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MONDAY, JULY 31, 1978



highlights

FEDERAL GRANT PROGRAMS

Announcing a New Weekly Feature

To assist readers wishing to keep abreast of federally funded grant programs, the FEDERAL REGISTER is adding a new listing to the weekly Reminders section published every Wednesday. Beginning with the issue of August 2, 1978, the Wednesday Reminders section will include a listing of grants related documents published in the FEDERAL REGISTER during the previous week.

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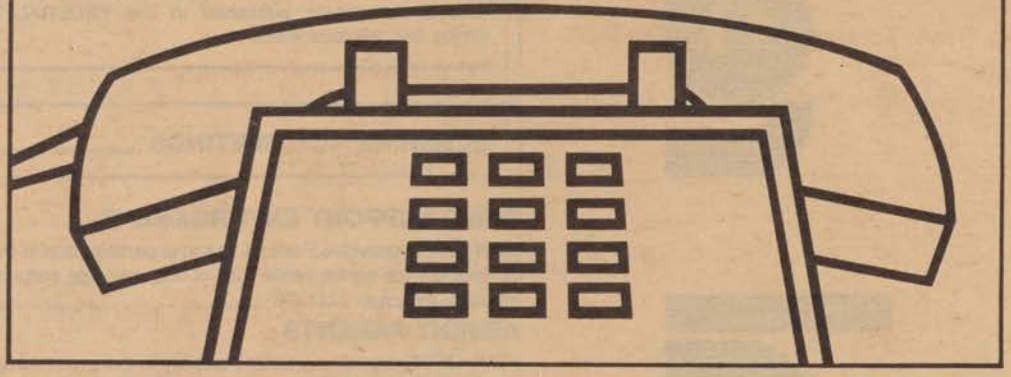
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[3410-02]

Title 7—Agriculture

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

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

Salable Percentages Established

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a salable percentage of 100 percent and a reserve percentage of 0 percent for the California dried prune crop year which begins August 1, 1978. These percentages are made upon the basis of recommendations and information submitted by the Prune Administrative Committee. The recommendations are based on the committee's estimates of California's 1978 dried prune production.

DATES: Effective August 1, 1978, through July 31, 1979.

FOR FURTHER INFORMATION CONTACT.

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Findings. Pursuant to the marketing agreement, as amended, and Order No. 993, as amended (7 CFR Part 993), regulating the handling of dried prunes produced in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Prune Administrative Committee established under this order, it is found that the salable percentage for the 1978-79 crop year be established at 100 percent and the reserve percentage established at 0 percent.

The Committee's recommendations are based on its estimate that California's 1978 dried prune production would approximate 146,260 tons. Carryin on August 1, 1978, the beginning of the 1978-79 crop year, is estimated to be about 22,034 tons, for a total available supply of 168,294 tons. Trade requirements for the 1978-79 crop year, including a desirable carryout of 25,000 tons, is estimated at 175,000 tons, which results in a supply of 6,706 tons less than estimated trade demand. (All preceding data in processed weight.) Consequently, the Committee recommended that no volume regulation be established for the 1978-79 crop year.

Therefore, the salable and reserve percentages for the 1978-79 crop year are as follows:

§ 993.214 Salable and reserve percentages for prunes for the 1978-79 crop year.

The salable and reserve percentages for the 1978-79 crop year shall be 100 percent and 0 percent, respectively.

It is further found that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The 1978-79 crop year begins August 1, 1978, and the salable and reserve percentages are applicable for that crop year; (2) handlers will begin receiving prunes soon, and no useful purpose will be served by delaying the effective date of this action; and (3) this regulation imposes no restrictions on handlers.

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

Dated: July 24, 1978.

CHARLES R. BRADER,
Deputy Director,
Fruit and Vegetable Division.

[FR Doc. 78-21092 Filed 7-28-78; 8:45 am]

[4410-10]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 214—NONIMMIGRANT CLASSES

PART 299—IMMIGRATION FORMS

Application to Accept or Continue Employment by G-4 Nonimmigrants

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rulemaking order amends the regulations of the Immigration and Naturalization Service to establish a formal procedure under which the alien spouses and unmarried dependent sons and unmarried dependent daughters of officers or employees of international organizations, classified as G-4 aliens under the Immigration and Nationality Act, may apply for permission to work. It also establishes the procedure by which such permission is granted or denied. At present, the Department of State informally adjudicates requests by G-4 aliens for permission to be employed. The informal procedures presently in use developed on an ad hoc basis over the years. As a result, the criteria for granting G-4 aliens permission to work are not uniform. This final rule will insure the application of uniform criteria. It is also designed to afford a reasonable opportunity for the spouses of international civil servants to work and enjoy greater participation in their communities, while their spouses are employed in this country.

EFFECTIVE DATE: August 30, 1978.

FOR FURTHER INFORMATION CONTACT:

James G. Hoofnagle, Jr., Instructions Officer, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, telephone: 202-376-8373.

SUPPLEMENTARY INFORMATION: On March 21, 1978, the Service published a notice of proposed rulemaking in the FEDERAL REGISTER in which it was proposed to set forth formal regulations for the employment of G-4 nonimmigrants in the United States (43 FR 11707). This notice was cosigned by the Acting Assistant Secretary of State for Consular Affairs.

Several individuals and groups submitted representations to the Service in response to the notice. The pertinent objections raised, along with our response are set forth below:

1. Representation: Formalized procedures will cause delays in processing applications which will result in G-4 applicants losing job opportunities. Further delay will be caused by requiring spouses and dependents of G-4 nonimmigrants assigned to the United Nations to submit their applications to the Visa Office, Department of State and the Washington, D.C. District Office of this Service.

Response: The Service will amend the final rule to provide that the spouse or dependent of a G-4 nonimmigrant assigned to the United Nations may submit the application to the U.S. Mission to the U.N. in New York, and it will then be processed by the New York, N.Y. District Office of this Service. Instructions will be given the New York, N.Y. and Washington, D.C. District Offices that applications for G-4 employment should be processed within 10 to 14 days. This will obviate the potential for lost employment opportunities.

2. Representation: The G-4 applicant should be given permission to work while the application is pending, to insure that job opportunities are not lost.

Response: As indicated above, the Service processing offices will be directed to expedite these applications, thus obviating the potential for loss of job opportunities.

3. Representation: The sworn statement from the employer should not be a requirement.

Response: The Service will delete the requirement for a sworn statement in the final regulation. However, we will retain the requirement that a statement from the employer be submitted. This is necessary in order to enable the Department of State and the Service to determine that the employment sought is employment spouses and dependent of G-4 nonimmigrants may accept under this regulation.

4. Representation: Department of Labor Schedule B (20 CFR 656) should not be indiscriminately applied across the board to preclude employment in certain jobs.

Response: The Service will not delete this requirement. It will be retained because it represents areas of employment in which no shortage of U.S. workers exists. The requirement is necessary to protect the U.S. labor market. We should like to point out that dependent sons and daughters who are in school full-time and engaged in part-time employment in jobs which appear on Schedule B will not be subject to the Schedule B requirement.

5. Representation: A labor certification should be required before a G-4 nonimmigrant spouse or dependent is given permission to work.

Response: We do not feel this is necessary. The Schedule B requirement and small numbers of anticipated participants will provide adequate protection of the U.S. labor force.

6. Representation: A period of grace should be given those who are working either without permission, or in a Schedule B job, at the time the regulaton becomes effective.

Response: G-4 nonimmigrants who are working without permission at the time this regulation becomes effective, will be given an opportunity to file an application for permission to continue their employment under this regulation, for a period of up to 90 days following the effective date of this regulation, without penalty. G-4 nonimmigrants who are employed in jobs which appear on Schedule B of the Labor Department will be permitted to retain that employment for 2 years following the effective date of this regulation. At the end of the 2-year period, they must reapply for permission to continue that employment under the terms and conditions of this regulation.

7. Representation: The absence of a provision for filing an appeal of a denied request for employment is objectionable.

Response: An applicant whose application is denied under this regulation may move for reconsideration of his or her application.

8. Representation: There is no legal authority under which this regulation may be issued. It is an unacceptable restriction on immigration and is contrary to the United Nations Headquarters Agreement to which the United States is a party.

Response: We disagree with this position. Under the Immigration and Nationality Act, G-4 spouses and dependents are nonimmigrants. Nonimmigrants generally are prohibited from working by Service regulations, unless permission to work has first been granted by the Service.

The U.N. Headquarters Agreement on which the legal objection to this regulation is based provides that G-4 aliens assigned to the U.N. shall be free from alien registration and immigration restrictions. In our view, G-4 nonimmigrants already have freedom from immigration restrictions. They reside here for as long as their spouse or parent is assigned to his/her international organization in duration of status, enjoying quasi-diplomatic status. The restriction complained of is not an immigration restriction. Rather, it is an employment restriction for the protection of the American labor market. Therefore, the proposed G-4 regulation does not contravene the cited U.N. Headquarters Agreement, nor is it inconsistent with the authority of Congress over aliens in the United States which has been delegated through the Attorney General to the Service under the Immigration and Nationality Act.

In the light of the foregoing, it has been determined that the rules proposed on March 21, 1978 published in the notice of proposed rulemaking at 43 FR 11707 will be adopted with the following modifications as set forth below:

1. The application may be submitted either to the Visa Office of the Department of State or to the United States Mission to the United Nations in New York, if the principal G-4 alien is employed by the U.N.

2. The requirement that the applicant submit a sworn statement from the prospective employer has been deleted. However, a statement from the employer describing the job and duties to be performed will continue to be required.

3. Service offices at New York, N.Y. (for U.N. applicants) and Washington, D.C. will process G-4 applications referred to the Service by appropriate officials of the Department of State.

4. A G-4 nonimmigrant who was authorized to accept employment in a job on schedule B of the Labor Department (20 CFR Part 656) may continue in that employment for a period of 2 years beyond the effective date of this regulation.

5. A G-4 nonimmigrant who is working without authorization on the effective date of this regulation must apply for authority to continue that work within 90 days of the effective date of this regulation. An applicant who files during that time will not be penalized for engaging in illegal employment.

6. Reference to form I-566 will be included in 8 CFR 299.1.

The following amendments are hereby prescribed to chapter I of title 8 of the Code of Federal Regulations: 8 CFR 214.2(g) is amended by redesignating the existing paragraph as subparagraph (1) and by adding a new subparagraph (2). As amended, 8 CFR 214.2(g) reads as follows:

§ 214.2 Special requirements for admission, extension and maintenance of status.

* * * * *

(g) *Representatives to international organizations*—(1) *General* * * *

(2) *Employment.* The spouse, unmarried dependent son, or unmarried de-

pendent daughter habitually residing with an officer or employee of an international organization, classified as a G-4 nonimmigrant under section 101(a)(15)(G)(iv) of the Immigration and Nationality Act, may be granted permission to accept or continue employment in the United States if an application to do so has first been favorably recommended by an authorized representative of the Department of State and approved by the District Director of this Service as indicated below. To apply, the spouse or unmarried dependent son or unmarried dependent daughter shall first submit form I-566 to the Visa Office of the Department of State, or to the United States Mission to the United Nations if the principal G-4 alien is employed by the United Nations. The form shall be accompanied by a certification by the international organization that the applicant is the spouse or unmarried dependent son or unmarried dependent daughter of an officer or employee of that organization. The applicant shall also submit with the application a statement from the prospective employer describing the position and salary offered, the duties of the position and verification that the applicant possesses the necessary qualifications for the position. The application may be approved if both the authorized representative of the Department of State and the District Director of this Service at New York (if the principal alien is working for the United Nations) or at Washington, D.C. are satisfied that: (i) Both the principal alien and the applicant desiring employment are maintaining G-4 status; (ii) the proposed employment is not in an occupation listed in the Department of Labor schedule B (20 CFR Part 656) or otherwise determined by the Department of Labor to be one for which there is an oversupply of qualified U.S. workers in the area of proposed employment, except in the case of the employment of an unmarried dependent son or unmarried dependent daughter in G-4 status who is a full-time student, if the employment is part time, consisting of not more than 20 hours per week and/or if it is temporary employment of not more than 12 weeks at a time during school holiday periods; provided that if a G-4 alien was authorized to accept full-time employment in a schedule B occupation prior to the effective date of this regulation, he/she may continue in that employment for a period of 2 years following the effective date of this regulation; and (iii) the proposed employment would not be contrary to the interests of the United States. Employment of G-4 aliens who have criminal records, or who have violated the immigration and nationality laws or regulations, or who worked illegally, or who cannot establish that they paid income taxes on income from previous U.S. employment may be considered contrary to the interests of the United States.

However, a G-4 alien who is working without authorization on the effective date of this regulation must apply for authority to continue that work within 90 days of the effective date of this regulation. He/she must comply with the terms of this regulation in all respects except for the provision relating to illegal employment and the fact of such illegal employment will not be construed against him/her in considering that application for employment. Permission to accept employment may not be granted to G-4 spouses or unmarried dependents where the principal alien will be stationed in this country for a definite period of 6 months or less. Permission to accept or continue employment under this section shall be granted in increments of not more than 2 years each. There shall be no appeal from a denial of permission to accept or continue employment under this section. The Service will inform the G-4 applicant by letter whether his/her application has been granted or denied, and if denied, of the reasons therefor. When an application is approved, the Service shall inform the Internal Revenue Service and Department of Labor.

* * * * *

§ 299.1 is amended to add the following form in numerical sequence:

§ 299.1 Prescribed forms. * * *

Form No.	Title and Description
* * * * *	
I-566 (8-30-78)	Application for Employment by a (G-4) Spouse or Unmarried Son or Daughter of an Official of an International Organization.
* * * * *	

(Secs. 103 and 214; 8 U.S.C. 1103 and 1184)

Effective date: The amendments contained in this order become effective on August 30, 1978.

Dated: July 17, 1978.

LEONEL J. CASTILLO,
Commissioner of Immigration and Naturalization.

Dated: July 24, 1978.

BARBARA M. WATSON,
Assistant Secretary of State for Consular Affairs.

[FR Doc. 78-21052 Filed 7-28-78; 8:45 am]

[8025-01]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

PART 111—POLLUTION CONTROL

Pollution Control Financing Guarantees

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: An amendment to the Small Business Act and the Small Business Investment Act approved June 4, 1976 authorized the Small Business Administration to provide guarantees of financing to acquire facilities for the control of air, noise or water pollution or contamination. These final rules are designed to implement this authority.

EFFECTIVE DATE: July 31, 1978.

ADDRESSES: John M. Trask, Jr., Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:

Earl L. Chambers, Director, Office of Community Development, 1441 L Street NW., Washington, D.C. 20416, 202-653-6082.

SUPPLEMENTARY INFORMATION: On December 8, 1977, a document was published in the FEDERAL REGISTER (42 FR 62012) proposing rules to implement an amendment to the Small Business and the Small Business Investment Acts approved June 4, 1976, (90 Stat. 663). This amendment authorizes the Small Business Administration to provide guarantees of financing to acquire facilities for the control of air, noise or water pollution or contamination. Comments received by February 6, 1978 were considered and necessitated changes for purposes of clarification. With these changes, a new part 111, pollution control financing guarantees is added to Title 13 of the Code of Federal Regulations.

As a result of the public comments and SBA's experience in conducting pilot projects, several changes in the proposed rules have been made. The major changes are: (1) Section 111.7(a) now reflects that the repayment period will be in accordance with the applicant's ability to repay, but shall not exceed 30 years; (2) the minimum processing and administrative fee relating to industrial revenue bond financing has been reduced from $1,000 to $500, as reflected in § 111.7(c); (3)

the trustee's functions formerly listed in § 111.4 have been deleted as being unnecessary; and (4) § 111.9 adopts the flexibility of the statutory "may" as it relates to minimization of loss. Further, § 111.9 has been expanded to define, in general terms, "reasonably diligent efforts" to minimize loss.

Pursuant to the authority of section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, a new part 111 of chapter I, title 13 of the Code of Federal Regulations is hereby adopted as set forth below:

Sec.
111.1 Statutory provisions.
111.2 Policy.
111.3 Definitions.
111.4 Eligibility.
111.5 Procedure for guarantee applications.
111.6 Participation agreement.
111.7 Terms of guarantee and fees.
111.8 Qualified contract.
111.9 Minimization of losses.
111.10 Payments of installments in default.

AUTHORITY: 15 U.S.C. 634(b)(6), 694-1 and 694-2, Pub. L. 94-305, approved June 4, 1976 (90 Stat. 663).

§ 111.1 Statutory provisions.

The statutory provisions will be found at 15 U.S.C. 694-1 and 694-2.

§ 111.2 Policy.

It is the intent of Congress to assist existing small concerns which are or are likely to be at an operational or financing disadvantage with other business concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor, by authorizing SBA to guarantee fully (100 percent), directly or in cooperation with others, the periodic payments due in connection with the purchase or lease of such facilities under a qualified contract. The guarantee shall be a full faith and credit obligation of the United States, and may be issued notwithstanding that the pollution control facility is acquired by the use of proceeds from tax-exempt industrial revenue bonds. In those instances where revenue bond financing is uneconomic or is not practicable (e.g., for small amounts), or when the project may not qualify for tax-exemption, the small concern may seek financing assistance under SBA's pollution control (Small Business Investment Act, sec. 404, 15 U.S.C. 694-1), Air Pollution (Small Business Act, sec. 7(b)(5), 15 U.S.C. 636), or Water Pollution (Small Business Act, sec. 7(g)(1), 15 U.S.C. 636(g)(1)) Loan Programs.

§ 111.3 Definitions.

Terms defined in this section are capitalized throughout this part.

For the purposes of this part: "Administration" means the Small Business Administration.

"Default" means failure of the small concern to make payment of the guaranteed amounts due within the time required under a qualified contract.

"Escrow" means an amount, not to exceed one-fourth of the average annual payments for which a guarantee is issued, to be held by a trustee or SBA, and which shall be available to meet any payments in default, or if no default in payment occurs during the term of the qualified contract, to be applied (with accrued interest, if any) toward final payments under the qualified contract.

"Facility" means such property (both real and personal) as the Administration in its discretion determines is likely to help prevent, reduce, abate, or control noise, air, or water pollution or contamination by removing, altering, disposing, or storing pollutants, contaminants, wastes, or heat, and such property (both real and personal) as the Administration determines will be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste.

"Guarantee Fee" means the fee, payable to SBA upon issuance of the guarantee, of not more than 3½ percent of the minimum annual guaranteed payments under any qualified contract (see § 111.7(d) of this part).

"Issuer" (when industrial revenue bond financing is used) means the duly constituted state or municipal authority which is authorized to issue industrial revenue bonds.

"Participant" means any company sharing the risk of loss under the guarantee with SBA pursuant to § 111.6.

"Person" includes corporations, companies, associations, cooperatives, firms, partnerships, societies, joint stock companies, States, agencies, territories and possessions of the United States or subdivisions of any of the foregoing, and the District of Columbia, as well as individuals.

"Processing and administrative fee" means a fee payable to SBA to defray processing and administrative expenses connected with each application (see § 111.7 (c) and (e) of this part).

"Qualified contract" means a lease, sublease, loan agreement, installment sales contract, or similar instrument, meeting the requirements of § 111.8, entered into between a small concern and any person.

"SBA" means the Small Business Administration.

"Small concern" means a concern which qualifies as a small business under § 121.3-16 of this chapter.

"Sponsor" (if any) means a commercial bank (usually the bank of account of the small concern) which assists the small concern in preparing its application for SBA assistance. The sponsor reviews and analyzes the credit and financial data of the small concern and issues an opinion (1) on the small concern's creditworthiness in accordance with its and SBA's established credit criteria and requirements, and (2) as to the operational or financing disadvantage of the small concern for the financing required.

"Trustee" (when industrial revenue bond financing is used) means the trustee under an indenture between the issuer and such trustee relating to the issuer's bonds.

§ 111.4 Eligibility.

In order to be eligible for a guarantee under this part, the applicant must:

(a) Be independently owned and operated and not dominant in its field and must be eligible under SBA loan policy, as defined in part 120 of this chapter;

(b) Together with its affiliates (as defined in § 121.3-2(a) of this chapter) qualify as a small business as defined in § 121.3-16 of this chapter;

(c) Be at an operational or financing disadvantage with other business concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor, or likely to suffer such disadvantage;

(d) Have been in operation for at least 5 years, and have a history of profitable operations during any three of the last 5 years preceding the date of the application;

(e) Provide evidence (usually from a pollution regulatory authority) of the need for the facility; and that the facility will help prevent, reduce, abate, or control pollution or contamination.

§ 111.5 Procedure for guarantee applications.

(a) Form: An application for guarantee shall be made on SBA form 1136 and shall include all pertinent information required in supporting schedules and exhibits.

(b) Place of filing: The application shall be submitted to the Sponsor (if any) in triplicate, for transmission to SBA. Appplications involving industrial revenue bond financing shall be filed at SBA's Central Office (1441 L Street NW., Washington, D.C. 20416). Other applications shall be filed at the SBA field office having jurisdiction over the principal place of business of the applicant small concern.

(c) Approval or denial of applications: No application for guarantee shall be approved unless the following conditions are met to SBA's satisfaction:

(1) Each application must be accompanied by a legible copy of the qualified contract (including supporting material).

(2) There is a reasonable expectation that the small concern will perform all the terms, covenants, and conditions of the qualified contract.

(3) The terms, covenants, and conditions of the qualified contract have been approved by SBA.

(4) SBA will not guarantee or participate in any guarantee when the sponsor or any participant, or an associate (as defined in § 120.1(d) of this chapter) of either, has a direct or indirect interest in the small concern.

(5) SBA will not guarantee or participate in guaranteeing any obligation under a qualified contract for the purpose of financing, directly or indirectly, the purchase of real or personal property or of services from any participant or sponsor or any of their associates, unless SBA shall have first made a written determination that the purchase of the property or services is in the best interests of the small concern.

(6) SBA will not guarantee or participate in the guarantee of the refinancing of an existing obligation relating to a facility unless SBA shall have first made a written determination that the terms of the existing obligation are causing an operational or financing disadvantage to the small concern, that refinancing on the terms proposed will relieve such disadvantage and will not violate § 120.2(d)(1) of this chapter and that the refinancing is not available without SBA's guarantee or participation.

§ 111.6 Participation agreement.

SBA may enter into a participation agreement with a qualified surety company or other qualified company to share in the risk of loss under the guarantee.

§ 111.7 Terms of guarantee and fee.

(a) The repayment period will be in accordance with the applicant's ability to repay, but shall not exceed 30 years.

(b) The required financing to be guaranteed shall not exceed $5,000,000 in principal.

(c) The processing and administrative fee relating to industrial revenue bond financing will be in accordance with the following schedule:

Aggregate amount of payments (principal and interest) guaranteed	Fee
Up to $500,000	$500.
$500,001 to $1,000,000	$500+0.002 of over $500,000.
$1,000,001 to $2,500,000	$1000+0.0015 of over $1,000,000.
Over $2,500,000	$2,125+0.001 of over $2,500,000.

Each application shall be accompanied by $250 of the processing and administrative fee which is not refundable. The balance of the processing and administrative fee is payable to SBA upon issuance of its guarantee. If the application is approved, SBA may issue a commitment to guarantee which shall expire not later than 24 months from the date of the commitment.

(d) The guarantee fee shall be 3½ percent of the minimum annual guaranteed payments under the qualified contract and shall be payable to SBA upon the issuance of the guarantee. The fee of 3½ percent shall not be computed on escrowed funds. The guarantee fee will be computed as follows: (total amount of payments (principal and interest) less: one-fourth of the average annual payments (escrow)) × 3.5 percent.

(e) The processing and administrative fee for the guarantee of financing, other than industrial revenue bond-related financing, shall be established and published in the future, but in no event shall the fee be less than $250.

§ 111.8 Qualified contract.

To be qualified, a contract shall provide: (a) For the acquisition, installation, planning, design, or financing of a facility.

(b) For any lien or security interest in the facility that may be determined necessary by SBA.

(c) Identification of the parties; description and location of the facility, the principal basic indebtedness therefor to be guaranteed (exclusive of those costs or expenses listed in (d) below), the rate of interest thereon and the number, amount and time of payments.

(d) That the small concern shall pay all costs related to the use, operation, maintenance, repair of, taxes, or other liens on the facility, licenses, insurance of any kind, or any expenses in connection with additions, substitutions, or modifications of the facility or any part thereof, in order that the payments to be guaranteed shall be net of the aforesaid expenses.

(e) That costs or expenses exceeding the estimated costs or expenses set forth in the application shall be borne by the small concern.

(f) That all available manufacturer's warranties shall vest in the small concern upon its acquisition of possession or title to the facility or any part thereof.

(g) That the small concern pay to the trustee (if any), or an escrow agent selected jointly by SBA and the small concern, an amount equal to one-fourth of the average annual guaranteed payments which shall be held in escrow by the escrow agent and invested in direct obligations of, or obligations guaranteed as to principal and interest by, the United States, or in insured savings accounts (up to the amount of the insurance) in any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation. Escrowed funds not so invested shall be deposited in a bank insured by the Federal Deposit Insurance Corporation or may be (a) invested in time certificates of deposit maturing within 1 year or less, issued by any bank which is so insured, or (b) deposited in a savings account of such bank. Such escrow amount plus interest thereon, if any, shall be drawn upon to meet any payments on which the small concern is in default, or if no default occurs, for application toward final payments. Any withdrawals which cure defaults shall be replenished by the small concern. In the case of applications which are not related to industrial revenue bond financing, SBA may require the applicant to make a cash down payment.

(h) That the obligations of the small concern to make the payments are absolute and unconditional; that the small concern shall have no legal right of setoff, recoupment or counterclaim against any person; that the obligation shall continue absolute and unconditional in the event of total or partial condemnation of the facility or the use thereof, or total or partial destruction of the facility by fire or other hazard.

(i) Clauses setting forth events of default and their consequences, including acceleration of the due date of the payments in the aggregate.

(j) The consent of the small concern to SBA's succession to the rights of the person providing the facilities for the purpose of collecting from the small concern in default, payments which are in arrears and with respect to which such person has received payments under the guarantee. Any collateral hypothecated as security to such person shall immediately vest in SBA as security for its payment or payments.

(k) An agreement by the small concern to keep the facility insured against such perils in such amounts as is customary and usual for other businesses insuring similar property.

(l) A statement that the instrument contains the entire agreement of the parties, and stipulation of the governing law.

§ 111.9 Minimization of losses.

Based on the useful life of the facility, its identity as an assembled or identifiable unit of real or personal property and such other factors as may be appropriate, SBA shall determine during the processing of the application whether the person (or trustee) relying upon the guarantee shall

mitigate losses caused by uncured defaults in the qualified contracts. Provided SBA has made an affirmative determination that losses shall be mitigated, upon the occurrence of a default in payment under the qualified contract, the person (or trustee) relying upon the guarantee shall, as a condition precedent to enforcing any claim under the guarantee, utilize the entire period, for which there are funds available in escrow, in reasonably diligent efforts to eliminate or minimize losses and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted. Generally, reasonably diligent efforts will consist of such actions as the person (or trustee) would take if the payments were not guaranteed, and may consist of advertising the facility for sale, lease, or rent or the retention of agents or brokers to salvage the value of the property for application of the proceeds on the amount guaranteed.

§ 111.10 Payments of installments in default.

After the escrow, if any, and interest thereon, if any, has been utilized to meet payments on which the small concern is in default, the person (or trustee) relying upon the guarantee shall file a claim with SBA for each additional payment in default thereafter. SBA will pay the defaulted payments 15 days prior to the due date of interest payment specified in the industrial revenue bonds (if any), or in the qualified contract if no industrial revenue bond is involved, until maturity, or until the resumption of full payments by the small concern, or its successor or, if the default is cause for acceleration of the indebtedness in the qualified contract, SBA may elect to pay the aggregate amount guaranteed and repossess the facility or cause it to be repossessed for use in mitigating losses.

(Catalog of Federal Domestic Assistance Programs No. 59.027, Pollution Control Financing Guarantee Program.)

Dated: July 20, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-20889 Filed 7-28-78; 8:45 am]

[4910-13]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINSTRATION, DEPARTMENT OF TRANSPORTATION

[Airworthiness Docket No. 78-ASW-5; Amdt. 39-3270]

PART 39—AIRWORTHINESS DIRECTIVES

Mooney M20F and M20J Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires replacement of main landing gear side brace bolts of Mooney M20F and M20J airplanes. The AD is needed to prevent failure of the side brace bolts and consequent loss of control of the airplane during takeoff and landing. This AD is being issued because of failures of static test specimens. Also, two main landing gear bolt failures have been reported on models M20F/M20J airplanes subsequent to sliding on ice or running off the runway into mud.

DATES: Effective—August 1, 1978. Compliance required within the next 90 days after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service bulletins may be obtained from the Service Manager, Mooney Aircraft Corp., P.O. Box 72, Kerrville, Tex. 78028. A copy of the service bulletin is contained in the rules docket of the Regional Counsel, Southwest Region, FAA, 4400 Blue Mound Road, Fort Worth, Tex. 76101.

FOR FURTHER INFORMATION CONTACT:

Michele M. Owsley, Airframe Section, Engineering and Manufacturing Branch, ASW-212, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex., telephone number 817-624-4911, extension 516.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring replacement of main landing gear side brace bolts of Mooney M20F and M20J airplanes was published in the FEDERAL REGISTER at 43 FR 12025. The proposal was prompted by the FAA's determination that the bolts of the main landing gear side brace assembly on Mooney M20F and M20J airplanes are under strength for certain inboard load conditions and could cause collapse of the main landing gear.

Interested persons have been afforded an opportunity to participate in the making of the amendment. One commentator suggested including in the summary the conditions under which the two reported service failures occurred. FAA has no objection to this and the summary has been rewritten to include reference to those conditions.

DRAFTING INFORMATION

The principal authors of this document are Michele M. Owsley, Aerospace Engineer, Flight Standards Division, and James O. Price, General Attorney, Southwest Region, FAA.

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:

MOONEY AIRCRAFT CORPORATION. Applies to Models M20F airplanes, all serial numbers, and M20J airplanes, serial numbers 24-0001 through 24-0609 certificated in all categories.

Compliance is required as indicated unless already accomplished.

To prevent possible failure of the main landing gear side brace bolts, accomplish the following:

Within the next 90 days after the effective date of this AD, replace the main landing gear side brace bolts in accordance with Mooney Service Bulletin No. M20-212 dated March 1, 1978, or equivalent methods approved by the Chief, Engineering and Manufacturing Branch, FAA, Southwest Region.

This amendment becomes effective August 1, 1978.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 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 Fort Worth, Tex., on July 18, 1978.

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc. 78-21079 Filed 7-28-78; 8:45 am]

[4910-13]

[Airspace Docket No. 78-ANW-09]

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

Alteration of Controlled Airspace, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to § 71.181 of the Federal Aviation Regulation (14 CFR 71.181) alters the designation of controlled airspace in the vicinity of Pasco, Wash. The rule designates additional airspace as 700-foot transition area. This action is necessary to provide controlled airspace for a standard instrument approach procedure to the Richland, Wash., Airport.

EFFECTIVE DATE: July 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Dale C. Jepsen, Airspace Specialist (ANW-533), Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, Northwest Region, FAA Building, Boeing Field, Seattle, Wash. 98108, telephone 206-767-2610.

SUPPLEMENTARY INFORMATION:

HISTORY

A notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER on Thursday, June 22, 1978, which described the proposed Pasco, Wash. transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One favorable comment was received.

THE RULE

This amendment to part 71 of the Federal Aviation Regulations (FAR) designates additional 700-foot transition area as controlled airspace to encompass aircraft executing the VOR DME-A standard instrument approach to the Richland, Wash., Airport.

DRAFTING INFORMATION

The principal authors of this document are Dale C. Jepsen, Airspace Specialist, Operations, Procedures and Airspace Branch, and Richard Salwen, Acting Regional Counsel, Northwest Region.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, the Pasco, Washington Transition Area in § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., July 28, 1978 as follows:

PASCO, WASH.

Revise the last descriptive segment of the 700-foot airspace to read:

* * *; within 5 miles north and 7.5 miles south of the Pasco VOR 288 radial extending from 8 miles west of the VOR to 26.5 miles west of the VOR.

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

NOTE.—The FAA 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 Seattle, Wash., on July 21, 1978.

J. H. TANNER,
Acting Director,
Northwest Region.

[FR Doc. 78-21078 Filed 7-28-78; 8:45 am]

[4910-13]

[Airspace Docket No. 78-CE-20]

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

Alteration of Control Zone, Olathe, Kans. (Johnson County Executive Airport)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the description of the existing Olathe, Kans. control zone so that it will refer only to the Johnson County, Kans. Executive Airport, Olathe, Kans. In another airspace rulemaking action, a control zone will be proposed at Olathe, Kans. to serve the Johnson County, Kans. Industrial Airport, Olathe, Kans. The purpose of this amendment and the other airspace action is to eliminate confusion by correctly describing the control zones serving each airport.

EFFECTIVE DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Gary W. Tucker, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

SUPPLEMENTARY INFORMATION: The purpose of this amendment to subpart F of part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the existing control zone at Olathe, Kans. and further describe it as referring to the Johnson County, Kans. Executive Airport. In a separate airspace action, a control zone is being proposed at Olathe, Kans. and will be further described as the Johnson County, Kans. Industrial Airport. These two airports are in close proximity to each other. Confusion will be eliminated if the two control zones at Olathe correctly refer to the airport each is serving. Since this change is primarily clarifying in nature, notice and public procedure hereon under 5 U.S.C. 553(b) is impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less than thirty (30) days after its publication.

DRAFTING INFORMATION

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

Accordingly, subpart F, § 71.171 of the Federal Aviation Regulations (14 CFR 71.171) as republished on January 3, 1978 (43 FR 355), is amended, effective 0901 G.m.t., November 2, 1978, by altering the following control zone to read:

OLATHE, KANS.

(JOHNSON COUNTY EXECUTIVE AIRPORT)

Within a 5-mile radius of the Johnson County Executive Airport (lat. 38°51'00" N., long. 94°44'15" W.) and within 2.5 miles each side of this 183° bearing from Johnson County Executive Airport, extending from the 5 mile radius zone to 6.5 miles south of the airport. This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

(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)); § 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 July 21, 1978.

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

[FR Doc. 78-21080 Filed 7-28-78; 8:45 am]

[4910-13]

[Airspace Docket No. 78-SO-26]

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

Designation of Transition Area, Hurtsboro, Ala.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule designates the Hurtsboro, Ala., transition area and will lower the base of controlled airspace in the vicinity of the Sehoy Airport (a private airport) from 1,200 to 700 feet to accommodate instrument flight rule (IFR) operations. A special use instrument approach procedure has been developed for the Sehoy Airport and the additional controlled airspace is required to protect aircraft conducting instrument flight rule (IFR) operations.

EFFECTIVE DATE: 0901 G.m.t., November 2, 1978.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Ga. 30320.

FOR FURTHER INFORMATION CONTACT:

William F. Herring, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320, telephone 404-763-7646.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the FEDERAL REGISTER on Thursday, April 27, 1978 (43 FR 17966), which proposed the designation of the Hurtsboro, Ala., transition area. No objections were received from this notice.

DRAFTING INFORMATION

The principal authors of this document are William F. Herring, Airspace and Procedures Branch, Air Traffic Division, and Keith S. May, Office of Regional Counsel.

ADOPTION OF AMENDMENT

Accordingly, subpart G, § 71.181 (43 FR 440) of part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, effective 0901 G.m.t., November 2, 1978, by adding the following:

HURTSBORO, ALA.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Sehoy Airport (lat. 32°13'12" N., long. 85°28'05" W.).

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

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 East Point, Ga., on July 19, 1978.

GEORGE R. LACAILLE,
Acting Director,
Southern Region.

[FR Doc. 78-21083 Filed 7-28-78; 8:45 am]

[4910-13]

[Airspace Docket No. 78-ASW-22]

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

Alteration of Transition Area: Lake Charles, La.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is an alteration of the transition area at Lake Charles, La. The intended effect of the action is the provision of additional controlled airspace for aircraft executing instrument procedures at the McFillen Airpark, Lake Charles, La. The circumstance which created the need for the action was the development of a very high frequency omnidirectional range station (VOR) standard instrument approach procedure to the McFillen Airpark.

EFFECTIVE DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

John A. Jarrell, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101, telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

HISTORY

On June 8, 1978, a notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 24851) stating that the Federal Aviation Administration proposed to alter the Lake Charles, La., transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. We received one objection from the Air Transport Association of America (ATA). They expressed concern that air carrier operations at Lake Charles Municipal Airport will be subjected to potential delays when approaches are in progress at McFillen Airpark. Terminal radar service is provided by the Lake Charles Airport traffic control facility. Consequently, instrument approaches, utilizing the radar can be executed and delays, if any, would be minimal.

In view of the above, we are satisfied that an instrument approach capability for McFillen Airpark can be accommodated with minimal impact on Lake Charles Municipal Airport.

THE RULE

This amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR part 71) alters the Lake Charles, La., transition area. This action provides additional controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument procedures at the McFillen Airpark.

DRAFTING INFORMATION

The principal authors of this document are John A. Jarrell, Airspace and Procedures Branch, and Robert C. Nelson, Office of the Regional Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, subpart G of part 71 of the Federal Aviation Regulations (14 CFR part 71) as republished (43 FR 440) is amended, effective 0901 g.m.t., November 2, 1978, as follows.

In subpart G, § 71.181 (43 FR 440), the Lake Charles, La., transition area is amended by the addition of the following wording at the end of the transition area description.

and within a 4-mile radius of McFillen Airpark (lat. 30°08'10" N., long. 93°10'58" W.).

(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 FAA 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 Fort Worth, Tex., on July 18, 1978.

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc. 78-21084 Filed 7-28-78; 8:45 am]

[4810-22]

Title 19—Customs Duties

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

[T.D. 78-253]

PART 159—LIQUIDATION OF DUTIES SUGAR FROM THE EUROPEAN COMMUNITY

Final Countervailing Duty Determination

AGENCY: U.S. Treasury Department.

ACTION: Final countervailing duty determination.

SUMMARY: This notice is to advise the public that a countervailing duty investigation has resulted in a final determination that benefits are granted to producers and growers of sugar by the European Community (EC) which constitute bounties or grants within the meaning of the Countervailing Duty Law.

EFFECTIVE DATE: July 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard B. Self, U.S. Treasury Department, 15th Street and Pennsylvania Avenue NW., Washington, D.C. 20220, 202-566-8585.

SUPPLEMENTARY INFORMATION: On June 30, 1978, a notice of "Initiation of Countervailing Duty Investigation and Preliminary Determination" was published in the FEDERAL REGISTER (43 FR 28599). This notice stated that an investigation was being initiated under section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) (hereinafter referred to as "the act") in response to a petition alleging that so-called restitution payments made upon exportation to sugar growers and processors in the EC under the common agricultural policy (CAP) constitute a bounty or grant under section 303 of the act. That notice further stated that based upon evidence already available regarding the operation of the CAP in previous countervailing duty investigations it was appropriate at the same time to issue a preliminary determination pursuant to section 303(a)(4) of the act (19 U.S.C. 1303(a)(4)), that bounties or grants are being paid or bestowed on the items subject to this investigation. The European Community consists of Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom. The sugar covered by this investigation enters the United States under item Nos. 155.20 and 155.30 of the tariff schedules of the United States. All imports of this product are dutiable.

The Submission of comments by interested parties by July 17, 1978, was invited but none have been received. The preliminary determination also stated that a final determination was expected in advance of December 16, 1978. The preliminary determination was based in part upon available information concerning the operation of the export restitution payments under the CAP developed in previous countervailing duty investigations involving other products. Further investigation has revealed that with respect to sugar, the CAP operates differently than it does with respect to the other agricultural products previously investigated. These differences relate primarily to the method by which the export restitutions are financed and the fact that there is a limit on the amount of sugar eligible to receive the payments. With respect to the latter, information available indicates that the sugar exported to the United States is eligible for, and may in fact receive, the restitution payments.

The export restitution payments are financed in part out of levies collected by the EC member states from sugar producers and in part out of funds from the guidance and guarantee fund (GGF) operated under the CAP. Other agricultural products receive their export restitutions entirely from the GGF. Despite this different method by which the funds are raised, it has been determined that the payment of export restitutions on sugar operates in a manner identical to that in which export restitutions are paid on other agricultural products, which Treasury has previously determined constitute a "bounty or grant".

After consideration of the available information, it is hereby determined that sugar from the European Community benefits from bounties or grants within the meaning of section 303 of the act. The bounties or grants are in the form of export restitution payments made by the EC under the CAP as described above. Accordingly, notice is hereby given that sugar covered by this investigation which is imported directly or indirectly from the EC, if entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the FEDERAL REGISTER, will be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303 of the act and until further notice, the net amount of such bounties or grants has been ascertained and determined to be 10.8 cents/pound of sugar. This amount represents the average maximum restitution level set by the EC for sugar exports during first the half of 1978. Although sugar exporters may on particular shipments receive less than the maximum restitution, the level of which is set at least every 2 weeks by the EC, it has been determined that this figure represents an accurate approximation of the subsidy being paid on recent shipments to the United States.

Effective on or after the publication date of this notice, and until further notice, upon the entry, or withdrawal from warehouse, for comsumption of such dutiable sugar imported directly or indirectly from the EC, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of sugar from the EC are benefiting from a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production or exportation of sugar from the EC.

§ 159.47 [Amended]

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting under the column headed "Country", the name "European Community (Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom)", and inserting the word "sugar", in the column headed "Commodity", the number of this Treasury Decision in the column headed "Treasury Decision" and the words "Bounty Declared-Rate" in the column headed "Action".

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15), March 16, 1978, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47) insofar as they pertain to the issuance of a final countervailing duty

determination by the Commissioner of Customs, are hereby waived.

HENRY C. STOCKELL, Jr.,
Acting General Counsel of the Treasury.

JULY 21, 1978.

[FR Doc. 78-21060 Filed 7-28-78; 8:45 am]

[6560-01]

Title 21—Food and Drugs

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

SUBCHAPTER E—ANIMAL FEEDS, DRUGS, AND RELATED PRODUCTS

[FRL 936-2; FAP 7H5156/T37]

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

O-(4-Bromo-2-chlorophenyl)-*O*-ethyl-*S*-propyl phosphorothioate

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

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation related to the experimental use of the insecticide *O*-(4-bromo-2-chlorophenyl)-*O*-ethyl-*S*-propyl phosphorothioate. The regulation was requested by Ciba-Geigy Corp. This rule will permit the marketing of cottonseed hulls and soapstock while further data is collected on the subject pesticide.

EFFECTIVE DATE: Effective on July 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. James Touhey, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460, 202-755-4851.

SUPPLEMENTARY INFORMATION: On December 21, 1976, the EPA announced (41 FR 55570) that Ciba-Geigy Corp., Agricultural Division, P.O. Box 11422, Greensboro, N.C. 27409, had filed a food additive petition (FAP 7H5156). This petition proposed that 21 CFR 561 be amended to establish tolerances for residues of the insecticide *O*-(4-bromo-2-chlorophenyl)-*O*-ethyl-*S*-propyl phosphorothioate in a proposed experimental program involving application of the insecticide to growing cotton with a tolerance limitation of 9 parts per million (ppm) in soapstock and 3 ppm in cottonseed hulls for residues of the insecticide and its metabolites converted to 4-bromo-2-chlorophenol and calculated as *O*-(4-bromo-2-chlorophenyl)-*O*-ethyl-*S*-propyl phosphorothioate in accordance with the experimental use permit that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) et seq.). No comments were received by the Agency in response to this notice of filing.

Subsequently, the petitioner amended the petition by increasing the proposed tolerances in soapstock from 9 ppm to 15 ppm and in cottonseed hulls from 3 ppm to 6 ppm. A notice of amended filing was published in the FEDERAL REGISTER of May 26, 1978 (43 FR 22775). One comment was received in response to this amended notice, pointing out that this insecticide, its metabolites, and its chemical decomposition products indicate a likelihood of forming a dioxin compound during the processing of oil derived from treated cottonseed. This possibility was examined and based on the information submitted, it was concluded that no detectable residues of a dioxin compound were present.

The scientific data reported and other relevant material were evaluated, and it was determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit which has been issued under FIFRA. It has further been determined that since residues of the pesticide may result in soapstock and cottonseed hulls from the agricultural use provided for in the experimental use permit, the feed additive regulation should be established and should include tolerance limitations.

The toxicological data considered in support of the proposed tolerances included 90-day dog and rat feeding studies with no-observable-effect levels (NOEL) of 2 ppm and 3 ppm, respectively; an incomplete 2-year rat chronic feeding study at up to 44.5 milligrams (mg)/kilogram (kg) of body weight, the highest level showing adequate initial survival; and a neurotoxicity study which was negative.

The acceptable daily intake (ADI) will be determined upon completion of the two-year rat study and will be published when permanent tolerances for the direct human food items are established. There are no pending regulatory actions against the subject pesticide, and no permanent tolerances have previously been established for it. The metabolism of the pesticide is adequately understood, and an adequate analytical method (gas chromatography) is available for enforcement purposes. (A related document establishing temporary tolerances for residues of the subject pesticide in or on cottonseed at 3 ppm; eggs and the meat, fat and meat byproducts of cattle, goats, hogs, horses, poultry and sheep at 0.05 ppm; and milk at 0.01 ppm appears elsewhere in today's FEDERAL REGISTER. The temporary tolerances established by this related document (PP 7G1888) will be adequate to cover residues that would result in eggs, milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep from the proposed feed additive use in this document as delineated in 40 CFR 180.6(a)(2)).

Accordingly a feed additive is established as set forth below.

Any person adversely affected by this regulation may, on or before August 30, 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 July 31, 1978, 21 CFR Part 561 is amended as set forth below.

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

Dated: July 25, 1978.

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

21 CFR is amended by adding § 561.53 to read as follows:

§ 561.53 *O*-(4-Bromo-2-chlorophenyl)-*O*-ethyl-*S*-propyl phosphorothioate.

(a) Tolerances are established for residues of the insecticide *O*-(4-bromo-2-chlorophenyl)-*O*-ethyl-*S*-propyl phosphorothioate and its metabolites converted to 4-bromo-2-chlorophenol (calculated as the parent compound) in cottonseed hulls at 6 parts per million and soapstock at 15 parts per million resulting from application of the insecticide to growing cotton. Such residues may be present therein only as a result of application of the insecticide in accordance with the provisions of an experimental use permit that expires August 1, 1979.

(b) Residues in cottonseed hulls and soapstock not in excess of 6 parts per million and 15 parts per million, respectively, resulting from the use as described in paragraph (a) of this section remaining after expiration of the experimental use program will not be considered actionable if the insecticide is legally applied during the term of

and in accordance with the provisions of the experimental use permit and feed additive tolerances.

(c) Ciba-Geigy Corp., shall immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 78-21160 Filed 7-28-78; 8:45 am]

[4210-01]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI 4343]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), administered by the Federal Insurance Administration, enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR Part 1909, et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administration has identified the special flood hazard areas in these communites by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elasped since publication of a flood insurance map. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of suspended communities.

State	County	Location	Community No.	Effective dates of authorization/cancelation of sale of flood insurance in community	Hazard area identified	Date [1]
Alabama	Pickens	Carrollton, town of	010181-B	Aug. 19, 1974, emergency; Sept. 15, 1978, regular; Aug. 15, 1978, suspended.	Aug. 23, 1974	Aug. 15, 1978
Do	Autauga	Prattville, city of	010002-B	June 18, 1974, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	May 3, 1974 Jan. 2, 1976	Do.
Connecticut	Fairfield	Fairfield, town of	090007-B	Apr. 7, 1972, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Aug. 2, 1974	Do.
Delaware	Sussex	Henlopen Acres, town of	100053-B	Sept. 6, 1974, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Sept. 6, 1974 Jan. 2, 1976	Do.
Florida	Orange	Unincorporated areas	120179-A	July 29, 1975, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Jan. 30, 1976 Apr. 15, 1977	Do.
Do	Volusia	Ormond Beach, city of	125136-A	Nov. 20, 1970, emergency; Sept. 7, 1973, regular; Aug. 15, 1978, suspended.	Sept. 7, 1973	Do.
Do	St. Johns	St. Augustine, city of	125145-B	Sept. 25, 1970, emergency; Oct. 6, 1972, regular; Aug. 15, 1978, suspended.	Oct. 11, 1972	Do.
Do	Martin	Stuart, city of	120165-C	May 14, 1973, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	May 24, 1974 Feb. 13, 1976	Do.
Indiana	Noble	Unincorporated areas	180183-A	Feb. 2, 1973, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Aug. 15, 1978	Do.
Do	St. Joseph	....do	180224-A	Oct. 22, 1971, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Dec. 27, 1974	Do.
Do	Washington	Salem, city of	180279-B	May 5, 1972, emergency, Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Nov. 23, 1973 May 28, 1976	Do.
Kansas	Wilson	Neodesha, city of	200359-B	Oct. 15, 1974, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Jan. 9, 1974 Aug. 29, 1975	Do.
Kentucky	Harlan	Unincorporated areas	210098-A	Jan. 12, 1973, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Nov. 29, 1974	Do.
Do	Jefferson	Shively, city of	20124-B	Aug. 13, 1971, emergency; Aug. 1, 1978, regular; Aug. 15, 1978, suspended.	May 17, 1974 Aug. 27, 1976	Do.
Massachusetts	Bristol	Berkley, town of	250050-B	Feb. 19, 1974, emergency; July 3, 1978, regular; Aug. 15, 1978, suspended.	July 26, 1974 Oct. 1, 1976	Do.
Minnesota	Goodhue	Unincorporated areas	270140-A	Apr. 30, 1971, emergency; Apr. 17, 1978, regular; Aug. 15, 1978, suspended.	Aug. 15, 1978	Do.

State	County	Location	Community No.	Effective dates of authorization/cancelation of sale of flood insurance in community	Hazard area identified	Date [1]
North Carolina	Mecklenburg	Charlotte, city of	370159-A	Apr. 12, 1973, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	June 28, 1974	Do.
Do	Surry	Elkin, town of	370225-B	Sept. 20, 1974; emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	June 28, 1974 June 11, 1976	Do.
New Hampshire	Hillsborough	Hudson, town of	330092-B	Nov. 17, 1977, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Mar. 8, 1974 Oct. 1, 1976	Do.
New Jersey	Camden	Cherry Hills, township of.	340129-A	Jan. 14, 1972, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Feb. 21, 1975	Do.
Do	Monmouth	Marlboro, township of	340310-A	Aug. 25, 1972, emergency; June 15, 1978, regular; Aug. 15, 1978, suspended.	Dec. 28, 1973	Do.
Do	Somerset	North Plainfield, city of.	345307-A	Nov. 6, 1970, emergency; Aug. 20, 1971, regular; Aug. 15, 1978, suspended.	Aug. 20, 1971	Do.
Do	Union	Roselle, borough of	340472-A	Apr. 25, 1973, emergency; July 17, 1978, regular; Aug. 15, 1978, suspended.	Apr. 22, 1977	Do.
New York	Livingston	Avon, town of	360380-C	May 17, 1973, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	May 24, 1974 June 4, 1976	Do.
Do	Jefferson	Ellisburg, town of	360334-B	May 29, 1973, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Apr. 5, 1974 Feb. 6, 1976	Do.
Do	Monroe	Parma, town of	360425-B	Mar. 9, 1973, emergency; Aug. 1, 1978, regular; Aug. 1, 1978, suspended.	Nov. 9, 1973 Apr. 16, 1976	Do.
Do	....do	Spencerport, village of	360433-B	Aug. 31, 1973, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Feb. 1, 1974 June 18, 1976	Do.
Ohio	Fayette	Washington, city of	390166-B	Mar. 12, 1975, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Nov. 23, 1974	Do.
Pennsylvania	Allegheny	Baldwin, borough of	420007-A	Nov. 19, 1973, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Dec. 17, 1976	Do.
Do	Bucks	Durham, township of	420186-B	Sept. 8, 1972 emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Apr. 13, 1973 May 21, 1976	Do.
Do	Mifflin	Granville, township of	421134-B	Mar. 12, 1974, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Aug. 30, 1974 Sept. 26, 1975	Do.
Do	Montgomery	Hatfield, borough of	420698-A	June 2, 1972, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	July 30, 1976	Do.
Do	Mifflin	Lewistown, borough of	420687-B	Nov. 17, 1972, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	July 20, 1973 Oct. 10, 1975	Do.
Do	Lawrence	New Castle, city of	420568-C	Aug. 31, 1973, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	June 21, 1974 Dec. 26, 1975	Do.
Do	Chester	North Coventry, township of.	420283-A	Jan. 26, 1973, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Nov. 30, 1973	Do.
Do	Bucks	Wrightstown, township of.	421045-B	Feb. 5, 1974, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	May 31, 1974 July 30, 1976	Do.
South Carolina	Horry	Surfside Beach, town of	450111-B	Sept. 10, 1971, emergency; Dec. 17, 1976, regular; Aug. 15, 1978, suspended.	June 14, 1974 June 25, 1976	Do.
Tennessee	Loudon	Unincorporated areas	470107-A	May 30, 1973, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Aug. 15, 1978	Do.
Virginia	Fluvanna	....do	510058-A	Oct. 4, 1973, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Dec. 13, 1974	Do.
Do	Rockbridge	Goshen, town of	510217-B	June 10, 1975, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Sept. 6, 1974 May 28, 1976	Do.
Do	Mecklenburg	Unincorporated areas	510189-A	Nov. 7, 1973, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Feb. 7, 1975	Do.
Do	Prince William.	Quantico, town of	510232-B	Mar. 19, 1975, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Nov. 1, 1974 May 21, 1976	Do.
Do	Giles	Rich Creek, town of	510070-A	June 10, 1975, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Nov. 5, 1976	Do.
West Virginia	Mason	Leon, town of	540113-B	July 16, 1975, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Sept. 6, 1974 July 16, 1976	Do.
Wisconsin	Fond du Lac	Fond du Lac, city of	550136-A	Mar. 8, 1974, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Feb. 8, 1970	Do.
Wyoming	Natrona	Unincorporated areas	560036-A	June 20, 1973, emergency; Aug. 15, 1978, regular; Aug. 15, 1978, suspended.	Aug. 15, 1978	Do.

[1] Certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: July 21, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-20744 Filed 7-28-78; 8:45 am]

[1505-01]

Title 32—National Defense

CHAPTER VI—DEPARTMENT OF THE NAVY

PART 751—PERSONNEL CLAIMS REGULATIONS

Miscellaneous Amendments

Correction

In FR Doc. 78-16254 appearing on page 25425 in the issue of Tuesday, June 13, 1978 in the 3rd column, the top of the page, paragraph numbered "1", the amendatory language should read, "1. Section 751.3 is amended by revising paragraph (b)(2), (i), and (j)(2) to read as follows:".

On page 25426, in the 3rd column, the paragraph numbered "7" should read, "7. Section 751.21 is amended by adding paragraph (f)(2) and revising paragraph (g) to read as follows:".

[3910-01]

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

SUBCHAPTER B—SALES AND SERVICES

PART 811—SALE OR RELEASE OF AUDIOVISUAL DOCUMENTATION

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

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising its rule on the sale or release of audiovisual documentation. Clarification was needed of provisions for sale or release of audiovisual documentation. This revision provides a new table and schedule of fees in accordance with DOD instruction 7230.7, which it implements.

EFFECTIVE DATE: February 6, 1974.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Hill, Headquarters USAF, Office of the Deputy Director of Operations and Training (XOOTV), Washington, D.C. 20330, 202-695-9610.

SUPPLEMENTARY INFORMATION: Part 811 of chapter VII, title 32 of the Code of Federal Regulations is revised to clarify provisions for sale or release of audiovisual documentation. It provides a new table to list offices of primary responsibility for release of various categories of audiovisual material. It incorporates a new schedule of fees in accordance with DOD instruction 7230.7 and updates office symbols and addresses throughout.

This revision is issued under authority of 10 U.S.C. 8012, 31 U.S.C. 483a.

The revised part will read as follows:

Sec.
811.1 Purpose.
811.2 Exclusions.
811.3 Authority for using or releasing audiovisual materials.
811.4 Policy on the sale, use, and release of audiovisual documentation.
811.5 Procedures for requesting audiovisual materials.
811.6 Schedule of fees.
811.7 Instructions for formal requests.

AUTHORITY: 10 U.S.C. 8012, 31 U.S.C. 483a.

§ 811.1 Purpose.

This part states the policy on the sale, use, and release of unclassified Air Force audiovisual documentation, and the dissemination of classified documentary materials. It explains when reproductions may be sold or released without charge, includes a schedule of fees, and tells how to collect and control fees. This part implements DOD instructions 7230.7, 18 July, and 7730.53, 15 July 1970. It should be used with parts 806, 812, and 813 of this chapter. This part applies to all members and employees of the Department of the Air Force.

§ 811.2 Exclusions.

This part does not apply to:

(a) The sale of aerial photography. Refer each request for aerial photography to the Assistant Secretary of Defense (Public Affairs), Washington, D.C. 20301.

(b) The sale of completed motion pictures and film strips. Requests for films produced according to AFR 95-14, Programing and Producing Audiovisual Products and Services, should be referred to the National Audiovisual Center, Washington, D.C. 20409.

(c) Photography obtained by or made at the request of the Office of Special Investigations for use in connection with an investigation or a counterintelligence report. The release of such photography is governed by parts 806 and 952 of this chapter.

(d) Photography obtained or made at the request of the Aircraft and Missile Accident/Incident Investigative Board in accordance with their investigation of Air Force aircraft and missile accidents/incidents investigated under authority of AFR 127-4, Investigating and Reporting U.S. Air Force Mishaps. The release of such photography is governed by part 806 of this chapter. and AFR 127-4.

§ 811.3 Authority for using or releasing audiovisual materials.

(a) Part 811a of this chapter explains the restrictions on personal retention or other personal use of official Air Force audiovisual material.

(b) Part 806 of this chapter explains Air Force disclosure and denial procedures regarding requests for audiovisual materials.

(c) Part 850 of this chapter, used in conjunction with DOD ISPR 5200.1-R, explains the restrictions and procedures for disseminating classified materials. Such reproduction and dissemination are accomplished only when an official requirement exists and when there is no limitation affecting the specific release imposed by the contributing military activity. Audiovisual material requiring security clearance before release must be submitted to the appropriate Office of Information for security review. Classified audiovisual material is downgraded as provided by part 850 of this chapter, DOD ISPR 5200.1-R, and the appropriate classification guide.

(d) AFM 400-3, Foreign Military Sales, provides guidance and explains procedures for processing requests for the purchase of USAF films by foreign governments.

(e) The following agencies act as clearance authority for the categories of services indicated:

(1) The appropriate Office of Information determines, IAW AFR 190-12, Release of Unclassified Information to the Public, and this part, the releasibility of audiovisual materials requested by:

(i) Newsprint, magazine, or electronic media.

(ii) Motion picture companies.

(iii) Commercial industries.

(iv) Nonprofit organizations.

(v) Non-Federal governmental agencies.

(vi) The general public.

(2) The Office of Legislative Liaison (SAF/LL) is the releasing authority for audiovisual materials requested for use by Members of Congress.

(3) The Foreign Liaison Division (HQ USAF/CVAFI), or MAJCOMs/SOA's holding a delegation of disclosure authority letter (DDL) as described in AFR 200-9, Disclosure of Classified Military Information to Foreign Government and International Organizations, are the releasing authorities for classified or unclassified audiovisual material requested for use by foreign governments, international organizations, or their representatives.

(4) The United States Information Agency (USIA) is the releasing authority for unclassified audiovisual material requested for use by foreign nationals or industry (other than representatives of foreign governments or international organizations). Submit requests to the USIA office serving the country. Requests originating within the United States may be submitted through SAF/OIPL for handling IAW

AFR 190-22, Release of Unclassified Public Information to Foreign Nationals, coordination with the Air Force Foreign Liaision Division (HQ USAF/CVAFI), and USIA clearance.

(5) The appropriate Casualty Assistance Office is the releasing authority for audiovisual materials requested for use by members of the armed forces in a casualty status, their next of kin, or authorized representatives.

§ 811.4 Policy on the sale, use, and release of audiovisual documentation.

(a) Although audiovisual materials and services may be sold as prescribed by this part, it is Air Force policy not to compete with available commercial services.

(b) Audiovisual materials or services that satisfy other provisions of this part may be provided to State and local units of government under title III of the Intergovernmental Cooperation Act of 1968. The requester must certify that such services cannot be procured reasonably and expeditiously through ordinary business channels.

(c) The sale of original audiovisual materials is prohibited. Use reproductions of the original material to service requests. Only when authorized by HQ USAF/XOOGV for internal Federal Government agency requests, or by the Secretary of the Air Force (SAF/OIPL) for non-Federal Government and public release requests, may original material be released. Material is released only to approved laboratories for reproduction at no expense to the Air Force.

(1) Depositories use only Air Force-owned materials in servicing approved requirements. Exceptions for access to other materials are granted only after the requester obtains the owner's written permission.

(2) Production of materials for sale must not be permitted to hamper official Air Force requirements or be used to justify increases in personnel or equipment.

(d) Restrictions on the use of records. Activities forwarding audiovisual material to the depositories must insure that any limitations on further dissemination are clearly noted on the film and accompanying documentation. In addition, observe the following restrictions:

(1) Recipients must not use Air Force photography to imply or otherwise indicate that the Air Force endorses a service or product unless the buyer has obtained approval in writing from the Secretary of the Air Force, Office of Information (SAF/OIPL).

(2) Audiovisual materials of non-Air Force subjects or activities, even though made by Air Force personnel, must not be sold or released unless appropriate clearances or talent releases are on file at the Central Depository.

(3) Exclusive rights to official Air Force photography may not be claimed by any other agency or person.

(4) The waiver of proprietary and privacy rights cannot be granted with the sale or release of audiovisual materials unless these rights and the rights of transfer are owned by the Air Force.

(5) Audiovisual material received from Air Force contractors must not be released or sold to competitive contractors unless such material is part of an Air Force contract requirement, or, is not of a proprietary nature, or, the Air Force contracting officer having jurisdiction over the contract determines that it is in the best interest of the Air Force.

(6) Air Force activities creating research and development record photography and depositing it according to AFR 95-4, Audiovisual Records Deposition Program, may obtain the film on loan through direct communication with the depository having custody.

(7) Formal agreements between the Air Force and certain Government agencies provide for photographic and related services. When the provisions for releasing audiovisual materials to Government agencies are not as specified in this part, the provisions of the formal agreement apply.

(e) Requests and services exempt from fees. In accordance with part 813 of this chapter, and to the extent that funds are available, the requests received from the sources indicated below are exempt from the payment of fees, provided that the service will not hamper the mission of the furnishing agency, all appropriate clearances and releases specified by this part have been obtained, and the work can be accomplished during normal work schedules.

(1) DOD agencies and other departments of the Federal Government requesting audiovisual materials for use in approved departmental activities.

(2) Members of Congress requesting audiovisual materials for use in official Government activities.

(3) Audiovisual materials or services that are furnished according to statute or executive orders.

(4) Federal, State, territorial, county, or municipal governments or an agency thereof, carrying on a function related to or furthering an Air Force or other DOD objective.

(5) Nonprofit organizations carrying on a function related to or in the interest of public health and welfare.

(6) A member of the armed forces in a casualty status, or their next of kin, or authorized representative when the requested audiovisual material relates to the member.

(7) The general public, to further the armed forces recruiting program or public understanding of the armed forces, when such photography or service is determined by SAF/OIPL to be in the best interest of the Air Force.

(8) Incidental or occasional requests for audiovisual materials or services (including requests from residents of foreign countries) when it is determined that fees would be inappropriate. (For the distribution of motion picture or still photography to foreign nationals, see AFR 190-22, Release of Unclassified Public Information to Foreign Nationals.)

§ 811.5 Procedures for requesting audiovisual materials.

(a) Preliminary inquiries may be made to the holding activity to obtain information on the availability of audiovisual materials in broad subject areas. In general, requests pertaining to motion picture or television materials should be addressed to the USAF Central Audiovisual Depository, and those pertaining to still materials should be addressed to the USAF Still Photographic Depository. Such inquiries do not constitute a formal request. No screening or access to materials is provided without the submission of a formal request, and the prior telephonic or written approval of the request.

(b) Submit formal requests in accordance with the instructions provided in § 811.7. When notified by the appropriate authority that the request has been approved, the requestor may communicate directly with the holding activity to arrange for selection of materials.

§ 811.6 Schedule of fees.

Fees are established by the Department of Defense and are listed as follows:

NOTE: All prices listed are subject to change without notice.

1. **Still Pictorial or Documentary Photographic Prints, Black and White.** Not more than three prints may be sold from any individual negative on each order. Unlisted standard sizes of prints may be furnished, if available, at proportionate fees.

a. 4"x5" single weight glossy finish, 1st print	$ .75
2d and 3d prints, each	.50
b. 5"x7" single weight glossy finish, 1st print	1.00
2d and 3d prints, each	.75
c. 8"x10" single weight glossy finish, 1st print	1.25
2d and 3d prints, each	1.00
d. 8"x10" double weight matte finish, 1st print	1.75
2d and 3d prints, each	1.50
e. 11"x14" double weight matte finish, each	3.50
f. 16"x20" double weight matte finish, each	4.75
g. 20"x24" double weight matte finish, each	6.50

2. **Transparencies.** (Not to exceed three copies of any one view):

a. 35mm transparencies (mounted) Black and white duplicate or copy, each	.50
Color duplicate from color slide, each	1.00
Color transparencies (from color negative material), each	3.50
b. 4"x5" color transparencies or color negatives, each	6.75
c. 8"10" color transparencies or color negatives, each	14.00

3. **Color Prints, Type C Only:**

a. 8"x10" color print, 1st print	4.50
2d and 3d prints, each	2.00
b. 11"x14" color print, 1st print	8.00
2d and 3d prints, each	$ 5.00
c. 16"x20" color print each	17.50
d. 16"x20" color print, mounted on 20"x24" cardboard, each	19.25

4. **Motion Picture and Sound Track Stock Footage, Printed and Processed:**

a. 16mm or 35mm black and white unedited footage without optical sound track, per foot	.07
b. With optical sound track, per foot	.10
c. Color unedited footage:	
16mm positive, per foot	.20
16mm internegative, per foot	.25
35mm answer print, per foot	.45
35mm viewing or release print, per foot	.15
35mm separation master positive (three required), per foot	.85
35mm color interpositive, per foot	.55
35mm color internegative, per foot	.55
d. Magnetic Tape:	
16mm (direct dubb), per foot	.05
35mm (direct dubb), per foot	.05
e. Searching (including overhead), each hour or fraction thereof	10.00
Minimum charge, including stock search, per order	20.00

NOTE: All film used in duplication to furnish a requested end product shall be charged on a per foot basis.

5. **General.** Charges for any additional services not specified above:

a. Clerical search and processing, Per hour	5.00
Minimum charge	3.00
b. Professional searching or researching (to be established at actual rate before search. A minimum charge will be established at one-half hourly rate.)	
c. Minimum charge for office copy reproduction (minimum up to six images)	2.00
d. Each additional image	.05
e. Each typewritten page	1.75

§ 811.7 Instructions for formal requests.

	TYPE OF REQUESTER	MATERIAL REQUESTED IS	FOR MOTION PICTURE OR TV MATERIALS		FOR STILL PHOTOGRAPHIC MATERIALS	
			ADDRESS THE REQUEST TO	INCLUDE IN THE REQUEST	ADDRESS THE REQUEST TO	INCLUDE IN THE REQUEST
	A	B	C	D	E	F
1	The general public	Unclas	FOR NATIONAL RELEASE TO: SAF/OIPL Wash DC 20330 for Local Release, to the servicing OI	Film sequence outline or script; Intended use of the film; Type of film stock required (neg, interneg, print); Approximate number of screen feet.	For national release: SAF/OIPL, Wash DC 20330. For local release: The servicing OI.	Story outline or ad copy; Intended use of the material; Type material required (print, neg, interneg); Required number of prints, slides, negs, etc.
2	An Air Force or other Federal Government agency	Unclas	AAVS/DOSD Norton AFB CA 92409	Intended use of the film; Type of film stock required (neg, interneg, print); Approximate number of screen feet.	USAF Central Still Photo Depository, 1221 S Fern St, Arlington VA 22202	Intended use of the material; Type material required (print, neg, interneg); Required number of prints, slides, negs, etc.
3	A Fed Govt contractor (to satisfy AV rqmt's specified in a Federal contract)	Unclas	AAVS/DOSD Norton AFB CA 92409, THRU Fed contracting officer having juris	Same as 2 above. NOTE: If material is intended for public release, request must be further processed THRU SAF/OIPL as in 1 above.	SAF/OIPL Wash DC 20330	Same as 2 above.
4	A non-Federal Govt agency (state, county, territorial, municipal	Unclas	SAF/OIPL Wash DC 20330	Same as 2 above. Include a certification that the requested material cannot be procured reasonably and expeditiously through ordinary business channels.	SAF/OIPL Wash DC 20330	Same as 2 above. Include a certification that the requested material cannot be procured reasonably and expeditiously through ordinary business channels.
5	Members of Congress	Classified or Unclas	SAF/LL Wash DC 20330		SAF/LL Wash DC 20330	
6	Foreign governments, international organizations, or their representatives	Classified or Unclas	HQ USAF/CVAFI, Wash DC or applicable MAJCOM/IN holding Delegation of Disclosure Authority Ltr. (DDL)		HQ USAF/CVAFI, Wash DC or applicable MAJCOM/IN holding Delegation of Disclosure Authority Ltr. (DDL)	
7	Foreign nationals or foreign industries (other than representatives of foreign govt's or international organizations)	Unclas	USIA Office serving the foreign country	NOTE: For requests originating within the US, requests may be addressed to SAF/OIPL Wash DC 20330, for coordination with HQ USAF/CVAFI and USIA clearance.	USIA Office serving the foreign country	NOTE: For requests originating within the US, requests may be addressed to SAF/OIPL, Wash DC 20330, for coordination with HQ USAF/CVAFI and USIA clearance.
8		Classified	MAJCOM/SOA (IN) or HQ USAF/CVAFI		HQ USAF/CVAFI, Wash DC or applicable MAJCOM/IN	

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer.

[FR Doc. 78-20934 Filed 7-28-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

[FRL 930-4]

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Air Pollution Control State of Arizona Rules and Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: It is the purpose of this action to promulgate final approval or disapproval of revisions to the Arizona State Implementation Plan (SIP). The revisions include State regulations, assertions of jurisdiction, and a House bill on terms and conditions for conditional permits.

EFFECTIVE DATE: August 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Attn: Erik Hauge, Air Programs Branch, EPA Region IX, 215 Fremont Street, San Francisco, Calif. 94105, telephone: 415-556-7595.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 16, 1977 (42 FR 30648) EPA proposed approval or disapproval of revisions to the Arizona SIP consisting of State air pollution control regulations, assertions of jurisdiction, and a House bill. The regulations were submitted to EPA on August 20, 1973, August 30, 1974, September 16, 1975 and January 23, 1976; the assertions of jurisdiction and the House bill were submitted to EPA on February 3, 1975.

The rulemaking notice provided for a 30-day public comment period. Information concerning the regulations proposed for approval and disapproval (the EPA evaluation report, the regulations under consideration, and a copy of the proposed rulemaking notice) was made available during the comment period at locations in Phoenix, Flagstaff and Tucson, Arizona, and at the EPA offices in San Francisco, California, and Washington, D.C. as per the June 16, 1977 notice.

DISCUSSION OF ACTION

APPROVALS

Approval is being promulgated for the State of Arizona regulations as follows:

7-1-1.1 (R9-3-101) (Policy and Legal Authority)
7-1-1.3A-D (R9-3-103A-D) (Air Pollution Prohibited)
7-1-1.5 (R9-3-105) (Enforcement)
7-1-4.3 (R9-3-403) (Sulfur Emissions: Sulfite Pulp Mills)
7-1-4.4 (R9-3-404) (Sulfur Emissions: Sulfuric Acid Plants)
7-1-4.5 (R9-3-405) (Sulfur Emissions: Other Industries)
7-1-5.1 (R9-3-501) (Storage of Volatile Organic Compounds)
7-1-5.2 (R9-3-502) (Loading of Volatile Organic Compounds)
7-1-5.3 (R9-3-503) (Organic Compound Emissions: Pumps and Compressors)
7-1-5.4 (R9-3-504) (Organic Solvents)
7-1-6.1 (R9-3-601) (Carbon Monoxide Emissions: Industrial)
7-1-7.1 (R9-3-701) (Nitrogen Oxide Emissions: Fuel Burning Installations)
7-1-7.2 (R9-3-702) (Nitrogen Oxide Emissions: Nitric Acid Plants)
7-1-8.3 (R9-3-803) (New Installations) submitted on August 20, 1973
7-1-2.10 (R9-3-210) (Emergency Episode Criteria)
7-1-4.2A and F (R9-3-402 A and F) (Sulfur Emissions: Fuel Burning Installations) except as they apply to the Navajo Generating Station, submitted on August 30, 1974; Assertions of jurisdiction, submitted on February 3, 1975
R9-3-102 (Definitions)
R9-3-108 (Test Methods and Procedures)
R9-3-302 (Particulate Emissions: Fugitive Dust)
R9-3-303 (Particulate Emissions: Incineration)
R9-3-304 (Particulate Emissions: Wood Waste Burners)
R9-3-305 (Particulate Emissions: Fuel Burning Equipment)
R9-3-307 (Particulate Emissions: Portland Cement Plants), and R9-3-308 (Particulate Emissions: Heater-Planers) submitted on September 16, 1975
R9-3-505 (Gasoline Volatility Testing)
R9-3-506 (Gasoline Volatility Standards) submitted on January 23, 1976

DISAPPROVALS

1. *State Jurisdiction.* As proposed on June 16, 1977, the Administrator is disapproving the State plan to the extent that the plan does not provide for the demonstration of the attainment and maintenance of the National Ambient Air Quality Standards in Graham and Greenlee Counties, and no county regulations have been submitted as part of the plan.

2. *Air Pollution Prohibited.* Regulation 7-1-1.3 (R9-3-103) was proposed for disapproval because it may allow violations of ambient air quality standards to occur in areas to which the general public has access. The Administrator finds that paragraphs A through D of this regulation are approvable, and they are being approved in this action. Paragraph E, however, is disapproved for the above cited reason.

3. *Sulfur Emissions from Fuel Burning Installations.* Regulation 7-1-4.2 (R9-3-402) (Sulfur Emissions: Fuel Burning Installations) was proposed for disapproval with regard to oil fired facilities. Paragraph A which states that the regulation is applicable to power plants with resulting sulfur dioxide emissions is approved.

Paragraphs B, C, D, and E are disapproved because taken together they could allow an existing fuel oil fired power plant to use dispersion dependent techniques alone as a means of attaining and maintaining ambient standards, contrary to the requirements of sections 110(a)(2)(B) and 123(a) of the Clean Air Act, as amended. For Federal enforcement purposes, the original regulation approved by EPA in May 1972, 7-1-4.2B, is retained.

Paragraph F dealing with sulfur dioxide emissions from coal fired power plants is approved (except as such regulations apply to the Salt River Project Agricultural Improvement and Power District—Navajo Generating Station). Sulfur dioxide emission limitations for the Navajo Generating Station will be addressed in a separate FEDERAL REGISTER notice.

DEFERRED ACTION

1. *Vehicle Inspection/Maintenance.* On June 16, 1977, EPA proposed approval with the exception of one subparagraph of the regulations comprising the State Inspection/Maintenance (I/M) program (R9-3-1001-1024), submitted on January 23, 1976. On February 11, 1977, the State submitted revised I/M regulations to EPA. EPA published a notice of proposed rulemaking and invited public comment on those revised regulations on September 6, 1977 (42 FR 44561). Therefore, EPA is taking no action on the original I/M regulations at this time. Final rulemaking for the revised I/M regulations will be addressed in a separate FEDERAL REGISTER notice.

2. *Process Industries.* Regulation R9-3-306 establishes particulate emission limits for process industries. Although this regulation was proposed for approval on June 16, 1977, the Administrator is not approving it in this action. The regulation requires that the emission limit be calculated based on a facility's total process weight rate, but the allowable emission rate could apply individually to each emission point at that facility. Thus, the total allowable emission rate from a process source would ultimately depend on the number of emission points at the facility. This is inconsistent with the intent of section 110(a)(2)(B) of the Clean Air Act, as

amended. EPA will propose to disapprove this regulation in a separate FEDERAL REGISTER notice.

3. *Malfunction.* Regulation 7-1-1.6 (R9-3-106) (Exceptions) was proposed for disapproval in the June 16, 1977 FEDERAL REGISTER. However, no action is being taken on it at this time pending receipt and review of the State's revised malfunction regulation.

4. Regulations 7-1-2.1 through 2.6 (R9-3-201 through 206) (Ambient Air Quality Standards), 7-1-2.7 (R9-3-207) (Evaluation), 7-1-2.8 (R9-3-208) (Antidegradation), and 7-1-2.9 (R9-3-209) (Air Quality Goals), were proposed for approval on June 16, 1977. Contrary to the proposal, however, EPA is not addressing these regulations at this time, since the State has submitted revised regulations to EPA. EPA will address the revised regulations in a separate FEDERAL REGISTER notice.

5. No action was proposed, and therefore no final action is being taken with regard to regulation 7-1-4.1 (R9-3-401) (Sulfur Emissions: Copper Smelters), or House Bill 2200 (Chapter 35, A.R.S.—April 26, 1974) (Terms and Conditions for Conditional Permits). These will be the subject of separate FEDERAL REGISTER notices.

6. *Visible Emissions.* No action is being taken at this time on regulation R9-3-301 (Visible Emissions—General) due to a reassessment of our position in the proposed rulemaking based on public comments received during the 30-day comment period. Certain commentors questioned the appropriateness of a 20 percent opacity limitation for all sources. EPA will address this regulation in a separate FEDERAL REGISTER notice.

DISCUSSION OF MAJOR COMMENTS

1. The proposed disapproval of regulation R9-3-103 (Air Pollution Prohibited) was addressed by two commentors. Both comments were centered around the definitions of "ambient air" and "public access" and in essence express the view that NAAQS do not have to be met in the facility's operating area.

The term "ambient air" is defined in 40 CFR 50.1(e) as "that portion of the atmosphere, external to buildings, to which the general public has access." Therefore, this definition requires that the general public not have access before any portion of the atmosphere is not considered ambient air. R9-3-103E could permit violations of NAAQS in areas to which the general public has access, and therefore the regulation must be disapproved.

2. In response to the proposed disapproval of regulation 7-1-4.2 (R9-3-402) (Sulfur Emissions: Fuel Burning Installations) as it relates to oil-fired installations, one commentor stated that EPA should be able to determine that the State regulation would be adquate to achieve and maintain ambient standards in the Phoenix-Tuson Air Quality Control Region (AQCR), based on the results of a study contracted by several public utility operators, and based on modeling done in establishing substitute regulations for the State of Ohio. Therefore, the commentor believed that the State need not submit a demonstration of adequacy and the regulation should be approved.

Demonstration of noninterference with attainment and maintenance of standards is required of the State plan under 40 CFR 51.12 and 51.13. Although documentation may exist showing the adequacy of the State regulation, it has not been submitted by the State or referenced in the State plan to support this regulation.

In addition, as discussed above, this regulation dealing with oil burning installations could allow sources to utilize only dispersion dependent techniques to prevent violations of ambient standards.

3. One comment was received regarding the proposed disapproval of regulation 7-1-1.6 (R9-3-106) (Exceptions). No action is being taken on this regulation at this time. The final FEDERAL REGISTER notice on the approval/disapproval of this regulation will include a summary of this comment.

(Secs. 110 and 301(a), of the Clean Air Act as amended, 42 U.S.C. 7410 and 7601(a).)

Dated: July 21, 1978.

BARBARA BLUM,
Acting Administrator.

Subpart D of Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart D—Arizona

1. Section 52.120, paragraph (c) is amended by renumbering subparagraphs (6) through (12) as (7) through (13) respectively, subparagraphs (13), (14), and (15) as (15), (17), and (21) respectively, and by adding new subparagraphs (6), (14), (16), (19) and (20) and reserving subparagraphs (18), (22), (23), (24), (25), (26), and (27) as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(6) Arizona Air Pollution Control Regulations (numbers in parentheses indicate recodification of regulations as identified in the Arizona State Implementation Plan Semi-Annual Report submitted to EPA on September 4, 1975).

