filed two applications for exception from the provisions of 10 CFR, part 212, subpart D. The exception requests, if granted, would permit O'Meara to sell a portion of the crude oil which it produces from the Vinton lease and the Louisiana State lease 2192 T 165, R 17E at upper tier ceiling price levels. In considering the two exception requests in a single proceeding, the DOE found that the firm was incurring an operating loss at each lease and that, in the absence of exception relief, the firm would lack an economic incentive to continue its production activities at the leases. On the basis of precedents involving similar factual situations, the DOE concluded that O'Meara was experiencing a gross inequity as a result of the application of the lower tier ceiling price rule to the Vinton and Louisiana State leases and that exception relief should be approved. The DOE determined, however, that the application of the methodology used to calculate relief in prior exception proceedings would not provide the appropriate level of exception relief in this case because the operating results attained at each lease during the last two fiscal quarters did not reflect the normal operating posture of each lease. In view of these circumstances, the DOE determined that the level of exception relief to be granted to O'Meara should be based upon a comparison of the operating costs per barrel which O'Meara incurred at each lease during 1973 and the unrecovered costs per barrel which the firm projects that it will sustain at each lease during its 1977 fiscal year. In accordance with this procedure, the DOE approved exception relief which permits O'Meara to sell at upper tier ceiling prices 71.7 percent of the crude oil produced and sold for the benefit of the working interest owners from the Vinton lease and 47.8 percent of the crude oil produced and sold for the benefit of the working interest owners from the Louisiana State lease.

Tonkawa Refining Co., Washington, D.C., FEE-4604, refined petroleum products

Tonkawa Refining Co. filed an application for exception from the provisions of 10 CFR 212.83. The exception request, if granted, would permit Tonkawa to be classified as a new refiner subsequent to its release from bankruptcy on July 1, 1975, and therefore permit the firm to establish prices for the covered products which it has sold subsequent to that date pursuant to the "new item rule" set forth in 10 CFR 212.111(b)(1)(ii). In considering the Tonkawa request, the DOE determined that Tonkawa had made a threshold showing that it would have been granted prospective exception relief had it filed an application for exception at the time it was released from bankruptcy. In addition, the DOE found that compelling reasons existed for the approval of retroactive exception relief. In this connection, the DOE observed that the purposes of the Tonkawa bankruptcy proceeding, viz., the severing of all of Tonkawa's connections with prior operations and providing an opportunity for the firm to operate on a profitable basis, would have been frustrated if the firm had been required to maintain the margin which existed on May 15, 1973 between its crude oil costs and refined product prices. Finally, the DOE found that Tonkawa's ability to continue its operations as an independent refiner would clearly be jeopardized in the absence of the exception relief which the firm requested. On the basis of these findings, the Tonkawa application for exception was granted.

REQUEST FOR STAY

Southwestern Refining Co., Inc., La Barge, Wyo., DES-0044, crude oil

On January 25, 1978, Southwestern Refining Co., Inc. filed an application for stay of its obligation under the old oil entitlements program to purchase entitlements in January 1978. Southwestern also requested a stay of its entitlement purchase obligation in subsequent months pending a final determination by the DOE on an application for exception which the firm had filed. In considering the request, the DOE found that Southwestern's financial material indicated that its projected cash flow from operations during the remaining months of its current fiscal year would be significantly less than the value of the entitlements it would be required to purchase during that period. Under these circumstances, the DOE concluded that Southwestern had met the conditions set forth in 10 CFR 205.125(b) under which a stay will be granted. Accordingly, the DOE stayed Southwestern's obligation to purchase entitlements in January 1978 and subsequent months pending a determination on its exception request.

SUPPLEMENTAL ORDERS

Laketon Asphalt Refining, Inc., Evansville, Ind., DEX-0045, crude oil

On February 23, 1977, the FEA issued a decision and order to Laketon Asphalt Refining, Inc., with respect to an appeal which the firm had filed from its 1975 obligation to purchase entitlements under the provisions of 10 CFR 211.67 (the entitlements program). *Laketon Asphalt Ref., Inc.*, 5 FEA par. 80,558 (February 23, 1977). Upon further consideration of the matter, the DOE concluded that further analysis was warranted to determine whether the data used to reflect Laketon's historical profitability should be adjusted. Furthermore, the DOE found that another issue, viz., the manner in which Laketon should properly report its "Net Sales" on the financial statements which it submits in connection with applications for exception from its entitlement purchase obligations, was not fully addressed in the February 23, 1977 decision. Accordingly, a supplemental order was issued amending the February 23, 1977 decision to permit the DOE to undertake a further analysis of these issues in determining the level of relief which Laketon should be granted from its 1975 entitlements purchase obligations.

Total Petroleum, Inc.; Apco Oil Corp., Washington, D.C., DEX-0039, crude oil and refined products

Total Petroleum, Inc., and Apco Oil Corp., requested that the DOE finalize certain provisions of a decision and order which was issued to Total, Apco, and Oklahoma Refining Corp. (ORC) in proposed form on February 6, 1978. In that determination, the DOE proposed to grant Apco, Total, and ORC various types of administrative relief to facilitate the purchase by Total and ORC respectively, of two refineries owned by Apco in Arkansas City, Kans., and Cyril, Okla. However, in proposing the approval of exception relief with respect to the Cyril refinery, the DOE concluded that ORC should not be permitted to earn entitlements under the small refiner bias for crude oil receipts at the Cyril refinery in excess of the entitlements which would be earned by a firm with refining capacity equal to Apco's current refining capacity. Subsequent to the issuance of the proposed order, Apco and ORC submitted a joint notice of objection to that determination with respect to the Cyril refinery. In the present submission, Total and Apco indicated that they planned to immediately proceed with the transfer of the Arkansas City refinery without awaiting a res-

olution of the issues which have been raised by Apco and ORC in their notice of objection. The firms therefore requested that the DOE finalize those aspects of the February 6 proposed order which relate to the transfer of the Arkansas City refinery. After considering this request, the DOE concluded that a number of provisions of the February 6 determination should be issued as an interim order. However, the DOE also held that Apco would remain subject to the conditions contained in the proposed decision and order which related to the firm's position under the entitlements program subsequent to its sale of one refinery, until the issuance of a final decision and order in this matter.

REQUESTS FOR EXCEPTION RECEIVED FROM NATURAL GAS PROCESSORS

The Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy has issued Decisions and Orders granting exception relief from the provisions of 10 CFR 212.165 to the natural gas processors listed below. The exception relief permits the firms involved to increase the prices of the production of the gas plants listed below to reflect certain non-product cost increases.

Company	Case No.	Plant	Location	Amount of price increase (per gallon)
Coastal States Gas Corp	DXE-0243	Albany	Shackelford County, Tex	$0.6494
	DXE-0245	Bay City	Matagorda County, Tex	.0071
	DXE-0246	Corpus Christi	Nueces County, Tex	.0123
	DXE-0247	Freer	Webb County, Tex	.0269
	DXE-0249	Mission	Hidalgo County, Tex	.0115
	DXE-0250	San Antonio	Bexar County, Tex	.0061

SUMMARY DECISIONS

The DOE issued a Decision and Order dismissing the following exception requests on the ground that an alternative administrative remedy is available to the firm.

Hanson Oil Corp., Roswell, N. Mex., FEE-4365, FEE-4395

The following Decision and Order amended a Decision and Order which was issued to Texas American Oil Corp. on February 6, 1978 by making certain corrective adjustments in the entitlements obligations of United Refining Co.:

Texas American Oil Corp., Midland, Tex., DEX-0038

DISMISSALS

The following submissions were dismissed on the grounds that the relief requested was no longer necessary:

Consumer Federation of America, Washington, D.C., DSG-0004

Franconia Propane Gas Co., Inc., Harleysville, Pa., DRA-0066

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.s.t., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

MAY 8, 1978.

[FR Doc. 78-13033 Filed 5-12-89; 8:45 am]

[3128-01]

ISSUANCE OF DECISIONS AND ORDERS BY THE OFFICE OF ADMINISTRATIVE REVIEW

Week of March 13 through March 17, 1978

Notice is hereby given that during the week of March 13 through March 17, 1978, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Administrative Review and the basis for the dismissal.

APPEALS

Akin, Gump, Hauer and Feld, Washington, D.C., DFA-0149, freedom of information

Akin, Gump, Hauer and Feld (Akin) appealed from a partial denial of a Request for Information which the firm submitted under the Freedom of Information Act (the Act). In its initial request, Akin sought access to certain applications for certification of refining capacity, certain determinations with regard to such applications, and all documents which set forth rules, guidelines or criteria to be used in evaluating such applications. The Information Access Officer determined that the Akin Request for Information was too broad and therefore failed to reasonably describe the documents to which the firm sought access. Nevertheless, the Information Access Officer released to Akin seven documents which were within the scope of its request after deletion of material which he found was exempt from disclosure under Section 552(b)(4) of the Act. In considering Akin's Appeal, the DOE concluded that certain information contained in the portions of the documents which were withheld had already been made public and therefore should have been released. It was also determined that certain other material, consisting of contractual provisions of a routine nature, should have been released. However, the DOE concluded that the remainder of the information had been properly withheld under Exemption 4. On the basis of the foregoing considerations, the DOE concluded that Akin's Appeal should be granted in part.

Beacon Oil Co., Hanford, Calif., FXA-1446, crude oil

Beacon Oil Co. filed an Appeal from a Decision and Order which the FEA issued to it on July 22, 1977. *Beacon Oil Co.*, 6 FEA Par. 87,016 (July 22, 1977). In the July 22 determination the FEA concluded that Beacon had received $445,248 in excessive exception relief benefits from the provisions of the Entitlements Program during the nine-month period April 1 through December 31, 1976. The Appeal, if granted, would have resulted in the issuance of an Order reducing the amount of excessive 1976 entitlement benefits for which Beacon was required to make restitution. Beacon contended that the DOE should adjust the level of the firm's historical profitability so as to more accurately reflect the manner in which Beacon currently conducts its marketing and refining operations. Beacon also claimed that the FEA failed to comply with the provisions of Section 104 of the Energy Conservation and Production Act (EPCA) which requires the FEA to promulgate rules establishing procedures for administrative review of an appeal proceeding. In considering Beacon's Appeal, the DOE noted that the arguments based on the EPCA had been presented by the firm in a prior proceeding in which they had been fully discussed and rejected by the FEA. The DOE further determined that in analyzing Beacon's total costs and expenses for its 1976 fiscal year, the FEA had erroneously understated by $474,853 the firm's operating profitability for the period April 1 through December 31, 1976. As a result, the amount of excessive benefits which the FEA had determined that Beacon received during 1976 was also understated by a similar amount. The DOE therefore modified the July 22 Order to require Beacon to purchase additional entitlements having a value of $474,853 ($79,142 per month for the months of February

through July 1978) in order to refund these excessive benefits. In all other respects the July 22 Order was affirmed.

Donald M. Bredfeldt, Dodge City, Kans., DRA-0074, propane

Donald M. Bredfeldt (Bredfeldt) filed an Appeal from an Remedial Order which the Acting Director for Enforcement of DOE Region VII issued to him on November 4, 1977. In the Remedial Order, Bredfeldt was directed to refund revenues which he had allegedly received as a result of charging prices which exceeded the maximum levels permitted by the Mandatory Petroleum Price Regulations. Although the DOE requested Bredfeldt to supply certain data which was necessary to enable the DOE to consider the Appeal, the requested information was never submitted. Consequently, the DOE summarily denied the Bredfeldt Appeal in accordance with the provisions of 10 CFR 205.106(b)(1)(ii).

Colonial Oil Co., Alexandria, Va., FXA-1409, motor gasoline

The Colonial Oil Co. (Colonial) filed an Appeal from a Decision and Order which the FEA issued in *Colonial Oil Co.*, 6 FEA Par. 83,027 (July 8, 1977). In that Decision, the FEA denied the latest in a series of requests by Colonial for an extension of the exception relief which had initially been granted in *Colonial Oil Co.*, 2 FEA Par. 83,201 (July 3, 1975). Colonial's Appeal, if granted, would result in the an extension of previous exception relief assigning Colonial new, lower-priced suppliers of motor gasoline to furnish volumes of gasoline which Colonial would otherwise be permitted to purchase from American Petrofina, Inc., (Fina) its base period supplier. In the Appeal, the DOE noted that the most recent extension of exception relief to Colonial had included a provision that in the event the firm filed a further request for exception, Colonial should consider requesting an exception which would require Fina to place it in a new class of purchaser. *Colonial Oil Co.*, 5 FEA Par. 83,138 (April 7, 1977). In the July 8, 1977 proceeding, Colonial had argued that the existence of a settlement agreement between it and Fina precluded Colonial from seeking this type of an exception, however, the FEA had concluded that no provision of the settlement agreement precluded the firm from seeking class of purchaser relief. In its Appeal, Colonial again contended that the terms of the settlement agreement prevented the firm from seeking a change in its class of purchaser status. In considering this contention, the DOE concluded that the existence of the settlement agreement did not justify continuation of a type of exception relief which entailed the assignment of third party suppliers, because the effect of sustaining Colonial's position would be to permit Colonial and Fina to bargain away the rights of third parties. Finally, the DOE observed that since Colonial and Fina themselves had recognized that the problem which Colonial was experiencing resulted from Colonial's class of purchaser status, and since the firms had apparently agreed to place Colonial in a new class of purchaser following the decontrol of motor gasoline, it would be inappropriate for the DOE to continue to approve a type of exception relief which involved third parties. Based on these considerations, the Colonial Appeal was denied.

Davison Oil Co., Mobile, Ala., DFA-0155, freedom of information

Davison Oil Co. (Davison) appealed from a partial denial by the DOE Information Access Officer of a Request for Information which the firm had filed under the Freedom of Information Act (the Act). In its Request for Information, Davison had sought copies of DOE records pertaining to the firm's cost and pricing of fuel oil which it sold since November 1973. The Information Access Officer released copies of several documents to Davison but withheld from disclosure one document in its entirety and portions of two others on the ground that the material was exempt from disclosure as confidential proprietary information under Section 552(b)(4) of the Act. In considering Davison's Appeal, the DOE found that the firm which had submitted this material to the DOE had no objection to its public disclosure. Consequently, the DOE determined that it would be in the public interest to release the material. The Appeal was accordingly granted.

Gulf Oil Corp., Tulsa, Okla., FXA-1430, crude oil

On August 11, 1977, the Gulf Oil Corp. (Gulf) filed an Appeal from a Decision and Order which the FEA issued on July 8, 1977. *Gulf Oil Corp.*, 6 FEA Par. 83,028 (July 8, 1977). In that Order, the FEA granted Gulf an exception from the provisions of 10 CFR, Part 212, Subpart D, which permitted the firm to charge upper tier ceiling prices for 42.66 percent of the crude oil produced and sold for the benefit of the working interests from the Northwest Graylin "D" Sand Unit (the Unit) during the period July through December 1977. The FEA noted that because of the particular manner in which Gulf had allocated its administrative overhead expenses, the per barrel expenses allocated to the Unit had increased significantly between the 1973 base quarter and the firm's two most recently completed fiscal quarters. However, the FEA found that this per barrel increase in administrative overhead was a direct result of a decline in the rate of crude oil production from the Unit and did not constitute an actual increase in expenses to Gulf and the other working interests. The FEA therefore adjusted Gulf's administrative overhead expenses in calculating the amount of crude oil which the firm may sell at upper tier ceiling prices. In its Appeal, Gulf contended that the adjustment which the FEA made represented a departure from the methodology previously used in similar cases. In considering the Appeal, the DOE noted that Gulf allocated its administrative overhead expenses on the basis of the number of wells located on the Unit rather than the number of barrels that the Unit produced. The FEA found that this method resulted in the allocation of a disproportionate amount of administrative costs to wells with declining production. The DOE therefore used an "input method" of calculating the allowable price increase by substituting the level of production during the April through June 1973 period for the level of production during the current period. The DOE found that this method provided a more accurate index of the administrative expenses which are attributable to the Unit. Gulf also argued on appeal that the FEA should have utilized Gulf's allocation method because it conformed to acceptable accounting procedures. The DOE found that a firm must not only follow generally accepted accounting procedures but also that these procedures must accurately and equitably reflect a proper attribution of the firm's expenses. The DOE therefore denied the Gulf Appeal.

Hagee-Lewis Petroleum Corp., Long Beach, Calif., FXA-1491, crude oil

Hagee-Lewis Petroleum Corp. (Hagee) appealed from a Decision and Order which the FEA issued to the firm on August 16, 1977. *Hagee-Lewis Petroleum Corp.*, 6 FEA Par. 83,056 (August 16, 1977). In that Decision, the FEA denied Hagee's request for an exception from the provisions of 10 CFR, Part 212, Subpart D, which if granted would permit the firm to sell the crude which it produces from the El Segundo No. 2 Well, located in Los Angeles County, Calif., at upper tier ceiling prices. In its Appeal, Hagee contended that the FEA erred in concluding that the application of the provisions of Subpart D to the No. 2 well did not constitute a gross inequity. Specifically, Hagee contended that the FEA had incorrectly excluded certain expenditures which should have been included in the firm's operating expenses. In considering the Appeal, the DOE determined that Hagee had failed to establish that the previous analysis of the firm's operating expenses was in any way erroneous. According to the information furnished by Hagee, the firm had never incurred certain expenditures which it claimed as operating expenses. Furthermore, the DOE determined that the low profit position of the firm was due in large part to the level of salaries paid to the owner-operators of the No. 2 well. Based on these considerations, the DOE denied the Hagee Appeal.

I. U. International Oil & Gas, Inc., Philadelphia, Pa., FRA-1468, crude oil

I. U. International Oil & Gas, Inc. (IUO&G) filed an Appeal of a Remedial Order which the Regional Compliance Director of FEA Region III issued to the firm on August 31, 1977. In the Remedial Order, the Regional Compliance Director found that IUO&G had improperly certified four of its crude oil producing properties as stripper well properties and also had incorrectly determined the May 15, 1973 posted price for the crude oil produced from its Pontotoc County, Okla. properties during the period August 1973 through January 1975. Based on these findings, the Regional Office held that IUO&G had charged unlawful prices for the crude oil which it sold. IUO&G was therefore ordered to refund over $845,573.15, plus interest, to the purchaser of the crude oil. In considering the Appeal, the DOE rejected IUO&G's claim that Ruling 1974-29 is contrary to Section 4(E)(2) of the Emergency Petroleum Allocation Act. The DOE also disagreed with IUO&G's argument that Ruling 1974-29 is a substantive rule subject to the notice and comment provisions of the Administrative Procedure Act (APA). Since IUO&G had included injection wells in the calculation of average daily production, the DOE held that IUO&G had improperly classified four of its properties as stripper well properties and as a result had overcharged the purchaser of the crude oil produced from these properties. The DOE also determined that the Regional Compliance Director correctly found that IUO&G had improperly included as part of its May 15, 1973 posted price a premium of $0.15 per barrel which the purchaser of the crude oil paid IUO&G in order to secure a long term supply contract. Finally, the DOE rejected IUO&G's argument that it was arbitrary and capricious to assess

full liability for the overcharges against IUO&G instead of limiting its liability to the firm's share of the total revenues. Consequently, the IUO&G Appeal was denied.

Mobil Oil Corp., Valley Forge, Pa., FIA-1470, motor gasoline

The Mobil Oil Corp. (Mobil) filed an Appeal of an Interpretation which had been issued to the firm by the General Counsel of the FEA on August 5, 1977. In the Interpretation, the FEA General Counsel ruled that the FEA had the authority to terminate a supplier's base period supply obligation to retail motor gasoline outlets and to assign those purchasers a new base period supplier by approving a "three party agreement." The General Counsel further found that upon the FEA's approval of the "three party agreements" the retail outlets constituted "new wholesale purchasers" and therefore the new base period supplier could certify upward any increased supply volume which resulted from the FEA's order to supply these "new wholesale purchasers" under the provisions of 10 CFR 211.13(c). In considering the Appeal, the DOE rejected Mobil's argument that the provisions of Section 211.13(c) limit upward certification to increased supply obligations which result from supplying retailers who are new to the petroleum industry. The DOE found that it had the authority to terminate existing base period supply relationships and to create new ones and that Section 211.13(c) was intended to permit a supplier to certify upward any increased supply obligation which results from an order to supply a purchaser. Consequently, the DOE held that upon approval of a "three party agreement," the new base period supplier is permitted under Section 211.13(c) to certify the increased supply volume upward to its own prime supplier. The DOE also held that while the prime supplier should be notified of the request for approval of a "three party agreement" so that it may be provided an opportunity to submit comments as a potentially aggrieved party, the unwillingness of a prime supplier to accept the increased supply volume upon upward certification does not in and of itself prevent the DOE from approving a "three party agreement." Based on these considerations, the Mobil Appeal was denied.

Rock Island Refining Corp., Indianapolis, Ind., FXA-1465, crude oil

Rock Island Refining Corp. filed an Appeal from a Decision and Order which the FEA issued to it on August 12, 1977. *Rock Island Refining Corp.*, 6 FEA Par. 87,028 (August 12, 1977). In the August 12 Decision and Order, the FEA considered financial and operating data which Rock Island submitted for the April 1 through November 30, 1976, and determined that Rock Island had received $1,736,408 in excessive benefits as a result of exception relief which the firm had been granted for that eight month period in 1976. Rock Island was accordingly required to purchase entitlements valued at $1,736,408 during the period August 1977 through July 1978 in order to refund the excessive benefits which it had received. The Appeal, if granted, would result in the issuance of an Order setting aside Rock Island's entitlement purchase obligation as set forth in the August 12 Decision and Order. In considering Rock Island's Appeal, the DOE rejected the firm's contention that it be permitted to adjust the historical profitability which Rock Island had previously reported to the FEA for use in evaluating the impact of the Entitlements Program on the firm. The DOE also rejected the firm's contention that the return on invested capital (ROIC) criterion which the FEA adopted in *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975) is inappropriate to a determination of exception relief. Rock Island's claim that the FEA erroneously adjusted the ROIC which the firm realized during the period April 1 through November 30, 1976 was also rejected. The Rock Island Appeal was therefore denied in all respects.

Shell Oil Co., Houston, Tex., FXA-1398, natural gas liquids

The Shell Oil Co. filed an Appeal from a Decision and Order which the FEA issued to it on June 24, 1977. *Shell Oil Co.*, Case No. FXE-4229 (unpublished). In that Decision, the FEA denied an Application for Exception which Shell filed from the provisions of Section 212.165. The FEA determined that exception relief was not warranted because the non-product cost increases incurred in the operation of Shell's Fashing natural gas processing plant since May 1973 did not materially exceed the passthrough levels permitted under the provisions of Section 212.165. In its Appeal, Shell contended that the FEA erroneously calculated the Fashing plant's current non-product costs on the basis of data from the firm's two most recent fiscal quarters, rather than the most recent quarter. In considering the Shell Appeal, the DOE noted that current non-product costs for natural gas processors seeking exception relief from Section 212.165 are generally calculated on the basis of the two most recent quarters unless a firm is making an initial request for exception relief. Since the Shell Application for Exception was not an initial request for exception relief for the Fashing plant, the DOE concluded that Shell's non-product cost increases were properly calculated on the basis of data for the firm's two most recent fiscal quarters. The Appeal was accordingly denied.

REQUEST FOR EXCEPTION

Jim Ellis, Tyler, Tex., FEE-4071, crude oil

Jim Ellis filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, which, if granted, would permit him to sell at upper tier ceiling prices the crude oil which he anticipates he will produce after making repairs to a well located on the Nay Perry Lease in Henderson County, Tex. In considering the Ellis application, the DOE found that a substantial investment will be necessary to rework the well on the Nay Perry Lease in order to resume producing operations at that lease. The DOE further determined that the crude oil production estimate provided by Ellis indicates that the required investment would be uneconomic if the crude oil which will be produced from the lease were subject to the lower tier ceiling price rule. In addition, the DOE determined that a substantial quantity of crude oil would not be recovered if the well involved was not repaired. On the basis of these findings, the DOE determined that exception relief should be granted to Ellis which would provide him with a sufficient economic incentive to undertake the capital investment project required to resume production from the Nay Perry Lease. The Application for Exception was granted and Ellis was permitted to sell 73.79 percent of the crude oil produced from the Nay Perry Lease for the benefit of the working interest owner during the first five years after production is resumed.

Hewit & Dougherty (Roche), Refugio, Tex., DXE-0055, natural gas liquids

On November 11, 1977, Hewit & Dougherty filed a Statement of Objections to an October 28, 1977 Proposed Decision and Order in which the DOE determined that the firm should be granted an exception from the provisions of 10 CFR 212.165 to permit it to increase the prices it charges for natural gas liquid products to reflect non-product cost increases at its Roche natural gas processing plant. Hewit & Dougherty contended that ordering paragraphs (2) and (3) of the Proposed Decision should be clarified. In considering the firm's submission, the DOE determined that the language in ordering paragraph (2) did not require clarification, since it was designed to permit Hewit & Dougherty to collect the amount of exception relief granted to the firm notwithstanding the possibility that the non-product cost increases which the firm experiences during the exception period may diminish. However, the DOE determined that ordering paragraph (3) should be modified to state more clearly its objective, which is to adjust the amount of exception relief in the event that the production of a particular processing plant is altered in favor of products for which a higher regulatory passthrough of non-product costs is available. Accordingly, the Decision and Order as modified was issued in final form with an effective date of October 28, 1977.

Koch Exploration Co., Duschesne County, Utah, DXE-0410, DXE-0411, crude oil

Koch Exploration Co. (Koch) filed two Applications for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception requests, if granted, would result in extensions of the exception relief which the DOE previously granted to Koch and would permit the firm to sell certain quantities of the crude oil produced from the Sink Draw No. 1 Lease and the Cedar Rim No. 3 Lease at upper tier ceiling prices. With respect to the Sink Draw Lease, the DOE found that since Koch is currently realizing a substantial operating profit from the property, the continuation of its crude oil extraction activities would be economically feasible even in the absence of exception relief. Consequently, the DOE concluded that the exception relief previously approved for the Sink Draw Lease should not be extended. With respect to the Cedar Rim Lease, the DOE found that Koch was sustaining an operating loss at this lease and that unless the previous exception relief were extended for an additional period of time, Koch would have no incentive to continue to produce crude oil from the property. On the basis of precedents involving sumilar factual situations, the DOE concluded that the application of the lower tier price rule to the Cedar Rim Lease would continue to result in a gross inequity and that an extension of exception relief should be granted. Koch was accordingly permitted to sell 100 percent of the crude oil produced from the Cedar Rim Lease for the benefit of the working interest owner at upper tier ceiling prices.

Monsanto Co., Houston, Tex., DEE-0422, crude oil

The Monsanto Co. filed an application for exception from the provisions of 10 CFR,

part 212, subpart D, which, if granted, would have permitted the firm to sell the crude oil produced from the Hendrick "A" property located in Winkler County, Tex., at upper tier ceiling prices. In considering the exception request, the DOE found that Monsanto's operation costs had increased to the point where the firm no longer had an economic incentive to continue the production of crude oil from the Hendrick "A" lease. The DOE also determined that if Monsanto abandoned its operations at the lease a substantial quantity of domestic crude oil would not be recovered. On the basis of criteria applied in previous decisions, the DOE determined that Monsanto should be permitted to sell 100 percent of the crude oil produced from the Hendrick "A" lease for the benefit of the working interest owners at upper tier ceiling prices.

Monsanto Co., Houston, Tex., DEE-0423, crude oil

The Monsanto Co. filed an application for exception from the provisions of 10 CFR, part 212, subpart D, which, if granted, would have permitted the firm to sell the crude oil produced from the Hendrick "C" property located in Winkler County, Tex., at upper tier ceiling prices. In considering the exception request, the DOE found that Monsanto's operation costs had increased to the point where the firm no longer had an economic incentive to continue the production of crude oil from the Hendrick "C" lease. The DOE also determined that if Monsanto abandoned its operations at the lease a substantial quantity of domestic crude oil would not be recovered. On the basis of criteria applied in previous decisions, the DOE determined that Monsanto should be permitted to sell 100 percent of the crude oil produced from the Hendrick "C" lease for the benefit of the working interest owners at upper tier ceiling prices.

Nick's Chevron, Ozona, Tex., DRC-0002, motor gasoline

Nick's Chevron (Nick's) filed an application for exception from the provisions of 10 CFR part 211.12 which, if granted, would have resulted in the issuance of an Order increasing the firm's annual base period use of motor gasoline for the retail service stations it operates from 259,019 gallons to 459,091 gallons per year. In considering Nick's initial exception application, the FEA Region VI Office determined that exception relief should not be granted on the basis of mere speculations as to future hardship. The regional office therefore issued a proposed decision and order denying the application for exception filled by Nick's Chevron. On October 17, 1977, Nick's submitted a statement of objections to the proposed decision and order. In its Statement, Nick's Chevron challenged none of the findings contained in the proposed order. Instead, the firm argued that its actual use of motor gasoline far exceeded its base period use and that its consequent need to seek surplus for so large a portion of its current use constituted a gross inequity. In considering the statement, the National Office of Administrative Review determined that Nick's had failed to demonstrate that it was experiencing an increased demand for motor gasoline as a result of a change in the circumstances under which that product was supplied or used, or that any of the objectives of the DOE statutes would be frustrated if exception relief were denied to the firm. The DOE therefore concluded that Nick's had failed to establish that exception relief was warranted on grounds of gross inequity. The application for exception was accordingly denied.

PETITION FOR SPECIAL REDRESS

Gas del Oro, Inc., Gas del Oro International, Inc. and the El Dorado Marketing Co. of Laredo, Houston, Tex., FSG-0049, natural gas liquid products

Gas del Oro, Inc., Gas del Oro International, Inc. and the El Dorado Marketing Co. of Laredo (Gas del Oro) filed a petition for special redress. The submission related to a dispute as to the maximum allowable prices for the natural gas liquid products that Suburban Propane Gas Corp. sells to Gas del Oro. If granted, the Gas del Oro petition would have resulted in the issuance of an order directing the DOE Office of Enforcement to take immediate action to conclude all pending compliance proceedings involving Gas del Oro and Suburban, or, in the alternative, declaring that Gas del Oro has exhausted its administrative remedies in the matter. In considering the Gas del Oro petition, the DOE noted that budgetary, policy and time constraints require the agency to assign priorities to the numerous compliance matters before it, and that such matters are not susceptible to the setting of arbitrary deadlines. The DOE found that although the Gas del Oro compliance proceedings had been under consideration by the DOE for a substantial period of time, the firm had failed to make a prima facie showing that a gross abuse of discretion had occurred. However, the DOE did conclude that unless the Gas del Oro compliance matters are promptly addressed there would no longer be any reasonable basis for adhering to the view that they can be resolved by the agency. Accordingly, the Gas del Oro petition was dismissed without prejudice to a refiling if the DOE does not conclude the pending compliance matters within ninety days.

SUPPLEMENTAL ORDER

Buck's Butane & Propane Service, Inc., San Jose, Calif., DRX-0051, propane

On November 15, 1977, the DOE issued a decision and order to Buck's Butane and Propane Service, Inc. (Buck's) which granted in part an appeal from a remedial order which was issued to the firm by the Director of Compliance of FEA region IX on April 21, 1977. *Buck's Butane and Propane Service, Inc.*, 1 DOE Par. 80,119 (November 15, 1977). In that determination, the remedial order was remanded to the Director of Enforcement of DOE region IX for further findings of fact concerning the level of refunds which Buck's should be required to make to its customers for propane pricing violations. The director of enforcement was directed to issue a revised remedial Order within 60 days. In considering this matter, the DOE observed that the present Buck's enforcement proceeding has been pending before the region IX office since March 1974. Moreover, more than 110 days had elapsed since the issuance of the November 15 appeal decision. Under these circumstances, the DOE concluded that further delay in the issuance of a revised remedial order to Buck's would be contrary to the public interest, contrary to the interest of the firm, and contrary to the interests of Buck's customers. Accordingly, an order was entered specifying that a revised remedial order should be issued to Buck's within five days. The DOE determined that if a revised remedial order is not issued at that time, those portions of the April 21 remedial order which were remanded to the region IX office should be rescinded.

SUMMARY DECISION

The following firm filed an application for stay of a remedial order which had been issued to it by the DOE. In considering the stay request, the DOE referred to a recent decision in *Rickelson Oil and Gas Co.*, 6 FEA Par. 85,029 (August 24, 1977), in which it held that a remedial order will generally be stayed pending the determination of an appeal unless it appeared that the public interest required immediate compliance with the remedial order. Since the record in this case did not indicate that the public interest required immediate compliance with the remedial order, the DOE granted the request for stay pending consideration of the Appeal.

Gala Gas Co., Eufaula, Ala., DRS-0027

Copies of the full text of these decisions and orders are available in the public docket room of the Office of Hearings and Appeals, room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.d.t., except holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.

MAY 8, 1978.

[FR Doc. 78-13034 Filed 5-12-78; 8:45 am]

[3128-01]

ISSUANCE OF PROPOSED DECISIONS AND ORDERS BY THE OFFICE OF HEARINGS AND APPEALS

April 18 through April 28, 1978

Notice is hereby given that during the period April 18 through April 28, 1978, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR, part 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within 10 days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by the aggrieved person of actual notice,

whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.d.t., except Federal holidays.

MELVIN GOLDSTEIN,
Director, Office of Hearings and Appeals.

MAY 8, 1978.

Kenard D. Brown, Casper, Wyo., DEE-0658, crude oil

Kenard D. Brown filed an application for exception from the provisions of 10 CFR 212.73 which if granted, would permit the producers of crude oil from 20 unspecified properties to sell all of the crude oil which they produce while testing an economizer pump manufactured by Mr. Brown at prices which are in excess of the lower tier ceiling price. On April 24, 1978, the DOE issued a proposed decision and order which determined that the exception request be denied.

Champlin Petroleum Co., Fort Worth, Tex., FEE-4730, crude oil

On August 24, 1977, the Champlin Petroleum Co. filed an application for exception from the provisions of 10 CFR 211.67 (the old oil entitlements program). The exception request, if granted, would permit Champlin to sell a sufficient number of entitlements to offset the costs which the firm incurred as a result of increasing the crude oil inventory which it maintains at its Corpus Christi refinery. On April 24, 1978, the Department of Energy issued a proposed decision and order which determined that Champlin's request be denied.

Edwin L. Cox, Lafayette, La., DEX-0037, crude oil

Edwin L. Cox filed an application for exception from the provisions of 10 CFR, part 212, subpart D. In that application Cox requested that the terms of a decision and order issued to it on May 23, 1977, be modified in order to permit the firm to sell at upper tier prices a greater quantity of the crude oil produced as a result of an investment at the Seward Lejeune lease in Jefferson Davis Parish, La. On April 24, 1978, the DOE issued a proposed decision and order which determined that the Cox exception request be granted.

Eason Oil Co., Oklahoma City, Okla., DEE-0522, crude oil

Eason Oil Co. filed an application for exception from the provisions of 10 CFR, part 212, subpart D, which if granted would permit Eason to increase its selling prices for crude oil which it produces from the Weiner property above maximum permissible levels specified in 10 CFR 212.73. On April 28, 1978, the DOE issued a proposed decision and order which determined that Eason's request be granted in part.

R. H. Engelke, San Antonio, Tex., DEE-0904, crude oil

R. H. Engelke (Engelke) filed an application for exception from the provisions of 10 CFR, part 212, subpart D, which if granted, would permit Engelke to sell the crude oil which is produced from the Bertha Copsey lease located in Jackson County, Tex., at upper tier ceiling prices. On April 25, 1978, the DOE issued a proposed decision and order which determined that the exception request be granted in part.

Equipment, Inc., Lafayette, La., FEE-4849, crude oil

Equipment, Inc. (Equipment) filed an application for exception from the provisions of 10 CFR, part 212, subpart D, which, if granted, would permit the firm to sell the crude oil produced from the Hayes No. 1 and Hayes A-1 wells, located in Acadia Parish, La., at market price levels. On April 24, 1978, the DOE issued a proposed decision and order which determined that the exception request be denied.

Hanover Management Co., Dallas, Tex., DEE-0496, crude oil

On February 1, 1978, Hanover Management Co. (Hanover) filed an application for exception from the provisions of 10 CFR, part 212, subpart D, which, if granted, would permit Hanover to sell the crude oil which it produces from the Dolly Cain No. 1 well at upper tier ceiling prices. On April 28, 1978, the DOE issued a proposed decision and order which determined that the exception request be granted in part.

Midroc Oil Co., Dallas, Tex., DEE-0098, crude oil

On November 22, 1977, Midroc Oil Co. (Midroc) filed an application for exception from the provisions of 10 CFR, part 212, subpart D, which if granted, would permit Midroc to sell the crude oil which it produces from the J. W. Parker lease, located in the Alloway field, Adams County, Miss., at market price levels. On April 25, 1978, the Department of Energy issued a proposed decision and order denying the Midroc request.

Monsanto Co., Houston, Tex., DEE-0490, crude oil

Monsanto Co. filed an application for exception from the provisions of 10 CFR, part 212, subpart D, which if granted, would permit Monsanto to sell the crude oil which it produces from the North Black Slough unit at upper tier ceiling prices. On April 24, 1978, the DOE issued a proposed decision and order which determined that the exception request be granted in part.

Monsanto Co., Houston, Tex., DXE-0481, DXE-0482, crude oil

Monsanto Co. filed two applications for exception from the provisions of 10 CFR, part 212, subpart D, which if granted, would result in the extension of exception relief previously approved and permit the firm to continue to sell certain crude oil which it produces at upper tier ceiling prices. On April 28, 1978, the DOE issued a proposed decision and order which determined that the exception requests be denied.

Mull Drilling Co., Inc., Wichita, Kans., FEE-4791, crude oil

Mull Drilling Co., Inc., filed an application for exception from the provisions of 10 CFR, part 212, subpart D, which if granted, would permit Mull to sell the crude oil which it produces from the Roth lease at upper tier ceiling prices. On April 24, 1978, the DOE issued a proposed decision and order which determined that the exception request be granted in part.

Texaco, Inc., Los Angeles, Calif., DEE-0947, crude oil

Texaco, Inc., filed an application for exception from the provisions of 10 CFR, part 212, subpart D, in which the firm requested that it be permitted to sell the crude oil produced from an offshore drilling platform located in Cook Inlet, Alaska, at exempt price levels. On April 24, 1978, the DOE issued a proposed decision and order which determined that the Texaco exception request be granted.

TOSCO Corp., Los Angeles, Calif., DXE-0494, crude oil

TOSCO Corp. filed an application for exception from the provisions of 10 CFR 211.67, which if granted, would relieve TOSCO of a portion of its monthly purchase obligations under the entitlements program commencing with the month of April 1978. On April 19, 1978, the DOE issued a proposed decision and order which determined that the exception request be denied.

REQUESTS FOR EXCEPTION RECEIVED FROM NATURAL GAS PROCESSORS

The Office of Hearings and Appeals of the Department of Energy has issued Proposed Decisions and Orders granting exception relief from the provisions of 10 CFR 212.165 to the natural gas processors listed below. The proposed exception relief permits the firms involved to increase the prices of the production of the gas plants listed below to reflect certain non-product cost increases:

Company	Case No.	Plant	Location	Amount of price increase (per gallon)
Coastal States Gas Corp	DEE-0458	Lakin	Kearny, Mo	$0.0270
Doric Petroleum, Inc	DXE-0953	Hennessey	Kingfisher, Okla	.0173
	DXE-0954	Newcastle	Grady, Okla	.0191
Gas Engine & Compressor Service, Inc	DXE-0945	Freestone	Freestone, Tex	.04867
Hunt Petroleum Corp	DXE-0940	Kinder	Allen Parish, La	.0277
Indian Wells Oil Co	DXE-1018	Indian Wells	Crockett, Tex	.06648
Marathon Oil Co	DEE-0376	Elk Basin	Park, Wyo	.0488
	DEE-0377	Susan Peak	Tom Green, Tex	.0426
Matrix Land	DXE-0748	Box-Elmdale Tuscola	Taylor and Gallahan, Tex	.31262
Texas Pacific Oil Co., Inc	DXE-0911	Adena	Morgan, Colo	.1610
	DXE-0912	Hamlin	Fisher, Tex	.0347
	DXE-0913	South Fullerton	Andrews, Tex	.0063

[FR Doc. 78-13035 Filed 5-12-78; 8:45 am]

[3128-01]

Energy Supply and Environmental Coordination Act

INTENTION TO RESCIND A CONSTRUCTION ORDER

The Department of Energy (DOE) hereby gives notice pursuant to section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), 15 U.S.C. 792(f), as amended, and 10 CFR 303.134(a) and 303.136(b), of its intention to rescind the Construction Order issued on June 30, 1977, to the major fuel burning installation (MFBI) named below:

Docket No.	Owner	Installation	Unit	Location
OCU-1300-1-1	Goodyear Tire & Rubber Co	Goodyear Gadsden Plant	1	Gadsden, Ala.

Such order would have required that this MFBI be designed and constructed so as to be capable of using coal as its primary energy source.

By letter dated November 17, 1977, addressed to the Federal Energy Administration, the Goodyear Tire and Rubber Co. notified DOE[1] that plans for construction of Unit 1 at the Goodyear Gadsden Plant have been terminated by the Goodyear Tire and Rubber Co. and that Unit 1 therefore will not be constructed. Further, the above cited letter from the Goodyear Tire and Rubber Co. transmitted as attachments thereto duly executed and certified revised Schedules A-1 and A-2 of Form FEA C-607-S-O ("Major Fuel Burning Installation Early Planning Process Report") amending previously submitted Schedules A-1 and A-2, which reported the planned construction of Unit 1 at the Goodyear Gadsden Plant.

Based on the November 17, 1977, letter and accompanying revised Schedules A-1 and A-2, DOE finds that significantly changed circumstances as defined in 10 CFR 303.136(b)(1), upon which the Construction Order was issued, have occurred and that rescission of the outstanding Construction Order issued to the MFBI named above is appropriate.

Comment on DOE's intention to rescind the Construction Order issued to the above named installation is invited. Interested persons may submit written data, views, or arguments, with respect to this proposed Rescission Order to Public Hearing Management, Box TL, Department of Energy, Room 2313, 2000 M Street NW., Washington, D.C. 20461.

Comments and other documents submitted to DOE Public Hearing Management should be identified on the outside of the envelop in which they are transmitted and on the document itself with the designation "Proposed Rescission Order for the Goodyear Gadsden Plant Installation."

All written comments received by 4:30 p.m., June 1, 1978, and all other relevant information submitted to or available to DOE will be considered by DOE prior to issuance of a Rescission Order.

Any information considered to be confidential by the person furnishing it must be so identified and submitted in writing in accordance with 10 CFR 303.9(f). DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

Any questions regarding this Notice should be directed to DOE National Headquarters as follows: Mr. Walter A. Romanek, Director, Division of Coal Utilization, Department of Energy, Code OCU (Proposed Rescission Order: Goodyear Gadsden Plant, Gadsden Installation, Gadsden, Ala. Installation, Docket Number OCU-0647), Washington, D.C. 20461, telephone 202-254-3910.

[1]Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act, Pub. L. No. 95-91.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 et seq.), as amended by Pub. L. 95-70; Federal Energy Administration Act of 1974 (15 U.S.C. 761 et seq.), as amended by Pub. L. 95-70); Department of Energy Organization Act (Pub. L. 95-91) E.O. 11790 (39 FR 23185); E.O. 12009 (42 FR 46267).)