7-1-1.1 (R9-3-101) (Policy and Legal Authority)
7-1-1.3 (R9-3-103) (Air Pollution Prohibited)
7-1-1.5 (R9-3-105) (Enforcement)
7-1-4.3 (R9-3-403) (Sulfur Emissions: Sulfite Pulp Mills)
7-1-4.4 (R9-3-404) (Sulphur Emissions: Sulfuric Acid Plants)
7-1-4.5 (R9-3-405) (Sulphur Emissions: Other Industries)
7-1-5.1 (R9-3-501) (Storage of Volatile Organic Compounds)
7-1-5.2 (R9-3-502) (Loading of Volatile Organic Compounds)
7-1-5.3 (R9-3-503) (Organic Compound Emissions: Pumps and Compressors)
7-1-5.4 (R9-3-504) (Organic Solvents)
7-1-6.1 (R9-3-601) (Carbon Monoxide Emissions: Industrial)
7-1-7.1 (R9-3-701) (Nitrogen Oxide Emissions: Fuel Burning Installations)
7-1-7.2 (R9-3-702) (Nitrogen Oxide Emissions: Nitric Acid Plants
7-1-8.3 (R9-3-803) (New Installations)

Submitted on August 20, 1973.

* * * * *

(14) Arizona Air Pollution Control Regulations:

7-1-2.10 (R9-3-210) (Emergency Episode Criteria)
7-1-4.2 (R9-3-402) (Sulfur Emissions: Fuel Burning Installations)

Submitted on August 30, 1974.

* * * * *

(16) Assertion of State Jurisdiction over Apache, Navajo, Santa Cruz and Yavapai Counties; Assertion of State Jurisdiction over Cochise County; and Assertion of State Jurisdiction over specific sources in Mohave County.

Submitted on February 3, 1975.

* * * * *

(18) [Reserved]

(19) Arizona Air Pollution Control Regulations:

R9-3-102 (Definitions)
R9-3-108 (Test Methods and Procedures)
R9-3-301 (Visible Emissions—General)
R9-3-302 (Particulate Emissions: Fugutive Dust)
R9-3-303 (Particulate Emissions: Incineration)
R9-3-304 (Particulate Emissions: Wood Waste Burners)
R9-3-305 (Particulate Emissions: Fuel Burning Equipment)
R9-3-307 (Particulate Emissions: Portland Cement Plants)
R9-3-308 (Particulate Emissions: Heater-Planers)

Submitted on September 16, 1975.

(20) Arizona Air Pollution Control Regulations:

R9-3-505 (Gasoline Volatility Testing)
R9-3-506 (Gasoline Volatility Standards)

Submitted on January 23, 1976.

(21) * * *

(22) [Reserved]
(23) [Reserved]
(24) [Reserved]
(25) [Reserved]
(26) [Reserved]
(27) [Reserved]

2. Section 52.125 is amended by the addition of a new paragraph (f) as follows and by renumbering paragraph (h) as paragraph (g):

§ 52.125 Control strategy and regulations: Sulfur oxides.

* * * * *

(f)(1) Paragraphs B through E of regulation 7-1-4.2 (R9-3-402) (Sulfur Emissions: Fuel Burning Installations) of the Arizona Air Pollution Control Regulations are disapproved because they could allow existing oil fired facilities to use dispersion dependent techniques alone as a means of attaining and maintaining the national ambient air quality standards. The regulation does not assure the attainment and maintenance of the national standards in a manner which is consistent with the intent of sections 110(a)(2)(B) and 123(a)(2) of the Clean Air Act.

(2) The approval of paragraphs A and F of regulation 7-1-4.2 as to coal fired facilities does not apply to the Salt River Project Agricultural Improvement and Power District-Navajo Generating Station.

* * * * *

4. Section 52.133 is amended by the addition of new paragraphs (b) and (c) as follows:

§ 52.133 Rules and regulations.

* * * * *

(b) Paragraph E of regulation 7-1-1.3 (R9-3-103) (Air Pollution Prohibited) prohibits any person from causing ground level concentrations to exceed ambient standards outside the boundaries of his operation. This regulation could allow violations of ambient air quality standards to occur in areas to which the public has access, contrary to the requirements of section 110(a)(1) of the Clean Air Act. Therefore, paragraph E of regulation 7-1-1.3 (R9-3-103) of the Arizona Rules and Regulations for Air Pollution Control is disapproved.

(c) The requirements of §§ 51.13 and 51.22 of this chapter are not met since the plan does not provide any enforceable regulations and a demonstration that such regulations will cause the attainment and maintenance of national ambient air quality standards in Graham and Greenlee Counties.

[FR Doc. 78-21090 Filed 7-28-78; 8:45 am]

[1505-01]

[FRL 928-3]

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES

Miscellaneous Amendments; Corrections

Correction

In FR Doc. 78-19798 appearing at page 31134 in the issue for Thursday, July 20, 1978, on page 31134, second column, in the table, the first entry for Unleaded reading "92" should read "93."

[4110-87]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER G—OCCUPATIONAL SAFETY AND HEALTH RESEARCH AND RELATED ACTIVITIES

PART 82—CERTIFICATION OF INDUSTRIAL SOUND LEVEL METER SETS

PART 84—CERTIFICATION OF GAS DETECTOR TUBE UNITS

Revocation of Parts

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Center for Disease Control, PHS, HEW.

ACTION: Revocation of regulations.

SUMMARY: HEW revokes parts 82 and 84 of title 42, Code of Federal Regulations, which concern voluntary testing and certification programs for industrial sound level meter sets and gas detector tube units. The programs will continue to operate under agency guidelines.

EFFECTIVE DATE: The revocation is effective on July 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert Schutz, Testing and Certification Branch, Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, W. Va. 26505, 304-599-7574 or FTS: 923-7331.

SUPPLEMENTARY INFORMATION: The National Institute for Occupational Safety and Health (NIOSH) was established by section 22(b) of the Occupational Safety and Health Act (29 U.S.C. 671(b)). Section 22(c) of the act authorizes NIOSH to develop and establish recommended occupational safety and health standards. As an extension to these recommendations, NIOSH development a number of testing and certification programs designed to assure safe and reliable performance of personal protective and hazard measuring equipment.

While the programs are voluntary, the testing and certification procedures were established by regulations. Since the programs are voluntary and manufacturers are under no legal obligation to submit their products for NIOSH testing and certification, the regulations are not legally required. Although the regulations are revoked, the voluntary certification programs for sound level meter sets and gas detector tube units, as well as for other measuring and personal protective equipment, will be continued or established by NIOSH pursuant to agency guidelines. Copies of the NIOSH guidelines for certification of industrial sound level meter sets and gas detector tube units, as well as information concerning other testing and certification programs, may be obtained from NIOSH at the above address.

Parts 82 and 84 of title 42, Code of Federal Regulations, are revoked, effective on July 31, 1978.

Dated: May 19, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 22, 1978.

HALE CHAMPION,
Acting Secretary.

[FR Doc. 78-21072 Filed 7-28-78; 8:45 am]

[4110-07]

Title 45—Public Welfare

CHAPTER III—OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 302—STATE PLAN REQUIREMENTS

PART 303—STANDARDS FOR AN EFFECTIVE PROGRAM

State Parent Locator Service, Requests for Information from the Federal Parent Locator Service, Location of Absent Parents

AGENCY: Office of Child Support Enforcement.

ACTION: Final rule.

SUMMARY: These regulations provide greater flexibility in the procedures used by State child support enforcement agencies to submit requests for location information to the Federal Parent Locator Service. The Office of Child Support Enforcement has determined that greater flexibility in these procedures will reduce the time it takes to locate absent parents and, therefore, will improve the location aspect of the child support enforcement program. State Child Support agencies will be permitted to submit requests for location information to the Federal Parent Locator Service from two child support offices in the State in addition to the central office of the State child support agency and the State may submit these requests at the same time it attempts to locate an absent parent using location sources within the State.

DATES: Effective date: July 31, 1978. Comment period: Consideration will be given to written comments or suggestions received on or before September 29, 1978. Agencies and organizations are requested to submit their comments in duplicate.

ADDRESS: Address comments to: Acting Director, Office of Child Support Enforcement, Department of Health, Education, and Welfare, P.O. Box 23526, Washington, D.C. 20024. Comments will be available for public inspection in room 2323 of the Department's offices at 330 C Street SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m., telephone 202-472-4510.

FOR FURTHER INFORMATION CONTACT:

Suzanne M. Duval, 202-472-4510.

SUPPLEMENTARY INFORMATION: Title IV-D of the Social Security Act (42 U.S.C. 651 et seq.) requires States to make child support enforcement services available to welfare recipients and those not on welfare who apply for such services. One of the services provided by this program is the location of absent parents in order to initiate the support enforcement process. Location efforts are made at the local, State, and Federal levels of government.

Pursuant to 42 U.S.C. 653 the Secretary has authority to establish and operate the Federal Parent Locator Service (FPLS) to obtain and transmit to authorized persons information about the whereabouts of absent parents from the files of Federal or State government agencies. In carrying out his responsibilites under this provision the Secretary, on June 26, 1975, promulgated regulations that prescribe the manner and form by which the FPLS shall receive and disseminate information. The Secretary is specifically granted the authority to establish these procedures by 42 U.S.C. 653(d). These amendments simplify and provide greater flexibility in the procedures used by States to submit location requests to the Federal Parent Locator Service (FPLS).

Location of an absent parent as soon as possible after the initiation of support enforcement activity has long been recognized as one of the most important factors in a successful support enforcement effort. Both of the changes made by this document will assist Federal and State program managers in reducing the time needed to locate an absent parent.

The first of these two changes will permit a State to submit appropriate requests to the FPLS at the same time the State attempts to locate an absent parent using State and local locate sources. Current regulations require States to exhaust State locate sources before they can submit location requests to the FPLS. In most States, searching all State locate sources takes at least 60 days. If these efforts prove unsuccessful then a request is submitted to the FPLS. The FPLS processing time for most location requests is an additional 60 days. By permitting States to submit appropriate location requests to the FPLS at the same time they attempt to locate the absent parent using their own sources, the time to complete the location process will be reduced substantially.

The second change will permit States to designate two sites in the States, in addition to the central office of the State Parent Locator Service, from which a State may submit location requests to the FPLS. These two additional sites must be State or local IV-D offices. In addition, these offices must submit requests to the FPLS in the same mode used by the central office of the State Parent Locator Service. This is the only way that additional flexibility can be provided without substantially increasing the cost of FPLS operations.

These regulations are being published in final form. The Administrative Procedure Act, 5 U.S.C. 553(b)(A) provides that rules of agency organization, procedure, or practice are exempt from the public rulemaking process. These regulations are exempt from the public notice and comment provisions since they deal with the FPLS's organizational practice and procedures. The proposed changes in the regulations do not affect the substantive rights of the public. Rather, they alter the number of places from which requests may be sent and the time at which they may be submitted. These changes do not affect the basic responsibilities or purpose of the Federal Parent Locator Service, but merely, alter the administrative method by which the FPLS operates so as to improve its efficiency. These technical amendments are not the kind of changes which require prior notice and public comments. As noted above, the Department will accept comments from interested individuals after the publication of these changes in the FEDERAL REGISTER.

1.45 CFR Chapter III, Part 302 is amended by revising § 302.35 to read as follows:

§ 302.35 State parent locator service.

The State plan shall provide that:

(a) The IV-D agency will establish a parent locator service utilizing:

(1) All sources of information and records available in the State, and in other States as appropriate; and

(2) The Federal PLS of the Department of Health, Education and Welfare.

(b) The State PLS will have a central State office and may also establish or designate offices at the local level.

(c) The IV-D agency will accept applications to utilize the Federal PLS from:

(1) Any State or local agency or official seeking to collect child support obligations pursuant to the State plan;

(2) A court which has authority to issue an order against an absent parent for the support and maintenance of a child, or any agency of such court; or

(3) The resident parent, legal guardian, attorney, or agent of a child who is not receiving aid under title IV-A of the act.

However, prior to the submission of any request to the Federal PLS, pursuant to (c)(3), the State PLS must first make diligent and reasonable efforts to locate the absent parent.

(d) Any requests to the Federal PLS under section 453 of the act will be submitted by the central State office in accordance with the manner and form prescribed by the Secretary. The IV-D agency may also designate a maximum of two additional IV-D offices within the State to submit such requests. These requests must be sub-

mitted in the same mode as the central office of the State PLS submits requests to the Federal PLS unless the mode used is approved by OCSE.

(e) The IV-D agency will collect or pay the fee which is required by section 453(e)(2) of the act to be charged the individuals described in paragraph (c)(3) of this section.

2. 45 CFR Chapter III, Part 302 is amended by revising § 302.70 to read as follows:

§ 302.70 Requests for information from the Federal Parent Locator Service (PLS).

The State plan shall provide as follows:

(a) All requests for information from the Federal PLS will originate from the central office of the State PLS, and the other offices, if any, designated pursuant to § 302.35(d).

(b) All requests will be on such forms and in such format as may be prescribed by the Office.

(c) Each request to the Federal PLS must contain the following information:

(1) The absent parent's name;

(2) The absent parent's social security account number (SSN). If the SSN is unknown, the IV-D agency must make every reasonable effort to ascertain the individual's SSN before submitting the request to the Federal PLS;

(3) Whether the individual is or has been a member of the armed services, if known;

(4) Whether the individual is receiving, or has received, any Federal compensation or benefits, if known; and,

(5) Any other information prescribed by the Office.

(d) All requests to the Federal PLS will be accompanied by a statement, signed by the head of the IV-D agency or his designee, attesting to the following:

(1) That request is being made to locate an individual for the purpose of establishing paternity or securing child support, and for no other purpose.

(2) That any information obtained through the Federal PLS shall be treated as confidential and shall be safeguarded pursuant to the requirements of § 302.18 of this chapter.

(3) That the IV-D agency will take protective measures to safeguard personal information transmitted and received through use of the Federal PLS.

(e) The State PLS shall collect such fee as the Office may from time to time establish for each request to the Federal PLS pursuant to § 302.35(c)(3). This fee will be collected by the Office from the IV-D agency by an offset of the quarterly awards.

3. 45 CFR Chapter III, Part 303 is amended by revising § 303.3 to read as follows:

§ 303.3 Location of absent parents.

For all cases referred to the IV-D agency pursuant to § 235.70 of this title or applying under § 302.33 of this chapter, the IV-D agency must attempt to locate all absent parents when their location is unknown. Under this standard, the IV-D agency must:

(a) Use appropriate local locate sources such as officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services (whether such individuals are employed by the State or a political subdivision), relatives and friends of the absent parent, current or past employers, the local telephone company, the U.S. Postal Service, financial references, unions, fraternal organizations, and police, parole, and probation records if appropriate;

(b) Establish working relationships with all appropriate local agencies in order to utilize local locate resources effectively;

(c) Use appropriate State agencies and departments, which as a minimum must include those departments which maintain records of public assistance, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records;

(d) Utilize all appropriate State and local locate sources within 60 days of referral of the case pursuant to § 235.70 of this title or application under § 302.33;

(e) Transmit appropriate cases to the Federal PLS to locate absent parents;

(f) Refer cases to the IV-D agency of any other State if there is reasonable belief that the absent parent may be present in such State. The IV-D agency of such other State shall follow the procedures prescribed in paragraphs (a)-(d) of this section for such cases.

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

(Catalog of Federal Domestic Assistance Program No. 13679, Child Support Enforcement Program.)

NOTE.—The Office of Child Support Enforcement has determined that this document does not require preparation of a regulatory analysis as required by Executive Order 12044 since this is not a significant regulation.

Dated: May 23, 1978.

LOUIS B. HAYS,
Acting Director, Office of Child Support Enforcement.

Dated: July 19, 1978.

JOSEPH A. CALIFANO, Jr.
Secretary.

[FR Doc. 78-21071 Filed 7-28-78; 8:45 am]

[4110-07]

PART 304—FEDERAL FINANCIAL PARTICIPATION

Federal Financial Participation in the Cost of Cooperative Agreements with Courts and Law Enforcement Officials

AGENCY: Office of Child Support Enforcement.

ACTION: Final rule.

SUMMARY: This regulation will, for the first time, provide Federal financial participation (FFP) for the non-salary costs of child support enforcement activities performed under title IV-D of the Social security Act by courts or by agencies that are part of a State or local court system. The Office of Child Support Enforcement has determined that Federal funding for these costs, at this time, is necessary to insure an effective child support enforcement program. This change will make additional Federal resources available to establish and enforce support obligations and account for child support collections.

DATES: Effective date: July 31, 1978. Comment period: Consideration will be given to written comments or suggestions received on or before September 29, 1978. Agencies and organizations are requested to submit their comments in duplicate.

ADDRESS: Address comments to: Acting Director, Office of Child Support Enforcement, Department of Health, Education, and Welfare, P.O. Box 23526, Washington, D.C. 20024. Comments will be available for public inspection in room 2323 of the Department's offices at 330 C Street SW., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 a.m. to 5 p.m., telephone 202-472-4510.

FOR FURTHER INFORMATION CONTACT:

John M. Sacchetti, 202-472-4510.

SUPPLEMENTARY INFORMATION: Final regulations implementing part D of title IV of the Social Security Act were published in the FEDERAL REGISTER on June 26, 1975. With respect to costs incurred by courts these regula-

tions provided Federal reimbursement only for the costs of compensating individuals employed by courts (other than judges) who perform child support enforcement activities defined in 45 CFR 304.20(b)(2)-(8). As a result, no Federal funding was available to pay for any other court related costs, such as office space, furniture, supplies, computers, etc.

Before the enactment of the IV-D program, the Department of Health, Education, and Welfare would not pay for any of the costs of State and local judicial systems as part of the public assistance programs. Judicial activity was viewed as an essential aspect of State government, the purpose of which was to apply State law in settling disputes relating to that law. The costs of the judiciary were paid solely with State or local funds.

Enactment of title IV-D prompted a partial change in the Department's traditional policy. Clearly some Federal funding of federally required activities was warranted, and therefore certain salary expenses were allowed. This policy of reimbursing only salary expenses was consistent with the Department's responsibilities under the applicable statutes, Sections 454 and 455 of the Social Security Act (42 U.S.C. Sections 654, 655). These statutes authorize Federal financial participation for expenses incurred in cooperative arrangements with appropriate courts and law enforcement officials entered into to assist in the administration of the State's plan for the child support enforcement program. These cooperative arrangements may include financial arrangements with the courts and law enforcement officials "* * * in order to assure optimum results under such program * * *". At the time the program started the Department did not know how extensively courts or agencies administered by courts would become involved in the child support enforcement program. It was believed that Federal financial participation in salaries of court personnel (other than judges) would be sufficient to "assure optimum results".

However, based on experience in administering the program over the last three years, the Office of Child Support Enforcement (the Office) has determined that courts or agencies administered by courts have become extensively involved in providing child support enforcement services, but that they frequently lack adequate resources to operate as effectively as possible. Therefore, it now appears that to make Federal funding available for the administrative costs (in addition to the compensation of individuals) incurred by courts that are providing IV-D services will promote better results in the child support enforcement program. The costs now eligible for FFP include the cost of office space, furniture, supplies, computers, etc., to the extent that these costs are necessary for the proper and efficient administration of the child support enforcement program. Since the funding of these costs was borne entirely by State or local court systems in the past, this amendment should make additional resources available to provide increased support enforcement services.

The amendments to the regulation do not remove the prohibition against Federal funding for judges' salaries or for other costs incurred in making judicial determinations. This restriction continues because of the Department's belief that it is not sound public policy to involve the Federal Government in financing State judicial determinations. If the Department were to finance the judicial costs the payments could only be made through the State's child support enforcement agency. This agency, or one under contract with it, would be bringing cases before the court to enforce child support obligations. Since this would result in one of the parties to litigation serving as a source of funding for the decisionmaker, it could raise questions concerning the impartiality of the judicial process.

The costs to which this prohibition applies include any costs that support the activities of a judge both in and out of the court room (office space, furniture, travel, etc.), cost related to the maintenance of the court room (space, furniture, etc.), costs of compensating court room personnel in performing judicial activities, and other costs incurred in supporting the judicial activities of court room personnel.

The Office is concerned that providing Federal funding for the administrative costs of courts increases the risk of paying for the same service or activity twice. For example, a State IV-D agency may have a computer system that it uses to account for payments from absent parents. A court that is under a cooperative agrement may want to develop its own computer operation to account for these same payments. To the extent that the court's computer system duplicates the functions performed by the State computer system, the Federal Government would be paying for the same activity twice. Duplicate payment for the same activity is prohibited by 45 CFR 304.20 (a)(1) and (b). These provisions specify that Federal reimbursement is only available for expenditures that the Office determines are necessary expeditures properly attributable to the IV-D program. Expenditures made to perform duplicate program activities are not expenditures that are necessary under the program.

Since Federal payment for duplicate expenditures is prohibited with respect to all program costs, the Office does not believe that a specific prohibition against Federal participation in duplicate expenditures is needed in 45 CFR 304.21. Any costs incurred by courts in performing activities that duplicate other IV-D program activities will be disallowed.

These amendments to the regulations are being published in final form. The Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, if the Department for good cause finds that the notice and public procedure provisions are unnecessary or contrary to the public interest, it may dispense with these provisions if it incorporates a brief statement of the reasons therefore. The Department finds that there is good cause to dispense with public notice and comment with respect to these changes. These amendments will make additional resources available to collect child support. They do not effect the substantive rights of individuals involved in the IV-D program. They make no major changes in the procedures or methods of operation of the child support enforcement program, but rather by providing FFP for certain administrative costs they merely seek to improve the efficiency and effectiveness of the child support enforcement program. These changes will help enlarge the capabilities of the child support enforcement program so it can be more readily available to individuals in need of them. Prompt enactment of these changes is necessary to enable the Department to enlarge the scope of the child support enforcement program and to respond to increased activity at the State level. These changes have long been advocated by the affected parties.

5 U.S.C. 553(d)(1) allows the Department to provide that a rule shall be effective upon publication where the rule relieves a restriction. These changes liberalize a restriction on the availability of Federal funding. They do not impose new responsibilities or requirements on anyone. For these reasons the regulations shall be effective upon publication. As noted above, however, the Department will accept comments from interested individuals after publication of these changes in the FEDERAL REGISTER and publish further changes if warranted by the comments.

1. 45 CFR Chapter III, Part 304 is amended by revising § 304.21 to read as follows:

§ 304.21 Federal financial participation in the costs of cooperative agreements with courts and law enforcement officials.

(a) Federal financial participation at the 75 percent rate is available in the

costs of cooperative agreements with appropriate courts and law enforcement officials pursuant to § 302.34 of this chapter. "Law-enforcement officials" means district attorneys, attorneys general, and similar public attorneys and prosecutors and their staff. Federal financial participation is available for costs incurred consistent with the agreement as of the first day of a calendar quarter if the agreement is executed prior to the end of the quarter. When performed pursuant to written agreement, cost of the following activities are subject to reimbursement:

(1) Subject to the conditions of § 304.20(a) of this chapter, the activities, including administration of such activities, specified in § 304.20(b)(2)–(8) of this chapter;

(2) Reasonable and essential short term training of court and law enforcement staff assigned on a full or part time basis to child support enforcement functions pursuant to the cooperative agreement.

(b) Federal financial participation is not available for:

(1) Service of process and court filing fees unless the court or the law enforcement agency would normally be required to pay the cost of such fees;

(2) Compensation (salaries and fringe benefits) of judges.

(3) Any costs incurred by a court in making judicial determinations.

(c) If an individual performs activities eligible for FFP under this section and also spends time performing activities as part of judicial determinations or other activities which are not eligible for FFP, the time spent by this individual performing activities eligible for FFP must be accounted for in accordance with instructions issued by OCSE.

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

(Catalog of Federal Domestic Assistance Program No. 13679, Child Support Enforcement Program.)

NOTE.—The Office of Child Support Enforcement has determined that this document does not require preparation of a regulatory analysis as required by Executive Order 12044 since this is not a significant regulation.

Dated: July 10, 1978.

DON WORTMAN,
Acting Director, Office of Child Support Enforcement.

Dated: July 19, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-21070 Filed 7-28-78; 8:45 am]

[6712-01]

Title 47—Telecommunications

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-485]

PART 1—PRACTICE AND PROCEDURE

Providing for the Use of Speakerphones in Hearing Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the FCC regulations to simplify use of the speakerphone at prehearing conferences, and to permit the limited use of the speakerphone in taking testimony from witnesses in hearing proceedings. The action is taken to lessen the burden and expense on those persons who participate in Commission proceedings, and the use of the speakerphone may also expedite the conduct of hearings.

EFFECTIVE DATE: Upon installation of speakerphone facilities in the hearing rooms.

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

FOR FURTHER INFORMATION CONTACT:

Upton Guthery, Office of General Counsel, 202-632-6444.

SUPPLEMENTARY INFORMATION:

Adopted: July 12, 1978.

Released: July 24, 1978.

By the Commission: Commissioner Quello concurring in the result.

Order. In the matter of amendment of part 1, rules of practice and procedure to provide for the use of speakerphones in hearing proceedings.

1. For several years now, and with some success, the Commission has permitted the use of a speakerphone as a means of attendance by counsel at prehearing conferences. We have now decided to simplify use of the speakerphone at prehearing conferences and to permit its limited use in taking the testimony of witnesses in hearing proceedings. First: We will arrange for the installation of speakerphone facilities in the hearing rooms, thus eliminating the present burden on parties of arranging and paying for the installation of a speakerphone on each occasion of its use (see present § 1.248(f)). Secondly: With the consent of all parties and the approval of the presiding officer, and subject to ground rules agreed upon by the parties, use of the speakerphone will be permitted in taking the testimony of witnesses.

2. These changes should reduce the burden and expense of participation in Commission proceedings for parties, counsel, and witnesses. They may also expedite the conduct of hearing proceedings by facilitating the scheduling of conferences and hearing sessions.

3. Authority for the amendments set out below is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Because the amendments are procedural in nature, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable. The amendments will be effective upon the installation of speakerphone facilities in the hearing rooms.

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

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

1. Section 1.248(f) is revised to read as follows:

§ 1.248 Prehearing conferences; hearing conferences.

* * * * *

(f) The presiding officer may, upon the written request of a party or parties, approve the use of a speakerphone as a means of attendance at a prehearing conference if such use is found to conduce to the proper dispatch of business and the ends of justice.

2. Section 1.364 is added, to read as follows:

§ 1.364 Testimony by speakerphone.

(a) If all parties to the proceeding consent and the presiding officer approves, the testimony of a witness may be taken by speakerphone.

(b) Documents used by the witness shall be made available to counsel by the party calling the witness in advance of the speakerphone testimony. The taking of testimony by speakerphone shall be subject to such other ground rules as the parties may agree upon.

[FR Doc. 78-21105 Filed 7-28-78; 8:45 am]

proposed rules

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

[1620-01]

COST ACCOUNTING STANDARDS BOARD

[4 CFR 331, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414 and 415]

CONTRACT COVERAGE AND MISCELLANEOUS AMENDMENTS

Proposed Rule

AGENCY: Cost Accounting Standards Board.

ACTION: Proposed rule.

SUMMARY: The proposed rule, if adopted, will exempt from certain individual Standards contracts and subcontracts with foreign concerns provided an authorized official of the Department of Defense or other relevant Federal agency determines that application of the Standard to such contracts or subcontracts is inappropriate.

DATE: Comments on the proposed amendments must be received by August 31, 1978.

ADDRESS: Arthur Schoenhaut, Executive Secretary, Cost Accounting Standards Board, 441 G Street NW., Washington, D.C. 20548.

FOR FURTHER INFORMATION CONTACT:

Noah Minkin, General Counsel, Cost Accounting Standards Board, 441 G Street NW., Washington, D.C. 20548, 202-275-5940.

SUPPLEMENTARY INFORMATION: Pub. L. 91-379 authorizes the Cost Accounting Standards Board to exempt from its Standards, rules and regulations classes or categories of defense contractors or subcontractors under contracts negotiated in connection with national defense procurements. In furtherance of this authority the Board has been reviewing various issues concerning the application of its Standards, rules and regulations to foreign concerns. The review discloses that the cost accounting practices which foreign concerns follow vary substantially from country to country and contractor to contractor. The review also indicates that because of the requirements of individual countries, the application of some Standards may cause significant administrative problems. For these reasons and based upon the entire review, the Board believes that it may be appropriate to exempt some contracts performed by foreign concerns from some Cost Accounting Standards. The Board therefore proposes to establish a limited exemption for foreign concerns for each Standard other than Cost Accounting Standards 401 and 402 entitled Consistency in Estimating, Accumulating and Reporting Costs and Consistency in Allocating Costs Incurred for the Same Purpose, respectively. Disclosure Statement requirements will not be affected by this proposal. The exemption will apply only to contracts and subcontracts which are specifically covered by a determination that there are facts and reasons which render application of a Standard or group of Standards to such contracts and subcontracts inappropriate. Determination will be made by designated officials of relevant Federal agencies.

All written submissions made pursuant to this notice will be available for public inspection at the Board's offices during regular business hours.

It is proposed to amend 4 CFR Parts 331 and 403 through 415 to read as follows:

PART 331—CONTRACT COVERAGE

§ 330.30 [Amended]

1. Change § 331.30(c)(2) to § 331.30(c)(2)(i).

2. Add § 331.30(c)(2)(ii) as follows:

(c) * * *

(2) * * *

(ii) Subject to the requirements and restrictions in this paragraph any official designated in § 331.30(c)(2)(i) may determine that application of a particular Standard or group of Standards to national defense contracts or subcontracts with foreign concerns is inappropriate. The determination must be in writing and must include a statement of the nature of the procurement, its estimated dollar value, the identity of the foreign concerns, the place of performance and the facts and reasons which support the conclusion that application of the particular Standard or group of Standards has been determined to be inappropriate. Within 10 days after making any such determination a copy shall be transmitted to the Executive Secretary of the Cost Accounting Standards Board. The determination may not apply to Cost Accounting Standard 401, Consistency in Estimating, Accumulating and Reporting Costs or Cost Accounting Standard 402, Consistency in Allocating Costs Incurred for the Same Purpose.

PART 403—ALLOCATION OF HOME OFFICE EXPENSES TO SEGMENTS

§ 403.70 [Amended]

Add § 403.70(c) as follows:

* * * * *

(c) This Standard shall not apply to any contract or subcontract to be performed outside the United States by a foreign concern if, pursuant to § 331.30(c)(2)(ii) of the Board's regulations it is determined that application of this Standard to such contract or subcontract is inappropriate.

PART 404—CAPITALIZATION OF TANGIBLE ASSETS

Delete § 404.70 Exemptions and add § 404.70 Exemptions as follows:

§ 404.70 Exemptions.

This Standard shall not apply to any contract or subcontract to be performed outside the United States by a foreign concern if, pursuant to § 331.30(c)(2)(ii) of the Board's regulations it is determined that application of this Standard to such contract or subcontract is inappropriate.

PART 405—ACCOUNTING FOR UNALLOWABLE COSTS

Delete § 405.70 Exemptions and add § 405.70 Exemptions as follows:

§ 405.70 Exemptions.

This Standard shall not apply to any contract or subcontract to be performed outside the United States by a foreign concern if, pursuant to § 331.30(c)(2)(ii) of the Board's regulations it is determined that application of this Standard to such contract or subcontract is inappropriate.

PART 406—COST ACCOUNTING PERIOD

Delete § 406.70 Exemptions and add § 406.70 Exemptions as follows:

§ 406.70 Exemptions.

This Standard shall not apply to any contract or subcontract to be performed outside the United States by a

foreign concern if, pursuant to § 331.30(c)(2)(ii) of the Board's regulations it is determined that application of this Standard to such contract or subcontract is inappropriate.

PART 407—USE OF STANDARD COSTS FOR DIRECT MATERIAL AND DIRECT LABOR

Delete § 407.70 Exemptions and add § 407.70 Exemptions as follows:

§ 407.70 Exemptions.

This Standard shall not apply to any contract or subcontract to be performed outside the United States by a foreign concern if, pursuant to § 331.30(c)(2)(ii) of the Board's regulations it is determined that application of this Standard to such contract or subcontract is inappropriate.

PART 408—ACCOUNTING FOR COSTS OF COMPENSATED PERSONAL ABSENCE

§ 408.70 [Amended]

1. Change § 408.70 to § 408.70(a).
2. Add § 408.70(b) as follows.

* * * * *

(b) This Standard shall not apply to any contract or subcontract to be performed outside the United States by a foreign concern if, pursuant to § 331.30(c)(2)(ii) of the Board's regulations it is determined that application of this Standard to such contract or subcontract is inappropriate.

PART 409—DEPRECIATION OF TANGIBLE CAPITAL ASSETS

§ 409.70 [Amended]

1. Change § 409.70 to § 409.70(a).
2. Add § 409.70(b) as follows.

* * * * *

(b) This Standard shall not apply to any contract or subcontract to be performed outside the United States by a foreign concern if, pursuant to § 331.30(c)(2)(ii) of the Board's regulations it is determined that application of this Standard to such contract or subcontract is inappropriate.

PART 410—ALLOCATION OF BUSINESS UNIT GENERAL AND ADMINISTRATIVE EXPENSES TO FINAL COST OBJECTIVES

§ 410.70 [Amended]

1. Change § 410.70 to § 410.70(a).
2. Add § 410.70(b).

* * * * *

(c) This Standard shall not apply to any contract or subcontract to be performed outside the United States by a foreign concern if, pursuant to § 331.30(c)(2)(ii) of the Board's regulations it is determined that application of this Standard to such contract or subcontract is inappropriate.

PART 411—ACCOUNTING FOR ACQUISITION COSTS OF MATERIAL

Delete § 411.70 Exemptions and add § 411.70 Exemptions as follows:

§ 411.70 Exemptions.

This Standard shall not apply to any contract or subcontract to be performed outside the United States by a foreign concern if, pursuant to § 331.30(c)(2)(ii) of the Board's regulations it is determined that application of this Standard to such contract or subcontract is inappropriate.

PART 412—COMPOSITION AND MEASUREMENT OF PENSION COST

Delete § 412.70 Exemptions and add § 412.70 Exemptions as follows:

§ 412.70 Exemptions.

This Standard shall not apply to any contract or subcontract to be performed outside the United States by a foreign concern if, pursuant to § 331.30(c)(2)(ii) of the Board's regulations it is determined that application of this Standard to such contract or subcontract is inappropriate.

PART 413—ADJUSTMENT AND ALLOCATION OF PENSION COST

Delete § 413.70 Exemptions and add § 413.70 Exemptions as follows:

§ 413.70 Exemptions.

This Standard shall not apply to any contract or subcontract to be performed outside the United States by a foreign concern if, pursuant to § 331.30(c)(2)(ii) of the Board's regulations it is determined that application of this Standard to such contract or subcontract is inappropriate.

PART 414—COST OF MONEY AS AN ELEMENT OF COST OF FACILITIES CAPITAL

§ 414.70 [Amended].

* * * * *

Add § 414.70(c) as follows:

(c) This Standard shall not apply to any contract or subcontract to be performed outside the United States by a foreign concern if, pursuant to § 331.30(c)(2)(ii) of the Board's regulations it is determined that application of this Standard to such contract or subcontract is inappropriate.

PART 415—ACCOUNTING FOR THE COST OF DEFERRED COMPENSATION

Delete § 415.70 Exemptions and add § 415.70 Exemptions as follows:

§ 415.70 Exemptions.

This Standard shall not apply to any contract or subcontract to be performed outside the United States by a foreign concern if, pursuant to § 331.30(c)(2)(ii) of the Board's regulations it is determined that application of this Standard to such contract or subcontract is inappropriate.

(Sec. 719, Defense Production Act of 1950, as amended, Pub. L. 91-379, (50 U.S.C. App. 2168).)

ARTHUR SCHOENHAUT,
Executive Secretary.

[FR Doc. 78-21261 Filed 7-28-78; 8:45 am]

[3410-02]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7CFR Part 1071]

MILK IN THE NEOSHO VALLEY MARKETING AREA

Proposed Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of proposed termination of certain rules.

SUMMARY: This action gives notice to all interested parties that the Secretary is considering terminating the advertising and promotion program of the Neosho Valley Federal milk marketing order. Written comments are invited.

DATE: Comments are due August 4, 1978.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-4829.

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 termination of certain provisions of the order regulating the handling of milk in the Neosho Valley marketing area is being considered.

All persons who desire to submit written data, views, or arguments in

connection with the proposed termination should file the same with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than August 4, 1978. All documents filed should be in duplicate.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The provisions proposed to be terminated are as follows:

1. Section 1071.61(d).
2. In § 1071.71(a)(2)(ii), the words "plus 5 cents."
3. In § 1071.75(b), the words "plus 5 cents."
4. In § 1071.76(a)(4), the words "plus 5 cents" which appear in two places.
5. Sections 1071.110 through 1071.122.

A final decision to adopt a base-excess plan in the Neosho Valley order was issued July 23, 1978. The proposed amended order would, in part, change the provisions for computing blend prices to producers. If the proposed amended order containing a base-excess plan is approved by producers and placed into effect, termination of the advertising and promotion program would require deletion of the following proposed language, which would be effected at the time the proposed amended order is issued:

1. Section 1071.61(a)(4).
2. In § 1071.61(b)(1), the words "by deducting 5 cents."
3. In § 1071.75(b), the words "plus 5 cents."
4. The change in § 1071.121(b).

STATEMENT OF CONSIDERATION

The proposed action would terminate funding of the order's advertising and promotion program with respect to milk marketed on and after July 1, 1978. All other provisions of the program would be terminated September 30, 1978. This would facilitate the orderly termination of programs funded with moneys collected on milk marketed prior to July 1. It would also permit the market administrator to complete audits and any other steps necessary in terminating the program.

This program currently provides for an assessment of 5 cents per hundredweight against all marketings of milk pooled under the order. Funds so deducted, except for reserves withheld to cover refunds and administrative costs incurred by the market administrator, are turned over to and expended by an agency organized by producers and producers' cooperative associations. The producers' agency is responsible for the establishment of research, advertising and other programs designed to improve the domestic marketing and consumption of milk and its products.

The program is voluntary in that any producer not wishing to support the program may request a refund of the assessment made against his marketings of milk. Refunds are made on a quarterly basis.

Producer participation in the program, which until recently had been quite high, is now very limited. For the April–June 1978 quarter, about 57 percent of the producers contributed funds to the program. As of June 15, 1978, 12 producers out of a total of 19 on the market had requested refunds for the following July–September quarter. Thus, a participation rate of only 37 percent of the producers is now indicated for the third quarter.

On the basis of the indicated participation for the third quarter, it is clear that a major portion of the market's producers no longer support the program. Accordingly, consideration is being given to terminating the operation of the advertising and promotion program.

Signed at Washington, D.C., on July 26, 1978.

IRVING W. THOMAS,
Acting Deputy Administrator,
Marketing Program Operations.

[FR Doc. 78-21150 Filed 7-28-78 8:45 am]

[6720-01]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Parts 545, 555]

[78-428]

PROPOSED ALTERNATIVE MORTGAGE INSTRUMENTS

JULY 24, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed regulations.

SUMMARY: These proposed regulations would authorize a number of new type of mortgage instruments for use by Federal savings and loan associations: the variable rate mortgage, rollover mortgage, graduated payment mortgage, and reverse annuity mortgage. The Bank Board believes these instruments are necessary, in addition to the standard fixed-rate, fixed-payment mortgage, in order to meet the needs of homeowners during different phases of their financial life cycles.

COMMENTS MUST BE RECEIVED BY: October 1, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Nancy L. Feldman, Assistant General Counsel, Federal Home Loan Bank Board, 202-377-6443, at the above address.

SUPPLEMENTARY INFORMATION: Several months ago, the Bank Board published findings from its alternative mortgage instruments research study (AMIRS), a project begun in the spring of 1976 to provide a comprehensive and systematic review and analysis of a number of new mortgage instruments for use by Federal savings and loan associations. The findings indicated a present and growing need for alternative mortgage instruments (AMI's) as homeowners move through different phases of their financial life cycles. Although it is expected that the standard fixed-rate, level-payment mortgage will continue to be both popular and available, many borrowers want and need a choice of home finance arrangements. The Bank Board believes that availability of AMI's will permit homeowners to match their financing needs with appropriate mortgage instruments.

The proposed regulations cover four types of AMI's recommended for authorization in the Bank Board Study: The variable rate mortgage (VRM), graduated payment mortgage (GPM), rollover mortgage (ROM), and reverse annuity mortgage (RAM). All the consumer safeguards described in the Study have beeen retained. Two important new restrictions are: (1) Not more than half of an association's home-mortgage loans made and purchased in any calendar year could be variable-rate mortgages and rollovers, and (2) These instruments could only be made, purchased or participated in by an association upon a finding by the Bank Board that authority to offer these instruments is required to preserve competitive balance in the association's home State.

The first part of the regulations sets out general restrictions on all AMI's. A prospective borrower must be shown a comparison between the AMI of interest to him and a comparable standard mortgage, described in the proposal as a mortgage with a fixed interest rate, level payments, and full amortization; the comparison must indicate rates and other terms, and examples of payment schedules in a "worst case" situation. In addition, each borrower must be given the option of choosing a standard instrument, rather than an AMI. This does not mean that associations would have to offer a standard 95 percent loan, for example, to a borrower whose income level would not support the monthly payments but would qualify for a 95 percent graduated payment mortgage; such a borrower would receive a comparison of the GPM and a standard mortgage with comparable terms, to which s/he

could choose to convert later in the loan term when s/he met the underwriting criteria, and the present alternative option would be a standard mortgage for which s/he currently qualifies. Borrower payments on AMI's could not be changed more frequently than once a year, with annual payment increases limited to 7.5 percent; balloon-payment loans would have to provide for refinancing at then current rates when final payment was due.

The proposal provides for down-payment (loan-to-value ratio) requirements to be the same for AMI's and comparable standard mortgages, since AMI's are not new types of loans, but simply different, creative methods of payment for regular types of home loans. The Bank Board is aware that this may cause a problem in the case of GPM "negative amortization", where equity actually declines in the first years of the loan, and invites comment on whether lower-equity requirements and additional safeguards would be appropriate for such loans. It is noted in this regard that the proposal would allow use of certain pledged savings accounts in lieu of down payments for loans in excess of 80 percent of the property's value; this is currently prohibited by Bank Board regulation.

The next regulatory sections cover the individual kinds of AMI's. GMP's have scheduled payments which begin below, and rise higher than, those of a standard mortgage until a predetermined level is reached; the period and rate of increase and interest rate are fixed at loan origination. Limits would be prescribed for maximum periods and annual rates of increase from 7.5 percent for 5 years to 3 percent for 10 years. The borrower would be given a one-time right to convert to a standard mortgage, without penalty if conversion is at the same interest rate and for the same original term as the GPM.

VRM's change according to market interest rates; such rates would have to be tied to independent Bank Board-approved indices. The regulation would authorize Federal savings and loan associations to make, purchase, and participate in VRM's (as well as ROM's, discussed below) only if the Bank Board has determined that Federal associations require such authority to maintain competitive balance with State-chartered institutions located in their home State. Increases would be limited to an annual rate of one-half of 1 percent, and a maximum of 2.5 percent over the life of the loan. Decreased would be mandatory, increases optional with the lender, but increases not taken could be accumulated and taken later but not in excess of the permitted annual or overall increase. Decreases less than the minimum change (0.10 percent) would also be accumulated. Lenders would be required to notify borrowers 45 days in advance of a rate increase, at which time the borrower could (1) Prepay without penalty (unless the rate was then below the original rate), (2) Agree to make higher installment payments, or (3) Make the same payments by extending the loan to a maximum of 40 years from origination. In the event of a decrease, either borrower or lender could require reduction of any prior extension of the loan term to the extent of the reduced interest rate.

An example of an index the Bank Board would consider approving for use in connection with VRM's and ROM's is one which the Federal Home Loan Mortgage Corporation has used; it is based on a combination of (1) the average market yield of outstanding U.S. Treasury securities with remaining maturities of 3 to 5 years (published by the Federal Reserve Board), and (2) the Federal Reserve Board Seasoned Corporate Bond Yield series (based on Moody's Investment Service series). The Bank Board believes this index has demonstrated flexibility in moving with market rates of interest, and it invites public comment on the index's suitability.

ROM's would have long-term maturities subject to mandatory refinancing at scheduled times with minimum 3-year intervals. Any adjustments of interest rate or other terms of the loan at refinancing would be without administrative fees to the borrower. The VRM interest-rate indexes, maximum percentages of rate increase, geographic and percentage-of-loans limitations would apply to ROM's.

RAM's, although named "reverse annuity" mortgages, do not require purchase of an insurance annuity, but rather refer generally to any type of instrument involving payments to homeowners based on accumulated equity. Since these plans may vary greatly and present a number of unique questions, the Bank Board's proposal does not attempt to limit their formulation, but rather would require submission and approval on a case-by-case basis.

The proposed regulations are keyed to the Bank Board's present Federal regulations section numbers, although a revision of these regulations has been proposed (43 FR 30730; July 17, 1978); it is contemplated that any final AMI regulations will be renumbered appropriately. The proposed alternative mortgage instrument regulations would be set forth directly following present § 545.6-1 pertaining to home loans, to which such regulations refer; the present text of § 545.6-2, referring to Charter E associations, is obsolete and would be deleted and the AMI-regulation text substituted.

Accordingly, the Federal Home Loan Bank Board proposes to amend its rules and regulations for the Federal Savings and Loan System, 12 CFR, parts 545 and 555, by adding a new subparagraph (a)(8) to § 545.6-1 thereof, deleting the text of § 545.6-2 thereof and adding a new text thereto, and revoking § 555.4 thereof, to read as set forth below.

PART 545—OPERATIONS

1. Amend § 545.6-1 by adding a new subparagraph (a)(8), as follows:

§ 545.6-1 Lending powers.

* * * * *

(a) *Homes or combinations of homes and business property.* * * *

(8) *Real estate loans with pledged savings accounts as additional security.*

Loans may be made under paragraphs (a) (4) and (5) of this section in excess of the maximum dollar, percentage-of-value, or percentage-of-purchase-price limitations thereof, with such excess secured by savings accounts, subject to the following restrictions:

(i) The loan shall not exceed the lesser of purchase price or value of the real estate;

(ii) The savings account shall consist only of funds belonging to the borrower, members of his family, or his employer;

(iii) The association shall fully disclose to the prospective borrower the difference (including interest, private-mortgage-insurance costs, and equity interest) between a loan secured by real estate and savings and a loan secured by real estate alone; and

(iv) The loan shall comply with § 545.6-2 as it relates to graduated payment mortgages.

2. Delete the text of § 545.6-2 and add a new text as follows:

§ 545.6-2 Alternative mortgage instruments.

(a) *General.* Associations making loans pursuant to § 545.6-1(a) of this part may use the alternative mortgage instruments described in this section, which allow certain payment and other provisions different from those required elsewhere in this subchapter, subject to the following general restrictions (and specific restrictions where applicable):

(1) Payment amounts may not be changed more than once a year;

(2) Payments in any year shall be no more than 7.5 percent higher than the payments in the previous year, which amount shall be cumulative for adjustment periods in excess of a year;

(3) Balloon-payment loans (requiring a final payment more than twice as large as any preceding payment) must provide for refinancing at market rates current at the time final payment is due;

(4) Prospective GPM, VRM, and ROM borrowers shall receive:

(i) A side-by-side comparison of rates and other terms of the particular alternative mortgage instrument offered and a comparable standard mortgage instrument (with a fixed interest rate, level payments, and full amortization);

(ii) Examples of payment schedules required by the alternative mortgage instrument and comparable standard mortgage instrument, the former indicating (*a*) every maximum increase at the time it could first occur, and (*b*) the highest possible payment during the loan term; and

(iii) The option to elect a standard instrument; and

(5) Loan-to-value limitations under § 545.6-1(a) of this part shall be complied with throughout the loan term.

(b) *Graduated-payment mortgage.* (1) *Definition.* This instrument's scheduled payments begin at a level lower than that of a comparable standard mortgage instrument, and gradually rise until a predetermined point is reached, after which they remain constant; the graduation period and rate of increase and the interest rate are fixed at loan origination.

(2) *Graduation period and rate.* Graduation periods are limited to 10 years, with maximum rates of increase in mortgage payments as follows:

(i) 7.5 percent annually for a gradution period of 5 or fewer years;

(ii) 6.5 percent annually for 6 years;

(iii) 5.5 percent annually for 7 years;

(iv) 4.5 percent annually for 8 years;

(v) 3.5 percent annually for 9 years; and

(vi) 3 percent annually for 10 years.

(3) *Borrower option to convert.* Borrowers under this plan shall be given at least a one-time right to convert, at a time chosen by the borrower, to a standard mortgage instrument. No assessment of penalties or fees shall be made if the borrower chooses to convert at the interest rate and outstanding maturity of the graduated-payment mortgage.

(4) Interest capitalization resulting from any negative amortization of these instruments does not deny the loan first-lien status under § 541.9 of this subchapter; such debt is considered to be contracted for as future advances at the time of loan origination.

(c) *Variable-rate mortgage.*—(1) *Definition.* The interest rate of this instrument is tied to a reference index which reflects changes in market interest rates; thus, actual future payments are not known at the time of loan origination.

(2) *Geographic limitation.* A Federal association may make, purchase, or participate in variable rate mortgage loans on real estate located in its home State if the Board has determined that Federal associations require authority to invest in such loans to maintain competitive balance with State-chartered institutions located in such State; associations authorized to make these investments in their home States may also make them in other States where the Board has made similar determinations. Federal associations investing in variable rate mortgage loans shall comply with this section and any other applicable provision of this chapter.

(3) *Index.* The Board will publish approved indexes which:

(i) have proven reliability in moving with market interest rates,

(ii) are beyond the influence of the association using it,

(iii) can be clearly explained in simple terms to prospective borrowers with the aid of publicly available information, and

(iv) are substantially free from manipulation by peculiar economic or technical factors.

(4) *Interest-rate changes.*

(i) *Frequency:* Changes (up or down) may take place only on the loan anniversary date.

(ii) *Maximum changes:* The maximum amount of rate change (up or down) shall be one-half of 1 percent (0.5 percent) a year, with a maximum increase of 2.5 percent over the life of the loan. Downward changes must be made, but increases are at the lender's option. Changes in the index rate which are not taken (either at lender's option in the case of increases or because they are too small or too large, i.e. less than 0.10 or over 0.5 percent in a given year) may be accumulated by the lender in the case of increases, and must be accumulated in the case of decreases, and taken at a later time (but never more than 0.5 percent per year), or used to offset other changes.

(*a*) *Variation:* If the instrument provides for rate adjustments at periods exceeding 1 year, the maximum change shall still not exceed a 0.5 percent cumulative annual rate, for example 1 percent every 2 years.

(iii) *Minimum changes.* The smallest change (up or down) shall be one-tenth percent (0.10 percent). Changes beyond that amount may be made in any increment (up to 0.5 percent) where the lender makes available payment tables so borrowers may review the calculations.

(iv) *Actions relating to rate increases.* Lenders shall give borrowers written notice 45 days in advance of a rate increase. Upon such notification, borrowers shall have the following options:

(*a*) Do nothing; payments will be adjusted upward to reflect higher interest rate;

(*b*) Request that payments remain the same and loan maturity be extended to a maximum of 40 years from origination data; or

(*c*) Prepay the loan, either in full or in part, without penalty if the current rate is above the initial loan rate.

(v) *Actions relating to rate decreases.* Either the lender or borrower may require reduction of the loan term to original maturity in the event of a decrease to the original rate; partial term reductions may be required upon partial rate decreases.

(d) *Rollover mortgage.*—(1) *Definition.* This instrument is a long-term loan which is refinanced at regularly-scheduled times.

(2) *Refinancing requirements.* At each scheduled adjustment time, refinancing must be made available for the amount of the outstanding loan for the remaining term. Any adjustments shall be made without administrative charges to the borrower, and any change other than of interest rate shall require comparative disclosure in accordance with paragraph (a)(4) of this section.

(3) Scheduled adjustments shall be spaced at least 3 years apart.

(4) *Index.* Interest-rate adjustments shall be tied to an index which complies with paragraph (c)(3) of this section.

(5) *Interest-rate changes.* The maximum amount of rate change shall reflect a cumulative annual rate not over one-half of one percent (0.5 percent), with a maximum increase of 2.5 percent over the long-term life of the loan. Downward changes *must* be made at scheduled adjustment times, but increases are at the lender's options. Instruments shall be in compliance with paragraphs (c)(4) (iii), (iv), and (v), pertaining to minimum changes and actions relating to rate increases, and decreases.

(6) *Geographic limitation.* The geographic limitation applicable to VRM's applies also to rollover mortgages.

(e) *Reverse-annuity mortgage.*

(1) *Definition.* This instrument provides periodic payments to homeowners based on accumulated equity; the payments are made directly by the lender or through purchase of an annuity.

(2) *Application.* Proposed reverse-annuity-mortgage plans shall be submitted to the Board for approval.

(f) *Application of restrictions.* Where a restriction specific to a particular alternative mortgage instrument is more limiting than a general restriction pertaining to the same subject matter set forth in paragraph (a)

of this section, the specific restriction shall prevail.

(g) *Cumulative index-rate changes.* Wherever this section refers to accumulation of index-rate changes over a multi-year adjustment period, it means that the change made at adjustment time may not exceed the specified maximum annual percent multiplied by the number of years in the preceding multi-year period. The increse or decrease is not limited to the annual amount as a maximum in a given year; for example, a rollover mortgage with a 5-year adjustment period whose index rate remains the same for 4 years and increases 1.5 percent in the fifth year may be increased 1.5 percent at the end of that year (assuming total increases do not exceed the 2.5 percent maximum).

(h) *Percentage-of-loans limitation.* Not more than 50 percent of an association's home-mortgage loans by dollar amount made or purchased in any calendar year shall be in mortgages under paragraphs (c) and (d) of this section.

PART 555—BOARD RULINGS

§ 555.4 [Deleted]

3. Delete § 555.4.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. § 1464; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc. 78-21085 Filed 7-28-78; 8:45 am]

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 78-CE-19]

CONTROL ZONE, OLATHE, KANS. (JOHNSON COUNTY INDUSTRIAL AIRPORT)

Proposed Alteration

AGENCY: Federal aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to designate a control zone at Olathe, Kans., to serve the Johnson County Industrial Airport in order to provide additional controlled airspace protection for aircraft utilizing said airport.

DATE: Comments must be received on or before October 7, 1978.

ADDRESS: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Mo. 64106, telephone 816-374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Mo.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons 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 duplicate to the Operations, Procedures, and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Mo. 64106. All communications received on or before October 7, 1978, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in light of the comments received. All comments received 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 NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures, and Airspace Branch, 601 East 12th Street, Kansas City, Mo. 64106, or by calling 816-374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

THE PROPOSAL

The FAA is considering an amendment to subpart F, § 71.171 of the Federal Aviation Regulations (14 CFR 71.171) by designating a control zone at Olathe, Kans., to serve the Johnson County Industrial Airport. To enhance airport usage, an instrument landing system has been installed on and a non-Federal air traffic control tower commissioned at this airport, thereby satisfying the requirements for the establishment of a control zone. Control zones are designated around airports that have a sufficient amount of air traffic to warrant IFR controlled airspace protection to the surface within a specified radius of the airport and along the final approach course of the instrument approach procedures. Johnson County Industrial Airport meets this criteria. The intended effect of this action is to insure segregation of aircraft using instrument approach procedures under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR).

Accordingly, the Federal Aviation Administration proposes to amend subpart F, § 71.171 of the Federal Aviation Regulations (14 CFR 71.171) as republished on January 3, 1978 (43 FR 355), by adding the following new control zone:

OLATHE, KANS. (JOHNSON COUNTY INDUSTRIAL AIRPORT)

Within a 5 mile radius of the Johnson County Industrial Airport (latitude 38°49'47" N., longitude 94°53'29" W.), excluding that portion which overlies the Olathe, Kans. (Johnson County Executive Airport) control zone, and excluding that portion bounded on the north by latitude 38°49'30" N., and on the east by longitude 94°56'30" W. This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective date and time will thereafter be continuously published in the airmen's information manual.

(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)); § 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 July 21, 1978.

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

[FR Doc. 78-21081 Filed 7-28-78; 8:45 am]

[4910-13]

[14 CFR Part 71]

[Airspace Docket No. 78-SO-50]

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

Proposed Designation of Transition Area, Jamestown, Tenn.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: A public use standard instrument approach procedure, VOR/DME-A, is being developed for Jamestown Municipal Airport, Jamestown, Tenn., and additional controlled airspace is required for containment of IFR operations. This proposed rule will designate the Jamestown, Tenn., transition area by lowering the base of controlled airspace in the vicinity of Jamestown Municipal Airport from 1,200 to 700 feet above ground level.

DATE: Comments must be received on or before September 15, 1978.

ADDRESS: Send comments on the proposal to: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Ga. 30320.

FOR FURTHER INFORMATION CONTACT:

Ronald T. Niklasson, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320, telephone 404-763-7646.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Interested persons 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, Southern Region, Federal Aviation Administration, Attention: Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Ga. 30320. All communications received on or before September 15, 1978, will be considered before action is taken on the proposed amendment. 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 public contact with FAA personnel concerned with this rulemaking will be filed in the public regulatory docket.

AVAILABILITY OF NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling 202-426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

THE PROPOSAL

The FAA is considering an amendment to subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate the Jamestown, Tenn., 700-foot transition area. This action will provide additional controlled airspace to accommodate aircraft performing IFR operations. If the proposed designation is acceptable, the operating status of the Jamestown Municipal Airport will be changed from VFR to IFR.

DRAFTING INFORMATION

The principal authors of this document are Ronald T. Naklasson, Airspace and Procedures Branch, Air Traffic Division, and Eddie L. Thomas, Office of Regional Counsel.

THE PROPOSED AMENDMENT

Accordingly, the Federal Aviation Administration proposes to amend § 71.181 (43 FR 440), subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71) by adding the following:

JAMESTOWN, TENN.

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of Jamestown Municipal Airport (latitude 36°20'56" N., longitude 84°56'47" W.).

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

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 East Point, Ga., on July 19, 1978.

GEORGE R. LACAILLE,
Acting Director,
Southern Region.

[FR Doc. 78-21082 Filed 7-28-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 454]

ADVERTISING AND LABELING OF PROTEIN SUPPLEMENTS

Publication of Presiding Officer's Report Regarding Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Publication of presiding officer's report.

SUMMARY: On March 10, 1976, the presiding officer published in the FEDERAL REGISTER (41 FR 10232) final notice of the proposed trade regulation rulemaking proceeding. A modification of the notice was published in the FEDERAL REGISTER on June 4, 1976 (41 FR 22593). The presiding officer's report, required by the Commission's rules of practice for rulemaking (16 CFR 1.13(f)) consisting of his summary, findings, and conclusions with regard to the proposed rule and to those issues designated by him has been made public and placed on Public Record 215-49. A limited number of copies of the presiding officer's report have been printed for distribution. When complete, the staff's report on the rulemaking record and its recommendations to the Commission also will be made public and notice thereof published in the FEDERAL REGISTER. The presiding officer's report has not been reviewed or adopted by either the Bureau of Consumer Protection or the Commission itself and its publication should not be interpreted as reflecting the present views of the Commission or any individual Commissioner.

DATE: The 60-day period which the rules of practice for rulemaking (16 CFR 1.13(g)) provide for public comment on both the report by the presiding officer and the report of the staff will not commence until the staff's report has been made public and placed on the public record. Therefore, comment on the presiding officer's report alone would be considered premature at this time.

FOR FURTHER INFORMATION CONTACT:

Christopher W. Keller, Presiding Officer, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, 202-724-1037.

Issued: July 26, 1978.

CHRISTOPHER W. KELLER,
Presiding Officer.

[FR Doc. 78-21091 Filed 7-28-78; 8:45 am]

[4110-07]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 416]

[Reg. No. 16]

SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Definition of Resident

AGENCY: Social Security Administration, HEW.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Social Security Administration is withdrawing the proposed amendment to the regulations entitled "Definition of Resident" which was published on August 7, 1975 (40 FR 33222).

EFFECTIVE DATE: The withdrawal will be effective July 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. S. J. Weissman, Legal Assistant, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-7341.

SUPPLEMENTARY INFORMATION: Subsequent to the publication of the notice of proposed rulemaking the Secretary of Health, Education, and Welfare, implemented two major initiatives to improve the Department's regulations. (See FEDERAL REGISTER of November 18, 1977, 42 FR 59555.) The first, Operation Common Sense, is a 5-year effort to review and revise existing regulations. The second initiative, in part, is designed to insure that regulations are not written if they are not necessary. In light of the Secretary's initiatives, we have again reviewed the notice of proposed rulemaking (Definition of Resident) and determined that it is not necessary because the proposed amendment involves a very narrow and precise technical clarification of the term "resident of the United States" which more properly belongs in operating guides or other instructional materials.

Accordingly, the proposal published in the FEDERAL REGISTER on August 7, 1975 (40 FR 33222) entitled "Definition of Resident", is hereby withdrawn.

Dated: May 16, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: July 22, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

[FR Doc. 78-21074 Filed 7-28-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 65]

[FRL 933-5; Docket No. DCO-78-17]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Delayed Compliance Order for Fiberfine of Memphis, Memphis, Tenn.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue a delayed compliance order (DCO) to Fiberfine of Memphis. The DCO requires Fiberfine of Memphis to bring its rock wool cupola at Memphis, Tenn., into compliance with certain regulations contained in the federally approved Tennessee State Implementation Plan (SIP). Because Fiberfine of Memphis is unable to comply with these regulations at this time, the proposed DCO would establish an expeditious schedule requiring final compliance by August 15, 1978. Source compliance with the order would preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the order.

DATES: Written comments must be received on or before August 30, 1978, and requests for a public hearing must be received on or before August 15, 1978. All requests for a public hearing should be accompanied by a statement as to why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after 21 days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESS: Comments and requests for a public hearing should be submitted to Paul J. Traina, Director, Enforcement Division, EPA, Region IV, 345 Courtland Street, Atlanta, Ga. 30308. Material supporting the delayed compliance order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Bert Cole, Air Enforcement Branch, Enforcement Division, EPA, Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308, telephone number 404-881-4298.

SUPPLEMENTARY INFORMATION: Pursuant to section 113(a)(1) of the act, 42 U.S.C. 1857c-8, (now 42 U.S.C. 7413(a)(1)), on May 12, 1976, the Environmental Protection Agency issued a notice of violation to Fiberfine of Memphis of the finding that the rock wool cupola was operating in violation of sections 3-20 and 3-17 of the Memphis and Shelby County Air Pollution Control Code, dealing with the control of particulate emissions from process sources and regulation of visible emissions. These regulations are part of the federally approved State implementation plan.

On April 6, 1976, the city of Memphis had initiated a suit in general sessions court alleging Fiberfine's continued violation of the Memphis-Shelby County Code. The case was dismissed on July 9, 1976, based upon the fact that Fiberfine of Memphis was installing a venturi scrubber on the rock wool cupola which the company asserted would meet the Memphis and Shelby County regulations. After the installation of the scrubber, visible emissions continued to fall in the 75-100 percent opacity range. A stack test was ordered by the Memphis and Shelby County Health Department (MSCHD) in order to determine compliance. The source was tested in October 1976, but the test results were unacceptable, because EPA method 5 for the determination of particulate emissions from stationery sources was not the method used in the test. By June 1977, the scrubber had deteriorated to the extent that it was inoperable. On June 3, 1977, MSCHD requested that the USEPA take independent action.

This Agency believes that the proposed delayed compliance order satisfies the applicable requirements of section 113(d) of the act. The delayed compliance order requires final compliance with sections 3-20 and 3-17 by August 15, 1978, and the source has consented to its terms. The source has agreed to meet the delayed compliance order's remaining increments during the period of this informal rulemaking. If the delayed compliance order is issued, source compliance with its terms would preclude further EPA enforcement against this source for violation of the regulations covered by the delayed compliance order while the delayed compliance order is in effect. Enforcement against the source under the citizen suit provision of the act (section 304) would be similarly precluded. In the event of an emergency episode the delayed compliance order shall not act to preclude the source from complying with all of the provisions of section 303 of the act. Comments received by the date specified above will be considered in determining whether EPA should issue the delayed compliance order. Testimony

given at any public hearing concerning the delayed compliance order will also be considered. After the public comment period, and after EPA has reviewed any comments received in response to this notice, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the delayed compliance order in 40 CFR 65.

The provisions of 40 CFR 65 will be promulgated by EPA soon, and will contain the procedures for EPA's issuance, approval, or disapproval of a delayed compliance order under section 113(d) of the act. In addition, part 65 will contain sections listing or including orders issued, approved, or disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14876 (April 2, 1975) will be withdrawn and replaced by a notice promulgating these new regulations.

Dated: June 14, 1978.

JOHN C. WHITE,
Regional Administrator.

In consideration of the foregoing, it is proposed to amend 40 CFR chapter 1 as follows:

1. By revising § 65.470 to read as follows:

§ 65.470 Federal delayed compliance orders issued under section 113(d) (1), (3), and (4) of the act.

U.S. ENVIRONMENTAL PROTECTION AGENCY

In the matter of Fiberfine of Memphis, Memphis, Tenn. proceeding under § 113(d) CLEAN AIR ACT, as amended, Docket No. DCO-78-17.

DELAYED COMPLIANCE ORDER

This Delayed Compliance Order is issued this date pursuant to section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7413(d) (hereinafter referred to as the "act"). This Delayed Compliance Order contains a schedule for compliance and reporting requirements. Public notice, opportunity for a public hearing, and 30 days notice to the city of Memphis, Shelby County, and the State of Tennessee has been provided pursuant to section 113(d)(1) of the act.

FINDINGS

On May 12, 1976, Mr. Jack E. Ravan, then regional administrator, region IV, United States Environmental Protection Agency, pursuant to authority delegated to him by the Administrator, issued a notice to Fiberfine of Memphis (hereinafter referred to as "Fiberfine"), that the rock wool cupola was found to be in violation of the Air Pollution Control Code of the Memphis and Shelby County Health Department (MSCHD), air pollution control division, sections 3-20 and 3-17, dealing with the control of particulate emissions from process sources and regulation of visible emissions. Said violations have continued beyond the 30th day after receipt of the regional administrator's notification to Fiberfine.

After a thorough investigation and analysis of all relevant facts, including the fact that Fiberfine is unable to comply immediately and that installation of control equipment is necessary to facilitate compliance with the applicable Memphis and Shelby County air pollution regulations, EPA has determined that compliance in accordance with the schedule hereinafter set forth is reasonable and as expeditious as practicable.

ORDERED

I

ABATEMENT PROGRAM

That the attached appendix governing an abatement program is incorporated into and made a part of this Delayed Compliance Order for the control of particulate emissions and visible emissions at Fiberfine of Memphis located in Memphis, Tenn.

The appendix is designated as follows: Appendix A.—Rock Wool Cupola.

II

REPORTS—ADDRESSEES

That all submissions of source performance test results, reports and other items required by this Delayed Compliance Order be made to Paul J. Traina, Director, Enforcement Division, United States Environmental Protection Agency, 345 Courtland Street, Atlanta, Ga. 30308 (hereinafter referred to as the "Director") with copies to the Director, Tennessee Division of Air Pollution Control, 256 Capitol Hill Building, Nashville, Tennessee 37219 (hereinafter referred to as the "State director"), and the Director, Division of Pollution Control, Memphis and Shelby County Health Department, 814 Jefferson Avenue, Memphis, Tenn. 38105, (hereinafter referred to as the "local director").

III

PROGRESS REPORTS—MILESTONE CERTIFICATION

That Fiberfine submit, no later than five (5) days after the end of each month, commencing with July 1, 1978, a monthly progress report for the emission point specified in part I. These reports shall contain specific information on the progress toward each milestone in part I. If any delay is anticipated in meeting said milestones, Fiberfine shall immediately notify the Director in writing of the anticipated delay and reasons therefore. Notification to EPA of any anticipated delay shall not excuse the delay. In addition, Fiberfine shall submit, no later than five (5) days after the deadline for completing each milestone required by part I, certification to the Director, State director and local director whether such milestone has been met.

IV

NOTICE OF TESTS

That Fiberfine provide the Director, State director and local director, with twenty (20) days notice prior to the conducting of any performance tests as required by part I in order to afford an opportunity to evaluate the test procedure and to have an observer present at such testing.

V

MALFUNCTIONS AND BREAKDOWNS

That Fiberfine shall perform operation and maintenance practices on all sources as necessary to prevent breakdowns or malfunctions and to reduce emissions in excess of regulations to the maximum extent practicable. When emissions due to sudden and unforeseen malfunction of the affected facility exceed those which occur during the normal operation of the cupola for greater than four (4) hours, the owner or operator shall notify this office and the appropriate State or local air pollution control agency by telephone or telegram as promptly as possible, and in no event later than twelve (12) hours following the start of such malfunction, and shall cause writtern notice to be sent to the Director, the State director and the local director, no later than the end of the next working day following the start of such malfunction. Such notices shall specify the name of the affected facility, its location, the address and telephone number of the person responsible for the affected facility, the nature and cause of the malfunction, the date and time when such malfunction was first observed, the expected duration, and an estimate of the physical and chemical composition, rate, and concentration of the emission. Fiberfine shall remedy the malfunction or breakdown as soon as possible thereafter and shall take reasonable steps to reduce emissions during the malfunction or breakdown.

The Regional Administrator shall have the authority during a breakdown or malfunction to require Fiberfine to take specific steps to reduce emissions, including process equipment modifications and/or reductions, or termination if necessary. Within ten (10) days after the termination of a breakdown or malfunction requiring the above notification, the owner shall submit:

(1) The time the excess emission began and ended;

(2) The time of the beginning and end of the breakdown or malfunction which is asserted to be the cause of the excess emission;

(3) An estimate of the physical and chemical composition, rate, and concentration of emissions which occurred, and where continuous monitoring is required or is in effect (including visible emission detector), the strip charts with plots of all emissions monitored versus time, including a summary of the monitoring instruments' written record expressed in units of the applicable standard.

(4) An explanation and, where appropriate, an engineering analysis of the cause of the malfunction or breakdown;

(5) A description of those operating and/or maintenance procedures and practices in use prior to and during the occurrence, which were designed to prevent or minimize the extent and duration of the malfunction or breakdown;

(6) Any other steps taken to minimize the extent or duration of the malfunction or breakdown;

(7) An analysis of what steps will be taken to prevent of minimize similar occurrences in the future; and

(8) Such additional information as the Regional Administrator may require.

VI

INTERIM REQUIREMENTS

A. For the period during which this order is in effect, Fiberfine shall at all times comply with the following interim emission requirements for the rock wool cupola which represent the best practicable system of emission reduction:

1. That the rock wool cupola be operated no more than sixteen (16) hours per day 5 days per week.

2. That the blow chamber settling chamber be on line during operation of the plant.

If, at any time during the pendency of this order, the applicable interim emission requirements are violated, Fiberfine shall notify EPA of the violation as soon as possible, but not later than 24 hours after the start of the violation.

B. In addition to the foregoing interim emission requirements, for the period during which this order is in effect, Fiberfine shall take all necessary steps to comply with the applicable emission limitations contained in the State implementation plan insofar as Fiberfine is able, and shall take all necessary precautions to insure that its emissions will not cause or contribute to a violation or violations of national ambient air quality standards.

C. Furthermore, Fiberfine shall comply with any emergency requirements specified by EPA pursuant to section 303 of the Clean Air Act, 42 U.S.C. § 7603, to prevent an imminent and substantial endangerment to human health.

VII

COMPLIANCE RESPONSIBILITY

Nothing herein shall affect the responsibility of the source to comply with all applicable Federal, State, or local regulations.

VIII

ORDER TERMINATION

This delayed compliance order shall be terminated in accordance with section 113(d) (8) of the act if the Administrator determines on the record after notice and hearing, that an inability to comply with section 3-20 and 3-17 no longer exists.

IX

VIOLATION OF REQUIREMENTS

Violation of any requirement of this delayed compliance order shall result in one or more of the following actions:

(a) Enforcement of such requirement through the commencement of a civil action for injunctive relief and the assessment of civil penalties pursuant to section 113(b) of the act, or a criminal prosecution pursuant to section 113(c) of the act, or both;

(b) Revocation of this delayed compliance order, after notice and opportunity for a public hearing, and subsequent enforcement of sections 3-20 and 3-17, in accordance with sections 113 (b) and/or (c) of the act.

X

NONCOMPLIANCE PENALTY

Failure by Fiberfine to achieve and certify compliance by August 15, 1978, and maintain compliance thereafter, shall result in one or more of the actions identified in part IX(a). In addition, noncompliance beyond July 1, 1979, will subject Fiberfine to an administratively assessed noncompliance penalty pursuant to the requirements of section 120 of the act and any rules and regulations promulgated pursuant thereto, unless Fiberfine is exempted by section 120(a)(2) (B) or (C) of the act. In the event of noncompliance after July 1, 1979, Fiberfine will be formally notified of its noncompliance pursuant to section 120(b)(3) of the act.

XI

WAIVER OF RIGHTS

That by consenting to the terms and conditions of this delayed compliance order, Fiberfine waives any and all rights it may have to seek a stay of enforcement of this delayed compliance order in connection with any judicial review of the Tennessee State implementation plan or portion therof.

XII

EFFECTIVE DATE

This delayed compliance order will have full force and effect upon execution.

APPENDIX A

U.S. ENVIRONMENTAL PROTECTION AGENCY DELAYED COMPLIANCE ORDER [1]

Fiberfine of Memphis shall complete or have completed the following acts with respect to control of particulate and visible emissions for its rock wool cupola located in Memphis, Tenn., on or before the dates specified:

1. December 15, 1977—Compliance plans and equipment—completed.
2. January 1, 1978—Place purchase orders for pollution control equipment—completed.
3. February 15, 1978—Start construction of pollution control equipment—completed.
4. July 1, 1978—Complete construction of pollution control equipment.
5. August 15, 1978—Certify final compliance with the applicable regulations by an acceptable stack test.

CONSENT [2]

Fiberfine of Memphis acknowledges that the visible emissions and the particulate emissions from its rock wool cupola located at its facility in Memphis, Tenn., are in violation of the applicable emission limitations contained in the federally-approved Tennessee implementation plan. Fiberfine has reviewed this delayed compliance order, believes it to be a reasonable and expeditious means to achieve compliance with the applicable particulate emission limiting regulation and visible emission regulation as contained in the federally-approved Tennessee implementation plan, and consents to all of the requirements and terms of this delayed compliance order.

Fiberfine hereby represents that it has full corporate authority and the necessary corporate approval to enter into and perform in accordance with the terms and provisions of this delayed compliance order. The signatory below represents that he has the requisite corporate authority to execute this Consent on behalf of Fiberfine of Memphis.

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[1] This appendix is attached to and incorporated by reference into a delayed compliance order issued to Fiberfine of Memphis on ————, pursuant to section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

[2] This consent is hereby attached to and incorporated by reference into a delayed compliance order issued to Fiberfine of Memphis on ————, pursuant to section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

Dated: June 15, 1978.

BRUCE A. GRAYBEAL,
Fiberfine of Memphis.

[FR Doc. 78-21023 Filed 7-28-78; 8:45 am]

[6560-01]

[40 CFR Part 65]

[FRL 933-6; Docket No. DCO-78-10]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued by the Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection to Western Kentucky University

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Commonwealth of Kentucky to Western Kentucky University. The order requires Western Kentucky University to bring air emissions from its heating plant in Bowling Green, Ky., into compliance with certain regulations contained in the federally-approved Kentucky State Implementation Plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

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

ADDRESS: Comments should be submitted to Director, Enforcement Division, EPA, Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Richard S. DuBose, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308, telephone number, 404-881-4298.

SUPPLEMENTARY INFORMATION: Western Kentucky University operates a heating plant at its facility in Bowling Green, Ky. The order under consideration addresses emissions from indirect heat exchangers at the facility, which are subject to Kentucky Air Pollution Control Regulation KAR 401 3:060, Section 3. The regulation limits the emissions of particulate matter, and is part of the federally-approved Kentucky State Implementation Plan. The order requires final compliance with the regulation by July 1, 1979, through the implementation of the following schedule for the construction or installation of control equipment:

(1) Submit final control plan for achieving compliance with applicable regulations by May 30, 1978.

(2) Award contract for required control equipment by July 15, 1978.

(3) Commence on site construction or installation of control equipment by August 1, 1978.

(4) Complete construction or installation of control equipment by May 15, 1979.

(5) Submit proof of final compliance by July 1, 1979.

The source has consented to the terms of the order and has agreed to meet the order's increments during the period of this informal rulemaking. The source is required to submit monthly coal analysis data in order to monitor emissions prior to the demonstration of final compliance. As interim limits, the noncompliant indirect heat exchangers shall not emit more than 1.46 pounds of particulate matter per million BTU's of heat input and the oil fired indirect heat exchangers are to be used to the maximum extent feasible.

Because this order has been issued to a major source of particulate matter emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection. EPA considers the above referenced order to satisfy the requirements of the applicable regulations.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under section 113 of the act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Kentucky SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR part 65.

The provisions of 40 CFR part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval or orders under section 113(d) of the act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

(AUTHORITY: 42 U.S.C. 7413, 7601.)

Dated: June 14, 1978.

JOHN C. WHITE,
Regional Administrator,
Region IV.

[FR Doc. 78-21025 Filed 7-28-78; 8:45 am]

[6560-01]

[40 CFR Part 65]

[FRL 933-7; Docket No. DCO-78-8]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued by the Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection to East Kentucky Power Cooperative

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Commonwealth of Kentucky to the William C. Dale Power Station of East Kentucky Power Cooperative. The order requires the company to bring air emissions from its power plant in Ford, Ky., into compliance with certain regulations contained in the federally-approved Kentucky State Implementation Plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or certain suit provisions of the act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

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

ADDRESS: Comments should be submitted to Director, Enforcement Division, EPA, Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Richard S. DuBose, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308, telephone number, 404-881-4298.

SUPPLEMENTARY INFORMATION: East Kentucky Power Cooperative operates a power plant in Ford, Ky. The order under consideration addresses emissions from units 1 and 2 of the William C. Dale Power Station of East Kentucky Power Cooperative, which are subject to Kentucky Air Pollution Control Regulation KAR 401 3:060, Section 3(3)(b). The regulation limits the emissions of particulate matter, and is part of the federally-approved Kentucky State Implementation PLan. The order requires final compliance with the regulation by July 1, 1979, through the implementation of the following schedule for the construction or installation of control equipment:

(1) Submit final control plan for achieving compliance with particulate emissions by May 9, 1978.

(2) Award contract for required control equipment by May 9, 1978.

(3) Commence on-site construction or installation of control equipment by February 1, 1979.

(4) Complete construction or installation of control equipment by June 15, 1979.

(5) Submit proof of final compliance by July 1, 1979.

The source has consented to the terms of the order and has agreed to meet the order's increments during the period of this informal rulemaking. The source is required to submit monthly coal analysis data in order to monitor emissions prior to the demonstration of final compliance. As an interim control, units 1 and 2 are not to be operated except during times of

emergency power loads and during times that other units in the power system are down for maintenance. Operations under these emergency and maintenance exceptions are not to exceed a 35 percent capacity factor or 134,904 megawatt hours per calendar year for units 1 and 2 combined.

Because this order has been issued to a major source of particulate matter emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection. EPA considers the above referenced order to satisfy the requirements of the applicable regulations.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under section 113 of the act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Kentucky SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR part 65.

The provisions of 40 CFR part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval of orders under section 113(d) of the act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

(Authority: 42 U.S.C. 7413, 7601.)

Dated: June 14, 1978.

JOHN C. WHITE,
Regional Administrator
Region IV.

[FR Doc. 78-21026 Filed 7-28-78; 8:45 am]

[6560-01]

[40 CFR Part 180]

[PP 7E1999/P87; FRL 934-3]

PROPOSED TOLERANCE FOR THE PESTICIDE CHEMICAL METHIDATHION

Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities

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

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance by established for residues of the insecticide methidathion. The proposal was submitted by the Interregional Research Project No. 4. This amendment to the regulations would establish a maximum permissible level for residues of methidathion on safflower seed.

DATE: Comments must be received by Ausust 30, 1978.

ADDRESS COMMENTS TO: Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, room 401, East Tower, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (WH-567), Office of Pesticide Programs, EPA (202-755-2516).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Arizona, California, and Texas has submitted a pesticide petition (PP 7E1999) to the EPA. This petition requests that the Administrator propose that 40 CFR 180.298 be amended by the establishment of a tolerance for residues of the insecticide methidathion (*O,O*-dimethyl phosphorodithioate, *S*-ester with 4-(mercaptomethyl)-2-methoxy-Δ^{2}1,3,4-thioadizolin-5-one) in or on the raw agricultural commodity safflower seed at 0.5 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included 2-year rat and dog feeding studies with a no-observable-effect level (NOEL) of 4 ppm based on cholinesterase inhibition, a rhesus monkey 2-year feeding study with an NOEL of 5 ppm, a rat multigeneration teratology/reproduction study with an NOEL of 32 ppm, a mouse dominant lethal assay (negative for mutagenic effects at up to 45 milligrams (mg)/kilogram (kg) of body weight (bw)), a hen demyelination study (negative at 50 mg/kg bw), a rat teratology study (negative at 5 mg/kg bw/day, which was the highest level fed). The acceptable daily intake (ADI) is 0.020 mg/kg bw/day.

The nature of the residue is adequately understood, and an adequate analytical method (gas chromatography with flame photometric detector in the phosphorus mode) is available for enforcement purposes. Tolerances have previously been established for residues of methidathion on a variety of raw agricultural commodities at levels ranging from 6 ppm to 0.05 ppm.