Issued in Washington, D.C., May 8, 1978.

BARTON R. HOUSE,
Assistant Administrator for Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-13126 Filed 5-12-78; 8:45 am]

[3128-01]

INERTIAL FUSION ADVISORY COMMITTEE

Notice of Renewal

This notice is published in accordance with the provisions of section 7 of the Office of Management and Budget Circular A-63, as amended. Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Management Secretariat, General Services Administration, notice is hereby given that the Inertial Fusion Advisory Committee has been renewed for a 24-month period ending on April 30, 1980.

The renewal of this Committee has been determined necessary and in the public interest. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), the Department of Energy Organization Act (Pub. L. 95-91), OMB Circular No. A-63 (Revised), and other directives and instructions issued in implementation of those Acts.

Further information regarding this Committee may be obtained from the Department of Energy Advisory Committee Management Office, 202-566-9996.

Issued at Washington, D.C. on May 10, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration,

Department of Energy.

[FR Doc. 78-13127 Filed 5-12-78; 8:45 am]

[3128-01]

[Case Number 630R00108]

TEXACO INC.

Consent Order

I. INTRODUCTION

Pursuant to 10 CFR 205.199J, the Office of Special Counsel of the Department of Energy (DOE) hereby gives Notice of a Consent Order which was executed between Texaco Inc. (Texaco) and the DOE on April 25, 1978. In accordance with that Section, DOE will receive comments with respect to this Consent Order. Although DOE has signed and tentatively accepted this Consent Order, DOE may, after consideration of comments received, withdraw its acceptance and, if appropriate, attempt to negotiate an alternative Consent Order.

II. THE CONSENT ORDER

Texaco Inc. is a refiner engaged in the production of crude oil, in refining, and in the marketing of petroleum products subject to DOE regulations.

Texaco, in its sales of motor gasoline and distillates to Gull Oil Company (Gull), Seattle, Wash., consistently treated Gull as a separate class of purchaser and calculated its May 15, 1973, price charged in transactions with that class by using prices quoted in the June 21, 1973 contracts, rather than employing prices charged in transactions with Gull on or before May 15, 1973. The Special Counsel has determined preliminarily that Texaco's use of prices charged by it to Gull insofar as they were calculated on the basis of the June 21, 1973 contracts and not on the basis of prices charged to Gull in transactions on or before May 15, 1973, resulted in Texaco's receiving revenues in excess of those permitted by applicable CLC, FEA, and DOE regulations.

In resolution of the issue raised, DOE and Texaco executed a Consent Order on April 25, 1978, the significant terms of which are as follows:

(1) Texaco shall immediately begin using prices actually charged Gull in transactions on or before May 15, 1973, to determine current maximum lawful selling prices.

(2) Texaco shall, within one year from the effective date of this Consent Order, refund by cash (in twelve equal monthly installments) to Gull $1,973,113, plus interest, for excess revenues received during the period August 19, 1973 through June 9, 1977. Interest will be computed at a rate of 6 percent from August 19, 1973 through June 30, 1975; 9 percent from July 1, 1975 through January 31, 1976; 7 percent from February 1, 1976 through January 31, 1978; and 6 percent from February 1, 1978 through the date of the refund by Texaco.

(3) Texaco shall refund by cash, within 90 days of the effective date of the Consent Order, to the firms (listed on Attachment A of the Consent Order) who purchased product from Gull at the time of the alleged overcharges but who are no longer purchasing product from Gull. The Office of Special Counsel has determined that an appropriate remedy for these firms would be a direct refund by Texaco to them. The total amount of such refunds is $1,409,851, plus interest.

(4) Each refund shall include a statement by Texaco that the refund is (i) required by DOE pursuant to a Consent Order, (ii) shall be treated by the firm receiving the refund as a reduction of its increased costs of product for the purposes of DOE regulations, and (iii) shall, in turn, be passed through to its customers to the extent required by DOE regulations.

(5) The provisions of 10 CFR 205.199J including the publication of this Notice, are applicable to the Consent Order.

III. SUBMISSION OF WRITTEN COMMENTS

Interested persons are invited to comment in writing to Mr. Bill Eaton, Branch Manager, Southwest District, Office of Special Counsel, Department of Energy, One Allen Center, Suite 660, 500 Dallas Avenue, Houston, Tex. 77002. Copies of this Consent Order may be received free of charge by written request to this same address or by calling, 713-226-5421.

Comments should be identified on the outside of the envelope and on documents submitted with the designation, "Comments on Texaco Consent Order." All comments received by 4:30 p.m. CDT, on or before June 12, 1978, will be considered by DOE in evaluating the Consent Order.

Any information or data which, in the opinion of the person furnishing it, is confidential, must be identified as such and submitted in accordance with the procedures outlined in 10 CFR 205.9(f).

Issued in Washington, D.C.

Dated: May 11, 1978.

PAUL L. BLOOM,
Special Counsel for Compliance.

[FR Doc. 78-13209 Filed 5-12-78; 8:45 am]

[3128-01]

Economic Regulatory Administration

ASPHALT & PETROLEUM INDUSTRIES

Action Taken on Consent Order

Pursuant to 10 CFR 205.199J, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) as successor to the Federal Energy Administration (FEA) hereby gives notice of final action taken on a Consent Order. Under the terms of 10 CFR 205.199J(b), the ERA may determine that Consent Order involving sums of $500,000 or less will not become effective until the ERA publishes notice of its execution and solicits and considers public comments with respect to its terms. The ERA determined that publication of notice of this Consent Order in the FEDERAL REGISTER was in the public interest. On February 27, 1978, the ERA published notice of the Consent Order which was executed between Asphalt & Petroleum Industries (Asphalt) and FEA (43 FR 8004 February 27, 1978). With that notice and in accordance with 10 CFR 205.199J(c) the ERA invited interested persons to comment on the Consent Order. A press release was issued simultaneously.

No comments were received with respect to the Consent Order. Therefore the ERA has concluded that the Consent Order as executed between FEA and Asphalt is an appropriate resolution of the compliance proceedings described in the Notice published on February 27, 1978, and hereby gives notice that the Consent Order shall become effective as proposed, without modification, upon publication of this Notice in the FEDERAL REGISTER.

Issued in Washington, D.C., May 9, 1978.

E. W. DORCHEUS,
Acting Director, Audit and Enforcement, Economic Regulatory Administration.

[FR Doc. 78-13076 Filed 5-12-78; 8:45 am]

[3128-01]

EVALUATION OF PRIORITY DESIGNATION UNDER CANADIAN ALLOCATION PROGRAM AS TO KOCH REFINING CO.'S REFINERY AT PINE BEND, MINN. AND ASHLAND OIL, INC.'S REFINERY AT ST. PAUL PARK, MINN.

Notice of Conference

Notice is hereby given that the Economic Regulatory Administration ("ERA") of the Department of Energy ("DOE") will hold a public conference on May 31, 1978, beginning at 9 a.m., c.s.t., in Courtroom 2, Federal Building and United States Courthouse, 316 North Robert, St. Paul, Minn., with Koch Refining Co. (Koch), Ashland

Oil, Inc. (Ashland), Williams Pipe Line Co. (Williams), Osage Pipeline Co. (Osage) and other interested or potentially aggrieved parties. The purpose of the conference is to assist ERA in its continuing evaluation pursuant to 10 CFR 214.34 (Mandatory Canadian Crude Oil Allocation Regulations) of the designation of Koch's refinery at Pine Bend, Minn., and Ashland's refinery at St. Paul Park, Minn., as first priority refineries under the Mandatory Canadian Crude Oil Allocation Regulations.

This conference will afford interested parties the opportunity to present their views on all of the issues relevant to ERA's evaluation of the priority designation of the Koch and Ashland refineries and will also permit an exchange of views on the issues among interested parties and ERA officials.

Background

On December 2, 1977, the ERA held a public conference in Minneapolis, Minn. to evaluate the priority designations of the Koch and Ashland refineries in light of changes in these refineries' access to non-Canadian sources of crude oil. (42 FR 59998, November 23, 1977.) The central issue at this conference was the volume of non-Canadian source crude oil available to the Koch and Ashland refineries through the crude oil pipeline recently completed by Williams from Mason City, Iowa to St. Paul, Minn.

Following that conference, on December 27, 1977, the ERA issued a Decision and Order to Koch and Ashland which determined that the current facts did not warrant a change in the priority status of either refinery. However, the ERA reduced the refineries' respective base period volumes of Canadian crude oil to reflect each refinery's current capability of receiving 30,000 barrels per day (B/D) of non-Canadian crude oil through the Williams pipeline. The Decision and Order noted that, by April 1978, the Williams pipeline capacity will increase to approximately 120,000 B/D. However, the actual crude oil throughput will be limited to approximately 70,000 B/D until August 1978, when the expansion of the Osage pipeline, the only pipeline currently capable of transporting crude oil to the Williams pipeline for delivery to the Minneapolis area, is completed. The ERA stated that it would continue to monitor changes in the refineries' access to non-Canadian crude oil:

> This determination shall be reviewed as actual refinery and pipeline operation data become available. * * * ERA will also review this decision before the beginning of the April–June 1978 CAP allocation period, and may review it at any time, in order to determine whether the adjustments to base period runs to stills ordered herein should be continued or changed or whether a change in the priority status * * * is warranted.

On March 23, 1978, the ERA gave notice that it was considering action to change the priority designation of the Koch and Ashland refineries from first to second priority status under the CAP (43 FR 13388, March 30, 1978). In the March 23 Notice, the ERA tentatively concluded that, due to changes in their current access to non-Canadian crude oil, the Koch and Ashland refineries no longer qualified for first priority status under the CAP. This tentative conclusion was based on preliminary findings that, by May 1, 1978, the Koch and Ashland refineries would be able to receive more than 75 percent of their respective base period volumes from non-Canadian sources.[1] In arriving at this tentative conclusion, the ERA estimated the volumes of non-Canadian crude oil available to Koch and Ashland by barge up the Mississippi River (30,000 B/D and 15,000 B/D, respectively), the Portal and Minnesota pipelines (11,000 B/D and 6,500 B/D, respectively), and the Williams crude oil pipeline (35,000 B/D each). The March 23 Notice invited comments on these preliminary findings and the consequences of designating Koch and Ashland as second priority refineries.

Six written comments were received in response to the March 23 Notice. After consideration of these comments, as well as other information available at this time, we have decided to solicit additional information from the parties and public comment concerning the following items before taking final action with respect to the resolution of this matter:

a. The maximum volume of crude oil which the Koch and Ashland refineries currently (and projected through September 1979) are physically capable of receiving by barge up the Mississippi River, taking into account lock problems, inadequate dredging, inclement weather and tankage considerations.

b. The current and projected crude oil throughput capacities, by month from May 1 through December 31, 1978, of the Williams and Osage pipelines to the Koch and Ashland refineries.

c. The tariff restrictions applicable to the Williams pipeline and the policy and practice of Williams with respect to waivers of tariff restrictions.

d. The grade and quality of crude oils which the Koch and Ashland refineries are physically capable of processing, and the variations in product yield that would result from processing different grades of crude oil in the respective refineries.

e. The comparative cost of CAP refineries supplying petroleum products to the States of North Datota, South Dakota, Montana, Wisconsin, and Minnesota of alternative sources of non-Canadian crude oil. We are particularly interested in comments on the marketplace impacts of water-borne crude oil costs.

f. The extent to which priority refineries use exchanges among themselves to facilitate distribution of Canadian crude oil allocated under the CAP and the extent to which priority refineries use exchanges with Canadian refineries to replace the declining exports of Canadian crude oil.

g. The effectiveness of the current method of allocating Canadian crude oil and such other related matters as any interested party may wish to raise.

Conference Procedures

ERA is convening this conference pursuant to 10 CFR 205.171 and paragraph 26 of DOE Delegation Order No. 0204–4. The Delegation Order authorizes the Administrator of the ERA to conduct conferences, hearings or public hearings with respect to the functions delegated thereby and to administer oaths and affirmations to any person appearing at such conference or hearing. Pursuant to this Delegation Order the ERA official designated to preside at the conference will be authorized to administer oaths or affirmations to any person presenting testimony at the conference, and the ERA hereby requests that all persons present their testimony under oath due to the complexities of the subject matter of the conference and the necessity for the ERA's final determination to be based on as reliable and complete a record as possible. The presiding ERA official will be authorized to conduct the conference in a fashion that will, in his or her judgment, facilitate the orderly presentation of interested parties' oral statements. All interested persons are requested to present views as to the issue or issues involved, and will be afforded the opportunity to make opening and closing statements, which may be subject to time limitations if so specified by the presiding ERA official.

Any interested person may submit questions to be asked of any person

[1] During the based period November 1, 1974, through October 31, 1975, Koch's Pine Bend refinery had total crude oil runs to stills of 89,713 B/D and total adjusted Canadian crude oil runs to stills of 74,383 B/D. The adjusted Canadian crude oil runs to stills consisted of 5,691 B/D of Canadian light crude oil and 68,692 B/D of Canadian heavy crude oil. Seventy-five percent of the refinery's total base period runs to stills is 67,285 B/D. During the base period, Ashland's St. Paul Park refinery had total crude oil runs to stills of 54,819 B/D and total adjusted Canadian crude oil runs to stills of 44,707 B/D. The adjusted Canadian crude oil runs to stills consisted of 39,904 B/D of Canadian light crude oil and 4,803 B/D of Canadian heavy crude oil. Seventy-five percent of the refinery's base period runs to stills is 41,114 B/D.

making a statement at the conference to the address indicated below one day in advance of the conference. Any person who wishes to ask a question at the conference may submit the question, in writing, to the presiding officer, who will determine whether the question is relevant and whether time limitations permit it to be answered.

This conference will be open to the public. Any person who wishes to make an oral statement at the conference must give notice thereof to the Chief, Crude Oil Allocation Branch, Economic Regulatory Administration, P.O. Box 19028, 20th Street Postal Station NW., Washington, D.C. 20036, 202-254-9707, on or before May 24, 1978. This notice should indicate the issues which will be addressed, the amount of time desired, and a person (with address and telephone number) to accept notification of the grant of time for an oral statement and the allotted time for the oral statement. The ERA reserves the right to restrict the number of such persons to be heard and to establish procedures governing the presentation of such oral statements.

Any person who wishes to file written comments with the ERA will be permitted to do so, either before or after the conference. Pre-conference comments must be sent to the Chief, Crude Oil Allocation Branch, at the above address before May 26, 1978. Post-conference comments must be received by June 9, 1978. Any information or data considered confidential by the person furnishing it must be identified on a second copy thereof. All comments (with confidential material excluded) received by the ERA will be available for public inspection in the Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

A transcript of the conference will be made, and it will be available for public review and copying at the Freedom of Information Office at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Any person may purchase a copy of the transcript from the reporter.

Further information concerning this conference may be obtained from Robert G. Bidwell, Jr., Chief, Crude Oil Allocation Branch, at the above address.

Issued at Washington, D.C., on May 8, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-13036 Filed 5-12-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. ER78-291]

NORTHERN STATES POWER CO. (MINNESOTA)

Order Accepting for Filing and Suspending Rate Increase, Providing for Hearing and Establishing Procedures

MAY 5, 1978.

On April 7, 1978, Northern States Power Co. (NSP) tendered for filing proposed revisions to its full requirement agreements[1] with 16 municipal customers and to its partial requirement agreements[2] with 9 municipal customers.[3] The proposed revisions provide for total increased charges to the customers of $1,897,000 (14.3 percent) for the test year ending April 30, 1979. NSP has requested an effective date 30 days after filing, i.e., May 8, 1978, and suspension of the proposed increase until July 1, 1978.

NSP's request for a May 8, 1978 effective date, and for suspension until July 1, 1978 is predicated upon a moratorium on rate increases agreed to by the company in settlement of Docket No. ER76-818 which settlement was approved by the FPC.[4] The moratorium precludes increases in rates until July 1, 1978. NSP however, asserts that it may file for a rate increase before that date if the company does not begin collecting under the rate increase until July 1, 1978. Thus, consistent with the settlement of Docket No. ER76-818, NSP has requested that the rate be suspended until July 1, 1978.

Notice of the filing was issued on April 13, 1978, with comments due on or before April 24, 1978. On April 21, 1978, the Cities of Anoka, Arlington, Brownton, Buffalo, Chaska, Granite Falls, Kosota, Kasson, Lake City, North Saint Paul, Saint Peter, Shakopee, Waseka, and Winthrop, Minn. (Cities) filed a Petition to Intervene.[5]

Our review of the Applicant's filing indicates that the proposed rate increase has not been shown to be justified and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the proposed increase for filing, set the matter for hearing, and suspend its operation for five months until October 8, 1978 when it will go into effect, subject to refund.

The Commission finds: (1) It is necessary and proper in the public interest and to aid in the enforcement of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the proposed rate increase tendered for filing by Northern States Power Co. of Minnesota on April 7, 1978, establish procedures for that hearing, and that the proposed rate increase be accepted for filing, suspended, and the use thereof deferred, as as hereinafter ordered.

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Act and by the Federal Power Act, particularly Sections 205, 206, 301, 308 and 309 thereof, and pursuant to the Commission's Rules of Practice and Procedure and pursuant to the Regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rate increase proposed by Northern States Power Co. of Minnesota in this proceeding.

(B) Pending such hearing and decision thereon, the proposed increased rates and charges filed by Northern States Power Co. of Minnesota on April 7, 1978, are hereby accepted for filing, suspended and the use thereof deferred until October 8, 1978, when they shall become effective subject to refund.

(C) The Federal Energy Regulatory Commission Staff shall serve top sheets in this proceeding on or before August 2, 1978.

(D) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose shall preside at a prehearing conference in this proceeding to be held on August 11, 1978, at 10 a.m. in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Said Judge is authorized to establish procedural dates and to rule upon all motions (except petitions to intervene, motions to consolidate and sever, and motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(E) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

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[1] The full requirements rate schedules are designated as Schedule A, Firm Power Service, Primary Distribution Voltage; and Schedule A-1, Firm Power Service, Transmission Voltage. Both rate schedules would be applicable to each full requirements customer. See, Attachment.

[2] The partial requirements rate schedules are designated as Schedule A, Load Pattern Service, Primary Distribution Voltage; Schedule A-1, Load Pattern Service, Transmission Voltage; and Schedule J, Load Pattern Service, Transmission Voltage. Pages 4 and 5 of the Attachment indicate which partial requirements customer will be served under which rate schedule.

[3] See, Attachment.

[4] See, Order Accepting Settlement Agreement and Setting Hearing, Docket No. ER76-818, issued on May 25, 1977.

[5] The Cities' Petition to Intervene will be acted upon by separate Commission order in this docket.

[Rate Schedule Designations, Docket No. ER78-291]

NORTHERN STATES POWER CO. (MINNESOTA)

FIRM POWER SERVICE

Filed: April 7, 1978; submittals undated.
Schedule A—Primary distribution voltage.
Schedule A-1—Transmission voltage (69 kV and above, for future service).

Designations	Descriptions	Other party
1. Supp. No. 8 to rate schedule FPC No. 338 (supersedes supp. No. 7)	8th revised schedule A	City of Anoka.
2. Supp. No. 9 to rate schedule FPC No. 338	Schedule A-1	Do.
3. Supp. No. 8 to rate schedule FPC No. 378 (supersedes supp. No. 7)	Schedule A	City of Arlington.
4. Supp. No. 9 to rate schedule FPC No. 378	Schedule A-1	Do.
5. Supp. No. 8 to rate schedule FPC No. 324 (supersedes supp. No. 7)	Schedule A	Village of Brownton.
6. Supp. No. 9 to rate schedule FPC No. 324	Schedule A-1	Do.
7. Supp. No. 8 to rate schedule FPC No. 369 (supersedes supp. No. 7)	Schedule A	Village of Buffalo.
8. Supp. No. 9 to rate schedule FPC No. 369	Schedule A-1	Do.
9. Supp. No. 9 to rate schedule FPC No. 323 (supersedes supp. No. 8)	Schedule A	City of Chaska.
10. Supp. No. 10 to rate schedule FPC No. 323	Schedule A-1	Do.
11. Supp. No. 10 to rate schedule FPC No. 355 (supersedes supp. No. 8)	8th revised schedule A	City of Granite Falls.
12. Supp. No. 11 to rate schedule FPC No. 355 Schedule A-1		Do.
13. Supp. No. 8 to rate schedule FPC No. 335 (supersedes supp. No. 7)	Schedule A	Home Light & Power Co.
14. Supp. No. 9 to rate schedule FPC No. 335	Schedule A-1	Do.
15. Supp. No. 9 to rate schedule FPC No. 318 (supersedes supp. No. 8)	Schedule A	Village of Kasota.
16. Supp. No. 10 to rate schedule FPC No. 318	Schedule A-1	Do.
17. Supp. No. 8 to rate schedule FPC No. 379 (supersedes supp. No. 7)	Schedule A	Village of Kasson.
18. Supp. No. 9 to rate schedule FPC No. 379	Schedule A-1	Do.
19. Supp. No. 8 to rate schedule FPC No. 361 (supersedes supp. No. 7)	Schedule A	City of Lake City.
20. Supp. No. 9 to rate schedule FPC No. 361	Schedule A-1	Do.
21. Supp. No. 8 to rate schedule FPC No. 371 (supersedes supp. No. 7)	Schedule A	Village of North St. Paul.
22. Supp. No. 9 to rate schedule FPC No. 371	Schedule A-1	Do.
23. Supp. No. 8 to rate schedule FPC No. 325 (supersedes supp. No. 7)	8th revised schedule A	City of St. Peter.
24. Supp. No. 9 to rate schedule FPC No. 325	Schedule A-1	Do.
25. Supp. No. 8 to rate schedule FPC No. 368 (supersedes supp. No. 7)	Schedule A	City of Shakopee.
26. Supp. No. 9 to rate schedule FPC No. 368	Schedule A-1	Do.
27. Supp. No. 8 to rate schedule FPC No. 366 (supersedes supp. No. 7)	Schedule A	Town of Valley Springs.
28. Supp. No. 9 to rate schedule FPC No. 366	Schedule A-1	Do.
29. Supp. No. 8 to rate schedule FPC No. 380 (supersedes supp. No. 7)	Schedule A	City of Waseca.
30. Supp. No. 9 to rate schedule FPC No. 380	Schedule A-1	Do.
31. Supp. No. 8 to rate schedule FPC No. 364 (supersedes supp. No. 7)	Schedule A	City of Winthrop.
32. Supp. No. 9 to rate schedule FPC No. 364	Schedule A-1	Do.

NORTHERN STATES POWER CO. (MINNESOTA)

LOAD PATTERN PARTIAL REQUIREMENT WHOLESALE CUSTOMERS

First revised schedule A—Primary distribution voltage (receives Bureau of Reclamation Power, wheeled).
First revised schedule A-1—Transmission voltage (69 kV and above and also receives wheeled Bureau power).
First revised schedule J—Transmission voltage (69 kV and above with baseload municipal generation).

Designations	Descriptions	Other party
1. Supp. No. 5 to rate schedule FERC No. 390 (redesignation of rate schedule FERC No. 385—supp. No. 5 above supersedes supp. Nos. 1 and 2).	1st revised schedule A	City of Ada.
2. Supp. No. 6 to rate schedule FERC No. 312 (supersedes supp. Nos. 3 and 4)	do	City of St. James.
3. Supp. No. 5 to rate schedule FERC No. 389 (supersedes supp. Nos. 1 and 2)	do	City of Sauk Centre.
4. Supp. No. 4 to rate schedule FERC No. 387 (supersedes supp. No. 1)	1st revised schedule A-1	City of East Grand Forks.
5. Supp. No. 5 to rate schedule FERC No. 314 (supersedes supp. No. 3)	do	City of Hillsboro.
6. Supp. No. 4 to rate schedule FERC No. 388 (supersedes supp. No. 1)	do	City of Olivia.
7. Supp. No. 4 to rate schedule FERC No. 386 (supersedes supp. No. 1)	do	City of Sioux Falls.
8. Supp. No. 3 to rate schedule FERC No. 394 (supersedes supp. No. 2 as supplemented)	1st revised schedule J	City of Kenyon.
9. Supp. No. 3 to rate schedule FERC No. 392 (supersedes supp. No. 2 as supplemented)	do	City of Le Sueur.

[FR Doc. 78-12909 Filed 5-12-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 896-1]

RECEIPT OF ENVIRONMENTAL IMPACT STATEMENTS

Pursuant to the President's Reorganization Plan No. 1, the Environmental Protection Agency is the official recipient for environmental impact statements (EIS's) and is required to publish the availability of each EIS received weekly. The following is a list of environmental impact statements received by the Environmental Protection Agency from May 1, 1978 through May 5, 1978. The date of receipt for each statement is noted in the statement summary. Under the Guidelines of the Council on Environmental Quality the minimum period for public review comment on draft environmental impact statements is forty-five (45) days; the date of submission of comment is June 26, 1978. The thirty (30) day period for each final statement begins the day the statement is made available to the Environmental Protection Agency and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Dated: May 10, 1978.

JOSEPH M. MCCABE,
Acting Director,
Office of Federal Activities.

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 359A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

Bear Lake Planning Unit, Caribou National Forest, Bear Lake, Franklin, and Caribou Counties, Idaho, May 2: The purpose of the proposed plan is to determine what the long range land management direction should be for the Bear River Planning Unit located in the Caribou National Forest, Bear Lake, Franklin, and Caribou Counties, Idaho. Many issues will be raised in this study to address possible conflicts including: (1) Recreation versus water quality and wildlife; (2) timber harvest versus roadless areas, local economy; (3) grazing versus local economy, wildlife, aquatic environment (fish); (4) transportation versus water quality; (5) private land development versus resource management. The Bear Lake Planning Unit contains 343,289 acres of national forest lands, State, and private lands. (ELR Order No. 80438.) (USDA-FS-R4-DES-(ADM)-78-4.)

Ochoco-Crooked River Planning Unit, Ochoco National Forest, Crook, Wheeler, and Grant Counties, Oreg., May 4: Proposed is a land management direction for 544,060

acres of the Ochoco National Forest located in Crook, Wheeler, and Grant Counties, Oreg. Ten land management alternatives are considered which include emphasis on: (1) Recreation and maintenance of large blocks of land in a natural condition; (2) use of land for commodity production and big game habitat needs; (3) management that does not favor any single use of the land; and, (4) use of land for commodity production. The preferred land management plan provides for a balance of all forms of current and projected uses within the planning unit. (USDA-FS-R6-DES-(ADM)-78-7.) (ELR Order No. 80459.)

Final

Prairie Dog Management, Nebraska National Forest, South Dakota and Nebraska, May 4: Proposed is implementation of a management plan for prairie dogs on the public lands in Nebraska National Forest in South Dakota and Nebraska. Prairie dog colonies reductions will be accomplished through the use of chemical toxicants. A key feature of the plan is to manage prairie dogs on a 92-square mile area of the Buffalo Gap National Grassland primarily to enhance habitat for the black-footed ferret. Anticipated effects will be reduction in habitat available for species associated with praire dogs other than black-footed ferrets, and a reduction in beef production by 319,000 lbs. per year (USDA-FS-R2-FES (Adm) FY-77-04). Comments made by: DOI AHP HEW, State and local agencies, and individuals. (ELR Order No. 80462.)

Canal Front Planning Unit, Olympic National Forest, Clallam, Jefferson, and Mason Counties, Wash., May 4: The proposed action involves the Canal Front Planning Unit, which includes both the Hoodsport and Quilcene Range District of the Olympic National Forest. It is located along the eastern portion of the Olympic Peninsula in northwestern Washington. The unit is in Congressional District 3 with approximately 49 percent of its land area in Jefferson County, 28 percent in Clallam County, and the remaining 23 percent located in Mason County. The primary objective in developing a land management plan is to provide for the needs and desires of people within the capability of the land to meet those needs. (USDA-FS-R6-DES (ADM) 78-9.) (ELR Order No. 80460.)

SOIL CONSERVATION SERVICE

Final

South Branch Little Nemaha Watershed, Johnson, Lancaster, and Otoe Counties, Nebr., May 3: Proposed is the South Branch Little Nemaha Watershed Project, designed to provide watershed protection and flood prevention. The planned works of improvement include land treatment measures (ongoing and accelerated), 14 floodwater retarding structures, 46 grade stabilization structures, and associated on-farm terrace systems. All structural measures and beneficiaries are located in Johnson, Lancaster, and Otoe Counties, Nebr. (USDA-SCS-WS (AMD) 77-1-F-NE.) Comments made by: USA, HEW, EPA, AHP, DOI, USDA, (ELR order No. 80446.)

DEPARTMENT OF DEFENSE

ARMY

Contact: George A. Cunney, Jr., Acting Chief, Environmental Office, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, 202-694-4269, Washington, D.C. 20310.

Final

McGregor range/land use withdrawal, Fort Bliss, El Paso County, Tex. May 5: The statement proposes the extension of the land withdrawal which allows the Fort Bliss Military Reservation to utilize the lands that comprise McGregor Range. The present arrangement is due to expire in August 1977. The Department of the Army developed this EIS in close cooperation and coordination with the Department of the Interior. The withdrawal will be extended for an initial 15-year period, followed by 2 10-year periods, subject to review by the USA, DOI, and USDA. The military use of tracked and wheeled vehicles on the range may cause soil erosion and disturb vegation and wildlife. Comments made by: USDA, EPA, DOT, AHP, USA, DOC, DOI, State and local agencies. (ELR Order No. 80461.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Department, Attention: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Draft

Navigation season extension demonstration, fiscal year 1979, May 5: The proposed fiscal year 1979 navigation season extension demonstration program is part of an ongoing investigation to demonstrate the practicability of certain enabling measures for extending the commercial navigation season on the Great Lakes-St. Lawrence Seaway System. This proposal covers only the demonstration of various methods needed to extend the navigation season and is not an environmental statement for the extension of the winter navigation season. (Detroit District) (ELR Order No. 80469.)

Aquatic plant control, Georgia, May 5: This project consists of aquatic plant control in the state of Georgia, currently, some aquatic plant control activity at corps projects such as Lake Seminole and Lake Walter F. George is being conducted as part of the operation and maintenance of these projects. There are basically four types of control currently being used in the aquatic plant control program: (1) Chemical (herbicides), (2) biological, (3) physical, and (4) mechanical. The proposed program will provide for the management of problem aquatic plants in the navigable waters of Georgia. Only the problem plants of water hyacinth and alligator weed have been approved under this program. (Savannah district.) (ELR Order No. 80447.)

Sand Island, shore protection, feasibility, Oahu: Honolulu County, Hawaii, May 1: The purpose of this statement is to study various different alternatives for protection from erosion of the Sand Island shoreline located at the mouth of the Honolulu Harbor, off the coast of Oahu Island, Hawaii. The two major alternatives under consideration are a cement-rubble-masonry seawall and a permeable stone revetment, both which would extend approximately 2,100 feet off the shore, other alternatives being considered include: (1) bulkheads; (2) offshore breakwaters; (3) shoreline management; (4) vegetative barriers; and (5) no-action. (Honolulu District.) (ELR Order No. 80433.)

Kailua Beach Park erosion control, Honolulu County, Hawaii, May 1: This statement is written in conjunction with a project report which considered several alternative plans for the long-term protection of recreational and natural resources from beach erosion at Kailua Beach on the Island of Oahu, Hawaii. Two of these plans have been presented for consideration in the EIS. The first plan concerns shore management which would involve establishment of a setback zone in which no damageable structures of park facilities would be constructed. The second plan consists of increasing the width of the beach by about 20 feet with maintenance required about every 5 years. (Honolulu District.) (ELR Order No. 80436.)

Detroit River shoreline flood protection study, Wayne County, Mich., May 1: This statement considers alternatives for flood protection along the Detroit River in Wayne County, Mich. The plans analyzed include floodproofing, house raising or the retention of flood insurance for all reaches of the river. Local officials are currently defining the mix of these three alternatives desired by the residents in each reach which encompass 3,604 acres of land and approximately 20,224 persons. Additional alternatives include a seawall/levee plan, combination seawall/floodproofing and seawall house raising plan, and relocation of some areas. (Detroit District.) (ELR Order No. 80435.)

Muskegon Lake, Westran Corp. permit application, Muskegon County, Mich., May 5: Proposed is the issuance of a permit to the Westran Corp. for a proposed project concerning the Muskegon Lake located in Muskegon County, Mich. The project includes diking, dredging and filling along the south side of the lake and would be completed in three stages. In the first stage a perimeter dike would be constructed between two existing dikes. The second stage would be removal of a portion of the western spit extending beyond the dike and the final stage includes filling of the area within the perimeter, landscaping, and development of a water-management program. (Detroit District.) (ELR Order No. 80472.)

Draft

Cadet Bayou, Construction, Anchorage Basin, O&M, Hancock County, Miss., May 4: This action involves two separate, but closely related Federal actions in Cadet Bayou, Hancock County, Miss.: (1) Construction and subsequent maintenance of a proposed anchorage basin which would become a part of the existing Federal project, and (2) operation and maintenance of the existing Federal project itself. The existing project provides for a channel 8 feet deep and 100 feet wide extending from the 8-foot contour in Mississippi Sound for a distance of about 1.48 miles to the mouth of the bayou. The proposed Anchorage Basin would be located 1,800 feet upstream from the mouth of the bayou and would connect with the existing Federal channel. (Mobile District.) (ELR Order No. 80448.)

Cayuga Station, permit, Somerset, Niagara County, N.Y., May 4: The proposed action is a permit application for construction and operation of a fossil fuel steam electric generating station at Somerset, New York by the New York Electric and Gas Corporation (NYSEG). The proposed generating station will utilize one low sulfur coal-fired unit to produce steam for the generation of 850 megawatts of electrical power. The exhaust steam from the turbine generator will be cooled and condensed by using lake Ontario water pumped to the plant via pipeline and circulated through a once through circulating water system. The elec-

trical power produced under this proposal will be transmitted via high voltage electrical transmission lines to connect with existing ones. (ELR Order No. 80450.)

Weston Generating Unit 3, Wausau, Permits, Marathon County, Wis., May 3: The proposed action is the issuance of Federal permits relating to the construction and operation of a 300 mw coal-fired steam generating unit at the Weston generating station located on a 144-acre tract on the east bank of the Wisconsin River about 8 miles south of the city of Wausau in a combined agricultural, residential, and industrial area. The Weston 3 generating station is proposed to meet projected growth in electrical demand beginning in the early 1980's. The size and type of the proposed plant is determined by analysis which considers: (1) the level of system reliability desired, (2) the cost of constructing and operating various types of new plants, etc. (ELR Order No. 80441.)

Final

Milford Lake, Operation and Maintenance, Geary, Clay, and Dickenson Counties, Kans., May 3: Proposed is the continued operation and maintenance of Milford Lake, Kans. The project consists of provision for water supply, regulation for flood control, operation and maintenance of Recreation areas, and management of public lands and waters. The major adverse effect associated with the operation of the project is related to flood control operations. Fluctuating lake levels cause disruption of recreation and shoreline erosion. Sedimentation affects benthic life, fish populations and recreational use of the lake. (Kansas District.) Comments made by: DOI, CGD, DOT, USDA, HUD, AHP, EPA, and State and local agencies. (ELR Order No. 80442.)

Final

Kualoa Regional Park Beach Erosion Control; Honolulu County, Hawaii, May 3: The proposed project is a reduction in erosion of parklands in Kualoa Regional Park, Honolulu, Hawaii. The alternatives considered in the beach erosion program include shoreline management, beach restoration, and beach restoration with a breakwater. Shoreline management would result in regulating park improvements and development in erosion prone areas. Beach restoration would protect the shoreline by increasing the beach width by 50 feet using 45,000 cubic yards of sand. Beneficial impacts are expected. (Honolulu District.) Comments made by: AHP, USDA, USAF, HEW, HUD, DOI, COE, DOT, EPA, and State and local agencies. (ELR Order No. 80443.)

Fox R., Wisconsin Navigation Project—O. & M. Several Wisconsin counties: Proposed is the continued operation and maintenance of the Fox River, Wis. navigation project. Project activities include operation and maintenance of locks and guard locks, channel dredging, channel clearing and snagging, and dredge material disposal. Operation and maintenance of nine U.S. dams on the Lower Fox River, and control and operation of four private dams on the Lower Fox River. Periodic dredging and snagging will be required in future years to keep the channels free of debris, (Chicago District.) Comments made by: USDA, DOI, DOT, AHP, EPA, and State and local agencies. (ELR Order No. 80466.)

Final supplement

Taylorsville Lake Project, Anderson, Nelson, and Spencer Counties, Ky., May 5: Proposed is the Taylorsville Lake project in Spencer, Anderson, and Nelson Counties, Ky. The damsite is situated four river miles upstream from Taylorsville, Ky., about 60 river miles above the mouth of the Salt River. This Multipurpose lake project, located about 26 miles southeast of Louisville, will provide flood control, general recreation, fish wildlife recreation, and water quality control. Completion of the project as proposed will provide flood reduction to downstream lands along the Salt and Ohio Rivers, improve downstream water quality and provide water oriented recreational opportunities. (Louisville District.) Comments made by: HUD, HEW, USDA, DOI, EPA, FERC, State and local agencies, and Groups and individuals. (ELR Order No. 80468.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Assistant Secretary for Environmental Affairs, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-377-4335.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Draft supplement

Atlantic Groundfish Fishery (S-2), May 5: This statement is the second draft supplement to a final EIS filed with CEQ in June 1977, concerning changes to the Atlantic (New England) groundfish fishery management plan for haddock, cod, and yellowtail flounder fisheries. These recommended changes would substantially modify the present regulations (50 CFR 651) on groundfish harvest. Proposed changes include: (1) increasing the OY for haddock to 20,000 mt and 26,000 mt for cod; (2) recreational allocations; (3) establishing a minimum mesh site for gillnets; (4) mandatory retention of all regulated species taken; (5) revised fishery closure procedures. (ELR Order No. 80474.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Ron Mustard, Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604, 312-353-2307.

Draft

Detroit Water Pollution Control Systems, Wayne, Oakland, and Macomb Counties, Mich., May 4: The proposed action involves Federal financial assistance for the upgrading and expansion of an existing regional wastewater treatment plant in the city of Detroit, Mich. The plant capacity would be expanded to treat an average daily flow of 600 mg with a 48-hour sustained peak flow of 1050 mgd. The plan also includes expansion of the associate collection system. Operation, maintenance, financial, and management improvement changes will be incorporated as well as modifications to existing contracts and ordinances (EPA Region 5). (ELR Order No. 80455.)

Mr. John Hagan, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308, 404-881-7458.

Draft

U.S. Steel Corp., No. 8 blast furnace permit, Jefferson County, Ala., May 4: The action proposed is the issuance of a NPDES permit to the United States Steel Corp. for the modernization of the steel plant facilities at Fairfield, Jefferson County, Ala. These changes will include the addition of a new blast furnace and auxiliaries, a third Q-BOP furnace, a 57-oven coke battery, 4 additional soaking pits, and the idling of 4 old coke batteries. These changes will replace existing blast furnace operations at the U.S. Ensley Steel Plant. The blast furnace complex area will occupy 13.15 acres of the total 5,000 acres involved in the fairfield operations (EPA/904-9-78-007). (ELR Order No. 80453.)

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders, Executive Director, Environmental Affairs Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, 202-566-0405.

Draft

Leasehold, 1900 Half Street NW., Buzzards Point, District of Columbia, May 4: GSA proposes that full occupancy be achieved for the 461,500 square feet of space in the 1900 Half Street Building, located in the Buzzard Point area of southwest Washington, D.C. in August 1973, GSA acquired a leasehold interest in this property which includes 271 parking spaces. Presently, the building is partially occupied by 1,085 Federal Government employees and GSA proposes to move agencies and employees in to fill the vacant space. At full occupancy, the building will house approximately 2,300 to 2,700 employees. (EDC 78004) (ELR Order No. 80463.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, 202-755-6308.

Draft

Cherry Lane Village, Meridian, Ada County, Idaho, May 1: The action involved is the approval by HUD of an application for mortgage insurance purposes concerning development of Cherry Lane Village, Meridian City, Ada County, Idaho, by the Leauitt Nupacific Company. The planned residential community will have a land area of 330 acres and will include 880 detached and attached single family homes, 180 units of multi-family homes, 6 acres of commercial area, and a golf course. The Development will provide housing for approximately 1,100 families. (HUD-RIO-EIS-78-3D) (ELR Order No. 80437.)

Strawberry Farms, No. 346, Columbus, Franklin County, Ohio, May 4: Proposed is the granting of FHA mortgage insurance to concept Communities for the development of Strawberry Farms in the city of Columbus, Franklin County, Ohio. Strawberry Farms involves the residential development of a 202+acre tract of land over approximately a 6-year period in the northeast quadrant of Columbus. Development will include the construction of approximately 635 housing units of which 613 will be single family while 22 are to be duplexes. Land within the development is being reserved for open space and school usage. (HUD-RO5-EIS-77-18-D) (ELR Order No. 80456.)

Shadowlake Village addition, Oklahoma City, Cleveland County, Okla., May 4: Proposed is the granting of FHA mortgage insurance to the Shadowlake Village Development Co. to develop a residential subdivision in southern Oklahoma City, Cleveland County, Okla. Shadowlake Village is proposed to include about 390 single family

homes, 43 duplexes, 360 apartments on 18.3 acres, 50,000 square feet of space in a garden-type office park, and 15.7 acres of neighborhood commercial uses. A 9.4 acre lake will complete the project. A small portion of the project, 199 lots in phases I and II, is under construction by virtue of HUD's "early start" procedures. (HUD-R06-EIS-78-20-D) (ELR Order No. 80458.)

Draft

Briarwood Estates subdivision, Dallas County, Tex., May 5: The proposed action involves the granting by HUD of home mortgage insurance to Fox and Jacobs, Inc. for the proposed residential subdivision, Briarwood Estates, the project site is the city of Dallas, approximately 10 miles northeast of the downtown area near the Dallas-Garland city limits, Dallas County, Tex. The project is expected to encompass approximately 206 acres of land and includes an early start request for 199 of the total 867 single-family housing units to be developed. (HUD-R06-EIS-78-21-D) (ELR Order No. 80471.)

Woodbridge Subdivision, Bedford, Tarrant County, Tex., May 4: Proposed is the granting of FHA mortgage insurance to Centennial Homes, Inc. for development of the Woodbridge Subdivision located in the city of Bedford, Tarrant County, Tex. The proposed community consists of 132 acres whereupon 477 single-family units will be erected. The site includes 4 acres which will be developed into a park for recreation use. Proposed plans also entail 28 acres to be devoted to retail purposes. (HUD-R06-EIS-78-19-D) (ELR Order No. 80451.)

Final

Woodridge Center Development, Du Page County, Ill., May 5: Proposed is the granting of FHA mortgage insurance to the Rossmoor Illinois Development Co. for single and multifamily units in the Woodridge Center Development, Woodridge, Ill. Completed construction consists of the first stage (222 Units) of a total development that is zoned for 3,256 units on 394.8 acres. The sponsor's plans contemplate a total development of about 1,300 total units. Adverse effects include the depletion of ground water resources, and construction-related pollution. (HUD-R05-EIS-77-12-F) Comments made by: USDA, DOI, EPA, State and local agencies. (ELR Order No. 80467.)