A second 24-month oncogenic study and an additional hen demyelination study are lacking. However, based on the existing scientific data, the insignificance of safflower seed in the diet, and because the missing studies are underway, it is concluded that the proposed tolerance be established. Should any information develop to show adverse effects from the insecticide to man or the environment, the petitioner has agreed not to contest a revocation of the tolerance by this Agency.

There is no reasonable expectation of residues in eggs, meat, milk, or poultry as delineated in 40 CFR 180.6(a)(3).

The pesticide is considered useful for the purpose for which a tolerance is being established and it is concluded that the tolerance of 0.5 ppm established by amending 40 CFR 180.298 will protect the public health. In addition, the negligible residue designation has been removed from the existing tolerances because long-term studies are now available. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered, or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act which contains any of the ingredients listed herein may request, within 30 days after publication of this proposal in the FEDERAL REGISTER, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "PP7E1999/P87". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of the Federal Register from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: July 24, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

Statutory Authority: Section 408(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(e)].

It is proposed that part 180, Subpart c, § 180.298 be revised in its entirety by editorially revising the section into an alphabetized columnar listing and by alphabetically inserting the tolerance of 0.5 ppm on safflower seed, as follows:

§ 180.298 Methidathion; tolerances for residues.

Tolerances are established for residues of the insecticide methidathion (*O,O*-dimethyl phosphorodithioate, *S*-ester with 4-(mercaptomethyl)-2-methoxy-Δ^2-1,3,4-thiadiazolin-5-one) in or on the following raw agricultural commodities:

Commodity:	Parts per million
Alfalfa	6
Alfalfa, hay	6
Clover	6
Clover, hay	6
Cottonseed	.2
Grapefruit	2
Grass	6
Grass, hay	6
Lemons	2
Oranges	2
Peaches	.05
Pecans	.05
Potatoes	.2
Safflower seed	.5
Sorghum, fodder	2
Sorghum, forage	2
Sorghum, grain	.2
Sunflower seeds	.5
Walnuts	.05

[FR Doc. 78-21015 Filed 7-28-78; 8:45 am]

[6560.01]

[40 CFR Part 180]

[PP 7E1881/P81; FRL 934-4]

PROPOSED TOLERANCE FOR THE PESTICIDE CHEMICAL MALATHION

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities

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

ACTION: Proposed rule.

SUMMARY: This notice proposes that the insecticide malathion be used on wild rice. The proposal was submitted by the Interregional Research Project No. 4. This amendment to the regulations would establish a maximum permissible level for residues of malathion on wild rice.

DATE: Comments must be received by August 30, 1978.

ADDRESS: Comments to Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (WH-567), Office of Pesticide Programs, EPA, 202-755-2516.

SUPPLEMENTARY INFORMATION: Dr. C.C. Compton, Coordinator, Interregional Research Project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Minnesota has submitted a pesticide petition (PP 7E1881) to the EPA. This petition request that the Administrator propose that 40 CFR 180.111 be amended by the establishment of a tolerance for residues of the insecticide malathion (*O,O*-dimethyl dithiophosphate of diethyl mercaptosuccinate) in or on the raw agricultural commodity wild rice at 8 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included two 2-year rat feeding studies, one with a no-observable-effect level (NOEL) of 100 ppm, the other showing cholinesterase-inhibition at 100 ppm but no systemic effects at 1,000 ppm; a one-generation rat reproduction study in which reproductive effects were observed at 4,000 ppm, the only level tested; a negative neurotoxicity study; a negative single dose (900 milligrams (mg)/kilogram (kg) of body weight (bw)) intraperitoneal teratology study in rats; rat and mouse oral lethal dose (LD_{50}) tests; two negative mutagenicity tests using microbial assay systems; and a 47-day human feeding study with an NOEL at 0.2 mg/kg bw/day. Based on this last study and using a safety factor of 10, the acceptable daily intake (ADI) is 0.02 mg/kg bw/day. The maximum permissible intake for a 60-kg man is 1.2 mg/day.

Tolerances have previously been established for residues of malathion on a variety of raw agricultural commodities at levels ranging from 135 ppm to 0.1 ppm. Food additive tolerances have also been established for malathion residues on raisins at 12 ppm and in safflower oil at 0.6 ppm. Feed additive tolerances have been established for malathion residues in dehydrated citrus pulp at 50 ppm and in nonmedicated cattle feed concentrate blocks at 10 ppm.

On a theoretical basis, the total maximal residue contribution (TMRC) of these tolerances exceeds the ADI; however, total diet surveys show that over a 4-year period the actual exposure to malathion was not more than 0.00013 mg/kg bw/day, which is less than 1 percent of the ADI. The increment of human exposure due to the tolerance on wild rice would be negligible, and thus, the increment in risk, if any, is acceptable. The metabolism of malathion is adequately understood, and an adequate analytical method (gas chromatography using a flame photometric detector) is available for enforcement purposes. The following studies are currently lacking: oncogenicity studies in two mammalian species using currently acceptable protocols, a multigeneration reproduction study, and a teratology (oral) study. However, it has been determined that the proposed tolerance can be established because: (1) Tolerances currently exist for malathion on a majority of food and feed items in the United States and (2) the use of malathion on wild rice would not significantly increase human exposure to malathion residues. There is no reasonable expectation of residues in eggs, meat, milk, or poultry as delineated in 40 CFR 180.6(a)(3).

The pesticide is considered useful for the purpose for which a tolerance is sought, and it is concluded that the tolerance of 8 ppm established by amending 40 CFR 180.111 will protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered, or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act which contains any of the ingredients listed herein may request, within 30 days after publication of this proposal in the FEDERAL REGISTER, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "PP7E1881/P81." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

STATUTORY AUTHORITY: Section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).

Dated: July 24, 1978.

DOUGLAS D. CAMPT,
Acting Director
Registration Division.

It is proposed that part 180, subpart C, § 180.111 be amended by alphabetically inserting the tolerance of 8 ppm on wild rice in the table to read as follows:

Section 180.111 Malathion; tolerances for residues.

* * * * *

Commodity:	*Parts per million*
* * * * *	
Rice, wild	8
* * * * *	

[FR Doc. 78-21016 Filed 7-28-78; 8:45 am]

[4110-84]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 23]

NATIONAL HEALTH SERVICE CORPS

Subpart A—Assignment of National Health Service Corps Personnel

AGENCY: Public Health Service, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations prescribe the requirements for the assignment of National Health Service Corps personnel under Section 333 of the Public Health Service Act (42 U.S.C. 254f) to public or nonprofit private entities to provide health services in or to a health manpower shortage area designated under Section 332 of the Public Health Service Act.

DATE: Comments must be received August 30, 1978.

ADDRESSES: Written comments, preferably in triplicate, should be addressed to the Director, Division of Policy Development, Bureau of Community Health Services, Health Services Administration, room 6-17, 5600 Fishers Lane, Rockville, Md. 20857. All comments received will be available for public inspection and copying at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Fitzhugh S. M. Mullan, M.D., Director, National Health Service Corps, Bureau of Community Health Services, Room 6-05, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4434.

SUPPLEMENTARY INFORMATION: On October 12, 1976, a new section 333 was added to the Public Health Service Act (42 U.S.C. 254f) by Pub. L. 94-484, the Health Professions Educational Assistance Act of 1976. This section allows the Secretary to assign, pursuant to regulations, members of the National Health Service Corps to public and nonprofit entities to provide health services in or to a health manpower shortage area.

Based upon the enactment of this new section 333, the Assistant Secretary for Health, Department of Health, Education, and Welfare, proposes to revoke the existing part 23, subpart A, and add a new Subpart A entitled "Assignment of National Health Service Corps Personnel."

A notice of intent to issue regulations for this program was published in the FEDERAL REGISTER on May 20, 1977 (42 FR 25992). Interested persons were invited to comment on the issues raised and several comments were received.

The regulations establish the conditions applicable to the assignment of National Health Service Corps personnel to a public or nonprofit private entity to provide health services in or to a health manpower shortage area. In the interest of streamlining regulations and reducing regulatory burden, minute program particulars have not been set forth in the regulations. For this reason, most of the comments received on the notice of intent were not pertinent to the development of these regulations, but will be considered by the Department in developing program policies.

Following is a brief summary of the major features of the proposed regulations:

(1) In approving applications for assignment, section 23.5(b) provides that if two eligible entities, one located in the health shortage area and one not located in the area but having a demonstrated interest in it, submit applications for assignment of National Health Service Corps personnel to provide health services to the area, special consideration will be given to the entity located in such health manpower shortage area. This special consideration was adopted in response to the several public comments received suggesting that such a consideration would promote greater community involvement between the approved entity and the individuals receiving health services.

(2) Section 333(c) of the Public Health Service Act requires that the Secretary take into consideration four factors in assigning National Health Service Corps personnel to entities with approved applications. The four factors are (i) Need of the health manpower shortage area, (ii) Use of physician assistants, nurse practitioners, or expanded function dental auxiliaries, (iii) Willingness of the individuals within the health manpower shortage area to assist and cooperate with the National Health Service Corps and (iv) Comments of professional societies serving the health manpower shortage area. In implementing this statutory requirement, the regulations provide that the Secretary will utilize a weighted-value system in which weights will be assigned to the four statutory factors, with the greatest weight being assigned to the first factor listed above and weights being assigned to the remaining factors in descending order. Based on this approach, approved applications will be assigned to priority categories. Personnel assignments will then be made to entities in accordance with these priority categories to the extent possible consistent with the statutory mandate that in assigning personnel to provide health services to a health manpower shortage area, the Secretary shall seek to assign to an area personnel with those characteristics which will increase the probability of their remaining to serve the area upon completion of the assignment period.

(3) The proposed regulations require that individuals receiving services from assigned National Health Service Corps personnel be charged on a fee-for-service or other basis at a rate to be approved by the Secretary. Fees are to be based upon the cost of delivering services and on fees charged for similar services by similarly situated practitioners and facilities. The proposed regulations further provide that no individual will be denied health services based upon his inability to pay for such services. With respect to this inability to pay, § 23.9 of the proposed regulations states that those individuals with annual incomes at or below the "CSA Income Poverty Guidelines" (45 CFR 1060.2) may receive services at a reduced charge. Individuals who have annual incomes above the "CSA Income Poverty Guidelines" but which do not exceed 200 percent of such CSA levels will also receive health services at reduced charge. Charges will be made, however, for services to individuals to the extent that payment will be made by a third party which is authorized or under legal obligation to pay such charges.

(4) The statute requires in section 334(a)(3) that the National Health Service Corps site repay the Federal Government for the costs involved in providing assigned National Health Services Corps personnel. The statute also provides that repayment may, under certain specific circumstances,

be waived in whole or in part. Section 23.10 of the regulations sets forth the criteria to be used in determining whether to grant a waiver of the repayment requirement.

All relevant material received on or before August 30, 1978 will be considered before adoption of final regulations.

It is proposed to add a new Subpart A to read as set forth below.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: February 10, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 18, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Subpart A—Assignment of National Health Service Corps Personnel

Sec.
23.1 Applicability.
23.2 Definition.
23.3 Eligibility.
23.4 Application.
23.5 Evaluation of application.
23.6 Assignment of National Health Service Corps personnel.
23.7 Agreement.
23.8 Operational requirements.
23.9 Charges for services.
23.10 Waiver.
23.11 Sale of equipment.
23.12 Supervision of assigned personnel.
23.13 Nondiscrimination.

AUTHORITY: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 333 of the Public Health Service Act, 90 Stat. 2272 (42 U.S.C. 254f).

Subpart A—Assignment of National Health Service Corps Personnel

§ 23.1 Applicability.

The regulations of this subpart are applicable to the assignment of National Health Service Corps personnel under section 333 of the Public Health Service Act (42 U.S.C. 254f) to provide health services in or to health manpower shortage areas as designated under section 332 of the Public Health Service Act (42 U.S.C. 254e).

§ 23.2 Definitions.

As used in this subpart:

(a) "Act" means the Public Health Service Act, as amended.

(b) "Assigned National Health Service Corps personnel" or "Corps personnel" means health personnel of the Regular and Reserve Corps of the Public Health Service Commissioned Corps and such civilian personnel as the Secretary designates, including, but not limited to, physicians, dentists, nurses, and other health professions personnel who are assigned in accordance with section 333 of the act and the regulations in this subpart.

(c) "Health manpower shortage area" means a geographic area, population group, a public or nonprofit private medical facility or other public facility which the Secretary determines has a shortage of health manpower in accordance with section 332 of the act and implementing regulations.

(d) "National Health Service Corps site" means the entity to which personnel has been assigned under section 333 of the act and this subpart to provide health services in or to a health manpower shortage area.

(e) "Nonprofit private entity" means an entity no part of the net earnings of which inure or may lawfully inure to the benefit of any private shareholder or individual.

(f) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of that Department to whom the authority involved has been delegated.

§ 23.3 Eligibility.

Any public or nonprofit private entity which is located in a health manpower shortage area, or has a demonstrated interest in such area, may apply for the assignment of National Health Service Corps personnel under this subpart.

§ 23.4 Application.

(a) An application for the assignment of National Health Service Corps personnel under this subpart must be submitted to the Secretary by an eligible applicant in such form and at such time as the Secretary may prescribe.[1] The application must be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by law, the act, the regulations of this subpart, and any additional conditions of assignment imposed pursuant thereto.

(b) In addition to such other pertinent information as the Secretary may require, an application for the assignment of Corps personnel filed under this subpart must include a description of the applicant's overall organizational structure, a justification of the request for the assignment of personnel based upon the needs of the health manpower shortage area, and a description of the applicant's financial plan for operating the National Health Service Corps site, including a proposed budget; sources of non-Federal support sought or obtained; the proposed expenditures for obtaining adequate support staff, equipment and supplies; and a list of the proposed fees and discounted fees to be charged for the provision of health services.

(c) An application for assignment filed under this subpart must also include evidence that the applicant has provided a copy of such application for review to (1) each health systems agency designated under section 1515 of the act for the health service area which includes all or part of the health manpower shortage area to receive assigned National Health Service Corps personnel, or (2) if no health systems agency has been designated for such a health service area, to each State health planning and development agency designated under section 1521 for each State which includes all or part of the health manpower shortage area to receive assigned National Health Service Corps personnel.

(d) If an application for assignment under this subpart is filed by an applicant which had previously been assigned National Health Service Corps personnel under an agreement entered into under section 329 of the act as in effect before October 1, 1977, or under section 334 of the act, the applicant must provide the information the Secretary deems necessary to making determinations required by section 333(a)(1)(D) of the act.

§ 23.5 Evaluation of applications.

(a) In approving or disapproving an application for assignment of Corps personnel, the Secretary will take into consideration among other pertinent factors:

(1) The degree to which the applicant adequately provides for meeting the requirements in § 23.8.

(2) The administrative and managerial capability of the applicant.

(3) The soundness of the applicant's financial plan for operating the National Health Service Corps site.

(4) The extent to which community resources will be utilized in operating the National Health Service Corps site.

(5) Comments received from any designated health systems agency or any designated State health planning and development agency to which an application was submitted for review under § 23.4(c).

(6) Comments received from professional societies serving the health manpower shortage area.

(b) If two entities, one located in the health manpower shortage area and one not located in the area but having a demonstrated interest in it, submit applications for assignment of Corps personnel to provide health services to the area, special consideration will be given to the entity which is located in such health manpower shortage area.

[1] Applications and instructions may be obtained from Regional Offices of the Department of Health, Education, and Welfare at the addresses set forth at 45 CFR 5.31(b).

§ 23.6 Assignment of National Health Service Corps personnel.

(a) The Secretary may, upon approving an application for the assignment of personnel and after entering into an agreement with an applicant under § 23.7, assign National Health Service Corps personnel to provide health services in or to a health manpower shortage area.

(b) In determining where to assign Corps personnel, the Secretary will apply a weighted-value system in accordance with section 333(c) of the act in which weight is assigned to the following factors in the order listed below; *Provided*, That in making the assignment of National Health Service Corps personnel to serve in a health manpower shortage area, the Secretary shall seek to assign such personnel to serve in the area who have those characteristics which will increase the probability of their remaining to serve in the health manpower shortage area upon completion of the period of assignment:

(1) Need of the health manpower shortage area as determined by criteria established under section 332(b) of the act;

(2) Indication in the application of using physician assistants, nurse practitioners, or expanded function dental auxiliaries;

(3) Willingness of individuals, government agencies, or health entities within the health manpower shortage area to cooperate with the National Health Service Corps in providing effective health services; and

(4) Comments of professional societies serving the health manpower shortage area.

§ 23.7 Agreement.

(a) *Requirements.* Each National Health Service Corps site must enter into an agreement with the Secretary under which the site will agree to (1) be responsible for charging for the health services provided by assigned National Health Service Corps personnel in accordance with section 334(d) of the act; (2) take such action as may be reasonable for the collection of charges for such health services in accordance with section 334(a)(2) of the act; (3) reimburse the United States such sums as may be required under section 334(a)(3) of the act; and (4) prepare and submit an annual report.

In addition, such agreement will set forth the period of assignment (not to exceed 4 years), the number and type of Corps personnel to be assigned to the site, and such other requirements as the Secretary determines necessary to carry out the purposes of section 334.

(b) *Termination.* An agreement entered into under this section may be terminated by either party on 30-days written notice or modified by mutual consent consistent with the requirements of section 334 of the act.

§ 23.8 Operational requirements.

Each National Health Service Corps site must:

(1) Operate a health care delivery system with an integrated organizational structure to assure (i) the provision of high quality comprehensive health care, (ii) adequate professional health care coverage for the health manpower shortage area, (iii) continuum of care, and (iv) the availability and accessibility of secondary and tertiary health care;

(2) Establish and maintain a patient record system;

(3) Implement a system for maintaining the confidentiality of patient records in accordance with the confidentiality provisions set forth in 42 CFR 56.111;

(4) Meet the requirements of applicable fire and safety codes;

(5) Develop, to the extent possible, linkages with other health care facilities for the provision of services which supplement or complement the services furnished by the assigned Corps personnel;

(6) Operate a quality assurance system in accordance with the provisions of 42 CFR 51c.303(c); and

(7) Establish basic data, cost accounting, and management information and reporting systems which will enable the applicant to provide statistical and other information concerning the assignment and the health manpower shortage area as the Secretary may require.

§ 23.9 Charges for services.

(a) Except as otherwise provided in paragraph (b) of this section, individuals receiving services from assigned National Health Service Corps personnel will be charged on a fee-for-service or other basis at a rate to be approved by the Secretary and computed to permit the recovery of the value of the services provided. In approving the fees to be charged for health services, the Secretary will consider the costs to the National Health Service Corps of providing the health services; the costs to the health manpower shortage area for providing the services; and the charges for similar services by other practitioners or facilities in or nearby the health manpower shortage area. However, if assigned National Health Service Corps personnel is providing service within the framework of an established health services delivery system, the Secretary may approve fees to be charged for the provision of the service consistent with charges made by such system.

(b) No charge or a reduced charge will be made for health services provided by assigned National Health Service Corps personnel to individuals within the health manpower shortage area with annual incomes at or below the "CSA Income Poverty Guidelines" (45 CFR 1060.2); *Provided*, That no individual will be denied health services based upon inability to pay for such services. Any individual who has an annual income above the "CSA Income Poverty Guidelines," but whose income does not exceed 200 percent of such CSA levels, will receive health services at reduced charges. However, charges will be made for services to such persons to the extent that payment will be made by a third party which is authorized or under legal obligation to pay such charges.

§ 23.10 Waiver.

(a) The Secretary may waive in whole or in part the reimbursement requirements of section 334 of the act where he determines that:

(1) The National Health Service Corps site is financially unable to meet such reimbursement requirements or that compliance with such requirements would unreasonably limit the ability of the site to adequately support the provision of services by assigned Corps personnel. In determining whether a National Health Service Corps site is financially unable to meet the reimbursement requirements or that such requirements would unreasonably limit the ability of a site to provide adequate services, the Secretary will consider (i) the costs necessary to maintain the adequate support of health services provided by assigned National Health Service Corps personnel, and the income and financial resources available to meet such costs; (ii) the ability of the applicant to obtain credit from suppliers, lending institutions, private organizations and individuals; and (iii) the need of the health manpower shortage area for health services, and the utilization by the National Health Service Corps site of health professions personnel.

(2) A significant percentage of the individuals who are located in the health manpower shortage area and are receiving the health services of the assigned National Health Service Corps personnel are elderly, living in poverty, or have other characteristics which indicate an inability to pay. For purposes of this section, "elderly" is defined as persons 65 years or older and the "CSA Income Poverty Guidelines" will be used as the standard for determining whether individuals are living in poverty. Other characteristics indicating inability to pay will include, but not be limited to, the ratio of unemployment in the health manpower shortage area and the area's cost-of-living.

(b) Requests for waiver under this subpart must be made at such time and in such manner and contain such documentation as the Secretary may require.

§ 23.11 Sale of equipment.

(a) The Secretary may upon expiration of the assignment of all Corps personnel to a health manpower shortage area, sell equipment and other property of the United States utilized by such personnel to an appropriate local entity at the fair market value, or at less than fair market value if he determines that an entity is financially unable to pay the full market value. For purposes of this section, unable to pay the full market value. For purposes of this section, an "appropriate local entity" is any entity providing health services in or to a health manpower shortage area. In determining whether an entity is financially unable to purchase equipment or property at fair market value, the Secretary will consider (1) the present financial resources of the entity available to purchase such equipment or property based upon its current liabilities, and (2) the entity's ability to obtain the funds necessary to purchase the equipment or property. However, the Secretary will not sell equipment or property under this paragraph for less than fair market value to a profitmaking organization unless such organization provides reasonable assurance that it will use the equipment or property to provide health services in or to the health manpower shortage area.

(b) The Secretary will give priority in the sale to an entity which will provide reasonable assurance that it will use the equipment or property for the purpose of retaining previously assigned National Health Service Corps personnel within the health manpower shortage area.

§ 23.12 Supervision of assigned personnel.

Assigned National Health Service Corps personnel will at all times remain under the direct supervision and control of the Secretary. Observance of institutional rules and regulations by such assigned personnel are mere incidents of the performance of their Federal functions and do not alter their direct professional and administrative responsibility to the Secretary.

§ 23.13 Nondiscrimination.

(a) Attention is called to the requirements of title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d et seq.) and, in particular, section 601 of such act which provides that no person in the United States shall, on the grounds of race, color, creed, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or actively receiving Federal financial assistance. A regulation implementing title VI has been issued by the Secretary with the approval of the President (45 CFR Part 80).

(b) Attention is called to the requirements of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which provides that no otherwise qualified handicapped individual in the United States shall, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing section 504 has been issued (45 CFR Part 84).

[FR Doc. 78-20506 Filed 7-28-78; 8:45 am]

[4110-87]

[42 CFR Parts 81, 83, and 84]

CERTIFICATION OF OCCUPATIONAL SAFETY AND HEALTH EQUIPMENT

Withdrawal of Notices of Proposed Rulemaking

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Center for Disease Control, PHS, HEW.

ACTION: Withdrawal of notices of proposed rulemaking.

SUMMARY: HEW withdraws notices of proposed rulemaking relating to voluntary testing and certification programs for personal noise dosimeter sets, industrial head protective devices, and gas detector tube units. The programs will be established or continued under agency guidelines.

EFFECTIVE DATE: July 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert Schutz, Testing and Certification Branch, Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Va. 26505, 304-599-7574 or FTS: 923-7331.

SUPPLEMENTARY INFORMATION: The National Institute for Occupational Safety and Health (NIOSH) was established by section 22(b) of the Occupational Safety and Health Act (29 U.S.C. 671(b)). Section 22(c) of the act authorizes NIOSH to develop and establish recommended occupational safety and health standards. As an extension to these recommendations, NIOSH developed a number of testing and certification programs designed to assure safe and reliable performance of personal protective and hazard measuring equipment. On December 30, 1977, NIOSH proposed regulations for the testing and certification of personal noise dosimeter sets (42 FR 65194), and on January 12, 1976, NIOSH proposed testing and certification regulations for industrial head protective devices (41 FR 1757). In addition, on November 5, 1976, proposed amendments for the classification and labeling of gas detector tube units were published (41 FR 48753).

Since the testing and certification programs are voluntary and manufacturers are under no legal obligation to submit their products for NIOSH testing and certification, the regulations are not legally required. Although the proposed regulations are being withdrawn, the voluntary certification programs for personal protective and measuring equipment will be continued or established by NIOSH under agency guidelines. Copies of the NIOSH guidelines for certification, as well as other information concerning the testing and certification programs, may be obtained from NIOSH at the above address.

Accordingly, the specified notices of proposed rulemaking are withdrawn.

Dated: May 19, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 22, 1978.

HALE CHAMPION,
Acting Secretary.

[FR Doc. 78-21073 Filed 7-28-78; 8:45 am]

[4910-59]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[49 CFR Part 531]

[Docket No. LVM 77-05; Notice 2]

PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

Proposed Decision to Grant Exemption

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Proposed decision to grant exemption from average fuel economy standard and to establish alternative standard.

SUMMARY: This notice is being issued in response to a petition by Excalibur Automobile Corp. (Excalibur) requesting that it be exempted from the generally applicable average fuel economy standard of 18.0 miles per gallon (mpg) for 1978 model year passenger automobiles and that a lower, alternative standard be established for it. This notice proposes that the requested exemption be granted and

that an alternative standard of 11.5 mpg be established for Excalibur.

COMMENT CLOSING DATE: August 30, 1978.

ADDRESS: Comments on this notice must refer to docket LVM 77-05 and should be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Douglas Pritchard, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590, 202-755-9384.

SUPPLEMENTARY INFORMATION: Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if the National Highway Traffic Safety Administration (NHTSA) establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one which manufactures less than 10,000 passenger automobiles worldwide in the model year for which the exemption is sought (the affected model year) and which manufactured less than 10,000 passenger automobiles worldwide in the second model year before the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

To implement section 502(c), NHTSA issued Part 525, Exemptions from average fuel economy standards (42 FR 38374; July 28, 1977). Part 525 prescribes the contents of exemption petitions and sets forth the procedures for processing those petitions. After receipt of a complete petition, the agency publishes a notice of receipt which summarizes the petition and invites comments on it. Subsequently, the agency publishes a proposed decision to grant or deny the petition and provides a further opportunity for comment. Finally, the agency publishes a final decision to grant or deny the petition.

Excalibur originally filed a petition in October 1977 for exemption from the generally applicable standards for 1978-1980 model year passenger automobiles. By letter of December 14, 1977, the agency informed Excalibur that its petition was incomplete and identified the additional information needed by the agency. Excalibur submitted further information in a letter dated February 17, 1978. This letter essentially completed Excalibur's petition for exemption from the affected model years' standards.

Accordingly, NHTSA issued a notice announcing the receipt of a petition for exemption from the 1978-1980 model year standards (43 FR 19311; May 4, 1978). That notice summarized the Excalibur petition and invited public comment on it. No comments were submitted in response to this notice.

This agency has decided to issue a proposed decision on the Excalibur petition for the 1978 model year separate from the proposed decision for the 1979 and 1980 model years. This will expedite reaching a final decision on the request for exemption from the 1978 standard. No purpose would be served by delaying the publication of this proposed decision until the analysis for the 1979 and 1980 model years is complete. A separate notice will soon be published announcing NHTSA's proposed decision for those future model years.

Requested alternative standard. Excalibur's request of an alternative standard of 11.5 mpg for the 1978 model year was based on its final average fuel economy, as reported by the Environmental Protection Agency. Since Excalibur produces only one vehicle configuration, this level will be its final average fuel economy, unless Excalibur makes a running change. NHTSA has used 11.5 mpg as a base figure, and determined the maximum feasible average fuel economy proposed in this notice after considering whether there were any fuel economy improvements which are deemed feasible for the 1978 model year and could be added to that base.

Technological feasibility and economic practicability. In considering whether Excalibur could improve its average fuel economy for model year 1978, the agency examined the same methods for improving average fuel economy that it examined in establishing average fuel economy standards for model year 1981-84 passenger automobiles (42 FR 33534; June 30, 1977) and for model year 1980-81 light trucks (43 Fr 11995; March 23, 1978). These methods were weight reduction, aerodynamic improvements, engine efficiency improvements, engine accessory efficiency improvements, alternative engines, turbochargers, automatic transmission improvements, improved lubricants, reduced rolling resistance, engine displacement or drive ratio reductions, and mix shifts.

NHTSA's examination of these methods in this proceeding was significantly less detailed than in those earlier proceedings since there is almost no leadtime now for making running changes to the model year 1978 Excaliburs. There will be even less leadtime when the final decision on the exemption petition is issued.

To use most of these methods, Excalibur would have to discard components that it has already purchased (Excalibur purchases its engines and drive trains from General Motors) and produce or purchase new components. NHTSA has no information regarding Excalibur's ability to produce or purchase and incorporate the new components before the end of the 1978 model year. It seems extremely unlikely, however, that this could be accomplished. On the other hand, the value of the inventory purchased or ordered by Excalibur as of the date the petition was filed was in excess of $800,000. It is judged not to be economically practicable for Excalibur to change the engine or drive train, and absorb the loss of inventory.

In addition to this substantial uncertainty and the very short leadtime, there is a possibility that changes to Excalibur's components to improve fuel economy in the 1978 model year could create a need to recertify the automobiles for compliance with the 1978 model year emission standards. Depending on the type and magnitude of the change, recertification could entail rerunning the 50,000 mile durability test and the 4,000 mile test. It would take at least 60 days to complete the testing if both tests were necessary. Until the Excaliburs were recertified, Excalibur would have to choose between (1) producing its automobiles with the changes and running the risk that the automobiles would not be certified and, therefore, could not be sold, (2) not producing any automobiles until certification was granted, thus potentially causing serious financial problems for Excalibur, or (3) continuing to produce Excaliburs as currently certified. The first and second course would involve a high degree of financial risk for a small company like Excalibur. Both could lead to serious disruptions of its cash flow. The third course would not involve that type of financial risk, but also would produce the least fuel economy benefit. Indeed, none of the courses would produce much of a fuel economy benefit since only a small portion of the entire Excalibur fleet would have the changes and, thus, have improved fuel economy.

Excalibur can not effect any mix shifts, because it produces only one vehicle configuration.

Based on the foregoing considerations, the NHTSA concludes that running changes and mix shifts to improve the fuel economy of Excalibur's 1978 model year passenger automobiles are not technologically feasible and economically practicable.

The effect of other Federal motor vehicle standards. The other motor vehicle standards are important for the current model year only in determining whether these standards could be complied with in a more fuel efficient manner. Any fuel economy penalty which might be imposed by these standards in the current model year would be reflected in Excalibur's fuel economy average and in the discussion of technological feasibility for the 1978 Excaliburs and thus would already have been considered.

In determining whether the Federal standards could be complied with in a more fuel efficient manner, the agency considers the leadtime available to the manufacturer to be a critical factor. In this case the leadtime is so short that the agency deems it to be extremely unlikely that a different means of complying with the emissions, safety, or damageability standards could be incorporated on 1978 Excalibur automobiles before the end of the model year.

Based on the foregoing, NHTSA tentatively concludes that no more fuel efficient means of compliance with the other Federal motor vehicle standards is available to Excalibur in the 1978 model year.

The need of the Nation to conserve energy. The daily extra U.S. demand for petroleum that will result from Excalibur achieving an average fuel economy of 11.5 mpg rather than the generally applicable level of 18.0 mpg is estimated to average 2.5 barrels per day over the life of the model year 1978 Excaliburs. To give a perspective on this number, the fuel consumed by passenger automobiles in the United States is about 5 million barrels each day. For all purposes, the United States currently consumes about 17 million barrels of petroleum each day.

Selection of the type of alternative standard. The act permits NHTSA to establish an alternative average fuel economy standard applicable to exempted manufacturers in one of three ways: (1) A separate standard may be established for each exempted manufacturer; (2) classes, based on design, size, price, or other factors, may be established for the automobiles of exempted manufacturers, with a separate average fuel economy standard applicable to each class; or (3) a single standard may be established for all exempted manufacturers.

The NHTSA believes that it is appropriate to establish a separate standard for Excalibur. The petitions of other manufacturers which have already been analyzed for the 1978 model year resulted in the proposal of separate standards for those petitioners. Some petitions of other manufacturers have not been fully analyzed. Accordingly, it would not be practicable for the agency to use the second or third approaches described in the preceding paragraph for the purposes of Excalibur's petition.

Proposed alternative standard. Based on the agency's tentative conclusions stated above, the agency believes that the maximum feasible average fuel economy for Excalibur for the 1978 model year is 11.5 mpg. Therefore, the agency proposes to exempt Excalibur from the generally applicable standard of 18.0 mpg and to establish an alternative standard of 11.5 mpg for Excalibur for the 1978 model year.

In consideration of the foregoing, it is proposed that 49 CFR Part 531 be amended by adding § 531.5(b)(5) reading as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

(1) * * *
(2) * * *
(3) * * *
(4) [Reserved]
(5) Excalibur Automobile Corp.

AVERAGE FUEL ECONOMY STANDARD

Model year:	*Miles per gallon*
1978	11.4

Interested persons are invited to submit comments on this proposed decision. Comments must be limited so as not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

NHTSA typically allows at least 45 days for the public to comment on its proposals. With respect to this proposal, however, the agency has shortened the comment period to 30 days. There are a number of reasons for taking this action. First, it is very desirable for a final decision on the Excalibur petition for the 1978 model year to be published before the end of the model year. To do this, it will be necessary to move expeditiously on this decision. Second, the agency has already provided a 25-day period to comment on the petition when the agency published its notice of receipt. Third, this agency's experience thus far with fuel economy exemptions indicates that there will be few, if any, comments on this proposal. This proposal is fairly simple, and should not require a great deal of analysis to prepare comments.

All comments received before the close of business on the comment closing date indicated at the beginning of this proposal will be considered, and will be available for public inspection in the docket both before and after the comment closing date. To the extent possible, comments filed after the comment closing date will also be considered. The agency will continue to file relevant material in the docket as it becomes available after the comment closing date, and it is recommended that interested persons continue to examine the docket for new material.

The agency has reviewed the impacts of this proposal and determined that they are minimal and that the proposal is not a significant regulation within the meaning of Executive Order 12044.

The program official and attorney principally responsible for the development of this proposed regulation are Douglas Pritchard and Stephen Kratzke respectively.

AUTHORITY: Sec. 9, Pub. L. 89-670, 80 Stat. 981 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 41 FR 25015, June 22, 1976, and 43 FR 8525, March 2, 1978.

Issued on July 25, 1978.

MICHAEL M. FINKELSTEIN,
Acting Associate Administrator for Rulemaking.

[FR Doc. 78-20955 Filed 7-28-78; 8:45 am]

[3510-22]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 264]

UNITED STATES STANDARDS FOR GRADES OF FROZEN MINCED FISH BLOCKS

AGENCY: National Oceanic and Atmospheric Administration, National Marine Fisheries Service, U.S. Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This document sets forth proposed U.S. Standards for Grades of Frozen Minced Fish Blocks. The proposal is based on new information and data submitted to the Department of Commerce following the March 13, 1975, proposal regarding proposed interim standards for frozen minced fish blocks, as well as on other information and research results available to the

Department from various sources. We believe that these proposed standards, when used by industry, will contribute substantially to the protection of consumers. When used properly, these standards will allow industry to obtain high quality minced fish blocks for further manufacture into end products.

DATE: Comments must be received on or before October 30, 1978.

ADDRESS: Persons wishing to submit written data, views, or comments concerning the proposed rules are invited to do so by writing to the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235. Comments on the proposal should bear a reference to the date and page number of this issue of the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT:

James R. Brooker, Staff Specialist, Seafood Quality and Inspection Division, National Marine Fisheries Service, Washington, D.C. 20235, 202-634-7458.

SUPPLEMENTARY INFORMATION: On March 13, 1975, the National Marine Fisheries Service published a notice of proposed rulemaking proposing Interim Grade Standards for Frozen Minced Fish Blocks in vol. 40, No. 50, pages 11729-11731 of the FEDERAL REGISTER. The proposed standards were to retain their interim status for approximately one year. This time period allowed interested parties to submit comments on the proposed standards and NMFS inspectors trial use of the standards.

Since March 1975, the following events have taken place that are relevant to the proposed U.S. Standards for Grades of Frozen Minced Fish Blocks:

1. A Technical Seminar on the Production and Utilization of Minced Fish throughout the world was held in Aberdeen, Scotland in 1976. The published proceedings from that seminar added to the body of scientific information and data about minced fish.

2. Developmental research activities on several aspects of minced fish, such as color classification, textural properties, and measurement of thaw drip have been completed. Certain research results have been incorporated in this proposal.

3. The National Marine Fisheries Service advised the Food and Drug Administration of its plan to publish proposed quality standards for minced fish blocks and provided information and data supporting the acceptability of minced fish. Certain concerns about minced fish were raised by the Food and Drug Administration to which the National Marine Fisheries Service has responded satisfactorily.

The National Marine Fisheries Service believes that sufficient scientific information and data are available on which to base the proposed standards. Further, we believe that these proposed standards, when used by industry, will contribute substantially to the protection of consumers. When used properly, these standards will allow industry to obtain high quality minced fish blocks for further manufacture into end products.

Dated: July 21, 1978.

THEODORE P. GLEITER,
Acting Assistant Administrator for Administration.

R. L CARNAHAN,
Deputy Assistant Administrator for Administration.

It is proposed to amend 50 CFR Part 264 by adding a new Subpart B to read as follows:

Subpart B—United States Standards for Grades of Frozen Minced Fish Blocks

Sec.
264.151 Scope and product description.
264.152 Product forms.
264.153 Grades-quality factors.
264.154 Determination of grade.
264.155 Additives.
264.156 Hygiene.
264.157 Appendix 1. Definition and method of measuring color classifications.

AUTHORITY: 7 U.S.C. 1621-1630.

Subpart B—United States Standards for Grades of Frozen Minced Fish Blocks

§ 264.151 Scope and product description.

These standards shall apply to frozen minced fish blocks which are uniformly shaped masses of cohering minced fish flesh. A block may contain flesh from a single species or a mixture of species with or without food additives. The minced flesh consists entirely of mechanically separated fish flesh processed and maintained in accordance with good commercial practice.

§ 264.152 Product forms.

(a) *Types.* (1) Unmodified—no food additives used.

(i) Single species.

(ii) Mixed species.

(2) Modified—contains food additives (see section 264.155)

(i) Single species.

(ii) Mixed species.

(b) *Color classifications.* (1) White. (2) Light. (3) Dark. See appendix 1, section 264.157 for definition and method of measurement.

(c) *Texture.* (1) Coarse—Flesh has a fibrous consistency,

(2) Fine—Flesh has a partially fibrous consistency because it is a mixture of small fibers and paste.

(3) Paste/Puree—Flesh has no fibrous consistency.

§ 264.153 Grades—quality factors.

(a) U.S. Grade A. Minced fish blocks shall:

(1) Possess good flavor and odor, and

(2) Comply with the limits of defects for U.S. Grade A quality in accordance with 264.154.

(b) U.S. Grade B. Minced fish blocks shall:

(1) Possess reasonably good flavor and odor, and

(2) Comply with the limits of defects for U.S. Grade B quality in accordance with 264.154.

(c) U.S. Grade C. Minced fish blocks shall:

(1) Possess minimally acceptable flavor and odor with no objectional off-flavors or off-odors, and

(2) Comply with the limits of defects for U.S. Grade C quality in accordance with 264.154.

§ 264.154 Determination of Grade.

(a) *Procedures for grade determination.* The grade shall be determined by: (1) sampling in accordance with the sampling plan described in paragraph (b) of this section; (2) evaluating odor and flavor in accordance with paragraph (c) of this section; (3) examining for defects in accordance with paragraphs (d) and (e) of this section; and (4) using the results to assigne a grade as described in paragraph (f) of this section.

(b) *Sampling.* The sampling rate of specific lots for all inspections shall be in accordance with the sampling plans contained in part 260 of this chapter. For examination in the frozen state, an entire block shall be used as a sample unit. For examination in the thawed state, a subsample of at least 5 pounds weight shall be used.

(c) *Evaluation of flavor and odor.* Evaluation of flavor and odor shall take place after the sample has been cooked by any of the procedures given below. These procedures are based on heating sample to internal temperature of at least 160° F (70° C), but without overcooking. Cooking times vary according to size of sample and the equipment used. If determining cooking time, cook extra sample using a temperature measuring device to determine internal temperature.

(1) Bake procedure—Wrap a minimum of 12 ounces of sample in aluminum foil and distribute evenly on flat cookie sheet or shallow flat pan. Heat in ventilated oven, preheated to 400° F (204° C), until internal temperature reaches at least 160° F (70° C).

(2) Steam procedure—Wrap a minimum of 12 ounces of sample in aluminum foil and place on wire rack suspended over boiling water in a covered container. Heat until internal temperature of sample reaches at least 160° F (70° C).

(d) *Examination for physical defects.* The sample unit will be examined for defects using the list of defects definitions 264.154(e), and the defects noted and categorized as minor, major, and serious, in accordance with Table 1 of this part.

(e) *Definitions of defects.*—(1) *Deteriorative color* refers to discoloration from the normal characteristics of the material used. Deterioration can be due to yellowing of fatty material, to browning of blood pigments, or other changes.

(i) Slight deteriorative discoloration—refers to a color defect that is slightly noticeable but does not seriously affect the appearance, desirability, or eating quality of the product.

(ii) Moderate deteriorative discoloration—refers to a color defect that is conspicuously noticeable but does not seriously affect the appearance, desirability, or eating quality of the product.

(iii) Excessive deteriorative discoloration—refers to a defect that is conspicuously noticeable and that seriously affects the appearance, desirability, or eating quality of the product.

(2) *Dehydration* refers to a loss of moisture from the surfaces of the product during frozen storage.

(i) Slight dehydration—is surface color masking, affecting more than 5 percent of the area, which can be readily removed by scraping with a blunt instrument.

(ii) Moderate dehydration—is deep color masking penetrating the flesh, affecting less than 5 percent of the area, and requiring a knife or other sharp instrument to remove.

(iii) Excessive dehydration—is deep color masking penetrating the flesh, affecting more than 5 percent of the area, and requiring a knife or other sharp instrument to remove.

(3) *Uniformity of size* refers to the degree of conformity to the declared contracted dimensions of the blocks. A deviation is considered to be any deviation from the contracted length, width, or thickness; or from the average dimensions of the blocks, physically determined, if no dimensions are contracted. Only one deviation from each dimension may be assessed. Two readings for length, three readings for width, and four readings for thickness will be measured.

(i) Slight—two or more deviations from declared or average length, width, and thickness up to ±⅛ inch.

(ii) Moderate—two or more deviations from declared or average length, width, and thickness from ±⅛ inch to ±⅜ inch.

(iii) Excessive—two or more deviations from declared or average length, width, and thickness over ±⅜ inch.

(4) *Uniformity of weight* refers to the degree of conformity to the declared weight. Only underweight deviations are assessed.

(i) Slight—any minus deviation of not more than 2 ounces.

(ii) Excessive—any minus deviation over 2 ounces.

(5) *Angles.* (1) An acceptable edge angle is an angle formed by two adjoining surfaces of the fish block whose apex is within ⅜ inch of a carpenter's square placed along the surfaces of the block. For each edge angle, three readings will be made and at least two readings must be acceptable for the whole edge angle to be acceptable. (2) An acceptable corner angle is an angle formed by 3 adjoining surfaces whose apex is within ⅜ inch of the apex of a carpenter's square placed on the edge surfaces. (3) Any edge or corner angle which fails to meet these measurements is unacceptable.

(i) Slight—two unacceptable angles.

(ii) Moderate—three unacceptable angles.

(iii) Excessive—four or more unacceptable angles.

(6) *Improper fill* refers to surface and internal air or ice voids, ragged edges, or damage. Improper fill is measured as the minimum number of 1-ounce units that would be adversely affected when the block is cut. For this purpose, the dimensions of a 1-ounce unit are 4×1×⅝ inch.

(i) Slight—not more than 3 units adversely affected.

(ii) Excessive—over 3 units adversely affected.

(7) *Blemishes* refer to pieces of skin, scales, blood spots, nape (belly) membranes (regardless of color), or other harmless extraneous material. One instance means that the area occupied by a blemish or blemishes is equal to a ¼ inch square. Instances are prorated on a per pound basis.

(i) Slight—less than 20 instances per pound.

(ii) Moderate—between 20 and 40 instances per pound.

(iii) Excessive—over 40 instances per pound.

(8) *Bones* refer to any objectionable bone or piece of bone that is ¼ inch or longer and is sharp and rigid. Perceptible bones shall also be checked by their grittiness during the normal evaluation of the texture of the cooked product (10). Bones are prorated on a five pound sample unit basis.

(i) Slight—not more than 1 bone per five pound sample unit.

(ii) Moderate—2 to 3 bones per five pound sample unit.

(iii) Excessive—over 3 bones, but not to exceed 10 bones, per five pound sample unit.

(9) *Flavor and odor* are evaluated organoleptically by smelling and tasting the product after it has been cooked in accordance with 264.154. (c).

(i) Good flavor and odor (essential requirements for a Grade A product) means that the cooked product has the flavor and odor characteristic of the indicated species of fish and is free from staleness, bitterness, rancidity, and off-flavors and off-odors of any kind.

(ii) Reasonably good flavor and odor (minimum requirements of a Grade B product) means that the cooked product is moderately absent of flavor and odor characteristic of the indicated species. The product is free from rancidity, bitterness, staleness, and off-flavors and off-odors of any kind.

(iii) Minimal acceptable flavor and odor (minimum requirements of a Grade C product) means that the cooked product has moderate storage-induced flavor and odor, but is free from any objectionable off-flavors and off-odors that may be indicative of spoilage or decomposition.

(10) *Texture defects* are judged on a sample of the cooked fish.

(i) Slight—flesh is fairly firm, only slightly spongy or rubbery. It is not mushy. There is no grittiness due to bone fragments.

(ii) Moderate—flesh is mildly spongy or rubbery. Slight grittiness may be present due to bone fragments.

(iii) Excessive—flesh is definitely spongy, rubbery, very dry, or very mushy. Moderate grittiness may be present due to bone fragments.

(f) *Grade assignment.* The sample unit shall be assigned the grade into which it falls in accordance with the limits for defects, summarized as follows:

Flavor and odor	Maximum number of physical defects permitted		
	Minor	Major	Serious
Grade A_ _ _ _ Good_ _ _ _ _ _ _ _ _ _ _ _ _ _	3	0	0
Grade B_ _ _ _ Reasonably good_ _ _ _ _ _ _ _	5	1	0
Grade C_ _ _ _ Minimal acceptable _ _ _ _ _ _	7	3	1

Each lot of minced blocks shall be assigned that grade which corresponds to the acceptance number for deviants prescribed in Tables II, V, or VI of 50 CFR 260.61.

§ 264.155 Additives

Minced fish blocks may be modified with food additives as necessary to stabilize product quality in accordance with the requirements of the regulations contained in 21 CFR 171.

§ 264.156 Hygiene

The fish material shall be processed and maintained in accordance with the requirements of 50 CFR §§ 260.98 to 260.104 and the requirements of good manufacturing practice contained in 21 CFR 110.

TABLE I

Physical Defects		Categories		
Types	Degree	Minor	Major	Serious
Frozen State				
Deteriorative color	Slight	101	—	—
	Moderate	—	201	—
	Excessive	—	—	301
Dehydration	Slight	102	—	—
	Moderate	—	202	—
	Excessive	—	—	302
Uniformity of size	Slight	103	—	—
	Moderate	—	203	—
	Excessive	—	—	303
Uniformity of weight	Slight	104	—	—
	Excessive	—	—	304
Unacceptable angles	Slight	105	—	—
	Moderate	—	205	—
	Excessive	—	—	305
Improper fill	Slight	106	—	—
	Excessive	—	—	306
Thawed State				
Blemishes	Slight	107	—	—
	Moderate	—	207	—
	Excessive	—	—	307
Bones	Slight	108	—	—
	Moderate	—	208	—
	Excessive	—	—	308
Cooked State				
Texture	Slight	109	—	—
	Moderate	—	209	—
	Excessive	—	—	309

Note: The code numbers shown in the above Table are for identificati of defects for recording purposes only. They are keyed to the nature and severity of the defect. They are not scores.

§ 264.157 Appendix 1. Definition and method of measuring color classifications.

264.157 Appendix 1. Definition and procedure of measuring color classifications cited in § 264.152(b). This appendix is intended for laboratory use to classify color when a field procedure is questioned.

Introduction. The procedure described below is to be followed when a photoelectric or visual reflectometer is used. The light source and filters for a photoelectric or visual reflectometer are designed to view a sample primarily in the red region of the spectrum, at or near 640 nanometers. The geometry of its illumination and observation conditions provide directions approximately 45 degrees and 0 degrees from a common perpendicular. The viewing area is, preferably, approximately six square inches or 39 square centimeters. Reflectometers having much smaller viewing areas may be used if enough measurements are made on different areas of the sample to describe its average reflectance accurately. The receptor characteristics provide reflectance measurements that are accurate to within 1 percent of full-scale reading using Munsell neutral value standards as described below.

This description of a reflectometer is intended to avoid undue restrictions to equipment provided by one, or a very few, manufacturers. In the majority of situations, a variety of reflectometers will be suitable for color classification of samples from minced fish blocks. In the event of a borderline sample whose color classification is disputed, the sample is measured again using a different, more accurate, reflectometer. For example, if a visual reflectometer had been used to classify a disputed sample, a more accurate photoelectric reflectometer should be used for the remeasurement.

Sample preparation. The color of the sample must represent the average color of the block when it is cut from that block. At least one of its sides must be large enough and flat enough to completely cover the reflectometer's viewing area. The sample must be cooked from the frozen state by the bake procedure or, if previously coated with batter and breading, by the deep fat frying procedure, 18.B01 in "Official Methods of Analysis" 2nd supplement to the 12th edition, of the Association of Official Analytical Chemists. If the sample is covered with batter and breading for cooking, this cover should be removed with a sharp serrated knife so that the viewing area surface remains flat. The cooked sample must also be thick enough to prevent transmission of external, ambient light into the viewing area of the reflectometer.

Measurement of color. The reflectometer itself is described above at "Introduction." It may be calibrated and used with neutral value standards furnished by the manufacturer of a reflectometer or with Munsell matte-finish neutral value standards. When other standards are used, they must have been calibrated against Munsell matte-finish neutral value standards using the same reflectometer. All standards must be large enough and thick enough to cover the reflectometer's viewing area and prevent transmission of external ambient light into this viewing area.

Munsell neutral value standards are based on the Munsell notation system as defined in terms of the CIE (International Commission on Illumination) standard observer and coordinate system for color specification. Chip or swatch samples of Munsell standards may be obtained from Munsell Color, Inc., Baltimore, Md. 21218, or made as given by the relationship between Munsell value and luminous reflectance derived by a subcommittee of the Optical Society of America and published in the "Journal of the Optical Society of America," volume 33, page 406 (1943). This relationship is based on the equivalence in luminous reflectance of light of 555 nanometer wave length to a given percent of the luminous reflectance of magnesium oxide. For the Munsell values used in this section, this relationship has been extracted from page 406 of this reference and is given in the following table, where "N" is the Munsell value and "Yv" is the equivalent luminous reflectance of the stated percent of magnesium oxide:

N	Yv
N2.00	3.13
N6.00	30.05
N6.25	33.04
N6.50	36.20
N7.00	43.06
N7.25	46.77
N7.50	50.68
N9.00	78.66

Definition of "white" samples. Calibrate the reflectometer to 0-percent reflectance using a N2.0 standard, then to 90 percent using a N9.0 standard. Place a sample on the viewing area and measure its reflectance. Samples from "white" blocks have a relative reflectance greater than a N7.25 standard; but if a particular sample has a relative reflectance between N7.0 and N7.5 standards, its reflectance is measured again using an expanded scale before defining it as "white." Recalibrate the reflectometer using a N7.0 standard to set 0-percent reflectance and a N7.5 standard to set 100-percent reflectance on its scale. With these calibration settings, a "white" sample is defined as having a greater relative reflectance than a N7.25 standard.

Definition of "dark" samples. Calibrate the reflectometer to a 0-percent reflectance using a N2.0 standard, then to 90 percent reflectance using a N9.0 standard. Place a sample on the viewing area and measure its reflectance. Samples from "dark" blocks have a relative reflectance less than a N6.25 standard; but if a particular sample has a relative reflectance between N6.0 and N6.5 standards, its reflectance is measured again using an expanded scale before defining it as "dark." Recalibrate the reflectometer using a N6.0 standard to set 0-percent reflectance and a N6.5 standard to set 100-percent reflectance on its scale. With these calibration settings, a "dark" sample is defined as having a lower relative reflectance than a N6.25 standard.

Definition of "light" samples. If a sample does not satisfy the criteria given above for "white" or "dark" samples, it is classified as "light."

[FR Doc. 78-21163 Filed 7-28-78; 8:45 am]

notices

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

[3410-05]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[Amdt. 1]

LOAN PROGRAMS—1973 AND SUBSEQUENT CROP PRICE SUPPORT PROGRAMS AND FARM STORAGE AND DRYING EQUIPMENT LOAN PROGRAM

Announcement of Interest Rate

The revised announcement by Commodity Credit Corporation published in the issue of the FEDERAL REGISTER of Tuesday, June 13, 1978, at page 25453, of the rate of interest applicable to price support programs on 1973 and subsequent crops or production and to financing the purchase or construction of farm storage facilities and drying equipment is hereby amended to announce the interest rate on 1978 crop upland cotton loans.

Paragraph A 1 (h) is revised to read as follows:

(h) For 1978 crop upland cotton, at the rate of 7.75 percent per annum from date of disbursement until date of repayment; a different interest rate may be announced subsequently, on a quarterly basis, for new loans.

(Secs. 4 and 5, 62 stat. 1070, as amended (15 U.S.C. 714, b and c); sec. 401 (a) and (b), 63 Stat. 1051, as amended (7 U.S.C. 1421 (a) and (b)).)

Signed at Washington, D.C. on July 24, 1978.

RAY FITZGERALD
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 78-21057 Filed 7-28-78; 8:45 am]

[3410-07]

Farmers Home Administration

[Notice of Designation Number A638]

OKLAHOMA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in Cimarron County, Okla., as a result of high winds, hail, and flooding June 3 and June 4, 1978.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904 Subpart C, Exhibit D, Paragraph V B, including the recommendation of Governor David L. Boren that such designation be made.

Applications for emergency loans must be received by this Department no later than January 16, 1979, for physical losses and July 18, 1979, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C. this 25th day of July 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-21108 Filed 7-28-78; 8:45 am]

[3410-07]

[Notice of Designation No. A637]

TEXAS

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Texas Counties as a result of drought January 1, 1978, through June 1, 1978, in Baylor County; drought May 1, 1977, through June 1, 1978, in Coke County; rain, high winds, and hail May 25, 26, and 27, 1978, in Deaf Smith County; sleet, snow, and ice January 11, 1978, through March 1, 1978, in Morris County; drought April 1, 1977, through May 31, 1978, in Real County; drought January 1, 1978, through May 8, 1978, in Upton County; and drought June 1, 1977, through May 25, 1978, in Zavala County.

Therefore, the secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904 Subpart C, Exhibit D, Paragraph V-B, including the recommendation of Governor Dolph Briscoe that such designation be made.

Applications for emergency loans must be received by this Department no later than January 16, 1979, for physical losses and July 18, 1979, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 27th day of July, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 78-21107 Filed 7-28-78; 8:45 am]

[3410-16]

Soil Conservation Service

BIG 8 R.C. & D. AREA, CRITICAL AREA TREATMENT R.C. & D. MEASURES, TEXAS

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 Big 8 R.C. & D. area critical area treatment R.C. & D. measures in Brazos, Burleson, Grimes, Madison, Lee, Leon, Robertson, Waller, and Washington Counties. Tex. 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. George C. Marks, State Conservationist, has determined that the preparation and review of environmental impact statements are not needed for this project. The measures concern plans for critical area treatment. The planned works of improvement include critical area treatment. The planned works of improvement include critical

area shaping, filling, topsoiling, fertilizing, and weed control; supplemental irrigation; grassed waterways; sod chutes; and stabilizing structures such as grade stabilization structures, debris basins, concrete chutes or drops, pipe drops, lined waterways, diversions, rock riprap, crossover pipe culverts, concrete retaining walls, underground pipe inlets, and fencing.

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. George C. Marks, State Conservationist, Soil Conservation Service, W.R. Poage Federal Building, 101 South Main Street, P.O. Box 648, Temple, Tex., phone 817-774-1214. 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 August 30, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

Dated: July 21, 1978.

EDWARD E. THOMAS,
Assistant Administrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-21033 Filed 7-28-78; 8:45 am]

[3410-16]

NORTH ACCOMACK ELEMENTARY SCHOOL LAND DRAINAGE AND CRITICAL AREA TREATMENT R.C. & D. MEASURE, VIRGINIA

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 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 North Accomack Elementary School land drainage and critical area treatment R.C. & D. measure, Virginia.

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. David N. Grimwood, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for land drainage and critical area treatment. The planned works of improvement include 2,740 feet of subsurface tile drainage; 1,900 feet of surface drainage ditches; selective filling; grading and shaping; seedbed preparation and seeding; and a pump.

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. David N. Grimwood, State Conservationist, Soil Conservation Service, 400 North 8th Street, Room 9201, Richmond, Va. 23240, Phone 804-782-2455. 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 August 30, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

Dated: July 21, 1978.

EDWARD E. THOMAS,
Assistant Administrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-21034 Filed 7-28-78; 8:45 am]

[3410-16]

WATERSHED PLANNING

Notice of Amended Authorization

The following concerned State Conservationist of the Soil Conservation Service has been authorized to provide planning assistance to local organizations for the indicated watershed. The State Conservationist may proceed with investigations and surveys as necessary to develop watershed plans under authority of the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and in accordance with requirements of the National Environmental Policy Act of 1969, Pub. L. 91-190.

Persons interested in this project may contact the State Conservationist listed below:

Oak grove Watershed (amended), Hood River County, Oreg., State Conservationist—Guy W. Nutt, Soil Conservation Service, Federal Building, 16th Floor, 1220 South West 3d Avenue, Portland, Oreg. 97204, 503-221-2751.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program.)

Dated: July 17, 1978.

VICTOR H. BARRY, JR.
Deputy Administrator for Programs.

[6320-01]

CIVIL AERONAUTICS BOARD

[Order 78-7-92; Docket 33063]

BRANIFF AIRWAYS, INC.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of July 1978.

By Order 78-7-91, issued concurrently with this Order, we have proposed to realine the route system of Continental Air Lines in a manner which would, among other things, give it unrestricted authority in certain minor markets, listed in the attached Appendix, where Braniff holds restricted authority.[1] As explained in Orders 78-4-109, 77-11-74, and 76-5-101, it is our view that such small markets do not, as a practical matter, present competitive considerations of significant magnitude, and, accordingly, we have proposed as a matter of policy to grant unrestricted authority to all carriers authorized to serve such minor markets. The removal of operating restrictions on Braniff as well as Continental will give these carriers greater flexibility to establish more logical aircraft routings, and may enable them to offer new or additional service, thereby benefiting the traveling public without any significant adverse impact on other carriers.

Therefore, consistent with our tentative findings and conclusions set forth in Order 78-7-91, and those in Order 78-4-109, we tentatively find and conclude that the elimination of restrictions on Braniff's operations in the markets listed in the Appendix is required by the public convenience and necessity, and is consistent with our policy of removing restrictions that serve no useful purpose and are otherwise wasteful and undesirable.

Interested persons will be given 30 days following the date of adoption of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to direct their objections, if any, to specific markets, and to support objections with detailed economic analysis. If an oral evidentiary hearing complete with the

[1] A minor market is one with fewer than 20 passengers per day, or 7,300 per year. The traffic volume and Braniff's current authority in each market are set forth in the Appendix.

opportunity for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.[2]

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 Braniff's certificate for Route 9 so as to remove operating restrictions in the markets listed in the attached Appendix;

2. Any interested persons having objection to the issuance of an order making final the proposed findings, conclusions, and certificate amendment and modification set forth here shall, within 30 days after the date of adoption of this order, file with the Board and serve upon all persons listed in Appendix I of Order 78-7-91, a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support the stated objections; answers to objections shall be filed 15 days thereafter;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters or issues raised before further action is taken by the Board;[3]

4. In the event no objections are filed to any part of this order, all further procedural steps relating to such part or parts will be deemed to have been waived, and the case will be submitted to the Board for final action; and

5. A copy of this order shall be served upon all persons listed in Appendix I of Order 78-7-91.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[4]

PHYLLIS T. KAYLOR,
Secretary.

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[2] We further tentatively find and conclude that Braniff is a citizen of the United States within the meaning of the act, and is fit, willing, and able to perform properly the air transportation proposed here and to conform to the provisions of the act and the Board's rules, regulations, and requirements.

[3] All motions or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

[4] All Members concurred.

MINOR MARKETS WHERE BRANIFF WILL RECEIVE UNRESTRICTED AUTHORITY

Market	Traffic [1] year end, Sept. 30, 1975	Present authority
Amarillo-Miami [2]	2,180	1 stop via Dallas.
New Orleans	4,720	1 stop via Tulsa.
Portland	1,670	1 stop via Dallas.
Seattle	2,020	Do.
Austin-Portland	2,090	Do.
Seattle	4,130	Do.
Colorado Springs-New Orleans	5,180	Do.
Kansas City-Lubbock	5,300	Do.
Lubbock-Miami [2]	3,650	Do.
New Orleans	4,960	Do.
Portland	1,250	Do.
Seattle	2,340	Do.
Wichita	1,690	Do.

[1] True O&D plus interline connecting passengers.
[2] Braniff's authority is Miami/Fort Lauderdale.

[FR Doc. 78-21116 Filed 7-28-78; 8:45 am]

[6320-01]

[Order 78-7-91; Docket 29857]

CONTINENTAL AIR LINES, INC.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of July 1978.

By application and petition dated September 30, 1976, Continental Air Lines asks the Board to issue an order directing all interested persons to show cause why its certificate of public convenience and necessity for Route 29 should not be amended to realign existing segments 1 through 12 and 14 through 19 into a single segment, and to modify or remove certain restrictions.[1]

In support of its request, the carrier argues that: Its route system is heavily encumbered by stops resulting from segment junction points and numerous restrictions, many of which were imposed as pretrial restrictions to limit the scope of cases; many of these were imposed more than 20 years ago, under vastly different circumstances, and have outlived their usefulness, while others are far more rigid than necessary to protect other carriers; and that the proposed realignment will improve greatly its operating flexibility without significant adverse effects on other carriers. It also argues that its proposed realignment conforms to the Board's realignment guidelines, with one proposed change.[2]

Petitioner also asks for a waiver of the environmental evaluation requirement set out in part 312 of the Board's regulations. In support, it argues that it is proposing no new or changed schedules in conjunction with the realignment, and is unable to state at this time what service changes will be instituted.[3]

Answers opposing the application were filed by the following parties: Hughes Airwest, Western Air Lines, Braniff Airways, Frontier Airlines, Ozark Air Lines, United Air Lines, National Airlines, Air California, Texas International Airlines, American Airlines, the Colorado parties,[4] the Kansas City parties,[5] the Wichita Area Chamber of Commerce, and the Port of Oakland.

Answers in general support[6] were filed by Trans World Airlines, the El Paso parties,[7] and the Midland/Odessa parties.[8]

Northwest Airlines filed an answer stating that it does not oppose the application provided its realignment application receives concurrent and comparative processing.

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[1] We are not proposing to realign segments 13 and 20 because Continental did not request realignment of segment 13, which extends to Hilo and Honolulu, and segment 20, which extends to Tampa/St. Petersburg, was awarded after the realignment application was filed. Peoria, which appears on segment 6 of Continental's certificate, was also awarded after this application was filed. Accordingly, that segment appears separately on its certificate. Restrictions pertaining to the other points on that segment, however, have been treated in accordance with the realignment guidelines. Appendixes filed as part of the original document.

[2] When Continental filed its application it had before it only the guidelines set out in the *Western Route Realignment*, Order 76-5-101. We have since revised those guidelines in the *Delta Route Realignment*, Order 78-4-109.

[3] We will grant the waiver.

[4] The city and county of Denver, the Public Utilities Commission of the State of Colorado, and the Denver Chamber of Commerce.

[5] The city of Kansas City and the chamber of commerce of Greater Kansas City.

[6] Some of the answers in general support contained objections directed at specific requests of Continental.

[7] The city of El Paso, the El Paso Airport and Mass Transit Board, and the El Paso Chamber of Commerce.

[8] The cities and chambers of commerce of Midland and Odessa.

Delta Air Lines states that it does not oppose the application if the Board denies the objections to its realignment application, and that otherwise it opposes.

The Colorado parties also filed a petition to intervene, which we will grant.

Continental filed a consolidated reply, addressing objections raised by answering parties.

The strongest general opposition comes from the local service carriers arguing that the current series of trunkline realignments amounts to a major revision of the U.S. air transportation system, and is economically unwise and illegal absent a formal oral hearing. They further argue, along with certain civic parties, that this realignment will create dormant authority in many markets, and will serve to discourage entry into those markets by other carriers. Certain civic parties suggest that, in order to alleviate this alleged problem, the Board should adopt a policy that if any particular authority awarded in a realignment proceeding remains dormant for twelve consecutive months, the incumbent's authority would be deleted and an award would be given to another carrier.

Several carriers also contend that the *Ashbacker*[9] doctrine bars consideration of Continental's requests for improved authority in certain markets.

We have considered these arguments, and we reject them as we did in the *Delta Realignment Proceeding*, Order 78-4-109. We refer interested parties to that order for a discussion of our reasons.

There were also many objections claiming that Continental has gone beyond our realignment guidelines and is attempting to acquire wholly new route authority in several markets. Finally, several parties enumerate specific markets in which they claim that Continental is not entitled to improved authority under our realignment guidelines.

As we have stated before, we are undertaking these route realignments in order to maximize scheduling flexibility, allow carriers to increase equipment utilization, conform route authority to traffic flows, and eliminate or modify outdated certificate conditions that now serve to impair meaningful market development and inhibit carrier efficiency. In the *Western* and *Delta* realignment proceedings, *supra*, we developed guidelines for deciding what improvements in authority are warranted in particular types of markets, and our reasons are discussed at length in those decisions. We have applied those guidelines in this proceeding, and we do not feel that the record supports any alterations or exceptions to them in this case.[10]

We tentatively find and conclude that: Continental's proposed realignment, as modified by this Order, conforms to the Board's policy and objectives discussed above, and that substantial public benefits will result from its realigned system; the proposed realignment will allow Continental to improve its operating efficiency and its service to the traveling public;[11] for the foregoing reasons, the public convenience and necessity require the realignment of Continental's system as proposed in this order; and Continental is a citizen of the United States within the meaning of the Act, and is fit, willing, and able to perform properly the air transportation proposed here, and to conform to the provisions of the Act and the Board's rules, regulations and requirements.

Further, we tentatively find that the action we propose here 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 that it is not a "major regulatory action" as the Board has defined that term for purposes of complying with the Energy Policy and Conservation Act.[12]

Interested persons will be given 30 days following the date of adoption of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect those persons to direct their objections, if any, to specific markets, and to support those objections with detailed economic analysis. If an oral evidentiary hearing complete with the opportunity for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.

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 Continental's certificate for Route 29 in the manner set forth in the accompanying proposed certificate (Appendix B);

2. Any interested persons having objections to the issuance of an order making final the proposed findings, conclusions, and certificate amendments and modifications set forth here shall, within 30 days after the date of adoption of this order, file with the Board and serve upon all persons listed in Appendix I a statement of objection together with a summary of testimony, statistical data, and evidence expected to be relied upon to support the stated objections; answers to objections shall be filed 15 days thereafter;

3. If timely and properly suported objections are filed, full consideration will be accorded the matters or issues raised before further action is taken by the Board.[13]

4. In the event no objections are filed to any part of this order, all further procedural steps relating to such part or parts will be deemed to have been waived, and the case will be submitted to the Board for final action;

5. The petition of the Colorado parties for leave to intervene be granted;

6. Continental be granted a waiver of the environmental evaluation requirement of Part 312; and

7. A copy of this order shall be served upon all persons listed in Appendix I.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[14]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21121 Filed 7-28-78; 8:45 am]

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[9] Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945).

[10] The objections of other carriers as they apply to specific markets and the proposed improvements in Continental's authority are set forth in detail in Appendices C through H, attached to this order.

[11] Continental will, of course, be required by the *Domestic Passenger-Fare Investigation-Phase 9* (Fare Structure), Order 74-12-109, December 27, 1974, to revise its fares in markets in which it receives improved authority so that the fares are calculated in a manner that properly relfects the improved authority resulting from the realignment.

[12] This finding takes into account the improved authority we propose to grant to other carriers in certain minor markets, as well as the improvements to Continental's authority.

[13] All motions and/or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

[14] All Members concurred.

[6320-01]

[Order 78-7-102; Docket 32786, 32452, 32875]

DELTA AIR LINES, INC. AND NORTH CENTRAL AIRLINES, INC.

Order on Reconsideration

Adopted by the Civil Aeronautics Board at its office in Wahington, D.C. on the 21st day of July 1978.

In the matter of application of Delta Air Lines, Inc. for new or amended certificate(s) of public convenience and necessity, and application of North Central Airlines, Inc. for amendment of its certificate of public convenience and necessity for Route 86F.

By order 78-6-22, served June 6, 1978, the Board instituted the *Philadelphia-Bermuda Nonstop Proceeding* and indicated its intention to proceed without an oral evidentiary hearing or a recommended decision. Delta Air Lines filed a petition for reconsideration. It asserts that it is not prepared at this time to waive its rights to an oral evidentiary hearing until it has seen the exhibits which will be supplied by other parties. It further states that, after review of those exhibits, it will advise the Board promptly if it wishes to waive the oral evidentiary hearing; if not, it will specify the areas and factual issues on which it requires cross-examination.

We will, of course, allow Delta and all other parties in this proceeding the opportunity to request oral evidentiary proceedings if there are material factual issues to be decided which can be resolved only through cross-examination. Parties will have until 5 working days after the date for filing rebuttal exhibits (July 26) to make their requests. In deciding whether or not to grant such requests, we will require parties to specify the exhibits which require cross-examination and to state precisely the matters that they find necessary to explore at an oral hearing. Should requests for cross-examination be granted, parties will be informed of the precise procedures to be followed.

Also, both Delta and North Central have filed motions to consolidate their applications in docket 32452 and 32875, respectively, in this proceeding. We have decided to grant both motions.

The Norfolk Port and Industrial Authority has petitioned for leave to intervene. It is found that petitioner has sufficient economic interest to participate as a party.

Accordingly, *it is ordered*, That:

1. To the extent indicated, the petition for reconsideration by Delta Air Lines in docket 32786 be granted;

2. All parties in this proceeding shall have 5 working days following the filing date for rebuttal exhibits to request an oral evidentiary hearing and the record developed at the hearing will be certified to the Board;

3. The motions of North Central Airlines and Delta Air Lines to consolidate their applications in dockets 32875 and 32452, respectively, in this proceeding (docket 32786) be granted; and

4. The petition of the Norfolk Port and Industrial Authority to intervene be granted.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[1]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21114 Filed 7-28-78; 8:45 am]

[6320-01]

[Order 78-5-91; Docket 32435]

EMERGENCY AIR TRANSPORTATION REQUIREMENTS

Correction

Issued under delegated authority May 16, 1978.

Page 1 should contain a third paragraph reading:

"On May 4, 1978, Great Northern Airlines, Inc., an Alaskan intrastate cargo carrier, requested Seattle-Anchorage cargo charter authority for L-188 aircraft. The request was granted the same day by telephone."

Dated: July 24, 1978.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21112 Filed 7-28-78; 8:45 am]

[6320-01]

[Order 78-7-93; Docket 33064]

FRONTIER AIRLINES, INC.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of July, 1978.

By Order 78-7-91, issued concurrently with this order, we have proposed to realine the route system of Continental Air Lines in a manner which would, among other things, give it unrestricted authority in certain minor markets, listed in the attached appendix, where Frontier holds restricted authority.[1] As explained in Orders 78-4-109, 77-11-74, and 76-5-101, it is our view that such small markets do not, as a practical matter, present competitive considerations of significant magnitude, and, accordingly, we have proposed as a matter of policy to grant unrestricted authority to all carriers authorized to serve such minor markets. The removal of operating restrictions on Frontier as well as Continental will give these carriers greater flexibility to establish more logical aircraft routings, and may enable them to offer new or additional service, thereby benefiting the traveling public without any significant adverse impact on other carriers.

Therefore, consistent with our tentative findings and conclusions set forth in Order 78-7-91, and those in Order 78-4-109, we tentatively find and conclude that the elimination of restrictions on Frontier's authority in the markets mentioned above is required by the public convenience and necessity, and is consistent with our policy of removing restrictions that serve no useful purpose and are otherwise wasteful and undesirable.

Interested persons will be given 30 days following the date of adoption of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to direct their objections, if any, to specific markets, and to support objections with detailed economic analysis. If an oral evidentiary hearing complete with the opportunity for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.[2]

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 Frontier's certificate for Route 24 so as to remove operating restrictions in the markets listed in the appendix;

2. Any interested persons having objections to the issuance of an order making final the proposed findings, conclusions, and certificate amendment and modification set forth here shall, within 30 days after the date of adoption of this order, file with the Board and serve upon all persons listed in appendix I of Order 78-7-91, a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support the stated objections; answers to objections shall be filed 15 days thereafter;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters or issues raised before further action is taken by the Board;[3]

4. In the event no objections are filed to any part of this order, all further procedural steps relating to such part or parts will be deemed to have

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[1] All Members concurred.

[1] A minor market is one with fewer than 20 passengers per day, or 7,300 per year. The traffic volume and Frontier's current authority in each market are set forth in the appendix.

[2] We further tentatively find and conclude that Frontier is a citizen of the United States within the meaning of the act, and is fit, willing, and able to perform properly the air transportation proposed here and to conform to the provisions of the act and the Board's rules, regulations, and requirements.

[3] All motions or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

been waived, and the case will be submitted to the Board for final action; and

5. A copy of this order shall be served upon all persons listed in appendix I of Order 78-7-91.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[4]

PHYLLIS T. KAYLOR,
Secretary.

[4] All Members concurred.

MINOR MARKETS WHERE FRONTIER WILL RECEIVE UNRESTRICTED AUTHORITY

Market	Traffic[1] year end, Sept. 30, 1975	Present authority
Amarillo-El Paso	5,080	1 stop via a point in Colorado.
Tucson	1,260	2 stop, one at a point in Colorado and one at another point.
Chicago-Lawton	1,820	2 stop.
El Paso-Wichita	2,920	1 stop.
Lawton-Phoenix	720	Do.
Tucson	370	2 stop.
Oklahoma City-Tucson	5,760	2 stop, one at Albuquerque and one at another point.
Tuscon-Tulsa	4,460	1 stop via Denver or 3-stop.
Wichita	3,160	2 stop.

[1] True O&D plus interline connecting passengers.

[FR Doc. 78-21119 Filed 7-28-78; 8:45 am]

[6320-01]

[Order 78-7-121; Docket 32376, 32584]

SAN ANTONIO-DENVER ROUTE PROCEEDING

Order

Issued under delegated authority July 24, 1978.

By Order 78-4-30, dated April 7, 1978, the Board instituted the San Antonio-Denver Route Proceeding to consider the need for new nonstop authority in this market. On May 1, 1978, Continental Air lines, Inc., moved to consolidate its application in Docket 32584 into this proceeding. No answers have been received opposing the motion insofar as Continental's application conforms to the scope of the investigation instituted by Order 78-4-30.

Continental's motion to consolidate will be granted to the extent that its application conforms to the scope of this investigation.

Pursuant to authority duly delegated by the Board in Order 78-4-30,

It is ordered that:

The motion of Continental Air Lines, Inc., to consolidate its application in Docket 32584 into Docket 32376 is granted to the extent that the application conforms to the scope of the investigation instituted by Order 78-4-30.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 C.F.R. 385.50, may file such petitions within ten days after the service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21113 Filed 7-28-78; 8:45]

[6320-01]

[Order 78-7-94; Docket 33065]

TEXAS INTERNATIONAL AIRLINES

Order to Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of July 1978.

By Order 78-7-91, issued concurrently with this Order, we have proposed to realign the route system of Continental Air Lines in a manner which would, among other things, give it unrestricted authority in certain minor markets, listed in the attached appendix, where Texas International holds restricted authority.[1] As discussed in Orders 78-4-109, 77-11-74, and 76-5-101, it is our view that such small markets do not, as a practical matter, present competitive considerations of significant magnitude, and, accordingly, we have proposed as a matter of policy to grant unrestricted authority to all carriers authorized to serve such minor markets. The removal of operating restrictions on Texas International as well as Continental will give these carriers greater flexibility to establish more logical aircraft routings, and may enable them to offer new or additional service, thereby benefiting the traveling public without any significant adverse impact on other carriers.

Therefore, consistent with our tentative findings and conclusions set forth in Order 78-7-91, and those in Order 78-4-109, we tentatively find and conclude that the elimination of restrictions on Texas International's operations in the markets listed in the Appendix is required by the public convenience and necessity, and is consistent with our policy of removing restrictions that serve no useful purpose and are otherwise wasteful and undesirable.

Interested persons will be given 30 days following the date of adoption of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to direct their objections, if any, to specific markets, and to support objections with detailed economic analysis. If an oral evidentiary hearing complete with the opportunity for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.[2]

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 Texas International's certificate for Route 82 so as to remove operating restrictions in the markets listed in the attached appendix;

2. Any interested persons having objection to the issuance of an order making final the proposed findings, conclusions, and certificate amendment and modification set forth here shall, within 30 days after the date of adoption of this order, file with the Board and serve upon all persons listed in Appendix I of Order 78-7-91, a statement of objections together

[1] A minor market is one with fewer than 20 passengers per day, or 7,300 per year. The traffic volume and Texas International's current authority in each market are set forth in the appendix.

[2] We further tentatively find and conclude that Texas International is a citizen of the United States within the meaning of the act, and is fit, willing, and able to perform properly the air transportation proposed here and to conform to the provisions of the act and the Board's rules, regulations, and requirements.

with a summary of testimony, statistical data, and evidence expected to be relied upon to support the stated objections; answers to objections shall be filed 15 days thereafter;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters or issues raised before further action is taken by the Board;[3]

4. In the event no objections are filed to any part of this order, all further procedural steps relating to such part or parts will be deemed to have been waived, and the case will be submitted to the Board for final action; and

5. A copy of this order shall be served upon all persons listed in Appendix I of Order 78-7-91.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[4]

PHYLLIS T. KAYLOR,
Secretary.

MINOR MARKETS WHERE TEXAS INTERNATIONAL WILL RECEIVE UNRESTRICTED AUTHORITY

Market	Traffic [1] year end, Sept. 30, 1975	Present authority
Amarillo-El Paso	5,080	1 stop.
New Orleans	4,720	Nonstop on flights serving Albuquerque, Denver, or a point west of either; otherwise 1 stop.
El Paso-New Orleans	6,360	2 stop.
Los Angeles-Wichita Falls	3,880	Do.
Lubbock-New Orleans	4,960	Nonstop on flights serving Albuquerque, Denver, or a point west of either; otherwise 1 stop.
Midland-New Orleans	6,320	Nonstop on flights serving Denver or Salt Lake City; otherwise 1 stop.

[1] True O&D plus interline connecting passengers.

[FR Doc. 78-21117 Filed 7-28-78; 8:45 am]

[6320-01]

[Order 78-7-95; Docket 33066]

TRANS WORLD AIRLINES, INC.

Order to Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of July 1978.

By Order 78-7-91, issued concurrently with this Order, we have proposed to realign the route system of Continental Air Lines in a manner which would, among other things, give it unrestricted authority in the Amarillo-Miami/Fort Lauderdale markets, minor markets where TWA holds restricted authority.[1] As discussed in Orders 78-4-109, 77-11-74, and 76-5-101, it is our view that such small markets do not, as a practical matter, present competitive considerations of significant magnitude, and, accordingly, we have proposed as a matter of policy to grant unrestricted authority to all carriers authorized to serve such minor markets. The removal of operating restrictions on TWA as well as Continental will give these carriers greater flexibility to establish more logical aircraft routings, and may enable them to offer new or additional service, thereby benefiting the traveling public without any significant adverse impact on the other carriers.

Therefore, consistent with our tentative findings and conclusions set forth in Order 78-7-91, and those in Order 78-4-109, we tentatively find and conclude that the elimination of restrictions on TWA's operations in the Amarillo-Miami/Fort Lauderdale markets is required by the public convenience and necessity, and is consistent with our policy of removing restrictions that serve no useful purpose and are otherwise wasteful and undesirable.

Interested persons will be given 30 days following the date of adoption of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to direct their objections, if any, to specific markets, and to support objections with detailed economic analysis. If an oral evidentiary hearing complete with the opportunity for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.[2]

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 TWA's certificate for Route 2 so as to remove operating restrictions in the Amarillo-Miami/Fort Lauderdale markets;

2. Any interested persons having objections to the issuance of an order making final the proposed findings, conclusions, and certificate amendment and modification set forth here shall, within 30 days after the date of adoption of this order, file with the Board and serve upon all persons listed in Appendix I of Order 78-7-91, a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support the stated objections; answers to objections shall be filed 15 days thereafter;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters or issues raised before further action is taken by the Board;[3]

4. In the event no objections are filed to any part of this order, all further procedural steps relating to such part of parts will be deemed to have been waived, and the case will be submitted to the Board for final action; and

5. A copy of the is order shall be served upon all persons listed in Appendix I of Order 78-7-91.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[4]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21118 Filed 7-28-78; 8:45 am]

[2] All motions or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

[1] Amarillo-Miami generated 2,180 true O. & D. plus interline connecting passengers for the year ended Sept. 30, 1975, while Amarillo-Fort Lauderdale generated only 820. Therefore, they meet the Board's definition of minor markets: those with fewer than 20 passengers per day or 7,300 per year. TWA currently has only connecting authority over St. Louis in these markets.

[4] All Members concurred.

[3] We further tentatively find and conclude that TWA is a citizen of the United States within the meaning of the act, and is fit, willing, and able to perform properly the air transportation proposed here and to conform to the provisions of the act and the Board's rules, regulations, and requirements.

[3] All motions or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

[4] All members concurred.

[6320-01]

[Order 78-7-103; Docket 31597]

TRANS WORLD AIRLINES, INC.

Order to Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of July 1978.

On November 14, 1977, Trans World Airlines filed an application to amend its certificate of public convenience and necessity for Route 2 to include fill-up authority between Philadephia and Boston on flights operated beyond Boston in foreign or overseas air transportation as authorized in Route 147. On the same date, TWA also filed a petition for issuance of a show-cause order.

In support of the petition, TWA states that it satisfies the requirements for fill-up rights as established in Orders 77-4-153 and 77-10-16, issued April 29, 1977 and October 6, 1977, respectively.[1]

The Boston parties filed an answer in support of TWA's application.[2] Allegheny Airlines, American Airlines, and the Philadelphia parties filed answers in opposition.[3]

American, in its answer in opposition, argues that: show cause procedures are an improper method by which to grant domestic coterminal traffic rights to international carriers; TWA's petition is premature due to both an insufficient length of service in the Boston-Philadelphia market, and the pendency of the Bermuda II Transatlantic route proceeding; TWA's need for fill-up authority is less than American's need for added domestic back-up traffic; and, should the petition be approved, American will suffer a substantial diversion of passengers in the market.

Allegheny raises some of the same objections as American, in addition to challenging the possible grant of fill-up rights that are limited only to TWA's international or overseas flights, rather than to London flights alone.[4][5]

TWA filed a reply to Allegheny's answer, accompanied by a request to file the unauthorized pleading. We will deny the carrier's request since its reply consists primarily of previously raised arguments in support of its application.

We have decided to order any interested persons to show cause why TWA's petition should not be granted as requested. Our tentative conclusion that its certificate of public convenience and necessity for Route 2 should be amended to permit it to carry persons, property and mail between Philadelphia and Boston on flights operated in foreign and/or overseas air transportation is based on the tentative findings below.

Grant of TWA's application is in line with a series of recent grants of fill-up authority to it and others.[6] The carrier is currently providing service in the market and has been doing so for neary 16 months. In light of its low load factors on the segment (15.5 percent for the period March through September, 1977), the grant of fill-up rights will benefit TWA, while providing increased frequencies for the public.

None of the objections to the request lead us to a different result. First, American's claim that a show-cause order is an improper method of granting fill-up authority was rejected in Order 77-4-153, April 29, 1977, and further discussion of that claim is unnecessary. Second, the request is in no way premature. TWA has served the market for a sustained period of time.[7] Finally, the grant of full-up authority is unlikely to have a significant diversionary effect on any other carrier. There were 437,960 O. & D. plus interline connecting passengers in the market for the year ended September 30, 1977,[8] and a total of 18 round trips by four carriers.[9] TWA estimates that it will attract only 15 additional passengers per flight if fill-up rights are granted. Moreover, if it wants to increase its Boston-Philadelphia frequencies on Route 2, it will have to extend its flights to European points.[10]

We also tentatively conclude that TWA's proposal will not be 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, as defined in Section 313 of our regulations.[11]

Interested persons will be given 30 days following adoption of this order to show cause why the tentative findings and conclusions set forth should not be made final. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he or she would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.

Accordingly, *It is ordered that:*

1. Trans World Airlines motion for leave to file an otherwise unauthorized document be denied;

2. The Philadelphia Parties' motion for leave to file an otherwise unauthorized document be granted;

3. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated here and amending its certificate for Route 2 to authorize Trans World Airlines to transport persons, property, and mail in interstate air transportation in the Boston-Philadelphia market on flights operated in foreign and/or overseas air transportation under its certificate for Route 147;

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[1] TWA claims its petition satisfies the following elements necessary for the grant of fill-up authority: it currently operates over the Boston-Philadelphia segment with substantial excess capacity and a granting of fill-up rights will strengthen its international route; if this is granted, there will be no adverse affect on other carriers and such rights are not now involved in another proceeding; and TWA has provided passenger service in this market for a sustained period of time.

[2] The Boston parties consist of the Massachusetts Port Authority and the Greater Boston Chamber of Commerce.

[3] The Philadelphia parties consist of the City of Philadelphia and the Greater Philadelphia Chamber of Commerce.

[4] Allegheny also challenges TWA's petition on the basis that, in effect, it is an attempt to avoid or modify its domestic long-haul restriction on Philadephia-Boston service. TWA has authority on Route 2 to carry passengers between Boston and Philadelphia, provided such flights serve Dayton, Ohio, or a city further west.

[5] The Philadelphia parties object to TWA's application on the basis of an inconvenience in customs clearance which Philadelphia-bound international passengers will incur if fill-up authority is granted. However, the Philadelphia parties' pleading does not make sufficiently clear the nature and reasons for such inconvenience. They will have another opportunity before our final order to clarify this point.

[6] *See e.g.,* Order 77-10-16, Oct. 6, 1977, made final by Order 78-4-18, Apr. 6, 1978.

[7] As for the uncertainties raised by the U.S. carrier designation provisions of Bermuda II, we have by Order 78-5-146, May 24, 1978, authorized the continuance of TWA on the Boston-London route. This decision has not yet been approved by President Carter. However, we do not believe that any remaining uncertainty about TWA's continuance on the route should lead to a rejection of the request before us.

[8] O. & D. Survey of Airline Passenger Traffic, tables 8, 10, Sept. 30, 1977.

[9] July 1, 1978, O.A.G.

[10] While it is true that the effect of the grant of fill-up rights will be to lessen the effects of TWA's domestic long-haul restriction on Boston-Philadelphia flights, similar effects have flowed from our previous grants of fill-up rights, and such an outcome does not constitute a valid reason for denying TWA's application. See, Order 78-4-18, Apr. 6, 1978; Order 77-11-10, Nov. 3, 1977.

[11] TWA's environmental evaluation stated that no new flights will be implemented as a result of any grant of fill-up rights.

We also tentatively conclude that TWA is a citizen of the United States, within the meaning of the Act, and is fit, willing and able to properly perform the transportation proposed here and to conform to the provisions of the Act and the Board's rules, regulations and requirements.

4. Any interested persons having objection to the issuance of an order making final the proposed findings, conclusions, and certificate amendments set forth here shall, within 30 days after the date of adoption of this order, file with the Board a statement of objections together with a summary of testimony, statistical data, and such evidence as is expected to be relied upon to support the stated objections; answers may be filed 15 days thereafter;

5. If timely and properly supported objections are filed, full consideration will be accorded the matters or issues raised by the objections before further action is taken by the Board.[12]

6. In the event no objections are filed, all further procedural steps will be deemed to have been waived, and the case will be submitted to the Board for final action; and

7. A copy of this order shall be served upon Trans World Airlines, Allegheny Airlines, American Airlines, and the Philadelphia and Boston parties.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board; [13]

PHYLLIS T. KAYLOR,
Secretary.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (AS AMENDED) FOR ROUTE 2

TRANS WORLD AIRLINES, INC.

Trans World Airlines, Inc. is authorized, subject to the following provisions, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued under it, to engage in air transportation of persons, property, and mail, as follows:

1. Between the terminal point San Francisco-San Jose, Calif., the intermediate points Oakland and Los Angeles-Ontario, Calif., Las Vegas, Nev., Phoenix and Tucson, Ariz., Albuquerque, N. Mex., Amarillo, Tex., Oklahoma City and Tulsa, Okla., Wichita, Kans., Kansas City and St. Louis, Mo., Louisville, Ky., and Cincinnati and Dayton, Ohio, and (a) beyond Dayton, the intermediate point Columbus, Ohio and the terminal point Detroit, Mich., and (b) beyond Dayton, the intermediate point Cleveland, Ohio, and the coterminal points New York, N.Y., and Newark, N.J., and (c) beyond Dayton, the intermediate points Columbus, Ohio, Washington, D.C., Baltimore, Md., Philadelphia, Pa.-Wilmington, Del. (to be served through the Philadelphia International Airport), New York, N.Y., Newark, N.J., and Hartford, Conn.-Springfield, Mass., and the terminal point Boston, Mass., and (d) beyond Dayton, the intermediate points Columbus, Ohio, Pittsburgh, Harrisburg, and Lancaster, Pa., Philadelphia, Pa.-Wilmington, Del. (to be served through the Philadelphia International Airport), New York, N.Y., Newark, N.J., and Hartford, Conn.-Springfield, Mass., and the terminal point Boston, Mass.;

2. Between the terminal point San Francisco-San Jose, Calif., the intermediate points Oakland and Los Angeles-Ontario, Calif., Las Vegas, Nev., Phoenix and Tucson, Ariz., Albuquerque, N. Mex., Amarillo, Tex., Oklahoma City and Tulsa, Okla., Wichita, Kans., Kansas City and St. Louis, Mo., Indianapolis, Ind., and Cincinnati and Dayton, Ohio, and beyond Dayton, as in segment 1 (a), (b), (c), and (d) above;

3. Between the terminal point San Francisco-San Jose, Calif., the intermediate points Oakland and Los Angeles-Ontario, Calif., Las Vegas, Nev., Phoenix and Tucson, Ariz., Albuquerque, N. Mex., Amarillo, Tex., Wichita, Kans., and Kansas City, Mo., and (a) beyond Kansas City, the intermediate points Hannibal, Mo.-Quincy, Ill., Chicago, Ill., and Detroit, Mich., and the coterminal points New York, N.Y. and Newark, N.J., and (b) beyond Kansas City, the intermediate points Hannibal, Mo.-Quincy, Ill., and Chicago, Ill., and the terminal point Pittsburgh, Pa.;

4. Between the terminal point Chicago, Ill., the intermediate points Dayton and Columbus, Ohio, and (a) beyond Columbus, the intermediate points Washington, D.C., Baltimore, Md., Philadelphia, Pa.-Wilmington, Del. (to be served through the Philadelphia International Airport), New York, N.Y., Newark, N.J., and Hartford, Conn.-Springfield, Mass., and the terminal point Boston, Mass., and (b) beyond Columbus, the intermediate points Pittsburgh, Harrisburg, and Lancaster, Pa., Philadelphia, Pa.-Wilmington, Del. (to be served through the Philadelphia International Airport), New York, N.Y., Newark, N.J., and Hartford, Conn.-Springfield, Mass., and the terminal point Boston, Mass.;

5. Between the terminal point San Francisco-San Jose, Calif., the intermediate points Oakland and Los Angeles-Ontario, Calif., Denver, Colo., and Kansas City, Mo., and beyond Kansas City, as in segments 1, 2, and 3 above (with applicable restrictions);

6. Between the terminal point St. Louis, Mo., the intermediate points Nashville, Tenn., Atlanta, Ga., and Tampa-St. Petersburg-Clearwater, Fla., and the coterminal points Fort Lauderdale and Miami, Fla.;

7. Between the terminal point Los Angeles-Ontario-Long Beach, Calif., and the intermediate points Hilo and Honolulu, Hawaii;

8. Between the terminal point Atlanta, Ga., and the terminal point Kansas City, Mo.

This service is subject to the following terms, conditions, and limitations:

(1) The holder shall render service to and from each of 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.

(2) The holder may continue to serve regularly any point named here through the airport it last used regularly to serve that point before the effective date of this certificate; and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named here if nonstop service was regularly scheduled by the holder between those points before the effective date of this certificate. Upon compliance with such procedures as may be prescribed by the Board, the holder may, in addition, regularly serve a point named here through any convenient airport, and render scheduled nonstop service between any two points not consecutively named here between which service is authorized.

(3) The holder shall not serve Chicago, Ill., on flights serving Cleveland, Ohio.

(4) The holder shall serve Las Vegas, Nev., and Los Angeles-Ontario, Calif., on the same flights only when such flights originate or terminate at Albuquerque, N. Mex., or points east of it.

(5) The holder shall not render scheduled nonstop service between Louisville, Ky., and Cleveland, Ohio.

(6) Nonstop flights between Chicago, Ill., and Boston, Mass., or Washington, D.C., shall originate or terminate at Kansas City, Mo., or a point west of it.

(7) Flights serving Louisville, Ky., and Washington, D.C., shall also serve Columbus or Dayton, Ohio.

(8) Flights serving Louisville, Ky., on the one hand, and Philadelphia, Pa.-Wilmington, Del., or Boston, Mass., on the other hand, shall also serve Cincinnati, Dayton, or Columbus, Ohio, or Pittsburgh, Pa.

(9) Flights serving Louisville, Ky., and Baltimore, Md., shall also serve Cincinnati, Dayton, or Columbus, Ohio.

(10) Flights serving Louisville, Ky., on the one hand, and Los Angeles-Ontario, San Francisco-San Jose, or Oakland, Calif., or Phoenix, Ariz., on the other hand, shall also serve St. Louis or Kansas City, Mo.

(11) Flights on segments 1 and 2 serving Detroit, Mich., on the one hand, and Los Angeles-Ontario, San Francisco-San Jose, or Oakland, Calif., or Phoenix, Ariz., on the other hand, shall also serve one of the following points: Columbus, Dayton, or Cincinnati, Ohio, St. Louis or Kansas City, Mo.

(12) Flights serving Indianapolis, Ind., and Detroit, Mich., shall also serve Dayton or Columbus, Ohio.

(13) The holder shall not engage in local air transportation between Phoenix, Ariz., on the one hand, and Las Vegas, Nev., on the other hand, during the period between the date upon which Bonanza Air Lines, Inc., inaugurates service over the Las Vegas-Phoenix portion of the route awarded it by Order E-3596, dated November 22, 1949, and the date (a) upon which the Chairman of the Board certifies to the holder that Bonanza Air Lines, Inc., or any assignee of Bonanza Air Lines, Inc., no longer holds an effective certificate issued by the Board for that Service, or (b) upon which the Board, acting under its order in the Bonanza Air Lines, Inc.-Transcontinental & Western Air, Inc., Route Authorization Transfer Case, Docket 4053 (Order E-3547, dated November 10, 1949), otherwise directs that such service maybe resumed, whichever shall first occur.

(14) The holder's authority to serve Lancaster, Pa., is suspended for the period during which Allegheny Airlines, Inc., is authorized to serve that point.

(15) The holder's authority to serve Hannibal, Mo.-Quincy, Ill., is suspended for the period during which Ozark Air Lines, Inc., is authorized to serve that point.

(16) The holder may serve Detroit, Mich., on segment 3(a) only on flights originating at Kansas City, Mo., or a point west of it, and terminating at New York, N.Y., or Newark, N.J., or originating at New York or Newark, and terminating at Kansas City or a point west of it: *Provided*, That the holder may originate or terminate at Detroit nonstop flights over segment 3(a) between De-

[12] All motions and/or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

[13] All Members Concurred.

troit, on the one hand, and Los Angeles-Ontario, San Francisco-San Jose, or Oakland, Calif., on the other hand.

(17) Flights on segment 3 serving Detroit, Mich., on the one hand, and points west of Chicago, Ill., on the other hand, shall also serve Chicago: *Provided,* That the holder may schedule nonstop flights over segment 3 between Detroit, on the one hand, and Los Angeles-Ontario, San Francisco-San Jose, or Oakland, Calif., on the other hand.

(18) Flights serving Cleveland, Ohio, on the one hand, and New York, N.Y., or Newark, N.J., on the other hand, shall originate or terminate at St. Louis, Mo., or a point west of it: *Provided,* That flights may originate or terminate at Cleveland if they are also scheduled to serve a point in Europe, Africa, or Asia.

(19) The holder shall not serve Denver, Colo., on flights serving Kansas City, Mo.

(20) The holder shall serve Denver, Colo., and St. Louis, Mo., on the same flights only when such flights originate or terminate at points east of St. Louis.

(21) Flights serving Denver, Colo., on the one hand, and Los Angeles-Ontario, San Francisco-San Jose, or Oakland, Calif., on the other hand, shall originate or terminate at Chicago, Ill., or points east of it (or east of St. Louis, Mo.).

(22) The holder shall render service between Baltimore, Md., or Washington, D.C., on the one hand, and Philadelphia, Pa.-Wilmington, Del., New York, N.Y., or Newark, N.J., on the other hand, only (a) on flights which also serve Tulsa or Oklahoma City, Okla., or (b) on flights which originate or terminate at Dayton, Ohio, or a point west thereof.

(23) The holder shall not serve either Tulsa or Oklahoma City, Okla., on flights which also serve Wichita, Kans., or Kansas City, Mo.

(24) The holder shall not engage in air transportation between Albuquerque, N. Mex., and Tucson, Ariz., except on flights which originate at a point east of Chicago, Ill., and terminate at a point in California, or which originate at a point in California and terminate at a point east of Chicago.

(25) Flights serving Boston, Mass., or Hartford, Conn.-Springfield, Mass., on the one hand, and New York, N.Y., Newark, N.J., Philadelphia, Pa.-Wilmington, Del., Baltimore, Md., or Washington, D.C., on the other hand, shall originate or terminate at Dayton, Ohio, or a point west of it.

(26) Indianapolis, Ind., and Cincinnati, Ohio, shall be served on the same flight only if such flight also serves St. Louis, Mo., or a point west of it, or Pittsburgh, Pa., or a point east of it.

(27) The holder shall schedule service between Atlanta, Ga., and Miami, Fla., between Atlanta and Tampa-St. Petersburg-Clearwater, Fla., or between Miami and Tampa-St. Petersburg-Clearwater only on flights originating or terminating at Nashville, Tenn., or a point west of it.

(28) The holder shall not engage in air transportation with respect to persons and property between Fort Lauderdale and Miami, Fla.

(29) The holder shall not engage in single-plane air transportation between points on segment 6, other than St. Louis, Mo., on the one hand, and any point west of Kansas City, Mo., on the other hand, except between Atlanta, Ga., and Wichita, Kans., via segment 8: *Provided,* That on flights serving Hong Kong, the holder may engage in single-plane air transportation between Miami and Fort Lauderdale, Fla., and Atlanta, Ga., on the one hand, and Hilo, Hawaii, and points west of it, on the other hand.

(30) The holder shall not engage in air transportation between Detroit, Mich., and Columbus, Dayton, or Cincinnati, Ohio.

(31) On flights serving Detroit, Mich., the holder shall not engage in air transportation between (a) Columbus and Dayton, Ohio, (b) Columbus and Cincinnati, Ohio, or (c) Dayton and Cincinnati.

(32) The holder shall not provide single-plane sevice between Denver, Colo., on the one hand, and Atlanta, Ga., Miami, Fort Lauderdale, or Tampa-St. Petersburg-Clearwater, Fla., on the other hand.

(33) Flights serving St. Louis, Mo., and Indianapolis, Ind., shall also serve a point west of St. Louis or east of Indianapolis.

(34) The holder shall not schedule single-plane service through the San Jose airport between San Francisco-San Jose, Calif., on the one hand, and Las Vegas, Nev., on the other hand.

(35) The holder shall serve Tucson, Ariz., and Las Vegas, Nev., on the same flight only when such flight originates at Los Angeles-Ontario, San Francisco-San Jose, or Oakland, Calif., and terminates at Albuquerque, N. Mex., or a point east of it, or originates at Albuquerque or a point east of it and terminates at Los Angeles-Ontario, San Francisco-San Jose, or Oakland.

(36) The holder shall not schedule single-plane service through the Ontario airport between Los Angeles-Ontario, Calif., and the following points: Oakland and San Francisco-San Jose, Calif., Las Vegas, Nev., Phoenix and Tucson, Ariz., Washington, D.C., Baltimore, Md., New York, N.Y., and Newark, N.J.

(37) Flights on segment 7 shall originate or terminate at a point west of Honolulu, Hawaii.

(38) On flights serving both Honolulu and Hilo, Hawaii, the holder shall not deplane at one of those points persons, property, or mail enplaned at the other.

(39) The holder's authority to serve Honolulu, Hawaii, shall be contigent upon its filing and keeping on file with the Board tariffs providing for common fares for persons and their accompanied baggage to and from all points in the State of Hawaii receiving service from a certificated air carrier, for all classes of service which the holder offers, and further providing for stopovers without charge or at nominal charge at the points of entry into and departure from the State of Hawaii and at intermediate points between such points of entry and departure and the ultimate point of origin or destination in the State of Hawaii, subject to such terms, conditions, and limitations as may be agreed upon by and between the holder and the certificated air carriers serving points in the State of Hawaii other than Honolulu and Hilo and are approved by the Board: *Provided, however,* That in the event of a disagreement between the holder and such carriers as to the terms, conditions, and limitations applicable to such common fares (including the divisions thereof), this condition shall be deemed to be satisfied if the holder offers to enter into an agreement concerning such common fares which the Board determines to be reasonable.

(40) Notwithstanding any other provisions of this certificate, the authority to serve Hilo, Hawaii, is permissive.

(41) Flights on segment 8 shall not serve Miami or Tampa-St. Petersburg-Clearwater, Fla.

(42) On flights serving a point outside the United States on route 147, the holder may render service between New York, N.Y., or Newark, N.J., on the one hand, and Washington, D.C., Detroit, Mich., or Boston, Mass., on the other hand, without regard to the restrictions contained in conditions (16), (17), (22), and (25) of this certificate. On flights serving a point outside the United States on route 147, the holder may also render service between Boston, Mass., on the one hand, and Philadelphia, Pa. on the other hand, without regard to the restrictrions listed above.

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.

This certificate shall be effective on

The Civil Aeronautics Board, through its Secretary, has executed this certificate and affixed the seal of the Board on

Secretary.

[FR Doc. 78-21120 Filed 7-28-78; 8:45 am]

[6320-01]

[Order 78-7-97; Docket 32832]

WILLIAM F. PEEL AND CARIBBEAN AIR SERVICES, INC.

Order to Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of July 1978.

William F. Peel and Caribbean Air Services, Inc. (Casair) have jointly applied for approval or exemption under section 408 of the act of Mr. Peel's acquisition of Casair.

Mr. Peel is the sole owner of Red Coats, Inc., a janitorial service contractor, and Seahorse Pools, Inc., a company engaged in the management of commercial pools; both are located in Washington, D.C. Mr. Peel holds no interest in any air carrier, common carrier, or person engaged in a phase of aeronautics.

Casair is a noncertificated commuter air carrier operating under Part 298 of the Board's Regulations, providing cargo service between Puerto Rico, the Virgin Islands and other points in the Caribbean; the holder of an exemption to use large aircraft (Order 77-11-20); and the holder of all-cargo service certificate granted by Order 78-1-26.[1]

In support of their request, the applicants state that the acquisition will have no anticompetitive effects; that

[1] Casair is now a subsidiary of Estate Welcome, a real estate developer in the Caribbean, which in turn is owned by Rich-Healy, a holding company engaged mainly in real estate, but which has among its subsidiaries Flight Services, Inc. (Flight Services), a flying school in Florida. These control relationships were approved in Order 74-2-114.

there will be no change in the cargo operations of Casair; and that the acquisition will have none of the effects set forth in subsection 312.9(a)(2) of the Board's Regulations. In addition, if holding of a 418 certificate is deemed to preclude the use of the section 408(a)(5) exemption, the applicants ask that the Board use show-cause procedures in considering the application.

No one has filed comments on this application.

We tentatively conclude that the acquisition of Casair by Mr. Peel is subject to section 408(a)(5) of the act;[2] that the acquisition will not create a monopoly, restrain competition or jeopardize any other air carrier, and should be approved; that acquisition will allow the continued cargo service by Casair in the Caribbean without anticompetitive effects; that this action is not a major action within the meaning of the National Environmental Policy Act of 1969;[3] and that Mr. Peel's present activities and those of Casair are sufficiently distinctive to preclude any significant conflict of interest. We find no factual issues in this case that need to be explored in a full hearing, and believe that a show-cause order is the most expeditious means of dealing with the application.

We will therefore direct all interested persons to show cause why the tentative findings and conclusions and the proposed approvals should not be made final. We expect such persons to state their objections with particularity; general, vague, or unsupported objections will not be entertained. If a full evidentiary hearing, complete with the opportunity for oral cross-examination, is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a hearing that cannot be established in written pleadings.

Accordingly, *it is ordered that:*

1. Interested persons are directed to show cause why the Board should not issue an order granting approval under section 408(b) of the Act of the proposed transactions described above;

2. Any interested persons having objection to the issuance of an order making final the proposed findings, conclusions, and approvals set forth here shall, within 7 days after the date of service of this order, file with the Board a statement of objections together with a summary of testimony, statistical data, and such evidence as is expected to be relied upon to support the stated objections;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters or issues raised by the objections before further action is taken by the Board;[4]

4. In the event no objections are filed within 7 days as prescribed in paragraph 2 above, all further procedural steps relating to such part or parts will be deemed to have been waived, and the tentative findings, conclusions and approvals set forth here shall become final without further Board consideration; and

5. A copy of this order shall be served upon the Department of Justice, Antitrust Division.

This order shall be published in the FEDERAL REGISTER.[5]

PHYLLIS T. KAYLOR
Secretary.

[FR Doc. 78-21115 Filed 7-28-78; 8:45 am]

[2]The holding of a 418 certificate does not necessarily preclude the use of our exemption powers under section 408(a)(5). We will address ourselves to this question in our proposed rulemaking dealing with 418 carriers. We hope to issue a NPRM in the next few weeks.

[3]From the application it does not appear that the grant of the exemption will have any of the results set forth in subsection 312.9(a)(2) of the Board's Regulations.

[4]All motions and/or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

[5]All Members concurred.

[3510-13]

DEPARTMENT OF COMMERCE

National Bureau of Standards

I/O CHANNEL LEVEL INTERFACE STANDARDS

Submission of Post-Hearing Brief

On June 19, 1978, the National Bureau of Standards (NBS) announced in the FEDERAL REGISTER (43 FR 26341) that three I/O channel level interface standards were being recommended for Federal use. The June 19 notice set out dates for an informal public hearing of July 10, 1978, which was later changed to August 11, 1978, through announcement in a FEDERAL REGISTER notice dated June 26, 1978 (43 FR 27577), and for the submission of written comments by August 18, 1978, on each of the three proposed Federal Information Processing Standards.

Following publication of those notices, requests have been received to modify the announced schedule by providing for a further extension and reordering of the informal public hearing and written comment schedule as well as allowing the submission of a post-hearing brief and rebuttal by a date thirty (30) days following availability for inspection and copying of the public transcript of the oral and written comments submitted to NBS regarding those three proposed standards.

Having carefully reviewed and considered the requests for a further extension of the dates for the informal public hearing and written comment period, it has been determined that the dates established by NBS for such hearing and written comment period are reasonable and adequate for the submission of comments on those proposed standards. The current dates represent a reasonable balance between the completeness of the public's response and the expense to the public that would be occasioned by further delay. Accordingly, it has been determined that an extension of the dates for the informal public hearing and the written comment period would not be in the public interest.

It is believed, however, that an opportunity to file a post-hearing brief rebutting any oral or written comments which are received by NBS on the proposed standards would produce desirable additional views and would not unduly delay the processing of the proposed standards. Accordingly, the referenced June 19, 1978, notice which announced the establishment of certain procedures for the upcoming August 11, 1978, informal hearing is amended by adding a paragraph 4 to those procedures so as to allow the submission of a post-hearing brief by any interested person by September 30, 1978. The added paragraph reads as follows:

4. Post-Hearing Brief.

(a) Provision will be made so as to insure the availability of the transcript of the informal hearing and all written materials for inspection and copying at the Department's inspection facility, referred to in paragraph 3 above, by August 25, 1978.

(b) Any interested person desiring to do so may submit, not later than September 30, 1978, a post-hearing brief rebutting any oral or written comments which are received by NBS on the proposed standards. Prior participation in this proceeding in the form of an oral statement at the informal hearing or through submission of written comments is not a requirement for submission of a post-hearing brief.

(c) The post-hearing brief should be submitted in quadruplicate and sent to the Director, Institute for Computer Sciences and Technology, Room A200, Administration Building, National Bureau of Standards, Washington, D.C. 20234.

Any person having any questions about any aspect of this notice may contact: Mr. Thomas N. Pyke, Jr., Chief, Computer Systems Engineering Division, Room A231, Technology Building, National Bureau of Standards, Washington, D.C. 20234, 301-921-3436.

Dated: July 27, 1978.

ERNEST AMBLER,
Director.

[FR Doc. 78-21266 Filed 7-28-78; 8:45 am]

[3510-22]

National Oceanic and Atmospheric Administration

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Scientific and Statistical Committee of the New England Fishery Management Council, established under section 302(g) of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss: (1) Groundfish FMP objectives, and (2) other business. The meeting is open to the public. For more information on seating changes to the agenda, and/or written comments contact the Executive Director.

DATES: The meeting will be held on August 16-17, 1978 convening at 9:30 a.m. on August 16, 1978, and adjourning at 4:30 p.m. on August 17, 1978.

ADDRESS: The meeting will be held at the Fisheries Research Station of the Department of Marine Resources, Conference Room, West Boothbay Harbor, Maine.

FOR FURTHER INFORMATION CONTACT:

Mr. Spencer Apollonio, Executive Director, New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Mass. 10960, telephone: 617-535-5450.

Dated: July 26, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-21059 Filed 7-28-78; 8:45 am]

[3210-22]

PACIFIC FISHERY MANAGEMENT COUNCIL

Amended Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Amended meeting notice.

SUMMARY: The Scientific and Statistical Committee of the Pacific Fishery Management Council established by section 302(g) of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) will hold a public comment period at its August 9-11, 1978, meeting (FR Vol. 43. No. 134 dated July 12, 1978).

DATES: The public comment period will commence at 4:30 p.m. on August 10, 1978.

ADDRESS: The Pacific Fishery Management Council will meet in the Evergreen A and B rooms of the Renton Inn located at 800 Rainier Avenue South, Renton, Wash.

FOR FURTHER INFORMATION CONTACT:

Mr. Lorry Nakatsu, Executive Director, Pacific Fishery Management Council, 526 Southwest Mill Street, Second Floor, Portland, Oreg. 97201, telephone 503-221-6352.

Dated: July 26, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-21058 Filed 7-28-78; 8:45 am]

[3510-07]

Office of the Secretary

ADVISORY COMMITTEE ON THE BUREAU OF THE CENSUS

Notice of Establishment

In accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. (1976)) and Office of Management and Budget Circular A-63 of March 1974, and after consultation with the General Services Administration, the Secretary of Commerce has determined that the establishment of the Department of Commerce Advisory Committee on the Bureau of the Census is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Secretary through the Chief Economist for the Department of Commerce (the "Chief Economist"), on Bureau of the Census policies, procedures, and quality standards and provide advice to the Department on how best it can insure that statistics disseminated by the Bureau, insofar as possible, meet the needs and purposes for which they are intended. The Committee shall consist of seven members, not presently employed by the Federal Government and three other members from the senior level ranks of Federal departments and agencies that utilize Bureau of the Census statistics substantially in the administration of Federal programs. The seven non-Federal members will reflect balanced representation of various geographic regions of the country and various types of data users, including both rural and urban. In addition to these 10 members, the Committee will also include the Chief Economist, the Directors of the Bureau of the Census and the Office of Federal Statistical Policy and Standards.

The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the act, 15 days from the date of the publication of this notice.

Interested persons are invited to submit comments regarding the establishment of the Department of Commerce Advisory Committee on the Bureau of the Census. Such comments, as well as any inquiries may be addressed to the Office of the Chief Economist, U.S. Department of Commerce, Washington. D.C. 20230, phone 202-673-7950.

Dated: July 24, 1978.

GUY W. CHAMBERLIN, Jr.
Assistant Secretary for Administration.

[FR Doc. 78-21044 Filed 7-28-78; 8:45 am]

[3510-25]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

REPUBLIC OF CHINA

Amending Visa Requirement for Certain Man-Made Fiber Textile Products

JULY 26, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Requiring that the correct category be shown on the accompanying export visa for knit shirts and blouses of man-made fibers in Categories 638 and 639, exported from the Republic of China.

SUMMARY: Under the terms of the new Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, between the Governments of the United States and the Republic of China, Categories 638 and 639 are no longer combined; therefore, the export visa accompanying merchandise classified in these categories must show the correct category of the merchandise. Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs amending previous directives to require that visas accompanying merchandise in Categories 638 and 639 show the correct category of the merchandise, not the combination 638/639.

EFFECTIVE DATE: October 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Judith L. McConahy, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On October 3, 1972 a letter dated Sep-

tember 27, 1972 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the FEDERAL REGISTER (37 F.R. 20745), which established an export visa requirement for textile products exported to the United States from the Republic of China under the terms of bilateral textile agreements negotiated between the two governments.

This requirement was amended by letter of June 30, 1976 (41 FR 27774) to permit the export visas accompanying merchandise classified in categories that are combined under the terms of the bilateral agreements to show either the combination of categories or a constituent category (or categories) in the combination. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to require that visas accompanying man-made fiber textile products exported from the Republic of China in Categories 638 and 639 show the correct category of the merchandise. After the effective date of this directive, merchandise classified in Category 638 or Category 639 and accompanied by visas showing Category 638/639 in the combination will be denied entry for consumption. Merchandise in Category 638 or Category 639 which is accompanied by visas showing Category 638/639 in the combination may be withdrawn from warehouse for consumption after the effective date of this directive, if entered for warehouse before that date, provided all other visa requirements have been met.

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

JULY 26, 1978

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

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive of September 27, 1972, from the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry into the United States for consumption, and withdrawal from warehouse for consumption, of certain cotton, wool, and man-made fiber textile products, produced or manufactured in the Republic of China, for which the Government of the Republic of China had not issued a visa. It also amends, but does not cancel, the directive of June 30, 1976, which permitted export visas to show for certain categories combined under the terms of the agreement, either the combination of categories or a constituent category (or categories) in the combination.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of June 8, 1978, between the Governments of the United States and the Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, the directives of September 27, 1972 and June 30, 1976 are hereby amended, effective on October 16, 1978, to prohibit entry for consumption of man-made fiber textile products in categories 638 and 639 that are accompanied by visas which do not show the correct category of the merchandise. Merchandise accompanied by visas showing category 638/639 in the combination may be withdrawn from warehouse for consumption after the effective date of this directive, if entered for warehouse before that date, provided all other visa requirements have been met.

The actions taken with respect to the Government of the Republic of China and with respect to imports of man-made fiber textile products from the Republic of China have been determined by the Committee for the Implementation of Textile Ageeements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 78-21167 Filed 7-28-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Intention To Issue a Prohibition Order to Certain Powerplants

The Department of Energy (DOE) hereby gives notice of its intention to issue a prohibition order, pursuant to the authorities granted it by section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended, 15 U.S.C. 791 et seq., and chapter II, title 10, Code of Federal Regulations (10 CFR parts 303 and 305) to the following powerplants:

Docket No.	Owner	Generating station	Powerplant No.	Location
DCU-169	Public Service Co. of Colorado.	Cameo	1	Palisade, Colo.
DCU-170	do	do	2	Do.

The proposed order would prohibit the above-named powerplants from burning natural gas or petroleum products as their primary energy source.

PROPOSED FINDINGS AND RATIONALE FOR NOTICE OF INTENTION TO ISSUE A PROHIBITION ORDER

ESECA and DOE regulations require DOE to make certain findings before issuing a Prohibition Order to a powerplant. DOE's proposed findings are set out below with respect to the powerplants named above. Supporting rationale and conclusions are also set forth.

These findings, which are now proposed by DOE, are based on information that has been provided to and developed by DOE prior to the issuance of this Notice of Intention (NOI) to Issue a Prohibition Order. DOE intends, as necessary, to fully update, for purposes of currency, the information and data pertinent to the issuance of this NOI prior to the issuance of a Prohibition Order. DOE invites the utility or other interested persons to submit more current information or data, if such is available.

Public Service Company of Colorado shall be referred to as the "utility" and as "PSCC".

I. CAPABILITY AND NECESSARY PLANT EQUIPMENT TO BURN COAL

DOE proposes to find that, on June 22, 1974, Powerplants No. 1 and 2 at Cameo Generating Station (Cameo 1 and 2) had, or thereafter acquired or were designed with the capability and necessary plant equipment to burn coal. This proposed finding is based on the facts and interpretations stated below:

A. Based on information supplied to the Federal Energy Regulatory Commission by PSCC and a site visit performed by Pedco Environmental, Inc. (Pedco) and DOE representatives, it has been determined that each powerplant had in place, on June 22, 1974, boilers that were capable of burning coal. The boilers had been designed and constructed or modified to burn coal as their primary energy source, notwithstanding the fact that, on June 22, 1974, the powerplants may

not have been burning coal as their primary energy source.

The 1977 annual fuel consumption information reported by PSCC was used to calculate the heat input of Cameo boilers 1 and 2. Boiler 1 was 3 percent oil and 97 percent natural gas, boiler 2 was 88 percent coal and 12 percent natural gas.

B. Based on information PSCC provided to DOE during the above-metnioned site visit and other information available to DOE, Cameo 1 and 2 will require air pollution control equipment when this generating station is converted to total coal firing.

C. DOE proposes to find that on June 22, 1974, Cameo 1 and 2 had all other significant plant equipment and facilities associated with the burning of coal.

D. Within the meaning of ESECA and the regulations promulgated pursuant thereto, absence of the facilities listed in paragraph B, above, does not constitute a lack of capability and necessary plant equipment to burn coal as of June 22, 1974.

II. THE BURNING OF COAL IN LIEU OF NATURAL GAS OR PETROLEUM PRODUCTS IS PRACTICABLE AND CONSISTENT WITH THE PURPOSES OF ESECA

DOE proposes to find that the burning of coal at Cameo 1 and 2 in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based upon the presumption that Cameo 1 and 2 will be operated at a 51.8 percent capacity factor (this represents a weighted average of each powerplant's projected capacity factor), have an average remaining useful life of 26 years (as of the date of this NOI), are expected to have at least 20 years of remaining useful life after conversion of the powerplants, and on the facts and interpretations stated below:

A. *The burning of coal is practicable*—1. *Costs associated with burning coal*—a. *Capital investment costs.* The total initial capital investment costs, exclusive of financing costs, that would result from the acquisition of equipment and facilities associated with the burning of coal at Cameo 1 and 2 are estimated to be approximately $2,556,000 for air pollution control equipment. This estimate was developed by Pedco as a result of its site visit.

b. *Annual operating and maintenance costs.* Based upon information supplied by PSCC and by Pedco, the expected increase in operating and maintenance costs, exclusive of fuel costs, that would result from the burning of coal at Cameo 1 and 2 is estimated to be approximately $181,000 per year.

c. *Fuel costs.* (i) Based on information supplied by the utility, the price of natural gas available to Cameo 1 and 2 is approximately $.84 per million BTU's. This represents $.84 per Mcf of natural gas, assuming 1,000,000 BTU's per Mcf.

(ii) Based on information supplied by the utility to the Federal Energy Regulatory Commission (FERC) and from other sources available to DOE, the price of coal available to Cameo 1 and 2 is approximately $.95 per million BTU's. This represents $22.15 per ton of delivered coal, assuming 23.3 million BTU's per ton or 11,650 Btu's per pound. This characteristic falls within the range stated in IIIA.3.a. below.

(iii) DOE estimates that the burning of coal in lieu of natural gas by these powerplants will result in an overall increase of approximately $0.11 per million BTU's.

(iv) Based on information supplied by PSCC, DOE has determined that Cameo 1 and 2 are presently burning coal and should continue to experience curtailment of their supply of alternate fuel, natural gas, and increased prices which will favor the burning of coal. DOE, therefore, proposes to find that Cameo 1 and 2 should continue to burn coal as their primary energy source which will result in a projected decrease in future fuel costs as a result of a Prohibition Order.

d. *Total annual costs associated with conversion.* As a result of the conversion of Cameo 1 and 2, there will be an estimated total anual increase in costs incurred, exclusive of fuel costs, of approximately $676,000, assuming coal is used to replace natural gas.

2. *Reasonableness of costs of conversion.* The foregoing analysis of the costs of conversion provides the basis for deciding whether the conversion of Cameo 1 and 2 is reasonable. Financial impacts of the conversion will be felt by the utility and by the consumer.

As a result of conversion, the utility will incur additional annual capital investment costs, including financing costs, of approximately $495,000 (this is based on a fixed charge rate of 19.4% of the total initial capital investment of $2,556,000), additional annual operating and maintenance costs, exclusive of fuel costs, of approximately $181,000 (these figures are derived from the figures in paragraphs A.1. a. and b.) and an annual fuel cost increase of approximately $115,000 (see paragraph A.1.c.). The estimated net annual increase in cost of producing electricity at Cameo 1 and 2 after conversion is estimated to be $792,000.

The use of coal at Cameo 1 and 2 will result in an estimated anual equivalent savings of 1,508,000 Mcf of natural gas (or approximately 246,333 barrels of oil equivalent) that otherwise would be used in providing steam for electric power generation. The cost of conversion per Mcf of natural gas is estimated to be $0.52.

Although conversion to the burning of coal would be expected to increase the cost of producing electricity at Cameo 1 and 2, DOE concludes that the cost, even using current prices per Mcf of natural gas saved, is not unreasonable. This determination is based on consideration of the substantial savings of natural gas that will result from this conversion. This determination also takes into account the fact that DOE has determined that Cameo 1 and 2 should continue to experience curtailment of its alternate fuel, natural gas. The determination that the costs of converting are not unreasonable is further supported by consideration of such costs in relation to the expected 20 years remaining useful life of the powerplants after conversion, the size and resources of the utility as examined in the following analysis of financial capability, the nature of the expected operations of these powerplants, and potential future increase in the fuel cost difference in favor of coal.

3. *Financial capabilities of PSCC.*—a. *Recovery of capital investment.* DOE proposes to find that compliance with a Prohibition Order to Cameo 1 and 2 will be economicaly feasible. DOE's analysis took into consideration the $36,600,000 additional capital investment costs required for PSCC to comply with this NOI and any other NOI's which are currently under consideration, as well as additional capital investment costs resulting from all Prohibition or Construction Orders, if any, issued to date under authority of section 2 (a) and (c) of ESECA to PSCC powerplants. DOE related these additional capital investment costs to PSCC's estimate of its 1977 construction budget of $158,000,000, the total capitalization of the utility of $1,200,000,000 and the average remaining useful life of 20 years after conversion of Cameo 1 and 2.

DOE does not consider the effect of this added capital investment cost to represent an unreasonable burden, given the financial capabilities of PSCC to assume such costs.

b. *Total annual costs associated with conversion.* The total estimated annual increase in costs (amortized increased capital investment costs and other costs, exclusive of fuel costs) that would be associated with the burning of coal, as opposed to natural gas, attributable to compliance with this NOI and all other NOI's which are currently under consideration would be $9,984,000. (DOE also took into consideration costs to PSCC that may result from compliance with all other outstanding Notices of Intention, to date, if any, to issue Prohibi-

tion or Construction Orders, to PSCC, and the requirements of PSCC resulting from compliance with all Prohibition or Construction Orders, if any, issued to date under authority of section 2 (a) and (c) of ESECA to PSCC powerplants.) This estimate of $9,984,000 is based on an investment oriented analysis described in an Ultrasystems Inc. report entitled "Computer Methodology For Coal Conversion Cost Determination," August 1976, (hereafter "Ultrasystems Computer Model").

The total estimated annual increase in costs of $9,984,000 that would be associated with conversion ultimately will be recovered in rates. However, due to the potential offsetting aggregate value of fuel cost savings of approximately $3,572,000 attributable to compliance with this NOI and all other NOI's currently under consideration, the net annual revenue requirements of PSCC should increase by approximately $6,412,000.

4. *Consumer impact.* The potential impact of proposed prohibition orders to PSCC for units located at its Valmont, Cherokee, Arapohoe, and Cameo generating stations would be a net increase in revenues required from PSCC consumers of approximately $.000539 per kilowatt hour of electricity sold by the PSCC systems. The impact as a result of a prohibition order to Cameo 1 and 2 alone would result in a net increase of .000067 per kilowatt hour sold. These estimates are based on DOE's analysis of the Ultrasystem's Computer Model result.

The actual amount of the increase would depend on the actual amount of the investment necessary to comply with a Prohibition Order, the methods which PSCC selects to finance the increased costs assoicated with burning coal as a primary energy source at Cameo 1 and 2, the extent to which the cost increase is spread among PSCC customers, the regulations or policies of the regulatory agencies with jurisdiction over PSCC regarding inclusion of such cost increase in consumer rates, the actual amount of the fuel cost differential, and other factors.

B. *Consistency with the purposes of ESECA.* Because the issuance of a Prohibition Order to Cameo 1 and 2 will discourage the use of natural gas or petroleum products and encourage the increased use of coal, DOE proposes to find that such action will be consistent with the purposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels.

On the basis of the environmental analysis which DOE is required to conduct prior to issuance of a Notice of Effectiveness of Prohibition Order, as well as the necessity for these powerplants to comply with the Clean Air Act, as amended (42 U.S.C. 7401 et seq.), and other applicable environmental protection requirements, DOE proposes to find that issuance of a Prohibition Order to Cameo 1 and 2 will be consistent with the proposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment.

III. COAL AND COAL TRANSPORTATION FACILITIES WILL BE AVAILABLE TO THESE POWERPLANTS DURING THE PERIOD UNTIL DECEMBER 31, 1984.

A. *Coal availability.*—1. *National coal reserves.* U.S. coal reserves are more than sufficient to supply national needs for the foreseeable future. U.S. Department of the Interior, Bureau of Mines data show a demonstrated coal reserve base of over 438 billion tons. ("Demonstrated Coal Reserve Base of the United States on January 1, 1976," Bureau of Minse (August 1977) [hereafter "BOM Survey"]). Mining experience in the United States has indicated that, on a national basis at least one-half of the coal, 219 billion tons, in the reserve base may be technically and economically recoverable. To determine when certain quantities of these reserves are expected to be available, DOE has examined several studies, reference herein, which together provide the best current evidence as to coal availability for the period ending December 31, 1984.

2. *National coal production and demand.* A comparison of estimated national coal production and national coal demand shows that there should be sufficient production of coal to meet the total national demand through 1984.

a. *National coal production.* It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

PRODUCTION POTENTIAL

[In millions of tons]

Year:	
1978	745
1979	781
1980	818
1981	858
1982	899
1983	942
1984	987

The figures shown above are derived from "Projections of Energy Supply and Demand and Their Impacts, Energy Information Administration," dated April 1978 (hereafter "Energy Supply and Demand Report"). The coal production forecast was derived from analytic procedures utilizing historic coal consumption patterns, in addition to derived demand under a forecast economic and energy case. DOE intends to fully update, for purposes of being current its coal availability finding pertinent to Cameo 1 and 2 prior to the issuance of a Notice of Effectiveness.

b. *National demand including ESECA Prohibition Order demand.* The estimated national demand, including any increased demand resulting from DOE actions under the authority of section 2(a) of ESECA, is as follows (Energy Supply and Demand Report):

DEMAND

[In millions of tons]

Year:	
1978	720
1979	758
1980	798
1981	841
1982	885
1983	932
1984	982

These demand projections were conservatively developed and are designed to include not only the actions already taken under ESECA but also all possible ESECA actions that may be taken in the future.

c. *National ESECA Prohibition Order demand.* DOE has estimated potential demand for coal resulting from this NOI, from all other outstanding Notices of Intention to issue Prohibition Orders currently under consideration and from all Prohibition Orders issued to date under authority of section 2(a) of ESECA to be as follows:

DEMAND

[In millions of tons]

Year:	
1978	9.6
1979	14.0
1980	20.4
1981	22.7
1982	29.5
1983	29.9
1984	29.9

(The above estimated demand figures include projections for Prohibition Orders issued on June 30, 1975 which are currently effective through December 31, 1978 and are subject to extension through December 31, 1984.)

3. *Characteristic coal, production and demand*—a. *Characteristic coal requirements for these powerplants.* Based on information provided by PSCC, DOE proposes to conclude that dry-bottom boilers, of the type used at Cameo 1 and 2, will be able to burn coal with the following characteristics and comply with all applicable air pollution control requirements: and 2 is estimated to be approximately $181,000 per year.

	Approximate values
BTU's per pound	8,500 to 12,000.
Moisture	8 to 25 pct.
Ash	5 to 15 pct.
Volatile	25 to 40 pct.
Ash softening temperature	2300 to 2700 (° F)
Sulfur	0.5 to 0.7 pct.
Grindability	45 to 60.

b. *Characteristic coal demand from these powerplants.* The potential average annual incremental demand for coal, of the type described above, which would result from burning coal instead of natural gas as a consequence of this Notice of Intention, is estimated to be as follows:

POTENTIAL ANNUAL DEMAND

[In thousands of tons]

Years: 1983 to 1984	65

c. *Characteristic coal available to these powerplants.* Based on information provided by the utility, DOE has determined to find that PSCC has executed two long-term contracts with Energy Fuels Co., Routt County, Colo. and the Rosebud Coal Sales Co., Carbon County, Wyo. for supplies of characteristic coal to PSCC. A third contract between the Bear Coal Co., Somerset, Colo., coal per year through December 31, 1979, which is presently being renegotiated to extend the period of performance to provide additional coal to PSCC. The Energy Fuels Co. contract provides coal supplies of approximately 2 million tons per year to PSCC through June 30, 1987. The Rosebud contract provides for coal supplies of approximately 1 million tons per year to PSCC through December 31, 1981. PSCC has advised DOE that the Rosebud contract is presently being renegotiated to extend the period of performance for additional supplies of characteristic coal, and that there are no anticipated contract problems.

In addition, Colowyo Coal Co., in Routt County, Colo. provides characteristic coal to PSCC on short term contracts to supplement coal supplies, as needed.

DOE has examined the quantities of coal for PSCC Generating Stations and proposes to find that there is sufficient characteristic coal to satisfy the increase in demand represented by all NOI's issued to cover the period these proposed orders are in effect.

4. *State and local laws.* DOE has found no State or local laws or policies limiting the extraction or utilitization of coal that would adversely affect these production figures, and none has been brought to DOE's attention.

5. *Conclusion.* On the basis of PSCC's present coal contract commitments, DOE proposes to find that coal of the characteristics required will be available to Cameo 1 and 2 through 1984. Furthermore, on the basis of the Bureau of Mines Survey and the Energy Supply and Demand Report, DOE expects that national coal production potential will exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential additional demand represented by this NOI, by all other outstanding Notices of Intention to issue Prohibition Orders, and from all Prohibition Orders issued to date under authority of section 2(a) of ESECA.

B. *Coal transportation.*—1. *Location of powerplants and coal supply.* Based on information provided by PSCC, coal for Cameo 1 and 2 will be supplied and transported from Energy Fuels Co., which is located in Routt County, Colo. and from the Bear Coal Co. in Somerset, Colo. to Cameo 1 and 2 at Palisade, Colo.

2. *Route of coal shipment.* Based on information provided to DOE by PSCC and the railroads, the primary route for coal deliveries from the Energy Mine and Bear Mine originates on and is brought into the Cameo Generating Station by the Denver & Rio Grande Western RR. (D&RGW).

3. *Originating trunk carrier.* D&RGW has indicated that it is able and willing to provide any additional capacity required for coal shipments to Cameo 1 and 2. D&RGW indicated that the rail facilities at Energy Fuels Co. in Routt County, Colo. and at Bear Coal Co. in Somerset, Colo. are readily available to PSCC and that the D&RGW has adequate handling and loading facilities to service any required increases in coal volumes.

DOE has not found nor has it been informed of any apparent constraints to transporting coal.

4. *Powerplant facilities.* Cameo 1 and 2 presently have coal unloading facilities which the railroads have advised DOE are adequate to handle the projected coal demand. There are no apparent obstacles to the handling and delivery of coal to Cameo 1 and 2.

5. *Conclusion.* On the basis of the information above, DOE proposes to find that coal transportation facilities will be available for the period a Prohibition Order is expected to be in effect since no significant constraints to coal delivery over the primary route to Cameo 1 and 2 presently exist.

IV. THE PROHIBITION OF THE BURNING OF NATURAL GAS OR PETROLEUM PRODUCTS AS THEIR PRIMARY ENERGY SOURCE WILL NOT IMPAIR THE RELIABILITY OF SERVICE IN THE AREA SERVED BY THE AFFECTED POWERPLANTS

Based on an analysis of the information submitted to the Federal Energy Regulatory Commission, DOE proposes to find that the issuance of a Prohibition Order to Cameo 1 and 2 will not impair the reliability of service in the area served by these powerplants. This proposed finding is based on the facts and interpretations stated below:

A. *Description of the dispatching system.* 1. The Cameo 1 and 2 Station is owned by PSCC, which is within the geographical area of the Western Systems Coordinating Council (WSCC) regional electric reliability council.

2. The term "dispatching system" as used in the finding means PSCC.

3. The net capacity as of March 31, 1978, of all dispatching system powerplants was 2,490 MW. (See line 1, attachment 1.)

4. Proposed changes up to the period in which Cameo 1 and 2 may implement a Prohibition Order will result in the net capacities indicated on line 4 of attachment 1 because of the following changes in the dispatching system listed in table 1:

TABLE 1

Powerplant designation	Fuel	Type of change	Capacity change (MW)	Effective date
Fort St. Vrain	Nuclear	Add	Plus 380	September 1978.
Pawnee 1	Coal	do	Plus 470	July 1980.
Southeastern Co. 1	do	do	Plus 470	April 1983.
Totals September 1, 1983.	Added +1270. (See line 2, attachment 1.)			

5. The proposed changes in table 1, above, are based on the best information available to DOE (FPC Form 12E-2, March 1978) at the time this NOI is issued. The Public Service Co. of Colorado Conversion Schedule (attachment 2) is DOE's estimate of the outage times that would be required for all the powerplants in PSCC that are currently being considered for Prohibition Orders. The schedule assumes outages for conversion at those times that are optimally suited, in terms of forecast peak load periods, to maintain reliability of service.

The schedule does not take into consideration the possibility of forced outages that would reduce the reserve margins; however, there is sufficient flexibility in the dispatching system to adjust for any forced outages which may occur.

B. *Forecast peak loads for the dispatching system.* 1. Forecast of peak loads for the dispatching system during the period in which Cameo 1 and 2 may be required to implement this Prohibition Order are as indicated on line 9 of attachment 1.

2. The forecast peak loads have been compared with loads in previous similar periods. The annual peak load growth rate for these forecasts is 5.3 percent.

C. *Maximum projected outages for the dispatching system.* 1. Scheduled outages for normal maintenance, including other powerplants that may be implementing Prohibition Orders and nuclear plant refueling within the dispatching system during the periods in which Cameo 1 and 2 may be implementing a Prohibition Order, may result in some loss of capacity which is expected to be as indicated on line 5 of attachment 1.

2. A projected outage of 3 weeks is estimated to be required to make modifications, installations, or other physical adjustments to Cameo 1 and 2, as required by this Prohibition Order should it become effective. The powerplants may be less than fully dependable during the period of on-line testing and adjustment following such modification. This period is not expected to exceed 30 days. To take advantage of the maximum reserve capacity, these projected outages are most likely to occur during the years 1983 and 1984. The potential loss of capacity from an outage of Cameo 2 would be approximately 52 MW (line 8, attachment 1.)

This represents the maximum potential loss that would be due to outage at these powerplants but it is expected that Cameo 1 and 2 would be implementing a Prohibition Order in May 1983. This maximum potential loss of 52 MW is included in the total outages indicated on line 7 of attachment 1. (The assumed conversion period specified on attachments 1 and 2 is shown for the purpose of illustration only.)

3. Maximum projected outages within the dispatching system include normal scheduled maintenance for all powerplants (line 5 of attachment 1) and outages that would be due to conversion (line 6 of attachment 1) for those powerplants implementing Prohibition Orders, if the attached PSCC Conversion Schedule is followed. Maximum projected outages could be expected to be as indicated on line 7 of attachment 1, thereby reducing the gross capacity and resulting in a net dependable capacity for the dispatching system.

D. *Net dependable capacity for the dispatching system.* 1. Based on the foregoing information, the net dependable capacity of the dispatching system at the expected time of implementation of a Prohibition Order would be as indicated on line 10 of attachment 1.

2. Comparing these net dependable capacities to the forecast peak loads shown on line 9 attachment 1 indicates that the reserve capacity shown on line 11 of attachment 1 would exist for the dispatching system.

3. Comparison of this reserve capacity to the forecast peak loads shown on line 9 of attachment 1 results in reserve margins as indicated on line 12 of attachment 1 (as contrasted with reserve margins as indicated on line 13 of attachment 1 if no units were removed from service due to Prohibition Orders).

4. DOE considers these reserve margins (line 12) to be acceptable taking into consideration the geographical location of Cameo 1 and 2.

5. At the completion of the conversion there would be 276 KW of electricity required to operate the pollution control equipment of Cameo 2 as a result of using coal as its primary energy source.

6. Existing transmission system interconnections may transfer an additional 656 MW into the dispatching system. This capacity may provide an additional source of electric power during the implementation period and will enhance the reliability of service. ("Western Systems Coordinating Council, Report to Department of Energy," April 1, 1978, Item 6-B)

E. *Conclusion.* If dispatching system conditions, including any scheduled outage by Cameo are as presently forecast during the time that would be required to implement this Prohibition Order by Cameo 1 and 2, DOE proposes to find there will be no impairment of reliability of service within the meaning of ESECA in the area served by PSCC or in the dispatching system as a result of this proposed order.

ATTACHMENT 1.—*Public service of Colorado reliability data—Cameo 2*

[Assumed conversion period Sept. 1-30, 1983]

	Megawatt capacity
1. Net capacity of PSCC as of Mar. 31, 1978.	2,490
2. Added capacity	1,270
3. Added capacity that can be obtained from interconnections	656
4. Net capacity	4,416
5. Scheduled outages for maintenance	59
6. Projected outages due to prohibition orders	227
7. Maximum projected outages due to maintenance and prohibition orders (line 5 and 6)	286
8. Unit outage	59
9. Peak load	3,213
10. Net dependable capacity	4,130
11. Reserve capacity	917
12. Reserve margin percent (maintenance and prohibition orders)	29
13. Reserve margin percent (maintenance only)	36

ATTACHMENT 2.—*Public service of Colorado conversion schedule*

Station	Unit	Assumed conversion dates
Cameo	2	September 1983.
Valmont	5	Do.
Arapahoe	3	October 1983.
Do	4	February 1984.
Cherokee	1	Do.
Do	3	October 1983.
Do	4	May 1983.

COMMENTS AND PUBLIC HEARING PROCEDURES

DOE hereby also gives notice of the opportunity for oral and written presentation of data, views and arguments by interested persons regarding this proposed Prohibition Order.

Public comment on the proposal to issue a Prohibition Order to the powerplants listed above is invited in the form of written and oral presentation of data, views, and arguments. Comments should make reference to the relevant docket number(s).

Comments should address: (1) The adequacy and validity of each of the proposed findings and the conclusions and rationale in support of these findings; (2) the environmental impact of the issuance of a Prohibition Order, including any site-specific environmental impacts; and (3) any other aspects or impacts of the proposed Prohibition Order believed to be relevant.

Pursuant to 10 CFR 303.173 (a) and (d), DOE hereby announces that a public hearing to receive oral presentation of data, views, and arguments of persons interested in the proposed Prohibition Order will be held beginning at 9 a.m. and again at 6 p.m. on August 17, 1978 in the hearing room (269), Post Office Auditorium, U.S. Post Office Building, 1823 Stout Street, Denver, Colo. 80202. Any person who has an interest in the subject of the hearing or who is a representative of a group or class of persons which has an interest in the subject of the hearing may make a written request, or a verbal request if confirmed in writing, for an opportunity to make an oral presentation. The request should be directed to Luther S. Clemmer, Department of Energy, Region VIII, 1075 South Yukon, Post Office Box 26247, Belmar Branch, Lakewood, Colo. 80226, 303-234-2596. The request should be received before 4:30 p.m., August 8, 1978.

The request should describe the person's interest in the issue(s) involved; if appropriate, it should state why the person is an appropriate representative of the group or class of persons which has such an interest; it should give a concise summary of the pro-

posed oral presentation and a telephone number where the person may be contacted.

Speakers will be contacted by a DOE representative before 4:30 p.m., August 10, 1978, and should submit ten (10) copies of their oral presentation, if possible, unless such presentation is less than five (5) pages, in which case only one copy is required, to Luther S. Clemmer, Department of Energy, 1075 South Yukon, Post Office Box 26247, Belmar Branch, Lakewood, Colo. 80226, before 4:30 p.m., August 15, 1978.

Detailed technical data, views, and arguments should be contained in a written submission in support of the oral presentation. The oral presentation itself should be a summary of those written comments.

While DOE will endeavor to provide adequate opportunity to all who desire to speak, DOE reserves the right to limit the number of persons to be heard at the hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. The length of time allocated to each presentation may be limited on the basis of the number of persons requesting to be heard. DOE will prepare an agenda that shall provide, to the extent possible, for presentation of all relevant data, views, and arguments.

A DOE offical will be designated to preside at the hearing which will not be a judicial or evidentiary hearing. During oral presentations only those conducting the hearing may ask questions. There will be no cross-examination. At the conclusion of all initial oral presentations, each person who has made an oral statement will be given the opportunity if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to the time limitations.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and it, together with pertinent written comments submitted to DOE in the course of the hearing, will be retained by DOE and made available for inspection and copying at the Freedom of Information Reading Room, located in room 2107, Federal Building, 12th Street and Pennsylvania Avenue NW., Washington, D.C. 20461, and DOE Regional Office VIII, Room 206, 1075 South Yukon, Post Office Box 26247, Belmar Branch, Lakewood, Colo. 80226, between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit written comments consisting of data, views, and arguments with respect to this Notice of Intention to Issue a Prohibition Order to Public Hearing Management, Box UY, 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 envelope in which they are transmitted and on the document itself with the designation "Proposed Prohibition Order for the Cameo Powerplant." Fifteen copies should be submitted.

All written comments received by 4:30 p.m., August 30, 1978, all oral presentations, and all other relevant information submitted to or available to DOE will be considered by DOE prior to issuance of a Prohibition Order.

Any information or data 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 or data and to treat it in accordance with that determination.

Upon completion of the proceedings described in this notice, DOE may determine to issue a Prohibition Order to the above-named powerplants. The Prohibition Order will not become effective, however, (1) until either (a) the Administrator of the Environmental Protection Agency (EPA) has notified DOE, as required by section 2(b) of ESECA, that the particular powerplant will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a delayed compliance order pursuant to the provisions of the Clean Air Act (CAA), as amended, 42 U.S.C. 7413 (d)(5) and the Act of August 7, 1977, Pub. L. 95-95, sec. 112, or (b) if no such notification is given by EPA, the date that the Administrator of EPA certifies is the earliest date that the particular powerplant will be able to burn coal and to comply with all applicable air pollution requirements, CAA, *supra*; Pub. L. 95-95 *supra*; and (2) until DOE has performed an analysis of the environmental impact of the issuance of a Notice of Effectiveness, pursuant to 10 CFR 208.3(a)(4) and 305.9, and has served the affected powerplant a Notice of Effectiveness, as provided in 10 CFR 303.10(b), 303.37(b) and 305.7. The date the Prohibition Order will be effective will be stated in the Notice of Effectiveness.

10 CFR 305.9 requires that, prior to issuance of a Notice of Effectiveness to a powerplant, DOE shall perform an analysis of the environmental impact of the issuance of such a Notice of Effectiveness. That analysis shall result in either: (1) Issuance of a declaration that the Prohibition Order will not, if made effective by issuance of a Notice of Effectiveness, be likely to have a significant impact on the quality of the human environment; or (2) the preparation by DOE of an environmental impact statement covering significant site-specific impacts that are likely to result from the Prohibition Order and that have not been addressed in the Final Revised (Programmatic) Environmental Impact Statement (FES 77-3, dated May 1977) or in other official documents made publicly available.

If DOE prepares an environmental impact statement covering significant site-specific impacts resulting from making a Prohibition Order effective, the statement shall be prepared and published for comment in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) prior to issuance of a Notice of Effectiveness. Interested persons may request a public hearing pursuant to 10 CFR 303.173 to comment on the contents of a draft environmental impact statement.

With respect to comments regarding any impact on air quality that might result from a proposed Prohibition Order, however, it should be recognized that ESECA has assigned to EPA the primary responsibility for analyzing the effect of any such order on the Nation's air quality and for determining the applicable air pollution control requirements that apply to any powerplant that has been issued an order. It is expected that a powerplant to which a Prohibition Order is issued may be eligible for a delayed compliance order pursuant to section 113(d) of the CAA, *supra*. If EPA decides to issue a delayed compliance order, it must also provide an opportunity for a public hearing.

Copies of the regulations implementing section 2 (a) and (b) of ESECA (10 CFR Parts 303 and 305) are available for inspection at the following DOE Regional Offices:

Region, Address, and Phone

I Director for Fuels Regulation, 150 Causeway Street, room 700, Boston, Mass. 02114, 617-223-5265.

II Director for Fuels Regulation, 26 Federal Plaza, room 3200, New York, N.Y. 10007, 212-264-8051.

III Director for Fuels Regulation, 1421 Cherry Street, room 1001, Philadelphia, Pa. 19102, 215-597-3915.

IV Director for Fuels Regulation, 1655 Peachtree Street NE., 8th Floor, Atlanta, Ga. 30309, 404-881-2722.

V Director for Fuels Regulation, Federal Office Building, 175 West Jackson Boulevard, room a-333, Chicago, Ill. 60604, 312-353-3053.

VI Director for Fuels Regulation, Post Office Box 35228, 2626 West Mockingbird Lane, Dallas, Tex. 75235, 214-749-7705.

VII Director for Fuel Regulation, 324 East 11th Street, Kansas City, Mo. 64106, 816-374-2936.

VIII Director for Fuels Regulation, Post Office Box 26247, Belmar Branch, 1075 South Yukon Street, Lakewood, Colo. 80226, 303-234-2596.

IX Director for Fuels Regulation, 111 Pine Street, San Francisco, Calif. 94111, 415-556-4640.

X Director for Fuels Regulation, 1992 Federal Building, 915 Second Avenue, Seattle, Wash. 98174, 206-442-7320.

Any questions regarding this notice should be directed to the DOE National Office as follows: Department of Energy, Code DCU (Prohibition Order: Cameo Powerplant), Washington, D.C. 20461, 202-254-5436.

(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; The Department of Energy Organization Act (Pub. L. 95-91); E. O. 11790 (39 F.R. 23185), E. O. 12009 (42 F.R. 46267)).

Issued in Washington, D.C., July 25, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration, Department of Energy.

[FR Doc. 78-21063 Filed 7-28-78; 8:45 am]

[3128-01]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Intention to Issue a Prohibition Order to Certain Powerplants

The Department of Energy (DOE) hereby gives notice of its intention to issue a Prohibition Order, pursuant to the authorities granted it by section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended, 15 U.S.C. 791 et seq., and Chapter II, Title 10, Code of Federal Regulations (10 CFR Parts 303 and 305) to the following powerplants:

Docket No.	Owner	Generating station	Powerplant No.	Location
DCU-171	Public Service Company of Colorado.	Cherokee	1	Denver, Colo.
DCU-172	....do	....do	2	Do.
DCU-173	....do	....do	3	Do.
DCU-174	....do	....do	4	Do.

The proposed order would prohibit the above-named powerplants from burning natural gas or petroleum products as their primary energy source.

PROPOSED FINDINGS AND RATIONALE FOR NOTICE OF INTENTION TO ISSUE A PROHIBITION ORDER

ESECA and DOE regulations require DOE to make certain findings before issuing a Prohibition Order to a powerplant. DOE's proposed findings are set out below with respect to the powerplants named above. Supporting rationale and conclusions are also set forth.

These findings, which are now proposed by DOE, are based on information that has been provided to and developed by DOE prior to the issuance of this Notice of Intention (NOI) to Issue a Prohibition Order. DOE intends, as necessary, to fully update, for purposes of currency, the information and data pertinent to the issuance of this NOI prior to the issuance of a Prohibition Order. DOE invites the utility or other interested persons to submit more current information or data, if such is available.

Public Service Company of Colorado shall be referred to as the "utility" and as "PSCC."

I. CAPABILITY AND NECESSARY PLANT EQUIPMENT TO BURN COAL

DOE proposes to find that, on June 22, 1974, Powerplants No. 1, 2, 3, and 4 at Cherokee Generating Station (Cherokee 1, 2, 3, and 4) had, or thereafter acquired or were designed with the capability and necessary plant equipment to burn coal. This proposed finding is based on the facts and interpretations stated below:

A. Based on information supplied to the Federal Energy Regulatory Commission by PSCC and a site visit performed by DOE representatives, it has been determined that each powerplant had in place, on June 22, 1974, boilers that were capable of burning coal. The boilers had been designed and constructed or modified to burn coal as their primary energy source, notwithstanding the fact that, on June 22, 1974, the powerplants may not have been burning coal as their primary energy source.

The 1977 annual fuel consumption information reported by PSCC was used to calculate the heat input of Cherokee boilers 1, 2, 3, and 4. Boiler 1 was 87 percent coal and 13 percent natural gas, boiler 2 was 92 percent coal and 8 percent natural gas, boiler 3 was 93 percent coal and 7 percent natural gas and boiler 4 was 96 percent coal and 4 percent natural gas.

B. Based on information PSCC provided to DOE during the above-mentioned site visit and other information available to DOE, boilers 1, 3, and 4 will require air pollution control equipment when this generating station is converted to total coal firing. Boiler 2 already has air pollution control equipment adequate to control particulate emissions.

C. DOE proposes to find that, on June 22, 1974, Cherokee 1, 2, 3, and 4 had all other significant plant equipment and facilities associated with the burning of coal.

D. Within the meaning of ESECA and the regulations promulgated pursuant thereto, absence of the facilities listed in paragraph B, above, does not constitute a lack of capability and necessary plant equipment to burn coal as of June 22, 1974.

II. THE BURNING OF COAL IN LIEU OF NATURAL GAS OR PETROLEUM PRODUCTS IS PRACTICABLE AND CONSISTENT WITH THE PURPOSES OF ESECA

DOE proposes to find that the burning of coal at Cherokee 1, 2, 3, and 4 in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based upon the presumption that Cherokee 1, 2, 3, and 4 will be operated at a 62.4 percent capacity factor (this represents a weighted average of each powerplant's projected capacity factor), have an average remaining useful life of 31 years (as of the date of this NOI), is expected to have at least 25 years of remaining useful life after conversion of the powerplants, and on the facts and interpretations stated below:

A. *The burning of coal is practicable*—1. *Costs associated with burning coal*—a. *Capital investment costs.* The total initial capital investment costs, exclusive of financing costs, that would result from the acquisition of equipment and facilities associated with the burning of coal at Cherokee 1, 2, 3, and 4 are estimated to be approximately $24,389,000 for air pollution control equipment. This estimate is based on information developed by Pedco as a result of its site visit.

b. *Annual operating and maintenance costs.* Based upon information supplied by PSCC and by Pedco, the expected increase in operating and maintenance costs, exclusive of fuel costs, that would result from the burn-

ing of coal at Cherokee 1, 2, 3, and 4 is estimated to be approximately $1,971,000 per year.

c. *Fuel costs.* (i) Based on information supplied by the utility, the price of natural gas available to Cherokee 1, 2, 3, and 4 is approximately $1.41 per million BTU's. This represents $1.41 per Mcf of natural gas, assuming 1,000,000 BTU's per Mcf.

(ii) Based on information supplied by the utility to the Federal Energy Regulatory Commission (FERC) and from other sources available to DOE, the price of coal available to Cherokee 1, 2, 3, and 4 is approximately $.73 per million BTU's. This represents $15.88 per ton of delivered coal, assuming 21.9 million BTU's per ton, or 10,950 BTU's per pound. This characteristic falls within the range stated in III A.3.a. below.

(iii) DOE estimates that the burning of 100 percent coal in lieu of natural gas by these powerplants will result in an overall reduction of approximately $.68 per million BTU's.

(iv) Based on information supplied by PSCC, DOE has determined that Cherokee 1, 2, 3, and 4 are presently burning coal and should continue to experience curtailment of their supply of alternate fuel, natural gas. DOE, therefore, proposes to find that Cherokee 1, 2, 3, and 4 would continue to burn coal as their primary energy source with a decrease in fuel costs as a result of a Prohibition Order.

d. *Total annual costs associated with conversion.* As a result of the conversion of Cherokee 1, 2, 3, and 4, there will be an estimated total annual increase in costs incurred, exclusive of fuel costs, of approximately $6,693,000, assuming coal is used to replace natural gas.

2. *Reasonableness of costs of conversion.* The foregoing analysis of the costs of conversion provides the basis for deciding whether the conversion of Cherokee 1, 2, 3, and 4 is reasonable. Financial impacts of the conversion will be felt by the utility and by the consumer.

As a result of conversion, the utility will incur additional annual capital investment costs, including financing costs, of approximately $4,722,000 (this is based on a fixed charge rate of 19.4 percent of the total initial capital investment of $24,389,000) and additional annual operating and maintenance costs, exclusive of fuel costs, of approximately $1,971,000 (these figures are derived from the figures in paragraphs A.1.a. and b.), but will experience an annual fuel cost savings of approximately $1,926,000 (see paragraph A.1.c.). The estimated net annual increase in cost of producing electricity at Cherokee 1, 2, 3, and 4 after conversion is estimated to be $4,767,000.

The use of coal at Cherokee 1, 2, 3, and 4 will result in an estimated annual equivalent savings of 2,812,000 Mcf of natural gas (or approximately 468,833 barrels of oil equivalent) that otherwise would be used in providing steam for electric power generation. The cost of conversion per Mcf of natural gas is estimated to be $1.70.

Although conversion to the burning of coal would be expected to increase the cost of producting electricity at Cherokee 1, 2, 3, and 4, DOE concludes that the cost, even using current prices, per Mcf of natural gas saved, is not unreasonable. This determination is based on consideration of the substantial savings of natural gas that will result from this conversion. This determination also takes into account the fact that DOE has determined that Cherokee 1, 2, 3, and 4 should continue to experience curtailment of its alternate fuel, natural gas. The determination that the costs of converting are not unreasonable is further supported by consideration of such costs in relation to the expected 25 years remaining useful life of the powerplants after conversion, the size and resources of the utility as examined in the following analysis of financial capability, the nature of the expected operations of these powerplants, and potential future increase in the fuel cost difference in favor of coal.

3. *Financial capabilities of PSCC*—a. *Recovery of capital investment.* DOE proposes to find that compliance with a Prohibition Order to Cherokee 1, 2, 3, and 4 will be economically feasible. DOE's analysis took into consideration a total estimated $36,600,000 additional capital investment costs required for PSCC to comply with this NOI and any other NOI's which are currently under consideration, as well as additional capital investment costs resulting from all Prohibition of Construction Orders, if any, issued to date under authority of section 2 (a) and (c) of ESECA to PSCC powerplants.

DOE related these additional capital investment costs to PSCC's estimate of its 1977 construction budget of $158,000,000, the total capitalization of the utility of $1,200,000,00 and the average remaining useful life of 25 years after conversion of Cherokee 1, 2, 3, and 4. DOE does not consider the effect of this added capital investment cost to represent an unreasonable burden, given the financial capabilities of PSCC to assume such costs.

b. *Total annual costs associated with conversion.* The total estimated annual increase in costs (amortized increased capital investment costs and other costs, exclusive of fuel costs) that would be associated with the burning of coal, as opposed to natural gas, attributable to compliance with this NOI and all other NOI's which are under consideration would be $9,984,000. (DOE also took into consideration costs to PSCC that may result from compliance with all other outstanding Notices of Intention, issued to date, if any, to issue Prohibition or Construction Orders, and the requirements of PSCC resulting from compliance with all Prohibition or Construction Orders, if any, issued to date under authority of section 2 (a) and(c) of ESECA to PSCC powerplants.) This estimate of $9,984,000 is based on an investment oriented analysis described in an Ultrasystems Inc. report entitled "Computer Methodology For Coal Conversion Cost Determination," August 1976, (hereafter "Ultrasystems Computer Model").

The total estimated annual increase in costs of $9,984,000 that would be associated with conversion ultimately will be recovered in rates. However, due to the potential offsetting aggregate value of fuel cost savings of approximately $3,572,000 attributable to compliance with this NOI and all other NOI's currently under consideration, if any, the net annual revenue requirements of PSCC should increase by approximately $6,412,000.

DOE does not consider the effect of these added annual costs associated with conversion an unreasonable burden given the financial capabilities of the utility to assume such cost.

4. *Consumer impact.* The potential initial impact of a Prohibition Order to PSCC for units located at its Valmont, Cherokee, Arapahoe and Cameo generating stations would be a net increase in revenues required from PSCC consumers of approximately $.000539 per kWh of electricity sold by the PSCC system. The impact as a result of a Prohibition Order to Cherokee 1, 2, 3, and 4 alone would result a net increase of .00040 per kWh sold. These estimates are based on DOE's analysis of the Ultra Systems Computer Model results.

The actual amount of the increase would depend on the actual amount of the investment necessary to comply with a Prohibition Order, the methods which PSCC selects to finance the increased costs associated with burning coal as a primary energy source at Cherokee 1, 2, 3, and 4, the extent to which the cost increase is spread among PSCC customers, the regulations or policies of the regulatory agencies with jurisdiction over PSCC regarding inclusion of such cost increase in consumer rates, the actual amount of the fuel cost differential, and other factors.

B. *Consistency with the purposes of ESECA.* Because the issuance of a Prohibition Order to Cherokee 1, 2, 3, and 4 will discourage the use of natural gas or petroleum products and encourage

the increased use of coal, DOE proposes to find that such action will be consistent with the purposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels.

On the basis of the environmental analysis which DOE is required to conduct prior to issuance of a Notice of Effectiveness of Prohibition.

Order, as well as the necessity for these powerplants to comply with the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and other applicable environmental protection requirements, DOE proposes to find that issuance of a Prohibition Order to Cherokee 1, 2, 3, and 4 will be consistent with the purposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels in a manner which is consistent, to the fullest extent practicable with existing national commitments to protect and improve the environment.

III. COAL AND COAL TRANSPORTATION FACILITIES WILL BE AVAILABLE TO THESE POWERPLANTS DURING THE PERIOD UNTIL DECEMBER 31, 1984

A. *Coal availability*—1. *National coal reserves.* United States coal reserves are more than sufficient to supply national needs for the foreseeable future. U.S. Department of the Interior, Bureau of Mines data show a demonstrated coal reserve base of over 438 billion tons (Demonstrated Coal Reserve Base of the United States on January 1, 1976, Bureau of Mines (August 1977) [hereafter "BOM Survey"]). Mining experience in the United States has indicated that, on a national basis at least one-half of the coal, 219 billion tons, in the reserve base may be technically and economically recoverable. To determine when certain quantities of these reserves are expected to be available, DOE has examined several studies, referenced herein, which together provide the best current evidence as to coal availability for the period ending December 31, 1984.

2. *National coal production and demand.* A comparison of estimated national coal production and national coal demand shows that there should be sufficient production of coal to meet the total national demand through 1984.

a. *National coal production.* It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

PRODUCTION POTENTIAL

[In millions of tons]

Year:	
1978	745
1979	781
1980	818
1981	858
1982	899

PRODUCTION POTENTIAL—Continued

[In millions of tons]

1983	942
1984	987

The figures shown above are derived from "Projections of Energy Supply and Demand and Their Impacts, Energy Information Administration," dated April 1978 (hereafter "Energy Supply and Demand Report"). The coal production forecast was derived from analytic procedures utilizing historic coal consumption patterns, in addition to derived demand under a forecast economic and energy case. DOE intends to fully update, for purposes of being current, its coal availability finding pertinent to Cherokee 1, 2, 3, and 4 prior to the issuance of a Notice of Effectiveness.

b. *National demand including ESECA Prohibition Order demand.* The estimated national demand including any increased demand resulting from DOE actions under the authority of section 2(a) of ESECA to be as follows (Energy Supply and Demand Report).