North Spring Subdivision, Harris County, Tex., May 1: Proposed is the acceptance of North Spring Joint Venture's 1125-acre North Spring Subdivision in the northern part of Harris County, Tex. for mortgage insurance purposes. The proposed development plan calls for the construction of approximately 4,026 housing units with additional acreage reserved for commercial, open space and recreational uses. Adverse effects include increased automobile traffic, vehicle emissions, and noise levels. (HUD-R06-EIS-78-12F) Comments made by: AHP, DOT, EPA, COE, USDA, DOI, State and local agencies. (ELR Order No. 80452.)

Section 104 (H)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104 (H) of the 1974 Housing and Community Development Act. Copies may be obtained from the Office of the appropriate local executive. Copies are not available from HUD.

Draft

Capitol Commons Project, redevelopment, Lansing, Ingham County, Mich., May 2: The city of Lansing has applied for community development block grant funding from HUD to redevelop a six-block area in the Lansing, Mich. central city area for residential purposes. The project proposes to raze the deteriorated housing currently on the site, with the exception of approximately 60 housing units on the western portion of the site, and redevelop the site with approximately 600 new housing units for a total of 660 housing units on a 32 acre site. The types of units involved are an elderly highrise, midrise apartments, Garden apartments, and townhouses. (ELR Order No. 80439.)

Final

Noise Exposure, Stapleton and Buckley Airports, Adams and Arapahoe Counties, Colo., May 2: The city of Aurora, Colo. proposes to approve the conduct of various federally funded housing programs in the "normally unacceptable" and "clearly unacceptable" noise exposure areas around Stapleton and Buckley Airports. The types of programs include rehabilitation of existing homes, rent subsidies, purchase of houses by the Aurora Housing authority for occupancy by qualifying persons to conduct other similar programs except that no new housing construction is considered in the noise areas. The location is in Adams and Arapahoe Counties within Aurora's city limits. Comments made by: DOT, AHP, EPA, USAF, HUD, State and local agencies, groups and individuals. (ELR Order No. 80440.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Building, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF LAND MANAGEMENT

Draft

Cerbat/Black Mountain Livestock Grazing Program, Mohave County, Ariz., May 5: The proposed action analyzes 26 allotment management plans which propose intensive grazing management for 1,445,652 acres of public land within the Cerbat and Black Mountain planning units within the Kingman Resource Area, Mohave County, Ariz. The proposed action includes: (1) Intensive management of grazing on 1,416,628 acres of public lands, including 635,196 acres of ephemral range and 70,793 acres of custodial range; (2) custodial management of grazing on 29,024 acres, and; (3) construction of range improvements. (DES-78-15) (ELR Order No. 80476.)

Tuledad-Home Camp Planning Unit, grazing, California and Nevada, May 5: The proposed action is the implementation of a grazing management program of the Tuledad-Home Camp Planning Unit located in the counties of Modoc and Lassen, Calif. and Washoe County, Nev. The management area comprises nearly 700,000 acres of public land. The plan proposes three levels of management: (1) Systematic grazing management on 670,000 acres; (2) custodial management on about 5,000 acres; and, (3) livestock grazing exclusions (no livestock grazing) on 19,000 acres. (DES-78-16) (ELR Order No. 80475.)

NATIONAL PARK SERVICE

Draft

Gulf Island National Seashore, Management/Concept Plan, Mississippi and Florida, May 5: Proposed is a general management plan to guide future management and development of Gulf Islands National Seashore, located in Mississippi and Florida, which proposes: (1) establishment of visitor center/administrative offices at Davis Bayou and Naval Live Oaks Reservation; (2) major day-use beach recreation facilities at Santa Rosa Island, Fort Pickens, Perdido Key, and West Ship Island; (3) increased emphasis on boating access in the Florida and Mississippi districts; (4) increased diversity of recreational and interpretive opportunities at most seashore units; and (5) enhanced protection of natural and cultural resources. (DES-78-14) (ELR Order No. 80465.)

DEPARTMENT OF LABOR

Contact: Mr. David R. Bell, Chief, Office of Environmental and Economic Impact Assessment, Room N-3673, Washington, D.C. 20210, 202-523-7076.

Final

Inorganic lead exposure, proposed standards, May 5: Proposed is the regulation of employee exposure to lead by limiting the exposure to an 8-hour time-weighted average concentration, based on a 40-hour work week, of 100 micrograms of lead per cubic meter of air (100 $\mu g/m^3$). The proposal also provides for the determination of employee exposure, methods of compliance, personal protective equipment and clothing, training, medical surveillance, and recordkeeping. Beneficial impact on the workplace environment is anticipated. Comments made by: EPA, DOI, HEW, DOD, ERDA, TREA, USDA, State and local agencies. (ELR Order No. 80470.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590. 202-426-4357.

FEDERAL AVIATION ADMINISTRATION

Final supplement

Harry S. Truman Airport, expansion (S—1), Virgin Islands, May 4: This statement supplements a final EIS filed with CEQ in September 1976. The project design has changed from dredgefill to fill only and new material is included regarding special use full area involving relocation of sanitary landfill. The proposed project involves construction of a new runway with parallel taxiway and attendant facilities, extended safety areas, installation of lighting and landing aids, a commercial terminal and cargo area, new general aviation facilities, construction of access road, fencing and the removal of obstructions to air navigation. (ELR Order No. 80454.)

FEDERAL HIGHWAY ADMINISTRATION

Draft

I-691, Cheshire, Southington and Meriden, Hartford and New Haven Counties, May 5: The proposed action is the construction of a new section of interstate Route 691, passing through the towns of Southington and Cheshire, Connecticut. This section would be approximately 3.5 miles long and would link the existing I-691 in Meriden, Conn., with I-84 at the Southington-Cheshire town line, thus completing the I-691 fa-

cility between I-91 and I-84. The route would be a four lane, limited access highway on a new right-of-way. (FHWA-CONN-EIS-78-02-D.) (ELR Order No. 80473.)

Latham-Mohawk River Interchange at Alternate Route 7, Albany County, N.Y., May 3: The proposed project, alternate Route 7, located in Albany County, N.Y., is a four lane divided freeway with an additional climbing lane in the westbound direction. Beginning in the vicinity of the present partially constructed exit 7 of Route I-67 in Latham, the project proceeds eastward to the existing interchange with Route I-787 in Maplewood. A major feature will be an interchange which will allow traffic flow between the project and Routes I-87 and U.S. 9. Construction of the proposed project will also relieve traffic congestion in Route 7 in Latham and Watervliet. (FHWA-NY-EIS-78-02 D.) (ELR Order No. 80444.)

Foothill Blvd., Rogue River and Redwood Highway, Josephine County, Oreg., May 3: The proposed action involves the selection of a corridor for a third crossing over the Rogue River located in the city of Grants Pass, Josephine County, Oreg. This crossing would serve as a bypass of the downtown area for through traffic desiring access to and from I-5 north of the river, to Highways 199 99 and 238 south of the river, and local traffic bound for the grants pass. The two locations under consideration are the mill street corridor which has three design alternatives, and the Agness Avenue corridor which has one design alternative. All alternatives will have four travel lanes, a median and shoulders. (FHWA-OR-EIS-78-5-D.) (ELR Order No. 80445.)

U.S. 72 Scottsboro to Tennessee State line, Jackson County, Tenn., May 5: The proposed action involves the improvement of U.S. 72 from Scottsboro to the Alabama-Tennessee State line in Jackson County, Alabama. The proposed typical section is a rural type, four-lane facility to be implemented by constructing two new lanes and retaining the present roadway where the location is parallel to the existing road, and constructing four new lanes where the route is on new location, the total length is 25.5 miles with an interchange with existing U.S. 72 northeast of Stevenson. (FHWA-ALA-EIS-78-03-D.) (ELR Order No. 80464.)

Northfield-Williamstown State Highway, Orange and Washington County, Vt., May 4: The proposed action is the reconstruction of approximately 2.6 miles of the existing Northfield-williamstown state highway in Washington and Orange Counties from a point on Vermont Route 12 in the hamlet of South Northfield, and extending easterly to the I-89 interchange. The proposed improvement is a two-lane highway and each of the proposed alternate routings utilize portions of existing right-of-way as well as requiring some new right-of-way. (FHWA-VT-EIS-78-02-D.) (ELR Order No. 80457.)

Final

Shakwak Highway improvement, Alaska, May 1: This EIS was produced in conjunction with the Canadian Department of public works. Proposed is the paving and upgrading of the Haines Road from the Alaska/British Columbia border to Haines junction, and the Alaskaa Highway from Haines junction to the Yukon/Alaska border, a distance of approximately 520 kilometers. The plan is known as the Shakwak project and four alternative routes are offered; the United States would pay for the project and Canada's Department of public works would direct construction and maintenance operations. (Region 10.) (FHWA-BC/YT-EIS-77-01-F.) Comments made by: DOT, DOI, EPA, State and local agencies, groups, (ELR Order No. 80434.)

URBAN MASS TRANSPORTATION ADMINISTRATION

Draft

Rail Rapid Transit Extension, Chicago O'Hare Airport, Cook County, Ill., May 4: The proposed project involves the extension of the Kennedy Rail Rapid Transit Line from its present terminus at Jefferson Park to O'Hare International Airport located in Chicago, Cook County, Ill. The two track extension of the existing line would be constructed in the median of the Kennedy Expressway from Jefferson Park to the Northwest Tollway. At this junction, the median of the O'Hare Access Road. Upon approaching the terminal area, the extension would go into a subway to be constructed beneath the existing parking garage. The transit line would terminate in a stubend station which would service the major airport terminals and facilities adjacent to the airport. (UMTA-IL-03-0046.) (ELR Order No. 80449.)

[FR Doc. 78-13161 Filed 5-12-78; 8:45 am]

[6560-01]

[FRL 896-5; OPP-42050A]

STATE OF ILLINOIS

Approval of State Plan for Certification of Pesticide Applicators

Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 et seq.), and the implementing regulations of 40 CFR Part 171 require each State desiring to certify applicators to submit a plan for its certification program to the Environmental Protection Agency (EPA) for approval. Any State certification program implemented under this section shall be maintained in accordance with the State Plan approved under this section.

On October 3, 1977, notice was published in the FEDERAL REGISTER (42 FR 53657) of the intent of the Regional Administrator, EPA, Region V, to approve on a contingency basis the Illinois Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides (Illinois State Plan). Contingent approval was requested by the State of Illinois pending passage of amendments to the Illinois Structural Pest Control Law and promulgation of implementing regulations which were described in the State Plan. Complete copies of the Illinois State Plan and proposed regulations were made available for public inspection at the Illinois Department of Agriculture, Springfield, Ill.; the Pesticide Branch, Air and Hazardous Materials Divison, EPA, Region V, Chicago; and the Office of Pesticide Programs, EPA, Washington, D.C.

Written comments were received only from the National Canners Association. These comments were carefully reviewed and evaluated by EPA and the Illinois Department of Agriculture. The National Canners Association commented that, because pesticide applicator training is not required by FIFRA, the proposed training budget of the Illinois Cooperative Extension Service should not be considered by EPA in its assessment of the adequacy of funding to support the State Plan. Because the State of Illinois plans to utilize training programs as an integral part of the pesticide applicator certification program to be implemented under the State Plan, estimated funds for training were identified and included as an attachment to the State Plan. However, the Agency did not include consideration of these funds in its assessment of the adequacy of funding of the proposed certification program.

Under the Illinois State Plan, certification credentials issued to a commercial applicator will identify the category(ies) and the subcategory(ies), if any, in which the applicator is certified. The National Canners Association questioned the need for subcategorization of Category 7, Industrial, Institutional, Structural, and Health Related Pest Control, due to the fact that the Agency will not require that pesticide labels identify specific pest control categories. It should be pointed out that the question of category notations on restricted use pesticide labels is unrelated to the issue of subcategorization. The establishment of subcategories by individual States is provided for at 40 CFR 171.3(a), and is intended to allow States, within broad categories, to sharpen the focus of the certification program to meet the particular requirements of the State. The Agency has reviewed the proposed subcategorization scheme for Category 7 and has found it is appropriate.

During the formal comment period, amendments to the Illinois Structural Pest Control Law were enacted by the State Legislature and signed by the Governor. Implementing regulations under this law were promulgated by The Illinois Department of Public Health on October 19, 1977, and are now effective. The State lead agency submitted the Illinois Structural Pest Control Law and final regulations to the Agency on November 29, 1977, requesting full approval of the Plan. Final Agency review of the Structural Pest Control Regulations revealed that Rule 2.14, supervison of non-certified persons, was significantly different from the proposed rule which the state had submitted as part of the State Plan discussed in the October 3, 1977, FEDERAL REGISTER notice. Subsequently, on January 10, 1978, the Agency advised the Illinois Depart-

ment of Public Health that Rule 2.14 was not in compliance with Federal regulations establishing State Plan requirements, specifically 40 CFR 171.7(b)(1)(iii) (A) and (D), and must be amended prior to granting full approval of the State Plan.

The Agency has determined that the Illinois State Plan will satisfy the requirements of section 4(a)(2) of the amended FIFRA and 40 CFR Part 171, if the final Structural Pest Control Regulations are amended to meet the requirements of 40 CFR 171.7(b)(1)(iii) (A) and (D). A suggested amendment to Rule 2.14, which would give the rule the same basic meaning it had when originally proposed, has been agreed to by the State and by EPA. The Illinois Department of Public Health expects to repromulgate these regulations on or before June 15, 1978. Notice is hereby given that contingent approval of the Illinois State Plan is granted through June 30, 1978. On or before expiration of the period of contingent approval, a notice shall be published in the FEDERAL REGISTER concerning the extent to which these terms and conditions have been satisfied, and the approval status of the Illinois State Plan as a result thereof.

EFFECTIVE DATE

Pursuant to section 4(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the Agency finds there is good cause for providing that the contingent approval granted herein to the Illinois State Plan shall become effective upon publication. Neither the Illinois State Plan itself nor this Agency's contingent approval of the plan creates any direct or immediate obligation on pesticide applicators or other persons in the State of Illinois. Delays in starting the work necessary to implement the plan, such as may be occasioned by providing some later effective date for the contingent approval are inconsistent with the public interest. Accordingly, this contingent approval shall become effective immediately.

Dated: May 3, 1978.

GEORGE R. ALEXANDER, Jr.
Regional Administrator,
Region V.

[FR Doc. 78-13223 Filed 5-12-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

FIXED SATELLITE ADVISORY COMMITTEE 1979 WORLD ADMINISTRATIVE RADIO CONFERENCE

Meeting

In further preparation for the 1979 World Administrative Radio Conference, a meeting of the Fixed Satellite Advisory Committee, chaired by Raymond B. Crowell, will be held on Wednesday, May 31, 1978, at 9:30 a.m., room 8210, located at 2025 M Street NW., Washington, D.C.

The meeting will be open to the public and any member of the public is invited to participate and present oral or written statements of relevance to the agenda upon recognition by the Chairman. Any such oral statements should be cleared with the Chairman at least one day prior to the meeting.

The meeting will be conducted in accordance with the following agenda:

(1) Chairman's opening remarks.
(2) Approval of Minutes of May 9 Meeting.
(3) Report of Informal Task Group.
(4) Discussion of Task Group Report.
(5) Adopt/Define further efforts required on Task Group Report.
(6) Suggestions for matters to be covered at next meeting.
(7) Date of next meeting.
(8) Any other business.
(9) Adjourn.

No part this meeting will be concerned with matters which are within the exemptions of the Public Information Act, 5 U.S.C. 552b(c).

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-13197 Filed 5-12-78; 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, Puerto Rico. 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 25, 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 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 agreements and the statement should indicate that this has been done.

Agreements Nos.: T-1839-6 and T-1839-A-2.

Filing party: Frederick M. Lowther, Esquire, Dickstein, Shapiro & Morin, 2101 L Street NW., Washington, D.C. 20037.

SUMMARY: Bayside Warehouse Co. (Bayside) and La Place Elevator Co., Inc., (La Place) have filed a single document amending Agreements Nos. T-1839 and T-1839-A. The agreement, identified as F.M.C. Agreement No. T-1839-6 and T-1839-A-2, is an assignment and assumption whereby Bayside transfers, conveys, assigns, quitclaims and delivers to La Place all of Bayside's right, title and interest in its grain elevator at Reserve, La. This agreement carries out the substitution of parties under Lease Agreement No. T-1839-A contemplated by the Asset Purchase Agreement between Bayside and Mitsui Co. (U.S.A.), Inc., (Mitsui) filed with the Commission and assigned Agreement No. T-3640. La Place is a subsidiary of Mitsui.

Agreement No.: T-3647.

Filing party: Frederick M. Lowther, Esquire, Dickstein, Shapiro & Morin, 2101 L Street NW., Washington, D.C. 20037.

SUMMARY: Agreement No. T-3647, among the South Louisiana Port Commission (Port), Mitsui & Co. (U.S.A.), Inc., (Mitsui) and Bayside Warehouse Co. (Bayside), is a Tanks Agreement contemplated by the Asset Purchase Agreement No. T-3640, between Bayside and Mitsui, and now pending before the Commission. Agreement No. T-3647 provides for Mitsui, at its own expense, to enter into a contract for the repair, waterproofing, sandblasting and painting of the steel grain storage tanks at the facilities which are the subject of Lease Agreement No. T-1839-A at Reserve, La., which agreement is now pending before the Commission.

Agreement No.: T-1768-9.

Filing party: Stanley P. Hebert, Port Attorney, Port of Oakland, P.O. Box 2064, 66 Jack London Square, Oakland, Calif. 94604.

SUMMARY: Agreement No. T-1768-9, between the City of Oakland (City) and Sea-Land Service, Inc., (Sea-Land), modifies the parties' basic agreement which provides for the preferential assignment of certain marine terminal facilities to Sea-Land. The basic agreement was previously amended by an Eighth Supplemental Agreement, Agreement No. T-1768-8, which provided, among other things, for the modification and assignment by the City of certain container cranes located upon the assigned premises and the recovery by the City of the cost of said modifications. The purpose of Agreement No. T-1768-9 is to provide that the container crane modifications shall be performed by Sea-Land based on plans, specifications and an estimate of cost approved by the Port rather than performed by the Port as originally specified in Agreement No. T-1768-8 and to provide for reimbursement of

Sea-Land by the City for the cost of these container crane modifications.

By Order of the Federal Maritime Commission.

Dated: May 10, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-13143 Filed 5-12-78; 8:45 am]

[6730-01]

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, Puerto Rico. 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 June 5, 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 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 agreements and the statement should indicate that this has been done.

Agreement No.: T-3649.

Filing party: Mr. Robert E. Tobin, Waterfront Real Estate, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

SUMMARY: Agreement No. T-3649, between Port of Seattle (Port) and Pacific Alaska Line, Inc., (Pacific), provides for the Four-year and two and one-half month renewable lease to Pacific of 34,557 square feet of unimproved land located in King County, Wash. The premises are to be used by Pacific in connection with its maritime commerce activities. As compensation, Port will receive $863.93 per month as rent.

Agreement No. 5200-32.

Filing party: David C. Nolan, Esquire, Graham & James, One Maritime Plaza, San Francisco, Calif. 94111.

SUMMARY: Agreement No. 5200-32 modifies the basic agreement of the Pacific Coast European Conference by (1) deleting Conference jurisdiction over cargo transshipped to West, South, and East Africa; (2) providing of a Member Line to take independent tariff action on 60 days' notice in order to meet outside competition; and (3) limiting the members a joint service to a single vote.

Agreement No. 9902-9.

Filing party: Edward Schmeltzer, Esquire, Schmeltzer, Aptaker & Sheppard, P.C., 1150 Connecticut Avenue NW., Washington, D.C. 20036.

SUMMARY: Agreement No. 9902-9 modifies the basic agreement to provide that Euro-Pacific may serve ports within its scope by intermodal or other indirect routing in emergency situations which preclude all-water service.

By Order of the Federal Maritime Commission.

Dated: May 10, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-13144 Filed 5-12-78; 8:45 am]

[4110-07]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Child Support Enforcement

REDELEGATIONS OF CHILD SUPPORT ENFORCEMENT PROGRAM AUTHORITIES

By Reorganization Order for the Department of Health, Education, and Welfare (HEW) dated March 8, 1977, as published in the FEDERAL REGISTER on March 9, 1977 (42 FR 13262-63), the Secretary of Health, Education, and Welfare (the Secretary) directed that HEW's Office of Child Support Enforcement (OCSE) shall remain a separate organizational unit in HEW and that the Commissioner of Social Security shall serve as Director of OCSE. Previously, the Administrator of HEW's Social and Rehabilitation Service (SRS), which was abolished by the HEW Reorganization Order, served as Director of OCSE.

Notice is hereby given that, pursuant to the overall authority for child support enforcement program administration vested with the new Director of OCSE by the HEW Reorganization of 1977, the Acting Director has approved the following redelegations of authority:

I. Pursuant to section 452(a)(3) of the Social Security Act, as amended (the Act), authority to review and approve State plans, and amendments to State plans, regarding programs for locating absent parents, establishing paternity and obtaining child support, has been redelegated to the Deputy Director, Office of Child Support Enforcement and to Regional Representatives, Office of Child Support Enforcement.

CONDITION

Authority to disapprove State plans and State plan amendments is reserved to the Director or Acting Director, Office of Child Support Enforcement, after consultation with the Secretary.

II. Pursuant to section 452(a)(8) of the Act, authority to review applications from States for permission to utilize district courts of the United States to enforce court orders for child support obtained against absent parents and, upon a finding that other States have not undertaken to enforce court orders of originating States within a reasonable time and utilization of the Federal Courts is the only reasonable method of enforcing such court orders, authority to approve such applications, has been redelegated to the Deputy Director, Office of Child Support Enforement and to Regional Representatives, Office of Child Support Enforcement.

III. Pursuant to section 452(b) of the Act, upon request by States having in effect approved State plans for child support enforcement programs, authority to certify to the Secretary of the Treasury for collection, under the provisions of section 6305 of the Internal Revenue Code of 1954, the amounts of delinquent child support obligations assigned to such States, after finding that the amounts requested for collection are the amounts of delinquency under court orders for support; that diligent and reasonable efforts have been made by States to collect these amounts, utilizing their own collection mechanisms; and that States have agreed to reimburse the Federal Government for costs involved in making such collections on behalf of States, has been redelegated to the Deputy Director, Office of Child Support Enforcement and to Regional Representatives, Office of Child Support Enforcement.

IV. Pursuant to section 455(b)(1) of the Act, authority to estimate, prior to the beginning of each quarter of the year, the amounts to which States will be entitled for the upcoming quarter under subsection (a) of section 455 of the Act, has been redelegated to the Deputy Director, Office of Child Support Enforcement.

V. Pursuant to section 455(b)(2) of the Act, authority to determine the allowability of expenditures claimed by States, has been redelegated to the Deputy Director, Office of Child Support Enforcement.

VI. Pursuant to section 455 of the Act, authority to review and approve grant awards to States operating programs approved under the provisions of section 452 of the Act, has been redelegated to the Deputy Director, Office of Child Support Enforcement.

VII. Pursuant to section 452(a)(4) of the Act, authority to determine, for

purposes of the penalty provision of section 403(h) of the Act, whether the actual operation of State programs for locating absent parents, establishing paternity and obtaining child support conforms to the requirements of Part D of title IV of the Act, based upon complete audits of such programs undertaken not less than annually, has been redelegated to the Deputy Director, Office of Child Support Enforcement.

CONDITION

Authority to make the final decision that the penalty provision of section 403(h) of the Act will be imposed upon a State is reserved to the Director of Acting Director, Office of Child Support Enforcement, after consultation with the Secretary.

VIII. Pursuant to section 453(e)(1) of the Act, authority to determine that requests for information as to the whereabouts of absent parents, to be used to locate such parents for the purpose of enforcing child support obligations against these parents, meet the criteria governing provision of such information set forth in subsections (a), (b) and (c) of section 453 of the Act, has been redelegated to the Deputy Director, Office of Child Support Enforcement.

IX. Pursuant to section 453(e)(2) of the Act, authority to determine amounts which may be paid to departments, agencies or instrumentalities of the United States, or of States, as reimbursement for costs incurred in providing information requested under the provisions of section 453 of the Act, and authority to cause such payments to be made, has been redelegated to the Deputy Director, Office of Child Support Enforcement.

X. Pursuant to section 453(e)(2) of the Act, authority to determine the amount of fees charged for services provided under section 453 of the Act to individuals specified in subsection (c)(3) of section 453 of the Act, and authority to cause collection of such fees, has been redelegated to the Deputy Director, Office of Child Support Enforcement.

XI. Pursuant to section 1110 of the Act, authority to approve or disapprove cooperative research and demonstration projects under section 1110 which involve programs for locating absent parents, establishing paternity and obtaining child support, has been redelegated to the Deputy Director, Office of Child Support Enforcement, and the Associate Commissioner for Program Policy and Planning, Social Security Administration (SSA).

CONDITION

All such projects require collateral approval by the Office of Child Support Enforcement and the Office of Program Policy and Planning, SSA. Where there is disagreement between the Office of Child Support Enforcement and the Office of Program Policy and Planning, SSA as to approval of a particular project, the matter will be referred to the Director or Acting Director, Office of Child Support Enforcement for decision.

XII. Pursuant to section 1110 of the Act, authority to sign and issue grant awards or contracts relative to cooperative research and demonstration projects under section 1110 which involve programs for locating absent parents, establishing paternity and obtaining child support, and authority to perform all related business management functions of the grants or contracts processes, has been redelegated to SSA's Associate Commissioner for Management and Administration; Deputy Associate Commissioner for Management and Administration; and Director and Deputy Director, Division of Contracting and Procurement, Office of Materiel Management, Office of Management and Administration.

CONDITIONS

A. Payment shall not be made with respect to any experimental, pilot, demonstration or other project funded through a grant award or contract, all or any part of which is wholly financed with Federal funds made available under section 1110 of the Act without any State, local, or other non-Federal financial participation, unless such project has been personally approved by the Secretary or Under Secretary.

B. Incumbents of positions redelegated this authority may not exercise such authority until the effective date specified in grants management officer warrants issued to them by the Director, Division of Contracting and Procurement, Office of Materiel Management, Office of Management and Administration, SSA. Their subsequent exercise of such authority shall be governed by the terms and conditions set forth in the warrants.

XIII. Further redelegations of the redelegations described in sections I-XII above may not be made, except as follows:

A. The redelegations contained in sections I, II, III, IV, V, VIII, and X above may be further redelegated by the Deputy Director, Office of Child Support Enforcement to Office of Child Support Enforcement headquarters positions at or above the Division Director level, without authority to make additional redelegations.

B. The redelegations contained in sections IV, V, VIII, and X above may also be further redelegated by the Deputy Director, Office of Child Support Enforcement to Regional Representatives, Office of Child Support Enforcement, without authority to make additional redelegations.

C. The redelegations contained in section XI above may be further redelegated by the Deputy Director, Office of Child Support Enforcement and SSA's Associate Commissioner for Program Policy and Planning to positions in their headquarters components at or above the Division Director level, without authority to make additional redelegations.

D. The redelegations contained in section XII above may be further redelegated by SSA's Associate Commissioner for Management and Administration to appropriate positions in SSA's Office of Materiel Management, Office of Management and Administration, without authority to make additional redelegations.

XIV. The redelegations specified in sections I-XII above are effective as of the date that this notice thereof is published in the FEDERAL REGISTER. To the extent that any actions taken by the incumbents of the positions redelegated the subject authorities, in effect, involve the exercise of these authorities prior to the date that this notice is published in the FEDERAL REGISTER, such actions are hereby affirmed and ratified.

Dated: May 8, 1978.

DON WORTMAN,
Acting Director, Office of Child Support Enforcement.

[FR Doc. 78-13073 Filed 5-15-78; 8:45 am]

[4110-07]

Office of the Secretary

SOCIAL SECURITY BENEFIT INCREASES

Notice of Cost-of-Living Increase in Benefits Under Titles II and XVI of the Social Security Act and in Income Limitations for Beneficiaries Under the Supplemental Security Income Program

I hereby determine and announce a cost-of-living increase of 6.5 percent in benefits under the Social Security Act, (the act) under title II effective with the month of June 1978 and under title XVI effective with the month of July 1978. This is pursuant to authority contained in section 215(i) of the Social Security Act (42 U.S.C. 415(i)), as amended by section 201 of Pub. L. 95-216, enacted December 20, 1977, and in section 1617 of the Social Security Act (42 U.S.C. 1382f).

The revised table of benefits following this notice is deemed to appear in section 215(a) of the act. For transitional insured persons aged 72 and over entitled under section 227 of the act (42 U.S.C. 427) and for uninsured persons aged 72 and over entitled under section 228 of the act (42 U.S.C. 428), the amounts of $83.70 and $41.90 per month are established and deemed to appear in sections 227 and 228. The additional amount of the supplemen-

tal security income benefit payable to essential persons for a year under section 211 of Pub. L. 93-66 is increased to $1,137.60.

Annual income limitations under the Supplemental Security Income Program for the aged, blind, and disabled, are increased to $2,272.80 and $3,409.20. (The last cost-of-living increase in benefits under titles II and XVI of the Social Security Act and in income limitations for beneficiaries under the Supplemental Security Income Program herein referred to was published on May 12, 1977, at 42 FR 24209.)

Automatic Benefit Increase Determination

Section 215(i) of the Social Security Act requires that, when certain conditions are met in the first calendar quarter of a year, the Secretary shall determine that a cost-of-living increase in benefits and income limitations is due. That section further specifies a formula which automatically determines the amount of any cost-of-living increase in benefits and income limitations, based on the Consumer Price Index reported by the Department of Labor.

Section 215(i)(2)(A) of the act provides that the Secretary shall determine each year, whether there is a cost-of-living computation quarter in such year. If he so determines, he shall, effective with June of that year, increase benefits for individuals entitled under sections 227 and 228 of the act, and shall increase the primary insurance amounts of all other individuals entitled to benefits under title II of the act (excluding, from any automatic cost-of-living benefit increases before June 1979, primary insurance amounts determined under section 215(a)(3)).

The percentage of increase in benefits shall equal the percentage of increase by which the Consumer Price Index for the cost-of-living computation quarter exceeds the index for the most recent prior base quarter or cost-of-living computation quarter.

Section 215(i)(1) of the act defines a base quarter as a calendar quarter ending on March 31 in each year after 1974, or any other calendar quarter in which occurs the effective month of a general benefit increase. Section 215(i)(1) also defines a cost-of-living computation quarter as a base quarter in which the Consumer Price Index prepared by the Department of Labor exceeds by not less than 3 percent such index in the later of (1) the last prior cost-of-living computation quarter or, (2) the most recent calendar quarter in which a general benefit increase was effective. However, there shall be no cost-of-living computation quarter in any calendar year if, in the prior year, a general benefit increase was enacted or becomes effective. Section 215(i)(1) of the act further provides that the Consumer Price Index for a base quarter or a cost-of-living computation quarter shall be the arithmetical mean of such index for the 3 months in such quarter.

Beginning with the Consumer Price Index (CPI) for January 1978, the Department of Labor has been publishing three versions of the CPI; the unrevised CPI for urban wage earners and clerical workers, the revised CPI for urban wage earners and clerical workers, and the new CPI for all urban consumers. The revised CPI for urban wage earners and clerical workers is being used for the first quarter of 1978 in this determination because it is an improved, updated version of the CPI for urban wage earners and clerical workers.

The revised Consumer Price Index for urban wage earners and clerical workers prepared by the Department of Labor for each month in the quarter ending March 31, 1978, was: for January 1978, 187.1; for February 1978, 188.4, for March 1978, 189.7. The arithmetical mean for this calendar quarter is 188.4. This result is compared to the last cost-of-living computation quarter, which ended March 31, 1977. The Consumer Price Index for each month in that quarter was: for January 1977, 175.3; for February 1977, 177.1, for March 1977, 178.2. The arithmetical mean for that calendar quarter was 176.9. The increase for the calendar quarter ending March 31, 1978, is 6.5 percent. Thus, since the percentage of increase in the Consumer Price Index from the calendar quarter ending March 31, 1977, to the calendar quarter ending March 31, 1978, is not less than 3 percent, the quarter ending March 31, 1978, is a cost-of-living computation quarter. Consequently, a cost-of-living benefit increase of 6.5 percent is effective for benefits under title II of the Act beginning June 1978.

Title II Benefits

Title II benefits are payable under the Federal old-age, survivors, and disability insurance program. Individuals entitled under such programs include insured workers, wives, husbands, children, widows, widowers, mothers, and parents.

In accordance with section 215(i)(2)(D)(iv) of the act, the primary insurance amounts and the maximum family benefits shown in columns IV and V, respectively, of the revised benefit table set forth below were obtained by increasing by 6.5 percent the corresponding amounts established by: (1) The last cost-of-living increase; and, (2) the extension of the benefit table made under section 215(i)(2)(D)(v) and published on November 4, 1977, at 42 FR 57754.

Section 227 of the act provides limited benefits to a worker, who became age 72 before 1969 and was not insured under the usual requirements, and to his wife or widow. Section 228 of the act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amounts of $78.50 and $39.30 established under sections 227 and 228 of the Act are increased by 6.5 percent to obtain the new amounts of $83.70 and $41.90.

Title XVI Benefits

Section 1617 of the Social Security Act provides that, whenever the benefits under title II are increased as a result of a determination made under section 215(i), the amounts in sections 1611(a)(1)(A), 1611(a)(2)(A), and 1611(b) of the Social Security Act and in section 211(a)(1)(A) of Pub. L. 93-66, shall be increased. The new amounts are effective with months after the month in which the title II increase is effective. The percentage of such increase shall be the same as the percentage of increase by which the title II benefits are increased (and rounded, when not a multiple of $1.20, to the next higher multiple of $1.20).

In accordance with section 1617, monthly Federal Supplemental Security Income (SSI) guarantees under the SSI program for the aged, blind, and disabled are increased effective with July 1978, by 6.5 percent. The current Federal SSI guarantees of $2,133.60 and $3,200.40 are increased by 6.5 percent to $2,272.80 and $3,409.20. The actual benefit received by the individual is the Federal SSI guarantee less any countable income. The amount of the current Federal SSI guarantee of $1,068.00 to essential persons under section 211(a)(1)(A) of Pub. L. 93-66 is increased by 6.5 percent to obtain a new amount of $1,137.60.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802-5, and 13.807 Social Security Programs.)

Dated: May 9, 1978.

HALE CHAMPION,
Acting Secretary.

Table for determining primary insurance amount and maximum family benefits beginning June 1978

[This revised table was made pursuant to sec. 215(i)(2)(D) of the Social Security Act, as amended]

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for June 1977)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or his primary insurance amount (as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
.....	$16.20	$114.30	.....	$76	$121.80	$182.70
$16.21	16.84	116.10	$77	78	123.70	185.60
16.85	17.60	118.80	79	80	126.60	189.90
17.61	18.40	121.00	81	81	128.90	193.50
18.41	19.24	123.00	82	83	131.20	196.80
19.25	20.00	125.80	84	85	134.00	201.00
20.01	20.64	128.10	86	87	136.50	204.80
20.65	21.28	130.10	88	89	138.60	207.90
21.29	21.88	132.70	90	90	141.40	212.10
21.89	22.28	135.00	91	92	143.80	215.70
22.29	22.68	137.20	93	94	146.20	219.30
22.69	23.08	139.40	95	96	148.50	222.80
23.09	23.44	142.00	97	97	151.30	227.00
23.45	23.76	144.30	98	99	153.70	230.60
23.77	24.20	147.10	100	101	156.70	235.10
24.21	24.60	149.20	102	102	158.90	238.50
24.61	25.00	151.70	103	104	161.60	242.40
25.01	25.48	154.50	105	106	164.60	246.90
25.49	25.92	157.00	107	107	167.30	251.00
25.93	26.40	159.40	108	109	169.80	254.80
26.41	26.94	161.90	110	113	172.50	258.80
26.95	27.46	164.20	114	118	174.90	262.40
27.47	28.00	166.70	119	122	177.60	266.50
28.01	28.68	169.30	123	127	180.40	270.60
28.69	29.25	171.80	128	132	183.00	274.60
29.26	29.68	174.10	133	136	185.50	278.30
29.69	30.36	176.50	137	141	188.00	282.10
30.37	30.92	179.10	142	146	190.80	286.20
30.93	31.36	181.70	147	150	193.60	290.40
31.37	32.00	183.90	151	155	195.90	293.90
32.01	32.60	186.50	156	160	198.70	298.10
32.61	33.20	189.00	161	164	201.30	302.00
33.21	33.88	191.40	165	169	203.90	305.90
33.89	34.50	194.00	170	174	206.70	310.10
34.51	35.00	196.30	175	178	209.10	313.70
35.01	35.80	198.90	179	183	211.90	318.00
35.81	36.40	201.30	184	188	214.40	321.70
36.41	37.08	203.90	189	193	217.20	326.00
37.09	37.60	206.40	194	197	219.90	329.90
37.61	38.20	208.80	198	202	222.40	333.60
38.21	39.12	211.50	203	207	225.30	338.00
39.13	39.68	214.00	208	211	228.00	342.00
39.69	40.33	216.00	212	216	230.10	345.20
40.34	41.12	218.70	217	221	233.00	349.50
41.13	41.76	221.20	222	225	235.60	353.40
41.77	42.44	223.90	226	230	238.50	357.80
42.45	43.20	226.30	231	235	241.10	361.70
43.21	43.76	229.10	236	239	244.00	366.10
43.77	44.44	231.20	240	244	246.30	371.10
44.45	44.88	233.50	245	249	248.70	378.80
44.89	45.60	236.40	250	253	251.80	384.90
		238.70	254	258	254.30	392.50
		240.80	259	263	256.50	400.00
		243.70	264	267	259.60	406.00
		246.10	268	272	262.10	413.70
		248.70	273	277	264.90	421.20
		251.00	278	281	267.40	427.20
		253.50	282	286	270.00	434.90
		256.20	287	291	272.90	442.60
		258.30	292	295	275.10	448.50
		261.10	296	300	278.10	456.10
		263.50	301	305	280.70	463.80
		265.80	306	309	283.10	469.80
		268.50	310	314	286.00	477.40
		270.70	315	319	288.30	485.10
		273.20	320	323	291.00	491.10
		275.80	324	328	293.80	498.70
		278.10	329	333	296.20	506.20
		281.00	334	337	299.30	512.50
		283.00	338	342	301.40	519.90
		285.60	343	347	304.20	527.50
		288.30	348	351	307.10	533.60
		290.50	352	356	309.40	541.20
		293.30	357	361	312.40	548.80
		295.60	362	365	314.90	554.90
		297.90	366	370	317.30	562.50
		300.60	371	375	320.20	569.90
		303.10	376	379	322.90	576.30
		305.70	380	384	325.60	583.90

Table for determining primary insurance amount and maximum family benefits beginning June 1978—Continued

[This revised table was made pursuant to sec. 215(i)(2)(D) of the Social Security Act, as amended]

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for June 1977)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or his primary insurance amount (as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		307.90	385	389	328.00	591.30
		310.30	390	393	330.50	597.40
		313.00	394	398	333.40	605.10
		315.40	399	403	336.00	612.70
		318.20	404	407	338.90	618.60
		320.20	408	412	341.10	626.30
		322.50	413	417	343.50	633.80
		324.80	418	421	346.00	639.90
		327.40	422	426	348.70	647.50
		329.60	427	431	351.10	655.10
		331.60	432	436	353.20	662.70
		334.40	437	440	356.20	665.70
		336.50	441	445	358.40	669.70
		338.70	446	450	360.80	673.40
		341.30	451	454	363.50	676.30
		343.50	455	459	365.90	680.10
		345.80	460	464	368.30	683.80
		347.90	465	468	370.60	687.10
		350.70	469	473	373.50	690.80
		352.60	474	478	375.60	694.60
		354.90	479	482	378.00	697.70
		357.40	483	487	380.70	701.60
		359.70	488	492	383.10	705.40
		361.90	493	496	385.50	708.40
		364.50	497	501	388.20	712.10
		366.60	502	506	390.50	715.80
		368.90	507	510	392.90	719.00
		371.10	511	515	395.30	722.80
		373.70	516	520	398.00	726.70
		375.80	521	524	400.30	729.50
		378.10	525	529	402.70	733.40
		380.80	530	534	405.60	737.10
		382.80	535	538	407.70	740.20
		385.10	539	543	410.20	744.10
		387.60	544	548	412.80	747.80
		389.90	549	553	415.30	751.60
		392.10	554	556	417.60	753.90
		393.90	557	560	419.60	756.90
		396.10	561	563	421.90	759.30
		398.20	564	567	424.10	762.30
		400.40	568	570	426.50	764.50
		402.30	571	574	428.50	767.50
		404.40	575	577	430.70	769.90
		406.20	578	581	432.70	772.80
		408.40	582	584	435.00	775.20
		410.20	585	588	436.90	778.20
		412.60	589	591	439.50	780.50
		414.60	592	595	441.60	783.50
		416.70	596	598	443.80	785.60
		418.70	599	602	446.00	788.90
		420.70	603	605	448.10	791.10
		422.80	606	609	450.30	794.00
		424.90	610	612	452.60	796.50
		426.90	613	616	454.70	799.50
		428.90	617	620	456.80	802.50
		431.00	621	623	459.10	804.80
		433.00	624	627	461.20	807.90
		435.10	628	630	463.40	810.70
		437.10	631	634	465.60	814.70
		439.20	635	637	467.80	818.50
		441.40	638	641	470.10	822.40
		443.20	642	644	472.10	826.10
		445.40	645	648	474.40	830.10
		447.40	649	652	476.50	833.70
		448.60	653	656	477.80	836.10
		449.90	657	660	479.20	838.40
		451.50	661	665	480.90	841.50
		453.10	666	670	482.60	844.50
		454.80	671	675	484.40	847.40
		456.40	676	680	486.10	850.50
		458.00	681	685	487.80	853.50
		459.80	686	690	489.70	856.40
		461.20	691	695	491.20	859.60
		462.80	696	700	492.90	862.60
		464.50	701	705	494.70	865.60
		466.10	706	710	496.40	868.60
		467.70	711	715	498.20	871.50
		469.40	716	720	500.00	874.60
		471.00	721	725	501.70	877.60
		472.60	726	730	503.40	880.70
		474.20	731	735	505.10	883.80
		475.90	736	740	506.90	886.70

Table for determining primary insurance amount and maximum family benefits beginning June 1978—Continued

[This revised table was made pursuant to sec. 215(i)(2)(D) of the Social Security Act, as amended]