DEMAND

[In millions of tons]

Year:	
1978	720
1979	758
1980	798
1981	841
1982	885
1983	932
1984	982

These demand projections were conservatively developed and are designed to include not only actions already taken under ESECA but also all possible ESECA actions that may be taken in the future.

c. *National ESECA Prohibition Order demand.* DOE has estimated potential demand for coal resulting from this NOI, from all other outstanding Notices of Intention to issue Prohibition Orders currently under consideration, and from all Prohibition Orders issued to date under authority of section 2(a) of ESECA is as follows:

DEMAND

[In millions of tons]

Year:	
1978	9.6
1979	14.0
1980	20.4
1981	22.7
1982	29.5
1983	29.9
1984	29.9

(The above estimated demand figures include projections for Prohibition Orders issued on June 30, 1975 which are currently effective through December 31, 1978, and are subject to extension through December 31, 1984.)

3. *Characteristic coal production and demand*—a. *Characteristic coal requirements for these powerplants.* Based on information provided by PSCC, DOE proposes to conclude that dry-bottom boilers, of the type used at Cherokee 1, 2, 3, and 4, will be able to burn coal with the following characteristics and comply with all applicable air pollution control requirements:

	Approximate values
BTU's per pound	8,500 to 12,000.
Moisture	8 to 25 percent.
Ash	5 to 15 percent.
Volatile	25 to 40 percent.
Ash softening temperature	2300 to 2700 (°F).
Sulfur	0.5 to 0.7 percent.
Grindability	45 to 60.

b. *Characteristic coal demand from these powerplants.* The potential average annual incremental demand for coal of the type described above, which would result from burning coal instead of natural gas as a consequence of this NOI, is estimated to be as follows:

POTENTIAL ANNUAL DEMAND

[In thousands of tons]

Years: 1983-1984	128

c. *Characteristic coal available to these powerplants.* Based on information provided by the utility, DOE has determined to find that PSCC has executed two long-term contracts with Energy Fuels Co., Routt County, Colo. and the Rosebud Coal Sales Co., Carbon County, Wyo. for supplies of characteristic coal to Cherokee 1, 2, 3, and 4, and for the Arapahoe, Valmont and Cameo Generating Stations. The Energy Fuels Co. contract provides coal supplies of approximately 2 million tons per year to PSCC through June 30, 1987. The Rosebud contract provides for coal supplies of approximately 1 million tons per year to PSCC through December 31, 1981. PSCC has advised DOE that the Rosebud contract is presently being renegotiated to extend the period of performance for additional supplies of characteristic coal, and that there are no anticipated contract problems.

In addition, Colowyo Coal Co., in Routt County, Colo., provides characteristic coal to PSCC on a short-term contract basis to suplement coal supplies, as needed.

DOE has examined the quantities of coal for Cameo, Cherokee, Valmont, and Arapahoe Generating Stations and proposes to find characteristic coal available to satisfy the increase in demand represented by all NOI's issued to cover the period these proposed orders are in effect.

4. *State and local laws.* DOE has found no State or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none has been brought to DOE's attention.

5. *Conclusion.* On the basis of PSCC's present coal contract commitments, DOE proposes to find that coal of the characteristics required will be available to Cherokee 1, 2, 3, and 4 through 1984. Furthermore, on the basis of the Bureau of Mines Survey

and the Energy Supply and Demand Report, DOE expects that national coal production potential will exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential demand represented by this NOI, by all other outstanding Notices of Intention to issue Prohibition Orders, and which will result from all Prohibition Orders issued to date under authority of section 2(a) of ESECA.

B. *Coal transportation.*—1. *Location of powerplants and coal supply.* Based on information provided by PSCC, coal for Cherokee 1, 2, 3, and 4 will be supplied and transported from Energy Fuels Co., which is located in Routt County, Colo. and from the Rosebud Coal Sales Co., in Carbon County, Wyo. to Cherokee 1, 2, 3, and 4 at Denver, Colo.

2. *Routes of coal shipments.* Based on information provided to DOE by PSCC and the railroads, the primary routes for coal deliveries originates from the Energy Mine and is delivered to the Cherokee Generating Station by the Denver & Rio Grande Western Railroad (D&RGW).

A secondary route for coal from the Rosebud Mine originates on the Union Pacific Railroad (UP) and later switches in Denver, Colo. to the D&RGW, which then delivers the coal into the Cherokee Generating Station.

3. *Originating trunk carrier.* D&RGW and UP Railroads have indicated that they are able and willing to provide any additional capacity required for coal shipments to Cherokee 1, 2, 3, and 4. Both railroads have stated that the rail facilities at Routt County, Colo. and Carbon County, Wyo. are readily available to PSCC and that D&RGW and UP Railroads have adequate handling and loading facilities to service any required increases in coal volumes.

DOE has not found nor has it been informed of any apparent constraints to transporting coal.

4. *Powerplant facilities.* Cherokee 1, 2, 3, and 4 presently have coal unloading facilities which the railroads have advised DOE are adequate to handle the projected increased coal demand. There are no apparent obstacles to the handling and delivery of coal to Cherokee 1, 2, 3, and 4.

5. *Conclusion.* On the basis of the information above, DOE proposes to find that coal transportation facilities will be available for the period a Prohibition Order is expected to be in effect since no significant constraints to coal delivery over the primary and secondary routes to Cherokee 1, 2, 3, and 4 presently exist.

IV. PROHIBITION OF THE BURNING OF NATURAL GAS OR PETROLEUM PRODUCTS AS THEIR PRIMARY ENERGY SOURCE WILL NOT IMPAIR THE RELIABILITY OF SERVICE IN THE AREA SERVED BY THE AFFECTED POWERPLANTS

Based on an analysis of the information submitted to the Federal Energy Regulatory Commission, DOE proposes to find that the issuance of a Prohibition Order to Cherokee 1, 2, 3, and 4 will not impair the reliability of service in the area served by these powerplants. This proposed finding is based on the facts and interpretations stated below:

A. *Description of the dispatching system.* 1. The Cherokee Station is owned by PSCC, which is within the geographical area of the Western Systems Coordinating Council (WSCC) regional electric reliability council.

2. The term "dispatching system" as used in the finding means PSCC.

3. The net capacity as of March 31, 1978, of all dispatching system powerplants was 2,490 MW. (See line 1, attachment 1.)

4. Proposed changes up to the period in which Cherokee 1, 2, 3, and 4 may implement a Prohibition Order will result in the net capacities indicated on line 4 of attachment 1 because of the following changes in the dispatching system:

Powerplant designation	Fuel	Type of change	Capacity change (MW)	Effective date
Fort St. Vrain 1	Nuclear	Add	Plus 330	September 1978.
Pawnee 1	Coal	do	Plus 470	July 1980.
Southeastern Co. 1	do	do	Plus 470	April 1983.
Totals May 1, 1983.	Added plus 1270. (See line 2, attachment 1.)			

5. The proposed changes above are based on the best information available to DOE (FPC Form 12E-2, March 1978) at the time this Notice of Intention is issued. The Public Service Co. of Colorado Conversion Schedule (attachment 2) is DOE's estimate of the outage times that would be for all the power plants in PSCC that are currently being considered for Prohibition Orders. The schedule assumes outages for conversion at those times that are optimally suited, in terms of forecast peak load periods, to maintain reliability of service.

The schedule does not take into consideration the possibility of forced outages that would reduce the reserve margin; however, there is sufficient flexibility in the dispatching system to adjust for any forced outages which may occur.

B. *Forecast peak loads for the dispatching system.* 1. Forecast of peak loads for the dispatching system during the period in which Cherokee 1, 2, 3, and 4 may be required to implement this Prohibition Order are as indicated on line 9 of attachment 1.

2. The forecast peak loads have been compared with loads in previous similar periods. The annual peak load growth rate for these forecasts is 5.3 percent.

C. *Maximum projected outages for the dispatching system.* 1. Scheduled outages for normal maintenance, including other powerplants that may be implementing Prohibition Orders and nuclear plant refueling within the dispatching system during the periods in which Cherokee 1, 2, 3, and 4 may be implementing a Prohibition Order, may result in some loss of capacity which is expected to be as indicated on line 5 of attachment 1.

2. A projected outage of 4 weeks is estimated to be required to make modifications, installations, or other physical adjustments to Cherokee 1, 3, and 4, as required by this Prohibition Order should it become effective. The powerplants may be less than fully dependable during the period of on-line testing and adjustment following such modification. This period is not expected to exceed 30 days. To take advantage of the maximum reserve capacity, these projected outages are most likely to occur during the years 1983 and 1984. The potential loss of capacity from an outage of Cherokee 1, 3, and 4 will be approximately 599 MW (line 8 sum of the three units, attachment 1).

This represents the maximum potential loss that would be due to outage at this powerplant, but it is expected that Cherokee 1, 3, and 4 would be implementing a Prohibition Order in May 1983, October 1983 and February 1984 respectively. This maximum potential loss of 559 MW is included in the total outages indicated on line 7 of attachment 1. (The assumed conversion period specified on attachment 1 and 2 is shown for the purpose of illustration only.)

3. Maximum projected outages within the dispatching system include normal scheduled maintenance for all powerplants (line 5 of attachment 1) and outages that would be due to conversion (line 6 attachment 1) for those powerplants implementing Prohibition Orders, if the attached PSCC Conversion Schedule is followed. Maximum projected outages could be expected to be as indicated on line 7 of attachment 1, thereby reducing the gross capacity and resulting in a net dependable capacity for the dispatching system.

D. *Net dependable capacity for the dispatching system.* 1. Based on the foregoing information, the net dependable capacities of the dispatching system at the expected time of implementation of a Prohibition Order would be as indicated on line 10 of attachment 1.

2. Comparing these net dependable capacities to the forecast peak loads shown on line 9, attachment 1 indicates that the reserve capacities shown on line 11 of attachment 1 would exist for the dispatching system.

3. Comparison of these reserve capacities to the forecast peak loads shown on line 9 of attachment 1 results in reserve margins as indicated on line 12 of attachment 1 (as contrasted with the reserve margins as indicated on line 13 of attachment 1 if no units were removed from service due to Prohibition Orders).

4. DOE considers these reserve margins (line 12) to be acceptable, taking into consideration the geographical location of Cherokee 1, 2, 3, and 4.

5. At the completion of the conversion there would be 1,550 kW of electricity required to operate the pollution control equipment at Cherokee 1, 3, and 4 as a result of using coal as their primary energy source.

6. Existing transmission system interconnections may transfer an additional 656 MW in May and October 1983 and 809 MW in February 1984 into the dispatching system. This capacity may provide an additional source of electric power during the implementation period and will enhance the reliability of service. (See "Western Systems Coordinating Council, Report to Department of Energy, April 1, 1978, Item 6-B WSCC Area Interchange Diagram, WSCC 1983 HS2, WSCC 1983-1984 HW1.)

E. *Conclusion.* If dispatching system conditions, including any scheduled outage by Cherokee 1, 3, and 4 are as presently forecast during the time that would be required to implement this Prohibition Order by Cherokee 1, 2, 3, and 4, DOE proposes to find that there will be no impairment of reliability of service within the meaning of ESECA in the area served by PSCC or in the dispatching system as a result of this proposed order.

ATTACHMENT 1.—*Public service of Colorado reliability data—Cherokee 1, 3, and 4*

[Assumed conversion period]

	Megawatt capacity		
	Unit 4 May 1-31, 1983	Unit 3 Oct. 1-31, 1983	Unit 1 Feb. 2-29, 1984
1. Net capacity of PSCC as of Mar. 31, 1978	2,490	2,490	2,490
2. Added capacity	1,270	1,270	1,270
3. Added capacity that can be obtained from interconnections	656	656	809
4. Net capacity	4,416	4,416	4,569
5. Scheduled outages for maintenance	248	400	152
6. Projected outages due to prohibition orders	339	201	205
7. Maximum projected outages due to maintenance and prohibition orders (line 5 and 6)	587	601	357
8. Unit outage	339	156	104
9. Peak load	2,785	3,016	2,819
10. Net dependable capacity	3,829	3,815	4,213
11. Reserve capacity	1,044	799	1,393
12. Reserve margin percent (maintenance and prohibition orders)	38	27	49
13. Reserve margin percent (maintenance only)	50	33	56

ATTACHMENT 2.—*Public service of Colorado conversion schedule*

Station	Unit	Assumed conversion dates
Cameo	2	September 1983.
Valmont	5	Do.
Arapahoe	3	October 1983.
Do	4	February 1983.
Cherokee	1	Do.
Do	3	October 1983.
Do	4	May 1983.

COMMENT AND PUBLIC HEARING PROCEDURES

DOE hereby also gives notice of the opportunity for oral and written presentation of data, views and arguments by interested persons regarding this proposed Prohibition Order.

Public comment on the proposal to issue a Prohibition Order to the powerplants listed above is invited in the form of written and oral presentation of data, views and arguments. Comments should make reference to the relevant docket number(s).

Comments should address: (1) The adequacy and validity of each of the proposed findings and the conclusions and rationale in support of these findings; (2) the environmental impact of the issuance of a Prohibition Order, including any site-specific environmental impacts; and (3) any other aspects or impacts of the proposed Prohibition Order believed to be relevant.

Pursuant to 10 CFR 303.173 (a) and (d), DOE hereby announces that a public hearing to receive oral presentation of data, views and arguments of persons interested in the proposed Prohibition Order will be held beginning at 9 a.m. and again at 6 p.m. on August 17, 1978, in the hearing room (269), Post Office Auditorium, U.S. Post Office Building, 1823 Stout Street, Denver, Colo. 80202. Any person who has an interest in the subject of the hearing or who is a representative of a group or class of persons which has an interest in the subject of the hearing may make a written request, or a verbal request if confirmed in writing, for an opportunity to make an oral presentation. The request should be directed to Luther S. Clemmer, Department of Energy, Region VIII, 1075 South Yukon, Post Office Box 26247, Belmar Branch, Lakewood, Colo. 80226, 303-234-2596. The request should be received before 4:30 p.m., August 8, 1978.

The request should describe the person's interest in the issue(s) involved; if appropriate, it should state why the person is an appropriate representative of the group or class of persons which has such an interest; it should give a concise summary of the proposed oral presentation and a telephone number where the person may be contacted.

Speakers will be contacted by a DOE representative before 4:30 p.m., August 10, 1978, and should submit ten (10) copies of their oral presentation, if possible, unless such presentation is less than five (5) pages, in which case only one copy is required, to Luther S. Clemmer, Department of Energy, 1075 South Yukon, Post Office Box 26247, Belmar Branch, Lakewood, Colo. 80226, before 4:30 p.m., August 15, 1978.

Detailed technical data, views and arguments should be contained in a written submission in support of the oral presentation. The oral presentation itself should be a summary of those written comments.

While DOE will endeavor to provide adequate opportunity to all who desire to speak, DOE reserves the right to limit the number of persons to be heard at the hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. The length of time allocated to each presentation may be limited on the basis of the number of persons requesting to be heard. DOE will prepare an agenda that shall provide, to the extent possible, for the presentation of all relevant data, views, and arguments.

A DOE official will be designated to preside at the hearing which will not be a judicial or evidentiary hearing. During oral presentations only those

conducting the hearing may ask questions. There will be no cross-examination. At the conclusion of all initial oral presentations, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and it, together with any written comments submitted in the course of the hearing, will be retained by the DOE and made available for inspection and copying at the Freedom of Information Reading Room, located in room 2107, Federal Building, 12th Street and Pennsylvania Avenue NW., Washington, D.C. 20461, and the DOE Regional VIII Office, room 206, 1075 South Yukon, Post Office Box 26247, Belmar Branch, Lakewood, Colo. 80226, between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit written comments consisting of data, views and arguments with respect to this Notice of Intention to Issue a Prohibition Order to Public Hearing Management, Box UZ, 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 envelope in which they are transmitted and on the document itself with the designation "Proposed Prohibition Order for the Cherokee Powerplant." Fifteen copies should be submitted.

All written comments received by 4:30 p.m., August 30, 1978, all oral presentations, and all other relevant information submitted to or available to DOE will be considered by DOE prior to issuance of a Prohibition Order.

Any information or data 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 or data and to treat it in accordance with that determination.

Upon completion of the proceedings described in this notice, DOE may determine to issue a Prohibition Order to the above-named powerplants. The Prohibition Order will not become effective, however, (1) until either (a) the Administrator of the Environmental Protection Agency (EPA) has notified DOE, as required by section 2(b) of ESECA, that the particular powerplant will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a delayed compliance order pursuant to the provisions of the Clean Air Act (CAA), as amended, 42 U.S.C. 7413(d)(5) and the act of August 7, 1977, Pub. L. 95-95, section 112, or (b) if no such notification is given by EPA, the date that the Administrator of EPA certifies is the earliest date that the particular powerplant will be able to burn coal and to comply with all applicable air pollution requirements, CAA, *supra;* Pub. L. 95-95, *supra;* and (2) until DOE has performed an analysis of the environmental impact of the issuance of a Notice of Effectiveness, pursuant to 10 CFR 208.3(a)(4) and 305.9, and has served the affected powerplant a Notice of Effectiveness, as provided in 10 CFR 303.10(b), 303.37(b) and 305.7. The date the Prohibition Order will be effective will be stated in the Notice of Effectiveness.

10 CFR 305.9 requires that, prior to issuance of a Notice of Effectiveness to a powerplant, DOE shall perform an analysis of the environmental impact of the issuance of such a Notice of Effectiveness. That analysis shall result in either: (1) Issuance of a declaration that the Prohibition Order will not, if made effective by issuance of a Notice of Effectiveness, be likely to have a significant impact on the quality of the human environment; or (2) the preparation by DOE of an environmental impact statement covering significant site-specific impacts that are likely to result from the Prohibition Order and that have not been addressed in the Final Revised (programmatic) Environmental Impact Statement (FEFS 77-3, dated May 1977) or in other official documents made publicly available.

If DOE prepares an environmental impact statement covering significant site-specific impacts resulting from making a Prohibition Order effective, the statement shall be prepared and published for comment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) prior to issuance of a Notice of Effectiveness. Interested persons may request a public hearing pursuant to 10 CFR 303.173 to comment on the contents of a draft environmental impact statement.

With respect to comments regarding any impact on air quality that might result from a proposed Prohibition Order, however, it should be recognized that ESECA has assigned to EPA the primary responsibility for analyzing the effect of any such order on the Nation's air quality and for determining the applicable air pollution control requirements that apply to any powerplant that has been issued an order. It is expected that a powerplant to which a Prohibition Order is issued may be eligible for a delayed compliance order pursuant to section 113(d) of the CAA, supra. If EPA decides to issue a delayed compliance order, it must also provide an opportunity for a public hearing.

Copies of the regulations implementing section 2 (a) and (b) of ESECA (10 CFR Parts 303 and 305) are available for inspection at the following DOE regional offices:

Region, Address, Phone

I Director for Fuels Regulation, 150 Causeway Street, Room 700, Boston, Mass. 02114, 617-223-5265.

II Director for Fuels Regulation, 26 Federal Plaza, Room 3200, New York, N.Y. 10007, 212-264-8051.

III Director for Fuels Regulation, 1421 Cherry Street, Room 1001, Philadelphia, Pa. 19102, 215-597-3915.

IV Director for Fuels Regulation, 1655 Peachtree Street NE., 8th Floor, Atlanta, Ga. 30309, 404-881-2722.

V Director for Fuels Regulation, Federal Office Building, 175 West Jackson Boulevard, Room A-333, Chicago, Ill. 60604, 312-353-3053.

VI Director for Fuels Regulation, Post Office Box 35228, 2626 West Mockingbird Lane, Dallas, Tex. 75235, 214-749-7705.

VII Director for Fuels Regulation, 324 East 11th Street, Kansas City, Mo. 64106, 816-374-2936.

VIII Director for Fuels Regulation, Post Office Box 26247, Belmar Branch, 1075 South Yukon Street, Lakewood, Colo. 80226, 303-234-2596.

IX Director for Fuels Regulation, 111 Pine Street, San Francisco, Calif. 94111, 415-556-4640.

X Director for Fuels Regulation, 1992 Federal Building, 915 Second Avenue, Seattle, Wash. 98174, 206-442-7320.

Any questions regarding this notice should be directed to the DOE national office as follows: Department of Energy, Code DCU (Prohibition Order: Cherokee Powerplant), Washington, D.C. 20461, to the attention of Mr. Walter A. Romanek, 202-254-3910.

(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; The 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., July 25, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration, Department of Energy.

[FR Doc. 78-21064 Filed 7-28-78; 8:45 am]

[3128-01]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Intention to Issue a Prohibition Order to Certain Powerplants

The Department of Energy (DOE) hereby gives notice of its intention to issue a Prohibition Order, pursuant to the authorities granted it by section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended, 15 U.S.C. 791 et seq. and Chapter II, Title 10, Code of Federal Regulations (10 CFR Parts 303 and 305) to the following powerplants:

Docket No.	Owner	Generating station	Powerplant No.	Location
DCU-175	Public Service Company of Colorado.	Arapahoe	1	Denver, Colo.
DCU-176	do	do	2	Do.
DCU-177	do	do	3	Do.
DCU-178	do	do	4	Do.

The proposed order would prohibit the above-named powerplants from burning natural gas or petroleum products as their primary energy source.

PROPOSED FINDINGS AND RATIONALE FOR NOTICE OF INTENTION TO ISSUE A PROHIBITION ORDER

ESECA and DOE regulations require DOE to make certain findings before issuing a Prohibition Order to a powerplant. DOE's proposed findings are set out below with respect to the powerplants named above. Supporting rationale and conclusions are also set forth.

These findings, which are now proposed by DOE, are based on the information that has been provided to and developed by DOE prior to the issuance of this Notice of Intention (NOI) to Issue a Prohibition Order. DOE intends, as necessary, to fully update, for purposes of currency, the information and data pertinent to the issuance of this NOI prior to the issuance of a Prohibition Order. DOE invites the utility or other interested persons to submit more current information or data, if such is available.

Public Service Company of Colorado shall be referred to as the "utility" and as "PSCC".

I. CAPABILITY AND NECESSARY PLANT EQUIPMENT TO BURN COAL

DOE proposes to find that, on June 22, 1974, Powerplants Nos. 1, 2, 3, and 4 at Arapahoe Generating Station (Arapahoe 1, 2, 3, and 4) had, or thereafter acquired or were designed with the capability and necessary plant equipment to burn coal. The proposed finding is based on the facts and interpretations stated below:

A. Based on information supplied to the Federal Energy Regulatory Commission by PSCC and a site visit performed by PedCo Environmental, Inc. (PedCo) and DOE representatives, it has been determined that each powerplant had in place, on June 22, 1974, boilers that were capable of burning coal. The boilers has been designed and constructed or modified to burn coal as their primary energy source, notwithstanding the fact that, on June 22, 1974, the powerplants may not have been burning coal as their primary energy source.

The 1977 annual fuel consumption information reported by PSCC was used to calculate the hear input of Arapahoe boilers 1, 2, 3, and 4. Boiler No. 1 was 99 percent coal and 1 percent natural gas, boiler No. 2 was 99 percent coal and 1 percent natural gas, boiler No. 3 was 99 percent coal and 1 percent natural gas, boiler No. 4 was 87 percent coal and 13 percent natural gas.

B. Based on information PSCC provided to DOE during the above-mentioned site visit and other information available to DOE, Arapahoe 3 and 4 will require air pollution control equipment when this generating station is converted to total coal firing. Arapahoe 1 and 2 presently have air pollution control equipment adequate to control particular emissions.

C. DOE proposes to find that, on June 22, 1974, Arapahoe 1, 2, 3, and 4 had all other significant plant equipment and facilities associated with the burning of coal.

D. Within the meaning of ESECA and the regulations promulgated pursuant thereto, absence of the facilities listed in paragraph B, above, does not constitute a lack of capability and necessary plant equipment to burn coal as of June 22, 1974.

II. THE BURNING OF COAL IN LIEU OF NATURAL GAS OR PETROLEUM PRODUCTS IS PRACTICABLE AND CONSISTENT WITH THE PURPOSES OF ESECA

DOE proposes to find that the burning of coal at Arapahoe 1, 2, 3, and 4 in lieu of petroleum products or natural gas is practicable and consistent with the purposes of ESECA. This finding is based upon the presumption that Arapahoe 1, 2, 3, and 4 will be operated at a 49.3 percent capacity factor (this represents a weighted average of each powerplant's projected capacity factor), have an average remaining useful life of 20 years (as of the date of this NOI), are expected to have at least 15 years of remaining usefull life after conversion of the powerplants, and on the facts and interpretations stated below:

A. *The burning of coal is practicable.*—1. *Costs associated with burning coal.*—a. *Capital investment costs.* The total initial capital investment costs, exclusive of financing costs, that would result from the acquisition of equipment and facilities associated with the burning of coal at Arapahoe 1, 2, 3, and 4 are estimated to be approximately $5,007,000 for air pollution control equipment. This estimate is based on information developed by Pedco as a result of its site visit.

b. *Annual operating and maintenance costs.* Based upon information supplied by PSCC and by Pedco, the expected increase in operating and maintenance costs, exclusive of fuel costs, that would result from the burning of coal at Arapahoe 1, 2, 3, and 4 is estimated to be approximately $382,000 per year.

c. *Fuel costs.* (i) Based on information supplied by the utility, the price of natural gas available to Arapahoe 1, 2, 3, and 4 is approximately $1.41 per million BTU's. This represents $1.41 per Mcf of natural gas, assuming 1,000,000 BTU's per Mcf.

(ii) Based on information supplied by the Federal Energy Regulatory Commission (FERC) and from other sources available to DOE, the price of coal available to Arapahoe 1, 2, 3, and 4 is approximately $0.80 per million BTU's. This represents $17.57 per ton of coal, assuming 22 million BTU's per ton, or 11,000 BTU's per pound. This characteristic falls within the range stated in III.A.3.a. below.

(iii) DOE estimates that the burning of 100 percent coal in lieu of natural gas by these powerplants will result in an overall reduction of approximately $0.61 per million BTU's.

(iv) Based on information supplied by PSCC, DOE has determined that Arapahoe 1, 2, 3, and 4 are presently burning coal and should continue to experience a curtailment of their supply of alternate fuel, natural gas. DOE, therefore, proposes to find that

Arapahoe 1, 2, 3, and 4 should continue to burn coal as their primary energy source with a projected decrease in future fuel costs as a result of a Prohibition Order.

d. *Total annual costs associated with conversion.* As a result of the conversion of Arapahoe 1, 2, 3, and 4, there will be an estimated total annual increase in costs incurred, exclusive of fuel costs, of approximately $1,352,000.

2. *Reasonableness of costs of conversion.* The foregoing analysis of the cost of conversion provides the basis for deciding whether the conversion of Arapahoe 1, 2, 3, and 4 is reasonable. Financial impacts of the conversion will be felt by the ultility and by the consumer.

As a result of conversion, the utility will incur additional annual capital investment costs, including financing costs, of approximately $969,000 (this based on a fixed charge rate of 19.4 percent of the total initial capital investment of $5,007,000) and additional annual operating and maintenance costs, exclusive of fuel costs, of approximately $382,000 (these figures are derived from the figures in paragraphs A.1.a. and b.), but will experience an annual fuel cost savings of approximately $542,000 (see paragraph A.1.c.). The estimated net annual increase in cost of producing electricity at Arapahoe 1, 2, 3, and 4 after conversion is estimated to be $809,000.

The use of coal at Arapahoe 1, 2, 3, and 4 will result in an estimated annual equivalent savings of 887,000 Mcf of natural gas (or approximately 147,833 barrels of oil equivalent) that otherwise would be used in providing steam for electric power generation. The cost of conversion per Mcf of natural gas is estimated to be $0.91.

Although conversion to the burning of coal would be expected to increase the cost of producing electricity at Arapahoe 1, 2, 3, and 4, DOE concludes that the cost, even using current prices, per Mcf of natural gas saved, is not unreasonable. This determination is based on consideration of the substantial savings of natural gas that will result from this conversion. This determination also takes into account the fact that DOE has determined that Arapahoe 1, 2, 3, and 4 should continue to experience curtailment of its alternate fuel, natural gas. The determination that the costs of converting are not unreasonable is further supported by consideration of such costs in relation to the expected 15 years remaining useful life of the powerplants after conversion, the size and resources of the utility as examined in the following analysis of financial capability, the nature of the expected operations of these powerplants, and potential future increase in the fuel cost difference in favor of coal.

3. *Financial capabilities of PSCC.*—a. *Recovery of capital investment.* DOE proposes to find that compliance with a Prohibition Order to Arapahoe 1, 2, 3, and 4 will be economically feasible. DOE's analysis took into consideration the $36,600,000 additional capital investment costs required for PSCC to comply with this NOI and any other NOI's which are currently under consideration, as well as additional capital investment costs resulting from all Prohibition or Construction Orders, if any, issued to date under authority of Section 2 (a) and (c) of ESECA to PSCC's powerplants.

DOE related these additional capital investment costs to PSCC's estimate of its 1977 construction budget of $158,000,000, the total capitalization of the utility of $1,200,000,000, and the average remaining useful life of 15 years after conversion of Arapahoe 1, 2, 3, and 4.

DOE does not consider the effect of this added capital investment cost to represent an unreasonable burden, given the financial capabilities of PSCC to assume such costs.

b. *Total annual costs associated with conversion.* The total estimated annual increase in costs (amortized increased capital investment costs and other costs, exclusive of fuel costs) that would be associated with the burning of coal, as opposed to natural gas, attributable to compliance with this NOI and all other NOI's which are currently under consideration would be $9,984,000. (DOE also took into consideration costs to PSCC that may result from compliance with all outstanding Notices of Intention, to date, if any, to issue Prohibition or Construction Orders to PSCC and the requirements of PSCC resulting from compliance with all Prohibition or Construction Orders, if any, issued to date under authority of section 2 (a) and (c) of ESECA to PSCC powerplants.) This estimate of $9,984,000 is based on an investment oriented analysis described in an Ultrasystem, Inc. report entitled "Computer Methodology For Coal-Conversion Cost Reasonableness Determination," August 1976, (hereafter "Ultrasystems Computer Model").

The total estimated annual increase in costs of $9,984,000 that would be associated with conversion, ultimately will be recovered in rates. However, due to the potential offsetting aggregate value of fuel cost savings of approximately $3,572,000 attributable to compliance with this NOI and all other NOI's currently under consideration, the net annual revenue requirements of PSCC should increase by approximately $6,412,000.

4. *Consumer impact.* The potential impact of proposed prohibition orders to PSCC for units located at its Valmont, Cherokee, Arapahoe, and Cameo generating stations would be a net increase in revenues required from PSCC consumers of approximately $.000539 per kWh of electricity sold by the PSCC system. The impact as a result of a prohibition order to Arapahoe 1, 2, 3, and 4 alone would result in a net increase of 0.000068 per kWh sold. These estimates are based on DOE's analysis of the Ultrasystems Computer Model results.

The actual amount of the increase would depend on the actual amount of the investment necessary to comply with a Prohibition Order, the methods which PSCC selects to finance the increased costs associated with burning coal as a primary energy source at Arapahoe 1, 2, 3, and 4, the extent to which the cost increase is spread among PSCC customers, the regulations or policies of the regulatory agencies with jurisdiction over PSCC regarding inclusion of such cost increase in consumer rates, the actual amount of the fuel cost differential, and other factors.

B. *Consistency with the purposes of ESECA.* Because the issuance of a Prohibition Order to Arapahoe 1, 2, 3, and 4 will discourage the use of natural gas or petroleum products and encourage the increased use of coal, DOE proposes to find that such action will be consistent with the purposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels.

On the basis of the environmental analysis which DOE is required to conduct prior to issuance of a Notice of Effectiveness of Prohibition Order, as well as the necessity for these powerplants to comply with the Clean Air Act, as amended (42 U.S.C. 7401 et seq.), technically and economically recoverable. To determine when certain quantities of these reserves are expected to be available, DOE has examined several studies, referenced herein, which together provide the best current evidence as to coal availability for the period ending December 31, 1984.

2. *National coal production and demand.* A comparison of estimated national coal production and national coal demand shows that there should be sufficient production of coal to meet the total national demand through 1984.

a. *National coal production.* It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

PRODUCTION POTENTIAL

[In millions of tons]

Year:	
1978	745
1979	781

PRODUCTION POTENTIAL—Continued

[In millions of tons]

1980	818
1981	858
1982	899
1983	942
1984	987

The figures shown above are derived from "Projections of Energy Supply and Demand and Their Impacts, Energy Information Administration," dated April 1978 (hereafter "Energy Supply and Demand Report"). The coal production forecast was derived from analytical procedures utilizing historic coal consumption patterns, in addition to derived demand under a forecast economic and energy case. DOE intends to fully update, for purposes of being current, its coal availability finding pertinent to Arapahoe 1, 2, 3, and 4 prior to the issuance of a Notice of Effectiveness.

b. *National demand including ESECA Prohibition Order demand.* The estimated national demand, including any increased demand resulting from DOE actions under the authority of section 2(a) of ESECA, is as follows (Energy Supply and Demand Report):

DEMAND

[In millions of tons]

Year:	
1978	720
1979	758
1980	798
1981	841
1982	885
1983	932
1984	982

These demand projections were conservatively developed and are designed to include not only the actions already taken under ESECA but also all possible ESECA actions that may be taken in the future.

c. *National ESECA Prohibition Order demand.* DOE has estimated potential demand for coal resulting from this NOI, from all other outstanding Notices of Intention to issue Prohibition Orders currently under consideration and from all outstanding Prohibition Orders issued to date under authority of section 2(a) of ESECA to be as follows:

DEMAND

[In millions of tons]

Year:	
1978	9.6
1979	14.0
1980	20.4
1981	22.7
1982	29.5
1983	29.9
1984	29.9

(The above estimated demand figures include projections for Prohibition Orders issued on June 30, 1975 which are currently effective through December 31, 1978 and are subject to extension through December 31, 1984.)

3. *Characteristic coal, production and demand*—a. *Characteristic coal requirements for these powerplants.* Based on information provided by PSCC, DOE proposes to conclude that dry-bottom boilers, of the type used at Arapahoe 1, 2, 3, and 4, will be able to burn coal with the following characteristic and comply with all applicable air pollution control requirements:

	Approximate values
BTU's per pound	8,500 to 12,000.
Moisture	8 pct to 25 pct.
Ash	5 pct to 15 pct.
Volatile	25 pct to 40 pct.
Ash softening temperature	2300 to 2700 (°F).
Sulfur	0.5 pct to 0.7 pct.
Grindability	45 to 60.

b. *Characteristic coal demand from these powerplants.* The potential average annual incremental demand for coal, of the type described above which would result from burning coal instead of natural gas as a consequence of this Notice of Intention, is estimated to be as follows:

POTENTIAL ANNUAL DEMAND

[In thousands of tons]

Years: 1983 to 1984	40

c. *Characteristic coal available to these powerplants.* Based on information provided by the utility, DOE has determined that PSCC has executed two long-term contracts with Energy Fuels Co., Routt County, Colo., and the Rosebud Coal Sales Co., Carbon County, Wyo., for supplies of characteristic coal to PSCC for Arapahoe 1, 2, 3, and 4, and for the Cherokee, Valmont and Cameo Generating Stations. The Energy Fuels Co. contract provides coal supplies of approximately 2 million tons per year to PSCC through June 30, 1987. The Rosebud contract provides for coal supplies of approximately one million tons per year to PSCC through December 31, 1981. PSCC has advised DOE that the Rosebud Mine Contract is presently being renegotiated to extend the period of performance for additional supplies of characteristic coal, and that there are no anticipated contract problems.

In addition, Colowyo Coal Co. in Routt County, Colo., provides characteristic coal to PSCC on short term contracts to supplement coal supplies as needed.

DOE has examined the quantities of coal for Arapahoe, Cameo, Cherokee, and Valmont Generating Stations and proposes to find that there is sufficient characteristic coal available to satisfy the increase in demand represented by all NOI's issued to PSCC to cover the period the proposed orders are in effect.

4. *State and local laws.* DOE has found no State or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none has been brought to DOE's attention.

5. *Conclusion.* On the basis of PSCC's present coal contract commitments, DOE proposes to find that coal of the characteristics required will be available to Arapahoe 1, 2, 3, and 4 through 1984. Furthermore, on the basis of the Bureau of Mines Survey and the Energy Supply and Demand Report, DOE expects that national coal production potential will exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential additional demand represented by this NOI, by all other outstanding Notices of Intention to issue Prohibition Orders, and from all Prohibition Orders issued to date under authority of section 2(a) of ESECA.

B. *Coal transportation.*—1. *Location of powerplants and coal supply.* Based on information provided by PSCC, coal for Arapahoe 1, 2, 3, and 4 will be supplied and transported from Energy Fuels Co., which is located in Routt County, Colo. to Arapahoe 1, 2, 3, and 4 in Denver, Colo.

2. *Route of coal shipment.* Based on information provided to DOE by PSCC and the railroads, the primary route for coal delivery from the Energy Mine originates on the Denver & Rio Grande Western RR. (D&RGW) and is transferred to the Colorado & Southern Rwy. (C&S) in Denver, Colo. The C&S delivers the coal into the Arapahoe Plant.

3. *Originating trunk carrier.* D&RGW and C&S RRs. have indicated that they are able and willing to provide any additional capacity required for coal shipments to Arapahoe 1, 2, 3, and 4. The D&RGW has stated that the rail facilities at Energy Fuels Co. in Routt County, Colo. are readily available to PSCC. C&S has stated that it has adequate coal handling and unloading facilities to service any required increases in coal volumes.

DOE has not found nor has it been informed of any apparent constraints to transporting coal.

4. *Powerplant facilities.* Arapahoe 1, 2, 3, and 4 presently have coal unloading facilities, which C&S has advised DOE are adequate to handle the projected increased coal demand, provided that the utility adds the required manpower to unload the delivered coal. There are no other apparent obstacles to the handling and delivery of coal to Arapahoe 1, 2, 3, and 4.

5. *Conclusion.* On the basis of the information above, DOE proposes to find that coal transportation facilities will be available for the period a Prohibition Order is expected to be in effect since no significant constraints to coal delivery over the primary route to Arapahoe 1, 2, 3, and 4 presently exist.

IV. THE PROHIBITION OF THE BURNING OF NATURAL GAS OR PETROLEUM PRODUCTS AS THEIR PRIMARY ENERGY SOURCE WILL NOT IMPAIR THE RELIABILITY OF SERVICE IN THE AREA SERVED BY THE AFFECTED POWERPLANTS

Base on an analysis of the information submitted to the Federal Energy Regulatory Commission, DOE finds that the issuance of a Prohibition Order of Arapahoe 1, 2, 3, and 4 will not impair the reliability of service in the area served by these powerplants. This finding is based on the facts and interpretations stated below:

A. *Description of the dispatching system.* 1. The Arapahoe 1, 2, 3, and 4 Station is owned by PSCC, which is within the geographical area of the Western Systems Coordinating Council (WSCC) regional electric reliability council.

2. The term "dispatching system" as used in the finding means PSCC.

3. The net capacity as of March 31, 1978, of all dispatching system powerplants was 2,490 NW. (See line 1, attachment 1.)

4. Proposed changes up to the period in which Arapahoe 1, 2, 3, and 4 may implement a Prohibition Order will result in the net capacities indicated on line 4 of attachment 1 because of the following changes in the dispatching system listed in Table 1:

TABLE 1

Powerplant designation	Fuel	Type of change	Capacity change (MW)	Effective date
Fort St. Vrain 1	Nuclear	Add	Plus 330	September 1978.
Pawnee 1	Coal	do	Plus 470	July 1980.
Southeastern Co. 1	do	do	Plus 470	April 1983.
Totals October 1, 1983.	Added plus 1,270. (See line 2, attachment 1.)			

5. The proposed changes in table 1, above, are based on the best information available to DOE (FPC Form 12E-2, March 1978) at the time this NOI is issued. The Public Service Co. of Colorado Conversion Schedule (attachment 2) is DOE's estimate of the outage times that would be required for all the powerplants in PSCC that are currently being considered for Prohibition Orders. The schedule assumes outages for conversion at those times that are optimally suited, in terms of forecast peak load periods, to maintain reliability of service.

The schedule does not take into consideration the possibility of forced outages that would reduce the reserve margins; however, there is sufficient flexibility in the dispatching system to adjust for any forced outages which may occur.

B. *Forecast peak loads for the dispatching system.* 1. Forecast of peak loads for the dispatching system during the period in which Arapahoe 1, 2, 3 and 4 may be required to implement this Prohibition Order are as indicated on line 9 of attachment 1.

2. The forecast peak loads have been compared with loads in previous similar periods. The annual peak load growth rate for these forecasts is 5.3 percent.

C. *Maximum projected outages for the dispatching system.* 1. Scheduled outages for normal maintenance, including other powerplants that may be implementing Prohibition Orders and nuclear plant refueling within the dispatching system during the periods in which Arapahoe 1, 2, 3 and 4 may be implementing a Prohibition order, may result in some loss of capacity which is expected to be as indicated on line 5 of attachment 1.

2. A projected outage of 3 weeks for Arapahoe No. 3 and 4 weeks for Arapahoe No. 4 is estimated to be required to make modifications, installations, or other physical adjustments required by this Prohibition Order should it become effective. The powerplants may be less than fully dependable during the period of on-line testing and adjustment following such modification. This period is not expected to exceed 31 days. To take advantage of the maximum reserve capacity, these projected outages are most likely to occur during the years 1983 and 1984. The potential loss of capacity from an outage of Arapahoe 3 and 4 would be approximately 146 MW (line 8, sum of the two units, attachment 1).

This represents the maximum potential loss that would be due to outage at these powerplants, but it is expected that Arapahoe 3 and 4 would be implementing a Prohibition Order in October 1983 and February 1984 respectively. This maximum potential loss of 146 MW is included in the total outages indicated on line 7 of attachment 1. (The assumed conversion period specified on attachments 1 and 2 is shown for the purpose of illustration only.)

3. Maximum projected outages within the dispatching system include normal scheduled maintenance for all powerplants (line 5 of attachment 1) and outages that may be due to conversion (line 6 of attachment 1) for those powerplants implementing Prohibition Orders, if the attached PSCC Conversion Schedule is followed. Maximum projected outages could be expected to be as indicated on line 7 of attachment 1, thereby reducing the gross capacity and resulting in a net dependable capacity for the dispatching system.

D. *Net dependable capacity for the dispatching system.* 1. Based on the foregoing information, the net dependable capacity of the dispatching system at the expected time of implementation of a Prohibition Order would be as indicated on line 10 of attachment 1.

2. Comparing these net dependable capacities to the forecast peak loads shown on line 9, attachment 1 indicates that the reserve capacity shown on line 11 of attachment 1 would exist for the dispatching system.

3. Comparison of these reserve capacities to the forecast peak loads shown on line 9 of attachment 1 results in reserve margins as indicated on line 12 of attachment 1 (as contrasted with reserve margins as indicated on line 13 of attachment 1 if no units were removed from service due to Prohibition Orders).

4. DOE considers these reserve margins to be acceptable, taking into consideration the geographical location of Arapahoe 1, 2, 3, and 4.

5. At the completion of the conversion there would be 637 KW of electricity required to operate the pollution control equipment at Arapahoe 3 and 4 as a result of using coal as their primary energy source.

6. Existing transmission system interconnections may transfer an additional 656 MW in October 1983 and 809 MW in February 1984 into the dispatching system. this capacity may provide an additional source of electric power during the implementation period and will enhance the reliability of service. ("Western Systems Coordinating Council, Report to Department of Energy," April 1, 1978, Item 6-B, WSCC Area Interchange Diagram, WSCC 1983 HS2, WSCC 1983-1984 HW1).

E. *Conclusion.* If dispatching system conditions, including any scheduled outage by Arapahoe 3 and 4 are as presently forecast during the time required to implement this Prohibition Order by Arapahoe 1, 2, 3, and 4, DOE proposes to find that there will be no impairment of reliability of service within the meaning of ESECA in the

area served by PSCC or in the dispatching system as a result of this proposed order.

ATTACHMENT 1.—*Public Service of Colorado reliability data Arapahoe 3 and 4*

[Assumed conversion period]

	Megawatt capacity	
	Unit 3, Oct. 1-31, 1983	Unit 4, Feb. 1-29, 1984
1. Net capacity of PSCC as of Oct. 31, 1978	2,490	2,490
2. Added capacity	1,270	1,270
3. Added capacity that can be obtained from interconnections	656	809
4. Net capacity	4,416	4,569
5. Scheduled outages for maintenance	400	152
6. Projected outages due to prohibition orders	201	205
7. Maximum projected outages due to maintenance and prohibition orders (line 5 and 6)	601	357
8. Unit outage	45	101
9. Peak load	3,016	2,819
10. Net dependable capacity	3,815	4,212
11. Reserve capacity	799	1,393
12. Reserve margin percent (maintenance and prohibition orders)	27	49
13. Reserve margin percent (maintenance only)	33	57

ATTACHMENT 2.—*Public service of Colorado conversion schedule*

Station	Unit	Assumed conversion dates
Cameo	2	September 1983.
Valmont	5	Do.
Arapahoe	3	October 1983.
Do	4	February 1984.
Cherokee	1	Do.
Do	3	October 1983.
Do	4	May 1983.

COMMENT AND PUBLIC HEARING PROCEDURES

DOE hereby also gives notice of the opportunity for oral and written presentation of data, views and arguments by interested persons regarding this proposed Prohibition Order.

Public comment on the proposal to issue a Prohibition Order to the powerplants listed above is invited in the form of written and oral presentation of data, views and arguments. Comments should make reference to the relevant docket number(s).

Comments should address (1) the adequacy and validity of each of the proposed findings and the conclusions and rationale in support of these findings, (2) the environmental impact of the issuance of a Prohibition Order, including any site-specific environmental impacts and (3) any other aspects or impacts of the proposed Prohibition Order believed to be relevant.

Pursuant to 10 CFR 303.173 (a) and (d), DOE hereby anounces that a public hearing to receive oral presentation of data, views and arguments of persons interested in the proposed Prohibition Order will be held beginning at 9 a.m. and again at 6 p.m. on August 17, 1978, in the hearing room (269), Post Office Auditorium, U.S. Post Office Building, 1823 State Street, Denver, Colo. 80202. Any person who has an interest in the subject of the hearing or who is a representative of a group or class of persons which has an interest in the subject of the hearing may make a written request, or a verbal request if confirmed in writing, for an opportunity to make an oral presentation. The request should be directed to Luther S. Clemmer, Department of Energy, Region VIII, 1075 South Yukon, Post Office Box 26247, Belmar Branch, Lakewood, Colo. 80226, 303-234-2596. The request should be received before 4:30 p.m., August 8, 1978.

The request should describe the person's interest in the issue(s) involved; if appropriate, it should state why the person is an appropriate representative of the group or class of persons which has such an interest; it should give a concise summary of the proposed oral presentation and a telephone number where the person may be contacted.

Speakers will be contacted by a DOE representative before 4:30 p.m., August 10, 1978, and should submit ten (10) copies of their oral presentation, if possible, unless such presentation is less than five (5) pages, in which case only one copy is required, to Luther S. Clemmer, Department of Energy, 1075 South Yukon, Post Office Box 26247, Belmar Branch, Lakewood, Colo. 80226, before 4:30 p.m., August 15, 1978.

Detailed technical data, views and arguments should be contained in a written submission in support of the oral presentation. The oral presentation itself should be a summary of those written comments.

While DOE will endeavor to provide adequate opportunity to all who desire to speak, DOE reserves the right to limit the number of persons to be heard at the hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. The length of time allocated to each presentation may be limited on the basis of the number of persons requesting to be heard. DOE will prepare an agenda that shall provide, to the extent possible, for presentation of all relevant data, views and arguments.

A DOE official will be designated to preside at the hearing which will not be a judicial or evidentiary hearing. During oral presentations only those conducting the hearing may ask questions. There will be no cross-examination. At the conclusion of all initial oral presentations, each person who has made an oral statement will be given the opportunity if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to the time limitations.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and it, together with pertinent written comments submitted to DOE in the course of the hearing, will be retained by DOE and made available for inspection and copying at the Freedom of Information Reading Room, located in room 2107, Federal Building, 12th Street and Pennsylvania Avenue NW., Washington, D.C. 20461, and DOE Regional Office VIII, room 206, 1075 South Yukon, Post Office Box 26247, Belmar Branch, Lakewood, Colo. 80226, between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit written comments consisting of data, views and arguments with respect to this Notice of Intention to Issue a Prohibition Order to Public Hearing Management, Box UX, De-

partment 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 envelope in which they are transmitted and on the document itself with the designation "Proposed Prohibition Order for the Arapahoe Powerplant." Fifteen copies should be submitted.

All written comments received by 4:30 p.m., August 30, 1978, all oral presentations, and all other relevant information submitted to or available to DOE will be considered by DOE prior to issuance of a Prohibition Order.

Any information or data considered to be confidential by the person furnishing it must be so identified and submited in writing in accordance with 10 CFR 303.9(f). DOE reserves the right to determine the confidential status of the information or data and to treat it in accordance with that determination.

Upon completion of the proceedings described in this notice, DOE may determine to issue a Prohibition Order to the above-named powerplants. The Prohibition Order will not become effective, however, (1) until either (a) the Administrator of the Environmental Protection Agency (EPA) has notified DOE, as required by section 2(b) of ESECA, that the particular powerplant will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a delayed compliance order pursuant to the provisions of the Clean Air Act, as amended, (CAA), 42 U.S.C. 7413(d)(5) and the act of August 7, 1977, Pub. L. 95-95, section 112, or (b) if no such notification is given by EPA, the date that the Administrator of EPA certifies is the earliest date that the particular powerplant will be able to burn coal and to comply with all applicable air pollution requirements, CAA, supra; Pub. L. 95-95, supra; and (2) until DOE has performed an analysis of the environmental impact of the issuance of a Notice of Effectiveness, pursuant to 10 CFR 208.3(a)(4) and 305.9, and has served the affected powerplant a Notice of Effectiveness, as provided in 10 CFR 303.10(b), 303.37(b), and 305.7. The date the Prohibition Order will be effective will be stated in the Notice of Effectiveness.

10 CFR 305.9 requires that, prior to issuance of a Notice of Effectiveness to a powerplant, DOE shall perform an analysis of the environmental impact of the issuance of such Notice of Effectiveness. That analysis shall result in either: (1) Issuance of a declaration that the Prohibition Order will not, if made effective by issuance of a Notice of Effectiveness, be likely to have a significant impact on the quality of the human environment; or (2) the preparation by DOE of an environmental impact statement covering significant site-specific impacts that are likely to result from the Prohibition Order and that have not been adequately addressed in the Final Revised (Programmatic) Environmental Impact Statement (FES 77-3, dated May, 1977) or in other official documents made publicly available.

If DOE prepares an environmental impact statement covering significant site-specific impacts resulting from making a Prohibition Order effective, the statement shall be prepared and published for comment in accordance with section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) prior to issuance of a Notice of Effectiveness. Interested persons may request a public hearing pursuant to 10 CFR 303.173 to comment on the contents of a draft environmental impact statement.

With respect to comments regarding any impact on air quality that might result from a proposed Prohibition Order, however, it should be recognized that ESECA has assigned to EPA the primary responsibility for analyzing the effect of any such order on the Nation's air quality and for determining the applicable air pollution control requirements that apply to any powerplant that has been issued an order. It is expected that a powerplant to which a Prohibition Order is issued may be eligible for a delayed compliance order pursuant to section 3(d) of the CAA, *supra*. If EPA decides to issue a delayed compliance order it must also provide an opportunity for a public hearing.

Copies of the regulations implementing section 2 (a) and (b) of ESECA (10 CFR Parts 303 and 305) are available for inspection at the following DOE Regional Offices:

Region Address, Phone

I Director for Fuels Regulation, 150 Causeway Street, room 700, Boston, Mass. 02114, 617-223-5265.

II Director for Fuels Regulation, 26 Federal Plaza, room 3200, New York, N.Y. 10007, 212-264-8051.

III Director for Fuels Regulation, 1421 Cherry Street, room 1001, Philadelphia, Pa. 19102, 215-597-3915.

IV Director for Fuels Regulation, 1655 Peachtree Street NE., 8th Floor, Atlanta, Ga. 30309, 404-881-2722.

V Director for Fuels Regulation, Federal Office Building, 175 West Jackson Boulevard, room A-333, Chicago, Ill. 60604, 312-353-3053.

VI Director for Fuels Regulation, Post Office Box 35228, 2626 West Mockingbird Lane, Dallas, Tex. 75235, 214-749-7705.

VII Director for Fuels Regulation, 324 East 11th Street, Kansas City, Mo. 64106, 816-374-2936.

IX Director for Fuels Regulation, 111 Pine Street, San Francisco, Calif. 94111, 415-556-4640.

X Director for Fuels Regulation, 1992 Federal Building, 915 Second Avenue, Seattle, Wash. 98174, 206-442-7320.

Any questions regarding this notice should be directed to the DOE National Office as follows: Department of Energy, Code DCU (Prohibition Order: Arapahoe Powerplant), Washington, D.C. 20461, 202-254-5436.

(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; The 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., July 25, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation,
Economic Regulatory Administration, Department of Energy.

[FR Doc. 78-21065 Filed 7-28-78; 8:45 am]

[3128-01]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Intention To Issue A Prohibition Order to Certain Powerplants

The Department of Energy (DOE) hereby gives a notice of its intention to issue a Prohibition Order, pursuant to the authorities granted it by section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, as amended, 15 U.S.C. 791 *et seq.* (ESECA), and Chapter II, Title 10, Code of Federal Regulations (10 CFR Parts 303 and 305) to the following powerplant:

Docket No.	Owner	Generating station	Powerplant No.	Location
DCU-179	Public Service Company of Colorado.	Valmont	5	Boulder, Colo.

The proposed order would prohibit the above-named powerplant from burning natural gas or petroleum products as its primary energy source.

PROPOSED FINDINGS AND RATIONALE FOR NOTICE OF INTENTION TO ISSUE A PROHIBITION ORDER

ESECA and DOE regulations require DOE to make certain findings before issuing a Prohibition Order to a powerplant. DOE's proposed findings are set out below with respect to the powerplant named above. Supporting rationale and conclusions are also set forth.

These findings, which are now proposed by DOE, are based on information that has been provided to and developed by DOE prior to the issuance of this Notice of Intention (NOI) to Issue a Prohibition Order. DOE intends, as necessary, to fully update, for purposes of currency, the information and data pertinent to the issuance of this NOI prior to the issuance of a Prohibition Order. DOE invites the utility or other interested persons to submit more current information or data, if such is available.

Public Service Company of Colorado shall be referred to as the "utility" and as "PSCC".

I. CAPABILITY AND NECESSARY PLANT EQUIPMENT TO BURN COAL

DOE proposes to find that, on June 22, 1974, Powerplant No. 5 at Valmont Generating Station (Valmont 5) had, or thereafter acquired or was designed with the capability and necessary plant equipment to burn coal. This proposed finding is based on the facts and interpretations stated below:

A. Based on information supplied to the Federal Energy Regulatory Commission by PSCC and a site visit performed by Pedco Environmental, Inc. (Pedco) and DOE representatives, it has been determined that Valmont 5 had in place, on June 22, 1974, a boiler that was capable of burning coal. The boiler had been designed and constructed or modified to burn coal as its primary energy source, notwithstanding the fact that, on June 22, 1974, the powerplant may not have been burning coal as its primary energy source.

The 1977 annual fuel consumption information reported by PSCC was used to calculate the heat input of Valmont No. 5. Valmont No. 5 was 76 percent coal and 24 percent natural gas.

B. Based on information PSCC provided to DOE during the above-mentioned site visit and other information available to DOE, Valmont 5 will require air pollution control equipment when this generating station is converted to total coal firing.

C. DOE proposes to find that, on June 22, 1974, Valmont 5 had all other significant plant equipment and facilities associated with the burning of coal.

D. Within the meaning of ESECA and the regulations promulgated pursuant thereto, absence of the facilities listed in paragraph B, above, does not constitute a lack of capability and necessary plant equipment to burn coal as of June 22, 1974.

II. THE BURNING OF COAL IN LIEU OF NATURAL GAS OR PETROLEUM PRODUCTS IS PRACTICABLE AND CONSISTENT WITH THE PURPOSES OF ESECA

DOE proposes to find that the burning of coal at Valmont 5 in lieu of petroleum products or natural gas is practicable and consistent with the purpose of ESECA.

This finding is based upon the presumption that Valmont 5 will be operated at a 65 percent capacity factor, have a remaining useful life of 31 years (as of the date of this NOI), is expected to have at least 25 years of remaining useful life after conversion of the powerplant, and on the facts and interpretations stated below:

A. *The burning of coal is practicable*—1. *Costs associated with burning coal*—a. *Capital investment costs.* The total initial capital investment costs, exclusive of financing costs, that would result from the acquisition of equipment and facilities associated with the burning of coal at Valmont 5 is estimated to be approximately $4,691,000 for air pollution control equipment. This estimate is based on information developed by Pedco as a result of its site visit.

b. *Annual operating and maintenance costs.* Based upon information supplied by PSCC and by Pedco, the expected increase in operating and maintenance costs, exclusive of fuel costs, that would result from the burning of coal at Valmont 5 is estimated to be approximately $356,000 per year.

c. *Fuel costs.* (i) Based on information supplied by the utility, the price of natural gas available to Valmont 5 is approximately $1.24 per million Btu's. This represents $1.24 per Mcf of natural gas, assuming 1,000,000 Btu's per Mcf.

(ii) Based on information supplied by the utility to the Federal Energy Regulatory Commission (FERC) and from other sources available to DOE, the price of coal available to Valmont 5 is approximately $.74 per million Btu's. This represents $15.40 per ton of delivered coal, assuming 20.7 million Btu's per ton or 10,350 Btu's per pound. This characteristic falls in the range stated in III.A.3.a. below.

(iii) DOE estimates that the burning of 100 percent coal in lieu of natural gas by this powerplant will result in an overall reduction of approximately $0.50 per million Btu's.

(iv) Based on information supplied by PSCC, DOE has determined that Valmont 5 is presently burning coal and should continue to experience curtailment of its supply of alternate fuel, natural gas. DOE, therefore, proposes to find that Valmont 5 can continue to burn coal as its primary energy source with a decrease in fuel costs as a result of a Prohibition Order.

d. *Total annual costs associated with conversion.* As a result of the conversion of Valmont 5, there will be an estimated total annual increase in costs incurred, exclusive of fuel costs, of approximately $1,264,000, assuming coal is used to replace natural gas.

2. *Reasonableness of costs of conversion.* The foregoing analysis of the costs of conversion provides the basis for deciding whether the conversion of Valmont 5 is reasonable. Financial impacts of the conversion will be felt by the utility and by the consumer.

As a result of conversion, the utility will incur additional annual capital investment costs, including financing costs, of approximately $908,000 (this is based on a fixed charge rate of 19.4 percent of the total initial capital investment of $4,691,000) and additional annual operating and maintenance costs, exclusive of fuel costs, of approximately $356,000 (these figures are derived from the figures in paragraphs A.1.a. and b.), but will experience an annual fuel costs savings of approximately $1,219,000 (see paragraph A.1.c.). The estimated net annual increase in cost of producing electricity at Valmont 5 after conversion is estimated to be $44,000.

The use of coal instead of natural gas at Valmont 5 will result in an estimated annual equivalent savings of 2,456,000 Mcf of natural gas (or approximately 409,333 barrels of oil equivalent) that otherwise would be used in providing steam for electric power generation. The cost of conversion per Mcf of natural gas is estimated to be $.002.

Although conversion to the burning of coal would be expected to increase the cost of producing electricity at Valmont 5, DOE concludes that the cost, even using current prices per Mcf of natural gas saved, is not unreasonable. This determination is based on consideration of the substantial savings of natural gas that will result from this conversion. This determination also takes into account the fact that DOE has determined that Valmont 5 should continue to experience curtailment of its alternate fuel, natural gas. The determination that the costs of converting are not unreasonable is further supported by consideration of such costs in relation to the ex-

pected 25 years remaining useful life of the powerplant after conversion, the size and resources of the utility as examined in the following analysis of financial capability, the nature of the expected operation of this powerplant, and potential future increase in the fuel cost difference in favor of coal.

3. *Financial capabilities of PSCC.*—(a.) *Recovery of capital investment.* DOE proposes to find that compliance with a Prohibition Order to Valmont 5 will be economically feasible. DOE's analysis took into consideration the $36,600,000 additional capital investment costs required for PSCC to comply with this NOI and any other NOI's which are currently under consideration, as well as additional capital investment costs resulting from all Prohibition or Construction Orders, if any, issued to date under authority of section 2 (a) and (c) of ESECA to PSCC's powerplants.

DOE related these additional capital investment costs to PSCC's estimate of its 1977 construction budget of $158,000,000, the total capitalization of the utility of $1,200,000,000, and the remaining useful life of 25 years after conversion of Valmont 5.

DOE does not consider the effect of this added capital investment cost to represent an unreasonable burden, given the financial capabilities of PSCC to assume such costs.

b. *Total annual costs associated with conversion.* The total estimated annual increase in costs (amortized increased capital investment costs and other costs, exclusive of fuel costs) that would be associated with the burning of coal, as opposed to natural gas, attributable to compliance with this NOI and all other NOI's which are under consideration would be $9,984,000. (DOE also took into consideration costs to PSCC that may result from compliance with all other outstanding Notices of Intention, to date, if any, to issue Prohibition or Construction Orders, to PSCC, and the requirements of PSCC resulting from compliance with all Prohibition or Construction Orders, if any, issued to date under authority of section 2 (a) and (c) of ESECA to PSCC powerplants.) This estimate of $9,984,000 is based on an investment oriented analysis described in an Ultrasystems Inc. report entitled "Computer Methodology For Coal Conversion Cost Determination," August 1976 (hereafter "Ultrasystems Computer Model").

The total estimated annual increase in costs of $9,984,000 that would be associated with conversion ultimately will be recovered in rates. However, due to the potential offsetting aggregate value of fuel cost savings of approximately $3,572,000 attributable to compliance with this NOI and all other NOI's currently under consideration, if any, the net annual revenue requirements of PSCC should increase by approximately $6,412,000.

4. *Consumer impact.* The potential impact of the proposed Prohibition Orders to PSCC for units located at its Valmont, Cherokee, Arapahoe, and Cameo generating stations would be a net increase in the revenues required from PSCC consumers of approximately $.000539 per kWh of electricity sold by the PSCC system. The impact as a result of a Prohibition Order to Valmont 5 alone would result in a net increase of $.000004 per kWh sold. These estimates are based on DOE's analysis of the Ultrasystems Computer Model results.

The actual amount of the increase would depend on the actual amount of the investment necessary to comply with a Prohibition Order, the methods which PSCC selects to finance the increased costs associated with burning coal as a primary energy source at Valmont 5, the extent to which the cost increase is spread among PSCC customers, the regulations or policies of the regulatory agencies with jurisdiction over PSCC regarding inclusion of such amount of the fuel cost differential, and other factors.

B. *Consistency with the purposes of ESECA.* Because the issuance of a Prohibition Order to Valmont 5 will discourage the use of natural gas or petroleum products and encourage the increased use of coal, DOE proposes to find that such action will be consistent with the purposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels.

On the basis of the environmental analysis which DOE is required to conduct prior to issuance of a notice of Effectiveness of Prohibition Order, as well as the necessity for these powerplants to comply with the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and other applicable environmental protection requirements, DOE proposes to find that issuance of a Prohibition Order to Valmont 5 will be consistent with the purposes of ESECA to provide for a means to assist in meeting the essential needs of the United States for fuels in a manner which is consistent, to the fullest practicable, with existing national commitments to protect and improve the environment.

III. COAL AND COAL TRANSPORTATION FACILITIES WILL BE AVAILABLE TO THESE POWERPLANTS DURING THE PERIOD UNTIL DECEMBER 31, 1984.

A. *Coal availability*—1. *National coal reserves.* United States coal reserves are more than sufficient to supply national needs for the foreseeable future. U.S. Department of the Interior, Bureau of Mines data show a demonstrated coal reserve base of over 438 billion tons "Demonstrated Coal Reserve Base of the United States on January 1, 1976," Bureau of Mines (August 1977) [hereafter "BOM" Survey"]). Mining experience in the United States has indicated that, on a national basis at least one-half of the coal, 219 billion tons, in the reserve base may be technically and economically recoverable. To determine when certain quantities of these reserves are expected to be available, DOE has examined several studies, referenced herein, which together provide the best current evidence as to coal availability for the period ending December 31, 1984.

2. *National coal production and demand.* A comparison of estimated national coal production and national coal demand shows that there should be sufficient production of coal to meet the total national demand through 1984.

a. *National coal production.* It is conservatively estimated that it will be practicable to produce coal nationally in at least the following quantities:

PRODUCTION POTENTIAL

[In millions of tons]

Year:	
1978	745
1979	781
1980	818
1981	858
1982	899
1983	942
1984	987

The figures shown above are derived from "Projections of Energy Supply and Demand and Their Impacts, Energy Information Administration" dated April 1978 (hereafter "Energy Supply and Demand Report"). The coal production forecast was derived from analytic procedures utilizing historic coal consumption patterns, in addition to derived demand under a forecast economic and energy case. DOE intends to fully update, for purposes of being current, its coal availability finding pertinent to Valmont 5 prior to the issuance of a Notice of Effectiveness.

b. *National demand including ESECA Prohibition Order demand.* The estimated national demand, including any increased demand resulting from DOE actions under the authority of section 2(a) of ESECA, to be as follows (Energy Supply and Demand Report).

DEMAND

[In millions of tons]

Year:	
1978	720
1979	758
1980	798
1981	840
1982	885
1983	932
1984	981

These demand projections were conservatively developed and are designed to include not only the actions already taken under ESECA but also all possible ESECA actions that may be taken in the future.

c. *National ESECA Prohibition Order demand.* DOE has estimated potential demand for coal resulting from this NOI, from all other outstanding Notices of Intention to issue Prohibition Orders currently under consideration, and from all outstanding Prohibition Orders issued to date under authority of section 2(a) of ESECA is as follows:

DEMAND

[In millions of tons]

Year:	
1978	9.6
1979	14.0
1980	20.4
1981	22.7
1982	29.5
1983	29.9
1984	29.9

(The above estimated demand figures include projections for Prohibition Orders issued on June 30, 1975 which are currently effective through December 31, 1978 and are subject to extension through December 31, 1984.)

3. *Characteristic coal, production and demand.*—a. *Characteristic coal requirements for this powerplant.* Based on information provided by PSCC, DOE proposes to conclude that the dry-bottom boiler, of the type used at Valmont 5, will be able to burn coal with the following characteristics and comply with all applicable air pollution control requirements:

	Approximate values
BTU's per pound	8,500 to 12,000
Moisture	8 to 25 percent.
Ash	5 to 15 percent.
Volatile	25 to 40 percent.
Ash softening temperature	2,300–2,700 (F)
Sulfur	0.5 to 0.7 percent.
Grindability	45 to 60.

b. *Characteristic coal demand from this powerplant.* The potential average annual incremental demand for coal, of the type described above, which would result from burning coal instead of natural gas as a consequence of this Notice of Intention, is estimated to be as follows:

POTENTIAL ANNUAL DEMAND

[In thousands of tons]

Year: 1984	119

c. *Characteristic coal available to this powerplant.* Based on information provided by the utility, DOE has determined that PSCC has executed two long-term contracts with Energy Fuels Co. in Routt County, Colo. and the Rosebud Coal Sales Co. in Carbon County, Wyoming for supplies for characteristic coal to Valmont 5 and for the Arapahoe, Cherokee and Cameo Generating Stations. The Energy Fuels Company contract provides coal supplies of approximately 2 million tons per year to PSCC through June 30, 1987. The Rosebud contract provides for coal supplies of approximately 1 million tons per year to PSCC through December 31, 1981. PSCC has advised DOE that the Rosebud Mine contract is presently being renegotiated to extend the period of performance for additional supplies of characteristic coal, and that there are no anticipated contract problems.

In addition, Colowyo Coal Company in Routt County, Colorado provides characteristic coal to PSCC on short-term contract to supplement coal supplies, as needed.

DOE has examined the quantities of coal for Valmont, Arapahoe, Cameo and Cherokee Generating Stations and proposes to find that there is sufficient characteristic coal available to satisfy the increase in demand represented by all NOI's issued to PSCC to cover the period the proposed orders are in effect.

4. *State and local laws.* DOE has found no state or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none has been brought to DOE's attention.

5. *Conclusion.* On the basis of PSCC's present coal contract commitments, DOE proposes to find that coal of the characteristics required will be available to Valmont 5 through 1984. Furthermore, on the basis of the Bureau of Mines Survey and the Energy Supply and Demand Report, DOE expects that national coal production potential will exceed the total national demand for coal in amounts sufficient in any year to meet the estimated potential demand resulting from this NOI, from all outstanding Notices of Intention to issue Prohibition Orders, and from all Prohibition Orders issued to date under authority of Section 2(a) of ESECA.

B. *Coal transportation.*—1. *Location of powerplant and coal supply.* Based on information provided by PSCC, coal for Valmont 5 will be supplied and transported from the Rosebud Coal Sales Company, which is located in Carbon County, Wyoming to Valmont 5 at Denver, Colorado and from Energy Fuels Company in Routt County, Colorado.

2. *Route of coal shipments.* Based on information provided to DOE by PSCC and the railroads, the primary route for coal delivery from the Rosebud Mine originates and is brought into the Valmont Generating Station by the Union Pacific (UP) Railroad.

The route for coal delivery from the Energy Mine originates on the Denver & Rio Grande Western (D&RGW) Railroad and later switches in Denver, Colorado to the UP, which then delivers coal into the Valmont Generating Station.

3. *Originating trunk carrier.* UP and D&RGW Railroads have indicated that they are able and willing to provide any additional capacity required for coal shipments to Valmont 5. Both railroads have stated that the rail facilities at Energy Fuels Company in Routt County, Colorado and at Rosebud Coal Sales Company in Carbon County, Wyoming are readily available to PSCC and that the UP has adequate coal handling and unloading facilities to service any required increases in coal volumes.

DOE has not found nor has it been informed of any apparent constraints to transporting coal.

4. *Powerplant facilities.* Valmont 5 presently has coal handling and unloading facilities which the railroads have advised DOE are adequate to handle the projected increased coal demand. There are no apparent obstacles to the handling and delivery of coal to Valmont 5.

5. *Conclusion.* On the basis of the information above, DOE proposes to find that coal transportation facilities will be available for the period a Prohibition Order is expected to be in effect since no significant constraints to coal delivery over the primary and secondary routes to Valmont 5 presently exist.

IV. THE PROHIBITION OF THE BURNING OF NATURAL GAS OR PETROLEUM PRODUCTS AS THEIR PRIMARY ENERGY SOURCE WILL NOT IMPAIR THE RELIABILITY OF SERVICE IN THE AREA SERVED BY THE AFFECTED POWERPLANTS

Based on an analysis of the information submitted to the Federal Energy Regulatory Commission, DOE proposes to find that the issuance of a Prohibition Order to Valmont 5 will not impair the reliability of service in the area served by this powerplant. This proposed finding is based on the facts and interpretations stated below:

A. *Description of the dispatching system.* 1. The Valmont Station is owned by PSCC, which is within the geographical area of the Western Systems Coordinating Council (WSCC) regional electric reliability council.

2. The term "dispatching system" as used in the finding means PSCC.

3. The net capacity as of March 31, 1978, of all dispatching system powerplants was 2,490 MW. (See line 1, attachment 1).

4. Proposed changes up to the period in which Valmont 5 may implement a Prohibition Order will result in the net capacities indicated on line 4 of attachment 1 because of the following changes in the dispatching system listed in Table 1:

TABLE 1

Powerplant designation	Fuel	Type of change	Capacity change (MW)	Effective date
Fort St. Vrain 1	Nuclear	Add	+330	September 1978.
Pawnee 1	Coal	do	+470	July 1980.
Southeastern Co. 1	do	do	+470	April 1983.
Total Sept. 1, 1983.	Added plus 1270. (See line 2, attachment 1.)			

5. The proposed changes in Table 1, above, are based on the best information available to DOE (FPC Form 12E-2, March 1978) at the time this NOI is issued. The Public Service Company of Colorado Conversion Schedule (Attachment 2) is DOE's estimate of the outage times that would be required for all the powerplants in PSCC that are currently being considered for Prohibition Orders. The schedule assumes outages for conversion at those times that are optimally suited, in terms of forecast peakload periods, to maintain reliability of service.

The schedule does not take into consideration the possibility of forced outages that would reduce the reserve margin; however, there is sufficient flexibility in the dispatching system to adjust for any forced outages which may occur.

B. *Forecast peak loads for the dispatching system.* 1. Forecast of peak loads for the dispatching system during the period in which Valmont 5 may be required to implement this Prohibition Order are as indicated on line 9 of attachment 1.

2. The forecast peak loads have been compared with loads in previous similar periods. The annual peak load growth rate for these forecasts is 5.3 percent.

C. *Maximum projected outages for the dispatching system.* 1. Scheduled outages for normal maintenance, including other powerplants that may be implementing Prohibition Orders and nuclear plant refueling within the dispatching system during the periods in which Valmont 5 may be implementing a Prohibition Order, may result in some loss of capacity which is expected to be as indicated on line 5 of attachment 1.

2. A projected outage of 4 weeks is estimated to be required to make modifications, installations, or other physical adjustments required by this Prohibition Order should it become effective. The powerplant may be less than fully dependable during the period of on-line testing and adjustment following such modification. This period is not expected to exceed 30 days. To take advantage of the maximum reserve capacity, these projected outages are most likely to occur during the years 1983 and 1984. The potential loss of capacity from an outage of Valmont 5 would be approximately 175 MW (line 8, attachment 1).

This represents the maximum potential loss that would be due to outage at this powerplant, but it is expected that Valmont 5 would be implementing a Prohibition Order in September 1983. This maximum potential loss of 175 MW is included in the total outages indicated on line 7 of attachment 1. (The assumed conversion period specified on attachments 1 and 2 is shown for the purpose of illustration only.)

3. Maximum projected outages within the dispatching system include normal scheduled maintenance for all powerplants (line 5 of attachment 1) and outages that would be due to conversion (line 6 of attachment 1) for those powerplants to be implementing Prohibition Orders, if the attached PSCC Conversion Schedule is followed. Maximum projected outages could be expected to be as indicated on line 7 of attachment 1, thereby reducing the gross capacity and resulting in a net dependable capacity for the dispatching system.

D. *Net dependable capacity for the dispatching system.* 1. Based on the foregoing information, the net dependable capacity of the dispatching system at the expected time of implementation of a Prohibition Order would be as indicated on line 10 of attachment 1.

2. Comparing these net dependable capacities to the forecast peak loads shown on line 9, attachment 1 indicated that the reserve capacities shown on line 11 of attachment 1 would exist for the dispatching system.

3. Comparison of these reserve capacities to the forecast peak loads shown on line 9 of attachment 1 results in reserve margins as indicated on line 12 of attachment 1 (as contrasted with reserve margins as indicated on line 13 of attachment 1 if no units were removed from service due to Prohibition Orders).

4. DOE considers this reserve margin (line 12) to be acceptable, taking into consideration the geographical location of Valmont 5.

5. At the completion of the conversion there would be 402 KW of electricity required to operate the baghouse at Valmont 5 as a result of using coal as its primary energy source.

6. Existing transmission system interconnections may transfer an additional 656 MW into the dispatching system. This capacity may provide an additional source of electric power during the implementation period and will enhance the reliability of service. (*Western Systems Coordinating Council, Response to Department of Energy,* April 1, 1978. Item 6-B)

E. *Conclusion.* If dispatching system conditions, including any scheduled outage by Valmont 5 are as presently forecast during the time that would be required to implement this Prohibition Order by Valmont 5, DOE proposes to find that there will be no impairment of reliability of service within the meaning of ESECA in the area served by PSCC or in the dispatching system as a result of this proposed order.

ATTACHMENT 1.—*Public service of Colorado reliability data.—Valmont 5*

[Assumed conversion period Sept. 1-30, 1983]

	Megawatt capacity
1. Net capacity of PSCC as of Aug. 31, 1978.	2,490
2. Added Capacity	1,270
3. Added capacity that can be obtained from interconnections	656
4. Net capacity	4,416
5. Scheduled outages for maintenance	59
6. Projected outages due to prohibition orders	227
7. Maximum projected outages due to maintenance and prohibition orders (line 5 and 6)	286
8. Unit outage	175
9. Peak load	3,213
10. Net dependable capacity	4,130
11. Reserve capacity	917
12. Reserve margin percent (maintenance and prohibition orders)	29
13. Reserve margin percent (maintenance only)	36

ATTACHMENT 2.—*Public service of Colorado conversion schedule*

Station	Unit	Assumed conversion dates
Cameo	2	September 1983.
Valmont	5	Do.
Arapahoe	3	October 1983.
Do	4	February 1984.
Cherokee	1	Do.
Do	3	October 1983.
Do	4	May 1983.

COMMENT AND PUBLIC HEARING PROCEDURES

DOE hereby also gives notice of the opportunity for oral and written presentation of data, views and arguments by interested persons regarding this proposed Prohibition Order.

Public comment on the proposal to issue a Prohibition Order to the powerplant listed above is invited in

the form of written and oral presentation of data, views and arguments. Comments should make reference to the relevant docket number.

Comments should address: (1) The adequacy and validity of each of the proposed findings and the conclusions and rationale in support of these findings, (2) the environmental impact of the issuance of a Prohibition Order, including any site-specific environmental impacts, and (3) any other aspects or impacts of the proposed Prohibition Order believed to be relevant.

Pursuant to 10 CFR 303.173 (a) and (d), DOE hereby announces that a public hearing to receive oral presentation of data, views and arguments of persons interested in the proposed Prohibition Order will be held beginning at 9 a.m. and again at 6 p.m. on August 17, 1978 in the hearing room (269), Post Office Auditorium, U.S. Post Office Building, 1823 Stout Street, Denver, Colo. 80202. Any person who has an interest in the subject of the hearing or who is a representative of a group or class of persons which has an interest in the subject of the hearing may make a written request, or a verbal request if confirmed in writing, for an opportunity to make an oral presentation. The request should be directed to Luther S. Clemmer, Department of Energy, Region VIII, 1075 South Yukon, Post Office Box 26247, Belmar Branch, Lakewood, Colo. 80226, 303-234-2596. The request should be received before 4:30 p.m., August 8, 1978.

The request should describe the person's interest in the issue(s) involved; if appropriate, it should state why the person is an appropriate representative of the group or class of persons which has such an interest; it should give a concise summary of the proposed oral presentation and a telephone number where the person may be contacted.

Speakers will be contacted by DOE representatives before 4:30 p.m., August 10, 1978, and should submit ten (10) copies of their oral presentation, if possible, unless such presentation is less than five (5) pages, in which case only one is required, to Luther S. Clemmer, Department of Energy, 1075 South Yukon, Post Office Box 26247, Belmar Branch, Lakewood, Colo. 80226, before 4:30 p.m., August 15, 1978.

Detailed technical data, views and arguments should be contained in a written submission in support of the oral presentation. The oral presentation itself should be a summary of those written comments.

While DOE will endeavor to provide adequate opportunity to all who desire to speak, DOE reserves the right to limit the number of persons to be heard at the hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. The length of time allocated to each presentation may be limited on the basis of the number of persons requesting to be heard. DOE will prepare an agenda that shall provide, to the extent possible, for the presentation of all relevant data, views, and arguments.

A DOE official will be designated to preside at the hearing which will not be a judicial or evidentiary hearing. During oral presentations only those conducting the hearing may ask questions. There will be no cross-examination. At the conclusion of all initial oral presentations, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and it, together with any written comments submitted in the course of the hearing, will be retained by DOE and made available for inspection and copying at the Freedom of Information Reading Room, located in room 2107, Federal Building, 12th Street and Pennsylvania Avenue NW., Washington, D.C. 20461, and DOE Regional Office VIII, room 206, 1075 South Yukon, Post Office Box, 26247, Belmar Branch, Lakewood, Colo. 80226, between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit written comments consisting of data, views and arguments with respect to this Notice of Intention to Issue a Prohibition Order to Public Hearing Management, Box UY, 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 envelope in which they are transmitted and on the document itself with the designation "Proposed Prohibition Order for the Valmont Powerplant." Fifteen copies should be submitted.

All written comments received by 4:30 p.m., August 30, 1978, all oral presentations, and all other relevant information submitted to or available to DOE will be considered by DOE prior to issuance of a Prohibition Order.

Any information or data 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 or data and to treat it in accordance with that decision.