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for June 1977)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or his primary insurance amount (as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		477.40	741	745	508.50	889.90
		478.90	746	750	510.10	892.70
		480.40	751	755	511.70	895.40
		481.80	756	760	513.20	897.80
		483.20	761	765	514.70	900.40
		484.50	766	770	516.00	903.00
		485.80	771	775	517.40	905.40
		487.20	776	780	518.90	907.90
		488.60	781	785	520.40	910.40
		489.80	786	790	521.70	912.90
		491.10	791	795	523.10	915.40
		492.50	796	800	524.60	918.00
		494.00	801	805	526.20	920.50
		495.30	806	810	527.50	923.00
		496.70	811	815	529.00	925.60
		498.00	816	820	530.40	928.00
		499.40	821	825	531.90	930.60
		500.70	826	830	533.30	933.10
		502.00	831	835	534.70	935.70
		503.30	836	840	536.10	938.10
		504.70	841	845	537.60	940.80
		506.00	846	850	538.90	943.00
		507.50	851	855	540.50	945.70
		508.80	856	860	541.90	948.10
		510.20	861	865	543.40	950.70
		511.50	866	870	544.80	953.20
		512.90	871	875	546.30	955.70
		514.10	876	880	547.60	958.20
		515.50	881	885	549.10	960.80
		516.80	886	890	550.40	963.20
		518.20	891	895	551.90	966.00
		519.60	896	900	553.40	968.30
		521.00	901	905	554.90	970.90
		522.30	906	910	556.30	973.50
		523.70	911	915	557.80	976.00
		525.10	916	920	559.30	978.30
		526.30	921	925	560.60	981.00
		527.60	926	930	561.90	983.40
		529.00	931	935	563.40	985.90
		530.40	936	940	564.90	988.50
		531.70	941	945	566.30	991.00
		533.00	946	950	567.70	998.50
		534.50	951	955	569.30	996.10
		535.90	956	960	570.80	998.60
		537.30	961	965	572.30	1,001.00
		538.40	966	970	573.40	1,003.60
		539.80	971	975	574.90	1,006.20
		541.20	976	980	576.40	1,008.50
		542.60	981	985	577.90	1,011.10
		543.80	986	990	579.20	1,013.60
		545.20	991	995	580.70	1,016.20
		546.60	996	1,000	582.20	1,018.60
		547.80	1,001	1,005	583.50	1,020.70
		548.90	1,006	1,010	584.60	1,023.20
		550.20	1,011	1,015	586.00	1,025.30
		551.50	1,016	1,020	587.40	1,027.80
		552.60	1,021	1,025	588.60	1,029.90
		553.80	1,026	1,030	589.80	1,032.20
		555.10	1,031	1,035	591.20	1,034.50
		556.20	1,036	1,040	592.40	1,036.70
		557.50	1,041	1,045	593.80	1,039.10
		558.80	1,046	1,050	595.20	1,041.30
		559.80	1,051	1,055	596.20	1,043.40
		561.10	1,056	1,060	597.60	1,045.90
		562.40	1,061	1,065	599.00	1,048.00
		563.60	1,066	1,070	600.30	1,050.50
		564.80	1,071	1,075	601.60	1,052.60
		566.00	1,076	1,080	602.80	1,054.90
		567.30	1,081	1,085	604.20	1,057.10
		568.40	1,086	1,090	605.40	1,059.40
		569.70	1,091	1,095	606.80	1,061.70
		571.00	1,096	1,100	608.20	1,064.00
		572.00	1,101	1,105	609.20	1,066.10
		573.30	1,106	1,110	610.60	1,068.50
		574.60	1,111	1,115	612.00	1,070.70
		575.70	1,116	1,120	613.20	1,073.10
		577.00	1,121	1,125	614.60	1,075.30
		578.20	1,126	1,130	615.80	1,077.60
		579.40	1,131	1,135	617.10	1,079.70
		580.60	1,136	1,140	618.40	1,082.20
		581.90	1,141	1,145	619.80	1,084.40
		583.10	1,146	1,150	621.10	1,086.70

Table for determining primary insurance amount and maximum family benefits beginning June 1978—Continued

[This revised table was made pursuant to sec. 215(i)(2)(D) of the Social Security Act, as amended]

I		II	III		IV	V
(Primary insurance benefit under 1939 Act, as modified)		(Primary insurance amount effective for June 1977)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefit (as determined under subsec. (d)) is—		Or his primary insurance amount (as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of this subsection shall be—	And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		At least—	But not more than—		
		584.20	1,151	1,155	622.20	1,088.80
		585.50	1,156	1,160	623.60	1,091.10
		586.70	1,161	1,165	624.90	1,093.40
		587.90	1,166	1,170	626.20	1,095.80
		589.20	1,171	1,175	627.50	1,098.00
		590.30	1,176	1,180	628.70	1,100.20
		591.40	1,181	1,185	629.90	1,102.20
		592.60	1,186	1,190	631.20	1,104.30
		593.70	1,191	1,195	632.30	1,106.50
		594.80	1,196	1,200	633.50	1,108.60
		595.90	1,201	1,205	634.70	1,110.60
		597.10	1,206	1,210	636.00	1,112.90
		598.20	1,211	1,215	637.10	1,114.90
		599.30	1,216	1,220	638.30	1,117.00
		600.40	1,221	1,225	639.50	1,119.00
		601.60	1,226	1,230	640.80	1,121.20
		602.70	1,231	1,235	641.90	1,123.20
		603.80	1,236	1,240	643.10	1,125.40
		605.00	1,241	1,245	644.40	1,127.50
		606.10	1,246	1,250	645.50	1,129.60
		607.20	1,251	1,255	646.70	1,131.60
		608.30	1,256	1,260	647.90	1,133.80
		609.50	1,261	1,265	649.20	1,135.90
		610.60	1,266	1,270	650.30	1,138.00
		611.70	1,271	1,275	651.50	1,140.00
		612.80	1,276	1,280	652.70	1,142.20
		613.80	1,281	1,285	653.70	1,144.10
		614.90	1,286	1,290	654.90	1,146.10
		616.00	1,291	1,295	656.10	1,148.00
		617.00	1,296	1,300	657.20	1,150.00
		618.10	1,301	1,305	658.30	1,152.00
		619.10	1,306	1,310	659.40	1,154.00
		620.20	1,311	1,315	660.60	1,155.90
		621.30	1,316	1,320	661.70	1,157.90
		622.30	1,321	1,325	662.80	1,159.80
		623.40	1,326	1,330	664.00	1,161.90
		624.40	1,331	1,335	665.00	1,163.80
		625.50	1,336	1,340	666.20	1,165.80
		626.60	1,341	1,345	667.40	1,167.70
		627.60	1,346	1,350	668.40	1,169.70
		628.70	1,351	1,355	669.60	1,171.70
		629.70	1,356	1,360	670.70	1,173.70
		630.80	1,361	1,365	671.90	1,175.60
		631.80	1,366	1,370	672.90	1,177.70
		632.90	1,371	1,375	674.10	1,179.60
		633.90	1,376	1,380	675.20	1,181.60
		634.90	1,381	1,385	676.20	1,183.40
		635.90	1,386	1,390	677.30	1,185.30
		636.90	1,391	1,395	678.30	1,187.10
		637.90	1,396	1,400	679.40	1,189.00
		638.90	1,401	1,405	680.50	1,190.80
		639.90	1,406	1,410	681.50	1,192.70
		640.90	1,411	1,415	682.60	1,194.60
		641.90	1,416	1,420	683.70	1,196.50
		642.90	1,421	1,425	684.70	1,198.30
		643.90	1,426	1,430	685.80	1,200.20
		644.90	1,431	1,435	686.90	1,202.00
		645.90	1,436	1,440	687.90	1,203.90
		646.90	1,441	1,445	689.00	1,205.70
		647.90	1,446	1,450	690.10	1,207.70
		648.90	1,451	1,455	691.10	1,209.50
		649.90	1,456	1,460	692.20	1,211.40
		650.90	1,461	1,465	693.30	1,213.20
		651.90	1,466	1,470	694.30	1,215.10
		652.90	1,471	1,475	695.40	1,216.90

[FR Doc. 78-13075 Filed 5-12-78; 8:45 am]

[4110-35]

Health Care Financing Administration

CHLORDIAZEPOXIDE HCl

Effective Date for Final Maximum Allowable Cost Determinations

On February 24, 1978, notice of the Final Maximum Allowable Cost (MAC) Determination for Chlordiazepoxide HCl was published in the FEDERAL REGISTER (43 FR 7714), to have been effective on April 10, 1978. On April 7, 1978, the Department was preliminarily enjoined from implementing or enforcing the MAC determination on chlordiazepoxide HCl until a decision could be reached on the merits in *Hoffmann-LaRoche* v. *Califano*, Civil No. 78-0467, in the United States District Court for the District of Columbia. Notice of the preliminary injunction was published in the FEDERAL REGISTER on April 18, 1978 (43 FR 16425). On May 10, 1978, the District

Court entered an order vacating the preliminary injunction and granting the Department's motion to dismiss. Consequently, the Final Maximum Allowable Cost Determination for Chlordiazepoxide HCl are effective May 18, 1978.

Dated: May 12, 1978.

PETER J. RODLER,
Executive Secretary, Pharmaceutical Reimbursement Board.

[FR Doc. 78-13357 Filed 5-12-78; 10:57 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Colorado 011902A]

NORTHWEST PIPELINE CORP.

Notice of R/W Application for Pipeline

MAY 5, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), Northwest Pipeline Corp., 315 East 200 South, Salt Lake City, Utah 84111, has applied for a right-of-way for a 4½ inch o.d. natural gas pipeline for the Piceance Creek Gathering System approximately 1.5 miles long, across the following Public Lands:

SIXTH PRINCIPAL MERIDIAN, RIO BLANCO COUNTY, COLO.

T. 2 S., R. 96 W., 6th PM
Sec. 8: Lot 2 & 7;
Sec. 18: Lot 5, 6, 7, 10.
T. 2 S., R. 97 W., 6th PM
Sec. 11: SE¼NW¼, NE¼.

The above-named gathering system will enable the applicant to collect natural gas in the area through which the pipeline will pass and to convey it to the applicant's customers.

The purposes for this notice are: (1) to inform the public that the Bureau of Land Management is proceeding with the preparation of environmental and other analytic reports, necessary for determining whether or not the application should be approved and if approved, under what terms and conditions. (2) to give all interested parties the opportunity to comment on the application. (3) to allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claim or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on Northwest Pipeline Corp.

Any comment, claim, or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colo. 80202, as promptly as possible after publication of this notice.

ANDREW W. HEARD, Jr.,
Leader, Craig Team, Branch of Adjudication.

[FR Doc. 78-13118 Filed 5-12-78; 8:45 am]

[4310-55]

Fish and Wildlife Service

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Doug Goode, Rt. 1, Box 176, Pike Road, Montgomery, Alabama 36064.

The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale in interstate commerce, for the purpose of propagation, those species of pheasants listed in 50 CFR 17.11 as [T(C/P)]. Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-2464. Interested persons may comment on this application by submitting written data, views, or arguments to the director at the above address on or before June 14, 1978. Please refer to the file number when submitting comments.

Dated: May 10, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch Federal Wildlife Permit Office.

[FR Doc. 78-13122 Filed 5-12-78; 8:45 am]

[4310-55]

THREATENED SPECIES PERMIT

Notice of Receipt of Application

Applicant: Carden-Johnson Circus Corp., General Offices, Route 2, Willard, Mo. 65781.

The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale in interstate commerce, for the purpose of propagation, those species of tigers (*Panthera tigris*) listed in 50 CFR 17.11 as [T(C/P)]. Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-2421. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before June 14, 1978. Please refer to the file number when submitting comments.

Dated: May 10, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 78-13121 Filed 5-12-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[TA-201-30]

CERTAIN STAINLESS STEEL FLATWARE

Report to the President

MAY 8, 1978.

To the President:

In accordance with section 201(d)(1) of the Trade Act of 1974 (88 Stat. 1978), the U.S. International Trade Commission herein reports the results of an investigation relating to stainless steel table flatware.

The investigation to which this report relates (No. TA-201-30) was undertaken to determine whether knives, forks, spoons, and ladels, with stainless steel handles, provided for in items 650.08, 650.09, 650.10, 650.12, 650.38, 650.39, 650.40, 650.42, 650.54, 650.55, and, if included in sets, 651.75, of the Tariff Schedules of the United States (TSUS), are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

The Commission instituted the investigation under the authority of section 201(b)(1) of the Trade Act on December 16, 1977, following receipt on December 8, 1977, of a petition filed by the Stainless Steel Flatware Manufacturers Association, Washington, D.C.

Notice of the investigation and hearing were duly given by publishing the original notice in the FEDERAL REGISTER of December 23, 1977 (42 FR 64446).

A public hearing in connection with the investigation was conducted on February 21 and 22, 1978, in the Commission's Hearing Room in Washington, D.C. All interested persons were afforded the opportunity to be present, to produce evidence, and to be heard. A transcript of the hearing and copies of briefs submitted by interest-

ed parties in connection with the investigation are attached.[1]

The information contained in this report was obtained from fieldwork, from questionnaires sent to domestic manufacturers and importers, and from the Commission's files, other Government agencies, and evidence presented at the hearing and in briefs filed by interested parties.

There were no significant imports of stainless steel table flatware from countries whose imports are presently subject to the rates of duty set forth in column 2 of the TSUS. The import relief recommended herein, therefore, is not addressed to imports from those countries. However, certain recommended relief measures would involve the imposition of rates of duty in column 1 which are higher than the rates set forth in column 2. Should such recommended, or any other, rates of duty higher than the column 2 rates be proclaimed by you it would be necessary for you to proclaim rates for column 2 that are the same as those proclaimed in column 1 in order to avoid being in violation of our international obligations.

[1]Attached to the original report sent to the President, and available for inspection at the U.S. International Trade Commission, except for material submitted in confidence.

Determination, Findings, and Recommendations of the Commission

Determination

On the basis of its investigation, the Commission[2] determines that knives, forks, spoons, and ladles, with stainless steel handles, provided for in items 650.08, 650.09, 650.10, 650.12, 650.38, 650.39, 650.40, 650.42, 650.54, 650.55, and, if included in sets, 651.75, of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

[2]Vice Chairman Parker and Commissioners Moore, Bedell, and Ablondi determine in the affirmative, and Chairman Minchew and Commissioner Alberger determine in the negative.

Findings and Recommendations

Chairman Minchew,[3] Vice Chairman Parker, and Commissioners Moore and Bedell find and recommend that, to prevent or remedy the serious injury to the domestic industry, it is necessary to impose rates of duty, in lieu of the present rates of duty, with respect to U.S. imports of knives, forks, spoons, and ladles, having stainless steel handles, valued under 60 cents each, as follows:

[3]Chairman Minchew, noting that the Commission has made an affirmative determination, has made a recommendation of remedy.

Item	Recommended rates of duty				
	1st year	2d year	3d year	4th year	5th year
Knives and forks:					
Valued under 25¢ each (TSUS items 650.08, 650.10, 650.38, and 650.40).	1¢ each +55 pct ad valorem.	1¢ each +50 pct ad valorem.	1¢ each +45 pct ad valorem.	1¢ each +40 pct ad valorem.	1¢ each +30 pct ad valorem.
Valued 25¢ or more but under 60¢ each (TSUS items 650.09, 650.12, 650.39, and 650.42).	0.5¢ each +55 pct ad valorem.	0.5¢ each +50 pct ad valorem.	0.5¢ each +45 pct ad valorem.	0.5¢ each +40 pct ad valorem.	0.5¢ each +30 pct ad valorem.
Spoons valued under 60¢ each (TSUS items 650.54 and 650.55).	55 pct ad valorem ..	50 pct ad valorem ..	45 pct ad valorem ..	40 pct ad valorem ..	30 pct ad valorem.

Under TSUS item 651.75, knives, forks, spoons, and ladles having stainless steel handles will continue to be dutiable at the rate of duty applicable to that article in the set subject to the highest rate of duty including, for such articles valued at under 60 cents each, the rates recommended above.

Commissioner Ablondi finds and recommends that, in order to prevent or remedy the serious injury to the domestic industry that he has found to exist, it is necessary to impose a tariff-rate-quota system on U.S. imports of knives, forks, spoons, and ladles, having stainless steel handles, valued under 50 cents each, that are provided for in items 650.08, 650.09, 650.10, 650.12, 650.38, 650.39, 650.40, 650.42, 650.54, 650.55, and, if included in sets, 651.75, of the Tariff Schedules of the United States (TSUS).

The tariff-rate-quota system that he finds to be necessary is of 3 years' duration, with the existing column 1 rate of duty applying to imports of such articles entered or withdrawn from warehouse for consumption within the quotas, and higher rates of duty applying to imports entered in excess of the quotas.

He recommends that the quotas be administered on a yearly basis and that the within-quota amount for each of the 3 yearly quota periods be established at 480 million single units (whether or not included in sets) and be allocated as follows:

Country	Yearly within quota allocation (single units)
Japan	216,812,844
Republic of Korea	121,084,872
Republic of China	124,709,032
European Economic Community	5,051,948
Other	12,341,304
Total	480,000,000

He further recommends that the following column 1 rates of duty apply to imports of stainless steel table flatware valued at less than 50 cents per piece, entered or withdrawn from warehouse for consumption in excess of quota:

Existing TSUS items	Rate of duty
650.08	9.6¢ each + 12.5 pct ad val.
650.09	21.2¢ each + 6 pct ad val.
650.10	9.1¢ each + 17.5 pct ad val.
650.12	28.6¢ each + 8.5 pct ad val.
650.38	5.2¢ each + 12.5 pct ad val.
650.39	14.1¢ each + 6 pct ad val.
650.40	11.6¢ each + 17.5 pct ad val.
650.42	11.3¢ each + 8.5 pct ad val.
650.54	3.6¢ each + 17 pct ad val.
650.55	19.6¢ each + 8.5 pct ad val.
651.75	The rate of duty applicable to that article in the set subject to the highest rate of duty.

The outside-quota rates of duty are to be applied subject to the following proposed headnote to the TSUS:

If the amount of the duty applicable to overquota imports of stainless steel table flatware valued at less than 50 cents per piece and provided for, or, in the case of item 651.75, dutiable at the rates provided for, in items 650.08, 650.09, 650.10, 650.12, 650.38, 650.39, 650.40, 650.42, 650.54, or 650.55 exceeds the amounts determined by the application of the following rates to the specified items—

TSUS item	Rate of duty
650.08	1¢ each + 62.5 pct ad val.
650.09	0.5¢ each + 56 pct ad val.
650.10	1¢ each + 67.5 pct ad val.
650.12	0.5¢ each + 58.5 pct ad val.
650.38	1¢ each + 62.5 pct ad val.
650.39	0.5¢ each + 56 pct ad val.
650.40	1¢ each + 67.5 pct ad val.
650.42	0.5¢ each + 58.5 pct ad val.

TSUS item	Rate of duty
650.54	67 pct ad val.
650.55	58.5 pct ad val.

then the rate of duty provided for in this headnote shall apply in lieu of the column 1 rate.

Commissioner Alberger, having noted the Commission's affirmative determination in investigation No. TA-201-30, and having considered all factors with respect to remedyy, recommends no remedy.

AFFIRMATIVE VIEWS OF COMMISSIONERS GEORGE M. MOORE, CATHERINE BEDELL, AND ITALO H. ABLONDI

On December 8, 1977, the U.S. International Trade Commission received a petition filed by the Stainless Steel Flatware Manufacturers Association, Washington, D.C., requesting an investigation under section 201 of the Trade Act of 1974 with respect to imports of stainless steel table flatware. On December 16, 1977, the Commission instituted an investigation to determine whether knives, forks, spoons, and ladles, with stainless steel handles, of the types provided for in items 650.08, 650.09, 650.10, 650.12, 650.38, 650.39, 650.40, 650.42, 650.54, 650.55, and, if included in sets, item 651.75 of the Tariff Schedules of the United States (TSUS) (hereinafter stainless steel table flatware), are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

The Trade Act of 1974 (Trade Act) requires that each of the following conditions be met before an affirmative determination can be made:

(1) There are increased imports (either actual or relative to domestic production) of an article into the United States;

(2) A domestic industry producing an article like or directly competitive with the imported article is seriously injured, or threatened with serious injury; and

(3) Such increased imports of an article are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitve with the imported article.

Issued: May 8, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-13146 Filed 5-12-78; 8:45 am]

[7020-02]

[AA1921-Inq.-11 and AA1921-Inq.-12]

PHOTOGRAPHIC COLOR PAPER FROM JAPAN AND WEST GERMANY

Commission Determines "No Reasonable Indication of Injury"

MAY 8, 1978.

On April 7, 1978, the U.S. International Trade Commission received advice from the Department of the Treasury that, in accordance with section 201(c)(1) of the Antidumping Act of 1921, as amended, antidumping investigations were being initiatd with respect to photographic color paper[1] from Japan and West Germany, and that, pursuant to section 201(c)(2) of that act, information developed during Treasury's preliminary investigations led to the conclusion that there was substantial doubt that an industry in the United States was being or was likely to be injured by reason of the importation of such merchandise into the United States from Japan and West Germany. Accordingly, the Commission, on April 13, 1978, instituted inquiries Nos. AA1921-Inq.-11 (photographic color paper from Japan) and AA1921-Inq.-12 (photographic color paper from West Germany) under section 201(c)(2) of that act, to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

On the basis of information developed during the course of inquiry No. AA1921-Inq.-11 (photographic color paper from Japan), the Commission determines unanimously that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of photographic color paper from Japan that is allegedly being sold at less than fair value as indicated by the Department of the Treasury.

On the basis of information developed during the course of inquiry No. AA1921-Inq.-12 (photographic color paper from West Germany), the Commission determines unanimously that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of photographic color paper from West Germany that is allegedly being sold at less than fair value as indicated by the Department of the Treasury.

[1]The Treasury advice defined photographic color paper as silver halide color negative photographic papers, sensitized but not exposed, provided for in item 723.30, Tariff Schedules of the United States.

A public hearing was held on April 27, 1978, in Washington, D.C. Public notice of the institution of the inquiries and of the hearing was duly given by posting copies of the notice at the Secretary's Office in the Commission in Washington, D.C., and at the Commission's office in New York City, and by publishing the notice in the FEDERAL REGISTER on April 19, 1978 (43 FR 16554).

The Treasury Department instituted its investigations after receiving a properly filed complaint on March 6, 1978, from Minnesota Mining & Manufacturing Co. (3M Co.) of St. Paul, Minn. The Treasury Department's notice of its antidumping proceedings was published in the FEDERAL REGISTER of April 12, 1978 (43 FR 15380).

STATEMENT OF REASONS OF CHAIRMAN DANIEL MINCHEW AND COMMISSIONERS GEORGE M. MOORE, CATHERINE BEDELL, ITALO H. ABLONDI, AND BILL ALBERGER

On April 13, 1978, The U.S. International Trade Commission instituted inquiries Nos. AA1921-Inq.-11 and AA1921-Inq.-12 under section 201(c)(2) of the Antidumping Act, 1921, as amended, to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established,[1] by reason of the importation of photographic color paper from Japan and West Germany allegedly sold at less than fair value as indicated by the Department of the Treasury.

DETERMINATION

On the basis of information developed during the course of these inquiries, we determine that there is no reasonable indication that an industry in the United States is being or is likely to be injured by reason of the importation of photographic color paper into the United States from Japan and West Germany allegedly sold at less than fair value as indicated by the Department of the Treasury.

DISCUSSION

Statutory criteria of section 201(c)(2).—Section 201(c)(2) of the Antidumping Act, 1921, as amended, under which these inquiries are being conducted, states, in effect, that if the Secretary of the Treasury concludes, during a preliminary investigation under the Antidumping Act, that there is substantial doubt regarding possible injury to an industry in the United States, he shall forward to the U.S. International Trade Commission his reasons for such doubt. Within 30

[1]Prevention of the establishment of an industry is not a question in these inquiries and will not be discussed further.

days of receipt of the Secretary's reasons, the Commission shall determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of merchandise allegedly sold in the United States at less than fair value.

The imported article and the domestic industry.—Photographic color paper is used to make color prints from color negative film. It is composed of light-sensitive chemical emulsions coated on a resin-covered paper base. The emulsions contain silver halide (the light-sensitive chemical) and dyes which are activated during processing. Two U.S. firms currently produce photographic color paper: Eastman Kodak Co. and the petitioner, 3M Co. Eastman Kodak, the largest U.S. producer of photographic color paper, did not support or oppose the petition as explained in an affidavit which it filed with the Commission. A third company, GAF Corp., ceased production of such paper in July 1977, claiming alleged unfair trade practices on the part of Kodak as the reason for its withdrawal from the industry. What remained was only a small segment of the U.S. industry in support of the petition.

Information received from the Department of the Treasury on LTFV sales.—The Department of the Treasury advised the Commission that the petitioner alleged margins of sales at less than fair value of as much as 121 and 44 percent, respectively, relative to imports of photographic color paper from Japan and West Germany.

NO REASONABLE INDICATION OF INJURY OR LIKELIHOOD THEREOF BY REASON OF THE IMPORTATION OF PHOTOGRAPHIC COLOR PAPER FROM JAPAN AND WEST GERMANY

Imports from Japan and West Germany.—The analysis which follows takes into consideration the cumulative impact of the subject imports from Japan and West Germany.[2] Even in this light, which is the one most favorable to the petitioner's position, we find no reasonable indication of injury, or the likelihood thereof, to the relevant domestic industry.

U.S. production.—U.S. production rose by more than 16 percent from 1973 to 1976. In 1977, production did not increase despite an increase in producers' shipments because producers apparently decided to make substantial shipments from inventories.

Utilization of productive capacity.—U.S. producers increased their annual production capacity each year during 1973–77 and utilization of such capacity exceeded 85 percent each year. Because additions to capacity were generally made in large increments, the ratio of production to capacity declined in 1975 and again in 1977. Such declines are believed to be temporary conditions caused by the initial overexpansion of facilities to accommodate future increases in demand.

U.S. producers' shipments.—U.S. producers' shipments of photographic color paper rose each year during the 1973–77 period at an average annual rate of about 5 percent (based on quantity). Export shipments, which account for a substantial portion of total shipments, also increased each year, and were substantially higher than imports each year during the 1973–77 period.

U.S. producers' inventories.—U.S. producers' inventories fell sharply (by more than 14 percent) from 1976 to 1977 to a level lower than that of 1972 or 1973. The same general trend in inventory levels is exhibited by U.S. producers and importers, indicating that both have been similarly affected by changes in demand.

Emloyment.—The number of production and related workers engaged in the manufacture of photographic color paper remained relatively constant during 1973–77. This is partly explained by yearly increases in productivity that allowed production to increase without a corresponding increase in the number of workers.

Financial experience of 3M Co. and GAF Corp.[3].—3M Co.'s operating profit on its photographic color paper operations rose to a record level in 1977. In addition, its ratio of net operating profit to net sales for operations on photographic color paper is higher than the comparable ratio for its other operations in the same establishment. GAF Corp. experienced losses on its photographic color paper operations, but attributed such losses to alleged unfair competitive practices by Kodak.

Market share.—The total U.S. industry's share of U.S. consumption declined during the 1973–77 period, but both 3M Co. and GAF Corp. increased their share. Despite the lower share of the U.S. market accounted for by U.S. producers, the U.S. producers increased their shipments annually in response to increasing demand.

Prices.—Data compiled by the Commission do not support the contention that U.S. producers have been forced to lower their prices because of price reductions by importers of photographic color paper from Japan or West Germany. To the contrary, such data indicate that U.S. producers are leaders both in terms of price changes and in terms of lowest prices.

Lost sales.—While information before the Commission suggests that there were some sales lost to imports, a number of lost sales can be attributed to superior quality of the imported paper and not to underselling.

CONCLUSION

On the basis of the information obtained in these inquiries, we determine that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of photographic color paper from Japan (inquiry No. AA1921-Inq.-11) and West Germany (inquiry No. AA1921-Inq.-12) allegedly sold at less than fair value as indicated by the Department of the Treasury.

STATEMENT OF REASONS OF VICE CHAIRMAN JOSEPH O. PARKER

These inquiries were instituted by the Commission after receiving advice from the Department of the Treasury that, during the course of the preliminary antidumping investigations with respect to silver halide color negative photographic paper, sensitized but not exposed, from Japan and West Germany, Treasury had concluded from the information available to it, "that there is substantial doubt that an industry in the United States is being, or is likely to be, injured by reason of the importation of this merchandise into the United States." Pursuant to the provisions of section 201(c)(2) of the Antidumping Act, 1921, as amended, the Commission, on April 13, 1978, instituted inquiries Nos. AA1921-Inq.-11 (photographic color paper from Japan) and AA1921-Inq.-12 (photographic color paper from West Germany) to determine whether there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

DETERMINATION

On the basis of information developed during the course of these inquiries, I determine that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established,[4] by reason of the importation of photographic color paper into the United States from Japan and West Germany allegedly

[2] Commissioner Ablondi's analysis does not consider the subject imports on a cumulative basis.

[3] Kodak did not supply profit-and-loss data with respect to its color paper operations. The firm indicated insufficient time to respond to that aspect of the Commission's questionnaire.

[4] Prevention of the establishment of an industry is not a question in these inquiries and will not be discussed further.

sold at less than fair value, as indicated by the Department of the Treasury.

NO REASONABLE INDICATION OF INJURY OR LIKELIHOOD OF INJURY

The petitioner in these inquiries has urged the Commission not to make a finding of no reasonable indication of injury, and its brief cited five criteria of injury in support of its position.[5] Petitioner alleges that Japanese and West German imports of the subject merchandise have increased; that there has been increased market penetration; that there are large LTFV margins; and that there has been underselling and price depression. As in each investigation conducted by the Commission, these factors, as well as others, have been considered in reaching a determination.

Imports of photographic color paper from the four Japanese firms and one West German firm listed in the letter from Treasury increased steadily between 1973 and 1977. The share of apparent domestic consumption accounted for by imports from these firms increased from less than 10 percent to more than 25 percent between 1973 and 1977. For purposes of this decision, it must be assumed that the LTFV margins are as alleged by petitioner and transmitted to the Commission by Treasury. While increased imports, market penetration of the apparent levels in this investigation, and the assumed LTFV margins, standing alone, might be indicative of injury within the meaning of section 201, other factors are present which outweigh such evidence and warrant the conclusion that there is no reasonable indication of injury or the threat thereof to a domestic industry.

Apparent domestic consumption of photographic color paper increased steadily from 1973 to 1977, rising overall by more than 50 percent by 1977. U.S. producers' domestic shipments also increased during the 5-year period, rising by more than 20 percent. Their export shipments rose steadily by more than a third, and the United States was a net exporter of photographic color paper during each year of the 1973–77 period.[6]

In the last 5 years, the domestic industry has substantially increased its capacity to produce color photographic paper. While the domestic industry's ratio of production to production capacity declined slightly in 1977, the decrease took place in the same year that the domestic industry made its largest addition to productive capacity in the last 5 years. The petitioner almost doubled its ratio of production to production capacity in the last 3 years. Even if the petitioner and the other firms in the domestic industry operated at 100 percent of their capacity in 1976 and 1977, they could not have supplied apparent domestic needs and still maintained the same level of exports.

Data on financial experience was supplied in response to Commission questionnaires by the smaller two of the three firms in the domestic industry, the 3M Co., the petitioner, and GAF Corp. The 3M Co., which has captured an increasing market share in each year since 2973, did not have an adverse financial experience in any of the last 5 years except 1975. During the last 2 years, as both 3M Co. and imports captured a larger market share, 3M's financial experience has improved considerably and does not establish any adverse impact from the increase in imports.

GAF Corp., which ceased production of color photographic paper in July 1977, supplied no information to the Commission indicating that its financial experience and decision to cease production were related to alleged LTFV imports. Eastman Kodak, the largest factor in the domestic market, made no contention and supplied no information to the Commission indicating an adverse financial experience by reason of alleged LTFV imports.

The petitioner's allegation of underselling and price depression by LTFV imports was not borne out by the Commission's investigation. Price information gathered during the investigation shows that throughout most of the 1975–77 period the net selling prices of Fuji, the largest Japanese importer, and Agfa-Gevaert, the only West German importer, were generally above those of petitioner 3M Co. Throughout the 1973–77 period, GAF Corp., a domestic producer, consistently had the lowest prices in the market.

With respect to price depression, the Commission's investigation established that domestic prices have been declining since 1974. Fuji's prices began to decline in 1976, but remained above those of 3M Co. Agfa-Gevaert, the German producer, did not reduce its prices between mid-1973 and the fourth quarter of 1977. Thus, while there have been reductions in prices, particualrly in 1977, it appears that the domestic producers, some of which offered lower prices than the major importers throughout much of the period, were a major factor in initiating these reductions. The lowering of prices by the domestic producer whose product was consistently priced substantially higher than that of other domestic producers, apparently had a greater competitive impact than imports.

The price reductions by the domestic industry may, in part, be attributable to the steady increase in the productivity of production and related workers in the domestic industry. In terms of square feet per man-hour, output increased in each year after 1973 and was almost 15 percent higher in 1977 than in 1973.

In my judgment, these inquiries have established that, even though imports at the assumed LTFV margins are increasing both in actual terms and as a share of apparent domestic consumption, when examined in the context of other information established by the Commission's investigation, the conclusion must be reached that there is no reasonable indication that an industry is being injured or threatened with injury by reason of the importation of the subject merchandise.

Issued: May 9, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-13147 Filed 5-12-78; 8:45 am]

[5] Brief on behalf of the Minnesota Mining & Manufacturing Co., May 2, 1978.

[6] Specific data have been omitted to avoid disclosure of confidential information.

[7510-01]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 78-14]

FINAL ENVIRONMENTAL IMPACT STATEMENT

Public Notice Regarding Availability

Notice is hereby given of the public availability of the final Environmental Impact Statement for the National Aeronautics and Space Administration (NASA) Space Shuttle Program. This document supersedes a previous final statement on the same subject published in 1972.

Comments on the draft Environmental Impact Statement were previously solicited from state and local agencies and members of the public through a notice in the FEDERAL REGISTER of August 12, 1977.

Copies of the draft and final statement have been furnished to the Environmental Protection Agency; the Departments of Agriculture, Air Force, Army, Commerce, Defense, Energy, Health, Education, and Welfare, Housing and Urban Development, Interior, Navy, State, Transportation, and Treasury; the Advisory Council on Historic Preservation; the Advisory Council on Intergovernmental Relations; Agency for International Development; Council on Environmental Quality; Federal Aviation Administration; Federal Communications Commission; Federal Maritime Commission; Federal Power Commission; General Services Administration; National Academy of Sciences; National Science Foundation; Office of Management and Budget; Smithsonian Institution;

to appropriate state and local agencies; and to numerous private organizations.

Copies of the final statement may be obtained or examined at any of the following locations:

(a) National Aeronautics and Space Administration, Public Documents Room (Room 126), 600 Independence Avenue SW., Washington, D.C. 20546.

(b) Ames Research Center, NASA (Building 201, Room 17), Moffett Field, Calif. 94035.

(c) Hugh L. Dryden Flight Research Center, NASA (Building 4800, Room 1017), P.O. Box 273, Edwards, Calif. 93523.

(d) Goddard Space Flight Center, NASA (Building 8, Room 150), Greenbelt, Md. 20771.

(e) Johnson Space Center, NASA (Building 1, Room 136), Houston, Tex. 77058.

(f) John F. Kennedy Space Center, NASA (Headquarters Building, Room 1207), Kennedy Space Center, Fla. 32899.

(g) Langley Research Center, NASA (Building 1219, Room 304), Hampton, Va. 23365.

(h) Lewis Research Center, NASA (Administration Building, Room 120), 21000 Brookpark Road, Cleveland, Ohio 44135.

(i) George C. Marshall Space Flight Center, NASA (Building 4200, Room G-11), Huntsville, Ala. 35812.

(j) National Space Technology Laboratories, NASA (Building 1100, Room A-213), Bay Saint Louis, Miss. 39520.

(k) Jet Propulsion Laboratory, (Building 180, Room 600) 4800 Oak Grove Drive, Pasadena, Calif. 91103.

(l) Wallops Flight Center, NASA (Library Building, Room E-105), Wallops Island, Va. 23337.

Done at Washington, D.C., this 9th day of May 1978.

By the direction of the Administrator.

KENNETH R. CHAPMAN,
Associate Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 78-13123 Filed 5-12-78; 8:45 am]

[7520-01]

NATIONAL CAPITAL PLANNING COMMISSION

DELEGATIONS OF AUTHORITY

Notice of Amendments

The National Capital Planning Commission, at its December 14, 1977 meeting, amended its Delegations of Authority. The delegations, as amended, read as follows:

I. DEFINITIONS

The following terms, which are italic wherever they appear herein, shall have the following meanings, unless a different meaning clearly appears from the context:

"Agency" means the District of Columbia Redevelopment Land Agency established by the *Redevelopment Act.*

"Commission" means the National Capital Planning Commission created by the *Planning Act.*

"Comprehensive Plan" means the Comprehensive Plan for the National Capital prepared and adopted pursuant to the *Planning Act.*

"Council" means the Council of the District of Columbia as defined in Section 103 of the *Home Rule Act.*

"Environs" means the territory surrounding the District of Columbia within the National Capital Region as defined in Section 1(b) of the *Planning Act.*

"Executive Director" means the Director employed by the *Commission* pursuant to Section 2(c) of the *Planning Act.*

"Home Rule Act" means the District of Columbia Self-Government and Governmental Reorganization Act (December 24, 1973, 87 Stat. 774).

"Mayor" means the mayor of the District of Columbia as defined in Section 103 of the *Home Rule Act.*

"Planning Act" means the National Capital Planning Act of 1952, as amended (40 U.S.C. 71-71i, 72, 73, 74, D.C. Code secs. 1-1001 to 1-1013).

"Redevelopment Act" means the District of Columbia Redevelopment Act of 1945, as amended (D.C. Code, secs. 5-701 to 5-719).

"Zoning Act" means the Act of June 20, 1938, 52 Stat. 797, as amended (D.C. Code, secs. 5-413 to 5-428).

"Zoning Commission" means the Zoning Commission created by Section 1 of the Act of March 1, 1920, 41 Stat. 500, as amended (D.C. Code, sec. 5-412).

"Zoning Regulations" means the regulations, including the maps, and amendments thereto, promulgated by the *Zoning Commission* pursuant to the Zoning Act.

II. DELEGATIONS TO CHAIRMAN

The *Commission* delegates to the Chairman of the *Commission* the functions of:

1. Requesting the *Council* to grant, pursuant to section 2.(a)(4)(E) of the *Planning Act*, an extension of any time limitation contained in Section 2. of the *Planning Act*;

2. Employing an *Executive Director* and a *Secretary* to the *Commission* pursuant to Section 2.(c) of the *Planning Act*;

3. Making a report to the *Zoning Commission*, pursuant to Section 8.(a) of the *Planning Act*, on any zoning regulation or map, or amendment thereto proposed to be adopted by the *Zoning Commission* and referred to the *Commission* pursuant to Section 5.(a) of the *Zoning Act* where such zoning regulation or map, or amendment thereto, conforms to an urban renewal plan, or modification thereof, adopted by the *Commission* and approved by the *Council* pursuant to Sections 6 and 12 of the *Redevelopment Act.*

4. Requesting the *Zoning Commission* to recess a public hearing on a proposed amendment to the *Zoning Regulations* to provide an opportunity for the *Commission* to present a further report to the *Zoning Commission*, pursuant to Section 8. (b) of the *Planning Act;*

5. Executing agreements with state officials as to the arrangements for acquisition by the *Commission* of lands in Maryland and Virginia for the National Capital park, parkway, and playground system pursuant to Section 11 of the *Planning Act;*

6. Executing agreements with state officials as to the control of lands acquired in Maryland and Virginia, pursuant to Section 12. of the *Planning Act;*

7. Reporting annually to Congress the lands acquired during the preceding fiscal year, pursuant to Section 13. of the *Planning Act;*

8. Submitting to the Office of Management and Budget on or before September 15 of each year an estimate of the appropriations for land acquisition for the succeeding fiscal year, pursuant to Section 13. of the *Planning Act;*

9. Making favorable recommendations to the *Council* on proposed closings of streets, roads, highways, and alleys, or parts thereof, pursuant to Section 1 of the Street Readjustment Act of the District of Columbia (December 15, 1932, 47 Stat. 747, as amended; D.C. code, sec. 7-401), where such proposed closings conform to master plans or site and building plans approved by the *Commission* pursuant to Section 5.(a) of the *Planning Act* or to urban renewal plans, and modifications thereof, adopted by the *Commission* and approved by the *Council* pursuant to Sections 6 and 12 of the *Redevelopment Act;*

10. Approving transfers of jurisdiction over properties within the District of Columbia owned by the United States or the District among or between Federal and District authorities, pursuant to Section 1 of the Act of May 20, 1932, 47 Stat. 161, as amended (40 U.S.C. 122; D.C Code sec. 8-115), where such transfers of jurisdiction conform to master plans or site and building plans approved by the *Commission* pursuant to Section 5.(a) of the *Planning Act* or to urban renewal plans, and modifications thereof, adopted by the *Commission* and approved by the *Council* pursuant to Sections 6 and 12 of the *Redevelopment Act;*

11. Approving leasing, for terms not exceeding five years, by the Adminis-

trator of General Services of land acquired for park, parkway, or playground purposes pending their need for public uses, pursuant to Section 2 of the Act of December 22, 1928, 45 Stat. 1070 (40 U.S.C. 72b; D.C. Code, sec. 8-105).

III. DELEGATIONS TO EXECUTIVE DIRECTOR

The *Commission* delegates to the *Executive Director* the functions of:

1. Establishing, jointly with the *Mayor*, procedures for appropriate meaningful continuing consultation throughtout the planning process for the National Capital pursuant to Section 2.(a)(4)(F) of the *Planning Act;*

2. Employing technical and administrative personnel, except a Secretary to the *Commission*, and, by contract or otherwise, the temporary or intermittent services of experts and fixing the rate of compensation therefor pursuant to Section 2.(c) of the *Planning Act;*

3. Establishing the representation of agencies of the Federal and District of Columbia Governments on, and invite representatives of the planning and developmental agencies of the environs to participate in the work of, Coordinating Committee established by resolution of the *Commission* adopted August 8, 1952, pursuant to Section 2.(d) of the *Planning Act;*

4. Determining appropriate Federal and District of Columbia authorities to whom Federal elements of the *Comprehensive Plan*, or amendments thereto, shall be presented for comment and recommendations prior to adoption thereof, pursuant to Section 4.(e) of the *Planning Act;*

5. With respect to plans and programs submitted to the *Commission* pursuant to Section 5.(a) of the *Planning Act* for projects in the *environs* on reservations or sites for which the *Commission* has submitted to the agency its report and recommendations on the master plan therefor, making environmental impact findings on and approving:

(1) Preliminary and final site and building plans for proposed temporary or permanent additions of less than 10,000 square feet of floor area to existing structures and for proposed new temporary or permanent structures of less than 10,000 square feet of floor area, if the *Executive Director* determines that (a) the proposed development (i) is consistent with the recommendations of the *Commission* on the land use and circulation plan elements of the master plan, (ii) will have no significant adverse impact on the environment, access and egress facilities, and utilities, and (iii) is compatible with existing and proposed developments in its immediate vicinity, and (b) the addition or relocation of employees to the proposed development would not cause a significant impact on low- and/or moderate-income housing needs in the vicinity of the development; and

(2) Final site and building plans where such plans conform to applicable recommendations made by the *Commission* in its review of the preliminary site and building plans for the project and of any environmental statement or description of the environmental impact submitted pursuant to the *Commission's* Policies and Procedures for the Protection and Enhancement of Environmental Quality in the National Capital Region.

6. Advising and consulting with appropriate planning agencies having jurisdiction over the affected part of the *environs* with respect to general plans for proposed Federal and District developments and projects within the *environs* and with respect to plans for proposed developments or projects submitted pursuant to Section 5.(a) of the *Planning Act* involving a major change in the character or intensity of an existing use in the *environs*, pursuant to Section 5.(d) of the *Planning Act;*

7. Requesting Federal and District governmental agencies to furnish plans, data, and records necessary to the *Commission* and furnish related plans, data, and records to Federal and District of Columbia governmental agencies upon request, pursuant to Section 5.(e) of the *Planning Act;*

8. Conferring with Federal and District authorities and the *Agency* in the preparation of the general plan under Section 6.(a) of the *Redevelopment Act* and with respect to urban renewal planning under Section 6.(b) of the *Redevelopment Act*, pursuant to Section 6.(c) of the *Redevelopment Act;* and

9. Aiding the *Mayor* in making a survey of the "Old Georgetown" area pursuant to Section 4 of the Act of September 22, 1950, 64 Stat. 904 (D.C. Code, sec. 5-804).