Upon completion of the proceedings described in this notice, DOE may determine to issue a Prohibition Order to the above-named powerplant. The Prohibition Order will not become effective, however, (1) until either (a) the Administrator of the Environmental Protection Agency (EPA) has notified DOE, as required by section 2(b) of ESECA, that the particular powerplant will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a delayed compliance order pursuant to the provisions of the Clean Air Act (CAA), as amended, 42 U.S.C. 7413(d)(5) and the Act of August 7, 1977, Pub. L. 95-95, section 112, or (b) if no such notification is given by EPA, the date that the Administrator of EPA certifies is the earliest date that the particular powerplant will be able to burn coal and to comply with all applicable air pollution requirements, CAA, *supra;* Pub. L. 95-95, *supra;* and (2) until DOE has performed an analysis of the environmental impact of the issuance of a Notice of Effectiveness, pursuant to 10 CFR 208.3(a)(4) and 305.9, and has served the affected powerplant a Notice of Effectiveness, as provided in 10 CFR 303.10(b), 303.37(b) and 305.7. The date the Prohibition Order will be effective will be stated in the Notice of Effectiveness.

10 CFR 305.9 requires that, prior to issuance of a Notice of Effectiveness to a powerplant, DOE shall perform an analysis of the environmental impact of the issuance of such Notice of Effectiveness. That analysis shall result in either: (1) Issuance of a declaration that the Prohibition Order will not, if made effective by issuance of a Notice of Effectiveness, be likely to have a significant impact on the quality of the human environment, or (2) the preparation by DOE of an environmental impact statement covering significant site-specific impacts that are likely to result from the Prohibition Order and that have not been adequately addressed in the Final Revised (Programmatic) Environmental Impact Statement (FES 77-3, dated May 1977) or in other official documents made publicly available.

If DOE prepares an environmental impact statement covering significant site-specific impacts resulting from making a Prohibition Order effective, the statement shall be prepared and published for comment in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) prior to issuance of a

Notice of Effectiveness. Interested persons may request a public hearing pursuant to 10 CFR 303.173 to comment on the contents of a draft environmental impact statement.

With respect to comments regarding any impact on air quality which might result from a proposed Prohibition Order, however, it should be recognized that ESECA has assigned to EPA the primary responsibility for analyzing the effect of any such order on the Nation's air quality and for determining the applicable air pollution control requirements that apply to any powerplant that has been issued an order. It is expected that a powerplant to which a Prohibition Order is issued may be eligible for a delayed compliance order, pursuant to section 113(d) of the CAA, *supra*. If EPA decides to issue a delayed compliance order, it must also provide an opportunity for a public hearing.

Copies of the regulations implementing section 2 (a) and (b) of ESECA (10 CFR Parts 303 and 305) are available for inspection at the following DOE Regional Offices:

Region, Address, and Phone

I Director for Fuels Regulations, 150 Causeway Street, room 700, Boston, Mass. 02114, 617-223-5265.

II Director for Fuels Regulation, 26 Federal Plaza, room 3200, New York, N.Y. 10007, 212-264-8051.

III Director for Fuels Regulation, 1421 Cherry Street, room 1001, Philadelphia, Pa. 19102, 215-597-3915.

IV Director for Fuels Regulation, 1655 Peachtree Street NE., 8th Floor, Atlanta, Ga. 30309, 404-881-2722.

V Director for Fuels Regulation, Federal Office Building, 175 West Jackson Boulevard, room A-333, Chicago, Ill. 60604, 312-353-3053.

VI Director for Fuels Regulation, Post Office Box 35228, 2626 West Mockingbird Lane, Dallas, Tex. 75235, 214-749-7705.

VII Director for Fuels Regulation, 324 East 11th Street, Kansas City, Mo. 64106, 816-374-2936.

VIII Director for Fuels Regulation, Post Office Box 26247, Belmar Branch, 1075 South Yukon Street, Lakewood, Colo. 80226, 303-234-2596.

IX Director for Fuels Regulation, 111 Pine Street, San Francisco, Calif. 94111, 415-556-4640.

X Director for Fuels Regulation, 1992 Federal Building, 915 Second Avenue, Seattle, Wash. 98174, 206-442-7320.

Any questions regarding this notice should be directed to the DOE National Office as follows: Department of Energy, (Prohibition Order: Valmont Powerplant), Washington, D.C. 20461, to the attention of Mr. Walter A. Romanek, 202-254-3910.

(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; The 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., July 25, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration, Department of Energy.

[FR Doc. 78-21066 Filed 7-28-78; 8:45 am]

[1505-01]

OFFICE OF ASSISTANT SECRETARY FOR INTERNATIONAL AFFAIRS

Proposed Subsequent Arrangement

Correction

In FR Doc. 78-20385 appearing on page 31431 in the issue of Friday, July 21, 1978, on page 31432, in the 1st column, the last paragraph should read, "These subsequent arrangements will take effect August 7, 1978.".

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 933-4]

AMBIENT AIR MONITORING REFERENCE AND EQUIVALENT METHODS

Notice of Receipt of Application for Reference or Equivalent Method Determination

Notice is hereby given that on May 25, 1978, the Environmental Protection Agency received an application from Meloy Laboratories, Inc., 6715 Electronic Drive, Springfield, Va. 22151, to determine if its Meloy model SA285E sulfur dioxide analyzer should be designated by the Administrator of the EPA as an equivalent method under 40 CFR part 53, promulgated February 18, 1975 (40 FR 7044). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the FEDERAL REGISTER.

TOM MURPHY,
Acting Assistant Administrator for Research and Development.

JULY 25, 1978.

[FR Doc. 78-21008 Filed 7-28-78; 8:45 am]

[6560-01]

[OPP-180211; FRL 934-6]

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

Issuance of a Specific Exemption to Use Methidathion To Control the Artichoke Plume Moth

The Environmental Protection Agency (EPA) has granted a specific exemption to the California Department of Food and Agriculture (hereafter referred to as the "applicant") to use Supracide 2E (methidathion) in ground applications to control the artichoke plume moth on 10,060 acres of artichokes in the counties of Santa Barbara, Monterey, Santa Cruz, San Mateo, and San Luis Obispo in California. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street, SW., Room E-315, Washington, D.C. 20460.

According to the applicant, artichokes grown in five counties are subject to infestation by the artichoke plume moth (*platyptilia carduidactyla*), a very serious pest in this area. Parathion, methyl parathion, and phosalone are currently registered for use to control the artichoke plume moth. However, resistance to ethyl parathion has been extreme; methyl parathion combinations have given better control but 45-65 percent damage has been common. The applicant stated that an additional problem with ethyl and methyl parathion sprays has been that leafminers have increased in large numbers because of the ineffectiveness of these pesticides on leafminers; therefore, the leafminers become a public health hazard. Currently application of these products is made at 2-week intervals; losses still approach the 50-75 percent level in secondary pest resurgence of the chrysanthemum leafminer. Phosalone is not significantly more effective than these products and is much more expensive. In addition, up until April 15, 1977, the county commissioner had suspended the use of any pesticide on artichoke fields because of severe bee losses that appear to be an indirect result of the frequent application of parathion and methyl parathion.

The applicant stated that field trials performed with methidathion indicated that it is highly effective against the artichoke plume moth. Methidathion is also toxic to bees, but has demonstrated greater than 90 percent effectiveness for control of the plume moth after four or five applications.

The applicant further stated that Dylox, Zolone, and Endosulfan combinations have also been ineffective against this pest.

The applicant proposed to use the product Supracide 2E (methidathion), manufactured by Ciba-Geigy, EPA

Reg. No. 100-501. The application rate will be 1 pound active ingredient/50-70 gallons of water/acre per application by ground spray. A maximum of six applications of Supracide 2E will be made prior to bud formation. A maximum of 60,360 pounds of active ingredient will be applied.

During the coming year, approximately 10,060 acres of artichoke crop valued at about $16,984,000 will be grown in California. The applicant estimated that growers could incur an economic loss of about $5,300,000 from crop damage caused by the artichoke plume moth unless methidathion is made available to control the pest; up to 100 percent damage can occur.

Supracide 2E is EPA-registered for use in California on alfalfa grown for seed, oranges, and grapefruits; in the Western United States on peaches; in the Southeastern United States on pecans; and throughout the United States on sunflowers, tobacco, and walnuts. These uses are for ground or aerial application. No tolerance has been set for use on artichokes.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of artichoke plume moths is likely to occur in the five counties previously mentioned; (b) there is no pesticide presently registered and available for use to control the artichoke plume moth in California; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the artichoke plume moth is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the applicant has been granted a specific exemption to use the pesticide noted above until May 31, 1979, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions;

1. The product Supracide 2E (methidathion), EPA Reg. No. 100-501, manufactured by Ciba-Geigy, is authorized;

2. Applications may be made at a rate of 1 pound active ingredient/50-70 gallons of water/acre per application by ground spray;

3. Four to six applications of Supracide 2E may be made prior to bud formation;

4. A maximum of 10,060 acres of artichoke crop located in Santa Cruz, Santa Barbara, San Mateo, Monterey, and San Luis Obispo Counties may be treated;

5. A maximum of 60,360 pounds active ingredient may be applied;

6. The duration of the application period shall be from the beginning of May 1978 until May 31, 1979;

7. State-certified applicators shall make all treatments with Supracide 2E;

8. Workers shall not reenter treated fields within 48 hours after application to engage in any work requiring contact with treated foliage;

9. County agricultural commissioners, under the auspices of the California Department of Food and Agriculture, will monitor the use of this product under this specific exemption, and keep records of the program. A special permit from the county agricultural commissioners will be required prior to the use of this product;

10. The following statements shall be added to the labeling for use under this specific exemption:

a. Do not apply or allow the spray drift to artichoke fields when buds are present.

b. This product is toxic to bees. Do not apply when bees are actively visiting the area.

c. This product is toxic to wildlife and fish. Use with care when applying in areas frequented by wildlife or adjacent to any body of water. Keep out of lakes, streams, ponds, tidal marshes, and estuaries. Do not apply when weather conditions favor runoff or drift. Do not contaminate water by cleaning of equipment or disposal of wastes;

11. All label precautions shall be followed;

12. A residue level of methidathion in or on artichokes not exceeding 0.05 ppm has been determined as adequate to protect the public health. The Food and Drug Administration, U.S. Department of Health, Education and Welfare, has been advised of this action;

13. A final report summarizing the results of this program shall be submitted to EPA by May 31, 1979; and

14. The applicant shall inform EPA immediately of any adverse effects resulting from this program and shall be responsible for the performance of all provisions of this exemption.

STATUTORY AUTHORITY: Section 18 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136 et seq.).

Dated: July 24, 1978.

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

[FR Doc. 78-21003 Filed 7-28-78; 8:45 am]

[6560-01]

[FRL 935-2]

DRAFT REPORT ON SHORT-TERM SUPPLY AND DEMAND FOR LOW-SULFUR COAL FROM CENTRAL APPALACHIA

Notice of Availability

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of draft report on short-term supply and demand for low-sulfur coal from central Appalachia.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has made available for public review and comment a draft report on the potential short-term supply and demand for low-sulfur coal from central Appalachia. The report was prepared as part of a comprehensive economic and financial analysis initiated by EPA in response to petitions from Senator Metzenbaum of Ohio, the State of Ohio, the United Mine Workers of America, District 6 and the Ohio Mining and Reclamation Association to institute proceedings under section 125 of the Clean Air Act, as amended August 1977 (42 U.S.C. 7425) in Ohio. Notice of proceedings under section 125 of the Clean Air Act was published July 13, 1978 (43 FR 30113).

The report is in the form of a draft memorandum presenting a review of findings of a preliminary assessment which evaluates the short-term (to 1980) supply and demand for low-sulfur coal from cental Appalachia. The supply and demand balance is of concern because of the possible shift by Ohio utilities from high-sulfur coal to low-sulfur coal in order to comply with requirements of the federally promulgated Ohio sulfur dioxide implementation plan.

Copies of the draft report have been distributed to organizations and individuals who are known to have an interest in the Ohio section 125 proceedings.

Copies of the draft report are available for public inspection and copying during normal business hours at the following locations:

(1) Air Programs Branch, Air and Hazardous Materials Division, EPA, Region V, 230 South Dearborn Street, Chicago, Ill. 60604.

(2) U.S. Environmental Protection Agency Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, D.C. 20460.

(3) Cleveland Public Library, Main Branch, 325 Superior Avenue, Cleveland, Ohio 44115.

(4) Columbus Public Library, Main Branch, 96 South Grant, Columbus, Ohio 43215.

(5) St. Clairsville Public Library, 108 West Main Street, Clairsville, Ohio 43950.

Comments and views concerning the draft report are requested from other interested agencies, organizations, and individuals. Comments should be sent to Francis J. Biros, Chief, Technical Support Branch, Division of Stationary Source Enforcement, EN-341, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-2560.

Those submitting comments on the draft report should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of form. Comments may recommend modifications and/or new alternatives to the analytical approach and assumptions used in the preparation of the draft report that will enhance its accuracy.

Copies of comments received on the draft report will be placed in the above referenced locations for inspection and will be considered in the preparation of the final Ohio section 125 economic and financial analysis study if received on or before August 31, 1978.

Dated: July 29, 1978.

MICHAEL D. WILSON,
Deputy Assistant Administrator for General Enforcement.

[FR Doc. 78-21000 Filed 7-28-78; 8:45 am]

[6560-01]

[OPP-180209; FRL 934-5]

IDAHO, OREGON, AND WASHINGTON

Issuance of Specific Exemptions To Use Bentazon To Control Canada Thistle in Mint Fields

The Environmental Protection Agency (EPA) has granted a specific exemption to the Idaho, Oregon, and Washington departments of agriculture (hereafter referred to as "Idaho," "Oregon," and "Washington") to use bentazon for the control of Canada thistle in mint fields. These exemptions were granted in accordance with, and are subject to, the provisions of 40 CFR part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the applications on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

Canada thistle is a deep-rooted plant which competes strongly for light, moisture, and nutrients. Eventually, Canada thistle can eliminate mint stands in large areas of the field. In addition, contaminating residues of the weed impart a disagreeable odor to mint oil extracted from the harvested crop. This reduces the quality of the oil and can render it unfit for market.

There are no herbicides federally registered for control of Canada thistle in mint fields. Terbacil, trifluralin, and diuron are registered for weed control in mint, but according to Idaho, Oregon, and Washington, none of the registered products effectively control Canada thistle. Mechanical control (hand hoeing) is very expensive and may result in damage to mint rhizomes; hoeing also spreads disease.

The Canada thistle emergency in Idaho and Washington is particularly severe this year due to drought conditions which existed during 1977. These States reported that many fields normally planted to mint were abandoned last year. This allowed deep-rooted perennial weeds such as Canada thistle to become established. Although these fields were tilled prior to planting, Idaho and Washington reported that cultivation will not satisfactorily control Canada thistle. In Oregon, mint is grown under a non-tillage system as a cultural method to prevent spread of verticillium wilt, a major fungal disease of mint. Once the fields are established, they may be cropped for several years. This practice has resulted in weed infestation pressure from weeds, primarily Canada thistle, which are not controlled by currently registered herbicides.

An estimated average loss of 15 pounds of oil due to weed competition in weed-infested mint fields has been reported from Oregon. Based on an average price of about $14 per pound of oil, this amounts to a loss of $210 per acre. Subtracting the cost of treatments, the total net return in increased mint yield is valued at $1,136,000. Washington growers estimated the loss of 50 percent of the oil yield on 2,900 acres. Based on an average yield per acre of 79 pounds of oil, and an average value of $13 per pound, the loss to Washington mint growers could be as much as $1,490,000. Idaho estimated yield losses valued at $315,000.

Idaho, Oregon, and Washington requested that EPA allow postemergence applications of the herbicide bentazon (3-Isopropyl-1H-2,1,3-benzothiadiazine-4(3H)-one 2,2-dioxide) for control of Canada thistle on 900 acres of peppermint and spearmint in Idaho, 8,000 acres of peppermint in Oregon, and 2,900 acres of peppermint and spearmint in Washington; the product suggested was Basagran, EPA Reg. No. 7969-45. Basagran is registered for use on soybeans to control eighteen weed species, including Canada thistle.

Residues of bentazon resulting from this use present a minimal hazard to human health. EPA has determined that all present tolerances on bentazon represent less than one percent of the Acceptable Daily Intake (ADI), and mint and mint oil are very minor components of the human diet. Since bentazon is registered for application to soybeans, a major agricultural crop, any additional hazards to the environment resulting from the treatment of 11,800 acres of mint in these three States should be minimal.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of Canada thistle is likely to occur on the mint fields; (b) there is no pesticide presently registered and available for use to control the Canada thistle in Idaho, Oregon, and Washington; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the Canada thistle is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, Idaho, Oregon, and Washington have been granted specific exemptions to use the pesticide noted above until July 15, 1978, to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. The EPA-registered product Basagran (EPA Reg. No. 7969-45) may be applied at a rate of two (2) pounds active ingredient per acre per application;

2. Bentazon should be applied as an early post-emergence treatment of established mint fields;

3. A maximum of two (2) applications will be applied at a 10- to 14-day interval;

4. In Idaho, a maximum of 900 acres of mint may be treated. In Oregon, a maximum of 8,000 acres of mint may be treated. In Washington, a maximum of 2,900 acres of mint may be treated;

5. Application will be made by State-licensed commercial applicators or qualified growers;

6. A residue level of bentazon and its 6- and 8-Hydroxy metabolites not exceeding 1.9 ppm in mint hay and 4.0 ppm in spent mint hay has been determined to be adequate to protect the public health. The Food and Drug Administration, DHEW, has been advised of this action;

7. All applicable directions, restrictions, and precautions on the product label must be followed;

8. The EPA will be immediately informed of any adverse effects resulting from the use of bentazon in connection with these exemptions; and

9. The Idaho, Oregon, and Washington Departments of Agriculture are responsible for assuring that all of the provisions of these specific exemptions are met and must submit reports summarizing the results of these programs by April 30, 1978.

STATUTORY AUTHORITY: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136 *et seq.*).

Dated: July 24, 1978.

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

[FR Doc. 78-21004 Filed 7-28-78; 8:45 am]

[6560-01]

[OPP-180203; FRL 934-8]

MISSOURI DEPARTMENT OF AGRICULTURE

Issuance of Specific Exemption to Use Terramycin to Control Bacterial Spot on Peaches

The Environmental Protection Agency (EPA) has granted a specific exemption to the Missouri Department of Agriculture (hereafter referred to as the "applicant") to use terramycin to control bacterial spot. A maximum of 12,000 pounds of terramycin formulation will be applied on 1,000 acres of peaches in Missouri, primarily in the counties of Dunklin, Stoddard, and Cape Girardeau. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency condition.

This notice contains a summary of certain information required by regulations to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

The applicant requested approval to use Myco Shield Agricultural Terramycin (containing calcium complex of oxytetracycline) on bacterial spot which is caused by the bacterial plant pathogen *Xanthomonas pruni*. *X. pruni* infects leaves, fruit, and tender growing shoots. Severely infected leaves turn yellow and drop. On sensitive fruit varieties, a few lesions result in severe defoliation; on tolerant varieties, however, many more lesions are required for severe defoliation. Fruit size reduction and tree weakening result from heavy defoliation. Infected fruit develops cracks or checks, lesions, or a mottled appearance—features that render the fruit unacceptable to the fruit market.

Infections of the current season's growth result in two types of cankers: Summer cankers are lesions apparent during the year of infection and are located between nodes; spring cankers are lesions that result from fall infections but are unapparent until the following spring and are found at the buds of nodes. Overwintering occurs in spring cankers. When canker development is resumed in the spring, however, bacteria ooze from the lesions and are carried on water droplets for further infection of young leaves, fruit, or shoots. It appears that moisture such as in fog or dew is important in the dissemination process; hard driving rains are more effective than gentle rains in initiating new infections. Secondary spread continues whenever these environmental conditions are present. The disease becomes severe if moist weather conditions persist through June and July; disease spread and development are reduced in extended periods of hot, dry weather as was experienced during the 1977 growing season.

Bacterial spot occurs whenever peaches are grown in Missouri but is more prevalent in 750 acres of southeastern Missouri in Dunkin, Stoddard, and Cape Girardeau Counties where weather conditions more favorable for disease development are present.

The application stated that currently registered products for this use are ineffective. Copper hydroxide is for dormant application and cannot be applied this late in the season and causes tree defoliation; dodine has not proven efficacious under Missouri conditions and the cost of application often exceeds the value of the fruit partially protected, according to the applicant. In addition, zinc sulfate is incompatible with benomyl which is commonly applied to peaches for the control of other diseases.

The applicant proposes to use the product Myco Shield Agricultural Terramycin, manufactured by Pfizer Chemical Division, at the rate of ¾ pound of formulation per 100 gallons of water with a maximum of 200 gallons spray per acre. A maximum of eight applications will be made by growers using air blast sprayers.

The applicant stated that the losses caused by bacterial spot disease are normally between 5-10 percent from fruit loss and between 10-30 percent from defoliation on susceptible varieties in Missouri. The applicant further stated that economic losses valued at $488,250 were incurred in untreated orchards during the 1977 growing season. During the 1977 season, drought conditions prevailed and bacterial spot did not develop as prolifically as it would have developed during wet conditions. Consequently, the applicant claimed, if wet weather conditions develop during the 1978 season, losses may be 2-3 times greater than during 1977.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of bacterial spot has occurred or is about to occur; (b) there is no pesticide presently registered and available for use to control bacterial spot in Missouri; (c) there are no alternative means of control, taking into account the efficacy and hazards; (d) significant economic problems may result if bacterial spot is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, Missouri has been granted a specific exemption to use the pesticide noted above until August 15, 1978 to the extent and in the manner set forth in the application. The specific exemption will be conducted in accordance with the following conditions:

1. Myco Shield Agricultural Terramycin (calcium complex of oxytetracycline), manufactured by Pfizer Chemical Division, is authorized;

2. Application shall be made at a rate of three-fourths pound terramycin/100 gallons of water with a maximum of 200 gallons spray per acre;

3. A maximum of eight applications may be made by about fifty growers using air blast sprayers, 2-3 m.p.h., 100-200 p.s.i., in 15-200 gallons spray per acre depending on concentration and tree size;

4. A maximum of 12,000 pounds terramycin formulation may be applied;

5. Treatment may be made on a maximum of 1,000 acres of peach crop located throughout Missouri but primarily in the counties mentioned above;

6. A University of Missouri extension fruit pathologist, or personnel under his supervision, shall make all recommendations of terramycin applications based on observation of disease symptoms, weather conditions, and history of disease in a locality;

7. The application period shall be from shuck split until August 15, 1978;

8. Workers shall not be allowed to enter peach orchards after terramycin application until foliage is dry;

9. The Applicant shall inform the distributor of this material that records of the sale shall be kept and made available. These records shall include the name and address of the purchaser, and the quantity of material purchased;

10. A residue level of oxytetracycline not exceeding 0.1 ppm has been deemed adequate to protect the public health. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

11. There shall be a pre-harvest interval of not less than 21 days;

12. All label precautions must be followed;

13. A final report shall be submitted to EPA by December 31, 1978, summarizing the results of this program; and

14. The Applicant shall inform EPA immediately of any adverse effects resulting from this program and shall be responsible for the performance of all provisions of this exemption.

STATUTORY AUTHORITY.—Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

Dated: July 24, 1978.

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

[FR Doc. 78-21001 Filed 7-28-78; 8:45 am]

[6560.01]

[OPP-180216; FRL 934-7]

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Issuance of a Specific Exemption To Use Guthion To Control the Carrot Weevil

The Environmental Protection Agency (EPA) has granted a specific exemption to the New Jersey Department of Environmental Protection (hereafter referred to as the "applicant") to use azinphos methyl (Guthion) on 850 acres of carrots for the control of the carrot weevil in New Jersey. This exemption was granted in accordance with, and is subject to, provisions of 40 CFR Part 166, which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the application on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

According to the applicant, the carrot weevil (*Listronotus oregonensis*) damage to commercial carrots in southern New Jersey has been increasing in severity in recent years. Carrot weevil larvae tunnel in the tap root of carrots, leaving rust-colored feeding trails. Larval feeding early in the season results in mortality of seedling carrots, reducing the row-density. Later injury reduces the quality of market carrots, rendering many unmarketable. Further losses occur when carrots are placed in cold storage due to increased incidence of storage rot disease organisms (fungi and bacteria) which enter the carrots through weevil larvae feeding tunnels.

There appear to be neither alternative registered pesticides nor nonchemical methods of control available to control this insect. The applicant proposed to apply azinphos methyl (Guthion) to commercial carrots grown for processing under contract to the Campbell Soup Co., Camden, N.J. The pesticide will be applied at the rate of one-half pound active ingredient in 30-40 gallons water per acre. Up to six applications may be made at 10 day intervals during the growing season, with a 35 day pre-harvest interval. The New Jersey Cooperative Extension Service will coordinate the program. Soup Company personnel will instruct growers about application techniques, monitor the applications, and keep program records.

The combination of stand loss, yield loss, and storage loss is estimated to cost the New Jersey carrot farmers about $10.00 per ton on a crop valued at $40.00 per ton, or an economic loss of about 25 percent of the gross value of the carrot crop. Carrot crop losses can be as high as $170,000 if the carrot weevil is not controlled, according to the applicant.

The Fish and Wildlife Service of the U.S. Department of the Interior has advised EPA that no significant effects on fish and wildlife populations are expected from this limited use of azinphos methyl.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of carrot weevils has occurred or is about to occur; (b) there is no pesticide presently registered and available for use to control the carrot weevil in New Jersey; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the carrot weevils are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the applicant has been granted a specific exemption to use the pesticide noted above until July 31, 1978, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following restrictions:

1. The products Guthion 2S, EPA reg. No. 3125-123, or Guthion 50 WP, EPA reg. No. 3125-193, manufactured by Chemagro, are authorized;

2. Application may be made by ground equipment at a rate of one-half pound a.i. (azinphos methyl) in 30-40 gallons water per acre at no less than 10-day intervals;

3. A maximum of six applications may be made;

4. A maximum of 850 acres of carrots may be treated;

5. A maximum of 2,550 pounds a.i. may be applied;

6. a 35-day preharvest interval shall be observed;

7. Applications may be made by growers;

8 The New Jersey Cooperative Extension Service shall coordinate the program. Personnel of the Campbell Soup Co. shall instruct growers about application techniques, monitor the applications, and keep program records;

9. The duration of the application period shall be from June 1 until July 31, 1978;

10. A label precaution shall prohibit the use of treated carrot tops for food or feed;

11. Residues of azinphos methyl not exceeding 0.5 ppm in or on carrots have determined as adequate to protect the public health. The Food and Drug Administration, U.S. Department of Health, Education and Welfare, has been advised of this section;

12. All label precautions shall be followed;

13. The EPA shall be informed immediately of any adverse effects to man or the environment resulting from this program;

14. The applicant will be responsible for insuring that all provisions of this specific exemption are followed; and

15. A final reports summarizing the results of this program shall be submitted to EPA by December 31, 1978.

Statutory authority: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

Dated: July 24, 1978.

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

[FR Doc. 78-21002 Filed 7-28-78; 8:45 am]

[6560-01]

[FRL 936-3; PP 7G1888/T151]

O-(4-BROMO-2-CHLOROPHENYL)-O-ETHYL S-PROPYL PHOSPHOROTHIOATE

Establishment of Temporary Tolerances

Ciba-Geigy Corp., Agricultural Div., P.O. Box 11422, Greensboro, N.C. 27409, has submitted a pesticide petition (PP 7G1888) to the Environmental Protection Agency (EPA). This petition requests that temporary tolerances be established for combined residues of the insecticide *O*-(4-bromo-2-chlorophenyl)-*O*-ethyl *S*-propyl phosphorothioate and its metabolites converted to 4-bromo-2-chlorophenol and calculated as *O*-(4-bromo-2-chlorophenyl)-*O*-ethyl *S*-propyl phosphorothioate in or on the raw agricultural commodities cottonseed at 3 parts per million (ppm); eggs and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at

0.05 ppm; and milk at 0.01 ppm. (A related document establishing feed additive tolerances for residues of the subject insecticide in cottonseed hulls and soapstock hulls appears elsewhere in today's FEDERAL REGISTER.)

Establishment of these temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with an experimental use permit that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) *et seq.*).

An evaluation of the scientific data reported and other relevant material has shown that the requested tolerances are adequate to cover residues resulting from the proposed experimental use, and it has been determined that the temporary tolerances will protect the public health. These temporary tolerances are being established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Ciba-Geigy Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire August 1, 1979. Residues not in excess of 3 ppm remaining in or on cottonseed; 0.05 ppm remaining in eggs and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; and 0.01 ppm remaining in milk after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Special Registrations Branch, Registration Division (WH-567), Office of Pesticide Programs, Room 315, East Tower, 401 M Street SW., Washington, D.C. 20460, 202-755-4851.

(Sec. 408(j), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(j)).)

Dated: July 24, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-21159 Filed 7-28-78; 8:45 am]

[6560.01]

[PP 6G1780/T156; FRL 934-2]

Renewal of a Temporary Tolerance for Aldicarb

On May 6, 1976, the Environmental Protection Agency (EPA) gave notice (41 FR 18708) that in response to a pesticide petition (PP 6G1780) submitted to the Agency by the Southeastern Fruit and Tree Nut Research Station, Agricultural Research Service, U.S. Dept. of Agriculture, Byron, Ga. 31008, a temporary tolerance was established for combined residues of the insecticide aldicarb (2-methyl-2-(methylthio)propionaldehyde *0*-(methylcarbamoyl)oxime) and its cholinesterase-inhibiting metabolites 2-methyl-2-(methylsulfinyl)-propionaldehyde *0*-(methylcarbamoyl)oxime and 2-methyl-2-(methysulfonyl)propionaldehyde *0*-(methylcarbamoyl)oxime in or on the raw agricultural commodity pecans at 0.3 part per million (ppm).

This temporary tolerance expired April 30, 1977. The Southeastern Fruit and Tree Nut Research Station requested a 1-year renewal of this temporary tolerance both to permit continued testing to obtain additional data and to permit the marketing of pecans when treated in accordance with the provisions of an experimental use permit that has been renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

The scientific data reported and all other relevant material were evaluated, and it was determined that a renewal of the temporary tolerance would protect the public health. Therefore, the temporary tolerance has been renewed on condition that the pesticide is used in accordance with the experimental use permit with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. The Southeastern Fruit and Tree Nut Research Station must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of distribution and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires June 6, 1979. Residues not in excess of 0.3 ppm remaining in or on pecans after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Special Registrations Branch, Registration Division (WH-567), Office of Pesticide Programs, Room 315, East Tower, 401 M Street SW., Washington, D.C. 20460, 202-755-2516.

STATUTORY AUTHORITY: Sec. 408(j), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(j)).

Dated: July 24, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-21006 Filed 7-28-78; 8:45 am]

[6560.01]

[OPP-30116B; FRL 934-1]

PESTICIDE PROGRAMS

Notice of Approval of Application To Register Pesticide Product Entailing a Changed Use Pattern; Correction

In FEDERAL REGISTER document 78-15970 appearing on page 25182 in the issue of June 9, 1978, second column, change last sentence, first paragraph to read, "The application proposed a change in the use pattern to a tracking powder to control house mice." Change last sentence, second paragraph to read, "ZP TRACKING POWDER is classified for restricted use."

Dated: July 24, 1978.

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

[FR Doc. 78-21007 Filed 7-28-78; 8:45 am]

[6560-01]

[OPP—180210; FRL 933-8]

STATES OF NORTH DAKOTA AND MINNESOTA

Issuance of Specific Exemptions To Use Propanil To Control Foxtail Grasses in Spring Wheat

The Environmental Protection Agency (EPA) has granted specific exemptions to the North Dakota and Minnesota Departments of Agriculture (hereafter referred to as "North Dakota" and "Minnesota") to use Propanil for the control of foxtail grasses in up to 200,000 acres of spring wheat. These exemptions were granted in accordance with, and are subject to, the provisions of 40 CFR part 166, which prescribes requirements for exemption of Federal and State agencies for use

of pesticides under emergency conditions.

This notice contains a summary of certain information required by regulation to be included in the notice. For more detailed information, interested parties are referred to the applications on file with the Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M Street SW., Room E-315, Washington, D.C. 20460.

Green foxtail (*Setaria viridis*) and yellow foxtail (*Setaria lutescens*) are annual grass plants; they are also commonly referred to as wild millet, pigeon grass or bottle grass. Both plants are prolific seed producers which spread rapidly in cropping situations. Foxtail has become a major weed pest of the semi-dwarf varieties of wheat which have become popular in North Dakota and Minnesota within the past six years, according to these two States. Other factors which have intensified the foxtail grass problem this year include late planting, excessive moisture, and warm temperatures soon after planting. Due to heavy snowfall and rain this year, conditions are expected to be optimum for weed germination and growth.

A tank mix combination of Treflan E.C. and Avadex BW E.C. is State-registered in both North Dakota and Minnesota as a post-plant pre-emergence treatment for control of foxtail in spring wheat. However, according to Minnesota, Treflan cannot be used effectively when the soil is wet at time of seeding. Due to flooding conditions which have existed in some parts of the State, pre-emergence treatments of Treflan are not expected to be effective in controlling foxtail. Both States reported that the registered use of Treflan involves a difficult means of attempting to control foxtail; after the wheat is planted at a depth of 2-3 inches, Treflan must be incorporated two times within 8 hours of application at a depth of 1 to 1½ inches. The label prohibits application of Treflan E.C. plus Avadex BW tank mix to soils which are wet or subject to prolonged periods of flooding. There is no herbicide registered as a post-emergence treatment for control of foxtail in spring wheat.

North Dakota and Minnesota proposed to use single post-emergence applications of propanil (3',4' dichloropropionanilide), distributed by Rohm & Haas under the trade name Stam F-34 (EPA Reg. No. 707-75) on a maximum of 100,000 acres of spring wheat in each State. Stam F-34 is registered as a post-emergence grass and weed killer in rice. Tolerances are established for the combined residues of the herbicide and its metabolites in or on raw agricultural commodities as follows: 75 parts per million (ppm) in or on rice straw; 2 ppm in or on rice; 0.1 ppm (negligible residue) in meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; and 0.05 ppm (negligible residue) in eggs and milk.

According to Minnesota, yield losses in a late seeding can result in a yield loss of 5 bushels per acre or 500,000 bushels on 100,000 acres. At $3/bushel, the total monetary loss resulting from foxtail infestation of 100,000 acres of wheat could amount to $1,500,000. North Dakota estimated that approximately 40 percent of the 8,500,000 acre spring wheat crop will suffer some yield loss due to foxtail infestation this year. The potential yield loss in North Dakota is valued at $15,000,000 to $20,000,000 for the total acreage. The availability of propanil, however, will limit applications to a maximum of 100,000 acres in North Dakota.

EPA has determined that a single ground application of propanil should not have an unreasonable adverse effect on birds, mammals, or aquatic organisms in North Dakota and Minnesota. The proposed use should not pose a hazard to endangered species and/or their habitats.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak has occurred or is likely to occur; (b) there is no pesticide presently registered and available for use to control the foxtail grasses in spring wheat in these two States; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the foxtail is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, North Dakota and Minnesota have been granted specific exemptions to use the pesticide noted above until July 25, 1978, to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. A single post-emergence application of Stam F-34 (EPA Reg. No. 707-75) may be applied at a rate of 1.5 pounds active ingredient per acre;

2. Application will be limited to low pressure ground equipment using a sufficient amount of water to assure uniform coverage;

3. In North Dakota, a maximum of 100,000 acres may be treated. In Minnesota, a maximum of 100,000 acres may be treated in the following counties: Clay, Douglas, Grant, Kittson, Marshall, Norman, Otter Tail, Pennington, Polk, Red Lake, Roseau, Traverse, and Wilkin;

4. Each specific exemption authorizes the application of a maximum of 150,000 pounds active ingredient;

5. In North Dakota, all applications will be made by private and commercial applicators. In Minnesota, all applications will be made by State-certified private applicators and State-certified commercial applicators;

6. Propanil should be applied when the majority of foxtail seedlings are in the 2- to 4-leaf stage and the wheat is in the 2-leaf to early tillering stage. Available efficacy data demonstrate that this herbicide should be effective in controlling green foxtail in hard red spring wheat;

7. EPA has determined that residue levels of propanil and its metabolites (calculated as propanil) will not exceed 0.05 ppm in or on wheat grain and 0.5 ppm in wheat straw. Detectable residues (less than 0.05 ppm) will not occur in wheat milling factions. The existing meat and milk tolerances will not be exceeded by this use. Wheat grain and straw with residues which are not in excess of these levels may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

8. The treated crop will not be grazed by livestock or cut for green chop feed;

9. Propanil will not be applied when weather conditions favor run-off or drift from treated areas;

10. Propanil will not be tank-mixed with other pesticides or fertilizers;

11. All Applicable directions, restrictions, and precautions on the EPA-registered label must be followed;

12. North Dakota and Minnesota are responsible for assuring that all of the provisions of these specific exemptions are met and must submit reports summarizing the results of these programs by March 15, 1979;

13. The EPA shall be immediately informed of any adverse effects resulting from the use of propanil in connection with these exemptions; and

14. The Minnesota Department of Agriculture will provide the EPA Region V Office, Pesticides Branch, with a list of distributors for Stam F-34. The distributors will be required to maintain point of sale records.

STATUTORY AUTHORITY: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 89 Stat. 751; 7 U.S.C. 136 et seq.).

Dated July 20, 1978.

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

[FR Doc. 78-21005 Filed 7-28-78; 8:45 am]

[6560-01]

[FRL 936-1]

ENVIRONMENTAL IMPACT STATEMENTS

Notice of Receipt

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 July 17, 1978, through July 21, 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 and comment on draft environmental impact statements is 45 days; the date of submission of comments is September 11, 1978. The 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: July 26, 1978.

WILLIAM D. DICKERSON,
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

Pitch project, mining and milling, Gunnison National Forest, Saguache County, Colo., July 18: The proposed action is the issuance of approvals, permits, and licenses to the Homestake Mining Co. for the implementation of the pitch project located in Gunnison National Forest, Saguache County, Colo. The project will consist of mining and milling operations involving uranium ore deposits which will take place over an estimated period of 20 years. A mill will be constructed and operated as long as ore is available. Waste materials will be buried onsite at the head end of a natural valley (USDA-FS-R2-DES (ADM)-FY-78-03) (EPA Order 80773).

Logan Planning Unit, Flathead National Forest, Flathead and Lincoln Counties, Mont., July 18: This project concerns a land management plan for the Logan Planning Unit, Flathead National Forest in Flathead and Lincoln Counties, Mont. The proposed action will affect 89,200 acres of land which is divided into six management units of similar resource potentials and problems, the major features of the plan provide for: (1) Recreation, (2) road corridors, (3) high output of wood products, (4) wildlife habitat, (5) protection of trout habitat, and (6) roadless areas (USDA-FS-RI(10)DES-ADM-78-10) (EPA Order 80778).

Upper Shavers Fork Subunit, Monogahela National Forest, Pocahontas and Randolph Counties, W. Va., July 17: The project proposal concerned involves a 10-year management plan for the Upper Shavers Fork Subunit located in the counties of Pocahontas and Randolph, W. Va. Features of management which are to be implemented or are under consideration include: (1) recreational opportunity; (2) timber sales and cultural timber work; (3) even and uneven aged management; (4) modified cutting methods; (5) temporary ban of work in Cheat Mountain RARE II Area; (6) necessary but protective road system; (7) acquisition surface/subsurface rights, reserved mineral rights on national forest lands, and coal mining (USDA-FS-R9-DES-ADM-78-02) (EPA Order 80770).

Final

Island Park Planning Unit, Targhee National Forest, Fremont County, Idaho, July 18: Proposed is the Island Park Planning Unit in Targhee National Forest, Fremont County, Idaho. The land management plan for the 501,000-acre unit sets forth the allocation of land to various resource uses and activities: Recreation, commodity outputs, environmental considerations, and wilderness studies. Adverse impacts include some road construction, some adverse effects on water quality, and construction effects (USDA-FS-R4-FES(ADM)-78-2).Comments made by AHP, USDA, HUD, DOI, EPA, State and local agencies, groups, individuals, and businesses. (EPA Order 80775).

RURAL ELECTRIFICATION ADMINISTRATION

Draft

Nebraska Public Power District, transmission facility, several counties in Nebraska, July 21: This proposal concerns the approval of funding by REA for a portion of the proposed 329 miles of 345-kilovolt transmission facilities. The facilities, as proposed, will be constructed in the counties of Cheyenne, Deuel, Keith, Lincoln, Custer, Sherman, Buffalo, Frontier, and Red Willow. The new substations—Keystone, Sweetwater, and Red Willow—will connect with several existing facilities, modified by construction. Four alternatives are under consideration (USDA-REA-EIS(ADM)78-10-D) (EPA Order 80792).

SOIL CONSERVATION SERVICE

Draft

Hungry Hall flood prevention and drainage, Clarendon and Sumter Counties, S.C., July 17: The purpose of this proposal is to eliminate flooding and improve drainage on farmlands within Clarendon and Sumter Counties, S.C. The planned project will consist of land treatment and 3.5 miles of channel work on previously altered ephemeral streams. Land treatment measures will consist of on-farm drainage (open and closed), field borders, wind breaks, and wildlife food and cover planting. The main channel, which is 2.4 miles long, will have a bottom width of 3 to 8 feet, and the lateral will have a bottom width to 3 feet (USDA-SCS-EIS-RC&D-(ADM)-78-2-(D)-SC) (EPA Order 80768).

Soak and Piney Creeks Watershed, Raleigh County, W. Va., July 20: The Soak Creek Watershed is located in Raleigh County, in southern West Virgina. It includes all of the drainage area of Soak Creek from its headwaters to its confluence with Piney Creek, an area of about 3,690 acres of 5.8 square miles. The watershed has a population of about 3,500 people. The only incorporated town in the watershed is Sophia, with a 1970 population of 1,300 people (USDA-SCS-EIS-WS(ADM)78-2-(F)WV) (EPA Order 80785).

Final

South Branch, Little Nemaha Watershed, Johnson, Lancaster, and Otoe Counties, Nebr., July 21: 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(ADM)77-1-F-NE). Comments made by USA, HEW, EPA, AHP, DOI, USDA, and State agencies. (EPA Order 80446).

CIVIL AERONAUTICS BOARD

Contact: Mr. Ivars V. Mellups, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5205.

Final

Chicago-Midway low fare route proceeding, July 18: This environmental impact statement has been prepared in conjunction with the Chigago Midway low-fare proceeding, Docket 30277. At issue in this proceeding is whether the Civil Aeronautics Board should authorize new service between Chicago's Midway Airport and the cities of Detroit, St. Louis, Cleveland, Kansas City, Pittsburgh, and Minneapolis/St. Paul. There are five active applicants for new authority. The proponents of this action cite two primary benefits. First, the traveling public would experience lower fares and secondly, Midway Airport would be revitalized. Comments made by EPA, DOT, and local agencies (EPA Order 80776).

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Assistant Secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-377-4335.

MARITIME ADMINISTRATION

Draft

Tank vessels engaged in domestic trade, July 20: The proposal of this statement would provide assistance in the construction of tank vessels in the guarantee of financial obligations (notes, bonds, etc.) including interest, that are obtained in the private market by U.S. citizens for the construction of such vessels in U.S. shipyards under title XI financing. The primary purpose of the program is to promote the growth and modernization of the U.S. merchant marine by enabling private owners to obtain long-term financing as is available to the larger, financially stronger corporations (MA-EIS-7302-78051-D) (EPA Order 80783).

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy, 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

Kill Van Kull navigation project, Newark Bay, several counties in New York and New Jersey, July 17: This project consists of the widening and deepening of the Federal navigation channels in Kill Van Kull, Richmond County, New York and Newark Bay, Union, Essex, and Hudson Counties, N.J. The entrance to Kill Van Kull and north along Newark Bay will be deepened from 35 to 45 feet MLW in rock. Ports Elizabeth and Newark channels and attended pierhead channels are also included. Widening will be done in select areas to permit safer turns and eliminate sharp turns, with dredged material being disposed of in the New York bight (EPA Order 80765).

Final

Isle of Hope Marina expansion, permits, Chatham County, Ga., July 21: The proposed action is the granting of two permits for the expansion of the existing Isle of Hope Marina on Skidaway River, in Georgia. Proposed work includes construction of additional floating docks, dredging, construction of bulkhead with fill, and construction of appurtenant structures. Dredging activities will cause an increase in suspended solids and turbidity, and 431 acres of marsh will be eliminated by the bulkhead and backfill (Savannah district). Comments made by DOC, USDA, DOI, HEW, HUD, USCG, EPA, State agencies, groups, and individuals (EPA Order 80794).

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

Mount. Vernon Campus Square, University of the District of Columbia, District of Columbia, July 21: The proposal discussed concerns the granting of funds to the University of the District of Columbia. The University is presently housed in 14 buildings in various sections of the District. Plans are being prepared by the university to consolidate the programs in new facilities located in downtown Washington, D.C. The new campus would accommodate 6,517 full-time equivalent students and would be located on four blocks directly north of Mount. Vernon Square in the northwest section of the city (EDC-78005) (EPA Order 80789).

Union Station renovation, Nashville, Davidson County, Tenn., July 21: The proposed action involves the renovation of Union Station, a railroad terminal, for use as Federal offices plus community and commercial space in Nashville, Davidson County, Tenn. The new facility would provide space for eight Government agencies presently housed in outlying leased locations. The proposed building would provide approximately 72,700 occupiable square feet of space, of which 47,700 square feet would house 163 Federal employees and 25,000 square feet would be leased (EPA Order 80793).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-6308.

Draft

Monserrate Towers, Sabana Adajo Ward, Carolina, P.R., July 17: This project proposal concerns the construction of Monserrate Towers I and II in Sabana Adajo Ward, Carolina, P.R. The project will consist of two, 20-story, multifamily buildings located on 10.56 acres of land. The HUD will subsidize the monthly rent for tennants who qualify under the section 8 program. The applicant, Interstate General Corp., will also provide for recreation, cultural, and commercial areas and facilities (EPA Order 80769).

Parkway West and Westgreen Subdivision, Harris County, Tex., July 19: The proposed action is the approval by HUD of home mortgage insurance for Parkway West and Westgreen Subdivisions located in Harris County, Tex. The corporations of Mischer and Homecraft propose to build two subdivisions on a 595-acre tract of land composed primarily of single-family homes with some multifamily and commercial reserves. The subdivisions, combined, will provide housing for approximately 6,000 people (HUD-R06-EIS-78-260) (EPA Order 80780).

Final

Six Forks North, Mine Valley Subdivision, Raleigh, Wake County, N.C., July 19: The proposed action is the the approval of FHA home mortgage insurance for Six Forks North—Mine Valley Subdivisions, Raleigh, N.C. The project involves a 700-acre tract of land purchased by Key Homes, Inc. approximately 152 acres of the original 700-acre tract have been developed for uses other than single-family housing, including sale of about 101 acres, flood control and recreational land, and light office, institutional and shopping facilities (HUD-R04-EIS-78-05-F). Comments made by USDA, DOI, EPA, FERC, HEW, GSA, State and local agencies. (EPA Order 80779.)

Supplement

Riverton New Community (S-1), Monroe County, N.Y., July 21: This supplement concerns the proposed, and later approved, action of a final EIS filed in November 1971, concerning application for title VII funds by Riverton Properties, Inc., for the Riverton New Community, Monroe County, N.Y. This supplement proposes the withdrawal of these funds in an effort to avoid possible financial losses. The proposal includes the following actions: (1) acquisition of real property; (2) disposal of project land; (3) termination and amendment of land-use covenants; (4) payment for certain expenditures; and (5) other various settlements. (EPA Order 80788).

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

Lovick-Trussville water project, Jefferson County, Ala., July 20: The proposed action will involve the extension of a portable water supply to residents within the Lovick-Trussville impact area, located in Jefferson County, Ala. The project will extend water to 153 households, dispersed over 6.5 square miles, and require placement of 47,520 linear feet of pipe. The existing Birmingham Water Works Board (BWWB) mains would be tapped and water piped into the impact area. The BWWB will assume the related engineering and maintenance responsibilities (CD-4-02-21A-LVT) (EPA Order 80786).

Eagle-Market Street development project (UDAG), Buncombe County, N.C., July 18: This proposal concerns an application for HUD funding through the urban development action grant program by the city of Asheville, Buncombe County, N.C. The renewal plan as drafted includes project details such as land acquisition, relocation, land use, public works improvements, site plans, and financing. The purpose of this project is to attract private investment in an attempt to solve problems of migration and declining tax base. (EPA Order 80777).

Final

Pedestrian walkway, Upper Darby Township, Delaware County, Pa., July 18: The proposed action is the application for community development block grant funds from HUD. The proposal is the construction of an enclosed pedestrian walkway over West Chester Pike at the intersection with 69th Street to physically separate pedestrian movement between the 69th Street transit terminal and the 69th business area in the Upper Darby Township, Delaware County, Pa. This action is a multiyear project and is scheduled to be started in August 1978 and completed with 10 months. Comments made by EPA, GSA, DOT, State agencies, and businesses. (EPA Order 80772).

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

Final

Offfshore western and central gulf Outer Continental Sheif sale No. 51, Texas, Louisiana, and Mississippi, July 20: The proposed lease sale comprises 148 tracts comprising 713,388 acres located in the Gulf of Mexico offshore of Texas, Louisiana, Mississippi, and Alabama in water depths ranging from 5 to 160 meters and a distance from shore of 6.5 to 185 kilometers. If implemeted, this sale is tentatively scheduled to be held in December 1978. Seventy-four percent of the tracts are gas prone and 26 percent are oil and gas prone. Comments made by DOE, DOC, DOI, EPA, USCG, COE, NRC, State and local agencies, and businesses (EPA Order 80784).

BUREAU OF RECLAMATION

Draft

Uintah unit, central Uta project, Ashley National Forest, Uintah and Duchesne

Counties, Utah, July 20: This proposed project is located in Unitah and Duchesne Counties, Utah, and will involve the Uintah and Whiterocks Dam and Rivers. Modification of 13 high country lakes in Ashley National Forest and 15 miles of rehabilitation on existing channels. The main purpose of the project is to provide water for the Uintah and Ouray Indian Reservation. Other features of the project will provide for (1) municipal water supply, (2) recreation facilities, (3) big game range improvements and fishery habitat structures, and (4) flood control (INT-DES-78-27) (EPA Order 80782).

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL AVIATION ADMINISTRATION

Final

Proposed West Mesa Airport, Alberquerque, Bernalillo County, N. Mex., July 21: Proposed is the acquisition of approximately 5,075 acres of land for the construction of a new general aviation airport to serve the city of Albuquerque and the county of Bernalillo, N. Mex. Project implementation consists of two runways, taxiways, aircraft parking aprons, aircraft storage and maintenance, lighting systems, instrument landing systems, and airport traffic control towers. No signifcant impacts on the environment are anticipated. Comments made by EPA, DOI, COE, USDA, AHP, HEW, DOT (EPA Order 80791).

FEDERAL HIGHWAY ADMINISTRATION

Draft

U.S. 74, Independence Boulevard corridor, Mecklenburg County, N.C., July 18: The proposed action is the construction of a multilane freeway facility between the proposed outer loop freeway and the central business district loop freeways in Charlotte, Mecklenburg County, N.C. Alternatives to the proposed action are an express transitway and major improvements to the existing facility, as well as a no-major-improvements option. All alternatives are presently under consideration, and no preferred or recommended alternative has been selected (FHWA-NC-EIS-77-02-D) (EPA Order 80774).

TN-1, East/west Waverly bypass, Humphreys County, Tenn., July 20: The proposed project is an improvement of TN-1 from the end of the present four-lane section about 5.2 miles west of TN-13 in downtown Waverly, Humphreys County, Tenn., to about 2.7 miles east of TN-13. The project will pass through or around Waverly, and varies from 7.8 to 8.6 miles in length depending on alternative selected. The proposed improvement will have four traffic-carrying lanes throughout its length (FHWA-TN-EIS-77-08D) (EPA Order 80787).

Final

I-630, I-430, and I-30 connector, Little Rock, Pulaski County, Ark., July 17: The proposed action is the construction of a multilane interstate facility in Little Rock, Ark. The completed project will be approximately 7.4 miles in length and will connect interstate routes 30 and 430. Approximately 2.56 miles of this route have been completed and 2.44 miles are currently under construction. These portions were designed as a six-lane interstate facility. Adverse effects include the relocation of residences and businesses, and the utilization of approximately 433 acres for the roadway and its right-of-way (FHWA-ARK-EIS-77-01-F). Comments made by EPA, DOI, USDA, COE, DOT, State agencies, groups, individuals, and businesses. (EPA Order 80771.)

Potsdam relief route, U.S. #11 and N.Y. #56, St. Lawrence County, N.Y., July 21: Proposed is the construction of a new connection between U.S. #11 and N.Y. #56 in the village and town of Potsdam, thereby providing relief from the traffic problems in the central business area. The project will result in the moving of some families and commercial concerns along with the relocation of a village park and the altering of a second (FHWA-NY-EIS-75-06-F). Comments made by USCG, DOT, FPC, DOI, EPA, HEW, and State agencies. (EPA Order 80790.)

South 35 (Lang Drive), La Crosse, La Crosse County, Wis., July 17: Proposed is the reconstruction of 1.13 miles of South 35 (Lang Drive) from La Crosse street to St. Andrews Street, along the existing alinement. The roadway will be widened from two to four lanes and raised above 100-year flood levels in an effort to keep this traffic corridor open during future floods from both the La Crosse and Mississippi Rivers. The roadway embankment material will be obtained by constructing a lake in the La Crosse River flood plain. This project is located in La Crosse County, Wis. (FHWA-WISC-EIS-75-03-F). Comments made by COE, EPA, HUD, USDA, USCG, DOI, State and local agencies, groups, individuals, and business. (EPA Order 80767.)

Final supplement

I-435 extension, Johnson and Wyandotte Counties (S-3), Johnson and Wyandotte Counties, Kans., July 19: This supplement supplements a final EIS filed with CEQ in November 1972. Proposed is the addition of 20.5 miles to the I-435 loop around greater Kansas City in Johnson and Wyandotte Counties, Kans.; the proposed facility calls for a minmum six-lane, limited access facility, including interchanges and bridge crossings of the Kansas and Missouri Rivers. Adverse effects include the conversion of pasture, cultivated land, and dwelling unit tracts to right-of-way; the displacement of one church; the destruction of wildlife habitat; and increased levels of air and noise pollution (region 3) (FHWA-KANS-EIS-72-04-FS-3). Comments made by HUD, DOT, HEW, COE, DOI, USDA, DOC, EPA, State and local agencies, individuals, and businesses. (EPA Order 80781.)

INFORMATION REPORT

The EPA has received the following report which provides supplemental information on proposals which have fulfilled the NEPA process. Copies of the report are available from the originating agency upon request.

U.S. Army, Corps of Engineers, Dr. C. Grant Ash, Office of Environmental Policy Department, Attn: DAEN-CWR-P, Office of the Chief of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20310, 202-693-6795.

EIS No., date received, and title

80766—July 30, 1978—Review Report for Lake Manawa, Iowa, June 1978 Volume I Summary Report, Volume II Technical Report.

[FR Doc. 78-21135 Filed 7-28-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

CANADIAN STANDARD BROADCAST STATIONS

Notification List

List of new stations, proposed changes in existing stations, deletions, and corrections in assignments of Canadian standard broadcast stations modifying the assignments of Canadian broadcast stations contained in the appendix to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting January 30, 1941.

JUNE 29, 1978.

CANADIAN LIST NO. 375

Call letters	Location	Power kilowatts	Antenna	Schedule	Class	Antenna height (feet)	Ground system: Number of radials	Ground system: Length (feet)	Proposed date of commencement of operation
		570 kHz							
CHYM	Kitchener, Ontario, N. 43°17'25", W. 80°21'10", (*P.O. 5D/10N*) (now in operation on new frequency at new site).	10	DA-1	U	III	.....	.....	.....	
		1050 kHz							
CKAL	Vernon, British Columbia, N. 50°17'20", W. 119°16'26" (assignment of call letters).	10D/1N	DA-N ND-D-190	U	II	.....	.....	.....	E.I.O. *June 29, 1979.*

CANADIAN LIST NO. 375—Continued

Call letters	Location	Power kilowatts	Antenna	Schedule	Class	Antenna height (feet)	Ground system: Number of radials	Ground system: Length (feet)	Proposed date of commencement of operation
		1220 kHz							
(New)	Amqui, Quebec, N. 48°26'45", W. 67°29'54", (substitute for Rimouske).	5	DA-N ND-D-189	U	II	.....	.....	.....	E.I.O. *June 29, 1979.*
		1220 kHz							
(New)	Rimouske, Quebec, N. 48°24'15", W. 68°29'26", (delete).	10	DA-N ..... ND-D-189.7 ..	U	II	.....	.....	.....	
		1250 kHz							
CKOM	Saskatoon, Saskatchewan, N. 52°04'45", W. 106°30'38", (correction to recapitulative list Dec. 31, 1977 as per notification Aug. 31, 1960.	10	DA-N ND-D.*221*	U	III	.....	.....	.....	
		1270 kHz							
CJTN	Trenton, Ontario, N. 44°02'41", W. 77°34'47", (assignment of call letters).	1	DA-2	U	III	.....	.....	.....	E.I.O. *Mar.8, 1979.*
		1400 kHz							
CHNL-1	Clearwater, British Columbia, N. 51°39'26", W. 120°04'54", (now in operation).	1D/0.25N	ND-191	U	IV	180	120	282 ave.	
		1470 kHz							
CHOW	Welland, Ontario, N. 42°56'52", W. 79°16'19", (*P.O. 1D/0.5N*) (*previously notified 10D/2.5N proposal withdrawn.*)	*5D/10N*	DA-2-	U	III	.....	.....	.....	E.I.O. *June 29, 1979.*
		1490 kHz							
CHYM	Kitchener, Ontario, N. 43°23'06", W. 80°30'00", (delete).	10D/5N	DA-2	U	IV	.....	.....	.....	
		1490 kHz							
CFPS	Port Elgin, Ontario, N. 44°24'58", W. 81°23'31", (now in operation).	1D/0.25N	ND-170	U	IV	75	120	264 ave.	

WALLACE E. JOHNSON,
Chief, Broadcast Bureau,
Federal Communications Commission.

[FR Doc. 78-21131 Filed 7-28-78; 8:45 am]

[6712-01]

COMMERCIAL TV BROADCAST APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Correction

Adopted: July 24, 1978.

Released: July 25, 1978.

By the Chief, Broadcast Facilities Division.

For the following document: TV Broadcast Applications Ready and Available for Processing Pursuant to Section 1.572(c) of the Commission's Rules.

The following entry, which appeared on the Public Notice, Mimeo No. 3140, released July 21, 1978, listing commercial television broadcast applications which will be considered as ready and available for processing on september 8, 1978, is hereby deleted:

BPCT-5199 (new) Miami, Fla., Contemporary Television Broadcasting, Inc., Channel 39, ERP Vis. 2858 kW, HAAT: 649 ft. Request for waiver of section 73.610(d) of the Commissions' Rules.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-21130 Filed 7-27-78; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, P.R. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C, 20573, on or before August 21, 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. LM-5.

Filing party: Frank McRight, Esquire, McRight, Sims, Rowe and Bagwell, P.O. Box 1024, Mobile, Ala. 36601.

Summary: Agreement No. LM-5, which is between the Gulfport Stevedoring Association, Inc. (GSA), and certain GSA members (Members), is a funding agreement providing for the following assessments per long ton of cargo loaded or unloaded by the Members at the Port of Gulfport:

Classification A—Bulk cargo not packaged and loaded without mark or count, $0.02.

Classification B—Metals and metal products, including vehicles, $0.05.

Classification C—All other cargo, $0.10.

The purpose of these assessments is to fund the Members' obligation to GSA resulting from a settlement with Local 1303 of the International Longshoremen's Association, AFL-CIO (ILA) providing for a one-time payment of $172,447 to the Administrator of the GSA-ILA Vacation and Holi-

day Plan and Trust for distribution to its employees. GSA will borrow, on the Members' behalf, funds to make this payment and the assessments made under this agreement will terminate when the amount paid by the Members is sufficient to pay the principle and all interest on the loan.

Agreement No. LM-6.

Filing party: Frank McRight, Esquire, McRight, Sims, Rowe and Bagwell, P.O. Box 1024, Mobile, Ala. 36601.

Summary: Agreement No. LM-6 is between the members of the Gulfport Stevedoring Association, Inc. (GSA) and provides for the following "Labor Relations Assessment" per long ton of cargo loaded or unloaded by GSA members at the Port of Gulfport:

Classification A—Bulk cargo not packaged and unloaded without mark or count, $0.01.[1]

Classification B—All other cargo, $0.03.[1]

The purpose of these assessments is to raise funds for the operation of GSA in connection with its labor relations activities, which include the equitable adjustment of disputes relating to business dealings of stevedoring and shipping interests with labor organizations; the management and control for stevedoring and shipping interests of funds set aside and contributed by or through stevedoring and shipping interests or legally withheld in any manner for use in connection with labor relations activities or collective bargaining activities; the assessment of cargo and the serving as actuary for the assessment of cargo; and the maintenance of facilities necessary or desirable for the carrying out of the functions of GSA.

Agreements Nos. LM-8, LM-9, as amended by LM-9-1, LM-9-A, and LM-9-B.

Filing party: M. Tyus Butler, Jr., Bouhan, Williams and Levy, the Armstrong House, Bull and Gaston Streets, Post Office Box No. 2139, Savannah, Ga. 31402.

Summary: Agreement No. LM-8 constitutes the Articles of Incorporation, Bylaws and Membership Subscription of the Savannah Container Maintenance Association, Inc. (SCMA), a business league whose purposes include the negotiation of collective bargaining agreements on the behalf of its members. Agreement No. LM-9, as amended by Agreement No. LM-9-1, constitutes the 1977-1980 collective bargaining agreement between SCMA and Local 1414 of the International Longshoremen's Association, AFL-CIO (ILA). Agreement No. LM-9-A is the Agreement and Declaration of Trust for the Container Mechanics Pension Fund, and Agreement No. LM-9-B is the Agreement and Declaration of Trust for the Container Mechanics Welfare Fund.

Agreement No. T-3682.

Filing party: H. H. Wittren, Manager, Waterfront Real Estate, Port of Seattle, P.O. Box 1209, Seattle, Wash. 98111.

Summary: Agreement No. T-3682, between Port of Seattle, in the capacity of Grantor on behalf of the State of Washington, and Port of Seattle (Port), in the capacity as user, provides for the 30-year grant to Port of a waterway permit of a portion of the Salmon Bay Waterway, to be used by Port, itself, or by others under a subpermit. As compensation, Port will pay $1 per year for use of the waterway by itself or another governmental body for noncommercial purposes. Port will pay as additional rental only those revenues which are received under subpermits which: (1) do not have structures or improvements constructed or owned by the Port; and (2) are being used by a subpermittee for commercial purposes. Port may retain revenues under subpermits which are used by governmental bodies for noncommercial purposes.

Agreement No. 10044-4.

Filing party: Lloyd A. Strickland, Vice President, Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, La. 70130.

Summary: Agreement No. 10044-4, between Compania Peruana de Vapores and Lykes Bros. Steamship Co., Inc. amends the parties' basic cargo revenue pooling, sailing and equal access agreement in the southbound trade from United States Gulf ports to ports in Peru by (1) excluding from pool revenues certain heavy lift cargoes; (2) providing that each party will undertake to obtain, at its own expense, approval by its own governmental agencies; (3) changing the arbitration rules of procedure to be followed; (4) extending the term of the agreement through December 31, 1980; and (5) providing that the full calendar year 1978 shall be considered as a pool accounting year for computation of pool shares.

Agreement No. 10347.

Filing party: Sanford C. Miller, Esq., Haight, Gardner, Poor & Havens, One State Street Plaza, New York, N.Y. 10004.

SUMMARY: Agreement No. 10347, between Deutsche Dampfschifffahrts-Gesselschaft "Hansa" and Nedlloyd Lijnen B. V., provides for the scheduling and joint advertisement of their sailings in the eastbound and westbound trades between U.S. Gulf, South Atlantic and North Atlantic ports, on the one hand, and ports in the Mediterranean, Red Sea, Persian/Arabian Gulf and Oman, on the other hand. The Agreement also provides that (1) there shall be no joint solicitation and/or booking between or among the parties; (2) each party shall issue its own bill of lading; (3) the parties will retain their own identity with respect to conference/rate agreement membership; (4) the parties may charter to and from each other blocks of space; (5) there shall be no pooling of revenues or sharing of operational expenses; (6) the parties may employ the same terminals and facilities; and (7) the parties may interchange their land-based and sea-going equipment and may exchange information concerning such equipment.

Agreement No. 10346.

Filing party: Jose Vicente Valdez, Executive Administrator, Inter-American Freight Conference, Lavalle 381-8° Piso, Buenos Aires, Argentina.

SUMMARY: Agreement No. 10346, by and among Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I., Delta Steamship Lines, Inc., The Nothern Pan-America Lines, A/S, Companhia De Navegacao Lloyd Brasileiro, Companhia Maritima Nacional, Montemar S.A. Comercial y Maritima and Navimex S.A. de C.V., is a cargo revenue pooling and sailing agreement in the northbound trade from Argentine ports within the La Plata/Rosario range, both inclusive, to United States Gulf of Mexico ports. The agreement, among other things, spells out each participant's pool share and required minimum sailings in the applicable trade. The agreement will be effective upon approval by the respective govenmental authorities and shall remain in effect through December 31, 1980.

By Order of the Federal Maritime Commission.

Dated: July 26, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-21111 Filed 7-28-78; 8:45 am]

[1] This assessment will be, at a minimum, $15 per vessel. LASH or SEABEE vessels will pay $7.50 per barge loaded or unloaded.

[6210-01]

FEDERAL RESERVE SYSTEM

FEDERAL OPEN MARKET COMMITTEE

Authorization for Foreign Currency Operations

In accordance with the Committee's rules regarding availability of information, notice is given that at its meeting on June 20, 1978, paragraph 1D of the Committee's authorization for foreign currency operations was amended to read as follows:

1D. To maintain an overall open position in all foreign currencies not exceeding $1 billion, unless a larger position is expressly authorized by the Committee. For this purpose, the overall open position in all foreign currencies is defined as the sum (disregarding signs) of net positions in individual currencies. The net position in a single foreign currency is defined as holdings of balances in that currency, plus outstanding contracts for future receipt, minus outstanding contracts for future delivery of that currency, i.e., as the sum of these elements with due regard to sign.

By order of the Federal Open Market Committee, July 21, 1978.

ARTHUR L. BROIDA,
Secretary.

[FR Doc. 78-21036 Filed 7-28-78; 8:45 am]

[6210-01]

DOMESTIC POLICY DIRECTIVE OF JUNE 20, 1978

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the Committee's domestic policy directive issued at its meeting held on June 20, 1978.[1]

The information reviewed at this meeting suggests that real output of goods and services has grown rapidly on the average in the current quarter as activity rebounded from the effects of the unusually severe winter weather and the lengthy coal strike, but the rate of advance most recently appears to be slowing. Following substantial gains in March and April, increases in industrial production and nonfarm payroll employment moderated in May and retail sales

[1] The record of policy actions of the Committee for the meeting of June 20, 1978 is filed as part of the original document. Copies are available on request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

changed little. The unemployment rate edged up from 6.0 to 6.1 percent in association with a large increase in the civilian labor force. Average wholesale prices rose somewhat less rapidly in May than earlier in 1978, reflecting smaller reported increases in farm products and processed foods. So far this year prices have increased at a considerably faster rate than they had on average during 1977. The index of average hourly earnings also has increased at a somewhat faster pace so far in 1978 than during 1977.

Since the end of May the trade-weighted value of the dollar against major foreign currencies has declined about 2 percent, but it remains above its early-April low. The trade deficit in April was down somewhat from its very high first-quarter rate.

Growth in M-1 moderated in May from the extraordinarily rapid pace in April, and as a result growth in M-2 and M-3 also slowed. Inflows of the interest-bearing deposits included in M-2 picked up somewhat as commercial banks increased their reliance on large-denomination time deposits to finance an unusually sharp increase in business loans. Market interest rates have risen somewhat further in recent weeks.

In light of the foregoing developments, it is the policy of the Federal Open Market Committee to foster monetary and financial conditions that will resist inflationary pressures while encouraging continued moderate economic expansion and contributing to a sustainable pattern of international transactions. At its meeting on April 18, 1978, the Committee agreed that these objectives would be furthered by growth of M-1, M-2, and M-3 from the first quarter of 1978 to the first quarter of 1979 at rates within ranges of 4 to 6½ percent, 6½ to 9 percent, and 7½ to 10 percent, respectively. The associated range for bank credit is 7½ to 10½ percent. These ranges are subject to reconsideration at any time as conditions warrant.

In the short run, the Committee seeks to achieve bank reserve and money market conditions that are broadly consistent with the longer-run ranges for monetary aggregates cited above, while giving due regard to developing conditions in financial markets more generally. During the period until the next regular meeting, System open market operations shall be directed initially at attaining a weekly-average Federal funds rate slightly above the current level. Subsequently, operations shall be directed at maintaining the weekly Federal funds rate within the range of 7½ to 8 percent. In deciding on his specific objective for the Federal funds rate the manager shall be guided mainly by the relationship between the latest estimates of annual rates of growth in the June–July period of M-1 and M-2 and the following ranges of tolerance: 5 to 10 percent for M-1 and 6 to 10 percent for M-2. If, giving approximately equal weight to M-1 and M-2, their rates of growth appear to be significantly above or below the midpoints of the indicated ranges, the objective for the funds rate shall be raised or lowered in an orderly fashion within its range.

If the rates of growth in the aggregates appear to be above the upper limit or below the lower limit of the indicated ranges at a time when the objective for the funds rate has already been moved to the corresponding limit of its range, the manager is promptly to notify the Chairman who will then decide whether the situation calls for supplementary instructions from the Committee.

By order of the Federal Open Market Committee, July 21, 1978.

ARTHUR L. BROIDA,
Secretary.

[FR Doc. 78-21035 Filed 7-28-78; 8:45 a.m.]

[6210-01]

EADS BANCORPORATION

Formation of Bank Holding Company

Eads Bancorporation, Eads, Eads, Colo., has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 95 percent (less directors' qualifying shares) of the voting shares of First National Bank in Eads, Colo. The factors that are considered in acting on the application are set forth in § 3(c) of the act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the reserve Bank, to be received not later than August 15, 1978.

Board of Governors of the Federal Reserve System, July 25, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-21037 Filed 7-28-78; 8:45 am]

[6210-01]

FIRST BANKSHARES CORP. OF S.C.

Proposed Retention of First National Credit Life Insurance Co.

First Bankshares Corp., S.C., Columbia, S.C., has applied, pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's regulation Y (12 CFR § 225.4(b)(2)), for permission to retain voting shares of First National Credit Life Insurance Co., Columbia, S.C. Notice of the application was published on June 28, 1978 in the State, a newpaper circulated in Columbia, S.C.

Applicant states that the proposed subsidiary would engage in the activity of underwriting credit life insurance directly related to extensions of credit by Applicant's subsidiaries. Such activities have been specified by the Board in § 225.4(a) of regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than August 23, 1978.

Board of Governors of the Federal Reserve System, July 24, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-21038 Filed 7-28-78; 8:45 am]

[6210-01]

JOHNSON COUNTY BANKSHARES, INC.

Proposed Retention of Republic Investment Co., Inc.

JULY 25,1978.

Johnson County Bankshares, Inc., Prairie Village, Kans., has applied, pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's regulation Y (12 CFR § 225.4(b)(2)), for permission to retain all of the voting shares of Republic Investment Co., Inc., Prairie Village, Kans. Notice of the application was published on June 15, 1978, in the Kansas City Star, a newspaper circulated in Kansas City, Mo.

Applicant states that the proposed subsidiary would continue to engage in lending activities and the sale of insurance directly related to extensions of credit. Such activities have been specified by the Board in § 225.4(a) of regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh pos-

sible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than August 24, 1978.

Board of Governors of the Federal Reserve System, July 25, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-21039 Filed 7-28-78; 8:45 am]

[6210-01]

NATIONAL BANCSHARES CORP. OF TEXAS

Aquisition of Bank

National Bancshares Corp. of Texas, San Antionio, Tex., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of Guaranty National Bank, Houston, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later that August 24, 1978.

Board of Governors of the Federal Reserve System July 24, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-21040 Filed 7-28-78; 8:45 am]

[6210-01]

REPUBLIC NATIONAL BANCSHARES, INC.

Formation of Bank Holding Company

Republic National Bancshares, Inc., Houston, Tex., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares (less directors' qualifying shares) of Republic National Bank of Houston, Houston, Tex., and 100 percent of the voting shares (less directors' qualifying shares) of Colonial National Bank, Harris County, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. § 1842(c)).

Republic National Bancshares, Inc., Houston, Tex., has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to acquire voting shares of Citizens and Southern Life Insurance Co., Houston, Tex. Notice of the application was published on June 30, 1978, in *The Houston Chronicle*, a newspaper circulated in Houston, Tex.

Applicant states that the proposed subsidiary would engage in the activities of acting as underwriter for credit life insurance and credit accident and health insurance which is directly related to extensions of credit by subsidiaries of Republic National Bancshares, Inc., Houston, Tex. Such activities have been specified by the Board in § 225.4(a) of regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than August 24, 1978.

Board of Governors of the Federal Reserve System, July 25, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-21041 Filed 7-28-78; 8:45 am]

[6210-01]

WACHOVIA CORP.

Proposed Retention of Wachovia Mortgage Co.

The Wachovia Corp., Winston-Salem, N.C., has applied, pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)) for permission to retain voting shares of Wachovia Mortgage Co., Winston-Salem, N.C. Notice of the application was published as follows:

May 11, 1978, *The Charlotte News*, Charlotte, N.C.
May 11, 1978, *The Greensboro Daily News*, Greensboro, N.C.
May 11, 1978, *The Wilmington Star-News*, Wilmington, N.C.
May 11, 1978, *The Charleston Evening Post*, Charleston, S.C.
May 12, 1978, *The Winston-Salem Journal*, Winston-Salem, N.C.
May 12, 1978, *The Columbia Record*, Columbia, S.C.
May 12, 1978, *The Pensacola Journal*, Pensacola, Fla.
May 17, 1978, *The News and Observer*, Raleigh, N.C.
May 17, 1978, *The Atlanta Constitution*, Atlanta, Ga.
May 25, 1978, *The Asheville Times*, Asheville, N.C.

Applicant states that the Proposed subsidiary would engage in the activities of rendering mortgage banking services including origination and servicing of mortgage loans, management and sale of properties acquired through foreclosure, acting as insurance agent for credit life, accident, health, property and casualty insurance, acting as adviser to a real estate investment trust, and acting as general partner in two apartment projects that provide low and moderate income housing. Such activities have been specified by the Board in § 225.4(a) of regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this

question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than August 21, 1978.

Board of Governors of the Federal Reserve System, July 21, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-21042 Filed 7-28-78; 8:45 am]

[6210-01]

WISCONSIN BAN CORP.

Formation of Bank Holding Company

Wisconsin Ban Corp., Prairie du Chien, Wis., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares (less directors' qualifying shares) of Prairie City Bank, Prairie du Chien, Wis. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than August 18, 1978.

Board of Governors of the Federal Reserve System, July 21, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-21043 Filed 7-28-78; 8:45 am]

[1610-01]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following request for clearance of reports intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on July 24, 1978. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FCC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before August 18, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL COMMUNICATIONS COMMISSION

The FCC requests an extension without change clearance of form 402-A, Annual Report of Licensees of Private Operational Fixed Microwave Radio Service Stations. Form 402-A is required by § 94.17(g) of the FCC rules and regulations. The report is filed by all entities cooperatively sharing microwave land mobile transmitting facilities. The report indicates each sharer's capital expenses, amount contributed related to use, and contributions to initial capital investment. The FCC estimates that respondents number approximately 80 and that reporting burden averages 1½ hours per response.

The FCC requests an extension without change clearance of form 404, Application for Aircraft Radio Station License. Form 404 is required by § 87.29 of the FCC rules and regulations and is filed when applying for a new or modified aircraft radio station license. The FCC estimates that approximately 20,000 applications are received annually and that respondent burden averages 30 minutes per response.

The FCC requests an extension without change clearance of form 405-B, License Expiration Notice and Renewal Application Short form. Form 405-B is required by §§ 1.922, 83.36, and 87.33 of the FCC rules and regulations and is used to notify a licensee of the expiration of his/her license. If eligible, licensee uses FCC form 405-B to apply for renewal of ship and aircraft license when there is no change or only minor change to current license. The FCC estimates that respondents number approximately 120,000 and that respondent burden averages 10 minutes per response.

The FCC requests an extension without change clearance of form 453-B, Certification of Special Temporary Authorization for Operation of Radio Station on Board New Aircraft or Aircraft With an Initial Radio Installation. Form 453-B is required by §§ 1.925 and 87.29 of the FCC rules and regulations. The form is used by manufacturers, dealers, and distributors of new aircraft and aircraft avionics to provide special temporary authority to owners of new aircraft or aircraft with an initial radio installation while form 404, application for Aircraft Radio Station License, is being processed. The FCC estimates that respondents number approximately 1,500 and that respondent burden averages 20 minutes per response.

The FCC requests an extension without change clearance of form 502, application for Ship Radiotelephone and/or Radionavigation Station License. Form 502 is required by §§ 83.36 and 1.912 of the FCC rules and regulations. The form is required to be filed when applying for new or modified ship station license in the marine service. The form is also used for applicants with voluntarily equipped vessels and with vessels subject to title III, part III of the Communications Act. The FCC estimates that approximately 60,000 applications are received annually and that respondent burden averages 30 minutes per response.

The FCC requests an extension without change clearance of form 503, application for Land Radio Station License in the maritime mobile service or an Alaska public fixed station. Form 503 is required by §§ 81.35 and 83.36 of the FCC rules and regulations. The form is used by applicants when applying for new or modified land radio stations in the maritime mobile service or an Alaska public fixed station. The FCC estimates that approximately 4,000 applications are received annually and that respondent burden averages 1 hour per response.

The FCC requests an extension without change clearance of form 820, application for exemption from Ship Radio Station requirements. Form 820 is required to be filed when applying for exemption from specified radio provisions of statute, treaty, or international agreements. The FCC estimates approximately 60 applications are filed annually and that respondent burden averages 1 hour per response.

NORMAN F. HEYL,
Regulatory Reports,
Review Officer.

[FR Doc. 78-21097 Filed 7-28-78; 8:45 am]

[6820-23]

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

FEDERAL SPACE EXCHANGE PROGRAM

Notice of Establishment

AGENCY: General Services Administration.

ACTION: Notice of a new Federal space exchange program.

SUMMARY: In an effort to increase flexibility in the satisfaction of agency space needs and to promote consolidation of agency components, GSA is initiating a program which will enable Federal agencies to negotiate directly with one another for the exchange of blocks of general purpose office and related space. This document outlines the procedures to be followed by agencies interested in availing themselves of GSA's new "Space Market" program.

EFFECTIVE DATE: July 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Paul H. Herndon III, Chief, Assignment Branch, Office of Space Management, Public Buildings Service, General Services Administration, Washington, D.C. 20405, 202-566-1872.

SUPPLEMENTARY INFORMATION: Because of the irregular growth pattern which Federal activities experience over a period of years in most major cities, agency components often become scattered throughout the urban area. As a result, agency efficiency is sometimes adversely affected.

While it is GSA policy to collocate agency elements whenever possible, in many cases, the action is precluded by the prevailing space situation or the need for prompt response to a space demand. Thus, agencies usually must wait for a major change in the Federal space position, such as the construction of a new Federal facility, before their activities can be combined.

However, to increase the potential for, at least, partial consolidation of agency activities, GSA is establishing a Federal "Space Market" through which agencies can explore the possibility of exchanging space. Under this program, agencies will be provided, upon request, a computer printout listing the space assignments in each city or community having a total of 250,000 square feet or more of GSA-controlled space. They will then be free to bargain directly with each other for space they identify from the printouts. If an agreement to exchange office locations is reached, the agencies involved will submit the standard space request documents to the appropriate GSA regional office for approval. All exchange proposals will be closely reviewed by GSA to determine that there is adequate operational justification to support the action, and that the benefits to be derived outweigh the costs involved. In addition, every exchange must be consistent with the President's Urban Policy.

Any approved exchanges will be carried out in accordance with GSA's existing space assignment policies and procedures (see Federal Property Management Regulations § 101-17). The agency which initiates the exchange proposal shall be responsible for funding the moving and telephone relocation costs for the agency being asked to relocate, and will also be responsible for funding space alterations required to make the agency's new space comparable to its previous assignment. In situations where there is equal benefit to both agencies from the exchange, the agencies may wish to work out an agreement between themselves regarding payment of the moving and alteration costs. Agencies considering exchanges should contact GSA as early in their discussions as possible so that they can be advised whether the proposal is consistent with GSA's immediate and long-range housing plans for the community.

Beginning August 1, 1978, our regional offices will be able to furnish Federal agencies printouts for any of the 90 cities or communities indicated below (attachment 1). Requests for these printouts should be directed to the Director, Space Management Division, Public Buildings Service, in the appropriate GSA regional office. Reference should be made to Report No. R-300 (Building and Assignment Data for the city of ——— .)

Dated July 14, 1978.

JAMES B. SHEA, Jr.,
Commissioner,
Public Buildings Service.

ATTACHMENT 1

Listing of cities containing 250,000 or more square feet of GSA-controlled space.

1. Anchorage, Alaska
2. Birmingham, Ala.
3. Mobile, Ala.
4. Montgomery, Ala.
5. Little Rock, Ark.
6. Phoenix, Ariz.
7. Fresno, Calif.
8. Los Angeles, Calif.
9. Oakland, Calif.
10. Richmond, Calif.
11. Sacramento, Calif.
12. San Diego, Calif.
13. San Francisco, Calif.
14. Colorado Springs, Colo.
15. Denver, Colo.
16. Lakewood, Colo.
17. Hartford, Conn.
18. Washington, D.C.
19. Jacksonville, Fla.
20. Miami, Fla.
21. Tampa, Fla.
22. Atlanta, Ga.
23. Savannah, Ga.
24. Honolulu, Hawaii
25. Des Moines, Iowa
26. Boise, Idaho
27. Chicago, Ill.
28. Indianapolis, Ind.
29. New Haven, Ind.
30. Louisville, Ky.
31. Baton Rouge, La.
32. New Orleans, La.
33. Boston, Mass.
34. Waltham, Mass.
35. Baltimore, Md.
36. Bethesda, Md.
37. Hyattsville, Md.
38. Rockville, Md.
39. Silver Spring, Md.
40. Suitland, Md.
41. Battle Creek, Mich.
42. Detroit, Mich.
43. Minneapolis, Minn.
44. St. Paul, Minn.
45. Kansas City, Mo.
46. St. Louis, Mo.
47. Jackson, Miss.
48. Billings, Mont.
49. Asheville, N.C.
50. Raleigh, N.C.
51. Lincoln, Nebr.
52. Omaha, Nebr.
53. Newark, N.J.
54. Albuquerque, N. Mex.
55. Albany, N.Y.
56. Buffalo, N.Y.
57. New York-Queens, N.Y.
58. New York, N.Y.
59. New York-Kings, N.Y.
60. Cincinnati, Ohio
61. Cleveland, Ohio
62. Columbus, Ohio
63. Dayton, Ohio
64. Oklahoma City, Okla.
65. Tulsa, Okla.
66. Portland, Oreg.
67. Mechanicsburg, Pa.
68. Philadelphia, Pa.
69. Pittsburgh, Pa.
70. Hato Rey-San Juan, P.R.
71. Columbia, S.C.
72. Memphis, Tenn.
73. Nashville, Tenn.
74. Austin, Tex.
75. Dallas, Tex.
76. El Paso, Tex.
77. Fort Worth, Tex.
78. Houston, Tex.
79. San Antonio, Tex.
80. Salt Lake City, Utah
81. Alexandria, Va.
82. Arlington, Va.
83. Falls Church, Va.
84. Norfolk, Va.
85. Richmond, Va.
86. Springfield, Va.
87. Auburn, W. Va.
88. Seattle, Wash.
89. Spokane, Wash.
90. Milwaukee, Wis.

[FR Doc. 78-21049 Filed 7-28-78; 8:45 a.m.]

[4110-12]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

OFFICE OF HUMAN DEVELOPMENT SERVICES

Statement of Mission, Organization, Function, and Delegations of Authority

This notice amends and supersedes in its entirety the present part D of the statement of reorganization, functions, and delegations of authority of the Department of Health, Education, and Welfare, Office of Human Development Services (HDS). The revised functional statements are consistent with the revised organization as specified by the Secretary's reorganization order, published at 43 FR 18613, dated May 1, 1978.

The new part D reads as follows:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF HUMAN DEVELOPMENT SERVICES

D.00 Mission. The Office of Human Development Services (HDS) administers human services programs for such groups as the elderly, children, youth, Native Americans, handicapped persons, and public assistance recipients and serves as the advisor to the Secretary on such programs. Advocates on behalf of these groups and for the special needs of families, persons living in rural areas, and veterans. Designs programs to eliminate barriers to self-sufficiency for people receiving HDS assistance. Emphasizes community- and home-based modes of service delivery where possible. Recommends to the Secretary actions and strategies which improve coordination of human services programs with other HEW programs, other Federal agencies, State and local government, and private sector organizations. Promotes the development of simplified and coherent human services delivery systems. Identifies ways to address unmet service needs and improve quality of care.

D.10 Organization. The Office of Human Development Services is a principal operating component of the Department of Health, Education, and Welfare located within the Office of the Secretary. HDS is headed by the Assistant Secretary for Human Development Services (ASHDS), who reports directly to the Secretary, and consists of:

Office of the Assistant Secretary for Human Development Services (DA)
Office of Policy and Management Control (DU)
Office of Planning, Research, and Evaluation (DV)
Office of Administration and Management (DB)
Administration on Aging (DG)
Administration for Children, Youth, and Families (DC)
Administration for Native Americans (DN)
Administration for Public Services (DS)
Rehabilitation Services Administration (DH)
Regional Offices of Human Development Services (DD1-X).

D.20 Functions. The functions of the organizational elements of HDS are summarized in this chapter and are described in detail in successive chapters.

A. The Office of the Assistant Secretary for Human Development Services (OASHDS) provides executive direction, leadership, and guidance to all HDS components, including the Regional Offices of HDS. Advises the Secretary and Under Secretary on HDS programs and recommends actions and strategies to improve coordination of HDS efforts with other programs and agencies. The ASHDS serves on the National Coordinating Committee for WIN and as the designee for the Secretary of HEW on the Architectural and Transportation Barriers Compliance Board.

B. The Office of Policy and Management Control (OPMC) develops and implements procedures, processes, and systems for carrying out major review and control activities for HDS, including regulations development, operational planning, and executive secretariat functions. Represents HDS in meetings and conferences with HEW and other public and private officials at the Federal, State, and local level. Directs equal employment opportunity and civil rights policies and programs for HDS. Formulates policies and procedures for organizational structure, manpower utilization, and use of consultant services.

C. The Office of Planning, Research, and Evaluation (OPRE) serves as the principal unit in HDS for the development of a framework for defining program problems. Designs operations research models and other scientific techniques for objective analysis of program impact and needs assessment. Evaluates and presents alternatives solutions to both basic and specific program policy issues. Assesses and recommends improvements for program and planning systems. Directs research and evaluation activities, program analysis, and planning. Develops an overall HDS program data systems capability and coordinates operation of data systems throughout HDS. Acts on behalf of top level management in the design of an HDS national model for social services policy development.

D. The Office of Administrative and Management (OAM) in consultation with the prorram administrations and staff offices, provides leadership and direction to administrative and management activities throughout HDS, including: Budget, finance, personnel, grants and contracts, procurement, materiel and facilities management, and similar administrative supporting services.

E. Administration on Aging (AOA) is the principal agency designated to carry out the provisions of the Older Americans Act of 1965 as amended. Advises the Secretary, HEW components, and other Federal Departments and Agencies on the characteristics, circumstances, and needs of older people and develops policies, plans, and programs designed to promote their welfare. Conducts programs of training, research, and demonstration and provides advice, assistance, and consultation to promote the development of State administered community based systems of comprehensive social services for older people.

F. The Administration for Children, Youth, and Families (ACYF) seeks to expand and improve the range of human services which promote sound development of children and youth. Supports families through activities directed at the improvement of the child care and youth services delivery systems. Designs and implements programs to improve the quality of life for children and youth and their families. Funds research and demonstration projects to measure the impact of existing programs and to develop new efforts to enrich the lives of children, youth, and their families.

G. The Administration for Native Americans (ANA) represents the concerns of American Indians, Alaskan Natives, and Native Hawaiians, hereafter referred to as Native Americans. Advises ASHDS on their concerns, and has primary responsibility for developing appropriate policy, legislative proposals, and guidance on matters involving the social and economic development of Native Americans. Serves as Departmental liaison with other Federal agencies on Native American affairs. Administers a grant program to promote the social and economic development of Native Americans and explores new program concepts and methods. Assures that information about Departmental services and benefits and eligibility criteria is conveyed to Native Americans. Fosters self-determination of Native Americans and their operation of Native American programs and enterprises.

H. The Administration for Public Services (APS) provides national leadership to the States in the planning, development, management, coordination, and execution of social services programs authorized under titles I, IV-A, X, XIV, XVI, and XX of the Social Security Act. In conjunction with the Department of Labor, develops plans for increasing the coordination of social services programs with employment programs such as Com-

prehensive Employment and Training Act (CETA) and WIN.

Provides technical assistance to States, local units of government, private organizations, and public interest groups in identifying service needs, planning and utilizing resources, and improving service delivery systems.

Promotes and funds research and demonstration projects and training programs to develop more effective approaches and methods for the management and delivery of social services. Coordinates Departmental response to concerns of rural Americans and promotes citizen participation and the use of volunteers in service programs.

I. The Rehabilitation Services Administration (RSA) supports services which improve conditions for and otherwise benefit handicapped individuals, with emphasis on the severely handicapped, including the developmentally disabled. Plans, develops, and coordinates the establishment of goals and objectives of programs for handicapped individuals and develops standards, criteria, guidelines, and policies to provide direction in the administration of these programs. Maintains close liaison with Architectural and Transportation Barriers Compliance Board and other public agencies and private organizations serving handicapped individuals. Advises the ASHDS on the formulaltion, development, implementation, and review of policies and legislation affecting handicapped individuals. Acts as an advocate for the rights of handicapped persons. Serves as a resource and clearinghouse of information for service providers at national, regional, State, and local levels in the development of national programs to reduce or eliminate social and environmental barriers experienced by handicapped persons. Establishes standards for determining who are handicapped individuals for purposes of RSA program eligibility, and provides leadership in assuring that all categories of handicapped individuals receive equitable consideration for access to services.

D. 30 Delegations of Authority. (a) Except as provided in part A, chapter AA of the DHEW Organization Manual and in this section, the Assistant Secretary for Human Development Services is delegated the following authorities by the Secretary:

1. The authority vested in the Secretary by titles I, II, III, and IV of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, and extended by the Rehabilitation Act Extension of 1976, Pub. L. 94-230 (22 U.S.C. 701 et seq).

2. The authority vested in the Secretary by the Randolph-Sheppard Vending Stand Act, Pub. L. 74-732, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516 (20 U.S.C. 107).

3. The authority vested in the Secretary by section 222(d) of the Social Security Act (42 U.S.C. 422(d)), authorizing vocational rehabilitation services to SSDI beneficiaries from social security trust funds.

4. The authority vested in the Secretary by section 1615(d) of the Social Security Act (42 U.S.C. 1382(d)), authorizing the program of vocational rehabilitation services to supplemental security income recipients funded by the public funds.

5. The authority vested in the Secretary by sections 1611(e)(3), 42 U.S.C. 1382(d), and 1633, 42 U.S.C. 1383(b), to enter into and administer agreements with State vocational rehabilitation agencies for the referral of certain SSI recipients medically determined to be drug addicts or alcoholics to a treatment facility and for the monitoring of the treatment of such individuals. This includes the authority to approve institutions or facilities to be utilized for such treatment. The following restrictions shall apply with respect to this authority:

i. This delegation must be exercised in accordance with all applicable regulations and Social Security Administration policies.

ii. In States where the State vocational rehabilitation agency has refused to enter into an agreement with HDS, the Commissioner of Social Security retains authority to enter into agreements under section 1633 with other appropriate State agencies to carry out the provisions of section 1611(e)(3) of the Social Security Act, and to approve or disapprove institutions or facilities for the purpose of providing for the referral and monitoring of treatment received by drug addicts and alcoholics at such institutions or facilities.

iii. The authority to terminate agreements with State vocational rehabilitation agencies shall be exercised jointly by SSA and HDS.

iv. All model agreements shall be developed jointly by SSA and HDS, and approved by the Office of the General Counsel.

6. The authority vested in the Secretary by the Developmentally Disabled Assistance and Bill of Rights Act, Pub. L. 94-103 (42 U.S.C. 6001 et seq.).

7. The authority vested in the Secretary by section 303 of the Public Health Service Act (42 U.S.C. 242a) to administer the Hospital Improvement Program/Hospital In-service Training Program, to the extent necessary to carry out the functions exercised, as of August 1, 1967, by the Division of Mental Retardation, to make hospital improvement project grants, including institutional improvement project grants and in-service training projects to hospitals or other institutions for the mentally retarded, to the extent of funds allocated to OHDS for this purpose.

8. The authority vested in the Secretary by title V, section 513 of the Public Health Service Act (42 U.S.C. 229(b)) to conduct evaluation of developmental disabilities programs authorized by Pub. L. 88-164, the Mental Retardation Facilities and Community Mental Health Centers Construction Act, as amended by Pub. L. 94-103, the Developmentally Disabled Assistance and Bill of Rights Act (42 U.S.C. 6001 et seq.), and section 303 of the Public Health Service Act (42 U.S.C. 242(a)).

9. The authority vested in the Secretary by letter dated September 1, 1960, to the Secretary of the Treasury from the Director, Bureau of the Budget, authorizing the carrying out of programs under section 104(k), now section 104(b)(3) of the Agricultural Trade Development and Assistance Act of 1954, Pub. L. 83-480 (7 U.S.C. 1704(b)(3)), insofar as this authority pertains to the mission of the Office of Human Development Services, including the portion of this authority delegated as pertaining to the mission of the Rehabilitation Services Administration. *Provided*, That, these authorities shall be exercised in accordance with applicable policies and procedures established by appropriate authorities to insure consistency with basic foreign policy and with related Federal programs.

10. The authority vested in the Secretary by section 4 of the International Health Research Act of 1960, Pub. L. 86-610 (22 U.S.C. 2102), with respect to responsibilities relating to the mission of the Office of Human Development Services, including the portion of this authority delegated as pertaining to the mission of the Rehabilitation Services Administration. *Provided*, That these authorities shall be exercised in accordance with applicable policies and procedures established by appropriate authorities to insure consistency with basic foreign policy and with related Federal programs.

11. The Assistant Secretary for Human Development Services continues as the designee of the Secretary to be Chairman of the Architectural and Transportation Barriers Compliance Board in accordance with the provisions of title V, section 502(a) of the Rehabilitation Act of 1973, as amended by Pub. L. 93-516 and extended by Pub. L. 94-230 (22 U.S.C. 792). To the Assistant Secretary for Human Development Services are delegated all authorities and functions vested in the Secretary by the said provision. (This delegation is not subject to the reservation of authority to the Secretary as

contained in part A, chapter AA of the Department Organization Manual.)

12. The authority vested in the Secretary to administer the Project Headstart Program and the Day Care Projects Program pursuant to title V, parts A, C, and D, of the Headstart, Economic Opportunity, and Community Partnership Act of 1974, Pub. L. 93-644 (42 U.S.C. 2921 et seq.).

13. The authority vested in the Secretary to administer the provisions of title IV-B of the Social Security Act (42 U.S.C. 620 et seq.), pertaining to child welfare services (including grants or portions of grants for child welfare services in the Northern Mariana Islands, as established by Pub. L. 94-241, Covenant to Establish a Commonwealth of Northern Mariana Islands (28 U.S.C. 1681).

14. The authority vested in the Secretary by section 426 of the Social Security Act (42 U.S.C. 626) to administer the Child Welfare Services Research, Demonstration, and Training Projects Program.

15. The authority vested in the Secretary by the Organic Act of the Children's Bureau (the Act of April 9, 1912), 42 U.S.C. 191 et seq.).

16. The authority vested in the Secretary by the Child Abuse Prevention and Treatment Act of 1974, Pub. L. 93-247 (42 U.S.C. 5101 et seq.) as amended by section 557(d) of Pub. L. 93-644, as amended by the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Pub. L. 95-266.

17. The authority vested in the Secretary to administer child development activities under section 202 of the Appalachian Regional Development Act of 1965, as amended by Pub. L. 94-188, the Regional Development Act of 1965 (40 APP U.S.C. 202).

18. The authority vested in the Secretary to administer the Runaway Youth Program under the Runaway Youth Act, title III of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, as amended by Pub. L. 95-115, the Juvenile Justice Amendments of 1977 (42 U.S.C. 5701 et seq.).

19. The authority vested in the Secretary by the Older Americans Act of 1965, Pub. L. 89-73 (42 U.S.C. 3001 et seq.).

20. The authority vested in the Secretary by the Native American Programs Act of 1974, title VIII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2991 et seq).

21. The authority vested in the Secretary to administer the provisions of titles I, IV-A, X, XIV, XVI, and XX of the Social Security Act pertaining to grants or portions of grants under these authorities related to social services in the Islands and Trust Territories (including the Northern Mariana Islands, as established by Pub. L. 94-241, Covenant to Establish a Commonwealth of Northern Mariana Islands, 28 U.S.C. 1681).

22. The authority vested in the Secretary to administer the provisions of title XX of the Social Security Act (42 U.S.C. 1397).

23. The authority vested in the Secretary to administer the provisions of title IV-A, section 402(a)(19)(G) of the Social Security Act—Grants to States for Aid and Services to Needy Families with Children—Work Incentive Program Formula Grants (45 U.S.C. 602).

24. The authority vested in the Secretary pursuant to section 1110, title XI of the Social Security Act (42 U.S.C. 1310), Cooperative Research and Demonstration Projects, insofar as this authority pertains to the mission of the Office of Human Development Services and to the extent of funds allocated to OHDS for this purpose.

25. The authority vested in the Secretary to administer Research and Demonstration Projects under section 1115, title XI of the Social Security Act (42 U.S.C. 1315) and to recommend approval of new projects to the Secretary where special Federal project funds are involved. This authority shall be exercised insofar as this authority pertains to the mission of the Office of Human Development Services and to the extent of funds allocated to OHDS for this purpose.

(b) *Limitations on authority.* 1. No State plan or amendment thereto submitted pursuant to any statute administered by the Assistant Secretary for Human Development services shall be finally disapproved without prior consultation and discussion by the Assistant Secretary for Human Development Services with the Secretary.

2. An application for designation as a State licensing agency under the Randolph-Sheppard Vending Stand Act, Pub. L. 74-732, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516 (20 U.S.C. 107), shall not be disapproved, nor shall a designation made pursuant to that act be revoked, without prior consultation and discussion by the Assistant Secretary for Human Development Services with the Secretary.

3. The authority delegated for titles I, II, and III of the Rehabilitation Act of 1973, as amended, shall be redelegated to the Commissioner, Rehabilitation Services Administration, in compliance with provisions of section 101(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516. The authority delegated for title IV of the Rehabilitation Act of 1973, as amended, may be redelegated.

4. The authority delegated for the Randolph-Sheppard Vending Stand Act, as amended, shall be redelegated to the Commissioner, Rehabilitation Services Administration, in compliance with section 203(a)(1) of the Randolph-Sheppard Act Amendments of 1974 (title II, Pub. L. 93-516).

(c) *Continuation of authorities.* Except as inconsistent with the reorganization orders of July 26, 1977 and April 18, 1978, all regulations, rules, orders, statements of policy and interpretations with respect to the Office of Human Development Services and the Offices of the Regional Administrators for Human Development Services, heretofore issued and in effect prior to the reorganization orders of July 26, 1977 and April 18, 1978, or to become effective subsequent to these orders, are continued in full force and effect.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF HUMAN DEVELOPMENT SERVICES

DA.00 Mission. The Office of the Assistant Secretary for Human Development Services (HDS) advises the Secretary and Under Secretary on, and provides leadership and direction to, human services programs for such groups as the elderly, children, youth, families, native Americans, persons living in rural areas, handicapped persons, and public assistance recipients. Recommends to the Secretary actions and strategies which improve coordination of human services programs among HEW programs, other Federal agencies, State and local government, and private sector organizations. Directs, coordinates, manages, and provides leadership in planning and developing HDS programs; supervises use of research and impact evaluation funds; and promotes the development of simplified and coherent human services delivery systems. Is responsible for directing coordinated public affairs, legislative, and regional and intergovernmental relations activities.

DA.10 Organization. The Office of Human Development Services is headed by the Assistant Secretary for Human Development Services (ASHDS), who reports directly to the Secretary, and consists of:

Immediate Office of the Assistant Secretary for Human Development Services (DA)
Office of Regional and Intergovernmental Relations (DAR)
Office of Legislative Affairs (DAL)
Office of Public Affairs (DAP)

DA.20 Functions. A. The Immediate Office of the Assistant Secretary for Human Development Services (DA) provides executive direction, leadership and guidance to all HDS components, including the regional offices of HDS. ASHDS serves on the national coordinating committee for the work incentive program (WIN), which estab-

lishes uniform reporting and similar requirements for the administration of WIN and establishes and clarifies policy under these regulations. Serves as the designee for the Secretary of HEW on the Architectural and Transportation Barrier Compliance Board. The Deputy Assistant Secretary for Human Development Services (DASHDS) acts as the Assistant Secretary in the absence of the ASHDS. In addition to the immediate office, there are the following staffs:

1. Office of Regional and Intergovernmental Relations (DAR) serves as principal adviser to ASHDS on intergovernmental matters and regional concerns; provides HDS liaison with State and local governments, public interest groups and other voluntary organizations; develops, in conjunction with the Office of Planning, Research, and Evaluation, mechanisms for outside groups to participate in HDS planning, policy, and program development; assists in the formulation of policies on the delivery of services and advises on shaping assistance to meet specific needs. Provides leadership, management oversight, coordination, evaluation, and administrative direction to the regional administrators. Works with OPMC to develop, implement, and review regional office performance standards; assists the ASHDS and DASHDS in identifying and resolving problems involving regional operations; provides the staff work necessary for field visits to HDS regional offices by personnel within and outside HEW, including preplanning and follow-up work for the Assistant Secretary's travel. Serves as HDS liaison with the Deputy Under Secretary for Intergovernmental Affairs. Represents within the Department the concerns of veterans focusing attention on those with special needs: The handicapped, minorities, undereducated, unemployed, untrained, and those ineligible for benefits because of type of discharge. Is the focus within the Department for inter-agency activities and communication concerning veterans; and represents the Department on inter-departmental committees and task forces concerned with removal of barriers preventing veterans from full participation in society. Reviews programs and policies within the Department that affect veterans; develops and presents strategies, proposals, and plans for expanding services to veterans within HEW, placing emphasis on increased veteran participation in ongoing programs of the Department. Maintains liaison for the Department with veterans' organizations in the public and private sector.

2. Office of Legislative Affairs (DAL) serves as principal contact point for congressional or legislative issues affecting HDS. Counsels and advises ASHDS and program commissioners on various aspects of congressional relations and legislation. Develops legislative guidance for ASHDS approval and monitors implementation. Coordinates information and technical assistance provided to congressional committees, Members of Congress and their staffs.

Assists in the development of legislative proposals and programs for HDS. Prepares or coordinates the preparation of analyses on legislation, position papers, and reports of proposed legislation; assists in the preparation of testimony and backup material on HDS legislative proposals before Congress; monitors hearings and other congressional activities which affect HDS; coordinates constituent group concerns about legislation which affects HDS programs. Keeps the calendar of expiring legislation and key legislative activities, such as hearings. Serves as HDS liaison with the Office of the Assistant Secretary for Legislation and coordinates congressional relations activities with that office.

3. Office of Public Affairs (DAP) plans and implements public information activities and projects of national scope which involve the ASHDS and DASHDS. Develops and implements a public affairs strategy for HDS. Exercises review and approval responsibility over annual public information work plans of HDS components and other aspects of public affairs, as mandated by Office of the Assistant Secretary for Public Affairs in its Public Affairs Manual; serves as HDS liaison with OASPA; responsible for evaluation and oversight of HDS program administration public information activities and products; plans and implements a field liaison program with State public information officers of programs related to HDS. Provides centralized printing management and graphics design services to HDS, and exercises printing authority to deal directly with contractors and, through the Government Printing Office, with printers; represents HDS in activities involving major print and broadcast media; provides centralized publication and audiovisual distribution servies for all HDS agencies. Serves as the Freedom of Information office for HDS.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF HUMAN DEVELOPMENT SERVICES

Office of Policy and Management Control

DU.00 Mission. The Office of Policy and Management Control (OPMC) develops and implements procedures, processes, and systems for carrying out major management review and control activities for HDS. Provides leadership and advice to all HDS components in the area of policy and management control. Directs equal employment opportunity and civil rights policies and programs for HDS. Formulates policies and procedures for changing organizational structure, utilizing manpower resources, and using consultant services. Is responsible for executive secrtariat, operational planning, and regulations and policy coordination functions.

DU. 10 Organization. The Office of Policy and Management Control is headed by a Director, who reports directly to the Assistant Secretary for Human Development Services, and consists of:

Office of the Director (DU)
Division of Management Analysis and Review (DUM)
Executive Secretariat (DUS)
Division of Policy Coordination (DUP)
Division of Equal Opportunity and Civil Rights (DUE)

DU.20 Functions. A. Office of the Director (DU) provides executive leadership to OPMC. Coordinates the development of policy throughout HDS and assures consistency of policy interpretation among various program and staff offices. Exercises leadership in compliance and affirmative action activities and provides administrative support for equal employment opportunity efforts. Oversees the responsibilities of the four operating divisions.

B. Division of Management Analysis and Review (DUM) plans, organizes, and conducts surveys and management reviews of processes or functions in HDS program and staff components. Serves as HDS principal staff for examining organization and management problems of particular interest to the Assistant Secretary. Performs analyses of the overall organizational structure and functions of HDS and the elements which comprise HDS. Coordinates preparation of or prepares organizational proposals requiring Secretarial approval. Serves HDS committee management office. Administers consultant services management procedures within HDS, including performance of certification reviews of contract proposals for management consultant services as defined by Chapter 8-15 of the HEW General Administration Manual. With OAM and OPRE, develops and maintains a human resources management program, including development of information for the budget formulation process. Maintains official organization files for HDS, including organization charts, and disseminates these materials as appropriate throughout HDS. Prepares formal delelgations of authority for the ASHDS; coordinates the development of standards for and

conducts Regional Office/Central Office Performance reviews.

C. Executive Secretariat (DUS) ensures that issues requiring the attention of the ASHDS, DAS, or HDS Executive Staff are developed on a timely and coordinated basis. Facilitates decisions on matters requiring immediate action including special reports and Secretarial assignments. Serves as HDS liaison to HEW Executive Secretariat. Manages the Secretary's major initiatives tracking system (MITS) with HDS. Aids in formulation of and tracking the operational objectives developed by each HDS unit for the Assistant Secretary. Provides assistance and advice HDS staff on the development of responses to correspondence and on the content and style of special assignments. Tracks development of periodic reports and facilitates Departmental clearance. Exercises quality control for all major written products for the ASHDS and DASHDS signature. Included in the Executive Secretariat is the Correspondence Control Center which receives, assesses, and controls incoming correspondence and assignments to the appropriate HDS unit for response.

D. Division of Policy Coordination (DUP) designs, implements, and coordinates a uniform policy development, regulatory, and issuance system for HDS and acts as HDS principal liaison for these functions. Implements special HDS and Departmental regulatory reform initiatives; provides substantive HDS input as Departmental meetings on regulatory matters; staffs the Secretary's regulations review panels and represents HDS on all policy and regulatory matters. Coordinates with Genral Counsel on all legal matters. Coordinates Privacy Act functions for HDS.

Provides analysis of HDS statutory authorities to identify policy issues and alternatives for the Assistant Secretary to guide the substantive development of regulations and other policy documents. Prepares guidance that outlines the policy implications of HDS legislative and regulatory authorities and documents for Assistant Secretary issuance. Negotiates and resolves policy and regulatory issues between HDS administrations and other HEW POCs and OS. Performs analyses of legal decisions, opinions, rulings, and other legal instruments affecting HDS policies. Designs and provides training and technical assistance to program administrations, regional components, and HDS consistuencies. Assists program administrations in establishing a regulations development capacity. Controls the HDS calendar of regulatory activities; coordinates with fiscal, administrative and legislative cycles for HDS.

E. Division of Equal Opportunity and Civil Rights (DUE) provides overall direction and leadership on equal employment opportunity and civil rights policies and programs; plans, develops, and evaluates programs and procedures designed to eliminate discrimination in employment, training, incentive awards, promotion, and career opportunities. Assures nondiscriminatory implementation and operation of Federally supported HDS programs and projects; receives and arranges for investigation of complaints of discrimination; signs and negotiates proposed dispositions of complaints for the Assistant Secretary for Human Development Services. Develops, implements and monitors the HDS affirmative action plan. Develops and implements evaluations designed to assess overall EEO program progress. Maintains liaison with various non-Federal organizations and State and local governments concerned with equal opportunity and civil rights; represents minorities, handicapped individuals, and women by identifying particular problems and recommending solutions related to their employment, career development, and upward mobility. Implements the disadvantaged enterprise program as mandated under section 8(a) of the Small Business Act, serves as focal point for 8(a) contracts by advising minority enterprises of potential opportunities; participates in procurement planning to ensure that 8(a) affirmative action objectives are met; and keeps key program and procurement officials apprised of the 8(a) program through conferences, seminars and presentations. Monitors, in coordination with OCR, the civil rights compliance of recipients of HDS funds. Serves as HDS liaison with the HEW Office for Civil Rights, the OS EEO Office, and ASPER on related responsibilities.

Department of Health, Education, and Welfare

Office of Human Development Services

Office of Planning, Research, and Evaluation

DV.00 Mission. The Office of Planning, Research, and Evaluation (OPRE) develops and coordinates major planning, evaluation, research and systems development activities for HDS. Designs operations research models and other scientific techniques for objective analysis of program impact and needs assessment. From an HDS perspective evaluates and presents alternative solutions to program issues. Assesses and recommends improvements for program and planning systems. Coordinates research and evaluation activities, program analysis and planning. Develops an overall HDS program data systems capability and coordinates operation of data systems throughout HDS. Acts on behalf of top level management in the design of an HDS national model for social services policy development.

DV.10 Organization. The Office of Planning, Research, and Evaluation is headed by the Director, who reports directly to the Assistant Secretary for Human Development Services, and consists of:

Office of the Director (DV)
Office for Planning and Evaluation (DVP)
Office for Program Systems Development (DVS)

DV.20 Functions. A. Office of the Director (DV) serves as the advisor to the Assistant Secretary for Human Development Services for broad program policy formulation, analysis and implementation, program planning, research, evaluation, and systems development. Interacts on behalf of the Assistant Secretary with the Assistant Secretary for Planning and Evaluation on all evaluation and planning matters. Provides leadership and guidance and coordinates the activities of the organizational elements of OPRE. Establishes internal management priorities and policies. Develops office goals and objectives and tracks operating costs and accomplishments. Monitors workload, evaluates OPRE performance and determines resources needs and allocation. Provides leadership and coordination of OPRE activities in the areas of financial management, contracts and grants, personnel management, organization, and management systems and studies. Reviews program requirements estimates for funds and staff and prepares budgets to support program plans. Provides administrative support in all areas and maintains liasion in program and staff areas to support the OPRE mission.

B. Office for Planning and Evaluation (DVP), headed by a Deputy Director, identifies long term objectives for HDS and develops alternative policies and strategies for achieving objectives; addresses program policy development in the overall sphere of human services; establishes a framework for program policy development, research, and demonstration (domestic and international), evaluation, and analysis for HDS; and develops HDS criteria for ZBB development. Assesses current and proposed legislation using input from the latest research, demonstration, and evaluation efforts and program experience from State and local delivery systems.

Reviews testimony and backup materials for presentation to Congressional committees. Interacts with HDS program administrations on bureau-wide program policy issues, including planning and evaluation; initiates, reviews, and coordinates all planning systems

cycles for HDS; and provides guidance to HDS components for plan development. Establishes and maintains programmatic calendar of HDS events. Assesses HDS program objectives and accomplishments; directs and initiates evaluation studies; monitors and provides leadership, technical assistance, guidance, and coordination to HDS program administrations in evaluation matters; and formulates the HDS evaluation plan. Provides guidance, technical assistance, and advice to program administrations in the area of research and demonstration (domestic and international) and monitors their activities. Transforms, disseminates, and translates HDS research products for application. Assesses proposed, ongoing, and completed projects; initiates action to assure that proper emphasis is given to transforming the findings; and disseminates vital data aimed at improving the quality and effectiveness of the human services systems. Provides direction and coordinates the HDS research and demonstration plan. Directly manages projects of a crosscutting nature.

Conducts and participates with the Department in analyses affecting HDS and provides HDS input into major initiatives of other principal operating components. Aids the Office of Legislative Affairs in addressing and analyzing policy options and Congressional initiatives. Explores and advances policy development in the social service area. Provides impact analyses of initiatives for inclusion in the HDS budget.

C. Office for Program Systems Development (DVS), headed by a deputy director, plans, specifies, develops, and delivers automated and nonautomated systems for management and administration. Assesses, develops, and establishes HDS systems in the areas of information and data collection, development, and design, social statistics, forecasting, analysis, data processing, reporting, and a mechanism for reviewing State and local data systems. Identifies operating problems and proposes solution strategies. Reviews regulatory and statutory authority that relates to statistical program reporting requirements in HDS. Develops policies and standards for data reporting requirements in HDS and plans, evaluates, and coordinates reporting requirements for States. Evaluates States' systems requirements from a national perspective and identifies need areas and model systems to fulfill those requirements. Develops and maintains an inventory of State and Territorial systems and assists States and other Federal agencies in developing systems that provide statistics on services delivery to clients, services delivery trends, and forecasts of further needs. Reviews and approves applications from States for Federal financial participation in the acquisition of ADP equipment and services. Prepares forecasts and projections of client populations and program expenditures for HDS programs. Designs, develops, tests, and operates a dynamic computer micro-analytic simulation model system for HDS. Directs, coordinates, and leads the HDS program of assistance to States on development and better utilization of statistical and forecasting techniques. Develops statistical concepts, analytical methods, and sampling procedures for HDS, State, and local agencies. Manages the HDS and OMB reports clearance process. Evaluates internal HDS systems requirements; identifies need areas; and recommends model systems for application. Computerizes the processing of data for HDS. Conducts analyses to determine feasibility of automation. Prepares specifications for a complete system design outlining methods for data collection and input, file maintenance, and the processing and reporting of desired information. Carries out computer programing, including testing and debugging. Provides ongoing system maintenance and support. Acts as primary contact with the Department's Data Management Center.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF HUMAN DEVELOPMENT SERVICES

Office of Administration and Management

DB.00 Mission. The Office of Administration and Management (OAM) advises the Assistant Secretary for Human Development Services on matters of administration and management inherent in the operation of HDS. Under the guidance and with the approval of the ASHDS, and in consultation with the program administrations and staff offices, provides leadership and direction to administrative and management activities throughout HDS, including: Budget, finance, personnel, grants and contracts, procurement, materiel and facilities management, and similar administrative supporting services. Performs certain services on a centralized basis in each of the above areas for all of HDS, in cooperation with the program administrations, program administrative staff, and other HDS staff offices. Develops and promulgates policies and procedures for effective and efficient administration and management of financial and personnel resources. Provides advice, assistance and guidance to HDS Regional Office units in these areas.

DB.10 Organization. The Office of Administration and Management is headed by the Director, who reports directly to the Assistant Secretary for Human Development Services, and consists of:

Office of the Director (DB).
Budget and Financial Management Division (DBB).
Grants and Contracts Management Division (DBG).
Personnel Division (DBP).
Administrative Services Division (DBM).

DB.20 Functions. A. Office of the Director (DB) directs and coordinates all elements of the Office of Administration and Management; provides leadership and services to all programs and components of HDS, including coordination and implementation activities for grants and contracts, budget, finance, personnel, and administrative services. Initiates new and revised plans of OAM activities and insures that programs are coordinated to maximize the use of HDS resources. Serves as the HDS liaison with the Assistant Secretary for Management and Budget and the Assistant Secretary for Personnel Administration on personnel, budget, and administrative issues.

B. Budget and Financial Management Division (DBB) consolidates, formulates, presents, and executes budget estimates, apportionments, and forecasts of resources relating to the direction and coordination of the financial resources of HDS; participates in planning, directing, and coordinating financial and budgetary programs of HDS. Provides guidance to HDS programs in preparing budgets, justifications, and other budgetary materials. Coordinates with Office of Planning, Research, and Evaluation and affected programs on individual budgets for preparation of a single budget document for presentation to the ASHDS, departmental management, OMB, and the Congress. Assists in planning for and presenting the budget before OMB and the Congress; requests, receives, consolidates, and finalizes materials from HDS programs for testimony at hearings before these bodies. Reviews the budget as approved by Congress and recommends for ASHDS approval a financial plan for its execution; makes allocations to constituent offices within the guidelines of the approved financial plan. Develops and maintains an overall system of budgetary controls to insure observance of established ceilings on both funds and personnel; maintains commitment records against allowances, and certifies funds availability for HDS Staff Offices and certain program administrations as requested. Prepares requests for apportionment of appropriated funds. Maintains control of allotted funds against current obligations, including separate plans for each of the regional offices. prepares spending

plans and periodic status-of-funds reports for the ASHDS. Provides analysis and coordinates accounting reports for HDS. Develops financial operating procedures and manuals, including assuring implementation within HDS of departmental and Federal fiscal policies and procedures. Participates in program development and implementation plans where there are budgetary implications; serves as the HDS liaison with HEW and OMB on all budgetary matters.

C. Grants and Contracts Management Division (DBG) provides centralized management and administration of discretionary grants and contracts for HDS headquarters awards. Assures that all awarded discretionary grants and contracts conform with applicable statutes, regulations, and policies. Serves as the principal office within HDS for assuring that the business aspects of grants administration are carried out. Develops and issues, after consultation with program directors and with the approval of the ASHDS, HDS regulations, policies, instructions, and procedures for the administration of all formula and discretionary grants and contracts.

Provides support, processes all discretionary grant award documents, negotiates amount of grant budget, and makes all contract awards for HDS headquarters offices. Reviews discretionary grants and contracts and recommends action concerning requests for waivers, appeals, deviations, determinations, and findings.

Provides technical assistance to staff of HDS program administrations and staff offices regarding grants and contracts, and provides overall policy direction and technical assistance to Regional Offices. Serves as HDS liaison with GAO, HEW Audit Agency, and the Department's Office of Grants and Procurement on all grant and contractual matters.

D. Personnel Division (DBP) provides leadership and direction in developing and administering the centralized personnel management and administration program for HDS. Provides advice to the Director, OAM, and through that Office to the ASHDS and other HDS key officials on matters relating to the development and execution of personnel policies and programs. Subject to the approval of the ASHDS, develops personnel management objectives, policies, standards, and procedures for personnel operations. Responsible for the development of an HDS-wide personnel policy framework. Within delegated authorities, conducts HDS-wide personnel programs, and provides staff support in such areas as placement and staffing, position classification, employee relations, labor relations, employee development, and training and position and pay management. Coordinates and provides advice and assistance to HDS organizational elements on position classification, recruitment, and placement.

Provides assistance to the regional offices through the development and classification of standard position descriptions, the administration of certain incentive awards and through the administration of certain training activities. Develops plans for ensuring current and future staffing requirements. Participates in personnel matters relating to labor-management relations and coordinates career development activities. Serves as the contact in HDS on personnel matters with the Civil Service Commission, ASPER, and OMB. Provides special studies on personnel matters at the request of the Director, OAM.

E. Administrative Services Division (DBM) provides administrative services and technical staff support to meet the operational needs of constitutent offices that comprise HDS. May provide services directly or through program administration and HDS staff office administrative personnel. Designs, implements through program offices, monitors, and reports on HDS programs in forms management, records maintenance, and disposition, word processing, files management, etc. Develops, implements through program offices, and evaluates HDS space management and planning program. Provides advice and assistance to responsible individuals in program offices. Administers HDS travel policy, and develops and provides advice and assistance to program offices on travel matters. Administers HDS travel policy.

Provides direct special mail and messenger services and coordinates HEW mail service to HDS. Develops and monitors HDS parking policies, and allocations. Obtains and maintains duplicating equipment and services. Develops broad HDS telecommunications plans and places orders for telephone services.

Provides training and technical assistance to program administration and HDS staff office personnel responsible for telephone requests. Provides liaison with HEW on all telecommunications matters. Provides liaison with HEW and through the Department with General Services Administration, Labor Department, Department of Energy, and other Federal agencies, and provides guidance within OHDS on building security, occupational health and safety programs, laboring services, equipment repair services, loan of audiovisual equipment, and conference room control, and, as necessary, maintains contracts for provision of above services. Maintains supply, equipment, and materiel inventories for excess items in storage and for items allocated to program administrations and HDS staff offices.

Controls and reviews all purchase requests against departmental and Federal requirements. Acts as liaison with OS procurement office on small purchases and with the Department's Office of Grants and Procurement on materiel management matters. Provides technical assistance and training to program administration and HDS staff office administrative personnel on materiel management. Conducts materiel surveys. Develops, issues, and maintains HDS internal manuals and directives on administrative management delegations, policies, and procedures; develops and monitors all budgetary projections for standard level user's charge funds, telecommunications costs, and other administrative expenditures. Controls central HDS funding for equipment, furniture, laboring services, and certain other object class categories.

Department of Health, Education, and Welfare

Human Development Services, Administration on Aging

DG.00 Mission. The Administration on Aging (AOA) is the principal agency designated to carry out the provisions of the Older Americans Act of 1965 as amended. Advocates at the Federal level for the needs, concerns, and interests of older people. Advises the Secretary, DHEW agencies, and other Federal departments and agencies on the characteristics, circumstances, and needs of older people and on policies, plans, and programs designed to promote their welfare.

Develops prgram plans, policies, and guidelines; provides advice, assistance, and consultation to promote the development of State-administered, community-based systems of comprehensive social services for older people. Conducts programs of research, model, and demonstration projects, and training and education projects designed to enhance achievement of the goals and objectives established in title I of the Older Americans Act of 1965, as amended. Assesses national manpower requirements in the field of aging, and develops plans and projects for responding to manpower needs. Operates a National Clearinghouse on Aging, conducts a program of public information and public education on aging, develops and disseminates information on aging.

Conducts interagency activities to expend knowledge of aging, and to increase awareness about the nature of aging processes and the needs of older people.

DG.10 Organization. The Administration on Aging is headed by a Commissioner who develops and directs

the program of the Administration on Aging and reports directly to the Assistant Secretary for Human Development Services. The Administration on Aging consists of:

Office of the Commissioner (DG)
Federal Council on Aging Staff (DG-1)
Office of Management and Policy Control (DGQ)
  Division of Policy Control and Planning (DGQ1)
  Division of Management and Budget (DGQ2)
Public Information Office (DGB)
Office of Program Operations (DGN)
  Division of Program Management (DGN1)
  Division of Program Operations Analysis (DGN2)
Office of Program Development (DGS)
  Division of State and Community Programs (DGS1)
  Division of Service Development (DGS2)
Office of Education and Training (DGE)
  Division of Education and Career Preparation (DGE1)
  Division of Continuing Education and Training (DGE2)
National Clearinghouse on Aging (DGT)
Office of Research, Demonstration, and Evaluation (DGR)
  Division of Research and Evaluation (DGR1)
  Division of Model Projects and Demonstrations (DGR2)

DG.20 Functions. A. Office of the Commissioner (DG) establishes priorities, sets policies, and directs plans and programs conducted by the Administration on Aging. Advises the Assistant Secretary and heads of DHEW agencies administering programs which impact on the lives of older people.

Serves as an advocate for older people with other departments and agencies of the Federal Government and with voluntary organizations, and undertakes plans to coordinate activities in behalf of older people. Assures affirmative action through the aging system.

Stimulates and coordinates AOA international activities in research, training, and technical assistance; and coordinates AOA international activities with those of the HDS level international offices. Cooperates with multilateral international agencies, such as the United Nations, in planning and participating in international conferences and meetings. Arranges for visits of personnel interested in aging from other nations and assists U.S. personnel in arranging visits to other countries.

The Deputy Commissioner is the Commissioner's principal associate in carrying out the mission of the agency.

B. Federal Council on Aging Staff (DGC) provides general staff support for a Presidential level advisory body, the Federal Council on Aging (FCA); provides all meeting and hearing arrangements. Prepares an annual report for the Congress and such other reports as are required by such authority as contained in the Federal Advisory Committee Act. Conducts or supervises the production of studies, research, or analysis of various matters affecting the elderly as background for Council deliberations and recommendations.

C. Office of Management and Policy Control (DGQ) is responsible for policy analysis and development, long- and short-range planning, development of legislation, preparation of required reports, budget development, and presentation of justifications for the annual budget request, and provision of management services. Coordinates with appropriate HDS staff offices in carrying out these functions.

1. Division of Policy Control and Planning (DGQ1) conducts policy analyses on a wide range of basic program issues affecting AOA or programs for the aging. Reviews legislation and research, demonstration, and evaluation findings for planning and program implications; develops strategies for goal achievement; develops and recommends priorities to the Commissioner; coordinates preparation of the AOA long-range plan with appropriate input from other AOA elements; monitors short-range planning initiatives; assists other AOA components in planning; and coordinates with OPRE/HDS on planning issues and development. Develops AOA legislative proposals; in coordination with HDS and OS legislative staff, identifies policy issues in proposed legislation and regulations; coordinates development within AOA of proposed legislation and regulations; develops bill reports as requested, obtains information on State legislation on aging; publishes periodic information for the States on new legislation on aging; and works with States and regional offices to develop model State legislation as appropriate. Coordinates preparation of annual AOA reports to the President and Congress.

Coordinates with Division of Management and Budget to insure that budget proposals and narrative justifications are consistent with AOA plans and policies.

2. Division of Management and Budget (DGQ2) administers and coordinates budget formulation in accordance with ASHDS guidelines and instructions. Exercises funds controls for all formula grants, discretionary and S. & E. accounts. Processes AOA fiscal documents required to make and manage grants and contracts; and tracks financial status of all AOA programs and salaries and expenses funds. Develops, with the Office of Administration and Management/HDS, accounting standards for State and area agencies and multipurpose senior centers, and responds to audit issues raised by DHEW audit reviews. Based on formula grants management policies and procedures approved by the ASHDS, controls administrative accounting and reprograming of formula grant funds. Coordinates with OAM/HDS in providing management services, including personnel and administrative services to AOA. Conducts internal management analyses and serves as liaison with counterpart HDS components.

In cooperation with Executive Secretariat/HDS, operates the AOA Executive Secretariat, including correspondence control functions and other workflow control services for the Office of the Commissioner; and maintains special document files required to conform to Federal policies and internal management policies. Coordinates and controls the issuance of AOA policy documents, including program instructions, technical assistance memoranda, and other policy issuances; and administers word processing system for AOA.

D. Office of Public Information (DGB) in coordination with the HDS Office of Public Affairs, develops and distributes professional and lay publications and audiovisual materials about older people and programs and services for older people; prepares and issues brochures, factsheets, news releases, exhibits, and films on the needs and concerns of older persons, and measures to improve the circumstances, available services, and environment for the older population. Develops and implements a public affairs strategy for AOA; represents AOA in activities involving print and broadcast media. Develops special information campaigns to inform older people about new benefits and services and fosters the annual Older Americans Month. Serves as liaison with the Office of Public Affairs/HDS in providing centralized publications and audiovisual services for AOA. Distributes numerous publications prepared by AOA, by other agencies of HEW, and by other Federal departments and agencies; and assists other AOA offices in designing and processing monographs, reports, and directories. Coordinates with the Office of Public Affairs/HDS in handling Freedom of Information Act functions. Acts as liaison to the HDS Office of Public Affairs.

E. The Office of Program Operations (DGN) is responsible for supervising and directing the activities of the 10 regional offices of the Administration on Aging in the execution of their responsibilities under the Older Americans Act. Implements the policy and program development functions of AOA in the field through provision of guidance, direction, and information concerning AOA programs to the staff

of the regional offices. Operational contacts between AOA central and regional offices are through the Office of Program Operations.

Issues substantive operating procedures to guide regional offices in the conduct of their responsibilities; regularly assesses the performance of regional office staff against the established procedures. Coordinates the processing and approval of State plans based on recommendations of the regional offices. Is responsible for collection, analysis, and distribution of program performance data on Older Americans Act programs. In consultation with OPMC/Division of Equal Opportunities and Civil Rights, provides guidance to regional offices on a variety of management issues relating to such areas as civil rights, minority contracting, age discrimination, and handicapped regulations.

1. Division of Program Management (DGN1) provides day-to-day direction and technical assistance to regional offices to assure proper and effective implementation of Older Americans Act programs. Develops guidance for, and assists in the development of, annual regional work plans, and monitors their implementation.

Coordinates with the Office of Management and Policy Control/AOA to assure that proper administrative support and financial resources are available to enable the regional offices to carry out their responsibilities. Coordinates with other AOA offices to enable regional offices to provide timely information and technical assistance to existing and potential grantees of AOA discretionary programs, and manages regional office monitoring of AOA discretionary grant activities. Provides assistance relative to merit system standards and their implementation by State agencies. Works with other AOA offices to assure that timely responses to requests for policy interpretation and technical assistance from State agencies and other grantees are provided to the regional offices. Represents AOA in discussions with field coordination units at the HDS and D/HEW levels. Coordinates with the Office of Regional and Intergovernmental Relations/HDS on regional concerns.

2. Division of Program Operations Analysis (DGN2) develops and operates the management information system of the Administration on Aging which is primarily concerned with the effectiveness and efficiency with which services are delivered. Coordinates and conducts special studies, program analyses, and evaluations as the Commissioner may direct. Prepares reports on program operations under titles III, V, and VII for the Commissioner, other AOA offices, Office of the Secretary, the Congress, and the public. In coordination with the Office of Management and Policy Control/AOA, assures the proper analysis and resolution of audit findings by regional offices for final action by the Commissioner. Is responsible for developing profiles of State agencies and area agencies and the programs of State agencies. Through the analysis of State plans, evaluation findings, audit reports, and quarterly progress reports, prepares early warnings of program and management issues. Compiles a variety of analyses on special issues of regional and State agency concern.

Maintains a calendar of central office/regional office requests to prevent overloading and duplicative demands on staff and defines priorities and expectations for regional office activities. Maintains information on the professional development and technical capacity of regional staff, and recommends and fosters the development of training opportunities to assure a regional staff capacity for responding to emerging program and management demands. Coordinates the processing of State plans for final action by the Commissioner.

F. Office of Program Development (DGS) develops policies and program plans, regulations, and program instruction to improve facilities, programs, and services available to the Nation's older population for service programs administered by the Administration on Aging under the older Americans Act. Fosters, oversees, assists, and assesses the development of State-administered, community-based systems of social services as authorized under titles III, V, and VII of the Older Americans Act and related acts.

Develops innovative programs and services and seeks to improve access to and efficiency of service delivery. Develops service delivery system components in AOA long- and short-range plans. Maintains information on programs in other Federal agencies and national voluntary agencies which have potential for relating to State and area aging activities.

1. Division of State and Community programs (DGS1) develops regulations, policies, and guidelines for use by State and area agencies on aging, and other local agencies and organizations responsible for programs under titles III, V, and VII of the act. Provides technical assistance to regional personnel on such policy, through the Office of Program Operations. Coordinates analysis of approved State plans to identify patterns, emerging issues, and policy implications, and makes recommendations to the Commissioner.

2. Division of Services Development (DGS2) develops proposals for modifying service programs and developing new programs based on results of evaluation impact studies and increasing knowledge about specialized needs and changing circumstances of older people.

Develops optional models and disseminates "best practice" suggestions for use by the regional offices, State and area agencies on aging; and develops technical assistance materials. With assistance of the Office of Education and Training, develops technical assistance materials and inservice training curricula targeted at building the capabilities of State and area agency staff and other social service programs.

Conducts special pilot projects which are usually national in scope, crosscutting with other HDS program and HEW agencies, other Federal agencies, and national voluntary organizations. Develops and implements new initiatives, often in collaboration with public agencies and voluntary organizations. Develops and manages onetime interagency national program initiatives. Collaborates with other Federal agencies in development of measures to assist older people on such matters as the need for long-term care appropriate to their circumstances, legal problems, victimization, and suitable living arrangements.

G. Office of Education and Training (DGE) administers programs to increase the supply of trained personnel in the field of aging; to increase knowledge in other professional fields of the processes of aging and the circumstances and requirements of older people; and to increase the availability, accessibility, and adequacy of training and educational programs on aging within educational institutions throughout the country. Conducts continuing studies and periodic review of manpower needs and resources in the field of aging; develops and monitors a national plan for increasing these resources; and prepares reports thereon for the Administration on Aging, the Federal Council on Aging, the Office of the Secretary, the President, and the Congress. Develops policies and fosters short term and in service training programs for increasing competencies of personnel employed in the field of aging and in related fields. Develops the manpower and training components of AOA long and short range plans. Encourages and affords partial support for multidisciplinary centers of gerontology authorized in Title IV-C of the Older Americans Act. Coordinates education and manpower development activities of AOA with similar activities of other Federal agencies and of professional and voluntary organizations in the field of aging. Develops the plan for the White House conference on aging.

1. Division of Education and Career Preparation (DGE1) administers a program for developing curricula and providing training related to preparation for careers in the field of aging through grants to or contracts with educational institutions with programs for personnel preparing for professional teaching, research, or other careers in aging, as well as paraprofessional careers. Makes grants primarily to public and private institutions of higher education for planning, developing, and operating multidisciplinary centers of gerontology designed to serve the purposes set forth in Title IV-C of the Older Americans Act. Provides technical assistance and consultation relative to education and training needs and programs to States and educational institutions and organizations at all levels. Develops criteria for evaluating the effectiveness of education and career training programs and the performance of AOA grantees and contractors, and coordinates through the Office of Program Operations the Regional Office monitoring of discretionary grants and projects.

2. Division of Continuing Education and Training (DGE2) develops and administers a program in staff development and continuing education for personnel in the field of aging and for established professional and paraprofessional personnel in related fields who seek to develop competencies for work in the field of aging. Allocates manpower developmnent funds to State agencies on aging for the use of State and area agencies in conducting and supporting short term training for network personnel and personnel of provider agencies, including lay volunteers, to improve their competencies for serving older people. Develops criteria for evaluating short term training. Develops and disseminates material on occupational information, personnel needs, and job requirements in the field of aging. Designs techniques and instruments for evaluation of education and training programs.

H. National Clearinghouse on Aging (DGT) carries out functions to facilitate access of teachers, students, reserchers, practitioners, and interested members of the general public to rapidly growing literature and basic data in the field of aging. Conceptualizes, develops, and operates directly or by contract a system for collecting, storing, retrieving, and disseminating bibliographic and related information in the field of aging for the use of the national network on aging, teachers, and students, research personnel, personnel of Federal agencies, the Congress, personnel of public and private agencies and organizations, and the general public. Complies, through grants or contracts, a thesaurus on aging, and monthly and annual indexes of new literature on aging, and prepares special reports on particular subjects. Maintains a library of books, monographs, professional journals, and reports on research and demonstration projects supported by AOA and other Federal agencies. Collects and disseminates statistical information on characteristics, circumstances, and needs of older persons. Seeks to develop data collection, analysis, and dissemination programs with other offices and agencies to expand the range of available data and to fill gaps in information. Conducts analysis of data generated by other agencies, and develops reports on this data. Provides consultation on statistical methodology and interpretation to other offices in the Administration on Aging. Complies and organizes demographic information about the older population for use by AOA in making formula grants to the States. Responds to elderly consumers and intervenes with appropriate agencies to assure that older people receive benefits to which they are entitled. Coordinates with Federal, State, and local agencies to assure that consumer problems brought to the attention of AOA are appropriately resolved. Responds to inquiries and request for information about programs and sources of assistance for older persons.

I. Office of Research, Demonstration, and Evaluation (DGR) develops strategies and conducts activities to develop adequate knowledge for developing and testing facilities, programs, and services calculated to improve the environment for older people. Promotes coordination of research and evaluation activities in the field of aging. Oversees the grant and contract activities designed to carry out research, development, and evaluation programs; develops AOA policies and criteria for monitoring grants and contracts supported through the Office. Develops the research, development, and evaluation components of AOA long and short range plans, in coordination with OPRE/HDS.

1. Division of Research and Evaluation (DGR1) assesses the need for and develops strategies, plans and priorities for support of research that will add to knowledge essential to achieving the objectives set forth in title I of the Older Americans Act and for improving services to older persons. Administers the program of research authorized under title IV-B of the Older Americans Act, including monitoring grantee progress and evaluating performance. Promotes coordination of research on aging and utilization of research findings. Administers evaluation of AOA programs and other related national programs affecting older people as authorized by title II, section 202(f)(14) of the Older Americans Act. Develops AOA plans and priorities for evaluation of programs in consultation with appropriate units of the Administration on Aging. Manages contracting for mandated evaluation projects and performs intramural evaluation studies. Prepares reports of the results of program and impact evaluations conducted by and for AOA.

2. Division of Model Projects and Demonstrations (DGR2) develops policies, plans, and priorities for model development and demonstration projects. Administers program of development and demonstration model projects authorized by title III, section 308, and title IV-B of the Older Americans Act, including monitoring progress and evaluation of performance of grantees and contractors. Supports a wide range of innovative projects, including programs and projects in such areas as crime prevention, day care, legal services, transportation, nursing home ombudsman, and elderly housing with assisting services.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF HUMAN DEVELOPMENT SERVICES, ADMINISTRATION FOR CHILDREN, YOUTH, AND FAMILIES

DC.00 Mission. The Administration for Children, Youth, and Families (ACYF) seeks to expand and improve the range of human services which promote sound development of children and youth and are supportive of families. Supports and encourages services which prevent or remedy the effects of abuse or neglect of children and youth. Investigates and reports on methods and approaches for improving and enriching the lives of children and youth and for strengthening American families.

DC.10 Organization. The Administration for Children, Youth, and Families is headed by a Commissioner who reports directly to the Assistant Secretary for Human Development Services (ASHDS) and consists of:

- Office of the Commissioner (DC)
- Office of Public Information and Education (DCE)
- Office of Regional/State and Community (DCR)
- Office of Planning, Research, and Evaluation (DCP)
  - Planning, Management, and Policy Control Division (DCP1)
  - Research, Demonstration, and Evaluation Division (DCP2)
- Office of Developmental Services (DCF)
  - Day Care Division (DCF1)
  - Head Start Bureau (DCF2)
- Office of Services for Children and Youth (DCS)
  - Children's Bureau (DCS1)
  - Youth Development Bureau (DCS2)

DC.20 Functions. A. Office of the Commissioner (DC) provides executive leadership, policy direction, manage-

ment strategy, legislative liaison, and a focus to the Administration for Children, Youth, and Families in the administration of its duties. Serves as adviser to the Assistant Secretary for Human Development Services and other elements of DHEW in the area of children, youth, and families.

B. Office of Public Information and Public Education (DCE) develops a national information dissemination strategy and program to keep ACYF's various constituences, as well as the general public, continually informed about ACYF program goals, activities and results.

Identifies the information needs of the public and furnishes advice and consultation to ACYF Commissioner and program managers concerning those needs. Advises staff on Freedom of Information Act requirements and assures timely responses to requests under the act. In coordination with the HDS Office of Public Affairs, initiates and directs media arrangements for ACYF activities and programs and maintains continuing media relationships and contacts.

Provides leadership, liaison, and technical assistance to regional and appropriate national constituent groups.

C. Office of Regional/State and Community Affairs (DCR) serves as the principal liaison between ACYF headquarters and the 10 regional offices for children, youth, and families; assists in interpreting and disseminates policy and regulations to regional offices; assures regional input in the process of developing policies and regulations; assists in the resolution of issues affecting the regions. Monitors overall activities of the ACYF regional staff with special emphasis on collecting and analyzing data on funding action and other program implementation by the regionals. Serves as expert technical adviser to regional offices in the processing of appeals by headstart grantees, including interpreting the regulations, procuring hearing examiners, and advising the Commissioner on appeals elevated to ACYF level for final decision. Assists the Commissioner in insuring that regional and headquarters staff offices provide equal opportunity to all ACYF employees. Assists the Commissioner in insuring citizen participation in ACYF decisionmaking process. Serves as the Commissioner's staff unit for the enforcement of Executive Order No. 11246 and titles VI, VII, and IX of the Civil Rights Act. Works closely with other ACYF units in headquarters and regions to establish and maintain relationships with national and local public interest groups.

D. Office of Planning, Research, and Evalution (DCP) provides leadership, direction, management strategy, and focus for the activities of the Planning, Management, and Policy Control Division and the Research, Demonstration, and Evaluation Division and Coordinates the activities of these two divisions.

1. Planning, Management, and Policy Control Division (DCP1) develops long-range planning guidance, coordinates, and develops the annual 5-year forward plan; analyzes key program issues; and articulates goals, strategies, and budget projections. Develops guidance for the major initiative tracking system (MITS); coordinates development of operational initiatives and implementation of processes for monitoring and reporting on progress toward achievement of MITS projects. Organizes zero-base budget process; develops policy guidance; and analyzes budgetary proposals. Works with OAM/HDS to prepare budget presentations for use at the departmental, OMB, and congressional levels. Analyzes existing and new legislation and existing and proposed regulations bearing upon programs affecting children, youth, and families; assesses impact on intended beneficiaries and existing services; and, as appropriate, coordiantes development of implementation plans and regulatory materials. Provides and coordinates a central source for administrative services; manages timekeeping and payroll functions; develops staffing plans; coordinates the development of employees training plans; develops space utilization and communication plans; and maintains general liaison with personnel, staffing, and administrative offices at the OHDS level. Manages the Executive Secretariat; maintains correspondence control and other internal agency communications systems; and manages a system for insuring the completion of action items from agency executive staff meetings. Provides primary liaison with OHDS staff offices including OAM, OPRE, and OPMC.

2. Research, Demonstration, and Evaluation Division (DCP2) coordinates planning for section 426 (Title IV-B, Social Security Act) and other ACYF research and demonstration funds, assists with the development of a departmentwide research strategy on children, youth, and families; administers the ACYF evaluation funds; coordinates the development of an ACYF-wide evaluation strategy. Provides leadership to the Federal Interagency Panel on Early Childhood Research and Development and the Federal Interagency Panel for Research and Development on Adolescence; collects, analyzes, and interprets research reports on child and family studies and identifies promising models for service programs; actively promotes the utilization of research findings; serves as clearinghouse for information related to research, demonstration, and findings in the area of child development and the family. Jointly with the National Center on Child Abuse and Neglect, develops policies, priorities, plans, and objectives for research and demonstration activities authorized by Pub. L. 93-247, the Child Abuse Prevention and Treatment Act of 1974, as amended by title I of Pub. L. 95-266, the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978. Directly administers R. & D. efforts related to basic research and demonstration activities; provides coordination with OPRE in research, demonstration, and evaluation activities. Develops ACYF R.D. & E. plan.

E. Office of Developmental Services (DCF) provides leadership, direction, management strategy, and focus for the activities of the Head Start Bureau and the Day Care Division. Coordinates programs of these divisions and serves as advisor to the Commissioner.

1. Day Care Division (DCF1) develops policies, strategies, standards, manuals, and guidance material for the conduct of experiments demonstrations, and operational programs in the field of day care. Identifies the need for applied R. & D. program; designs and monitors nationwide studies. Serves as an advocate for quality day care to meet the needs of children and families. Develops standards and regulations, model legislation, and legislative proposals. Coordinates interagency activities relating to day care policy. Identifies training and technical assistance needs and designs programs for States and local communities. Acts as liaison with the Appalachian Regional Commission. Actively encourages and advises Federal, State, and local providers on the development of effective day care services.

2. Head Start Bureau (DCF2) develops program and administrative management policy for the operation of Head Start programs. Provides guidance and technical assistance to regional offices and local programs. Plans and implements programs and projects to strengthen administrative and management capabilities of Head Start grantees. Develops and manages a system for bureauwide monitoring of regional office implementation of headstart policies, priorities, and systems. Coordinates the annual planning for technical assistance and training for headstart grantees; and develops the annual headstart budget. Designs, tests, and implements systems for data collection from grantees and regional offices describing headstart program activities. Develops and maintains a statistical data base used for analysis

and review of program operations and disseminates findings.

Reviews applications for and makes awards for headstart programs serving primarily native American children or children of migratory workers; monitors and evaluates those programs; and develops and recommends policies for and provides staff support to the funded programs. Plans, provides, or arranges for technical assistance to native American or migrant headstart programs and for training to the staff of these programs. Plans and conducts activities related to child abuse and child welfare services in native American and migrant communities. Provides technical and programmatic counsel and expertise in the areas of medical and dental services, nutrition, mental health services, social services, parent involvement, services to handicapped children, and training and educational programs for staff of local headstart programs. Assesses current policies in these areas and develops improved ones. Plans and administers projects to strengthen these programmatic areas. Plans, develops, tests, and directs the broad scale implementation of innovative programs for comprehensive child development services.

F. Office of Services for Children and Youth (DCS) provides leadership, direction, management strategy, focus, and coordination for the activities of the Children's Bureau and the Youth Development Bureau. Serves as adviser to the Commissioner on children and youth issues.

1. Children's Bureau (DCS1) advises the Commissioner on matters pertaining to condition which affect the general well-being of children. Develops policies and procedures for developing Child Welfare Services State grant program plans authorized under title IV-B of the Social Security Act. Develops and interprets regulations, guidelines, instructions, and State allotments. Develops outlines for and processes fiscal requests from States forwarded by RO's. Monitors regional office State grants administration. Develops policies and oversees regional office technical assistance to States to enable them to meet requirements for State grants. Plans for, analyzes, and, in conjunction with regional offices, collects child welfare program services data. Coordinates Child Welfare Services with other Federal agencies and non-Federal groups. Analyzes regional office monitoring and T/TA reports and provides program technical direction to regional offices.

Administers the Child Welfare Services training program. Provides technical expertise in developing programmatic policies, standards, model laws, regulatory material, and guidelines. Studies current practices and problems, recommends action to meet special needs of children at risk, and promotes replication of successful designs. Provides expert knowledge, training, and technical assistance to public and private social services agencies and organizations through development of innovative programs, suggested guidelines, and program design features for comprehensive child welfare services. Through the National Center on Child Abuse and Neglect, acts as the principal agent within ACYF and the Department for development of policies, advice, and plans (including input to the ACYF long-range plan) on programs relating to the prevention, identification, and treatment of child abuse and neglect. Develops and interprets regulations, guidelines, and instructions for grants to assist State programs on child abuse and neglect and for provision of technical assistance. Compiles and prepares for publication training materials for personnel who are or intend to be engaged in the prevention, identification, and treatment of child abuse and neglect. Receives, processes, and reviews, either through the regional or headquarters office, all applications for demonstration grants or contracts authorized to prevent, identify, and treat child abuse and neglect and makes recommendations thereon to the Commissioner, ACYF.

Establishes and operates a National Clearinghouse on Child Abuse and Neglect. Develops policies, priorities, plans, and objectives for research and demonstration activities relating to child abuse and neglect. Provides staff support to the Advisory Board on Child Abuse and Neglect in the conduct of its responsibilities, including the areas of standards development, reports preparation and program coordination.

2. Youth Development Bureau (DSC2) plans, develops, and implements an integrated program of research, demonstration, and evaluation to investigate and assess a broad range of programs delivering services to youth. Tests the effectiveness of various programs and service strategies in addressing the needs of youth and their problems. Analyzes and synthesizes reports of research, demonstration, and evaluation findings; disseminates findings which will impact on youth development and youth service programs; and recommends programs which will improve services to runaway and other youth in need of services. Develops or strengthens local facilities designed to meet the needs of runaway or other homeless youth and their families by providing temporary shelter, counseling, and aftercare and by working to reunite the youth in their care with their families or provide an alternative appropriate living arrangement.

Develops and implements policy for the management of facilities for runaway youth. Through the regional offices, monitors the facilities performance and analyzes results to improve their effectiveness. Designs, implements, and assesses contracts which provide technical assistance to the runaway facilities and short term training to their staff. Improves the services to runaway and other homeless youth through promulgation of model statutes, development of national programs and development of family/individual counseling techniques.

Serves as a youth advocate within ACYF and to other Federal agencies. Coordinates with other agencies whose programs impact on youth and serves as a clearinghouse for information on youth needs, problems, and programs.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF HUMAN DEVELOPMENT SERVICES ADMINISTRATION FOR NATIVE AMERICANS

DN.00 Mission. The Administration for Native Americans (ANA) represents the concerns of American Indians, Alaskan Natives, and native Hawaiians, hereinafter referred to as native Americans. The Administration has primary responsibility for developing policy, legislative proposals and guidance, and for providing staff advice to the Assistant Secretary and the Secretary, on matters involving the social and economic development of native Americans. ANA administers grant programs to eligible Indian tribes and native American organizations in urban and rural areas with funds authorized under the Native American Programs Act, title VIII of the Head Start, Economic Opportunity, and Community Partnership Act of 1974.

In conjunction with the Office of the ASHDS, ANA provides departmental liaison with other Federal agencies on native American affairs, working to address unmet needs and increase the availability of resources and services to native American communities through other agencies.

Through its policy, liaison, and granting functions, ANA explores new program concepts and new methods for increasing the social and economic development of native Americans, assures that information about departmental services and benefits and eligibility criteria is conveyed to native Americans, and fosters the opportunity for the exercise of self-determination of native Americans and their operation of native American programs and enterprises.

DN.10 Organization. The Administration for Native Americans is headed

by a Commissioner who reports directly to the Assistant Secretary for Human Development Services and consists of:

Office of the Commissioner (DN)
  Intra-Departmental Council on Indian Affairs Staff (DN-1)
Office of Program Operations (DNB)
  Tribal Programs Division (DNB1)
  Special Programs Division (DNB2)
Office of Planning and Program Development (DNP)
  Research, Demonstration, and Evaluation Division (DNP1)
  Policy, Planning, and Budget Division (DNP2)
  Administrative Services Staff (DNP3)

DN.20 Functions. A. Office of the Commissioner (DN) provides overall direction, management, and legislative liaison for all components of ANA. Serves as adviser to the ASHDS, the Secretary, and the heads of DHEW agencies administering programs which have a significant impact on native Americans. On behalf of the Department conducts liaison with and obtains advice from Indian tribes and native American organizations. Has final approval for all ANA grant awards (except those specifically redelegated to the HDS regional offices). Has final approval for all ANA interagency agreements and has final approval of contracts and other expenditures. The Commissioner is also Chairman of the Intra-Departmental Council on Indian Affairs.

1. Intra-Departmental Council on Indian Affairs Staff (IDCIA) (DN-1) provides general staff support to the Council and the Commissioner of ANA in his capacity as Chairman of the Council.

The Council serves as the focal point within the Department for interagency coordination activities relating to Indian affairs to effect cooperation and complementary utilization of the Department's resources for Indian people. Develops and promotes consistent policies on Indian affairs for the entire Department and causes the full and continuous application of these policies throughout the Department. Identifies administrative, legislative, and regulatory changes or developments necessary for the application of an effective and consistent Indian policy.

B. Office of Program Operations (DNB) administers the financial assistance projects of the Administration for Native Americans. Monitors overall performance of the financial assistance program, and directs the application of consistent regulations, policies, and guidelines.

1. Tribal Programs Division (DNB1) provides direct assistance to American Indian tribes and Alaskan Native organizations in developing and securing funds for local self-determination programs aimed at social and economic self-sufficiency. Reviews applications and performs onsite monitoring and evaluation of funded projects. Furnishes training and technical assistance support to equip Indian tribes and Alaskan Native organizations with needed technical skills in a variety of program and management areas. Serves as resource to and liaison with Indian tribes and Alaskan Native organizations.

2. Special Programs Division (DNB2) provides to native Hawaiians, other native American groups and organizations serving native Americans off-reservation (primarily in urban areas) direct assistance in developing, securing, and administering services aimed at social and economic self-determination. Provides policy direction and guidance to the HDS regional offices in administering the grant program for urban native Americans and native Hawaiians. For rural off-reservation grantees, reviews applications for support and performs onsite monitoring and evaluation of funded projects. Furnishes training and technical assistance support to equip native American groups and organizations with needed technical skills in a variety of program and management areas. Serves as a resource to and liaison with native American groups and organizations.

C. Office of Planning and Program Development (DNP) plans, directs, and coordinates planning and program development activities. Directs the development of regulations, policies, and guidelines for ANA. Directs the development of program and budget plans consistent with the Department's requirements. Monitors overall performance of research, demonstration, evaluation, planning, budget, and support functions.

1. Research, Demonstration, and Evaluation Division (DNP1) develops and monitors projects in social and economic development, manpower, and other areas of concern to native Americans. Determines research needs and develops the research and development plan for ANA. Conducts cross-cutting studies on program effectiveness and performs special studies and analyses on a broad range of issues and activities relating to programs for native Americans. Contributes to evaluative efforts of other agencies relevant to native Americans. Coordinates with OPRE/HDS.

2. Policy, Planning, and Budget Division (DNA2) develops and recommends the implementation of policies throughout ANA. Formulates budget and legislative plans consistent with departmental and ANA requirements. Coordinates the reporting by ANA units to the DHEW/HDS management system, including reports on short-range initiatives (e.g., MITS). Assists the Office of Program Operations in developing local program planning capability. Compiles statistics on the population served by ANA programs. In accordance with ASHDS guidelines and instructions, administers the development of budget proposals and internal ANA financial operating plans. Furnishes assistance to program specialists and grantees in financial systems development. Coordinates with appropriate HDS staff units in carrying out these functions.

3. Administrative Service Staff (DNP3) provides a wide range of administrative services in support of all ANA programs and activities. Tracks financial status of all program and S. & E. accounts and provides financial data to the Commissioner. Initiates and expedites the progress of all procurements and personnel actions. Serves as ANA Executive Secretariat, controlling the flow of correspondence. Coordinates with the Office of Public Affairs/HDS in developing a public information plan and specific materials for dissemination. Responsible for the receipt of Freedom of Information Requests and coordinates responses to such requests directed to ANA. Coordinates with appropriate HDS units in implementing administrative requirements and procedures.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF HUMAN DEVELOPMENT SERVICES

Administration for Public Services

DS.00 Mission. The Administration for Public Services (APS) provides national leadership to States in the planning, development, management, coordination, and delivery of social services programs authorized under Title I, IV-A, X, XIV, XVI (AABD) and XX of the Social Security Act.

Provides leadership in the development, design and evaluation of Comprehensive Annual Services Plans, which reflect the special needs of low-income and disadvantaged populations, including recipients of Aid to Families with Dependent Children, Medicaid and Supplemental Security Income. Establishes program objectives, standards, policies and guidelines to promote the goals of Title XX among eligible low income populations.

Develops policies and guidelines to assure adherence to Federal requirements. Provides guidance to States in the development and operation of state and local training programs. Promotes and funds research and demonstration projects to develop more effective approaches and methods for the management and delivery of social services. Conducts and funds studies to evaluate the extent to which social service programs meet the goals speci-

fied in the Title XX Act. Provides administrative support services to the staff assigned to the Work Incentive Program, which is jointly administered by the Department of Labor and HEW. Consults with other Federal agencies in the development of policies and programs which promote the achievement of social services program goals. In conjunction with the Department of Labor, develops plans for increasing the coordination of social services programs with employment programs such as CETA and the WIN program. Coordinates rural development initiatives within HEW and assists the Department of Agriculture in carrying out Section 603(b) of the Rural Development Act of 1972.

Provides leadership and professional consultation to Regional Office staff and assists States, local units of government, private agencies and organizations, and public interest groups in the identification of service needs, the planning and utilization of resources, the mangement and the methods for improving service delivery systems, manpower development and management of training programs, and promotion and management of research and demonstration projects.

DS.10 Organization. The Administration for Public Services is headed by a Commissioner who reports directly to the Assistant Secretary for Human Development Services and consists of:

Office of the Commissioner (DS)
  Regional Liaison Staff (DS-1)
Office of Administration and Management (DSB)
Office of Policy Control (DSK)
Office of Public Information (DSE)
Executive Secretariat (DSG)
Office of Program Operations (DSH)
  Division of Program Management (DSH1)
  Division of Financial Management (DSH2)
Office of Program Development (DSJ)
  Division of Intergovernmental Planning and Coordination (DSJ1)
  Division of Research, Demonstration, and Evaluation (DSJ2)
  Division of Program Planning and Analysis (DsJ3)

DS.20 Functions. A. Office of the Commissioner (DS) provides executive leadership and policy direction to APS in the administration of its responsibilities. Serves as the principal advisor to the Assistant Secretary for Human Development Services on the policies, planning, development, and coordination of social services programs. Maintains relationships with HDS officials and other Federal Agency officials to coordinate APS policies and activities. The Duty Commissioner acts as the Commissioner in his absence.

1. Regional Liaison Staff (DS-1) provides advice to the Commissioner and appropriate operational units on the implementation of special initiatives and operational issues in the Regional Offices. Assures that regional concerns are reflected in the development of oprational plans, policy, and legislative initiatives. Coordinates the assignment of work activities which require significant Regional Office involvement or staff resources. Identifies the need for and provides technical support and guidance to regional staff. Ensures adequate information flow between Central Office, the APS regional program offices, and HDS Regional Administrators. Establishes procedures for regular communication of regional activities.

In coordination with HDS Regional Administrators and the HDS Office of Regional and Intergovernmental Relations, performs oversight of APS regional responsibilities of assuring compliance with Title VI of the Civil Rights Act. Serves as APS liaison to other HEW and HDS units concerning the operations of APS regional offices.

B. Office of Administration and Management (DSB) manages and directs activities relating to internal planning, coordination, and implementation of budget, personnel, and administrative services essential to the operation of APS.

Manages the formulation and justification of the Title XX Program Budget and the APS S. & E. budget. Prepares related reports and exhibits for use at Departmental, OMB, and Congressional presentations. Prepares, justifies, and manages the internal operating S. & E. budget. Within assigned ceiling, proposes, implements, and controls position allocation in APS. Controls administrative accounting and reprogramming of funds as necessary.

Assures adherence to requirements of the Federal statutes relating to non-discrimination in APS S. &. E. contracts. Provides or assures the provision of necessary personnel, administration and general services support activities to APS, including organization and manpower management; internal orientation, training and staff development; development and monitoring of EEO objectives; procurement, records, and facilities management. Develops and maintains the APS work measurement system. Maintains liaison and coordinates activities with appropriate HDS staff offices.

C. Office of Policy Control (DSK) develops and coordinates policy initiatives, legislative proposals, and regulations for APS. Reviews and clears all APS policy related materials to assure consistency with HEW and HDS policies and requirements. Replies or assigns to appropriate divisions, tracks, coordinates and clears responses to policy inquiries from Regional Offices and other sources. Provides, or assures the provision of, consistent policy interpretation to HDS staff and outside inquiries. Serves as contact for information pertaining to APS issuances in the FEDERAL REGISTER. Officially disseminates regulations and other policy related material.

Maintains liaison with appropriate HDS and OS units to insure legal sufficiency and consistency of policy interpretations. Proposes legislative initiatives and coordinates the development and submittal of the APS legislative plan. Performs other legislative assignments; identifies and tracks legislation and regulations of interest to APS. Analyzes legislation and disseminates relevant information to Regional Offices and APS staff. Receives and analyzes the quarterly compliance reports from Regional Offices. Assists Regional Offices on the compliance process and the development of recommendations for compliance action. Prepares documentation for the Commissioner and initiates and tracks compliance process.

D. Office of Public Information (DSE) provides general information regarding APS activities to the public and external organizations in response to requests for such information. In coordination with the HDS Office of Public Affairs, issues news releases, and coordinates and arranges media contacts. Consults with various APS units on the creation, writing, and design of special presentations, written materials, publications, and speeches. Plans, writes, and edits social services materials. Plans and coordinates the production and distribution of films, video tapes, and recordings. Coordinates activities with HDS Public Affairs Office as necessary. Maintains liaison with the State Public Information Officers regarding APS activities. Responsible for the receipt of Freedom of Information requests and coordinates responses to such requests directed to APS.

E. Executive Secretariat (DSG) receives and controls correspondence. Prepares responses to correspondence or assigns the responsibility to other APS units when inquiries require technical analysis and interpretation; obtains clearance of APS Office of Policy Control as necessary. Prepares or coordinates the preparation of special reports or responses to assignments of general nature. Assures that all correspondence is answered in a timely fashion. Serves as the APS liaison with HDS Executive Secretariat.

F. Office of Program Operations (DSH) provides leadership and direction to the activities of the Division of Program Management and the Division of Financial Management. Assures the coordination of the activities of these divisions with the Office of Program Development and the APS staff offices.

1. Division of Program Management (DSH1) plans, directs, and provides leadership, professional consultation, technical information and guidance in the development and management of the State title XX program, the development of the proposed and final title XX CASP, the delivery of social services, and in the development and management of the title XX training program. Provides expertise in the development of regulations and policies which relate to title XX Comprehensive Annual Services Planning process, title XX State program administration, and the title XX training program. Promotes the implementation of innovative service delivery methods and practices. Develops strategies and management tools for the review and monitoring of program performance. Proposes revisions to law and regulations on the basis of monitoring and program review findings.