IV. DELEGATIONS TO SECRETARY

The *Commission* delegates to the Secretary to the *Commission* the functions of:

1. Publishing, jointly with the *Mayor*, from time to time as appropriate, the *Comprehensive Plan* pursuant to Section 2.(a)(4)(D) of the *Planning Act;* and

2. Certifying to the *Agency* urban renewal plans adopted by the *Commission* and approved by the *Council* under Section 6.(b)(2) of the *Redevelopment Act*, pursuant to Section 6.(d) of the *Redevelopment Act.*

V. REPORTS TO COMMISSION

The Chairman of the *Commission*, the *Executive Director*, or the *Secretary* to the *Commission* shall report the exercise of any delegation of authority pursuant to Parts II, III, or IV, respectively, to the *Commission* at its meeting next following the exercise of such delegation.

VI. RESERVATIONS OF FUNCTIONS

The *Commission*, by majority vote at any meeting of the *Commission* and prior to the exercise of any delegation of authority pursuant to Parts II, III, or IV, may reserve to the *Commission* the performance, in general or with respect to a particular matter, of the function as to which such delegation is granted.

DANIEL H. SHEAR,
Secretary.

MAY 5, 1978.

[FR Doc. 78-13119 Filed 5-12-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

NOTICE OF REGIONAL STATE LIAISON OFFICERS' MEETING

On June 14, 1978, the Nuclear Regulatory Commission will sponsor a meeting with State Liaison Officers in Missouri, Minnesota, Oklahoma, Illinois, Indiana, Iowa, Michigan, Ohio, and Wisconsin to discuss mutual regulatory interests. Forty-nine Governors have appointed Liaison Officers to NRC and this will be a meeting of those Liaison Officers from the States in NRC Region III (Chicago). The meeting, which will be open to the public, will be held from 9 a.m. to 9 p.m. at Argonne National Laboratory, 9700 Cass Avenue, Argonne, Ill. The evening session from 7 to 9 p.m. will involve a workshop on radioactive waste disposal and decommissioning of nuclear facilities.

Questions regarding this meeting should be directed to Sue Weissberg, Office of State Programs at 301-492-7794.

Dated at Bethesda, Md., this 9th day of May 1978.

For the Nuclear Regulatory Commission.

ROBERT G. RYAN,
Director,
Office of State Programs.

[FR Doc. 78-13083 Filed 5-12-78; 8:45 am]

[7590-01]

PROPOSED GOALS FOR NUCLEAR WASTE MANAGEMENT

Task Force Report

Notice is hereby given that a report, "Proposed Goals for Nuclear Waste Management," NUREG-0300, is available for public comment. This document is a report to the NRC Staff from a contractor and staff study and

is in response to a request by the Commission for a set of comprehensive goals to be met by the NRC nuclear waste management regulatory program. The views expressed in the report are those of the authors and do not represent the views of the Commission or the staff. The contributors to the report represent diverse disciplines and have submitted to the staff a report which reflects these diverse backgrounds and points of view as brought to bear on nuclear wastes. The authors extended the scope of their inquiry to cover "all technical and societal aspects necessary to an operating waste management system." The report is based on findings, interpretations and analyses by seven individuals who examined selected primary literature and interviewed others concerned with waste management. Most of the ideas expressed in this report are not new; many individuals inside and outside the nuclear agencies have been voicing them for many years. However, not all of the concerns have been systematically acknowledged before.

In brief, the report "identifies the range of considerations which must be accounted for in establishing the broad comprehensive policy foundation needed by society for control of the long-term potential hazards of radioactive wastes." The goals fall into three time periods and are summarized in a Table following this notice. They could form part of a basis from which to derive licensing criteria and regulations for nuclear waste management; they are principles by which one could judge whether a proposed system measures up to the overall goal of protecting things valued by those whom the system serves; and they could serve to focus public debate on important waste management factors. However, no decision has been made regarding these uses by the Commission.

All interested persons who desire to submit written comments on the report and its proposed goals should send them by June 29, 1978, to the Assistant Director for Waste Management, Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Copies of the report may be examined at the Commission's Public Document Room at 1717 H Street, Washington, D.C. Copies of the comments received in response to this notice will be placed in the Public Document Room in Washington, as received. Single copies of the report may be obtained without charge, to the extent of supply, by writing to the Division of Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Thereafter copies may be obtained from the National Technical Information Service, Springfield, Va. 22161, at current rates.

Dated at Washington, D.C., this 25th day of April 1978.

For the Nuclear Regulatory Commission.

WILLIAM P. BISHOP,
Assistant Director for Waste Management, Division of Fuel Cycle and Material Safety.

[FR Doc. 78-13084 Filed 5-12-78; 8:45 am]

[7590-01]

[Docket No. 50-244]

ROCHESTER GAS AND ELECTRIC CORP.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 19 to Provisional Operating License No. DPR-18, issued to Rochester Gas and Electric Corp. (the licensee), which revised the Technical Specifications for operation of the R. E. Ginna Plant (facility) located in Wayne County, N.Y. The amendment is effective as of its date of issuance.

The amendment changes the Appendix A Technical Specifications to support operation in Cycle 8 with reload fuel by Exxon Nuclear Co. (ENC). This fuel has been designed by ENC to be compatible with the fuel supplied previously by Westinghouse. In addition, the amendment allows Technical Specification changes that are required for startup tests.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of proposed Issuance of Amendment to Facility Operating License in connection with this action was published in the FEDERAL REGISTER on February 21, 1978 (43 FR 7275). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the Commission's Order for Modification of License dated August 27, 1976, (2) the application for amendment dated January 6, 1978, and supplements thereto dated January 10, 1978, March 27, 1978, April 6, 1978, April 17, 1978, and April 25, 1978, (3) Amendment No. 19 to License No. DPR-18, (4) the Commission's related Safety Evaluation, and (5) the Exemption related to the requirements of 10 CFR 50.46(a)(1) and the Safety Evaluation dated April 18, 1978, attached thereto. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Rochester Public Library, 115 South Avenue, Rochester, N.Y. 14627.

A copy of items (1), (3), (4), and (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 1st day of May, 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief Operating Reactors, Branch #2, Division of Operating Reactors.

[FR Doc. 78-13085 Filed 5-12-78; 8:45 am]

[7590-01]

[Docket No. 50-244]

ROCHESTER GAS AND ELECTRIC CORP.

Exemption

I

The Rochester Gas and Electric Corp. (the licensee), is the holder of Provisional Operating License No. DPR-18 which authorizes the operation of the nuclear power reactor known as R. E. Ginna Nuclear Power Plant (the facility) at steady reactor power levels not in excess of 1,520 megawatts thermal (rated power). The facility consists of a Westinghouse Electric Co. designed pressurized ractor (PWR) located at the licensee's site in Wayne County, N.Y.

II

In accordance with the requirements of the Commission's ECCS Acceptance Criteria 10 CFR 50.46, the licensee submitted on April 7, 1977 and January 6, 1978 ECCS evaluations for proposed operation using 14×14 fuel manufactured by the Westinghouse Electric Co. and the Exxon Nuclear Co. (ENC). These evaluations established limits on the peaking factor based upon ECCS evaluation models developed by the Westinghouse Electric Co. (Westinghouse), the designer of the Nuclear Steam Supply System for this facility, and by Exxon, the supplier of the reload fuel. The Westinghouse and

ENC ECCS evaluation models had been previously found to conform to the requirements of the Commission's ECCS Acceptance Criteria, 10 CFR Part 50.46 and appendix K. The evaluations indicated that with the peaking factor limited as set forth in the evaluations and with other limits set forth in the facility's Technical Specifications, the ECCS cooling performance for the facility would conform with the criteria contained in 10 CFR 50.46(b) which govern calculated peak clad temperature, maximum cladding oxidation, maximum hydrogen generation, coolable geometry and long-term cooling.

On March 23, 1978 Westinghouse informed the Nuclear Regulatory Commission (NRC) that an error had been discovered in the fuel rod heat balance equation which resulted from the incorrect use of only half of the volumetric heat generation due to metal-water reaction in calculating the cladding temperature. Thus, the LOCA analyses previously submitted to the Commission by licensees of Westinghouse reactors were in error.

The error identified would result in an increase in calculated peak clad temperature, which, for some plants, could result in calculated temperatures in excess of 2200° F unless the allowable peaking factor was reduced somewhat. Westinghouse identified a number of other areas in the approved model which Westinghouse indicated contained sufficient conservatism to offset the calculated increase in peak clad temperature resulting from the correction of the error noted above. Four of these areas were generic, applicable to all plants, and a number of others were plant specific. As outlined in the NRC Staff's Safety Evaluation Report (SER) of April 18, 1978, the staff determined that some of these modifications would be appropriate to offset to some extent the penalty resulting from correction of the error. The attached SER of April 18, 1978 sets forth the value for each modification applicable to each facility.

As part of the proposed change to the technical specifications the licensee has submitted information and analyses to permit Cycle 8 operation with reshuffled Westinghouse fuel and with 32 Westinghouse fuel assemblies replaced with fresh fuel assemblies manufactured by the Exxon Nuclear Co. (ENC) and loaded on the periphery of the core. Based on an analysis of the information presented by the licensee, the staff has concluded that the new fuel manufactured by Exxon Nuclear Co. (ENC) is both similar to and compatible with the fuel previously supplied by Westinghouse. The ENC calculations for the ENC fuel for the Ginna Core are not affected by the Westinghouse error. (Safety Evaluation for the reload application dated May 1, 1978.) The staff's evaluation determined that the impact of correcting the Westinghouse Zirconium-water reaction error on the peak cladding temperature for the RE Ginna plant is less than the presently existing margin (228° F) to the 2200° F acceptance criteria limit. The NRC Staff has confirmed that the impact of correcting the error in the Westinghouse ECCS evaluation model as it relates to the use of Westinghouse fuel is conservative, based on the April 18, 1978 Safety Evaluation Report.

Although revised computer calculations correcting the error, noted above, and incorporating the modifications described in the Staff's April 18, 1978 SER have not been run for each plant, the various parametric studies that have been made for various aspects of the approved Westinghouse model over the course of time provide a reasonable basis for concluding that when final revised calculations for the facility are submitted using the revised and corrected Westinghouse model, they will demonstrate that operation will conform to the criteria of 10 CFR 50.46(b), when operated at the peaking factors set forth in the SER of April 18, 1978. Such revised calculations fully conforming to 10 CFR 50.46 are to be provided for the facility as soon as possible.

Operation of the facility would nevertheless be technically in non-conformance with the requirements of § 50.46, in that specific computer runs for the particular facility employing revised models with the Westinghouse metal-water error corrected and with the proposed model changes considered, as a complete entity will not be complete for some time. However, operation as proposed in the licensee's application dated January 6, 1978, and at the peaking factor limit specified in this Exemption will assure that the ECCS system will conform to the performance criteria of § 50.46. Accordingly, while the actual computer runs for the specific facility are carried out to achieve full compliance with 10 CFR § 50.46, operation of the facility will not endanger life or property or the common defense and security.

In the absence of any safety problem associated with operation of the facility during the period until the computer computations are completed, there appears to be no public interest consideration favoring restriction of the operation of the captioned facility. Accordingly, the Commission has determined that an exemption in accordance with 10 CFR § 50.12 is appropriate. The specific exemption is limited to the period of time necessary to complete computer calculations.

IV

Copies of the Safety Evaluation Report dated April 18, 1978, and the following documents are available for inspection at the Commission's Public Document Room at 1717 H Street, Washington, D.C. 20555, and at the Rochester Public Library, 115 South Avenue, Rochester, N.Y. 14627.

(1) Licensee submittals dated April 7, 1977, January 6, 1978, and April 25, 1978.

(2) Amendment No. 19 to License No. DPR-18 and the related Safety Evaluation for the reload application, and

(3) This Exemption in the matter of RE Ginna Nuclear Power Plant.

Wherefore, in accordance with the Commission's regulations as set forth in 10 CFR Part 50, the licensee is hereby granted an exemption from the requirements of 10 CFR § 50.46(a)(1) that ECCS performance be calculated in accordance with an acceptable calculational model which conforms to the provisions in appendix K, without errors discussed herein. This exemption is conditioned as follows:

(1) As soon as possible, the licensee shall submit a reevaluation of ECCS cooling performance calculated in accordance with the Westinghouse Evaluation Model, and approved by the NRC staff and corrected for the errors described herein.

(2) Until further authorization by the Commission, the Technical Specification limit for total nuclear peaking factor (F_Q) for the facility shall be limited to 2.32.

Dated at Bethesda, Md., this 1st day of May, 1978.

For the Nuclear Regulatory Commission.

VICTOR STELLO, Jr.,
Director, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

[FR Doc. 78-13086 Filed 5-12-78; 8:45 am]

[7590-01]

[Docket No. 50-338]

VIRGINIA ELECTRIC AND POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 4 to the Facility Operating License No. NPF-4, issued to Virginia Electric and Power Co., which deletes certain conditions contained in Facility Operating License NPF-4 Amendment No. 3. The amendment is effective as of its date of issuance.

The amendment deletes 2 conditions regarding tests and procedures to be followed prior to achieving full power.

The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in Title 10 CFR Chapter I, which

are set forth in the license amendment. The Commission has determined that the amendment does not authorize a change in effluent types or total amounts nor an increase in power level and will not result in any significant environmental impact. Having made this determination, it has further been concluded that the amendment involves an action which is insignificant from the standpoint of environmental impact and, pursuant to 10 CFR 51.5(d)(4), that an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) Virginia Electric and Power Co. letters, dated April 12, 1978, and April 14, 1978, (2) Amendment No. 4 to License No. NPF-4, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555 and at the Board of Supervisor's Office, Louisa County Courthouse, Louisa, Va. 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Va. 22901. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Dated at Bethesda, Md. this 8th day of May 1978.

For the Nuclear Regulatory Commission.

OLAN D. PARR,
Chief, Light Water Reactors Branch No. 3, Division of Project Management.

[FR Doc. 78-13087 Filed 5-12-78; 8:45 am]

[7590-01]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.20, "Applications of Bioassay for I-125 and I-131," provides criteria acceptable to the NRC staff for the development and implementation of a bioassay program for any licensee handling or processing I-125 or I-131.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guide 8.20 will, however, be particularly useful in evaluating the need for an early revision if received by July 14, 1978.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a).)

Dated at Rockville, Md., this 8th day of May 1978.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc. 78-13088 Filed 5-12-78; 8:45 am]

[7555-02]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

INTERGOVERNMENTAL SCIENCE, ENGINEERING AND TECHNOLOGY ADVISORY PANEL

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

Name: Intergovernmental Science, Engineering, and Technology Advisory Panel—Science and Technology Task Force.
Place: Room 3104, New Executive Office Building, 726 Jackson Place NW., Washington, D.C.
Date: Thursday June 1, 1978; 9 a.m.-11:45 a.m.; 1:00 p.m.-3:45 p.m.
Contact Person: Mr. Robert Goldman, Office of Science & Technology Policy, Executive Office of the President; telephone, 202-395-4596. Anyone who plans to attend should contact Mr. Goldman by May 29, 1978.

The purpose of the meeting is to discuss Task Force recommendations with officials from the National Science Foundation (NSF), and to consider general recommendations for strengthening Federal R&D dissemination and research utilization activities.

Minutes of the meeting: Summary minutes of the meeting will be available from Mr. Goldman.

TENTATIVE AGENDA

Thursday, June 1, 1978

Morning—Federal dissemination and research utilization activities.
Afternoon—Status of Task Force recommendations to NSF.

WILLIAM J. MONTGOMERY,
Executive Officer, Office of Science and Technology Policy.

MAY 9, 1978.

[FR Doc. 78-13120 Filed 5-12-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1469]

WISCONSIN

Declaration of Disaster Loan Area

Fond du Lac County and adjacent counties within the State of Wisconsin, constitute a disaster area as a result of damage caused by heavy rains and flooding which occurred on April 3, 1978 through April 4, 1978. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on July 7, 1978, and for economic injury until the close of business on February 8, 1979, at:

Small Business Administration, District Office, 122 West Washington Avenue, Room 700, Madison, Wis. 53703.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.

Dated: May 8, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-13124 Filed 5-12-78; 8:45 am]

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

AIR TRAFFIC CONTROL TOWER

Notice of Commissioning

Notice is hereby given that on June 16, 1978, through October 2, 1978, the Airport Traffic Control Tower at the Martha's Vineyard Airport, Martha's Vineyard, Mass., will be commissioned

as a part-time facility. Hours of operation will be established in advance by a Notice to Airmen and, therefore, be published in the Airman's Information Manual. This information will be reflected in the FAA Organization Statement the next time it is issued. Communications to the tower should be as follows:

Federal Aviation Administration, Airport Traffic Control Tower, P.O. Box 71, Vineyard Haven, Mass. 02568.

(Sections 313(a), 72 Stat. 752; 49 U.S.C. 1354(a) and Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Burlington, Mass., on May 11, 1978.

ROBERT E. WHITTINGTON,
Director, New England Region.

[FR Doc. 78-13069 Filed 5-12-78; 8:45 am]

[4910-13]

AIR CARRIER DISTRICT OFFICE AT YPSILANTI, MICH.

Notice of Address Change

Notice is hereby given that on or about May 1, 1978, the Air Carrier District Office at Ypsilanti, Mich., will be moved from Flight Standards Building, Willow Run Airport, Ypsilanti, Mich. 48197, to Ypsilanti Savings Bank, 301 W. Michigan, Ypsilanti, Mich. 48197. Services to the air carrier public of Michigan and Ohio will not be affected. This information will be reflected in the FAA Organization Statement the next time it is reissued.

Issued in Des Plaines, Ill., on May 4, 1978.

JOHN M. CYROCKI,
Director, Great Lakes Region.

[FR Doc. 78-13071 Filed 5-12-78; 8:45 am]

[4910-13]

RADIO TECHNICAL COMMISSION FOR AERONAUTICS (RTCA) SPECIAL COMMITTEE 137—AIRBORNE NAVIGATION SYSTEMS (2D AND 3D)

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the RTCA Special Committee 137 on Airborne Navigation Systems (2D and 3D) to be held June 7-8, 1978, RTCA Conference Room 261, 1717 H Street NW., Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) review committee terms of reference; (3) establish guidelines and limits for committee activities; (4) review minimum operational performance standards (MOPS) format; (5) establish work program and time for accomplishment; and (6) assignment of tasks.

Attendance is open to the interested public but, limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify, not later than the day before the meeting, and information may be obtained from, RTCA Secretariat, 1717 H Street NW., Washington, D.C. 20006; 202-296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on May 8, 1978.

KARL F. BIERACH,
Designated Officer.

[FR Doc. 78-13070 Filed 5-12-78; 8:45 am]

[4910-60]

Materials Transportation Bureau

UNITED NATIONS RECOMMENDATIONS ON THE TRANSPORT OF DANGEROUS GOODS

Public Meeting

A public meeting will be held on June 19, 1978, at 9:30 a.m. in Room 3201 of the Trans Point Building, 2100 Second Street SW., Washington, D.C. 20590. The purpose of this meeting will be to discuss the results of the March 1978 meeting of the Group of Rapporteurs of the United Nations Committee of Experts on the Transport of Dangerous Goods. In addition, the meeting will provide a forum by which interested parties may provide information to assist the MTB in the formulation of United States positions for the upcoming meeting of the Group of Rapporteurs, as well as for the next meeting of the United Nations Group of Experts on Explosives, both of which will be held during August 1978 in Geneva, Switzerland. Anticipated items of discussion at this meeting include:

1. The UN Hazard Information System.
2. Changes in the definition of Class 6 and in the toxicity criteria for the determination of packaging group.
3. Recent developments concerning the UN portable tank recommendations.
4. Minimum thicknesses for metal drums.
5. Consignment procedures for dangerous goods shipments (Revision of Chapter 13 of the UN recommendations.)
6. Water resistance of fiberboard packagings.

Interested persons are invited to attend and participate in this meeting.

ALAN I. ROBERTS,
Director, Office of Hazardous Materials Operations.

[FR Doc. 78-13145 Filed 5-12-78; 8:45 am]

[4910-62]

Office of the Secretary

MINORITY BUSINESS ENTERPRISE

Internal Order

The Department of Transportation herewith publishes for the information of the public its recent internal directive on Minority Business Enterprise (DOT Order 4000.7A), issued on March 6, 1978.

This action is taken because of the significant interest that has been expressed in the Department's minority business program. The Department will seek comments and suggestions on the implementation of this internal directive when detailed procedures are published in the near future. The Minority Business Program Order will enhance the Department's ability to comply with the President's direction that Federal agencies triple the participation of minority businesses in agency programs by the end of fiscal year 1979.

Issued in Washington, D.C. on April 24, 1978.

BROCK ADAMS,
Secretary of Transportation.

DEPARTMENT OF TRANSPORTATION, OFFICE OF THE SECRETARY, WASHINGTON, D.C.

SUBJECT: MINORITY BUSINESS ENTERPRISE PROGRAM

1. *Purpose.* This Order updates, reemphasizes and clarifies the key elements for effective implementation and enforcement of the Department's Minority Business Enterprise (MBE) program.

2. *Cancellation.* DOT 4000.7 MINORITY BUSINESS ENTERPRISE PROGRAM of 3-26-75.

3. *Policy.* a. It is the policy of the Department of Transportation to encourage and increase the participation of businesses owned and controlled by minorities, including women, (MBEs) in contract and projects funded by the Department. Economically and socially disadvantaged individuals, including minorities and women, have traditionally been underrepresented as owners and managers of businesses in this country. The executive and legislative branches of the federal government have long recognized the need to promote the development of businesses owned by the economically and socially disadvantaged to achieve the goal of equal opportunity. To overcome the traditional underrepresentation of these groups in the business community, the federal government has used its procurement authority and its financial assistance programs to state and local governments as vehicles to assist minority business enterprises. Executive Order 11625 directs the Department of Commerce to provide techni-

cal and financial assistance to promote MBEs. Executive Order 11625 further requires that federal executive agencies develop comprehensive plans and programs to encourage minority business enterprise.

b. The Department of Transportation is firmly committed to fulfilling its responsibilities under this Executive Order and to meet the goal of greater MBE participation in contracts and projects funded by the Department, although this may result in some increased cost to DOT. To this end, DOT is requiring each of its operating elements and all aid recipients and their contractors to make strong affirmative action efforts designed to set and meet goals for increasing MBE involvement. These efforts will encompass all aspects of the procurement of supplies, equipment, construction and services, including professional service contracts, concession contracts and bank deposits.

c. The Department recognizes that meaningful gains in the level of MBE participation can be achieved only with energetic enforcement of this order and the commitment of all DOT employees, grantees and contractors to the goals of equal opportunity.

4. *Authority.* Executive Order 11625 of 10-13-71 provides arrangements for developing and coordinating a national program for minority business enterprise (MBE). Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d) and its regulations prohibit discrimination in all federally-funded programs and mandate DOT and other federal agencies to require that affirmative efforts be made to ensure effective participation by minorities in these programs. In addition, the following statutes and regulations enforced by operating elements of DOT are examples of those that prohibit discrimination and require affirmative action in connection with DOT programs: Section 905 of Pub. L. 94-210, the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) and the regulations implementing §905, 49 CFR Part 265 [FRA]; Commandant Instruction 4380.2 [Coast Guard]; 49 U.S.C. §1730 (§30 of the Airport and Airway Development Act of 1970, as amended) [FAA]; 49 U.S.C. §1608(f) [UMTA]; and 23 CFR Part 230, Subparts A, B and C [FHWA].

5. *Definitions.* a. *Minority business enterprise* is a business that is owned and controlled by one or more minority persons. For the purpose of this definition,

(1) *Minority Person* means an individual who is Black, Hispanic, Asian American, American Indian, Alaskan native, or a woman regardless of race or ethnicity.

(2) *Owned and controlled* means a business which is (1) a sole proprietorship legitimately owned by an individual who is a minority person, (2) a partnership or joint venture controlled by minority persons and in which at least 51 percent of the beneficial ownership interests legitimately are held by minority persons, or (3) a corporation or other entity controlled by minority persons, and in which at least 51 percent of the voting interests and 51 percent of the beneficial ownership interests legitimately are held by minority persons.

b. *Operating Element* includes the following parts of DOT: The Office of the Secretary; the Federal Aviation Administration; the United States Coast Guard; the Federal Highway Administration; the Federal Railroad Administration; the National Highway Traffic Safety Administration; the Urban Mass Transportation Administration; the St. Lawrence Seaway Development Corporation; and the Research and Special Programs Directorate.

6. *Responsibilities.* a. The Deputy Secretary is the Department of Transportation member of the Interagency Council for Minority Business Enterprise and has overall responsibility for the DOT MBE program, including the exercise of policy leadership regarding the involvement of MBEs in the Department's activities. The Assistant Secretary for Administration has responsibility for establishing and maintaining a program to promote the Department's MBE policy, developing reporting systems, and providing support to the Deputy Secretary in the activities of the Interagency Council for Minority Business Enterprise, including providing DOT representation on the several Task Forces or Committees of the Interagency Council for MBE. The Departmental Director of Civil Rights has authority to carry out periodic MBE program review functions and to recommend improvements in the MBE program to the Deputy Secretary.

b. Secretarial Officers and heads of operating elements have responsibility for effectively carrying out the policy within their office or administration. The head of each operating element (and the Assistant Secretary for Administration in the case of OST) shall designate an official to act as MBE Coordinator and to have overall responsibility, in cooperation with the Director of Civil Rights of the Operating element if the Director of Civil Rights is not designated as MBE Coordinator, for promotion of the minority business enterprise program in his or her element. The Director of each element's Office of Civil Rights shall include MBE subcontracting efforts as a factor in regular contract review activities. In those operating elements in which a minority business resource center is established, the Administrator may assign to that center such authority under this Order as is deemed appropriate.

c. Each operating element will also designate for each activity with contracting authority an official to be responsible for promotion of the program to award contracts to MBE firms. This official should be able to provide effective coordination between procurement personnel and the various requirements offices and will be responsible for ensuring that required reports are submitted. In addition, when deemed appropriate by the head of each operating element, this official shall establish effective lines of communication with regional and field offices of the Office of Minority Business Enterprise, Department of Commerce, and shall ensure that his or her procuring activity is represented on and actively participates in the activities of the Minority Business Opportunity Committees established in the area.

d. Upon good cause shown, the Deputy Secretary may grant waivers for an operating element from any organizational structure requirement of this Order. Any waiver must preserve the policy purposes of this Order.

7. *Procedures. a. Direct DOT Procurement Contracts.* Each DOT operating element shall take effective steps to apply the MBE policy to its direct procurement activities. Those steps shall include, but not be limited to, the following:

(1) Establish an annual goal, expressed as a percentage of the operating element's contracting dollars, for minority business utilization in its direct contracting, with special emphasis on types of contracts where minority business involvement has been more limited than others. The element's MBE Coordinator, with the approval of the head of the operating element and the concurrence of the Deputy Secretary, shall establish the goal and shall determine at least annually the way in which the percentage goal will be allocated among contracting activities, among the element's programs, and among types of contract work.

(2) Develop plans and procedures to comply with the requirements of paragraphs 7b(1)(c)(6) through (11) with respect to an operating element's direct contracting MBE program. The operating element's Office of Civil Rights shall be responsible for determining the legitimacy of MBEs.

(3) Maintain in each procurement office bidders mailing lists that clearly show identified minority business enterprises. The Assistant Secretary for Administration shall coordinate the maintenance of these lists and, if deemed desirable by the Deputy Secretary, maintain a centralized list which shall be the reference point for all lists maintained in the Department, and which shall be updated periodically from those lists. Included among the lists maintained by the operating element should be the small purchase source list for repetitive procurements. The small business and MBE status of firms on such lists will be indicated when the status is known. In order to ensure maximum identification of MBE firms for its source lists, the procurement office shall consult with its civil rights office, the SBA, local branches of the Office of Minority Business Enterprise, local Business Development Organizations (BDOs), and minority organizations or technical assistance groups. Invitations for bids and requests for proposals and quotations will be sent to identified minority firms for each requirement.

(4) Screen all procurements for possible award to MBE firms under the Small Business Administration's Section 8(a) program, or for possible award to MBE firms through the use of competitive set-aside contracts under which consideration will be given only to bids or proposals submitted by minority business enterprises. Competitive set-asides will be used where there is an adequate number of qualified MBEs in the relevant geographical area available to submit bids or proposals for the contracts and where the procedure is approved for use in the particular case by the head of the operating element or his/her designee. Procurements found to be suitable for award under Section 8(a) will be processed through the appropriate SBA office. The screening process required by this paragraph shall be carried out by the operating element's procurement office. A recommendation not to use a set-aside procedure shall be subject to review and approval by the operating element's Office of Civil Rights and by the MBE Coordinator or their designees, prior to issuance of the solicitation or, if justified in writing, after the issuance of the solicitation but before contract award. The MBE Coordinator and the Office of Civil Rights or their designees may waive review and approval authority with respect to classes of procurements for which they determine that set-asides cannot be used. Such waivers shall be reassessed at least annually. In those operating elements where a designee acts for the MBE Coordinator, the MBE Coordinator shall review the adequacy of the operating element's MBE program ef-

forts with the designee during the preparation of each quarterly report required under paragraph 8 of this Order.

(5) Comply with, and ensure prime contractor compliance with, the provisions of FPR Subpart 1-1.13, *Minority Business Enterprise.* In appropriate circumstances, operating elements shall require percentage goals for prime contractors with respect to minority subcontracting. Reasonable techniques for achieving the purposes of the minority subcontracting program, including the use of minority set-asides in subcontracting where allowable under state law, may be approved by the operating element. Where appropriate, an operating element may require prime contractors to prepare programs complying with the requirements of paragraph 7b(1)(c). The Contracting Officer shall consult and coordinate with the MBE Coordinator or a designee to resolve issues or questions regarding MBE involvement arising during negotiations with prime contractors.

(6) Decide, prior to contract award, that overall MBE participation (whether by set-asides, prime or subcontract award) is adequate. The operating element's procurement office shall prepare a finding that the level of MBE participation in each contract is adequate, subject to approval by the operating element's Office of Civil Rights and by the MBE Coordinator or their designees.

b. *Financial Assistance Programs.* Each DOT operating element shall make immediate and concerted efforts to carry out the Department's MBE policy in the financial assistance programs administered by the element. Those efforts require the full cooperation of recipients, who must be told in clear terms what they must do to comply with the policy, and must be provided with guidance and technical assistance by operating element personnel. Operating elements shall adopt procedures to ensure that actions taken by employees of the operating element and by recipients are in furtherance of the MBE policy.

(1) *Requirements for Financial Assistance Programs.* The element's process for the award of financial assistance will require all applicants for grants, project acceptance, authorization to proceed or other necessary DOT clearance, to present for approval by the operating element as a part of their application an affirmative action program to promote minority business enterprise, and to implement such a program if the grant is awarded or the project accepted. Operating elements need not require that a new program be prepared for each application, but rather may approve a project on the basis of a previously approved program so long as the percentage goals or other requirements pertaining to the particular application are satisfactory. Program approval shall be reassessed periodically to assure compliance with applicable standards. The requirements of this paragraph include the following:

(a) The recipient shall agree to abide by the following statement of MBE obligation and, unless otherwise determined by the head of the operating element or his/her designee, to include the following statement in all agreements between the recipient and any subrecipient, and in all contracts which are financed in whole or in part with Federal funds provided under the agreement with the recipient except contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions and Puerto Rico:

1 Policy. "It is the policy of the Department of Transportation that minority business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement."

2 MBE Obligation. "The recipient or contractor agrees to provide for full and fair utilization of minority business enterprises and will use its best efforts to insure that minority business enterprises shall have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or contractors must take all necessary and reasonable steps to insure that minority business enterprises have an equitable opportunity to compete in all contracting activities."

3 Definitions.

a. "The term 'minority business enterprise' as used in this agreement means a business enterprise that is owned and controlled by one or more minority persons. The term 'minority person' means a person who is Black, Hispanic, Asian American, American Indian, Alaskan native, or a woman regardless of race or ethnicity."

b. "The phrase 'owned and controlled' as used in this definition means a business which is (1) a sole proprietorship legitimately owned by an individual who is a minority person; (2) a partnership or joint venture controlled by minority persons, and in which at least 51 percent of the beneficial ownership interests legitimately are held by minority persons, or (3) a corporation or other entity controlled by minority persons, and in which at least 51 percent of the voting interests and 51 percent of the beneficial ownership interests legitimately are held by minority persons."

(b) The applicant or recipient may seek assistance from the DOT operating element's MBE Coordinator or his/her designee in preparing a program and shall work with the MBE Coordinator or his/her designee to carry out an affirmative action program for the utilization of MBEs.

(c) The affirmative action program prepared by the recipient and the commitment to carry it out shall be incorporated into and become part of the grant agreement. The affirmative action program shall include at a minimum:

1 A policy statement expressing a commitment to utilize MBEs in all aspects of procurement to the maximum extents feasible;

2 The appointment of a liaison officer, as well as such support staff as may be necessary to administer the program, noting the authority, responsibility, and duties of the liaison officer and support staff;

3 Percentage goals for the dollar value of work to be awarded to MBEs and reasonable written justification for those goals;

4 Procedures by which recipients will seek affirmative action on MBE participation from major suppliers or contractors to the recipient;

5 Where allowable under local law and appropriate to meet MBE goals, procedures by which the recipient will carry out an MBE set-aside program, under which consideration of bids or proposals would be limited to those submitted by MBEs in cases where MBEs with capabilities consistent with contract requirements exist in sufficient numbers to permit competition;

6 Procedures to require that participating MBEs be identified by name when bids or proposals are submitted, and procedures to permit the legitimacy of MBEs and joint ventures involving MBEs to be ascertained.

7 Procedures to insure that known MBEs will have an equitable opportunity to compete for contracts and subcontracts by arranging solicitations, time for the presentation of bids, quantities, specifications and delivery schedules so as to facilitate the participation of MBEs;

8 Means by which MBEs may be assisted in overcoming barriers to program participation, such as through bonding, insurance and technical assistance activities;

9 Information and communication programs to make MBEs aware of their opportunities, with such programs being bilingual where appropriate;

10 Opportunities for the utilization of minority-owned banks;

11 A description of the methods by which the recipient will require subrecipients, contractors and subcontractors, as a precondition to subgrant or contract award, to comply with the provisions of as many of the previous ten paragraphs as are pertinent to the work covered by the subgrant or contract. The description shall contain the specific language to be included in agreements and contracts making the requirements applicable, as well as a summary of the ways recipient will provide help to its subrecipients, contractors and subcontractors in drafting and implementing their programs for using MBEs. For example, a contract offering substantial subcontracting possibilities would require that the contractor, at a minimum, disignate a liaison officer, consider the qualifications of minority firms, arrange for minority businesses to have a chance to compete, consider the use of set-asides, maintain records, submit reports, and cooperate with the Contacting Officer in studies of the contractor's MBE procedures.

(d) If after investigation and opportunity for the recipient to respond, the Secretary determines that a recipient has failed to prepare and carry out an adequate minority business enterprise affirmative action program, that failure shall be grounds for the Department's refusal to award financial assistance or give project approval, or shall constitute a breach of contract and may result in the termination of financial assistance, and may preclude the recipient from receiving further financial assistance from any operating administration of the Department of Transportation or such other remedy as the Department deems appropriate. The recipient shall advise each subrecipient, contractor or subcontractor that failure to carry out the requirements set forth above and to use good faith efforts to utilize qualified minority businesses as contractors and subcontractors shall constitute a breach of the contract and, with the concurrence of the Department, may result in termination of the agreement or contract by the recipient or such other remedy as the recipient deems appropriate.

(e) The operating element may impose reasonable reporting requirements, to the extent necessary to judge compliance with MBE obligations. Records shall be available upon the request of an authorized officer or employee of the Department. The recipient in turn shall require subrecipients, contractors and subcontractors to maintain records adequate to judge compliance with requirements applying to them. Recipients shall maintain records showing, at a minimum:

1 Procedures which have been adopted to comply with the policies and procedures set

forth in this Order, including the establishment of a source list of MBEs.

2 Awards to MBEs, and;

3 Specific efforts to identify and award contracts to MBEs.

8. *Reports.* a. *Quarterly Reports.* The head of each operating element shall submit a quarterly report (by the last day in January, April, July and October) to the Assistant Secretary for Administration and to the Departmental Director of Civil Rights describing the activities undertaken toward and progress achieved in meeting the goal of greater MBE participation in its procurement and financial assistance programs during the preceding Federal quarter. These reports shall discuss at least the following:

(1) Data on the level of MBE participation in the contracting and subcontracting activities of the operating element and of recipients of financial assistance, both in terms of number of MBE contracts awarded, the identities of MBEs, and the dollar value of the work being so contracted;

(2) A statistical breakdown of the methods of award to MBEs (for example, 8(a), open competition, small business set-asides, competitive MBE set-asides, and subcontracts).

(3) Data reported by prime contractors on their subcontracting as required by Federal Procurement Regulations (FPR) 1-1.1310-2(b);

(4) Brief description of any participation or attendance in seminars, conferences, or workshops on MBE.

(5) Brief description of any problems encountered in the general area of MBE or on specific contracts or projects.

b. All Secretarial Officers within DOT should, as required, report on significant procurement developments related to MBE.

c. In order to meet the deadline established by Executive Order 11625 for the annual report to the President, the report submitted at the end of the year must be received in OST by the end of October. This report will include forecast data for the next fiscal year covering Sections 1, 2 and 3 of Department of Commerce, Office of Minority Business Enterprise, Form MBE-91 (Revs. 4-75).

9. *Effective date.* The provisions of this Order are effective immediately upon promulgation. Operating elements shall submit plans for full implementation of this Order to the Deputy Secretary within sixty days of the date of promulgation.

BROCK ADAMS,
Secretary of Transportation.

[FR Doc. 78-13141 Filed 5-12-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Customs Service

[056230]

AMERICAN MANUFACTURER'S PETITION

Extension of Time for Comments Concerning an American Manufacturer's Petition to Reclassify Wide Angle Bicycle Reflectors

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension of time for comments.

SUMMARY: This notice extends the period of time permitted for the submission of comments in response to a recent American manufacturer's petition to the Customs Service to reclassify imported wide angle bicycle reflectors. This extension will permit the preparation and submission of more detailed comments by interested members of the public.

DATE: Comments must be received on or before June 6, 1978.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-8181.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On April 6, 1978, the Customs Service published in the FEDERAL REGISTER (43 FR 14562) a notice of receipt of an American manufacturer's petition, filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting the reclassification of imported wide angle bicycle reflectors. The petitioner contends that the "chief use" of the wide angle bicycle reflector is as part of a bicycle, which qualifies it for classification under item 732.37, Tariff Schedules of the United States.

COMMENTS

Comments concerning the American manufacturer's petition were to have been received on or before May 8, 1978. However, the Customs Service has been requested to extend the period of time for submission of comments in order to allow additional time for the preparation of a response to the American manufacturer's petition. Therefore, the period of time for the submission of comments is extended to June 6, 1978.

LEONARD LEHMAN,
Assistant Commissioner, Regulations and Rulings.

[FR Doc. 78-13079 Filed 5-12-78; 8:45 am]

[4810-22]

[T.D. 78-133]

TUNA FISH—TARIFF-RATE QUOTA

Tariff-Rate Quota for the Calendar Year 1978 on Tuna Classifiable Under Item 112.30, Tariff Schedules of the United States

MAY 5, 1978.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna for calendar year 1978.

SUMMARY: Each year the tariff-rate quota for tuna fish described in item 112.30, Tariff Schedules of the United States (TSUS), is based on the U.S. pack of canned tuna during the preceding calendar year.

EFFECTIVE DATES: The 1978 tariff-rate quota is applicable to tuna fish described in item 112.30, TSUS, entered, or withdrawn from warehouse, for consumption during the period January 1 through December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Helen C. Rohrbaugh, Head, Quota Section, Duty Assessment Division, Office of Operations, U.S. Customs Service, Washington, D.C. 20229, 202-566-8592.

It has now been determined that 101,407,000 pounds of tuna may be entered for consumption or withdrawn from warehouse for consumption during the calendar year 1978 at the rate of 6 per centum ad valorem under item 112.30, TSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 per centum ad valorem under item 112.34 of the tariff schedules.

Pursuant to the provisions of item 112.30, TSUS, the above quota is based on the United States pack of canned tuna during the calendar year 1977.

G. R. DICKERSON,
Acting Commissioner of Customs.

[FR Doc. 78-13080 Filed 5-12-78; 8:45 am]

[8320-01]

VETERANS ADMINISTRATION

VETERANS ADMINISTRATION NATIONAL CEMETERY, RIVERSIDE, CALIF.

Availability of Final Environmental Impact Statement

Notice is hereby given that a document entitled "Final Environmental Impact Statement for the Veterans Administration National Cemetery, Riverside, California" dated March 1978, has been prepared as required by the National Environmental Policy Act of 1969.

The proposed National Cemetery is to be located on 750± acres near Riverside, California. This proposed development will provide burial space for approximately 437,000 gravesites and will have an administration building, a memorial center, and a maintenance complex to provide for all associated cemetery functions.

The Final Statement discusses the environmental impact of the proposed National Cemetery. The document is

being placed for public examination in the Veterans Administration Office of Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Jack Westall, Assistant Chief Medical Director for Administration (13), Room 600, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420.

Single copies of the Final Statement may be obtained on request to the above office.

By direction of the Administrator.

Dated: May 5, 1978.

MAURY S. CRALLE, Jr.,
Assistant Deputy Administrator.

[FR Doc. 78-13110 Filed 5-12-78; 8:45 am]

[1505-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 63]

MOTOR CARRIERS TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-11954 appearing at page 18813 in the issue for Tuesday, May 2, 1978 on page 18815 a motor carrier application was inadvertently omitted. This application is published below for the convenience of the reader.

No. MC 100666 (Sub-No. 382TA), filed February 21, 1978, and published in the FEDERAL REGISTER issue of March 29, 1978, and republished as corrected this issue. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Applicant's representative: Wilburn L. Williamson, 280 National Foundation Life Building, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over *irregular routes*, transporting: *Expanded plastics products* (except in bulk), from the facilities of The Dow Chemical Co., at or near Magnolia, AR, and Pevely, MO, to points in the United States on and east of U.S. Hwy 85, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Dow Chemical U.S.A., P.O. Box 36000, Strongsville, OH 44136. Send protests to: Ray C. Armstrong, Jr., District Supervisor, Interstate Commerce Commission, T-9038 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113. The purpose of this republication is to correct the territory description.

[1505-01]

[Notice No. 66]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-11955 appearing at page 18819 in the issue for Tuesday, May 2, 1978, in the last paragraph of the third column on page 18821 the first lien should read, "No. MC 115654 (Sub-No. 86TA)."

[Notice No. 67]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-11953 appearing at page 18823 in the issue for Tuesday, May 2, 1978, the first line of the first full paragraph in the first column on page 18827 should read, "No. MC 144515 (Sub No. 1TA)."

[7035-01]

[Notice No. 659]

ASSIGNMENT OF HEARINGS

MAY 10, 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. AB 43 (Sub-No. 43), Illinois Central Gulf Railroad Co., abandonment between Herscher and Varnes in Kankakee, Ford, Livingston, and McLean Counties, Ill., and No. 36643, *Bloomer Shippers Association v. Illinois Central Gulf Railroad Company*, now being assigned June 26, 1978 (1 week), at Bloomington, Ill., in a hearing room to be later designated.

No. MC 116915 (Sub-No. 34), Eck Miller Transportation Corp., now assigned June 6, 1978, at Louisville, Ky., will be held in Room 273, Federal Building, Sixth and Federal Place.

No. MC 143837, Good Will Tours, Inc., now assigned June 6, 1978, at Topeka, Kans., will be held in Room 366, Holiday Inn South, 3802 South Topeka Avenue.

No. MC 123048 (Sub-No. 368), Diamond Transportation System, Inc., now assigned June 6, 1978, at Chicago, Ill., will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

No. MC 124170 (Sub-No. 71), Frostways, Inc., now assigned June 7, 1978, at Chicago, Ill., will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

No. MC 136035 (Sub-No. 9), W. S. Dunning & Son, Inc., now assigned June 7, 1978, at Louisville, KY., will be held in Room 273, Federal Building, Sixth and Federal Place.

No. MC 119988 (Sub-No. 116), Great Western Trucking Co., Inc., now assigned June 8, 1978, at Louisville, KY., will be held in Room 273, Federal Building, Sixth and Federal Place.

No. MC 105566 (Sub-No. 144), Sam Tanksley Trucking, Inc., now assigned June 9, 1978, at Louisville, Ky., will be held in Room 273, Federal Building, Sixth and Federal Place.

No. AB 43 (Sub-No. 48), Illinois Central Gulf Railroad Co., abandonment near Reynolds, Ky., and Owensboro, in Ohio and Daviess Counties, Ky., now assigned June 12, 1978, at Owensboro, Ky., will be held in City Hall, Conference Room, Fourth and Allen Streets.

No. MC 82063 (Sub-No. 87), Klipsch Hauling Co., Inc. and MC 115331 (Sub-No. 432), Truck Transport Inc., now assigned June 26, 1978, at St. Louis, Mo., will be held in Courtroom 3, Fifth Floor, U.S. Court and Customs House, 1114 Market Street.

No. MC 140612 (Sub-No. 31), Robert F. Kazimour, now assigned June 27, 1978, at St. Louis, Mo., will be held in Courtroom 3, Fifth Floor, U.S. Court and Customs House, 1114 Market Street.

No. MC 142059 (Sub-No. 13), Cardinal Transport, Inc., now assigned June 28, 1978, at St. Louis, Mo., will be held in Courtroom 3, Fifth Floor, U.S. Court and Customs House, 1114 Market Street.

No. MC 98327 (Sub-No. 26), System 99, is now assigned for hearing June 6, 1978 (14 days), at the Adams Hotel, Central Avenue and Adams, Phoenix, Ariz.

No. MC 75281 (Sub-No. 9), Righter Trucking Co., Inc., now assigned June 5, 1978, at St. Louis, Mo., will be held in Courtroom 3, Fifth Floor, U.S. Court and Customs House, 1114 Market Street.

MC 87109 (Sub-No. 25), Tidewater Inland Express, Inc., d.b.a. T.I.E., Inc., now assigned July 24, 1978, at Washington, D.C., is cancelled and reassigned for July 24, 1978, (2 weeks), at Salisbury, Md., in a hearing room to be later designated.

No. MC 143236 (Sub-No. 11), White Tiger Transportation, Inc., is now assigned for hearing July 17, 1978, at the offices of the Interstate Commerce Commission, Washington, D.C.

No. AB 43 (Sub-No. 49), Illinois Central Gulf Railroad Co. abandonment between Kosciusko and Fentress, in Attala and Choctaw Counties, Miss., now assigned May 22, 1978, at Kosciusko, Miss., is postponed to June 26, 1978 (1 week), at Kosciusko, Miss., at a location to be later designated.

H.G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-13132 Filed 5-12-78; 8:45 am]

[7035-01]

[Notice No. 42]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applica-

tions 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 on or before June 14, 1978. 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-FC-35475, filed April 7, 1978. Transferee: APOLLO TRANSPORTS, INC., P.O. Box 912, Austin, TX 78767. Transferor: Gulf Coast Transportation, Inc., P.O. Box 316, Winnie, TX 77665. Applicant's representative: William D. Lynch, P.O. Box 912, Austin, TX 78767. Authority sought for lease by lessee of the operating rights of lessor, as set forth in Certificate of Registration, No. MC 121587, issued November 30, 1966, as follows: Specified commodities between points in TX. Lessee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

REPUBLICATION

No. MC-FC-77-457, filed December 9, 1977. 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 MC 61242 (Sub-No. 1) and MC 61242 (Sub E-1), issued May 9, 1968, and January 10, 1975 respectively as follows: *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. 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-FC-77633, filed April 19, 1978. Transferee: FOX BUS LINES, INC., 92 Brattle Street, Worcester, MA 01606. Transferor: Worcester Bus Co., Inc., 287 Grove St., Worcester, MA 01605. Applicants' respresentative: David M. Marshall, Attorney At Law, 101 State Street (Suite 304) Springfield, MA 01103. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates No. MC 102676, and (Sub-No. 6 and 13), issued December 3, 1959, February 28, 1962, and August 29, 1977, respectively as follows, regular routes: *Passengers and their baggage,* between Worcester, MA, and Burrillville, RI, serving all intermediate points, *passengers and their baggage,* in special operations, in round-trip seasonal service, beginning and ending at Worcester, MA, and extending to Hampton Beach, NH, irregular routes: *Passengers,* in round-trip special seasonal operations, between Worcester, MA, and Rockingham Park, Narragansett Park, and Lincoln Downs racetracks, situated at or near Salem, NH, Providence, RI, and Lincoln, RI, respectively, *passengers,* in special seasonal nonscheduled round-trip service with restrictions, between Worcester, MA, on the one hand, and, on the other, Narragansett Park racetrack at Salem, NH, irregular routes: *Passengers,* in special round-trip operations, with restrictions, beginning and ending at Worcester, MA, and extending to Derry Hudson, Nashua, and Salem, NH, and Pawtucket RI, irregular routes: *Passengers* in round-trip special operations, during the racing seasons, beginning and ending at Oxford, Webster, and Worcester, MA, and extending to the sites of Plainfield Greyhound Park, at Plainfield, CT, and Yankee Greyhound Racing, Inc., at Seabrook, NH. Transferee presently holds no authority from this commission. Application has been filed for temporary authority under section 210a(b).

No. MC-FC—77636, filed April 19, 1978. Transferee: DEE JAY TRANSPORTATION, INC., P.O. Box 651, Horace, ND 58407. Transferor: Art Freenberg, d.b.a. Glacier Transport, P.O. Box 428, Grand Forks, ND 58201. Applicant's representative: Charles E. Johnson, Attorney At Law, 418 East Rosser Avenue, P.O. Box 1982, Bismarck, ND 58501. Authority sought for purchase by transferee of a portion of the operating rights of transferor as set forth in Certificate No. MC 139420 (Sub-No. 9), and (Sub-No. 10), issued September 24, 1975, and December 14, 1976, respectively as follows: (1) *Nonalcoholic beverages,* (a) from Minneapolis, MN, to Fargo and Grand Forks, ND, (b) from Grand Forks, ND, to Thief River Falls, MN, (c) from Fargo ND, to Thief River Falls MN (2) *containers,* from Thief River Falls, MN, to Grand Forks, ND, (3) *Nora-alcoholic beverages containers,* from Thief River Falls, MN to Fargo, ND. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC-FC—77637, filed April 21, 1978. Transferee: R. CONLEY, INC., Elma, NY 14059, Transferor: Royce Cliff, Route 4, Albion, NY 14411. Applicants' representative: Robert V. Gianniny, Esq., Middleton, Wilson, Boylan & Gianniny, 900 Midtown Tower, Rochester, NY 14604. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate No. MC 19608, issued October 12, 1965, as follows: *Vinegar,* in bulk, from points in Niagara and Wayne Counties, NY, to Akron, Cleveland, and Cuyahoga Falls, OH, and Springboro, PA; *Cider and vinegar,* in bulk, in tank trucks, from points in Niagara, Orleans, Monroe, Wayne, Wyoming, Yates, and Erie Counties, NY, to Cincinnati, OH, Pittsburgh and Philadelphia, PA, points in OH north of U.S. Hwy 50 and east of U.S. Hwy 127, those in PA north of U.S. Hwy 30, and those in NJ north of NJ Hwy 40, including points on the indicated portions of the highways specified. Transferee is presently authorized to operate as a common carrier under Certificate No. MC 125040 (Subs. 2 and 4). Application has not been filed for temporary authority under section 210a(b).

No. MC FC-77643, filed April 27, 1978. Transferee: B & K TRANSPORTATION CO., INC., 14 Audubon Road, Wakefield, MA 01880. Transferor: James H. Foley, d.b.a. J. H. Foley Trans. Co., 20 Longmeadow Road, Arlington, MA 02174. Applicant's representative: Frederick T. O'Sullivan, Attorney at Law, P.O. Box 2184, Peabody, MA 01960. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit, No. MC-127743 (Sub-No. 2), issued October 28, 1977, as follows:

Polyurethane foam and polyurethane foam mattresses, from Wakefield, MA, to points in CT, DE, IL, IN, KT, ME, MD, MI, MO, NH, NJ, NY, OH, PA, RI, and VT. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC FC-77645, filed April 26, 1978. Transferee: KEITH E. HARDING, d.b.a. Tri County Service Co., P.O. Box 185, Ten sleep, WY 82442. Transferor: Walter G. Dyer, d.b.a. Tensleep Service Co., P.O. Box 523, Worland, WY 82401. Applicant's representative: Keith E. Harding, P.O. Box 185, Tensleep, WY 82442. Authority sought to purchase the operating rights set forth in Certificate No. MC-109849 issued September 18, 1974: *General commodities* with the usual exceptions over specified regular routes between Worland and Ten Sleep, WY and between Ten Sleep and Buffalo, WY serving all intermediate points in both cases. Transferee holds no Commission authority and does not seek section 210a(b) authority.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-13133 Filed 5-12-78; 8:45 am]

[7035-01]

[Notice No. 41]

MOTOR CARRIER TRANSFER PROCEEDINGS

MAY 15, 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 FC 77654. By application filed May 4, 1978, COUNTY LINE TRUCKING, INC., 224 North Defiance Street, Archbold, OH 43502, seeks temporary authority to transfer the operating rights of KDB Express, Inc., P.O. Box 217, Archbold, OH 43502, under section 210a(b). The transfer to County Line Trucking, Inc., of the operating rights of KDB Express, Inc., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-13134 Filed 5-12-78; 8:45 am]

[7035-01]

[Rule 19; Ex Parte No. 241; Exemption No. 149]

EXEMPTION UNDER PROVISION OF THE MANDATORY CAR SERVICE RULES

TO ALL RAILROADS

Because of congestion following severe winter storms, The Detroit Terminal Railroad Co. is unable to furnish shippers gondola cars of suitable ownership to maintain operations thereby threatening to close factories and create substantial economic loss.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19:

The Detroit Terminal Railroad Company is authorized to accept from shippers general service plain gondola cars less than 61-ft. in length and bearing mechanical designations "GA", "GB", "GD", "GH", "GS", and "GT" as listed in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 407, issued by W. J. Trezise, or successive issues thereof, regardless of the provisions of Car Service Rule 2.

It is further ordered, That:

This exemption shall not apply to cars of Mexican or Canadian ownership or to cars subject to Interstate Commerce Commission or Association of American Railroads' Orders requiring return of cars to owners.

Effective May 1, 1978.
Expires June 30, 1978.

Issued at Washington, D.C., April 28, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-13135 Filed 5-12-78; 8:45 am]

[7035-01]

[Rule 19; Ex Parte No. 241; Exemption No. 90]

EXEMPTION UNDER PROVISION OF THE MANDATORY CAR SERVICE RULES

To all railroads:

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 on 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, ICC-R.E.R. No. 407, 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.
Delaware 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.
* * * McCloud River Railroad Co. deleted.
Middletown and New Jersey Railway Co., Inc.
Reporting Marks: MNJ.
Muncipality of East Troy, Wis.
Reporting Marks: METW.
New Orleans Public Belt RR.
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 Ry.
Reporting Marks: SN.
St. Johnsbury & Lamoille County RR.
Reporting Marks: SJL.
St. Lawrence RR.
Reporting Marks: NSL.
Sierra Railroad Co.
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 May 1, 1978, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., April 27, 1978.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 78-13136 Filed 5-12-78; 8:45 am]

[1505-01]

[Notice No. 60]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-10848, appearing at page 17093 in the issue for Friday, April 21, 1978, and corrected at page 19747 in the issue Monday, May 8, 1978; in the last line of that correction, the number should read "(Sub-No. 264TA)".

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine ACT" (Pub. L. 91-409), 5 U.S.C. 552b(e)(3).

CONTENTS

[6320-01]

1

[M-128 amdt. 1; May 8, 1978]

CIVIL AERONAUTICS BOARD.

NOTICE OF ADDING AND CLOSING AN ITEM FOR THE MAY 12, 1978 MEETING AGENDA

TIME AND DATE: May 12, 1978, 10 a.m.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 22. Seattle/Portland-Japan Service Investigation Docket 28655.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Discussion of this item will involve consideration of the Board's position in ongoing consultations with the Japanese. Premature public disclosure of the options, plans and opinions of the Board could seriously undermine the current consultations with the Japanese.

Accordingly, the following Members have voted that public observation of this meeting would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552(b)(c)(9)(B) and 14 CFR section 310b.5(9)(B) and that the meeting will be closed:

Chairman, Alfred E. Kahn; Vice Chairman, G. Joseph Minetti; Member, Lee R. West; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey.

A public target date of Friday, May 12, 1978 has been set for consideration of this item. In order for the Board to determine whether discussion of this item should be open or closed to public observation, it was not included in the original agenda. Accordingly, the following Members have voted that agency business requires the addition of this item and that no earlier announcement was possible:

Chairman, Alfred E. Kahn; Vice Chairman, G. Joseph Minetti; Member, Lee R. West; Member, Richard J. O'Melia; Member, Elizabeth E. Bailey.

PERSONS EXPECTED TO ATTEND

Board Members.—Chairman, Alfred E. Kahn; Vice Chairman, G. Joseph Minetti; Member, Lee R. West; Member, Richard J. O'Melia; and Member, Elizabeth E. Bailey.

Assistants to Board Members.—Mr. Mike Roach, Mr. James Casey, Mr. John Golden, Mr. Elias Rodriquez, and Mr. Ford Cole.

Office of the Managing Director.—Mr. Dennis Rapp and Mr. John Hancock.

Bureau of International Aviation.—Mr. Donald Farmer, Mr. Donald Litton, Mr. Joseph Chesen, Mr. Tony Largay, Ms. Mary Pett, and Mr. Ivy Mellops.

Bureau of Pricing and Domestic Aviation.—Mr. Michael Levine, Ms. Barbara Clark, Mr. Herbert Aswall, Mr. James Deegan, and Mr. James Greene.

Office of the General Counsel.—Mr. Philip Bakes, Mr. Gary Edles, Mr. Peter Schwarzkopf, Mr. Mitchell Black, Ms. Melissa Osborne, Ms. Katlyn Thomas, and Mr. Michael Schopf.

Office of Economic Analysis.—Mr. Darius Gaskins.

Office of the Secretary.—Mrs. Phyllis T. Kaylor, and Ms. Deborah A. Lee.

Reporter.—North American Reporting.

GENERAL COUNSEL CERTIFICATION

I certify that this meeting may be closed to the public under 5 U.S.C. 552(b)(c)(9)(B) and 14 CFR 310b.5(9)(B).

PHILIP J. BAKES, Jr.,
General Counsel.

[S-1009-78 Filed 5-11-78; 11:08 am]

[6355-01]

2

CONSUMER PRODUCT SAFETY COMMISSION.

LOCATION: 3d Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

TIME AND DATE: May 10, 1978, 10 a.m., 2:30 p.m., and 3:30 p.m.

STATUS: Partly open and partly closed.

MATTERS TO BE CONSIDERED:

Commission Meeting, Wednesday, May 10, 1978, 10 a.m., 2:30 p.m., and 3:30 p.m., Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

ORAL ARGUMENTS

Open to the public:

10 a.m.—National Mattress Co., et al. (CPSC 76-9). The Commission will hear oral arguments on this appeal by the respondent of the Administrative Law Judge's Initial Decision.

2:30 p.m.—Ups 'N Downs, Inc., et al. (CPSC 76-5). The Commission will hear oral arguments on this appeal by enforcement counsel of the Administrative Law Judge's Initial Decision.

MEETING

Closed to the public:

3:30 p.m.—*Aluminum Wire Strategies*—The Commission will continue its discussion of the implications of a recent court decision on this matter and strategies for Commission action as a result of this decision.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Sheldon D. Butts, Assistant Secretary, Office of the Secretary, Suite 300, 1111 18th Street NW., Washington, D.C. 20207, telephone 202-634-7700.

[S-1011-78 Filed 5-11-78; 3:15 pm]

[6714-01]

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Federal Deposit Insurance Corporation met in closed session at 4 p.m. on Wednesday, May 10, 1978 to act on the following matters:

Amend Part 329 of the Corporation's rules and regulations, entitled "Interest on Deposits," in order to establish two new categories of time deposits.

Transfer certain personnel from the Office of Corporate Planning to the Division of Research.

In scheduling the meeting, the Board determined, on motion of Chairman George A. LeMaistre, seconded by Director John G. Heimann (Comptroller of the Currency), with Director William M. Isaac concurring, that Corporation business required action on the matters on less than

seven days' notice to the public; that no earlier notice of the meeting was practicable; that the meeting was exempt from the open meeting requirements of the "Government in the Sunshine Act" by subsections (c)(6) and (c)(9)(A)(i) thereof (5 U.S.C. 552b(c)(6), (c)(9)(A)(i)); and that the public interest did not require consideration of the matters in a meeting open to public observation.

The meeting was held by telephone conference call originating from room 6008 of the FDIC Building located at 550 17th Street NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Alan R. Miller, Executive Secretary of the Corporation, at 202-389-4446.

Dated: May 10, 1978

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-1012-78 Filed 5-11-78; 3:15 pm]

[6715-01]

4

FEDERAL ELECTION COMMISSION.

"FEDERAL REGISTER" NO. S-1006-78.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 18, 1978 at 10 a.m.

CHANGE IN MEETING:

Please add the following item to the open portion of the meeting: "Notice of Rulemaking to Amend Regulations 11 C.F.R. Parts 130-146."

PERSON TO CONTACT FOR INFORMATION:

Mr. David Fiske, Press Officer, telephone 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-1013-78 Filed 5-11-78, 3:30 pm]

[6740-02]

5

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published May 15, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: May 17, 1978, 10 a.m.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No., and Company

CI-2—AR61-2 and AR69-1, et al., Area Rate Proceeding, et. al., (Southern Louisiana Area).

CP-5(A)—CP75-372 and CP 75-373, Tennessee Gas Pipeline Co., A Division of Tenneco, Inc.

CP-5(B)—CP75-362, El Paso Natural Gas Co.

CP-6—CP78-171, Southern Natural Gas Co., Texas Gas Transmission Corp. and United Gas Pipe Line Co.

M-4—Inflated Rate Increase Filings.

M-5—Re-Examination of Special Relief and Related Cost Issues Involving Gas Producers.

M-6—Annual Applications of the Gas Research Institute.

ER-3—ER77-531, Illinois Power Co.

KENNETH F. PLUMB,
Secretary.

[S-1010-78 Filed 5-11-78; 3:15 pm]

[6740-02]

6

MAY 10, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., May 17, 1978.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, telephone 202-275-4166.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda, however, all public documents may be examined in the Office of Public Information.

GAS AGENDA, 120TH MEETING, MAY 17, 1978, REGULAR MEETING

I. Producer Matters:
A. Producer Certificates:
CI-1.—Docket Nos. CI77-802, CI77-803, et al., Canadian Superior Oil (U.S.) Ltd., et al., Docket No. CI77-621, et al., Atlantic Richfield Co. et al.
II. Pipeline Certificate Matters:
A. Pipeline Certificate:
CP-1.—Docket No. CP77-396, Sea Robin Pipeline Co.
CP-2.—Docket No. CP77-140, Delhi Gas Pipeline Corp. Docket No. CP77-307, Northern Natural Gas Co., Docket No. CP77-328, Natural Gas Pipeline Co. of America.
CP-3.—Docket No. CP78-123, Alcan Pipeline Co. Docket No. CP78-124, Northern Border Pipeline Co., Docket No. CP78-125, Pacific Gas Transmission Co.
CP-4.—Mississippi Gas Corp., Gas Utility District No. 2.
CP-5.—Reserved.
CP-6.—Reserved.
B. Storage:
CP-7. Docket No. CP78-175, Natural Gas Pipeline Co. of America.
CP-8.—Reserved.
CP-9.—Reserved.
CP-10.—Docket No. RP72-99, Transcontinental Gas Pipeline Corp.
CP-11.—Docket No. RP71-29, et al., United Gas Pipeline Co. et al.

GAS AGENDA 120TH MEETING, MAY 17, 1978, REGULAR MEETING

CAG-1.—Docket No. RP77-102, *Public Service Co. of North Carolina, Inc., et al.* v. *Transcontinental Gas Pipeling Corp.* Docket No. RP78-26, Transcontinental Gas Pipeline Corp. (North Carolina Utilities Commission on Behalf of Farmers Chemical Association).
CAG-2.—Docket No. RP78-57, Oklahoma Natural Gas Gathering Corp.
CAG-3.—Docket Nos. RP76-10, (PGA78-2) and RP74-61 (PGA78-2), Arkansas Louisiana Gas Co.
CAG-4.—Docket Nos. RP71-18, et al., and RP73-86, Columbia Gas Transmission Corp.
CAG-5.—Docket No. CP77-636, Columbia Gas Transmission Corp.
CAG-6.—Docket No. RP63-1, United Gas Pipeline Co.
CAG-7.—Docket No. CP75-123, Arkansas Louisiana Gas Co. Docket No. CP75-141, Natural Gas Pipeline Co. of America.
CAG-8.—Docket No. CP78-182, Colorado Interstate Gas Co.
CAG-9.—Docket No. CP78-196, Northern Natural Gas Co.
CAG-10.—Docket No. CP78-157, Lone Star Co., a Division of Enserch Corp.
CAG-11.—Docket No. CP78-179, Texas Eastern Transmission Corp. Southern Natural Gas Co. Docket No. CP78-180, Texas Easdtern Transmission Corp. Southern Natural Gas Co.
CAG-12.—Docket No. CP78-17, Transcontinental Gas Pipeline Corp.
CAG-13.—Docket No. CP78-211, Natural Gas Pipeline Co. of America.
CAG-14.—Docket No. CP77-503, Kansas-Nebraska Natural Gas Co., Inc. Docket No. CP78-114, Panhandle Eastern Pipeline Co.
CAG-15.—Docket Nos. CP75-286 and CP76-106, Northwest Pipeline Corp.
CAG-16.—Docket No. CP73-95, Columbia Gas Transmission Corp.
CAG-17.—Docket No. CP78-145, Florida Gas Transmission Co.
CAG-18.—Docket No. CP78-235, Southern Natural Gas Co., United Gas Pipeline Co.
CAG-19.—Docket No. CP78-240, Tennessee Gas Pipeline Co., a Division of Tenneco Inc.
CAG-20.—Docket No. CP78-27, Texas Gas Transmission Corp. Docket No. CP78-61, Transcontinental Gas Pipeline Corp.
CAG-21.—Docket No. CI77-606, Continental Oil Co. Docket No. CI77-620, Diamond Shamrock Corp. Docket No. CI78-310, Cities Service Co.
CAG-22.—Docket No. G-8341, et al., Phillips Petroleum Co. (operator), et al.
CAG-23.—Docket No. G-4809, et al., Chevron U.S.A., Inc. (operator) et al.
CAG-24.—Docket No. CI66-738, et al., Union Oil Co. of California, et al.
CAG-25.—Docket No. CI77-828, et al., Union Oil Co. of California, et al.

MISCELLANEOUS AGENDA, 120TH MEETING, MAY 17, 1978, REGULAR MEETING

M-1.—Docket No. RM77-14, Gas Research Institute.
M-2.—Docket No. R-472, Report of the Alternative Fuel Demand of Directed End Use Customers of Interstate Pipeline Co. Due to Natural Gas Curtailments FPC Form No. 69.
M-3.—Secretary of Energy's Proposed Rule Amending 10 CFR Section 430.22(e)(2) and Appendix E of Subpart B of Part 430.

POWER AGENDA 120TH MEETING, MAY 17, 1978, REGULAR MEETING

I. Electric Rate Matters:
ER-1.—Docket No. ER78-325, Florida Power and Light Co.
ER-2.—Docket No. E-9181, Nantahala Power and Light Co.

POWER AGENDA, 120TH MEETING, MAY 17, 1978, REGULAR MEETING

CAP-1.—Docket No. ER78-317, Indiana & Michigan Electric Co.
CAP-2.—Docket No. ER78-318, Otter Tail Power Co.
CAP-3.—Docket No. ER78-324, Montaup Electric Co.
CAP-4.—Docket Nos. ER78-327 and ER78-328, Central Hudson Gas and Electric Corp.
CAP-5.—Docket No. ER78-42, Iowa Power and Light Co.
CAP-6.—Docket No. ER78-50, Iowa Power and Light Co.
CAP-7.—Docket No. EL78-14, Kentucky Utilities Co.
CAP-8.—Docket No. ES78-26, Iowa-Illinois Gas and Electric Co.
CAP-9.—Project No. 2113, Wisconsin Valley Improvement Co.

KENNETH F. PLUMB,
Secretary.

[S-1007-78 Filed 5-11-78; 11:08 am]

[6820-35]

7

LEGAL SERVICES CORPORATION.

TIME AND DATE: 9 a.m., Thursday, May 18, 1978.

PLACE: 733 15th Street NW., 7th floor, Washington, D.C.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED:

1. Consideration of Proposed Part 1606 of the Regulations, Applications for and Denial of Refunding.
2. Consideration of Standards for Consolidations and Mergers of Legal Services Programs.
3. Consideration of proposed amendments to the following Regulations: (a) Part 1608, Prohibited political activities, (b) Part 1609, Fee-generating cases, (c) Part 1612, Restrictions on certain activities, (d) Part 1613, Restrictions on legal assistance in criminal proceedings, (e) Part 1614 (repeal), restrictions on representation of juveniles, and (f) Part 1620, Priorities in allocation of resources.
4. Revision of proposed amendment of Part 1602 (Freedom of Information Act Requests).

CONTACT PERSON FOR MORE INFORMATION:

Linda C. Horn, Office of the General Counsel, telephone 202-376-5113.

Issued: May 10, 1978.

THOMAS EHRLICH,
President.

[S-1008-78 Filed 5-11-78; 11:08 am]

federal register

MONDAY, MAY 15, 1978
PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

[4110-02]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 190]

BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

AGENCY: Office of Education, HEW.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commissioner of Education proposes to issue technical amendments to the Basic Ecucational Opportunity Grant regulations to define more clearly the administration of the program, and to implement the requirements mandated by the Education Amendments of 1976. The proposed rule revises and consolidates all existing program regulations other than those contained in the Family Contribution Schedules.

DATES: Comments must be received on or before June 14, 1978.

Public hearings will be held in three cities at the dates and times listed below:

May 31, 1978, Washington, D.C., 9 a.m. to 4 p.m.

June 2, 1978, Chicago, Ill., 9 a.m. to 4 p.m.

June 5, 1978, San Francisco, Calif., 9 a.m. to 4 p.m.

ADDRESS: Written comments should be sent to Mr. William Moran, Acting Chief, Basic Grants Policy Section, Division of Policy and Program Development, ROB-3, Room 4923, 400 Maryland Avenue SW., Washington, D.C. 20202. Comments will be available for public inspection at the above address, between 8:30 a.m. and 4 p.m., Monday through Friday (except Federal holidays).

The public hearings will be held at the following locations:

May 31, 1978, Regional Office Building—3, GSA Auditorium, 7th and D Streets SW., Washington, D.C., 9 a.m. to 4 p.m.

June 2, 1978, Illinois Institute of Technology, 3241 South Federal Street, Hermann Hall, Chicago, Ill., 9 a.m. to 4 p.m.

June 5, 1978, University of San Francisco, Student Center, 2130 Fulton Street, San Francisco, Calif., 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT:

William Moran, 202-245-1744.

SUPPLEMENTARY INFORMATION: These proposed amendments are being submitted for public comment. The final regulations resulting from this notice of proposed rulemaking are expected to be in effect for the 1978-79 award period.

EXPLANATION OF NEED FOR REGULATIONS

The following proposed rules revise and consolidate the Basic Grant Program regulations with the exception of the Family Contribution Schedules which are revised and published annually. These regulations provide for the administration of the Program, ensuring a standardized process by which a student's Basic Grant award is calculated and disbursed. In establishing the Basic Grant Program as a formula program based on an entitlement concept, the Congress intended as one of its major characteristics a consistent treatment of all applicants regardless of the institution a student chooses to attend. While the amount and types of financial aid the student receives from other programs might vary depending upon the availability of funds at a particular institution and the financial aid officer's judgment concerning the student's need, the student can be assured that the determination of eligibility for a Basic Grant is made in precisely the same manner for every applicant.

In revising these regulations, a number of objectives have been established. The first objective is to make the regulations more easily understood. All of the existing regulations have been consolidated and many have been rewritten and reorganized, not because of a change in concept, but for logical coherence and clarification. Secondly, the applicable provisions of the Education Amendments of 1976 have been incorporated. The third objective has been to respond to problems in program operation which program experience has indicated are not sufficiently addressed in current regulations. Final regulations resulting from this proposed rule will supercede the administrative and technical regulations published in the FEDERAL REGISTER on November 6, 1974, December 2, 1974, and August 10, 1976.

Amendments have been made in the administration of payments to prevent program abuse both by institutions and student recipients. These provisions have been developed in an effort to achieve a balance between good program control and an administration of the program which would not be overly burdensome to the institution.

It is important to note that these regulations apply only to the Basic Grant Program. However, there are other regulations which affect all Federal student financial assistance programs, including Basic Grants which must also be complied with by administrators of the program. The Students Consumer Information Services regulations (45 CFR Part 178) were published on December 1, 1977 as final regulations. Other regulations currently being developed are: Procedures for Determining Institutional Eligibility and Recognizing National Accrediting Bodies and State Agencies (45 CFR Part 149) and General Provisions Relating to Student Assistance Programs (45 CFR Part 168).

A detailed description of the changes and amendments to the Basic Grant regulations is given below, organized by subpart.

SUBPART A

Subpart A sets forth the purpose of the program, the definitions of the terms used throughout the regulations, and the eligibility criteria for students and for institutions.

Most of the revisions and expansions of the definitions included in this subpart are of a minor technical nature in tended for the sake of clarity and specificity, and, as such, do not necessitate discussion. Several, however, warrant comment.

In an effort to standardize the language used by programs in the Bureau fo Student Financial Assistance, the following terms are proposed to supplant current usage. In place of the Current term "academic year," the term "award period" is proposed to describe the period of time from July 1 of one year to June 30 of the subsequent year. "Award period" was selected because it is the term used for this twelve month interval in the three campus-based programs (Supplemental Educational Opportunity Grant, College Work-Study and National Direct Student Loan) and in the regulations concerning Student Consumer Information services.

It is also proposed to supplant the current term "school year" with the term "academic year." The proposed definition of "academic year" would establish the amounts of academic work for which a student must enroll within an award period in order to receive a full Basic Grant award. At institutions under a credit hour system, an academic year would mean an interval equal to the length of two semesters, two trimesters or three quarters.

At institutions using a clock hour system of measuring academic progress, an academic year is measured in terms of the number of clock hours designated by the institution to be completed within the period of an academic year, to be a minimum of 900 clock hours. A student is eligible to receive a portion of a full award based on the number of clock hours completed divided by the number of clock hours a full-time student would complete during an academic year.

In the course of the program's existence, instances of program abuse have surfaced which indicated a need to define "payment period." A payment period is the unit used to divide a student's Basic Grant for an award period into segments of an academic

year. Although a student's Basic Grant is applicable for an entire award period, the disbursement of these funds is divided into at least two equal disbursements (one each payment period) so as to minimize abuse of the program by students and institutions. The amount the students should receive for each payment period is based upon the amount of work expected to be accomplished by that student for that portion of the award period.

For institutions using clock hours to measure progress, the Office of Education is proposing two possible definitions of payment period and is soliciting public comments on both. The proposed definition of payment period attempts to ensure that a student, before being paid for additional course work, will have competed the work for which the student has already received Basic Grant assistance. As described below, these proposal are intended to eliminate a potential area of program abuse which exists under current regulations.

The difference between the two proposals can be summarized as follows: The first definition describes a payment period as a fixed number of clock hours to be completed within a flexible period of time. The length of the payment period would expand or contract to correspond with the actual length of time required by the student to complete those clock hours. The second definition describes a payment period as a fixed period of time. The student is paid at the beginning of the period for the clock hours expected to be finished during that period. If, at the end of the period of time, the student has not completed that amount of work, the student's award for the subsequent payment period will be adjusted.

The first definition (appearing in § 190.2a(d) of the proposed regulations) defines a payment period as being one-half of the student's course work within an award period. At the beginning of a student's enrollment for an award period, the institution would determine the number of clock hours the student can be expected to complete during the academic year within the award period, and then calculate and disburse the student's award for the first half of that academic year. The second payment period for the student would begin only after the student had completed the academic work required during the first payment period for which that student had been paid. The second payment period would be based upon the number of clock hours the student is expected to complete up to the end of the academic year or the award period. A payment period might extend into the subsequent award period, that is, up to the time the student actually completes the academic work for which the student has been paid. This method would reduce a potential for program abuse that exists under current regulations when a student enrolls for, and is paid on the basis of, a certain enrollment status but fails to complete the number of hours which should have been completed at that enrollment status.

Under current regulations, at the time the second half of that student's academic year begins, the student is paid once again on the basis of the number of hours for which the student enrolls, regardless of the amount of academic work actually completed during the first half of the academic year. The proposed definition, included in § 190.2a, stipulates that the student enrolled in a program in which progress is measured in terms of clock hours would not receive another payment until the student had completed the academic work for which the student had already been paid.

Under the alternate definition proposed here for public comment, but not set forth in § 190.2a, an award period would be divided into two equal payment periods of a fixed length of time. A student's second disbursement would be made on a given date, rather than when the student actually completes the work for which the student has been paid, as in the system proposed above. However, under this alternate proposal, at the time of the disbursement for the second payment period, the student would receive the full amount of the second disbursement *only* if the student had completed the clock hours for which the student had been paid in the first payment period.

If the student had not completed the appropriate number of clock hours, the second disbursement would be adjusted to reflect the actual amount of work which will be completed during the award period. Under the proposed alternate definition the student's award would be adjusted in the following manner to accommodate any overpayment which occurred in the first payment period:

1. Multiply the amount disbursed during the first payment period by the following fraction:

Hours for which paid, but not completed during payment period, divided by Hours scheduled to be completed for the payment period

and,

2. Subtract the amount arrived at in Step 1 from the amount of the second disbursement to adjust the year's award.

For example, on July 1, a student enrolls in a 900 clock hour program, registering for 25 hours of training per week, The institution disburses one-half of the student's Scheduled Award. Eighteen weeks later the second payment period begins and the student is eligible for an additional payment. If the student had maintained the original schedule and completed 450 hours, the student would receive the second half of the Scheduled Award. However, the student has not completed 50 of the 450 hours for which the student has been paid and the second half of the Scheduled Award must be adjusted to reflect the overpayment in the first payment period. The second disbursement is calculated by multiplying the amount of the first disbursement by 50/450 and subtracting that amount from the second half of the Scheduled Award.

Comment is solicited on both the proposed definition set forth in § 190.2a and the alternate proposal.

The proposed definition of "institution of higher education" (§ 190.3) has been amended to include the provision in Section 1201(a) of the Higher Education Act of 1965 which allows eligible public and other non-profit institutions to admit as regular students not only high school graduates but also other persons who are beyond the age of compulsory school attendance in the state in which the institution is located and who have the ability to benefit from the training offered by the institution. The wording of the definition is consistent with that for other Title IV programs.

Through the statutory definition of "institution of higher education," the Congress has provided, as a minimum, certain requirements that an institution must meet in order to participate in Federal student assistance programs. The proposed definition of "eligible program" (§ 190.2a) establishes a parallel with the statutory institutional eligibility requirements for each of the categories of postsecondary institutions: (1) proprietary, and (2) public or other non-profit institutions of higher education and vocational schools. Most noteworthy of these requirements is the minimum program length. An eligible program at a proprietary institution must include at least 16 semester or trimester hours or 24 quarter hours, or 600 clock hours of supervised training. On the other hand, an eligible program at a public or other non-profit institution of higher education or vocational school must include at least 24 semester or trimester hours or 36 quarter hours, or 900 clock hours of instruction.

Under § 190.7, "Institutional Eligibility," an institution may pay a student only in the payment period during which the institution becomes eligible, rather than retroactively for the entire year during which the institution becomes eligible as is permitted under the current policy. Similarly, if an institution becomes ineligible, the institution may pay the student only to the end of the payment period in which the institution loses its eligibility.

The situation in which a student is enrolled in both regular and correspondence course work is addressed in § 190.9, "Determination of Enrollment Status under Special Circumstances." This proposed rule is intended to encompass "outreach programs," offered by many institutions of higher education, which may involve correspondence work or educational aids such as television, in a relatively unsupervised student learning process.

"Institutional Administrative Allowance" (§ 190.10) implements section 411(d) of the Higher Education Act of 1965, providing an administrative allowance of up to $10 per Basic Grant recipient each award period to institutions participating in the Basic Grant Program. This allowance is to be used first to comply with the Student Consumer Information regulations set forth in 45 CFR, Part 178, and then for other administrative costs of Title IV Programs. The amount of an institution's allowance is contingent upon the amount of funds appropriated for this purpose by Congress. The amount an institution will receive will be based upon the number of Basic Grant recipients enrolled at the institution during the previous award period.

SUBPART B

This subpart establishes and defines the application procedures for Basic Grants.

The proposed amendments regarding the application were rewritten for increased clarity. Section 190.11 includes an additional technical provision that the address provided on the application must be that of the applicant. An institutional address may be used only if the student resides at the institution.

Section 190.15 provides for an extension of the annual deadline for correcting financial information on an application if the Commissioner has requested documentation to verify that information. This provision is part of the Office of Education's efforts to curb program abuse by establishing procedures to verify an applicant's eligibility when there is documentation that financial information provided on the application form is not accurate.

Section 190.16 addresses requests for recomputation of the expected family contribution because of extraordinary circumstances. These extraordinary circumstances are the conditions under which an applicant is permitted to file a Supplemental Form. They are set forth in Sections 190.39 and 190.48 which are part of the annual Family Contribution Schedules.

SUBPART E

This subpart establishes the allowances for the costs of attendance for students eligible for Basic Grants. Subpart E was reorganized to simplify the identification of educational costs.

Section 190.52 was derived from 190.51(d) of the current regulations to deal specifically with costs of attendance for students engaged in correspondence courses. Tuition and fee charges to be included are the actual amounts charged for a full academic year. Room and board charges incurred specifically to fulfill a required period of residential training may be considered a part of the cost of attendance.

Section 190.53 was added for the purpose of defining costs of attendance for students whose program length exceeds the length of the academic year for institutions mesuring progress interms of the clock hour systems. The following paragraphs explain the method of determining the allowable costs in calculating the costs of attendance.

When determining allowable costs in this case, institutional charges, including tuition, fees, and, when appropriate, room and board, for the full program should be multiplied by the following fraction:

$$\frac{\text{Clock hours in academic year}}{\text{Clock hours in program}}$$

This procedure results in a cost of education which has been prorated for the length of the academic year. For example, if an institution charges $1,000 tuition and fees for a 1,200 hour program with a 900 hour academic year (900/1,200 × $1,000=$750) $750 would be added to the standard allowances for room and board and miscellaneous expenses in determining the student's cost of attendance.

When institutional charges include room and board, the same procedures are used. For example, in the case of an institution which charges $2,400 for tuition, fees, room and board for a 1,500 hour program with a 1,000 hour academic year (1,000/1,500 × $2,400=$1,600) $1,600 would be added to the $400 allowance for miscellaneous expenses in determining the student's cost of education.

Section 190.51(e) of the current regulations regarding costs of attendance for incarcerated students, has been rewritten and amended as § 190.54. The tuition and fees which are charged to a full-time student for a full academic year in the same program are the allowable costs to be used in determining the cost of education for incarcerated students. In addition to revising the former regulation for clarity, the amendments address the situation in which an incarcerated student is a resident of a halfway house, or a participant in restricted parole or some other type of rehabilitative program. In this instance, if less than one-half of room and board expenses are provided by the agency involved, the student will have the same cost of education allowances as a student who is not incarcerated. The determination of whether the incarceration facility provides more than one-half of the student's room and board expenses is made by the financial aid officer.

The cost of attendance for students enrolled in the U.S. Armed Forces Academies is defined in § 190.55. For purposes of this part, students enrolled in the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy or the U.S. Coast Guard Academy have no cost of attendance, and are therefore not eligible for Basic Grant assistance.

SUBPART F

In addition to several minor technical adjustments, the regulations concerning the determination of Basic Grant awards incorporate substantive changes. In the former category, § 190.61, "Submission of SER for Receipt of a Basic Grant—Cut Off Dates," has been expanded by incorporating § 190.76 from Subpart G of the current regulations. This change was made in an attempt to arrange the regulations in a more logical fashion so that the reader might more easily locate a particular item.

The regulations have been revised to reflect more accurately the enrollment status of part-time students and to pay them accordingly. The legislation governing the program requires that a student may be enrolled on at least a half-time basis to receive a Basic Grant. Currently program regulations define students as either full-time, three-quarter-time or half-time. A student enrolled for more credits than the amount needed to be considered half-time but less than the amount needed to be considered three-quarter-time is considered a half-time student and receives an award computed as one-half of the amount of full-time student would receive. Similarly, a student enrolled in a less than full-time but more than three-quarter time status is considered as three-quarter-time for Basic Grant purposes and receives an award computed as three-quarters of the amount of full-time student would receive.

Under the proposed rule eligible students who are enrolled on a less than full-time basis will no longer be divided into only two part-time categories. Rather, the Commissioner is proposing that a student's status as part-time will reflect the exact degree that the student's enrollment is related to full-time enrollment status.

The purpose of this change is to provide greater equity for part-time students. Under the proposed rule an award will bear a direct relationship to the student's academic course load. With this approach the institution will

need only a full-time payment schedule for calculating awards under the Basic Grant Program. The half-time and three-quarter-time payment schedules will no longer be required.

At those institutions which use traditional academic intervals, a student's award for a payment period would be determined by dividing the Schedule Basic Grant award by the number of payment periods in a school year and multiplying that amount by the credit hours in the payment period divided by the credit hours a full-time student would take in a payment period. For example, a student taking 11 credit hours a term at an institution which considers 12 hours per term full-time, would receive 11/12 of the Scheduled Basic Grant award divided by the number of terms in the academic year. Clock hour system institutions would determine a student's award for a payment period by multiplying the Scheduled Basic Grant award by the clock hours in the payment period divided by the number of clock hours in the academic year. For example, in a 900 clock hour program in which 600 clock hours will be completed before the close of the award period, the first payment period would consist of one-half of the number of hours to be completed within the award period (300). The student should received 300/900 or one-third of the Schedule Basic Grant Award for that payment period.

"Attendance at more than one institution during an award period—transfer student," § 190.66, is the result of combining two points with the current § 190.83. When the institution is verifying the amounts of aid received under the National Direct Student Loan Program in order to insure that the aggregate amount the student receives under NDSLP does not exceed the statutory limitation of $2,500 for a two year degree or $5,000 for a bachelor's degree, and, ascertaining, under the Supplemental Education Opportunity Grant Program, whether a student is in the initial or continuing category for such aid, Basic Grant award information should be obtained at the same time from the student. It should be noted that the proposed regulations governing administrative standards (45 CFR Part 168) which will be published shortly specifically addresses institutional responsibility regarding the requesting and forwarding of financial aid transcripts for students. When the institution becomes aware of the amount of Basic Grant money that the student has received, the Basic Grant award at the new school must be adjusted if necessary to ensure that the student does not exceed the highest Scheduled Basic Grant Award for the award period for which the student is eligible. If the student does receive more than that amount, the student will be required to repay that amount which is in excess of the student's highest Scheduled Basic Grant Award.

Section 190.67, "Study by Correspondence," has been added to formalize the method of determining an award for students engaged in such study.

SUBPART G

This subpart concentrates on the administration of grant payments to students by institutions within the Regular Disbursement System. It has been extensively rewritten and expanded to accommodate several areas of special concern that, as the recent history of the program's operation indicates, have not been adequately addressed. Many of the current regulations merely required expansion and reorganization. Also, additional rules were developed for some aspects of the operation of the program in order to prevent potential or, in some cases, actual sources of program abuse by institutions and students.

Over the past several years some institutions have demonstrated that they were not capable or properly administering the disbursement of Basic Grant funds under the Regular Disbursement System. As a result, the Commissioner terminated each of those school's Agreement in order to protect both the interests of the government and the students attending those institutions. Therefore, § 190.73 is to formalize the process of termination. This section provides for that termination upon thirty days notice from the Commissioner, unless the Commissioner determines that a notice of shorter duration is necessary to prevent the likelihood of substantial loss of funds.

Students who are enrolled in an institution subject to termination would still be entitled to receive their Basic Grant payments; however, the institution would have to enter into an agreement with the Commissioner under the Alternate Disbursement System (ADS). The institution would then be responsible, under Subpart H of these regulations, to provide the Commissioner with that information necessary under ADS to facilitate the continued disbursement of funds to its students.

An institution can choose to terminate its RDS agreement with the Commissioner. However, that termination would take effect only on the last day of the award period in which a termination is requested.

Section 190.75, "Determination of Eligibility for Payment," includes two requirements applicable to all Title IV programs which result from the Education Amendments of 1976. These requirements, set forth in Section 497(e) of the Higher Education Act of 1965, as amended, stipulate that a student may receive assistance from Title IV programs only if that student:

(a) Is maintaining satisfactory progress in the student's course of study according to the standards and practices of the institution in which the student is enrolled, and

(b) Does not owe a repayment on a Basic Grant, Supplemental Grant, or State Student Grant received to meet costs of attendance at the institution in which the student is enrolled, and is not in default on a National Direct Student Loan received from that institution or on a Guaranteed Student Loan advanced to meet the student's costs of attendance at that institution.

Proposed regulations for the Basic Grant Program on these two statutory provisions were included in the notice of proposed rulemaking published in the FEDERAL REGISTER on April 8, 1977. In addition to setting forth the basic statutory requirement, the proposed rule also provided that if the institution determined at the beginning of a payment period that the student was not making satisfactory progress, but is able to reverse that determination before the end of the payment period, the student may be paid for the entire payment period. However, if the reversal of its original determination does not occur until after the end of the payment period, no retroactive payments may be made for that payment period. This proposal for dealing with the satisfactory progress requirement in the statute has been repeated in this notice of proposed rulemaking.

In responding to the April 8th notice of proposed rulemaking a number of commenters asked if any parameters would be set by the Office of Education for institutional standards of satisfactory progress. If the contents of an institution's standards of "satisfactory progress" establishes a reasonable code, this would be acceptable to the Office of Education. In setting its standards the institution is establishing a framework for evaluating a student's efforts to achieve an educational goal within a given period of time. In making this evaluation the institution needs to know the normal time frame for completion of the course of study in which the student is enrolled and it must have some means, such as grades or work projects completed, which can be measured against a norm.

Although the content of an institution's standards of "satisfactory progress" will not be subject to regulation at this time, the statute requires that the institution have some standards. An institution lacking any standards would be precluded from making any payments to students under Title IV programs since it would have no means of measurement for making the determination required by the statute. If an institution already has standards of "satisfactory progress" it may use those standards in determining eligi-

bility for payments under the Basic Grant and other Title IV programs. If it does not already have any standards it must adopt standards which will be applicable at least for recipients of aid under Title IV programs. Whatever standards are used for determining eligibility for payment under Title IV programs must be applied uniformly for recipients of aid under each of those programs; it would not be permissible, for example, to have one standard for receiving a Basic Grant and another for receiving a National Direct Student Loan.

Paragraph (e) of § 190.75 reflects the statutory provision stipulating that the institution may not pay a Basic Grant to a student who owes a refund because of an overpayment received under any of the three Title IV grant programs. An overpayment may result from an error by the student in completing the application or an error by the institution in making payment. The regulation differentiates between these two kinds of errors. If the overpayment was the result of an institutional error, the institution may pay the Basic Grant if the student acknowledges in writing the amount of the overpayment and agrees to repay it within a reasonable period of time. The proposed regulation leaves the period of time for this repayment to the discretion of the institution in order that the financial aid officer may take the individual circumstances of the student into account. The institution may extend that period of time into future award periods. If the overpayment resulted from an error on the part of the student, the institution may pay the Basic Grant if the overpayment has been repaid by the student or can be eliminated within the award period in which it occurred by adjusting subsequent Basic Grant payments for that award period.

In addition to overpayments resulting from student errors in completing the application or institutional errors in computing the amount of a grant, overpayments may also result if the student leaves the institution before the completion of the period for which the funds were awarded. The notice of proposed rulemaking published on April 8, 1977 discussed the issue of attribution of repayments from cash disbursements made directly to the student when the student leaves the institution before the completion of the period for which the funds were awarded. In that notice a formula was proposed, to be inserted in § 190.77 of the Basic Grant regulations, for calculating the portion of a grant disbursement which should be considered an overpayment subject to repayment by the student. There was a general consensus among the commenters that the formula did not allow sufficient flexibility for the institution to take into consideration the circumstances of individual students in determining the amount of a cash disbursement which should be repaid. In response to the commenters' concern, the proposed formula has been discarded. In its place the Commissioner is proposing a procedure in which the institution would have discretion in determining the portion of a cash disbursement it considered "unused" as of the date the student withdraws. The portion of the "unused" amount which should then be considered an overpayment for each specific Title IV grant or loan program would then be determined by a simple proportional ratio. This proposal is included in proposed regulations for all Title IV programs entitled "General Provisions Relating to Student Assistance Programs (45 CFR Part 168)," to be published shortly in the FEDERAL REGISTER as a notice of proposed rulemaking.

Paragraph (e) of §190.75 is intended to clarify the institution's responsibility in fulfilling the statutory requirement stating that it may not pay a Basic Grant to a student who is in default on a Guaranteed Student Loan advanced to the student for attendance at that institution. This paragraph provides that in determining whether the student is in default the institution may rely on a written statement from the student. Thus, the institution would not be required to initiate inquiries with commercial lenders to determine the current repayment status of each of its potential aid recipients. Also, this paragraph of the proposed regulation provides that the institution may, if it chooses, pay a Basic Grant to a student who is in default on a Guranteed Student Loan if the guarantor (i.e., the Commissioner or the applicable guarantee agency) has determined that the student has made satisfactory arrangements to repay the defaulted loan. Similarly, the institution may, if it chooses, pay a Basic Grant to a student who is in default on a National Direct Student Loan at the institution, if the institution determines that the student has made satisfactory arrangements to repay it.

As a means of strengthening the effort to control abuse of the Basic Grant Program by students, Section 190.77, "Verification of Information on the SER—Withholding of payments," has been added. The procedures in this section pertain to verifying the information on the SER either before or after payment has been made. If the institution discovers that inaccuracies exist on the SER after payment has been made, the procedures outlined in § 190.80, "Recovery of overpayments," may also apply. Since the eligibility for Basic Grant assistance is based on need which is determined solely on the basis of information supplied by the applicant (and the parents of dependent applicants), it is imperative that the pertinent data be accurate. Therefore, the Commissioner has taken a number of steps to help ensure that all applicants report correct information on their applications for aid.

All applicants must, of course, sign the certification statement on the application in which they agree to provide, if requested, any documentation necessary for the verification of their reported information. This section then outlines those situations under which the commissioner will request documentation to verify that information. It further requires that institutions must request from the student substantiating information or corrections if there is reason to believe that the information on the SER is inaccurate. If a student makes a correction which results in a change in the expected family contribution, the institution must recalculate the award. Additionally, institutions are required to withhold payment if they have documented evidence showing that the relevant information on the SER is erroneous, whereas they may not withhold payment if they believe the information to be inaccurate, but lack documentation.

This section also provides procedures for institutions to report unresolved cases to the Commissioner and for cancellation of a student's award if the student does not provide a complete and acceptable response to the Commissioner's request for documentation within an established time period. Concurrent with this award cancellation, the student's identification number is placed in a "hold" status which will prohibit the processing of any future applications in that award period or in subsequent award periods until the student has complied with the Commissioner's request.

For example, if a student submits an SER and the financial aid officer has reason to believe that some of the data on the SER is incorrect, the financial aid officer must request that the student review the information for accuracy and correct any erroneous entries. If the student does not correct the suspected discrepancy or does not prove to the financial aid officer's satisfaction that the information is correct, the financial aid officer would submit the case to the Commissioner. As already indicated, the financial aid officer would continue to pay the Basic Grant pending the outcome of the Commissioner's investigation unless the financial aid officer had documented evidence supporting his or her belief that the SER is not valid or unless the Commissioner specifically instructed the aid officer to withhold payment.

Once the Commissioner has reviewed the case, a determination will

be made as to whether additional documentation or corrections are necessary. If a student is asked to supply additional information, the student will have to comply within an established time period in order to avoid the cancellation of the grant. If the student forfeits the right to the grant by failing to supply requested documentation, that student will not be able to receive any additional consideration for future Basic Grant assistance until the requested documentation has been provided or until the Commissioner determines that the need for the documentation no longer exists.

If the student does submit the requested documentation and all necessary corrections have been made, then the amount of the Basic Grant to which the student will be entitled will be based on the valid SER which results from the verification process. However, if that SER is submitted after the close of the award period because of the verification process, the student will only be eligible for payment up to the amount that was previously withheld because of the verification process, even if the second SER has a lower eligibility index than the original. The reason for this rule is to avoid imposing upon institutions the administrative burden which would be incurred if they were required to recompute grants from previous award periods.

Section 190.78, "Method of Disbursement by Check or Credit to the Student's Account," has been expanded to include instructions to the institution concerning its responsibility to notify students about the availability of their check. To address the problem of students who do not pick up their checks promptly when they are notified that the checks are available, institutions are instructed to hold those checks fifteen days beyond the last day of the student's enrollment for that award period. A student forfeits the check if it is not picked up by that time. In cases of forfeits the institution may credit the student's account for any amount owed by the student for that award period. This section also limits the practice of early payments to students by the institution. A student may be paid at or after registration but no earlier than ten days before the first day of classes if the student is being paid directly, and no earlier than three weeks before the first day of classes if the institution is crediting the student's account. In addition, if an institution credits a student's account, the institution must obtain the student's signature on a written schedule of the dates and amounts of each disbursement, retain a signed copy for its records, and give a copy of the signed schedule to the student. This provision is intended to replace the requirements in § 190.75(e) of the current regulations stipulating that a signed receipt must be obtained for each disbursement by credit to the student's account. This change is proposed in response to institutional comments that the current procedure poses an undue administrative burden. However, if an institution prefers to continue obtaining a signed receipt for each transaction, the series of signed receipts may be considered a schedule for purposes of complying with this regulation. It should be noted, however, that if the student officially or unofficially withdraws from or is expelled by the institution before the first day of classes, after having received a Basic Grant payment through either method of disbursement, the entire amount of the payment must be restored to the Basic Grant account.

Since the inception of the program, a cooperative effort has existed between the Office of Education and various RDS institutions in order to recover overpayments to students, in addition to verifying information found on Student Eligibility Reports. Section 190.80, "Recovery of Overpayments," formalizes this effort by delineating institutional responsibilities and reporting procedures. This section does not mandate any additional duties or responsibilities beyond those which have existed under the cooperative effort. However, it sets forth those responsibilities in regulations for RDS institutions and is intended to aid in preventing further program abuse. Institutional responsibility for overpayments which are the result of institutional error is stipulated, as well as the responsibility of the institution to cooperate with the Commissioner in recovering overpayments if those overpayments are not the result of institutional error. In the former instance, the institution is liable to the government for the overpayment but may attempt to collect the overpayment from the student. In the latter instance, the institution is only responsible for making a reasonable effort to contact the student and recover the overpayment. It is required to notify the Commissioner if it is unsuccessful in recovering the overpayment.

Section 190.81, "Recalculation of a Basic Grant Award," has been expanded and amended to require that a student's Basic Grant must be, rather than may be, recalculated if there is a change in the student's expected family contribution. If the enrollment status of a student changed during a payment period, the institution retains the option of choosing whether or not it will recalculate. If the institution, as a matter of institutional policy, chooses to recalculate for changes in enrollment status, it must take into consideration the portions of the payment period at both the original enrollment status and the new enrollment status, and also any change in the student's cost of education.

"Fiscal Control and Fund Accounting Procedures," § 190.82, has also been amended. Under current regulations institutions may but are not required to maintain a separate account for Federal funds. Under the proposed regulation, a separate account must be maintained for Federal funds. This requirement is also proposed in the "General Provisions Relating to Student Assistance Programs (45 CFR Part 168)."

Section 190.83, "Maintenance and Retention of Records," has been amended. The requirement of institutions to retain records has been increased from three to five years following the submission of a final report of expenditure of funds. Furthermore, any records involved in a claim or expenditure which has been questioned by a Federal audit are to be retained until the resolution of that audit exception. This requirement is consistent with that provided for the three campus-based Title IV student financial assistance programs.

"Audit and Examination," § 190.85, brings the Basic Grant Program into conformity with the three campus-based Title IV programs by requiring, at a minimum, that the Basic Grant Program be audited at least once every two years. The audits shall be performed in accordance with the Department of Health, Education, and Welfare "Audit Guide" for student financial assistance programs.

SUBPART H

This new subpart had been added to Part 190 in an effort to define more precisely the responsibilities of institutions, which, for one reason or another, operate the administration of grant payments under the Alternate Disbursement System. These new regulations are considered necessary for the proper conduct of the Program.

Under § 190.92, an institution will now be required to enter into a written agreement with the Commissioner to participate in the Alternate Disbursement System.

§ 190.92, "Change in Ownership and Change to Regular Disbursement System," provides that, if an institution changes ownership, its agreement with the Commissioner is terminated. However, it may be reactivated if the institution is found in compliance with the eligibility criteria set forth in "Procedures for Determining Institutional Eligibility and Recognizing National Accrediting Bodies and State Agencies (45 CFR Part 149)," when these criteria become final regulations. (They are to be published shortly as a notice of proposed rulemaking.) Institutions may only shift from ADS to RDS at the beginning of an award period.

Section 190.94 sets forth the regulations which reflect the continuing responsibility of institutions to provide information necessary for the Commissioner to compute and disburse grant payments, and to provide certification regarding each student's eligibility or continuing eligibility for payment. This section also embodies the requirements mandated by Section 497(e) of the Higher Education Act of 1965, as amended, concerning satisfactory progress, repayments owed on grants previously received, and default status on Guaranteed and National Direct Student Loans.

Section 190.96 specifies that institutions must maintain records to support the information they supply to the Commissioner, provide a routine verification of that information as required, and provide access to records and information for purposes of audit and examination. As in the past, institutions under the Alternate Disbursement System do not have responsibility for the actual computation and disbursement of award payments.

NOTE.—The Office of Education 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.

Pursuant to the authority contained in Title IV of the Higher Education Act of 1965, as amended (Pub. L. 89-329), the Commissioner proposes to amend the regulations in 45 CFR Part 190.

(Catalogue of Federal Domestic Assistance No. 13.539 Basic Educational Opportunity Grant Program).

Dated: March 7, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: May 1, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

Accordingly, 45 CFR Part 190 is porposed to be amended as set forth below.

PART 190—BASIC EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Subpart A—Scope, Purpose and General Definitions

Subpart B—Application Procedures for Determining Expected Family Contribution

Subpart C—(Family Contribution Schedule)

Subpart D—(Family Contribution Schedule)

Subpart E—Costs of Attendance

Subpart F—Determination of Basic Grant Awards

Subpart G—Adminstration of Grant Payments—Regular Disbursement System

Subpart H—Administration of Grant Payments—Alternate Disbursement System

AUTHORITY: Section 411 of the Higher Education Act of 1965 as added by Section 131(b) of Public Law 92-318, 86 STAT 247-251 as amended, (20 U.S.C. 1070a) unless otherwise noted.

Subpart A—Scope, Purpose and General Definitions

§ 190.1 Scope and purpose.

The Basic Educational Opportunity Grant (Basic Grant) Program is to help financially needy students meet the costs of post-secondary education.

(20 U.S.C. 1070a.)

§ 190.2 General definitions.

As used in this part:

(a) *Academic year:* (1) A period of time in which a full-time student is expected to complete the equivalent of 2 semesters, 2 trimesters or 3 quarters at institutions using credit hours; or

(2) At least 900 clock hours of training for each program at institutions using clock hours.

(20 U.S.C. 1088(c)(1).)

(b) *Act:* Title IV-A-1 of the Higher Education Act (HEA) of 1965, as amended.

(c) *Award period:* The period of time between July 1 of one year and June 30 of the following year.

(d) *Clock hour:* The equivalent of—

(1) A 50 to 60 minute class, lecture or recitation; or

(2) A 50 to 60 minute faculty supervised laboratory, shop training or internship.

(e) *Commissioner:* The U.S. commissioner of Education or his/her designee.

(f) *Enrolled:* Completion of registration requirements at the institution a student is attending or will be attending.

(g) *Enrollment status:* The following fraction: the student's credit or clock hours for a payment period/credit or clock hours of a full time student for a payment period (if this fraction exceeds one (1), then one (1) is used as the student's enrollment status).

(h) *Full-time student:* An enrolled student who is carrying a full-time academic work load (other than correspondence) which is determined by the institution and amounts to one of the following minimum requirements:

(1) 12 semester hours or 12 quarter hours per academic term in those institutions using standard semester, trimester or quarter hour systems;

(2) 24 semester hours or 36 quarter hours per academic year for institutions using credit hours to measure progress but not using semester, trimester or quarter systems;

(3) 24 clock hours per week for institutions using clock hours;

(4) In those institutions using both credit and clock hours, if the sum of the fractions is equal to or greater than one:

the number of credit hours/12 plus (+) the number of clock hours/24

(5) A series of courses or seminars which will equal 12 semester hours or 12 quarter hours in a maximum of 18 weeks; or

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic work-load of a full-time student.

(20 U.S.C. 1088(c)(2).)

(i) *Good standing:* The eligibility of a student to continue attending the institution in which he/she is enrolled in accordance with the standards of the institution.

(j) *Half-time student:* An enrolled student who is carrying a half-time academic work load which is determined by the institution and amounts to at least half the work load of a full-time student. (see full-time student)

A half-time student enrolled in correspondence study must meet the minimum requirement of at least 12 hours of preparation of work per week. However, regardless of the work load, no student enrolled in correspondence study will be considered more than a half-time student.

(k) *Nonprofit institution:* An institution owned and operated by one or more nonprofit corporations or associations in which no part of the net earnings benefit any private share holder or individual.

(20 U.S.C. 1141(c).)

(l) *Payment schedule:* A table showing a full-time student's Scheduled Basic Grant for a given award period. This table, published by the Commissioner, is based on—

(1) The Family Contribution Schedules described in Subparts C & D;

(2) Attendance costs as defined in Subpart E; and

(3) The amount of funds available for making Basic Grants.

(m) *Scheduled Basic Grant:* The amount of a Basic Grant which would be paid to a full-time student for a full academic year.

(n) *State:* The states of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands and the Northern Mariana Islands.

(20 U.S.C. 1141(b); 20 U.S.C. 1088(a).)

(o) *Student Eligibility Report (SER):* A report provided to the applicant showing the amount of his/her expected family contribution.

(p) *Undergraduate student:* A student, enrolled in an undergraduate course of study, at an institution of higher education who:

(1) Has not been awarded a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 years, or is enrolled in a 5-year program designed to lead to a first degree. (A student enrolled in any other length program is considered an undergraduate student for only the first 4 years).

(20 U.S.C. 1070a unless otherless noted.)

§ 190.2a Special terms.

(a) *Eligible program in a public or nonprofit private college, university, junior college, community college or vocational school:* An undergraduate program of education or training which—

(1) Admits as regular students only persons who—

(i) Have a certificate of graduation from a secondary school, (high school graduates),

(ii) Have the equivalent of a high school diploma, a General Education Development (GED) Certificate, and

(iii) Are beyond the age of compulsory school attendance in the State in which the institution is located, and may benefit from the education or training offered.

(2)(i) Leads to a bachelor, associate or undergraduate professional degree,

(ii) Is acceptable for full credit toward a bachelor degree, or

(iii) Is at least a 1-year program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation. (A 1-year program is defined in § 190.3(c)).

(b) *Eligible program in a proprietary institution of higher education:* An undergraduate program of education or training which—

(1)Admits as regular students only high school graduates or GED recipients,

(2) Leads to a degree or certificate,

(3) Prepares students for gainful employment in a recognized occupation, and

(4) Is at least a 6-month program as defined in § 190.3(d).

(c) *Regular student:* A person who enrolls in an eligible program at an institution of higher education for the purpose of obtaining a degree or certificate.

(d) *Payment period—General.* Institutions not using semesters, trimesters, quarters or other academic terms, or which do not measure progress in credit hours, must have at least two payment periods between July 1 of one year and June 30 of the following year (an award period). The two payment periods are calculated in the following way:

(1) If the student's academic year is within one award period and the student's educational program is not less than a full academic year—

(i) The first payment period is the first half of the student's academic year, and

(ii) The second payment period is the second half of the student's academic year.

(2) If the student's academic year is NOT within one award period or the student's educational program is LESS than a full academic year—

(i) The first payment period is the first half of the hours the student is scheduled to complete within the award period, and

(ii) The second payment period begins when the first payment period ends and ends when the student completes all hours he/she was scheduled to complete between the beginning of the second payment period and June 30.

(3) A student with incompleted hours for the second payment period of any award period may complete them during the following award period. In this case, the first payment period of the new award period will not begin until the student has finished all carried over hours for which he/she was paid.

(e) *Payment period—Academic terms/credit hour institutions.* For those institutions which use academic terms and measure progress in credit hours, a payment period is a span of time which corresponds with each semester, trimester, quarter or other academic term.

(20 U.S.C. 1070a.)

§ 190.3 Institution of higher education.

An institution of higher education is a public, private nonprofit or proprietary institution.

(a) *A public or private nonprofit institution of higher Education* is an educational institution which—

(1) Is in a State;

(2) Admits as regular students only persons who—

(i) Have a high school diploma,

(ii) Have a GED Certificate, or

(iii) Are beyond the age of compulsory school attendance in the state in which the institution is locate, and have the ability to benefit from the training offered. (An institution must document a student's ability to benefit from the training offered on the basis of standardized test, other measurement instruments, practicum examinations or verifiable indicators such as written recommendations from professional educators, counselors, or employers not affiliated with the institution);

(3) Is legally authorized to provide an education program beyond secondary education in each State in which the institution is physically located;

(4) Provides—

(i) An educational program for which it awards an associate, baccalaureate, advanced or professional degree,

(ii) At least a 2-year program which is acceptable for full credit towards a baccalaureate degree, or

(iii) At least a 1-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation, and

(5) Is—

(i) Accredited by an accrediting agency,

(ii) Approved by a State agency recognized by the Commissioner as a reliable authority on the quality of public postsecondary vocational education in its State, if the instutution is a public postsecondary vocational educational institution,

(iii) An institution which has satisfactorily assured the Commissioner that it will meet the accreditation standards of an agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards, or

(iv) An institution whose credits are accepted on transfer by at least 3 accredited institutions on the same basis as transfer credits from fully accredited institutions.

(b) *A proprietary institution of higher education* is an educational institution which—

(1) Is not a public or other nonprofit institution;

(2) Is in a State;

(3) Admits as regular students only person who have a high school diploma or a GED certificate;

(4) Is legally authorized to provide postsecondary education in the state in which it is physically located;

(5) Provides at least a 6-month program of training to prepare students for gainful employment in a recognized occupation;

(6) Is accredited by an accrediting agency;

(7) Has been in existence for at least 2 years, i.e., is legally authorized to provide, and has provided, a training program on a continuous basis to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation period) preceding the date of application for eligibility; and

(8) Has entered into an agreement which the Commissioner has determined will insure that the availability of assistance to students under Title IV of HEA has not resulted in, and will not result in, increased tuition, fees or other charges to its students.

(c) *One year training program.* A program which is—

(1) At least 24 semester or trimester hours or units, or 36 quarter hours or units, at institutions using semesters, trimesters or quarter systems;

(2) At least 900 clock hours of supervised training at institutions not using semesters, trimesters or quarter systems; or

(3) At least 900 hours of preparation for a correspondence program.

(d) *Six month training program.* A Program which is—

(1) At least 16 semester or trimester hours or 24 quarter hours at institutions using semester, trimesters, or quarter systems;

(2) At least 600 clock hours of supervised training at institutions not using semesters, trimesters, or quarter hour systems, or

(3) At least 600 hours of preparation for a correspondence program.

(20 U.S.C. 1141(a), 20 U.S.C. 1088(b)(3).)

§ 190.4 Eligible student.

(a) A student is eligible to receive a Basic Grant if the student—

(1) Is accepted for enrollment or is enrolled in good standing as at least a half-time undergraduate student at an institution of higher education;

(2) Is enrolled in an eligible program as a regualar student, as defined in § 190.2a; and

(3) Is a U.S. Citizen or National, is or intends to become a permanent U.S. resident, or is a permanent resident of the Trust Territory of the Pacific Islands.

(b) A member of a religious order (community, society, agency or organization) who is pursuing a course of study in an institution of higher education will be considered as having a family contribution of not less than $1,601 if that religious order—

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3)(i) Has directed the member to pursue the course of study, or

(ii) Provides subsistence support to its member.

(20 U.S.C. 1070a.)

§ 190.5 Duration of student eligibility.

(a) A student is eligible to receive a Basic Grant for the period of time required to complete an undergraduate course of study. That period is usually 4 academic years, but may be extended up to one additional year if—

(1) The student is pursuing a 5-year course of study designed to lead to a first degree; or

(2) The student is or will be required to enroll in a noncredit remedial course of study.

(b) For the purpose of paragraph (a) of this section, a noncredit remedial course of study is a course of study for which no credit is given toward an academic degree and which is designed to increase the ability of the student to pursue an undergraduate course of study leading to such a degree.

(c) The Commissioner will subtract from each student's period of eligibility, any period for which the student has received a Basic Grant. The eligibility used during an award period will be calculated by: The student's Basic Grant Award for that award period, divided by the student's Scheduled Basic Grant.

(d) If a student has received an overpayment in an award period, the overpayment will not be used in calculating the amount of eligibility used.

(20 U.S.C. 1070a.)

§ 190.6 Basic Grant payments from more than one institution.

A student will not be entitled to receive Basic Grant payments concurrently from more than one institution or from the Commissioner and an institution.

(20 U.S.C. 1070a.)

§ 190.7 Institutional eligibility.

(a)(1) An institution of higher education is eligible to participate in the Basic Grant Program if it meets the appropriate definition set forth in § 190.3, and is in compliance with the applicable provisions of part 168 of this title, "Standards of Administrative Capability and Financial Responsibility."

(2) If an institution becomes eligible during an award period, a student enrolled and attending that institution will be eligible to receive a Basic Grant for the payment period during which the institution became eligible and any subsequent payment period.

(b)(1) An institution of higher education becomes ineligible to participate in the Basic Grant Program if it no longer meets the applicable definition set forth in § 190.3, or if its eligibility is terminated under Subpart H of part 168 of this title.

(2) If an institution becomes ineligible during an award period, an eligible student, who is enrolled and attending that institution, will be paid a Basic Grant for the payment period prior to the time the institution became ineligible. In addition, an eligible student, who has received a Basic Grant or to whom a commitment has been made before the effective date of termination of the institution's eligibility, will be paid a Basic Grant for the payment period in which the institution became ineligible.

(3) For purposes of this section, a commitment of a Basic Grant to a student is made when a student, who is enrolled in and attending an institution, submits a valid Student Eligibility Report to the institution, or to the Commissioner if the institution participates in the program under the Alternate Disbursement System.

(c) An institution which becomes ineligible must provide the Commissioner with the names and enrollment status of each student eligible for Basic Grants attending the institution when its eligibility was terminated.

(d) An institution under the Regular Disbursement System which becomes ineligible must supply to the Commissioner—

(1) A list of students to whom a commitment of a Basic Grant has been made as of the date of termination;

(2) The amount of funds paid to each Basic Grant recipient for that award period;

(3) The amount due to each student eligible to receive a Basic Grant through the end of the payment period; and

(4) An accounting of the Basic Grant expenditures for that award period to the date of termination.

(20 U.S.C. 1070a.)

§ 190.8 Consortium agreements.

(a) A consortium agreement is a written agreement between at least two institutions which enables an enrolled student in an eligible program at the first institution to take courses at the second institution which apply towards his/her certificate or degree at the first institution.

(b) If two eligible institutions have entered into a consortium agreement, the institution at which the student is enrolled and expects to receive a degree or certificate calculates and pays the student's Basic Grant.

(c) Courses taken at both institutions under a consortium agreement will be considered in determining the student's enrollment status and cost of attendance in calculating the student's Basic Grant.

(20 U.S.C. 1070a.)

§ 190.9 Determination of enrollment status under special circumstances.

(a) *Non-credit remedial courses.* In determining a student's enrollment status, the institution will include any non-credit remedial course in which the student is enrolled. If a non-credit remedial course is not measured by clock or credit hours, the institution must determine the equivalent number of clock or credit hours which should be included for that work.

(b) *Combination of regular and correspondence study.* If an eligible student takes correspondence courses from either his/her own institution or another institution under a consortium agreement with the student's institution, the correspondence work must be included in determining the student's enrollment status if it—

(1) Applies toward the student's degree or certificate or is remedial work necessary for the student or to proceed in his/her course of study;

(2) Is completed within the period of time required for regular course work; and

(3) Does not exceed one-half of the student's total course load for that payment period.

(20 U.S.C. 1070a.)

§ 190.10 Adminstrative cost allowance to participating schools.

(a) Any participating educational institution is eligible to receive an administrative cost allowance when funds are appropriated by Congress for this purpose.

If funds are sufficient, each participating institution will be paid not more than $10 per year for each student who receives a Basic Grant. (No institution may count a Basic Grant recipient more than once in an award period).

All funds a school receives under this section must be used to provide consumer information in accordance with 45 CFR 178, and for additional costs of administrating student financial aid programs under Title IV of HEA.

(b) If appropriated funds for any fiscal year are insufficient to pay full allowances, payments will be proportionately reduced. If additional funds become available for any fiscal year in which payments were reduced, allowances will be increased proportionately to the reductions.

(20 U.S.C. 1070a(d).)

Supart B — Application Procedures for Determining Expected Family Contribution

§ 190.11 Application.

(a) To receive a Basic Grant, a student applies to the Commissioner on an approved form to have his/her expected family contribution determined.

(b) The student, and where relevant the student's parents or spouse, must submit accurate and complete information as of the date the application is signed.

(c) The address provided by the student must be his/her residence and not the address of the school, unless the student resides at the school.

(20 U.S.C. 1070a(b)(2).)

§ 190.12 Certification of information.

The applicant, and where relevant the applicant's parents or spouse, will provide (if requested) information or documents, including a copy of Federal Income Tax Returns, necessary to verify the accuracy of the information provided.

(20 U.S.C. 1070a(b)(2).)

§ 190.13 Deadline for filing applications.

For each award period the Commissioner will establish application filing cut-off dates for determining expected family contributions.

(20 U.S.C. 1070a(b)(1).)

§ 190.14 Notification of expected family contribution.

The Commissioner will send to each eligible applicant a "Student Eligibility Report" which states the amount of the applicant's expected family contribution and information used in that computation.

(20 U.S.C. 1070a.)

§ 190.15 Applicant's request for recomputation of expected family contribution because of clerical or arithmetic error.

An applicant may request a recomputation of the expected family contribution if he/she believes a clerical or arithmetic error has occurred, or if the information submitted was inaccurate when the application was signed.

A request for recomputation will be made on an approved form and must be received by the Commissioner no later than the annual cut-off date unless the recomputation is necessary because of a request made by the Commissioner to verify information.

(20 U.S.C. 1070a(b)(2).)

§ 190.16 Request for recomputation of expected family contribution because of extraordinary circumstances.

In filing an application to have an expected family contribution determined, an applicant may provide financial information relating to the tax year immediately following the base year if the conditions in §§ 190.39 or 190.48 apply.

(20 U.S.C. 1070a.)

Subpart C—(Family Contribution Schedule)

Subpart D—(Family Contribution Schedule)

Subpart E—Costs of Attendance

§ 190.51 General attendance costs.

(a) Except as provided in §§ 190.52 through 190.55, the following will be recognized as a student's costs of attendance:

(1) *Tuition and fees:* The amount charged to a full-time student by the institution for tuition and fees for an academic year.

Tuition and fees may include travel costs within the United States required for completion of the course of study, but not for travel between the student's residence and the institution, or for travel outside the United States.

(2) *Room and board:*

(i) The amount charged the student by the institution under a contract for room and board,

(ii) The amount charged the student by the institution under a contract for room but not board, plus an allowance of $625 for the award period,

(iii) The amount charged the student by the institution under a contract for board but not room, plus an allowance of $475 for the award period,

(iv) If no contract is entered into for either room or board, an allowance of $1,100 for the award period whether or not the student lives with a parent, or

(v) If an institution enters into a contract with the student for room and/or board for less than 7 days a week, a daily rate will be computed and charged the student for those days not covered by the contract. This amount will be added to the costs established under clauses (i), (ii), or (iii) of subparagraph (a)(2), whichever is applicable.

(3) An allowance of $400 will be made for books, supplies and miscellaneous expenses for the award period.

(b) A student who receives a Basic Grant may not be charged more by an institution than a student enrolled in that same program who does not receive a Basic Grant.

(20 U.S.C. 1070(a)(2)(B)(iv).)

§ 190.52 Attendance costs for students in correspondence study programs.

If a student is enrolled in a correspondence study program, only the costs of tuition and fees charged the student for that program for an academic year will be recognized as a student's costs of attendance. However, room and board costs incurred for fulfilling a required period of residential training may be recognized as a cost of attendance.

These room and board costs will be—

(a) Based on institutional charges; or

(b) Determined according to the costs established in § 190.51(a)(2) and prorated in the same ratio as the course work completed in residential training bears to the course work for an academic year.

(20 U.S.C. 1070a.)

§ 190.53 Attendance costs for students whose program length exceeds the academic year at institutions using clock hours.

Costs for students whose program length exceeds the length of the academic year at institutions measuring progress in clock hours will be calculated by adding—

(a) Institutional charges × clock hours in academic year/clock hours in program;

(b) Room and/or board as described in 190.51(a)(2) if not determined in paragraph (a) of this section; and

(c) An allowance of $400 for books, supplies and miscellaneous expenses.

(20 U.S.C. 1070(a)(2)(B)(iv).)

§ 190.54 Attendance cost for incarcerated students.

(a) Costs of attendance for eligible students who are incarcerated and for whom at least one-half of room and board expenses are provided will include—

(1) Tuition and fees charged a full-time student for an academic year: and

(2) An allowance of $150 for books and supplies.

(b) Costs of attendance for eligible students who are incarcerated and for whom less than one-half of room and board expenses are provided will be the same as those allowed for students who are not incarcerated.

(20 U.S.C. 1070(a)(B)(iv).)

§ 190.55 Attendance costs for students at U.S. Armed Forces academies.

Students enrolled at the U.S. Military Academy at West Point, the U.S. Naval Academy, the U.S. Air Force Academy or the U.S. Coast Guard Academy will be considered to have no cost of attendance.

(20 U.S.C. 1070a(2)(B)(iv).)

Subpart F—Determination of Basic Grant Awards

§ 190.61 Submission process and deadline for student eligibility report.

(a) A student applies for a Basic Grant by submitting a valid "Student Eligibility Report" (SER) to his/her institution or to the Commissioner if that institution is on the Alternate Disbursement System.

The SER is considered valid only if all information used in the calculation of the expected family contribution is complete and accurate when the application was signed. Institutions are entitled to rely on SER information except under conditions set forth in § 190.77

(b) To receive a Basic Grant, a student who enrolls befor May 1 of an award period must submit the SER to his/her institution on or before May 31 of each award period.

A student who enrolls on or after May 1 of an award period may submit the SER to the institution on or before June 30 of that award period.

(c) A student attending an institution under the Alternate Disbursement System is permitted an additional ten days to submit the SER to the Comissioner; June 10 for those who enroll on or before May 1, and July 10 for those who enroll after May 1.

(d) A student who submits an SER to an institution at the time he/she is no longer enrolled and attending a program at that institution may not be paid a Basic Grant.

(20 U.S.C. 1070a(b)(2).)

§ 190.62 Calculation of a Scheduled Basic Grant at full funding.

(a) When funds are available to satisfy all payments, the Commissioner will pay each eligible full-time student for a complete academic year a Basic Grant which is the lowest of the following calculations:

(1) The difference between $1,800 and the expected family contribution stated on the applicant's SER;

(2) 50 percent of the applicant's cost of attendance; and

(3) The difference between the cost of attendance and expected family contribution.

(b) Notwithstanding paragraph (a) of this section, no payment will be made if the student's Scheduled Basic Grant is less than $200.

(20 U.S.C. 1070a(a)(2).)

§ 190.63 Calculation of a Scheduled Basic Grant at less than full funding.

(a) When funds are not available to satisfy all payments, the Commissioner will pay each eligible full-time student for a complete academic year a Basic Grant which is the lowest of the following calculations:

(1) The difference between $1,800 and the expected family contribution, reducing the remainder in accordance with section 411(b)(3) of the Act;

(2) 50 percent of the applicant's costs of attendance; and

(3) The difference between the costs of attendance and expected family contribution.

(b) Notwithstanding paragraph (a) of this section, no payment will be made if—

(1) The student's award is less than $50; or

(2) When calculated at full funding, the Scheduled Basic Grant is less than $200. (See § 190.62(a).)

(20 U.S.C. 107a(b) (3).)

§ 190.64 Calculation of a Basic Grant for a payment period.

(a) At those institutions using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours, a Basic Grant for each payment period is calculated as follows:

(1) If a student is enrolled in an eligible program which is at least a full academic year—

(i) Determine the student's Scheduled Basic Grant according to § 190.62 (full funding) or § 190.63 (less than full funding) whichever is appropriate,

(ii) Divide the Scheduled Basic Grant by the number of payment periods in the academic year, and

(iii) Multiply the result obtained in clause (ii) by the student's enrollment status. (See § 190.2 to determine enrollment status.)

(2) If a student is enrolled in an eligible program which is LESS than a full academic year—

(i) Determine the student's Scheduled Basic Grant,

(ii) Divide the Scheduled Basic Grant by the number of payment periods,

(iii) Multiply the result obtained in clause (ii) by the student's enrollment status, and

(iv) Multiply the result obtained in clause (iii) by: the credit hours in the program/the credit hours in the academic year.

(b) At those institutions which measure progress by clock hours or do not use semesters, trimesters, quarters or other academic terms, a Basic Grant for each payment period is calculated as follows:

(1) Determine the the student's Scheduled Basic Grant; and

(2) Multiply the Scheduled Basic Grant by: the credit or clock hours in the payment period/the credit or clock hours in an academic year.

(c) Notwithstanding paragraphs (a) and (b) of this section, a student may not receive a Basic Grant if the amount which the student would receive, projected on the basis of a full academic year, would be less than either $200 at full funding or $50 at less than full funding.

(20 U.S.C. 1070a.)

§ 190.65 Calculation of Basic Grants for terms which span two award periods.

At institutions which measure progress by credit hours and use semesters, trimesters, quarters or other academic terms, students will be paid for credit hours in terms which span two award periods by the following procedure:

(a) Payment for the credit hours will be made during the award period in which the term begins up to (but not to exceed) the student's Scheduled Basic Grant for that award period.

(b) Payment for any remaining credits due the student will be made the following award period.

(20 U.S.C. 1070a.)

§ 190.66 Transfer student: attendance at more than one institution during an award period.

(a) If a Basic Grant recipient withdraws from one institution and enrolls at a second in the same award period, the student must reapply for a Basic Grant to the second institution, or to the Commissioner for an ADS institution. (See § 190.72.)

(b) The second institution (or the Commissioner for ADS schools) calculates the student's award according to § 190.64.

(c) The second institution (or the Commissioner for ADS schools) pays a Basic Grant for only that portion of the award period in which the student is enrolled at that institution. The grant must be adjusted to ensure that the student does not exceed the Scheduled Basic Grant for that award period.

(d) A transfer student must repay any amount received in an award period which exceeds the Scheduled Basic Grant.

(20 U.S.C. 1070a.)

§ 190.67 Correspondence study.

A student, enrolled in a correspondence study program will be paid according to the following procedures:

(a) The institution prepares a written schedule for submission of lessons which must reflect a work load of at least 12 hours of preparation per week. This schedule is used to determine the length of the program.

(b) The student's Basic Grant for an award period is calculated as follows:

(1) Determine the Scheduled Basic Grant according to §§ 190.62 or 190.63, whichever is appropriate, and

(2) Multiply the Scheduled Basic Grant by the following fraction: hours of preparation in the award period/hours of preparation in the academic year.

(c) The student will be paid as a half-time student. Therefore, the maximum award a student may receive is the lesser of (1) one-half of the student's Scheduled Basic Grant for that award period, or (2) the amount obtained in subparagraph (b)(2) of the section.

(d) A student will receive 2 equal payments for an award period. The first payment will be made after the student has submitted 25 percent of the lessons scheduled for the award period.

(e) The final payment will be made after the student has submitted 75 percent of the lessons scheduled for the award period.

(20 U.S.C. 1070a.)

Subpart G—Administration of Grant Payments—Regular Disbursement System

§ 190.71 Scope.

This subpart deals with program administration by an institution of higher education that has entered into an agreement with the Commissioner to calculated and pay Basic Grant awards.

(20 U.S.C. 1070a.)

§ 190.72 Institutional agreement—regular disbursement system (RDS).

(a) The Commissioner may enter into an agreement with an institution of higher education under which the institution will calculate and pay Basic Grants to its students. The agreement will be on a standard form provided by the Commissioner and will contain the necessary terms to carry out this part.

(b) The Commissioner will send a payment schedule for each award period to an institution that has entered into an agreement under paragraph (a) of this section.

(20 U.S.C. 1070a.)

§ 190.73 Termination of agreement—regular disbursement system.

(a) *Termination by Commissioner.* The Commissioner may terminate the agreement with an institution by giving—

(1) 30 days notice; or

(2) A shorter period of time if it is necesary to prevent the likelihood of a substantial loss of funds to the Federal government or to students.

(b) *Information provided.* The institution must provide the following information to the Commissioner if the Commissioner terminates the agreement:

(1) A list of students who had Basic Grant commitments as of the date of termination;

(2) The amount of funds paid to Basic Grant recipients for the award period in which the agreement is terminated;

(3) The amount due to each student eligible to receive a Basic Grant through the end of the award period; and

(4) An account of Basic Grant expenditures to the date of termination.

(c) *Termination by institution.* The institution may terminate the agreement by giving the commissioner written notice. The termination will become effective June 30 of that award period. The institution must carry out the agreement for the remainder of the award period.

(d) *Termination because of change in ownership which results in a change of control.* The agreement automatically terminates when an institution changes ownership which results in a change of control. The Commissioner will enter into an agreement with the new owner if the institution complies with requirements set forth in § 149.66 of the "Eligibility Regulations." (45 CFR 149.66.)

(e) If an agreement is terminated, the Commissioner will pay an institution's students ONLY if it enters into an ADS agreement. (See § 190.92.)

(20 U.S.C. 1070a.)

§ 190.74 Advancement of funds to institutions.

The Commissioner will advance funds for each award period, from time to time, to RDS institutions, based on his/her estimate of the institution's needs for funds to pay its Basic Grant students.

(20 U.S.C. 1070a(b)(3)(A).)

§ 190.75 Determination of eligibility for payment.

(a) An institution may pay a Basic Grant to a student only after it determines that the student—

(1) Meets the eligibility requirements set forth in section 190.4;

(2) Is enrolled in good standing;
(3) Is maintaining satisfactory progress in his/her course of study;
(4) Is not in default on any National Direct Student Loan made by that institution or on any Guaranteed Student Loan received for attendance at that institution; and
(5) Does not owe a refund on a Basic Grant, a Supplemental Grant or a State Student Incentive Grant received for attendance at that institution.

(b) Before making any payment to the student for an award period, the institution must confirm that he/she continues to meet the criteria set forth in paragraph (a) of this section. However, if an eligible student submits an SER to the institution and becomes ineligible before receiving a payment, the institution must pay only the amount which it determines could have been used for educational purposes before the student became ineligible.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself BEFORE the end of the payment period, the institution may pay a Basic Grant to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses itself AFTER the end of the payment period, the institution may neither pay the student a Basic Grant for that payment period nor make adjustments in subsequent Basic Grant payments to compensate for the loss of aid for that period.

(e) Conditions under which students who are overpaid grants may continue to receive Basic Grants are as follows:

(1) *Overpayment of a Basic Grant.* If a student is overpaid a Basic Grant at an institution, that institution may pay a Basic Grant to that student if (i) the student is otherwise eligible, and (ii) the overpayment can be eliminated in the award period in which it occurred by adjusting the subsequent Basic Grant payments for that award period.

(2) *Overpayment of a Basic Grant due to institutional error.* In addition to the exception provided in subparagraph (1) of this paragraph, if the student is overpaid a Basic Grant at an institution as a result of institutional error, the institution may also pay the student a Basic Grant if:

(i) The student is otherwise eligible, and

(ii) The student acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment on a Supplemental Grant.* An institution may continue to pay a Basic Grant to a student who receives an overpayment on a Supplemental Grant if:

(i) The student is otherwise eligible, and

(ii) An adjustment in subsequent financial aid payments (other than Basic Grants) eliminates the overpayment in the same award period in which it occurred.

(f) An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program, may rely upon the student's written statement that he/she is not in default unless the institution has information to the contrary.

(g) Conditions under which students who are in default on loans may receive Basic Grants are as follows:

(1) *Guaranteed Student Loan.* A student, who is in default, may be paid a Basic Grant if the Commissioner (for federally insured loans) or a guarantee agency (for a loan insured by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Direct Student Loan.* An institution may pay a Basic Grant to a student in default on a National Direct Student Loan made at that institution, if the student has made arrangements, satisfactory to the institution, to repay the loan.

(h) For purposes of this part—

(1) Overpayment of a grant means that a student received payment of a grant greater than the amount he/she was entitled to receive;

(2) Supplemental Grant is a grant authorized under Title IV-A-2 of the HEA;

(3) State Student Incentive Grant is a grant authorized under Title IV-A-3 of the HEA;

(4) National Direct Student Loan is a loan made under Title IV-E of the HEA, and

(5) Guaranteed Student Loan is a loan made under Title IV-B of the HEA.

(20 U.S.C. 1070a, 20 U.S.C. 1070b et seq, 20 U.S.C. 1087aa et seq, 20 U.S.C. 1071 et seq, and 20 U.S.C. 1088b.)

§ 190.76 Frequency of payment.

(a) For each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) Only one payment is required if a portion of an academic year occurring within one award period is less than three months.

(c) Funds due a student for any completed period may be paid in one lump sum. The student's enrollment status will be determined according to work already completed.

(20 U.S.C. 1070a.)

§ 190.77 Verification of information on the SER—withholding of payments.

(a) The Commissioner may request that a student verify the information submitted on the application and included on the SER, and may request an institution to withhold payment of a student's grant.

(b) If an institution believes that any information on the SER used in calculating the student's expected family contribution is inaccurate, or if the application is chosen by the Commissioner for verification, the institution must request verification from the student.

(c) If an institution can document inaccuracies in the information used to calculate the student's expected family contribution on the SER, it may not pay a Basic Grant for any award period until the student corrects the error or verifies the data.

(d) If an institution cannot document that inaccuracies exist on the SER, it may not withhold payments unless authorized by the Commissioner.

(e) A student corrects an SER by—

(1) Providing accurate information on the SER;

(2) Getting the appropriate signatures on the SER; and

(3) Re-submitting the SER to the Commissioner.

(f) (1) If a student makes a correction which results in a change in his/her expected family contribution, the institution must recalculate the student's award based on the verified SER and any overpayment must be repaid by the student.

(2) If the documentation requested by the institution under this section does not verify the information of the SER, or if the student does not correct the SER, the institution must forward the student's name, social security number and other relevant information to the Commissioner.

(g) When notified by an institution under paragraph (f)(2) of this section, the Commissioner will determine whether to—

(1) Request additional information from the student; or

(2) Pay the student's Basic Grant on the basis of the SER.

(h) (1) If the Commissioner requests documentation, the student must comply within a time period set by the Commissioner.

(2) If the student provides the requested documentation on time, he/she will be eligible for Basic Grant payments based upon the verified SER. If the verified SER is submitted to the institution after the appropriate deadline (§ 190.61) the student may be paid only up to the amount withheld, because of the verification process.

(3) If the student does not provide the requested documentation within the established time period—

(i) The student will forfeit the Basic Grant for that award period,

(ii) Any grant payments received must be returned to the Commissioner, and

(iii) No further Basic Grant applications will be processed for that student until documentation has been provided or the Commissioner decides there is no longer need for documentation.

(4) If the student provides the documentation AFTER the established time period—

(i) The student will not be eligible for any further Basic Grant payments for that period,

(ii) Any overpayments must be repaid by the student to the institution, and

(iii) The student may keep any Basic Grant payments he/she is entitled to.

(20 U.S.C. 1070a.)

§ 190.78 Method of disbursement—by check or credit to student's account.

(a) A student may be paid either by check or be crediting his/her account with the institution. The institution must notify the student how he/she will be paid.

(b) (1) No payment may be made to a student for a payment period until the student is registered for that period.

(2) The earliest a direct payment may be made to a student is 10 days before the first day of classes of a payment period.

(3) The earliest a payment can be credited is 3 weeks before the first day of classes of a payment period.

(c) (1) If an institution credits a student's account, it must—

(i) Prepare a written schedule of the time and amount of each payment,

(ii) Get the student's signature on the schedule, and

(iii) Give a copy of the signed schedule to the student and keep a signed copy for its own records.

(2) Notwithstanding subparagraph (1) of this paragraph, if the institution prepares a schedule which a student refuses to sign, it still may pay the student if it retains the schedule with a notation that the student refused to sign.

(d) If a student has been paid and withdraws from the institution, officially or unofficially, or is expelled before the first day of classes, the institution must return to the Basic Grant account all funds paid.

(e) (1) If an institution pays directly, it must notify the student when the Basic Grant awards will be paid.

(2) If a student does not pick up the check on time, the institution must keep that check 15 days after the last date of the student's enrollment for that award period.

(3) If the student has not picked up the check at the end of the 15 day period, the institution may credit the student's account for any amount owed to it for the award period.

(4) A student forfeits the right to receive any remaining Basic Grant payment if he/she has not picked up the check within the specified period of time.

(5) Notwithstanding subparagraph (4) of this paragraph, the institution may, if it chooses, pay a student who did not pick up the check, through the next payment period.

(20 U.S.C. 1070a.)

§ 190.79 Affidavit of educational purpose.

No Basic Grant may be paid unless the student has filed a notarized affidavit with the institution he/she attends which—

(a) Is on a form approved by the Commissioner;

(b) States that the grant money will be used solely for educational expenses at the institution; and

(c) Is notarized by someone who does not recruit students for the institution.

(20 U.S.C. 1088g.)

§ 190.80 Recovery of overpayments.

(a) An institution is liable for an overpayment to a student if the regulations indicate that the payment should not have been made and the institution cannot collect the overpayment.

(b) If an institution makes an overpayment for which it is not liable, it must help the Commissioner recover the overpayment by—

(1) Making a reasonable effort to contact the student and recover the overpayment; and, if unsuccessful,

(2) Notifying the Commissioner of its attempt to recover the overpayment, and providing the Commissioner with the student's name, social security number, amount of overpayment and other relevant information.

(20 U.S.C. 1070a.)

§ 190.81 Recalculation of a Basic Grant award.

(a) *Change in expected family contribution.* (1) If the student's expected family contribution changes the institution must recalculate the Basic Grant Award.

(2) If the expected family contribution is recalculated because of—

(i) A clerical or arithmetic error under § 190.15, or

(ii) Extraordinary circumstances which affect the expected family contribution under §§ 190.39 and 190.48, the award is adjusted and the institution pays the student what he/she is entitled to for the award period.

(3) If a student's expected family contribution is recalcuated because of a correction of the information requested under §§ 190.12 or 190.77, the student's Basic Grant for the award period must be adjusted. Where possible, the adjustment must be made within the same award period. If the recalculation takes place in a subsequent award period, the student will be eligible to receive payment unless prohibited under the provisions of § 190.77(h) and will be required to return any overpayment at the time of recalculation.

(b) *Change in enrollment status.* If an institution decides that a student's enrollment status has changed during a payment period, it may (but is not required to) establish a policy under which the student's enrollment status may be recalculated. If such a policy is established, it must apply to all students. If a student's award is recalculated, the institution determines the total amount the student is entitled to for the entire payment period by taking into account—

(1) The portion of the payment period at the original enrollment status;

(2) The portion of the payment period at the new enrollment status; and

(3) Any change in the student's costs of attendance.

(20 U.S.C. 1070a.)

§ 190.82 Fiscal control and fund accounting procedures.

(a) An institution must deposit all Federal funds it receives under the Basic Grant, Supplemental Grant, College Work-Study and National Direct Student Loan programs in an account which includes only those funds. This account is subject to audit by the Commissioner.

(b) Funds received by an institution under this part are held in trust for the intended student beneficiaries and may not be used or hypothecated for any other purpose.

(20 U.S.C. 1070a.)

§ 190.83 Maintenance and retention of records.

(a) Each institution must maintain adequate records which include—

(1) The eligibility of all enrolled students who have applied for Basic Grants;

(2) The name, social security number and amount paid to each recipient;

(3) The amount and date of each payment;

(4) The amount and date of any overpayment that has been restored to the program account;

(5) The "Student Eligibility Report" for each student;

(6) The student's cost of attendance;

(7) How the student's full or part-time enrollment status was determined; and

(8) The student's enrollment period.

(b) The records listed in paragraph (a) will be available for inspection by the Commissioner's authorized representative at any reasonable time in the institution's offices. Records will be kept for five years after the institution submits an accounting of each award period's funds to the Commissioner.

(c) The records involved in any claim or expenditure questioned by Federal audit will be retained until resolution of any audit questions.

(d) An institution may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

(20 U.S.C. 1070a.)

§ 190.84 Submission of reports.

The institution will submit the reports and information the Commissioner requires in connection with the funds advanced to it in accordance with § 190.74. The institution will comply with the procedures the Commissioner may find necessary to ensure that the reports are correct.

(20 U.S.C. 1070a.)

§ 190.85 Audit and examination.

(a) *Federal audits.* The Secretary, the Comptroller General of the United States or their duly authorized representatives, will have access to the records specified in §§ 190.82 and 190.83 and to any other pertinent books, documents, papers and records.

(b) *Non-Federal audits.* All Basic Grant Program transactions will be audited by the institution or at the institution's direction to determine at a minimum—

(1) The fiscal integrity of financial transactions and reports; and

(2) If such transactions are in compliance with the applicable laws and regulations. Such audits will be performed in accordance with HEW's "Audit Guide" for student financial aid programs. The audit will be scheduled annually or, at least once every two years, depending on the size and complexity of the program.

(c) Audit reports will be submitted for review to the institution's local regional office of HEW's Audit Agency. The Audit Agency and the Commissioner will also be given access to records or other documents necessary to the audit's review.

(20 U.S.C. 1070a.)

Subpart H—Administration of Grant Payments—Alternate Disbursement System

§ 190.91 Scope.

This subpart deals with program administration by an institution of higher education under the Alternate Disbursement System (ADS). Under the ADS, the Commissioner calculates and pays the Basic Grant funds.

(20 U.S.C. 1070a.)

§ 190.92 Institutional agreement—Alternate Disbursement System (ADS).

Under ADS, the Commissioner will calculate and pay Basic Grant Awards to students enrolled in institutions which have entered into agreements to carry out this subpart, including—

(a) The completion of OE Form 304 for each eligible student, as specified in § 190.94; and

(b) The maintenance and retention of records as specified in § 190.96.

(20 U.S.C. 1070a.)

§ 190.93 Change in ownership and change to the Regular Disbursement System (RDS).

(a) *Change to RDS.* The Commissioner may enter into an agreement with an ADS institution which wishes to participate in the program under the Regular Disbursement System. However, the agreement will go into effect July 1 of the succeeding award period.

(b) *Termination because of change in ownership that results in a change in control.* The agreement terminates when an institution changes ownership that results in a change in control. The Commissioner may enter into an agreement with the new owner if the institution complies with the requirements set forth in § 149.66 of the "Eligibility Regulations," (45 CFR 149.66).

(20 U.S.C. 1070a.)

§ 190.94 Calculation and disbursement of awards by the Commissioner of Education.

(a) An eligible student enrolled in an institution participating in the Basic Grant Program under the ADS applies to the Commissioner for a Basic Grant according to the following procedures:

(1) The student submits an SER to his/her institution and obtains an OE Form 304 from the institution;

(2) The student completes the OE Form 304, including the affidavit of educational purposes as described under § 190.79, and submits it to the institution;

(3) On the OE Form 304 the institution certifies that the student—

(i) Meets eligibility requirements of § 190.4,

(ii) Is maintaining satisfactory progress in his/her course of study,

(iii) Does not owe a refund on grants received for attendance at that institution under the Basic Grant, the Supplemental Educational Opportunity Grant, or the State Student Incentive Grant Programs, and

(iv) Is not in default on any National Direct Student Loan made by the institution or on any Guaranteed Student Loan received for attendance at that institution. (In determining whether a student is in default on a GSL, the institution may rely on a written statement provided by the student unless the institution has information to the contrary), and

(4) The institution returns the SER and OE Form 304 to the student, who then submits these documents to the Commissioner.

(b) If an institution believes that the information on an SER may be in error, the institution must notify the student and request documentation or correction. Any case not resolved by the institution should be reported to the Commissioner.

(c) The Commissioner will calculate a student's award in accordance with Subpart F of this part and will pay the student once every payment period.

(20 U.S.C. 1070a.)

§ 190.95 Termination of enrollment and refund.

(a) The institution must inform the Commissioner of the date on which a student officially or unofficially withdraws or is expelled during a payment period for which that student was paid.

(b) A student who officially or unofficially withdraws or is expelled from an institution before completion of 50 percent of a payment period for which he/she has been paid, will refund a prorated portion of the payment as determined by the Commissioner.

(20 U.S.C. 1070a.)

§ 190.96 Maintenance and retention of records.

(a) An institution under the ADS must establish and maintain—

(1) Records relating to each Basic Grant recipient's enrollment status, and attendance costs at the institution; and

(2) Records showing when each recipient was enrolled. These records must be available at the geographic location where the student will receive his/her degree or certificate of course completion, and must be kept for five years following a recipient's last date of enrollment.

(b) The institution will make available to the Commissioner, the Secretary of the Department of Health, Education and Welfare, the Comptroller General of the United States, and their authorized representatives, pertinent books, documents, papers and records for audit and examination during the five year retention period.

(c) An institution may substitute microfilm copies in lieu of original records in meeting the requirements of this section.

(20 U.S.C. 1070a.)

[FR Doc. 78-12879 Filed 5-12-78; 8:45 am]

Federal Register

MONDAY, MAY 15, 1978
PART III

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination of Critical Habitat for the Whooping Crane

[4310-55]

Title 50—Wildlife and Fisheries

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination of Critical Habitat for the Whooping Crane

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines Critical Habitat for the whooping crane (*Grus americana*), an Endangered species, in the States of Colorado, Idaho, Kansas, Nebraska, New Mexico, Oklahoma, and Texas. This rule provides Federal protection of these areas under Section 7 of the Endangered Species Act of 1973 and is taken to assure the conservation of the whooping crane.

DATE: This rule becomes effective June 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

Background

In the Federal Register of December 16, 1975 (40 FR 58308-58312), the Service proposed the determination of Critical Habitat for the whooping crane and five other endangered species. Determinations of Critical Habitat for those other five endangered species have been made (41 FR 13926-13928, April 1, 1976—Snail Darter; 41 FR 41914-41916, September 24, 1976—American Crocodile, California Condor, Indiana Bat, and Florida Manatee).

Summary of Comments

The Critical Habitat proposal for the whooping crane in Idaho was supported by the Governor and the Idaho Fish and Game Department, as well as the Idaho Wildlife Federation and the Ada County Fish and Game League. The latter also recommended that other habitat adjacent to Gray's Lake National Wildlife Refuge be considered in future Critical Habitat proposals. The Service would be prepared to make such a determination at any time it is warranted by appropriate biological data.

The Kansas Forestry, Fish and Game Commission opposed designation of the Cheyenne Bottoms Waterfowl Management Areas as Critical Habitat for the whooping crane in Kansas. That agency felt that sufficient protection was already afforded the whooping crane in Kansas.

The Critical Habitat proposal in Nebraska for the whooping crane was the largest single zone proposed. This part of the proposal received the most comment—28 letters. Concern with possible Federal intervention into the private and local government rights was expressed by several individuals and agencies. General support was given by five private citizens, the National Audubon Society (and local chapters), as well as the Nebraska Game and Parks Commission. The latter suggested that only the Platte River channel and immediately adjacent wetlands and all rainwater basins of Type III and IV wetlands and their associated watersheds be determined Critical Habitat within the originally proposed zone. They acknowledged that sufficient data was not available to determine precisely which rainwater basins would meet the requirements of the whooping crane during migration. The Service agrees and the determination of the proposed Nebraska Zone as Critical Habitat has been refined to include the main channel and immediately associated riparian habitat of the Platte River in the stretch between Lexington and eastern Buffalo County. Until such time as the Service receives additional data on the habitat requirements of the whooping crane in Nebraska, the remaining area within this zone is not presently determined as Critical Habitat. However, the Service would be prepared to again propose such a determination at any time it is warranted by appropriate data on the whooping crane.

General opposition or concern to the proposed Critical Habitat in Nebraska was received without substantial biological data on the whooping crane's requirements from the city of Grand Island, the Grand Island Industrial Foundation, the Nebraska Office of Planning and Programming, the Central Platte Natural Resources District, the Central Nebraska Public Power and Irrigation District, the Nebraska Department of Aeronautics, and the Tri-Basin Natural Resources District. Two members of Congress and the Governor also expressed concern over the proposed size of the Nebraska zone as well as the effect the designation might have on the citizens of Nebraska. Four private citizens also expressed concern and general opposition to the proposal.

Comments on proposed areas in New Mexico and Colorado were received from the New Mexico Department of Game and Fish, several biologists, and one private citizen. In general, all suggested that the proposed zones in those States not be designated at this time (early 1976), since sufficient data was not available on whooping crane habitat requirements in these areas. Determination by the Service of the zones in Colorado and New Mexico as Critical Habitat is now being made based upon more recent data (through April 1978).

The National Audubon Society and the Oklahoma Department of Wildlife Conservation supported the proposal of Salt Plains National Wildlife Refuge as being designated Critical Habitat for the whooping crane.

The Whooping Crane Recovery Team provided the Service with much data and insight into the habitat requirements of the crane. In particular, the Team suggested refining and further restricting the final Critical Habitat from that proposed for the Aransas National Wildlife Refuge, Tex., Critical Habitat zone. The Service has accepted this refinement of that zone in the area delineated below. No comments were received by the Service in opposition to designating Aransas National Wildlife Refuge, Tex., as Critical Habitat for the whooping crane. One ranch owner expressed serious opposition to designation of a portion of Isla San Jose, adjacent to Aransas National Wildlife Refuge, because he felt his private enterprise would be restricted. Section 7 of the Act neither addresses or directly affects private landowners and their use of such lands that are determined to be a part of the Critical Habitat of a species. The Service must also utilize clearly definable and reasonable permanent boundaries which, by necessity, might include small strips of land or water that is not habitat meeting the direct needs of the species.

Several letters were received requesting further information or commenting on the Critical Habitat proposed in the Federal Register of December 16, 1975. These letters were too general to be categorized as being favorable or non-favorable towards the proposal. The Federal Highway Administration recommended that existing highways and their associated rights-of-way be specifically excluded from the Critical Habitat so designated. Existing man-made structures not necessary to the species'survival are excluded from this determination.

Basis for Determination

The proposal of December 16, 1975, involved nine zones in six States. The zones delineated below in the final determination of Critical Habitat represent a considerable reduction, particularly with respect to the Platte River zone in Nebraska. The decision to make this reduction was based upon a more thorough assessment of available biological data, particulary that provided by the Nebraska Game and Parks Commission.

The Critical Habitat zones include roosting areas used during migration, as well as rearing and wintering areas. As more precise information becomes available, regarding other sites not listed below, the Service may consider the proposal of additional Critical Habitat for the whooping crane.

CRITICAL HABITAT

Section 7 of the act, entitled "Interagency Cooperation," states:

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

A definition of the term "Critical Habitat" was published jointly by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of January 4, 1978 (43 FR 870-876) to be codified at 50 CFR 402 and is reprinted below:

> "Critical habitat" means any air, land, or water area (exclusive of those existing manmade structures or settlements which are not necessary to the survival and recovery of a listed species) and constituent elements thereof, the loss of which would appreciably decrease the likelihood of the survival and recovery of a listed species or a distinct segment of its population. The constituent elements of critical habitat include, but are not limited to: Physical structures and topography, biota, climate, human activity, and the quality and chemical content of land, water, and air. Critical habitat may represent any portion of the present habitat of a listed species and may include additional areas for reasonable population expansion.

As specified in the regulations for Interagency Cooperation as published in the January 4, 1978, FEDERAL REGISTER (43 FR 870), the Director will consider the physiological, behavioral, ecological, and evolutionary requirements for survival and recovery of listed species in determining what areas or parts of habitat are critical. These requirements include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing of offspring; and generally,

(5) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

Each of the above five factors pertain to the whooping crane and are summarized below:

(1) Whooping cranes are territorial birds. Each pair requires several hundred acres of undisturbed wetlands in and around Aransas National Wildlife Refuge. Unmated subadults must also have some suitable habitat that is not regularly defended by the paired cranes. The population wintering in the vicinity of Aransas National Wildlife Refuge has been expanding. Although maximum density of the habitat has not yet been reached, some cranes are now moving up and down the coastal marshes from the refuge to establish wintering territories.

The four refuges in Idaho, Colorado, and New Mexico will offer further space for individual and population growth as this separate flock becomes established in the wild.

(2) All areas designated in this rule provide food, water, and other nutritional or physiological needs of the whooping crane. Cranes at Aransas feed primarily on various crustaceans and molluscs found in the tidal flats and marshes. Crayfish, frogs, small fish, and other small animals appear to be the major items taken in wetlands on spring migration. During fall migration whooping cranes seem to feed more extensively in recently harvested grain fields where insects and wasted grains seem to constitute the bulk of their diet.

(3) Generally, whooping cranes (as do most other cranes in the world) require an open expanse for nightly roosting. This habit of using sand or gravel bars in rivers and lakes for nightly roosting appears to be one of the major factors in crane habitat selection. Feeding cranes seen in migration are frequently found within short flight distances of reservoirs, lakes, and large rivers that offer bare islands for nightly roosting.

(4) In this rule only the Grays Lake area offers potential nesting habitat for the whooping crane. The rearing of young cranes extends for approximately ten months; that is, until the young cranes are driven out of the family unit by their parents on the spring migration. All the areas in this rule constitute habitats essential to the rearing of these young whooping cranes by providing the cranes with sites for training and protection as well as feeding and other normal behavior.

(5) Whooping cranes do not readily tolerate disturbances to themselves or their habitat. A human on foot can quickly put a whooping crane to flight at distances over one quarter of a mile. Loss of large expanses of wetlands and shooting were the major factors in causing the massive declines of whooping cranes in the late 1800's. The one common feature uniting the vast majority of confirmed sightings of this crane in migration is the proximity to wetlands that provide undisturbed roosting sites.

Based upon this review of the above five factors, the comments received, the scientific literature, and unpublished data in the files of the Service, it is our finding that the habitats determined to be Critical in this rule do constitute areas required by the whooping crane, the loss of which would appreciably decrease the likelihood of the survival and recovery of these cranes. The continued conservation and recovery of the whooping crane would be seriously threatened without these feeding or roosting areas being determined as Critical Habitat.

Critical Habitat for the whooping crane (*Grus americana*) is, therefore, determined to include the following areas (exclusive of those existing manmade structures or settlements which are not necessary to the normal needs or survival of the species):

(1) Monte Vista National Wildlife Refuge, Colorado;

(2) Alamosa National Wildlife Refuge, Colorado;

(3) Grays Lake National Wildlife Refuge and vicinity, Idaho;

(4) Cheyenne Bottoms State Waterfowl Management Area, Kansas;

(5) Quivira National Wildlife Refuge, Kansas;

(6) Platte River Bottoms between Lexington and Dehman, Nebraska;

(7) Bosque del Apache National Wildlife Refuge, New Mexico;

(8) Salt Plains National Wildlife Refuge, Oklahoma; and

(9) Aransas National Wildlife Refuge and vicinity, Texas.

These areas are described in greater detail in the Regulation promulgation at the end of this publication.

EFFECTS OF THE RULEMAKING

Most persons who commented on the proposal were apparently confused regarding the meaning and implications of Critical Habitat designations. For example, many expressed concern that the designation would automatically halt or greatly restrict all human activities and development within the entire designated areas. Many seemed to think that Section 7 provisions would apply to the actions of all parties, not just Federal agencies. Perhaps most unfortunately, many persons apparently thought that the Fish and Wildlife Service could arbitrarily determine or not determine, enlarge or reduce a Critical Habitat area based on non-biological factors for the species involved.

There has been widespread and erroneous belief that a Critical Habitat designation is something akin to estab-

lishment of a wilderness area or wildlife refuge, and automatically closes an area to most human uses. Actually, a Critical Habitat designation applies only to Federal agencies, and essentially is an official notification to these agencies that their responsibilities pursuant to Section 7 of the Act are applicable in a certain area.

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

There may indeed be legitimate questions of whether, and to what extent, certain kinds of actions would adversely affect listed species. These questions, however, are not relevant to the biological basis of Critical Habitat delineations. Such questions should, and can more conveniently, be dealt with after Critical Habitat has been designated. In this respect, the Service in cooperation with other Federal agencies has drawn up a set of guidelines which, in part, establish a consultation and assistance process for helping to evaluate the possible effects of actions on Critical Habitat. Provisions for Interagency Cooperation were published as 50 CFR 402 in the FEDERAL REGISTER (43 FR 870-876) to assist Federal agencies in complying with their responsibilities under Section 7 of the Act.

NATIONAL ENVIRONMENTAL POLICY ACT

An environmental assessment has been prepared and is on file in the Service's Office of Endangered Species in Washington, D.C. The assessment is the basis for a decision that the determinations of this rulemaking are not major Federal actions that would affect significantly the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

FINAL RULEMAKING

The Director has considered all comments and data submitted in response to the proposed determination of Critical Habitat for the whooping crane. The Director also has considered other information received by the Service, both prior to and subsequent to the publication of the proposed Critical Habitat determination in the FEDERAL REGISTER of December 16, 1975. Based upon this review, the areas delineated below are determined to be Critical Habitat for the whooping crane.

The primary author of this rule is Mr. Jay M. Sheppard, Office of Endangered Species (202/343-7814).

REGULATION PROMULGATION

Accordingly, § 17.95(b), Subpart I, Part 17, Chapter I, Title 50 of the Code of Federal Regulations, is amended by adding the following Critical Habitat description before the Critical Habitat description for the Mississippi sandhill crane:

Subpart I—Interagency Cooperation

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

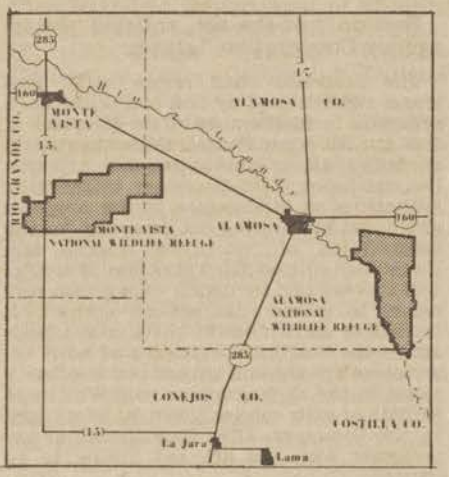
* * * * *

WHOOPING CRANE (*Grus americana*)

Colorado. Areas of land, water, and airspace with the following components: (1) Monte Vista National Wildlife Refuge in Alamosa and Rio Grande Counties; and (2) Alamosa National Wildlife Refuge in Alamosa and Conejos Counties.

WHOOPING CRANE

Alamosa, Costilla and Rio Grande Counties, COLORADO

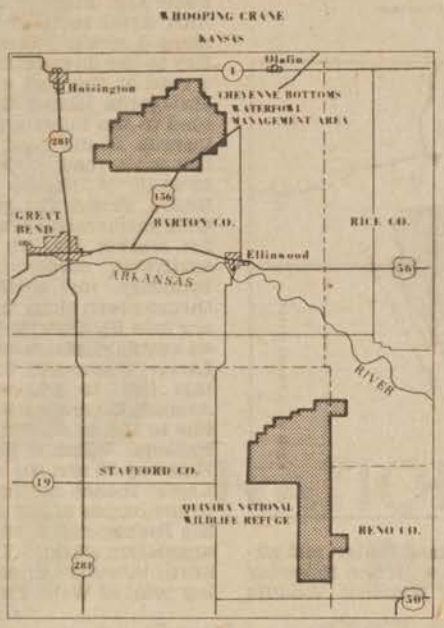


Idaho. An area of land, water, and airspace in Bonneville and Caribou Counties with the following components: Grays Lake National Wildlife Refuge, and all contiguous land and water within 1 mile of the boundaries of this refuge.

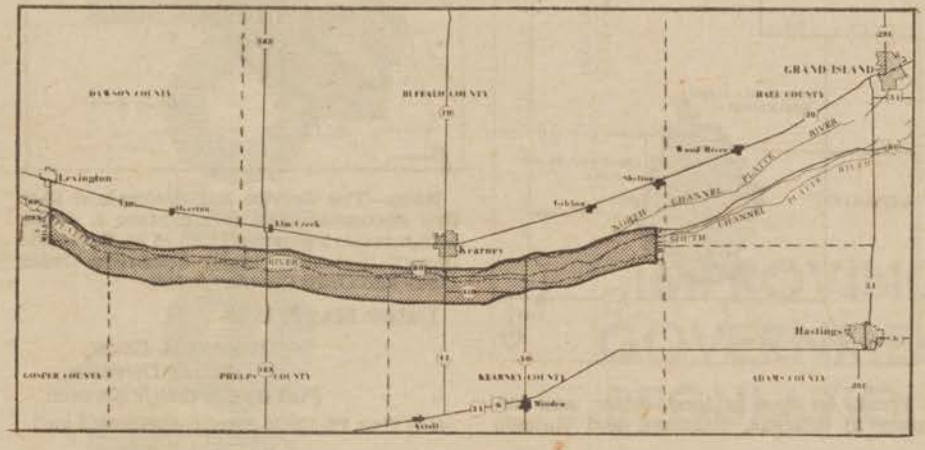
WHOOPING CRANE

Caribou & Bonneville Counties, IDAHO

Kansas. Areas of land, water, and airspace with the following components: (1) Quivira National Wildlife Refuge in Stafford, Reno, and Rice Counties; and (2) Cheyenne Bottoms State Waterfowl Management Area in Barton County.



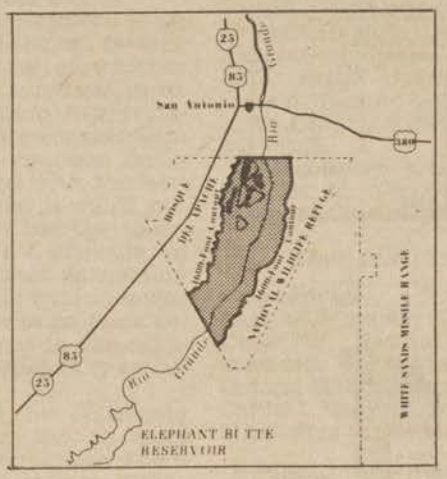
Nebraska. An area of land, water, and airspace in Dawson, Buffalo, Hall, Phelps, Kearny, and Adams Counties with the following boundaries: *Platte River bottoms*—a strip of river bottom with a north-south width 3 miles, a south boundary paralleling Interstate 80, beginning at the junction of U.S. Highway 283 and Interstate 80 near Lexington, and extending eastward along Interstate 80 to the interchange for Shelton and Dehman, Nebr. near the Buffalo-Hall County line.



New Mexico. An area of land, water, and airspace in Socorro County with the following component: All areas at or below 4,600 feet in elevation within Bosque del Apache National Wildlife Refuge.

WHOOPING CRANE

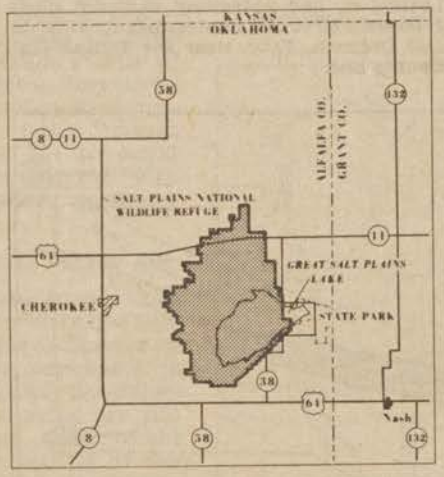
Socorro County, NEW MEXICO



Oklahoma. An area of land, water, and airspace in Alfalfa County with the following component: Salt Plains National Wildlife Refuge.

WHOOPING CRANE

Alfalfa County, OKLAHOMA



Texas. An area of land, water, and airspace in Aransas, Calhoun, and Refugio Counties with the following boundaries: Beginning at the point where the north boundary of the Aransas National Wildlife Refuge intersects the shore of San Antonio Bay at Webb Point; thence, from this point along a straight line across San Antonio Bay through the westernmost tip of Mosquito Point and inland to a point of intersection with metal surfaced road; thence eastward along a straight line across Espiritu Santo Bay to the intersection of the bay shore and a road at the east end of Pringle Lake on Matagorda Island; thence south along this road to the intersection with the main Matagorda Island road; southwestward along this main road to Cedar Bayou at latitude 28°04'10" N.; thence due west across Cedar Bayou, Vinson Slough, and Isla San Jose to Gulf Intracoastal Waterway platform channel marker No. 25; thence north to the southwest corner of the proclamation boundary, just south of Blackjack Point; thence north along the proclamation boundary into St. Charles Bay to a line drawn as an eastward extension of Twelfth Street on Lamar Peninsula; thence westward along this line to intersection with Palmetto Avenue; thence northward along a straight line to the southwest corner of the Aransas National Wildlife Refuge at Texas State Highway 35 and the north shore of Cavasso Creek; thence northeast on a straight line to the corner of the Aransas National Wildlife Refuge north boundary adjacent to triangulation station "Twin"; thence along the north boundary of said refuge to the starting point at Webb Point.

NOTE.—The Service has determined that this document does not contain a major action requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: May 8, 1978.

ROBERT S. COOK,
Acting Director,
Fish and Wildlife Service.

[FR Doc. 78-12925 Filed 5-12-78; 8:45 am]

federal register

MONDAY, MAY 15, 1978
PART IV

NATIONAL CAPITAL PLANNING COMMISSION

■

IMPROVING GOVERNMENT REGULATIONS

Proposals for Implementing Executive Order 12044

[7520-01]

NATIONAL CAPITAL PLANNING COMMISSION

IMPROVING GOVERNMENT REGULATIONS

Draft Report Pursuant to Section 5 of Executive Order 12044

Executive Order 12044 of March 23, 1978, directs Federal agencies to adopt procedures to improve existing and future regulations. Section 5 of the Executive Order directs each agency to prepare a draft report outlining "(1) a brief description of its process for developing regulations and the changes that have been made to comply with this Order; (2) its proposed criteria for defining significant agency regulations; (3) its proposed criteria for identifying which regulations require regulatory analysis; and (4) its proposed criteria for selecting existing regulations to be reviewed and a list of regulations that the agency will consider for its initial review". Section 5 also directs Federal agencies to (1) publish the draft report in the FEDERAL REGISTER for comment and (2) transmit the draft report to the Office of Management and Budget.

The following draft report is the first step in the Commission's process of adopting "procedures to improve existing and future regulations". These procedures will be published for comment in the near future. At its meeting on May 4, the Commission authorized the publication of the draft report in the FEDERAL REGISTER. Citizen comments on the draft report are encouraged and should be addressed to: Daniel H. Shear, Secretary, National Capital Planning Commission, Washington, D.C. 20576.

All comments should be received by July 14, 1978.

1. PROCESS FOR DEVELOPING REGULATIONS

a. *Regulation report.* The Office of the General Counsel will identify the need for preparing or revising regulations. If that office identifies the need for new or revised regulations, it will prepare a "regulation report". That report will discuss issues to be considered in developing the proposed regulations, alternative approaches to be explored, a tentative plan for obtaining public comment, and target dates for completion of steps in the development of the regulation. The Executive Director will review and approve the regulation report. If the proposed regulations appear to meet the criteria for "significant regulations", the Chairman will also review and approve the regulation report. The Office of the General Counsel will develop draft regulations in accordance with the approved regulation report. It will also assure that the development of proposed "significant regulations" is listed on the Commission's semi-annual agenda of "significant regulations" published in the FEDERAL REGISTER in accordance with Section 2(a) of the Executive Order.

b. *Draft regulations.* Draft regulations prepared by the Office of the General Counsel will be reviewed and approved by the Executive Director. Draft "significant regulations" shall also be reviewed and approved by the Chairman in accordance with Section 2(d) of the Executive Order. They will then be placed on a Commission meeting agenda and proceed through the Commission-approval process.

c. *Commission-approval process.* Proposed regulations come before the Commission twice: once for authorization to be published for comment in the FEDERAL REGISTER in draft form and, once more, as finally proposed for Commission approval.

Agendas indicating that the Commission will consider the proposed regulations are sent to those on the NCPC mailing list several weeks prior to a meeting. The agendas also inform the public when the text of proposed regulations may be obtained prior to the meeting. Citizen comments in writing before the meeting or orally at the meeting are encouraged.

These are only the major steps in the Commission's process for developing regulations; the entire process will be described in a subsequent publication. The process described above complies with section 2 of the Executive Order. The semi-annual agenda of "significant regulations" will be published in accordance with Section 2(a). The Chairman will become involved as directed by section 2(b). The Commission currently uses alternative forms of citizen participation as directed by section 2(c). The Chairman will approve draft "significant regulations" in accordance with section 2(d).

2. CRITERIA FOR DETERMINING "SIGNIFICANT REGULATIONS"

In determining whether regulations will be treated as "significant regulations", the Commission will apply the following criteria: (1) The type and number of individuals, businesses, organizations, State and local governments affected; (2) the compliance and reporting requirements likely to be involved; (3) direct and indirect effects of the regulations including the effect on competition; and (4) the relationship of the regulations to those of other programs and agencies.

3. CRITERIA FOR PREPARING REGULATORY ANALYSIS

A regulatory analysis will be performed for all "significant regulations" which will result in (a) an annual effect on the economy of $100 million or more; or (b) a major increase in costs or prices for individual industries, State and local governments, Federal agencies, or the National Capital Region.

A regulatory analysis may, in the discretion of the Chairman, be completed on any proposed regulation.

4. CRITERIA FOR SELECTING EXISTING REGULATIONS TO BE REVIEWED

In selecting existing regulations to be reviewed to determine whether they are achieving the policy goals of the Executive Order, the Commission shall apply the following criteria: (a) The continued need for the regulation; (b) the type and number of complaints or suggestions received; (c) the burdens imposed on those directly or indirectly affected by the regulations; (d) the need to simplify or clarify language; (e) the need to eliminate overlapping and duplicative regulations; and (f) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the National Capital Region.

5. REGULATIONS FOR INITIAL COMMISSION REVIEW

The following is a list of regulations the Commission will consider for its initial review to determine whether they are achieving the policy goals of the Executive Order:

a. Urban renewal requirements for proposals.

b. Site and building plans requirements.

c. Freedom of Information Act regulations.

d. Environmental policies and procedures.

e. Project review and notification system procedures.

f. Citizen participation and intergovernmental liaison.

DANIEL H. SHEAR,
Secretary.

MAY 5, 1978.

[FR Doc. 78-13125 Filed 5-12-78; 8:45 am]

Advance Orders are now being Accepted for delivery in about 6 weeks

CODE OF FEDERAL REGULATIONS

(Revised as of October 1, 1977)

Quantity	Volume	Price	Amount
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[A Cumulative checklist of CFR issuances for 1978 appears in the first issue of the Federal Register each month under Title 1. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected)]

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