2. Division of Financial Management (DSH2) plans, directs, and provides guidance and technical expertise in the areas of fiscal policies, standards, procedures, and financial operations. Provides expertise in the development of regulations and policies which relate to the financial operations of the title XX program. Maintains liaison and coordinates activities with appropriate HDS and other HEW units, HEW and GAO audit agencies, and other related organizations, with respect to title XX financial matters. Based on ASHDS approved formula grants management policies, controls administrative accounting and reprograming of formula grant funds. Makes grant awards to States: Processes estimates, expenditure reports, and adjustments for prior periods. Maintains liaison and coordination with appropriate HDS and other HEW units to assure consistency between grant award activities and the letter-of-credit system. Controls the deferral actions process as it impacts the grant awards and the adherence to regulatory time limits. Compiles and publishes annual allotment limits under title XX. Maintains appropriate fund controls. Provides technical expertise and consultation, directs and manages the procedures and activities related to the formal hearing held by the Departmental Grant Appeals Board of requests by States for reconsideration of disallowed claims. Maintains liaison with appropriate HDS and HEW units and provides the contact point for State agencies requesting reconsideration.

G. Office of Program Development (DSJ) provides leadership and direction to the activities of the division of Intergovernmental Planning and Coordination, the Division of Research, Demonstration, and Evaluation, and the Division of Program Planning and Analysis. Assures the coordination of the activities of these divisions with the Office of Program Operations and the APS staff offices.

1. Division of Intergovernmental Planning and Coordination (DSJ1) provides assistance on the development and design of comprehensive social services systems. Reviews implementation of policies, regulations, and interpretations at the State and local level and proposes policy or legislative changes to facilitate the planning of human resource programs. Develops and coordinates the implementation of joint initiatives within HDS and with other Federal agencies in order to promote comprehensive planning of title XX and related human service programs, including CETA, and to support coordination of program resources to meet the service needs of specific populations. Serves as an advocate for rural concerns in the development of human service policy by Federal and State programs. Provides guidance in the methods by which the concerns of low income and disadvantaged populations can be integrated into planning of social services programs and how their access to services can be facilitated. Maintains liaison with the Department of Labor on the development and implementation of policies relating to the provision of supportive services in the CETA programs. Promotes and provides guidance in the methods by which consumers, Indians, volunteers, and private agencies and foundations can become actively involved in the planning and development of human resources programs within HDS and in State and Federal social service programs.

2. Division of Research, Demonstration, and Evaluation (DSJ2) develops research, demonstration and evaluation strategies; funds and manages APS research, demonstration, and evaluation grants and contracts and conducts special studies relating to the planning, administration and delivery of social service programs and the impact of such programs on clients. Provides technical guidance on the development and implementation of R. & D. and evaluation projects and methodologies. Disseminates findings and methods pertaining to R. & D. and evaluation of social services. Prepares the annual Title XX Evaluation Report to Congress. Maintains liaison with HDS Office of Planning, Research, and Evaluation, ASPE, and other Federal offices. Reviews and clears grants and RFP's developed in other HDS bureaus. Monitors adherence of R.D. & E. grantees and contractors to Title VI of the Civil Rights Act.

3. Division of Program Planning and Analysis (DSJ3) provides technical support for internal planning processes, the identification and utilization of program and budget data, and the analysis of issues relating to the improvement and management of APS programs. Coordinates the development of management initiatives, long range plans, and consultant services plans. Designs and implements planning processes and monitors performance. Maintains continuous contact with OPRE, OPMC, and other HDS administrations on the implementation of joint activities. Carries lead responsibility for determining the data requirements of APS program reporting, including modifications to the Social Service Reporting Requirements. Performs analyses of CASP's, reports and data submissions. On a periodic basis, analyzes and publishes data on the APS programs. Serves as APS contact for reports clearance. Serves as technical expert within APS on methods of data development and interpretation and statistical and economic analysis. Develops and interprets trend analysis relevant to social services programs. Analyzes trends and proposes forecasting techniques.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF HUMAN DEVELOPMENT SERVICES, REHABILITATION SERVICES ADMINISTRATION

DH.00 Mission. The Rehabilitation Services Administration (RSA) supports services which improve conditions for and otherwise benefit handicapped individuals, with emphasis on the severely handicapped, including the developmentally disabled. Maintains close liaison with the Architectural and Transportation Barriers Compliance Board and the President's Committee on Mental Retardation; provides administrative support for the latter organization. Advises the ASHDS on the formulation, development, implementation, and review of policies and legislation affecting handicapped individuals. Acts as an advocate to assure the rights of handicapped persons. Serves as a resource and clearinghouse of information for service providers at national, regional, State, and local levels in the development of national programs to reduce or eliminate social and environmental barriers experienced by handicapped persons. Establishes standards for determining who are handicapped individuals for purposes of RSA program eligibility and provides leadership in assuring that all categories of handicapped individuals receive equitable consideration for access to services.

DH.10 Organization. The Rehabilitation Services Administration is headed by a Commissioner who reports directly to the Assistant Secretary for Human Development Services and consists of:

Immediate Office of the Commissioner (DH)
Public Affairs Staff (DHA1)
Regional Liaison Staff (DHA2)
President's Committee on Mental Retardation (DHP)
Office of Policy Management (DHL)
Division of Policy Development (DHL1)
Division of Planning (DHL2)
Division of Legislation, Regulations, and Congressional Relations (DHL3)
Office of Administrative Support (DHS)
Division of Administration and Personnel (DHS1)
Division of Program Data and Analysis (DHS2)
Division of Budget and Financial Management (DHS3)
Office of Advocacy and Coordination (DHC)
Division of Advocacy and Constituent Relations (DHC1)
Deafness and Communicative Disorders Office (DHC2)
Division of Liaison (DHC3)
Office of Program Operations (DHN)
Bureau for Blind and Visually Handicapped (DHN1)
Bureau of Vocational Rehabilitation Program Operations (DHN2)
Bureau of Developmental Disabilities Program Operations (DHN3)
Office of Program Development (DHM)
Bureau of Research and Engineering (DHM1)
Bureau of Evaluation and Utilization (DHM2)
Bureau of Demonstrations and Manpower Development (DHM3)

In addition, the Office for Handicapped Individuals (DHH) coordinates with the Commissioner, RSA, in carrying out its functions.

DH.20 Functions. A. Office of the Commissioner (DH) provides executive leadership to the Rehabilitation Services Administration. Establishes goals and objectives for programs for handicapped individuals and develops standards, criteria, guidelines, and policies to provide direction in the administration of these programs and serves as advisor to the ASHDS on programs and problems affecting handicapped individuals. Advocates for the rights and needs of handicapped individuals. Responsible for internal manpower measurement reports and analyses; develops, implements and monitors internal communications and correspondence systems; and maintains a liaison with the HDS Executive Secretariat for tracking RSA correspondence and assignments. Conducts special analyses of support services, program operations, program development activities, and other RSA operations in central office and the regions at the request of the Commissioner to determine consistency with established policies, regulations and guidelines; provides periodic reports on problem areas in staff relationships, operations, and management; and serves as a clearinghouse for employee suggestions. The Office of the Commissioner also contains the following organizations:

1. Public Affairs Staff (DHA1) provides leadership and direction to RSA's public affairs activities; prepares, edits, and distributes RSA publications; develops methods for increasing public awareness of the needs of people served by RSA and programs designed to help them. Develops and implements a public affairs strategy for RSA; represents RSA in activities involving print and broadcast media. Serves as liaison with the Office of Public Affairs/HDS in providing centralized publication and audio-visual services for RSA. Responsible for the receipt of Freedom of Information requests and coordinates responses to such requests directed to RSA.

2. Regional Liaison Staff (DHA2) serves as the principal staff arm in the direction and management of RSA's regional office; performs studies and reviews of regional operations; provides regional staff with support on matters requiring central office coordination; is responsible for staff support on technical management aspects of regional operations matters; develops priorities for distributing regional office manpower resources; coordinates development of annual regional operations budget plans; and maintains calendar of planned meetings involving regional staff. Coordinates with the Office of Regional and Intergovernmental Relations/HDS on regional issues.

B. The President's Committee on Mental Retardation (DHP) is supported by RSA staff members, who provide administrative support and assistance in the PCMR effort to: (1) Reduce the occurrence of mental retardation, (2) enable retarded individuals in public institutions to return to the community, and (3) provide assurance of full legal and human rights for retarded individuals. This staff prepares the committee's report to the President on the adequacy of national efforts to combat mental retardation; and develops and disseminates information to increase public awareness and understanding of retardation.

C. Office of Policy Management (DHL) supervises the RSA planning process (long and short-range) and the development and formulation of RSA policy and legislation. Assures consistency of planning, policy development, and legislative functions within RSA and coordinates with appropriate HDS staff offices. Conducts an active Congressional relations program in coordination with HDS and OS legislative affairs staffs.

1. Division of Policy Development (DHL1) conducts RSA-wide policy review, policy development, formulation, and analysis; analyzes policy within RSA as well as other Federal policies directly or indirectly related to the handicapped; reviews all policy issuances and interpretations and certifies consistency; in coordination with OPMC-HDS, manages a formal policy interpretation and issuance system; and assists in the development of and clears RSA regional offices policy interpretations. Conducts policy analyses at the direction of the Commissioner and incorporates research and evaluation findings into policy development.

2. Division of Planning (DHL2) develops, coordinates, and maintains a comprehensive RSA planning system, coordinates the development of the RSA's goals, objectives, and implementation plans; provides leadership in the development and resolution of short range priority objectives including the Secretary's Major Initiatives Tracking System (MITS); serves as RSA contact with outside organizations on long- and short-range planning issues; with OPMC/HDS and OPRE/HDS, advises on all matters relating to planning, including the standards, reports, and information needed for the development and assessment of plans. Provides leadership in the areas of long- and short-range planning to State agencies and other grantees. Incorporates policy analyses into long- and short-range plans.

3. Division of Legislation, Regulations, and Congressional Relations (DHL3) develops and proposes legislation necessary to improve rehabilitation programs for disabled individuals. Reviews and comments on other proposed legislation affecting handicapped individuals. Serves as contact point for members of Congress and their staffs on issues concerning handicapped individuals. Responds to requests from Congress and public and private groups for information on proposed legislation.

Coordinates and consults with HDS and the Office of the Assistant Secretary for Legislation on these issues. In coordination with OPMC/HDS, is responsible for RSA regulations formulation, development, review, and revision; and participates on regular HDS Regulations Team. Reviews, analyzes, and disseminates information on regulations issues.

D. Office of Administrative Support (DHS) provides leadership and guidance on matters relating to the overall administration and management of RSA; resolves critical issues and problems concerning executive management across RSA programs. Coordinates with OAM/HDS in carrying out these functions. Formulates internal administrative support procedures in accordance with OAM and ASHDS guidelines. Advises Commissioner on administrative matters, including EEO.

1. Division of Administration and Personnel (DHS1) in accordance with

policies and procedures issued by OAM, provides administrative support to all units of RSA. Responsible for space utilization and telephone plans within RSA. Controls personnel ceiling distribution within RSA; responsible for staff development including overall Annual Training Plan, training, equal employment matters, and development of EEO objectives of the agency. Maintains official files on delegations and organization for RSA. Responsible for preparation of regular and recurring reports for organizational manuals, personnel, records management, and expenditures for supplies and services; develops internal procedures for administrative services; responsible for records management.

2. Division of Program Data and Analysis (DHS2) develops and maintains the RSA statistical reporting system; revises statistical reporting procedures as required by modification in the Act and expanding needs of management; prepares justification and supporting documentation for the Office of Management and Budget for new or revised reports; prepares special studies on various aspects of program operations; compiles annual statistical reports on client characteristics and agency caseloads; provides estimates and projections of program operations for budgetary, legislative and long- and short-range purposes; trains regional staff in the use and interpretation of statistical information; performs cost/benefit analyses of agency programs.

3. Division of Budget and Financial Management (DHS3) provides leadership and guidance in the area of budgetary services and financial management; coordinates the formulation and justification of the RSA administrative and program budgets; reviews budget submissions prepared by RSA components to assure conformity with legislative mandates; provides technical assistance to RSA units in the execution of the budget and the preparation of financial reports and summaries. With respect to grants and contract management, RSA formulates internal procedures, in accordance with guidelines from OAM and ASHDS, coordinates provision of input to the ASHDS in development of policies and procedures, makes provisions for liaison with OAM, provides advice and recommendations to the Commissioner and provides TA to RSA units, and coordinates responses to appropriate audit reports.

E. Office of Advocacy and Coordination (DHC) provides leadership to RSA activities in advocating and securing the rights of handicapped individuals and coordinating programs and services; works in close cooperation with representative groups, develops and expands relationships with clients and client groups, consumer groups, private and public organizations including the National Disabilities Advisory Council (NDAC) and the President's Committee on Mental Retardation.

1. Division of Advocacy and Constituent Relations (DHC1) is responsible for developing and maintaining systematic ongoing interactions between RSA and appropriate constituent and client groups. Develops, implements, and maintains a consumer hot line and assumes leadership in the development of a network of information services to build an awareness of the actions necessary to address the problems of handicapped individuals; assists in the development of national educational programs to reduce social and environmental barriers experienced by handicapped individuals; maintains a clearing house of information on the needs of handicapped individuals and providers of services to this population; develops a coordinated system of information and data retrieval, utilizing existing information systems and related publications; develops, in coordination with the Division of Equal Opportunity and Civil Rights/HDS and the Office for Civil Rights/ HEW, and disseminates training materials on questions related to the legal rights of the disabled; established standards for determining who are handicapped individuals; provides leadership in assuring that all categories of handicapped individuals receive equitable consideration for access to services; works with other relevant program agencies to promote outreach services to meet the unique problems of the handicapped aged and eligible veterans as well as handicapped ethnic and racial minorities; assures that special population groups receive equitable consideration.

2. Deafness and Communicative Disorders Office (DHC2) promotes improved vocational rehabilitation services to the deaf, hard of hearing, and speech and language impaired individuals; serves as liaison to organizations, agencies, and institutions concerned with deafness and communicative disorders, including State governments and regional offices; promotes research on deafness.

3. Division of Liaison (DHC3) assumes leadership for the coordination of RSA activities including the analysis and implementation of the White House Conference on Handicapped Individual's resolutions; insures that various special population groups are involved in setting priorities for recommendations of White House Conference. Coordinates liaison activities with the White House, the A. & T.B.C.B., other Federal agencies, other public and private agencies, trade associations, labor unions, and professional organizations in relation to problems of handicapped individuals. Negotiates, develops, enters into, and implements interagency agreements designed to improve programs and services to handicapped individuals. Coordinates with other Government agencies regarding the implementation of the White House Conference report; reviews all RSA plans relevant to the White House Conference recommendations; provides leadership in coordinating activities with other Federal agencies and Departments which carry on various programs and activities concerned with handicapped individuals; assesses information on programs, plans, and policies of other Government agencies; coordinates and cooperates with other activities of special concern to the various handicapped population groups in this country. Reports to the Commissioner on trends, problems, and new directions identified through liaison and coordinated activities.

F. Office of Program Operations (DHN) administers the operations aspects of RSA programs; provides leadership in the provision of quality services to various handicapped population groups; establishes operational standards, criteria and program guidelines; provides technical assistance on program operations to regional office staff, State agencies, and local organizations. Incorporates innovative program initiatives into program operations. Provides guidance and assistance to State agencies on management information systems. Recommends areas for research, evaluation, and training to the Office of Program Development. Provides consultation on the various medical aspects of rehabilitation to all units within RSA, but especially to the regional staff and to selected State VR agencies on significant problems in this area; reviews all policies, plans, and programs of RSA to determine their consistency with established medical practices. Advises Commissioner on research, evaluation, and training projects having a medical component. Develops basic guidelines and assumptions for use by the States in developing their short and long-range goals and resource requirements. Serves as contact on all audits on State plan programs; analyzes, coordinates and substantiates all audit findings. Insures compliance with program financial operation requirements. Evaluates overall national program performance and progress from a cost benefit and effectiveness standpoint; develops, applies, and analyzes financial policies, standards, and procedures; develops and coordinates internal formula grant policy and procedures with the Department, other Federal agencies. Based on formula grants management policies and proce-

dures approved by ASHDS, controls allocation, administrative accounting, and reprograming of formula grant funds.

1. Bureau for Blind and Visually Handicapped (DHN1) develops guidelines and regulations for Federal departments and blind licensees regarding the Randolph-Sheppard program; provides consultation regarding the administration of the Randolph-Sheppard Act; interprets provisions of the act for State and Federal arbitration boards; provides leadership, guidance, and consultation to public and private agencies serving the blind and partially sighted. Provides technical assistance and consultation in curriculum development for the training of specialized personnel and to State agencies to maximize program utilization. Provides technical assistance to the Office of Program Development regarding special research projects for the blind and partially sighted including international projects. In conjunction with regional staff, conducts program reviews of State agencies serving the blind and partially sighted.

2. Bureau of Vocational Regabilitation Program Operations (DHN2) adminsters the program operation aspects of the Rehabilitation Act, as amended; provides leadership and guidance in the administration of RSA programs providing services to the handicapped and severely handicapped including social security disability and supplemental security income beneficiaries. Responsible for formulation, guidance, and conformity review of annual State plans, policy interpretation, and program operations in relationship to the law, regulations and standards governing the provision of services and the rehabilitation process; analyzes and evaluates State plan programing and performance in relation to Federal requirements. Develops and maintains RSA statistical reporting system. Defines management information and program financial management requirements for State agencies and reviews State plans for conformance.

3. Bureau of Developmental Disabilities Program Operations (DHN3) develops, promulgates, and implements Federal policies, guidelines, and procedures concerning the Developmental Disabilities Act and delivery of services authorized by the act. Provides leadership, coordination, and guidance for programs applicable to individuals with mental retardation and other developmental disabilities; and prepares and disseminates information to appropriate client and constituent groups on developmental disability plans and services, in conjunction with the Office of Advocacy and Coordination. Administers basic State grant program for developmentally disabled, including enforcement of section 113 requirements.

G. Office of Program Development (DHM) provides leadership in and manages program development activities including research and program evaluaton activities, rehabilitation engineering efforts, training and specialized service initiatives, and independent living demonstration projects. Plans for and implements experimental program services based on feedback from State and local organizations on program needs. Prepares research, development, and evaluation plans. Develops evaluation standards and criteria; provides consultation and technical assistance to regional offices' staff and assists them in the guidance of State and local organizations in program development; manages a domestic and international research effort; evaluates State and Federal program activities; manages a comprehensive effort of research, clinical evaluation, training, and service delivery in rehabilitation engineering. Promotes and directs a manpower development program to provide skilled personnel required to rehabilitate handicapped individuals with various disabilities; conducts special project activities to stress the need for specialized services required to rehabilitate handicapped individuals, especially those with severe disabilities.

1. Bureau of Research and Engineering (DHM1) directs and manages the overall research and engineering program of the Rehabilitation Services Administration. Analyzes problems of homebound and institutionalized handicapped individuals and those people who are multiply disadvantage because of poverty and a racial minority status in addition to a handicapping condition. Directs research efforts which address problems associated with loss of function resulting from disability and other medically oriented aspects of rehabilitation; establishes a network of domestic and international rehabilitation engineering centers to conduct research on new systems, equipment, devices, and aids to make full use of technology for resolving rehabilitation problems. Administers research grants or contracts awarded for the purpose of planning and conducting research and evaluation activities which bear directly on the development of new methods and procedures to assist in the provision of improved services to handicapped people; conducts research studies and surveys on the factors affecting rehabilitation and which expand the methodology and techniques for improved outreach and followup services; directs and conducts, by means of grants and contracts, a comprehensive research, development, clinical evaluation, training, and service delivery program in rehabilitation engineering designed to improve the productivity and quality of life of handicapped individuals. Coordinates with the National Academy of Science, the National Science Foundation, Food and Drug Administration, and the Federal Communications Commission and other agencies; plans and directs a research and program effort concerned with the elimination of environmental barriers; establishes demonstration projects to display various approaches which increase functional capacity and reduces or eliminates environmental barriers for various handicapping conditions.

2. Bureau of Evaluation and Utilization (DHM2) directs and manages the evaluation and utilization program of the RSA; measures and evaluates the impact of RSA programs to determine their effectiveness. Develops standards for evaluation of RSA programs. Develops research utilization plans, policies, and procedures. Insures that research results are evaluated, disseminated, and incorporated into program operations.

3. Bureau of Demonstrations and Manpower Development (DHM3) provides direction and guidance in developing, demonstrating, and managing innovative program activities. Administers a comprehensive manpower development program designed to stimulate program development and enhance service delivery for handicapped individuals. Reviews project grant applications, develops evaluative criteria, and provides guidance on the review of training applications; provides guidance on the conduct of staff development programs within State vocational rehabilitation agencies; encourages the development of experimental and innovative training programs; stimulates the development of new training projects.

H. Office for Handicapped Individuals (DHH) reports directly to the ASHDS, encouraging coordinated and cooperative planning designed to produce maximum effectiveness, sensitivity, and continuity in the provision of services for handicapped individuals by all programs. Develops means of promoting the prompt utilization of engineering and other scientific research to assist in solving problems in education, health, employment, rehabilitation, architectural, housing and transportation barriers, and other areas to achieve full integration of all handicapped individuals into all aspects of society.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF HUMAN DEVELOPMENT SERVICES

Regional Offices of Human Development Services

DD.00 Mission. The Regional offices of the Office of Human Development Services constitute an intermediate level in the administration of HDS programs between the central office and State and local government and other organizations. Award grants and contracts directly or recommend approval/disapproval to the appropriate central office organization in other cases. Assist State and local governments and other organizations in the administration of HDS programs, and monitor such administration to insure adherence to program objectives and applicable policies, regulations, and procedures. Coordinate HDS program activities with other principal operating components of HEW, and other Federal programs, so maximum benefit can be derived from the programs for the recipients of services. The HDS regional offices also make recommendation to HDS central office on program priorities and policy or procedural changes, based on operating experience from a vantage point close to the actual delivery of services.

DD.10 Organization. The Regional Offices of Human Development Services are each headed by a Regional Administrator, who reports directly to the Assistant Secretary, Office of Human Development Services. Each regional Office of Human Development services consists of:

Office of the Regional Administrator (DD1-X):
- Office of Management and Planning (DD1-X-1).
- Grants Management and Budget Office (DD1-X-2).

Regional Office on Aging (DD1-X5).
Regional Office for Children, Youth and Families (DD1-X4).
Regional Office for Public Services (DD1-X3).
Regional Office for Rehabilitation Services (DD1-X2).

DD.20 Functions. A. Office of the Regional Administrator (DD1-X) serves as the representative of the Assistant Secretary, HDS in the region. Provides executive leadership, implements and interprets ASHDS policy, is responsible for management oversight and coordination of activities of the HDS regional program components. Develops regional cross-cutting initiatives and priorities.

In accordance with regulations and policies established at central office, supervises the administration of the APS and ANA programs in the region. Responsible for the functions necessary to administer ANA grant programs delegated to the HDS regional offices. Serves on the regional coordinating committee for the work incentive program (WIN), which, consistent with directive of the National Coordinating Committee, reviews and approves State WIN plans, establishes and clarifies policy, and establishes other requirements for effective administration of WIN in its region. In coordination with HDS central office, directs and supervises establishment and implementation of regional HDS equal employment opportunity, affirmative action and civil rights goals.

Represents the ASHDS in direct official dealings with other Federal agencies, State and local governments, and public and private interest groups. In concert with the principal regional official, establishes and maintains working relationships with Governors, mayors, and other chief elected officials and coordinates official HDS regional contacts with Federal, State, and local elected officials.

Serves as liaison and adviser to the Assistant Secretary, HDS, the principal regional official, and heads of other HEW regional staffs administering programs that have an impact on HDS client groups.

Provides centralized administrative and grants management services to all HDS regional program components, within the limits set by the principal regional official and in accordance with applicable departmental and HDS policies.

1. Office of Management and Planning (DD1-X-1) assists in the development, coordination, and tracking of cross-cutting initiatives, long-range and operational planning, and management processes. Analyzes and participates in issue identification and resolution. Provides and coordinates regional HDS participation in interagency projects, work groups, and special initiatives.

Serves as liaison with related support units in the Office of the Assistant Secretary, HDS, and in the office of the principal regional official.

Conducts management analyses and provides technical assistance in planning and management information systems. Monitors program performance through MBO and other assessment systems.

Tracks cross-cutting objectives and keeps informed on progress on operational program objectives. Develops regional HDS position and briefing papers. Establishes and implements review and comment procedures.

Responds to requests for assistance and provides leadership in the resolution of complaints regarding regional HDS activities.

2. Grants Management and Budget Office (DD1-X-2) serves as grants officer for the HDS regional office and administers all business aspects and nonprogrammatic aspects of regional HDS discretionary grants insuring compliance with the HEW Grants Administration Manual and pertinent laws, regulations, policies, and procedures. Monitors financial aspects of grantee performance and provides appropriate technical assistance. In coordination with the appropriate Regional Program Director, resolves discretionary grant audit exceptions. Assists regional staff in contract procurements. Establishes property inventory and control. Maintains liaison with Regional Comptroller, HEW Audit Agency, and OAM/HDS. Formulates and monitors execution of regional HDS budget.

B. Regional Offices on Aging (DD1-X5) are located within the HDS Regional Offices. Each Regional Office on Aging is under the immediate direction of a Regional Program Director (RPD) who is responsible to the Commissioner on Aging through the Associate Commissioner for Program Operations.

The Regional Offices on Aging serve as the focal point for Older Americans Act programs within the 10 HEW regions through the development, coordination, and administration of AOA programs which provide services and advocacy through a Federal/State administered program, as the focus in each region for consideration of issues regarding policies affecting the elderly, and as advocates to assure the rights and entitlements of the elderly. Each such office represents the Commissioner on Aging and the Administration on Aging within its region, and provides information for and contributes to the development of national policy dealing with the elderly. Based on national policy and priorities, establishes regional program goals and objectives. Provides assistance to applicants for discretionary grants and contracts authorized under the Older Americans Act; approves discretionary grants for the Commissioner when such authority is delegated to the RPD; facilitates State and area agency review and comment on applications for discretionary grants and contracts; makes recommendations to the Commissioner on requests for discretionary grants and contracts; and assists in monitoring and evaluating certain discretionary grants. Monitors and provides assistance to States administering aging programs provided through Titles III, V, and VII of the Older Americans Act. Reviews State Plans on Aging and recommends approval or disapproval to the Commissioner on Aging. Advises the Commissioner of problems and progress of programs through the Office of Program Operations; recommends to the Commissioner policy changes that would im-

prove State and community operations; evaluates the effectiveness of programs in the region and recommends to the Commissioner and/or takes positive action to gain improvement as appropriate and assists agencies and grantees in applications of policy to specific operational issues requiring resolution. Facilitates interagency cooperation at the Federal, regional, and State levels to enhance resources and assistance available to the elderly. Coordinates with the RA/HDS on matters of an administrative or cross-cutting nature; keeps the RA/HDS routinely informed of program issues and progress. Is responsible for regional aging objectives.

C. Regional Offices for Children, Youth and Families (DD1-X4) are headed by a Regional Program Director (RPD) who reports directly to the Commissioner, ACYF. The RPD's administer, manage, and coordinate all programs in the CYF Regional Offices. Responsible for all regional program inspection activities, including civil rights matters, affecting ACYF programs. Develops, implements, and monitors all regional operational plans; assists in the development of regional budgets for all regional CYF programs; monitors budget implementation and grant and contract procurements; and coordinates the regional personnel, equal employment opportunity/affirmative action, and other general administrative functions with the RA/HDS. Is responsible for regional CYF operational objectives. The RPD's, in Regions II, III, IV, and V only, are also responsible for administration of grants under the Appalachian Regional Development Act for child development activities. In close coordination with the Appalachian Regional Commission (ARC), evaluates grantee programs, plans for and provides T/TA directly and through grants and contracts to grantees to improve program performance. Provides liaison with and information to interested groups, both public and private, on the ARC child development program. Manages the funding, monitoring, and evaluation of all regional Head Start grantees. Assures grantee compliance with performance standards. Evaluates need for training and technical assistance, and assures provision of appropriate T/TA. Monitors T/TA grants and contracts to assure efficient and proper use of funds. Manages certain demonstration projects in connection with Head Start programs. Provides information on Head Start to government and private groups and persons.

Administers and manages grants to States as authorized by title IV-B, Child Welfare Services and Training Programs, of the Social Security Act, and the Child Abuse Prevention Act, Pub. L. 93-247. Jointly plans with the States for the use of such funds and approves and makes grant awards to the States. Monitors State performance in the implementation of State grants; develops and implements training and technical assistance plans. Provides technical assistance, training liaison, and information to State and local governments, professional groups, and nonprofit agencies in child welfare and prevention of child abuse and neglect. Disseminates good practice guidelines and model legislation in the area of child welfare. Manages the selection, funding and monitoring of runaway youth facility projects in the region. Evaluates performance of projects against performance standards. Plans and arranges for the provision of T/TA to staff of runaway facilities as needed. Works with State and local governments and private groups to improve services to runaway youth and to discourage inappropriate institutionalization. Coordinates with the RA/HDS on matters of an administrative or cross-cutting nature. Keeps RA/HDS routinely informed of program issues and progress.

D. The Regional Offices for Public Services (DD1-X3) are headed by Regional Program Directors (RPD) who work under the supervision of the Regional Administrator, HDS. Program policy direction is provided to the Regional Office by the Commissioner, Administration for Public Services. Provides guidance and technical assistance to States in the planning, administration, evaluation, and delivery of comprehensive social services under title XX of the Social Security Act, as well as under titles I, IV-A, X, XIV, XVI (Aid to the Aged, Blind and Disabled, AABD) in regions II and IX. Assists States in the development and operation of title XX training programs and the development of manpower for the title XX program. Develops and promotes linkages between title XX and other social services programs in the States through leadership in the development, design, and evaluation of comprehensive annual services plans. Maintains liaison with income maintenance and health programs to facilitate provision of social services to clientele of these programs. Approves title XX State administrative plans and amendments and social service plans and amendments under titles I, IV-A, X, XIV, XVI (AABD) in regions II and IX. Reviews comprehensive annual services plans for compliance with Federal requirements and certifies their acceptability. Reviews, approves, defers, or disallows claims for Federal financial participation (FFP) by State and local social service agencies under title XX, as well as under titles I, IV-A, X, XIV, XVI (AABD) in regions II and IX.

Provides guidance and technical assistance to State and local agencies on the development and operation of financial management and reporting systems to support program goals and in the interpretation, implementation and operation of social services regulations, policies, and procedures. Assists States in the adoption of improved delivery practices and improved program, administrative, reporting, and financial management practices. Stimulates and facilitates the development of appropriate R. & D. and evaluation projects; in collaboration with the Regional Administrators and APS headquarters staff, monitors progress of R. & D. grants within the region. Monitors State adherence to title VI of the Civil Rights Act. Monitors adherence of State title XX programs to Federal requirements and conducts program reviews of the planning, financial, training, and program delivery operations in the States. Serves as the HDS liaison with State and local CETA administrators and with the DOL Employment and Training Administration. Advises the HDS Regional Administrators of opportunities for coordination between WIN and CETA and the HEW social service programs. Works with State and local program administrators and officials of private agencies and foundations to promote social and human development services. Consults with Regional Administrators on the planning and implementation of cross-cutting initiatives which require the involvement and assistance of other HDS.

E. The Regional Offices for Rehabilitation Services (DD1-X2) are headed by Regional Program Directors who report directly to the Commissioner, RSA. Develops, administers, and coordinates RSA/HDS programs which provide services for handicapped individuals through a State/Federal administered program. Provides information for and contributes to the development of national policy dealing with handicapped individuals and the developmentally disabled. Based on national policy and priorities, establishes regional program goals and objectives and provides direction and consultation in the administration of mandated programs. Provides guidance and leadership to State, local, and voluntary organizations. Works in close cooperation with other governmental agencies, professional organizations, universities, and other service providers. Plans, coordinates, and administers resources in providing services for the developmentally disabled. Participates in planning and conducting research and demonstration and related activities by means of grants and contracts for the purpose of developing methods, procedures, technology, and devices which serve to

promote and advance employment of handicapped individuals or improve their quality of life. Directs or promotes a training program to increase the number and quality of skilled personnel required to provide services to the target populations. Serves as the focus in each HDS regional office for consideration of issues regarding policies affecting target populations. Advocates for the rights of the disabled. Serves as regional contact for information on subjects relevant to problems of the disabled. Evaluates the effectiveness of the RSA programs in the regions in meeting the needs of target populations and recommends and/or takes affirmative action to promote improvement. Responsible for regional rehabilitation services operational objectives. Coordinates with the RA/HDS on matters of an administrative or cross-cutting nature. Keeps RA/HDS routinely informed of program issues and progress.

Dated: July 3, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-21061 Filed 7-28-78; 8:45 am]

[4110-02]

Office of Education

NATIONAL ADVISORY COUNCIL ON THE EDUCATION OF DISADVANTAGED CHILDREN

Notice of Scheduled Site Visit

Notice is hereby given, pursuant to Pub. L. 92-463, that a team of the National Advisory Council on the education of Disadvantaged Children will be making a site visit to migrant programs in Western New York State on August 16, 17, and 18, 1978.

The National Advisory Council on the Education of Disadvantaged Children is established under section 148 of the Elementary and Secondary Act (20 U.S.C. 2411) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

The team will be conducting the site to visit migrant camps and migrant programs in Geneseo, Brockport, Albion, Newfane and other rural areas close to those population centers. Persons desiring further information on the site activities may call Mrs. Lisa Haywood at area code 202-724-0114.

A site visit report will be prepared during the fall, and single copies will be available upon written request at the Office of the National Advisory Council on the Education of Disadvantaged Children, located at 425 13th Street NW., Suite 1012, Washington, D.C. 20004.

Signed at Washington, D.C. on July 26, 1978.

ROBERTA LOVENHEIM,
Executive Director.

[FR Doc. 78-21048 Filed 7-28-78; 8:45 am]

[4110-12]

Office of the Secretary

CHILD AND FAMILY DEVELOPMENT RESEARCH REVIEW COMMITTEE

Meeting

The Child and Family Development Research Review Committee will meet on Monday, September 11, 1978, through Thursday, September 14. The meeting will be held daily from 9 a.m. to 5 p.m. in Room 5559, Administration for Children, Youth and Families, 400 Sixth Street SW., Washington, D.C., and will be closed to the public except for the opening remarks. The purpose of the Committee meeting is to review applications for research and demonstration projects in the areas of child and family development and welfare, and child abuse and neglect and to make recommendations to the Commissioner, Administration for Children, Youth and Families, as to which projects should be funded. The agenda of this meeting will consist of opening remarks by the Commissioner, Administration for Children, Youth and Families, followed by the review of research and demonstration proposals concerned with child and family development and welfare, and child abuse and neglect which have been submitted to the Administration for Children, Youth and Families for the award of grants. The closed portion of the meeting involves solely discussion by committee members of individual grant applications which contain information of a proprietary or confidential nature, including detailed research protocols, designs, and other technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. These are matters listed in 5 U.S.C. 552(b) (4) and (6). This portion of the meeting is closed under provision of 5 U.S.C. 552b(c) (4) and (6), and section 10(d) of the Federal Advisory Committee Act.

A list of Committee members and a summary of the meeting may be obtained from:

Barbara Rosengard, Research and Evaluation Division, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013, 202-755-7758.

Dated: July 18, 1978.

BARBARA ROSENGARD,
Executive Secretary.

[FR Doc. 78-21093 Filed 7-28-78; 8:45 am]

[4110-12]

SECRETARY'S ADVISORY COMMITTEE ON THE RIGHTS AND RESPONSIBILITIES OF WOMEN

Meeting

The Secretary's Advisory Committee on the Rights and Responsibilities of Women, which is established to provide advice to the Secretary of Health, Education, and Welfare on the impact of the policies, programs, and activities of the Department on the status of women will meet on Thursday, September 7, 1978 from 9 a.m. to 5 p.m., and, on Friday, September 8, 1978 from 9 a.m. to 3 p.m., in room 703-A, HEW-Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. The agenda will include reports from Title IX, Health and Family Policy Task Forces and action decisions based upon those reports.

Further information on the Committee may be obtained from: Susan C. Lubick, Executive Secretary, telephone 202-245-8454. These meetings are open to the public.

Dated: July 25, 1978.

SUSAN C. LUBICK,
Executive Secretary, Secretary's Advisory Committee on the Rights and Responsibilities of Women.

[FR Doc. 78-21062 Filed 7-28-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

COLORADO

Notice of Availability of Draft West-Central Colorado Coal Regional Environmental Statement and Holding of Public Hearings for the Proposed Development of Coal Resource in West-Central Colorado

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of Interior has prepared a draft environmental statement on possible development of coal resources in west-central Colorado.

The DES analyzes the environmental effects that would result from six proposed underground mining and reclamation plans and examines the cumulative impacts of potential coal development through 1990 in Delta, Garfield, Gunnison, Mesa, Montrose, Ouray, and Pitkin Counties in west-central Colorado.

Single copies of the draft statement can be obtained from the:

BLM Disrict Manager, Montrose District Office, Highway 550 South, P.O. Box 1269, Montrose, Colo. 81401.
BLM District Manager, Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colo. 81501.
BLM State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colo. 80202.

Copies of the statement are also available for inspection at the following locations:

Washington Office of Public Affairs, Bureau of Land Management, Room 5627, 18th and C Street NW., Washington, D.C. 20240.
Montrose Regional Library, Montrose Colo. 81401.
Delta City Public Library, Delta, Colo. 81416.
Paonia Public Library, Paonia, Colo. 81428.
Conservation Library, Denver Public Library, 1357 Broadway, Denver, Colo. 80206.
Glenwood Springs Public Library, Glenwood Springs, Colo. 81601.
Mesa College Library, Grand Junction, Colo. 81501.
Montrose County Courthouse, Montrose, Colo. 81401.
Delta County Courthouse, Delta, Colo. 81416.
Garfield County Courthouse, Glenwood Springs, Colo. 81601.
Ouray County Courthouse, Ouray, Colo. 81427.
Mesa County Courthouse, Grand Junction, Colo. 81501.
Gunnison County Courthouse, Gunnison, Colo. 81230.
Pitkin County Courthouse, Aspen, Colo. 81611.

Written comments on the draft environmental statement should be submitted by September 20, 1978, to the District Manager, Montrose District Office, Bureau of Land Management, Highway 550 South, P.O. Box 1269, Montrose, Colo. 81401.

Oral and written comments will also be received at public hearings to be held:

September 13, 1978, at the Delta County Courthouse, Delta, Colo.
September 14, 1978, at the Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colo.
September 15, 1978, at the Denver Public Library, 1357 Broadway, Denver Colo.

Hearings will be held at 1 p.m. and 7 p.m. at each location.

Oral testimony of 10 minutes maximum duration will be accepted from each witness at the hearing in lieu of written comments or in addition to any written comments submitted by each witness. The 10 minute time limitation will be strictly enforced. The complete text of prepared speeches may be filed with the presiding officer at the hearing whether or not the speaker has been able to finish with oral delivery in the allotted 10 minutes.

Speakers will be heard, if present, in their established order on the witness list. After the last listed witness has been heard the presiding officer will consider the request of any other person present and wishing to testify. Only one witness will be allowed to represent the viewpoints of a single organization. However, any witness will be permitted to give germane testimony if offered as the views or opinions of a private citizen.

Written requests to testify orally should be received at the Montrose District Office at the above address prior to close of business on September 8, 1978. Requests should identify the organization represented and should be signed by the prospective witness.

Written or oral comments on the statement will receive equal consideration in preparation of the final environmental statement scheduled for publication in January 1979.

ARNOLD E. PETTY,
Acting Director,
Bureau of Land Management.

Approved: July 27, 1978.

GUY R. MARTIN,
Assistant Secretary
of the Interior.

[FR Doc. 78-21295 Filed 7-28-78; 9:12 am]

[4310-84]

LAKEVIEW DISTRICT OFFICE, OREGON

Restriction of Use of Motorized Vehicles on National Resource Lands

Notice is hereby given that restriction of use of motorized vehicles on certain public lands, in the Fossil Lake area, which were placed under restriction on January 26, 1977, is extended in accordance with the provisions of 43 CFR parts 6010.4. In addition certain other public lands in the Fossil Lake area are added. These restrictions do not apply to emergency, law enforcement, and Federal or other government vehicles while being used for official or emergency purposes, or vehicles authorized by permit or contract.

The areas affected by this designation and restriction notice are located approximately 11 miles northeast of Christmas Valley, Oregon. The legal description of the closed lands is:

TOWNSHIP 26 SOUTH, RANGE 19 EAST, WILLAMETTE MERIDIAN

Previously closed lands:
Secs:
7, NE¼SE¼, S½SE¼
8, S½N½, S½
14, all
15, all
17, all
18, E½
22, all
23, all
Sub total acres 4120

Additional closed lands:
Secs:
9, S½, S½NW¼, S½NE¼, NE¼NE¼
10, all
11, all
21, all
Subtotal acres 2,440

Total acres 6,560

The use of these public lands by vehicles in the past has destroyed vertebrate fossils that have significant scientific value. After consultation with various universities, museums and individuals throughout the United States, a motorized vehicle closure was determined to be necessary to protect the paleontological values (fossils) from further destruction and disturbance. The need for the original vehicle closure was discussed at formal public meetings for the Christmas Lake Planning Unit and informally with various off-road vehicle clubs using the area for recreation. New inventory work completed in the area during the period of restriction and further informal consultation with universities, museums and individuals, has shown the need to extend and enlarge the restriction to protect paleontological value (fossils). In addition, significant cultural values (archeological) were identified which also are in need of protection from further disturbance and destruction.

The restriction is effective immediately until January 31, 1980 or until the current resource planning with updated public input is completed on the Christmas Lake Planning Unit. The planning is expected to be done by January 1, 1980. Maps showing the areas described above are available at the Bureau of Land Management, Lakeview District Office, 1000 South 9th Street (P.O. Box 151), Lakeview, Oregon 97630.

Dated: June 21, 1978.

RICHARD A. GERITY,
District Manager.

[FR Doc. 78-21014 Filed 7-28-78; 8:45 am]

[4310-84]

PROPOSED FEDERAL COAL LEASING PROGRAM

Availability of Draft Environmental Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: On September 27, 1977, an order was given by the U.S. District Court for the District of Columbia

which concluded that the final environmental statement (ES) on the Federal coal leasing program was inadequate. In furtherance of the instructions in that order, the Department of the Interior is making available copies of the proposed outline for the new draft ES on the Federal coal leasing program.

ADDRESS: Copies of the outline may be obtained from the Office of Coal Management (140), Bureau of Land Management, Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Pat Geehan, Office of Coal Management (140), 202-343-4537.

SUPPLEMENTARY INFORMATION: On September 19, 1975, the Department of the Interior filed the final ES on the Proposed Federal Coal Leasing Program (FES 75-80). In the case *Natural Resources Defense Council, Inc.* v. *Royston Hughes*, Civil Action No. 75-1749, the U.S. District Court for the District of Columbia rules that the final ES filed in 1975 on the Federal coal leasing program was inadequate. The court ordered the Department to remedy the inadequacies by asking for comments on the final ES and preparing a new draft and new final coal programmatic ES.

The Department requested and received comments on the 1975 ES. After reviewing those comments, the Department has prepared a proposed outline for the new draft. ES.

The proposed outline will be the basis for the new draft ES. The outline may change in the course of developing the new draft ES. Note also that the outline structure represents a departure from the standard outline form described in the Department Manual 516. Our reason for departing from the standard outline, somewhat, is to make the explanation of the analyses the Department is conducting clearer and more succinct. The new statement will specifically propose policies and procedures for management of the Federal coal leasing program in an environmentally sound manner. The draft statement will be made available to the public, as announced in the FEDERAL REGISTER, public hearings will be held, and comments will be received for at least 45 days after the notice of the release of the statement.

Thereafter, the Department will prepare a new final coal programmatic ES that combines and integrates the material in the draft with the final ES previously released in 1975, and which fully responds to the comments received on the draft statement. After the new final ES has been made available to the public and is on file with the Environmental Protection Agency for at least 30 days, the Secretary of the Interior will personally reevaluate the Federal coal management policy based on the information contained in the new final ES and shall adopt a new Federal coal management policy.

ARNOLD E. PETTY,
Acting Associate Director,
Bureau of Land Management.

Approved: July 26, 1978.

GUY R. MARTIN,
Assistant Secretary,
of the Interior.

[FR Doc. 78-21106 Filed 7-28-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[AA1921-Inq.-14, AA1921-Inq.-15, and AA1921-Inq.-16]

PERCHLOROETHYLENE FROM BELGIUM, FRANCE, AND ITALY

Inquiry and Hearing

The U.S. International Trade Commission (Commission) received advice from the Department of the Treasury (Treasury) on July 19, 1978, that, during the course of determining whether to institute investigations with respect to perchloroethylene from Belgium, France, and Italy in accordance with section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)), Treasury had concluded from the information developed during its preliminary investigations 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. Therefore, the Commission on July 24, 1978, instituted inquiries AA1921-Inq.-14, AA1921-Inq.-15, and AA1921-Inq.-16, 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.

The Treasury advised the Commission as follows:

DEAR MR. CHAIRMAN: In accordance with section 201(c) of the Antidumping Act of 1921, as amended, an antidumping investigation is being initiated with respect to perchloroethylene from Belgium, France, and Italy. Pursuant to section 201(c)(2) of the act, you are hereby advised that the information developed during our preliminary investigation has led me to the conclusion 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.

The bases for my determination are summarized in the attached copies of the Antidumping Proceeding Notices in this case. Additional information will be provided by the U.S. Customs Service.

Some of the information involved in this case is regarded by Treasury to be of a confidential nature. It is therefore requested that the Commission consider all the information provided for its investigation to be for the official use of the ITC only, not to be disclosed to others without prior clearance from the Treasury Department.

Sincerely,

HENRY C. STOCKELL, JR.,
Acting General Counsel.

Hearing. A public hearing in connection with the inquiries will be held in Washington, D.C., on Friday, August 4, 1978, at 10 a.m., e.d.t. The hearing will be held in the Hearing Room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received in writing in the office of the Secretary to the Commission not later than noon Monday, July 31, 1978.

Written statements. Interested parties may submit statements in writing in lieu of, and in addition to, appearance at the public hearing. A signed original and 19 true copies of such statements should be submitted. To be assured of their being given due consideration by the Commission, such statements should be received not later than Friday, August 4, 1978.

By order of the Commission.

Issued: July 26, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-21126 Filed 7-28-78; 8:45 am]

[4410-18]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

DISCRETIONARY GRANT APPLICATIONS

Public Hearing

AGENCY: LEAA, Department of Justice.

ACTION: Notice of public hearing.

NOTICE: This is to give notice that the Law Enforcement Assistance Administration will conduct hearing in the matter of the appeal of the Georgia Department of Offender Rehabilitation from the denial of their Discretionary Grant Application No. 0089-04-ED-77 entitled "Performance Management Training for Correctional Officers."

DATE AND ADDRESS: The hearing will be held at 10 a.m. on Thursday, August 3, 1978, at the following location: FTC Offices, Suite 1010, 1718 Peachtree Street, Atlanta, Ga. 30309.

FOR FURTHER INFORMATION CONTACT:

Robert Gorman, Attorney-Advisor, Law Enforcement Assistance Administration, 633 Indiana Avenue NW., Washington, D.C. 20531, telephone, 202-376-3692.

CHARLES A. LAUER,
Deputy General Counsel, Office of General Counsel, Law Enforcement Assistance Administration.

[FR Doc. 78-21013 Filed 7-28-78; 8:45 am]

[4410-01]

Office of the Attorney General

[Order No. 796-78]

PRIVACY ACT OF 1974

System of Records (Amended)

On Friday, September 30, 1977, notice of the existence of the EEO (equal employment opportunity) volunteer representative roster (JUSTICE/OMF-015) was published in the FEDERAL REGISTER.

The roster consists of employees of the Department of Justice who have volunteered to serve as EEO representatives. The roster is used by Department personnel and applicants for De-

partment jobs who have filed or contemplate filing discrimination complaints based on race, color, religion, sex, national origin, age, or handicap.

Notice is hereby given that because of an internal reorganization the system manager and address for the above-named system have been changed to: Director, Equal Opportunity Programs Staff, Office of Management and Finance, Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530. The system manager is the official responsible for the system policies and practices.

Dated: June 26, 1978.

GRIFFIN B. BELL,
Attorney General.

[FR Doc. 78-21127 Filed 7-28-78; 8:45 am]

[4410-01]

[Order No. 797-78]

PRIVACY ACT OF 1974

Notice of New System of Records

Notice is hereby given, pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), that the Department of Justice proposes a new system of records to be maintained by the Community Relations Service.

The management information system (MIS), JUSTICE/CRS-001, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. § 552a(e)(4) has been published in the FEDERAL REGISTER.

Interested persons are invited to submit written comments on the routine uses of this system. Comments should be addressed to the Administrative Counsel, Office of Management and Finance, Room 1118, Department of Justice, Washington, D.C. 20530. All comments must be received on or before August 30, 1978. Comments will be available for public inspection in Room 642, Todd Building, 550 11th Street NW., Washington, D.C. No oral hearings are contemplated.

A report of the proposed system has been provided to the Director, Office of Management and Budget, to the President of the Senate and to the Speaker of the House of Representatives.

Dated: June 26, 1978.

GRIFFIN B. BELL,
Attorney General.

JUSTICE/CRS-001

System name:

Management Information System.

System location:

Community Relations Service, U.S. Department of Justice, 550 11th Street NW., Washington, D.C. 20530.

Categories of individuals covered by the system:

Conciliators and Mediators of the Community Relations Service of the U.S. Department of Justice.

Categories of records in the system:

The file contains the names of CRS employees, their case assignments, and the time allocated to each assignment. In addition, information reflecting the current status and handling of the case is included within the system.

Authority for maintenance of the system:

The file is established to effect the purposes of 42 U.S.C. 2000g-1, 2000g-3 (1970).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The file is used by CRS personnel as a basis for preparing daily, weekly, and monthly activity reports for internal management. It is also used by the Administrative Office to prepare time efficiency analyses on CRS personnel. In addition, the file will be consulted in order to prepare budget requests and reports to the Associate Attorney General, the Attorney General, and to Congress.

Release of Information to the News Media and the Public: Information from the system of records may be made available to the news media and the public, unless such release would violate 42 U.S.C. 2000g-2, or would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress: Information contained in the system, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record unless such release would violate 42 U.S.C. 2000g-2.

Release of Information to the National Archives and Records Service: A record from the system of records may be disclosed to the National Archives and Records Service (NARS) for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906, unless such disclosure would violate 42 U.S.C. 2000g-2.

Policies and practices for storing, retrieving, accessing, retaining, and dispensing of records in the system:

Storage:

Automated records are maintained on magnetic disk at the Department of Justice Data Management Service, and on tape at the Community Relations Service, 550 11th Street NW., Washington, D.C.

Retrievability:

Information is retrieved by a variety of key words including, but not limited to, the name of the employee, geographic location, and subject matter of the record.

Safeguards:

Information maintained in the system is safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. Only individuals specifically authorized by the Director of CRS will have access to the computer through a single terminal located in an office occupied during the day and locked at night. Access to the information in the system will be limited to those CRS employees whose official duties require such information.

Retention and disposal:

Records classified by the subject's name are retained until 60 days after the record subject leaves the employment of the Community Relations Service and are then deleted from the system.

System manager and address:

Deputy Director, Community Relations Service, U.S. Department of Justice, Todd Building, 550 11th Street N.W., Washington, D.C. 20530.

Notification procedures:

Address inquiries to Office of Chief Counsel, Community Relations Service, U.S. Department of Justice, 550 11th Street NW., Washington, D.C. 20530.

Record access procedures:

In all cases, requests for access to a record shall be in writing, by mail or in person. If request for access is made by mail, the envelope and letter shall be clearly marked "Privacy Act Request." The requester shall include a description of the record requested and, if known, the case file number(s). To identify a record relating to an individual, the requester must provide the individual's full name, date and place of birth, employee identification number, and date of employment and duty assignment station(s) while employed by the Community Relations Service.

Contesting record procedures:

Any individual desiring to contest or amend information maintained in the system should direct his or her request to the Deputy Director, Community Relations Service, U.S. Department of Justice, Todd Building, 550 11th Street NW., Washington, D.C. 20530. The request should state clearly what information is being contested, the reason for contesting, and the proposed amendment to the information.

Record source categories:

The records are prepared by the conciliator/mediator or, in exceptional cases, by his or her supervisor.

Systems exempted from certain provisions of the Act:

None.

[FR Doc. 78-21128 Filed 7-28-78; 8:45 am]

[4510-23]

MINIMUM WAGE STUDY COMMISSION

CANCELATION OF PUBLIC MEETING

The meeting of the Minimum Wage Study Commission scheduled for August 1, 1978, announced in the FEDERAL REGISTER on Friday, July 21, 1978 (43 FR 31474), has been canceled.

GERALD M. FEDER,
Chairman.

[FR Doc. 78-21333 Filed 7-28-78; 11:24 am]

[7536-01]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

HUMANITIES PANEL ADVISORY PANEL

Meeting

JULY 26, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 309, from 9 a.m. to 5:30 p.m. on August 14, 1978.

The purpose of the meeting is to review NEH Independent Fellowship applications in English Literature through the Eighteenth Century submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

DAVID C. JOHNSTONE,
Acting Director of Administration.

[FR Doc. 78-21087 Filed 7-28-78; 8:45 am]

[7536-01]

HUMANITIES PANEL ADVISORY COMMITTEE

Meeting

JULY 26, 1978.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street NW., Washington, D.C. 20506, in room 1130, from 9 a.m. to 5:30 p.m. on August 16, 1978.

The purpose of the meeting is to review NEH Independent Fellowship applications in American and Irish Literature from the Romantic Period to the Present submitted to the National Endowment for the Humanities for projects beginning after January 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

DAVID C. JOHNSTONE,
Acting Director of Administration.

[FR Doc. 78-21088 Filed 7-28-78; 8:45 am]

[7536-01]

NATIONAL COUNCIL ON THE HUMANITIES ADVISORY COMMITTEE

Meeting

JULY 25, 1978.

Pursuant to the Provisions of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a meeting of the National Council on the Humanities will be conducted at Washington, D.C., on August 17-18, 1978.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Shoreham Building, 806 15th Street NW., 1st Floor Conference Room, Washington, D.C. The session of the proposed meeting on August 17, 1978, and the afternoon session on August 18, 1978, will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy. Pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the committee.

The morning session on August 18, 1978, will convene at 8:30 a.m. and will be open to the public. The agenda for the morining session will be as follows:

MINUTES OF THE PREVIOUS MEETING

REPORTS

A. Chairman's Introductory Remarks.
B. Introduction of New Staff.
C. Summary of Recent Business.
D. Chairman's Grants.
E. Application Report.
F. Gifts and Matching Report.
G. Ratification of Actions of 48th Meeting.
H. Dates of Future Council Meetings.
I. Evaluation.
J. FY 1979 Appropriation Request.
K. FY 1980 Budget Request to OMB.

The remainder of the proposed meeting will be closed to the public.

It is suggested that those desiring more specific information contract the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

DAVID C. JOHNSTONE,
Acting Director of Administration.

[FR Doc. 78-21086 Filed 7-28-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON FLUID DYNAMICS

Meeting

The ACRS Subcommittee on Fluid Dynamics will hold an open meeting on August 15, 1978 at the Westbank Motel Coffee Shop, 475 River Parkway, Idaho Falls, Idaho 83401, to discuss the RELAP 4 and 5 Codes and their applications to reactor calculations. The BEACON Code also will be reviewed. Notice of this meeting was published at 43 FR 26162 and 30631, June 16 and July 17, 1978, respectively.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977 (42 FR 56972), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

TUESDAY, AUGUST 15, 1978

8:30 A.M. UNTIL THE CONCLUSION OF BUSINESS

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which shoud be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the Idaho National Engineering Laboratory (INEL), and their consultants, pertinent to the above topics. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Andrew L. Bates, telephone 202-634-3267, between 8:15 a.m. and 5 p.m., EST.

Dated: July 26, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-21137 Filed 7-28-78; 8:45 am]

[7590-01]

[Docket Nos. STN 50-592 and STN 50-593]

ARIZONA PUBLIC SERVICE CO., ET AL. (PALO VERDE NUCLEAR GENERATING STATION, UNITS 4 AND 5)

Receipt of Antitrust Information and Application for Construction Permits and Operating Licenses: Time for Submission of Views on Antitrust Matters

Arizona Public Service Co. on behalf of itself and 10 joint applicants—Southern California Edison Co., El Paso Electric Co., San Diego Gas & Electric Co., Nevada Power Co., Department of Water and Power of the city of Los Angeles, city of Anaheim, city of Burbank, city of Glendale, city of Pasadena, and city of Riverside, Calif. (the applicants), pursuant to section 103 of the Atomic Energy Act of 1954, as amended, filed portions of their application. These parts which consist of the Safety Analysis Report, general and financial information were accepted for docketing on March 31, 1978, and are assigned docket Nos. STN 50-592 and STN 50-593.

In addition a portion of the application filed contains the information requested by the Attorney General for the purpose of an antitrust review of the application as set forth in 10 CFR 50, appendix L, and was also accepted for docketing and is assigned docket Nos. STN 50-592-A and STN 50-593-A.

The application is for authorization to construct and operate two pressurized water reactors designated as the Palo Verde Nuclear Generating Station, Units 4 and 5 on the applicants' site in Maricopa County, Ariz. The reactor is designed for operation at a core power level of 3,800 megawatts thermal, with an equivalent net electrical output of approximately 1,307 megawatts.

A notice of hearing setting forth the radiological issues to be considered during the review is being published separately. A date for submitting petitions for leave to intervene on radiological issues is set forth in the notice of hearing.

Any person who wishes to have his views on the antitrust matters of the application presented to the Attorney General for consideration should submit such views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation, on or before July 6, 1978. The request should be filed in connection with docket Nos. STN 50-592-A and STN 50-593-A.

The Environmental Report was tendered but initially rejected and is expected to be resubmitted on or before September 1, 1978. A separate notice of receipt and availability for this remaining portion will be published at that time. A deadline for filing of other contentions relating to matters covered in the omitted material will be established by the Board subsequent to acceptance of the Environmental Report for a detailed review.

After the Environmental Report has been received and analyzed by the Commission's Director of Nuclear Reactor Regulation or his designee, a draft environmental statement will be prepared by the Commission's staff. Upon preparation of the draft environmental statement, the Commission will cause to be published in the FEDERAL REGISTER a notice of availability of the draft statement, requesting comments from interested persons on the draft statement. Upon consideration of comments submitted with respect to the draft environmental statement, the staff will prepare a final environmental statement, the availability of which will be noticed in the FEDERAL REGISTER.

Copies of the individual portions of the application, as noted above are available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, and at the Phoenix Public Library, Science and Industry Section, 12 East McDowell Road, Phoenix, Ariz. 85004.

Dated at Bethesda, Md., this 20th day of April 1978.

For the Nuclear Regulatory Commission.

JOHN F. STOLZ,
Chief, Light Water Reactors Branch No. 1, Division of Project Management.

[FR Doc. 78-16334 Filed 6-13-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 10334]

MFS MANAGED MUNICIPAL BOND FUND AND MASSACHUSETTS FINANCIAL SERVICES CO.

Filing of Application Pursuant to Section 6(c) of the Act for an Order Granting Exemption From the Provisions of Section 22(d) of the Act

JULY 21, 1978.

Notice is hereby given that MFS Managed Municipal Bond Trust (the "Trust"), an open-end, diversified, management investment company reg-

istered under the Investment Company Act of 1940 (the "Act"), and Massachusetts Financial Services Co. ("Financial Services") (hereinafter the Trust and Financial Services are collectively referred to as "applicants"), filed an application on April 27, 1978, and amendments thereto on June 1, 1978 and July 20, 1978, pursuant to section 6(c) of the Act for an order of the Commission exempting applicants from the provisions of section 22(d) of the Act to the extent necessary to permit unit holders of specified registered unit investment trusts to purchase shares of the Trust with distributions to the unit holders at a price other than the current public offering price described in the Trust's prospectus. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants represent that the exemption is requested to permit unit holders of past and future series of the First Trust of Insured Municipal Bonds (hereinafter past and future series are collectively referred to as the "Funds") to purchase shares of the Trust at net asset value plus a sales charge of 0.4 percent. Applicants state that this purchase price is less than the current public offering price described in the Trust's prospectus.

Wauterlek & Brown, Inc. ("Wauterlek & Brown") is the sponsor of the Funds, and serves as principal underwriter of the units issued by each Fund. Each Fund owns an insured portfolio of debt securities issued by or on behalf of states, territories, possessions of the United States, the District of Columbia, and their poliictical subdivisions, agencies, or intrumentalities. The interest on the securities of the Funds is exempt from Federal income tax.

Applicants state that the Trust is an open-end, diversified management investment company which invests substantially all of its assets in debt securities issued by or on behalf of states, territories and possessions of the United States, and the District of Columbia and their political subdivisions, agencies, or instrumentalities. The interest on these debt securities is exempt from Federal income tax. Financial Services serves as the principal underwriter for the Trust. Applicants state that the public offering price of the shares of the Trust is the net asset value next computed after the sale, plus a sales charge of 4.75 percent (as a percentage of offering price) when the amount of purchase is less than $10,000. Applicants set forth a chart which states that at amounts of purchase above $10,000 the sales charge as a percentage of offering price is reduced, and further reduced as amounts of purchase increase. At amounts of purchase of $1,000,000 or more, the sales charge as a percentage of offering price is 1.50 percent.

Applicants make the following representations with regard to the proposed transactions: the Trust proposes to permit unit holders of the Funds to purchase shares of the Trust at net assset value plus a 0.4 percent sales charge. All unit holders would be eligible to participate in the reinvestment program but would be required to reinvest the entire amount of all interest and pricipal distributions from any Fund. A unit holder of an outstanding series of the Funds would be notified of the existence of the privilege. Disclosure of the privilege would be made in the prospectus of all future series of the Funds. Present and future unit holders would be sent a current prospectus of the Trust, together with an authorization form which, if executed and returned, would entitle the unit holder to receive, in shares of the Trust, distributions of any series designated by him from which he is entitled to receive distributions. For both outstanding and future series of the Funds, the authorization form would state that any election to receive distributions from any series of the Funds designated by him in shares of the Trust would be effective until the unit holder revokes such election by written notice to the Trustee of the Funds. Once a unit holder of the Funds elects to participate in the reinvestment program and becomes a shareholder in the Trust, he will be entitled to all rights of any shareholder of the Trust with regard to his interest.

Applicants state that the expenses of offering the reinvestment program to unit holders of the Funds will be borne by Financial Services. Applicants believe that the sales charge of 0.4 percent would be sufficient to offset the expenses of the reinvestment program to Financial Services, which company would retain the entire charge.

Applicants represent that the Trust has no minumum investment requirement and presently has no power to redeem any shareholder's shares without his consent and does not presently contemplate seeking such power.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it except to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person, except a dealer, a principal underwriter, or the issuer, except at a current public offering price described in the prospectus. Applicants request an order of exemption from the provisions of section 22(d) of the Act to permit unit holders of specified registered unit investment trusts to purchase shares of the Trust from distributions of interest and principal to the unit holders through their investment dealers at net asset value plus a sales charge of 0.4 percent.

Applicants assert that the purposes of section 22(d) are to prevent sales of investment company securities by unauthorized dealers at prices less than those offered by authorized distributors, which would hinder distribution of the securities, to prevent dilution of existing shareholder equity, and to prevent discrimination in favor of insiders.

In support of their request, applicants argue that the largest portion of a sales charge on shares of the Trust is attributable to soliciting the investor and ascertaining his financial requirements. However, applicants argue that unit holders of the Funds have already ascertained their financial requirements and their initial investment in municipal bonds has been made. Thus, applicants assert that sales costs are reduced and that the consequent savings should be passed on to investors. Applicants argue that permitting the unit holders of the Funds to reinvest their Fund distributions is little different from permitting existing shareholders of the Trust to reinvest their distributions.

Additionally, applicants assert that because a subsidiary of the Bradford National Corp., Bradford Trust Co. of New York, is trustee of all but the first seven series of the Funds and another subsidiary of the same corporation, Bradford Trust Co. of Boston, is transfer agent for the Trust, the cost of processing the distribution reinvestments will not be materially greater than if the unit holders were existing Trust shareholders. Applicants submit that Fund investors, rather than Financial Services, the underwriter, should receive the benefit of the lower sales cost to be attained in the proposed reinvestment program.

Applicants also assert that the proposed reinvestment program will not result in a dilution in the equity of the existing shareholders in the Trust because the Trust will receive the asset value of the shares sold. Applicants argue that the Trust and its shareholders will benefit from the proposed reinvestment program because the program will increase the Trust's asset base. Since applicants assert that operating expenses will not increase concurrently with asset size, the per share cost of operations borne by the Trust's shareholders would be reduced. Appli-

cants further assert that the program will help assure the Trust of a positive cash flow, permitting it to (1) meet redemptions without disturbing investments, (2) decrease the assets devoted to cash reserves, and (3) gradually build up investment positions.

Section 6(c) of the Act provides, in pertinent part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than August 15, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant be delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-21021 Filed 7-28-78; 8:45 am]

[8010-01]

NATIONAL FUEL GAS COMPANY ET AL.

Proposal Requesting Further Exception From Consolidated Tax Allocation Provisions of Rule 45(b)(6)

Release No. 20636

JULY 21, 1978.

In the Matter of National Fuel Gas Co., 30 Rockefeller Plaza, New York, N.Y. 10020; National Fuel Gas Distribution Corp., Seneca Resources Corp., 10 Lafayette Square, Buffalo, N.Y. 14203; and National Fuel Gas Supply Corp., 308 Seneca Street, Oil City, Pa. 16301.

Notice is hereby given that National Fuel Gas Co. ("National"), a registered holding company, and its three wholly owned subsidiary companies have filed a declaration and an amendment thereto with this Commission pursuant to secton 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and rule 45 promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

National and its three subsidiary companies join annually in filing a consolidated Federal income tax return. By order dated April 19, 1963 (HCAR No. 14853), National was granted authoization to allocate the system's consolidated Federal income tax liabilities after giving effect to the investment tax credit in a manner differing from that prescribed in subparagraph (b)(6) of rule 45 promulgated under the Act. National now proposes a further modification of its manner of allocating consolidated Federal income taxes. It is stated that the reason for seeking the change centers around the recent expansion of the exploration and development activities of Seneca Resources Corp. ("Seneca").

Seneca is engaged in exploration for, and development of, oil and natural gas reserves in the Gulf Coast, Southwest, and Rocky Mountain areas of the United States and in the processing of liquefied petroleum products. The filing states that the growing needs of the National system for supplies of natural gas, coupled with the general decline of supplies from traditional sources, has necessitated that the system seek additional reserves. During the 12 months ended September 30, 1977, Seneca expended $1,900,000 for exploration and development. Exploration and development expenditures for fiscal 1978 and 1979 are presently estimated at $7,000,000 and $9,000,000, respectively. It is asserted that, normally, several years elapse before newly discovered gas reserves can be developed and marketed. During these early years, a large portion of the related expenses for gas exploration and development, such as the deduction for intangible drilling and development costs and abandonment of leasehold interests, although capitalized for books, are deducted as current expenses for Federal income tax purposes and thus produce tax losses and savings in consolidated tax liability. Seneca's operations produced a tax loss of $1,000,766 in fiscal 1977 and are expected to produce tax losses in succeeding years estimated at $3,148,000 in fiscal 1978 and $6,250,000 in fiscal 1979.

With the inclusion of Seneca in the consolidated tax return, an immediate reduction in income tax is obtained which would not otherwise be available to the system. Under the allocation method set forth in rule 45, the benefits of the current reductions in the tax attributable to the Seneca tax losses would flow to system companies other than Seneca in the form of reduced tax payments. In order to prevent this result and to provide Seneca with funds to carry on its exploration and development program, National's proposed method of allocation would, in effect, authorize the other system companies to pay Seneca an amount equal to their respective reductions in Federal income tax liability resulting from tax losses incurred by Seneca as a result of its exploration and development program.

The following procedure is to be used:

1. When, in any taxable year, the operations of Seneca result in a tax loss, the consolicated Federal income tax to be allocated among the other system companies (including subsidiaries of National not now in existence) will be based upon the tax that would have resulted had Seneca been excluded from the consolidated Federal income tax return.

2. The funds retained by virtue of the reduction in tax resulting from inclusion of that tax loss in the consolidated Federal income tax return would be remitted to Sebeca.

3. In future years, when Seneca has taxable income, it may be entitled to tax credits as a result of the net operating loss carryback and carryover provisions of section 172(b) of the 1954 Internal Revenue Code, as amended, in order to comply with the separate return limitations required by rule 45(b)(6). Any credits remitted under paragraph 2 would be applied to reduce any credits in other years to which Seneca may become entitled under the separate return limitations of rule 45(b)(6).

4. In no event will the tax allocated to each subsidiary company exceed the amount of tax of such company based upon a separate return comput-

ed as if such company had always filed its tax return on a separate return basis.

It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. Fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $5,200, including legal fees of $3,000.

Notice is further given that any interested person may, not later than August 21, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-21022 Filed 7-28-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1503]

NEBRASKA

Declaration of Disaster Loan Area

Sheridan County and adjacent counties within the State of Nebraska constitute a disaster area as a result of damage caused by a tornado which occurred on June 25, 1978. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on September 18, 1978, and for economic injury until the close of business on April 20, 1979 at:

Small Business Administration, District Office, Empire State Building, 19th and Farnam Streets, Omaha, Nebr. 68102.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 20, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-21122 Filed 7-28-78; 8:45 am]

[8025-01]

[License No. 02/02-0344]

NEW HORIZONS CAPITAL CORP.

Issuance of a License To Operate as a Small Business Investment Company

On December 20, 1977, a Notice was published in the FEDERAL REGISTER (42 FR 63842), stating that New Horizons Capital Corp., 160 Water Street, New York, N.Y. 10005, had filed an application with the Small Business Administration (SBA) pursuant to section 107.102 of the SBA rules and regulations governing small business investment companies (13 CFR 107.102 (1978)), for a license to operate as a small business investment company (SBIC).

Interested parties were given until the close of business, January 4, 1978, to submit their comments. No comments were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA on July 5, 1978, issued License No. 02/02-0344 to New Horizons Capital Corp., pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: July 13, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-21123 Filed 7-28-78; 8:45 am]

[4710-01]

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 618]

PRIVACY ACT OF 1974

Adoption of Systems of Records

On April 20, 1978, the Department published in the FEDERAL REGISTER, Public Notice No. 604 (43 FR 16834) setting forth the proposed establishment of two new systems of records entitled "Skills Catalogue Records, State-49" and "Family Liaison Office Records, State-50." The notice invited interested persons to submit their comments in writing to the Director, Foreign Affairs Document and Reference Center, room 1239, Department of State, 2201 C Street NW., Washington, D.C. by May 22, 1978.

The only comment received concerned the possible intrusive nature of several aspects of the Family Liaison Office Records; it also addressed the system's proposed routine uses.

The Department of State and the family Liaison Office reaffirm their intent to offer services only to those individuals who seek assistance, to maintain only a minimum of personal information, and to solicit this material directly from the individuals themselves. This information will be released only to appropriate agencies and community service organizations.

After due consideraion to the comment received, the Department of State adopts the "Skills Catalogue Records, State-49" and the "Family Liaison Office Records, State-50" as previously published. This action is effective immediately.

Dated: July 5, 1978.

For the Secretary of State.

BEN H. READ,
Deputy Under Secretary, for Management.

[FR Doc. 21129 Filed 7-28-78; 8:45 am]

[4910-14]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 78-100]

STANDARDS OF TRAINING AND CERTIFICATION OF SEAFARERS

Information and Regulatory Implementation Notice

PURPOSE

The purpose of this Notice is to inform the public of the results of the International Conference on Training and Certification of Seafarers, 1978 (held under the auspices of the Intergovermental Maritime Consultative Organization (IMCO) in association with the International Labor Organization (ILO) from June 14 through July 7, 1978); and, to provide notice to the public of the Coast Guard's intent to formulate proposals for regulatory implementation of the results of the Conference in the near future.

BACKGROUND

In early 1970 an IMCO working group reported "that in view of the continuing alarming rise in maritime casualties and pollution, it is necessary for urgent action to be taken, aimed at strengthening and improving standards and professional qualifications of mariners, as a means of securing better guarantees of safety at sea and protection of the marine environment."

Accordingly, at its 24th session (October 1971) the IMCO Maritime Safety Committee established the Subcommittee on Standards of Training and Watchkeeping and tasked it with studying the subject, and preparing a position to be considered at the Joint IMCO/ILO Committee on Training or, as appropriate, in conjunction with other members of the U.N. family. This subcommittee met once in 1972 and twice a year thereafter and produced a draft Convention for consideration by this 1978 Conference.

During the winter of 1976-77, several tanker casualties occurred in or near U.S. waters which demonstrated a need for an international effort to improve the level of safety on tank vessels and to decrease their pollution potential.

President Carter, in a March 17, 1977, message to Congress, proposed a series of initiatives on tank vessel safety and pollution prevention which should be taken nationally and internationally. The initiatives were broad in scope and covered three major areas:

1. Improved vessel inspection and certification.
2. Improved crew standards.
3. Improved vessel construction and equipment standards.

Improved vessel inspection and certification standards and procedures, as well as improved construction and equipment standards, were addressed by the International Conference on Tanker Safety and Pollution Prevention, February 6-17, 1978, under IMCO auspices. (See FR dated April 20, 1978, Part II, page 16886)

The improvement of crew standards was the subject of the International Conference on Training and Certification of Seafarers, 1978. Originally scheduled for the end of 1978, the Conference date was advanced to June-July at the request of the United States as part of this initiative on tank vessel safety and pollution prevention. The mission of the Conference was to work for a strong and effective Convention capable of early ratification by all nations so that it might come into force as early as possible.

Individuals or parties interested in full details of the June-July Conference may obtain further documentation from the Coast Guard. A document has been prepared for distribution containing the Final Act of the Conference and Attachment 1 thereto, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978. Every effort has been made to ensure its accuracy; however, the official documents from IMCO will not be available for some time to allow for translation into five official languages.

A copy of the Final Act of the Conference may be obtained by writing: Commandant (G-MVP/82), U.S. Coast Guard, Washington, D.C. 20590.

CONFERENCE ON TRAINING AND CERTIFICATION OF SEAFARERS, 1978

SUMMARY OF AGREED MEASURES

At the Conference, 72 nations agreed on the text of the world's first International Convention establishing basic requirements on training, certification and watchkeeping for masters, officers and crews of "seagoing" merchant ships. This Convention does not apply to war ships, naval auxiliaries, or other government-owned ships in governmental noncommerical service, nor does it apply to fishing vessels or yachts.

The new treaty, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, has the stated purpose: "To promote safety of life and property at sea and the protection of the marine environment." Based on the official assumption that human error in some aspects is a contributing factor in over 80 percent of maritime accidents, the improved training and qualification standards, when implemented, should better qualify personnel on board ships to avoid maritime casualties.

The principal provisions in the articles of the convention pertain to the issuance of certificates to seafarers and to the exercise of control with respect to such certificates on all ships when in the ports of a party to the Convention. Existing certificates and those issued under national practice to seafarers who commenced their sea service before the entry into force of the Convention will continue to be recognized. Under very limited and specific conditions a dispensation, to permit a seafarer to serve in a capacity for which he does not hold the appropriate certificate, may be granted in circumstances of an exceptional necessity. However, dispensations will not be granted to masters and chief engineers except in cases of extreme emergency. The control procedures will enable an administration to ascertain that seafarers on ships arriving in their ports comply with the Convention. In cases of noncompliance with the provisions of this Convention, in regard to failure of seafarers required to hold a certificate to have an appropriate valid certificate or valid dispensation, or, failure of navigational or engineering watch arrangements to conform to the requirements specified for the ship by the flag state, a ship may be detained.

The Annex to the Convention contains the regulations which establish standards for certificating masters, deck and engineer officers, and for issuing authorized documents to unlicensed ratings in the deck department. Requirements for sea service, training, professional examination, and physical fitness were incorporated to ensure that the level of qualification for seafarers is uniformly attained in all countries. Additionally, requirements were established in regard to the training and qualification of masters, officers and ratings for oil, chemical and liquefied gas tankers. These latter provisions were adopted by the Conference largely as a result of a resolution adopted by the February 1978, Conference on Tanker Safety and Pollution Prevention.

The Conference also adopted 23 resolutions which reinforce the Convention by recommending additional procedures and inviting further development of appropriate training requirements by the organization. Although the 23 resolutions adopted at this Conference do not form a part of the convention, being recommendations only, the United States will be considering implementing certain provisions of these resolutions, where desirable.

The Convention will enter into force 12 months after 25 nations, with combined merchant fleets constituting 50 percent of the gross tonnage of the world's merchant shipping, have either signed without reservation or deposited an instrument of ratification, acceptance, accession, or approval. The effect of its benefits may be realized much sooner since many of the more established maritime nations, which have already evolved standards comparable to the Convention requirements, intend to work toward implementing the provisions before the Convention comes into force.

IMPLEMENTATION

The Coast Guard intends, at a later date, to publish proposed rules for implementation of specific provisions of the Convention, as well as the desirable portions of the resolutions adopted by the Conference, which would call for higher standards than are presently required by U.S. rules and regulations for licensing of merchant marine personnel. Public comments will be invited at that time.

Dated: July 21, 1978.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Officer of Merchant Marine Safety.

[FR Doc. 78-21125 Filed 7-28-78; 8:45 am]

[4910-13]

Federal Aviation Administration

SPECIAL COMMITTEE 136—INSTALLATION OF EMERGENCY LOCATOR TRANSMITTER (ELT) WITHIN AIRCRAFT

Notice of Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Special Committee 136 on Installation of Emergency Locator Transmitters (ELT) Within Aircraft to be held August 22 through 24, 1978, Conference Room 246, Building 1202, NASA Langeley Research Center, Hampton, Va. commencing at 9 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remark; (2) approval of minutes of first meeting held May 24-25, 1978; (3) briefings on ELT malfunctions, false alarm rates, failure to activate problems and installation procedures; (4) presentations on methods used and data obtained from full-sale crash testing of light aircraft; (5) tours of ELT antenna facility and impact dynamics research facility; 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 July 24, 1978.

KARL F. BIERACH,
Designated Officer.

[FR Doc. 78-21055 Filed 7-28-78; 8:45 am]

[4910-06]

Federal Railroad Administration

[Docket Nos. RMB 78-1 through 5]

MINORITY BUSINESS RESOURCE CENTER

Purchase of Redeemable Preferred Stock

Proposed program. Notice is hereby given that the Federal Railroad Administration ("FRA") has solicited separate applications from each of five small business investment companies ("MESBIC's") licensed by the Small Business Administration ("SBA") under section 301(d) of the Small Business Investment Act of 1958 seeking financial assistance through the purchase by the United States of their redeemable preferred stock ("stock") under section 906 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. 1657a. These MESBIC's, each of which proposes that the United States purchase stock having an aggregate par value not in excess of $400,000, are:

Docket No. and Name

78-1—Independence Capital Formation, Inc., 3049 East Grand Boulevard, Detroit, Mich. 48202.
78-2—Vanguard Investment Co., Inc., 309 Pepper Building, Fourth and Liberty Streets, Winston-Salem, N.C. 27101.
78-3—Progress Venture Capital Corp., Progress Plaza Shopping Center, 1501 North Broad Street, Philadelphia, Pa. 19122.
78-4—Rutgers Minority Investment Co., 92 New Street, Newark, N.J. 07102.
78-5—Opportunity Capital Corp., 100 California Street, Suite 714, San Francisco, Calif. 94111.

Justification for program. The proceeds of the sale of the stock are to be used by each MESBIC to make investments in minority entrepreneurs and businesses to engage in business opportunities related to the maintenance, rehabilitation, restructuring, improvement, and revitalization of the Nation's railroads and to provide management and technical services to entrepreneurs and businesses engaged in such opportunities. Simultaneous with the purchase of stock in each MESBIC, the SBA will be participating by an investment in the MESBIC under its regulations governing SBA investments in MESBIC's (13 CFR Part 107).

Comments. Interested persons may submit written comments on the separate applications to the Executive Director of the Minority Business Resource Center, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590, not later than the comment closing date shown below. Such submission shall indicate the docket number shown on this notice and state whether the commenter supports or opposes the application and the reasons therefor.

Each application will be made available for inspection during normal business hours in room PL-413 at the above address of the FRA, subject to the regulations of the Office of the Secretary of Transportation set forth in part 7 of title 49 of the Code of Federal Regulations.

The comments will be considered by the FRA in evaluating the applications. However, formal acknowledgements of comments will not be provided.

The FRA has not approved or disapproved the applications nor has it passed upon the accuracy or adequacy of the information contained therein.

(Sec. 906 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210), as amended.)

Dated: July 25, 1978.

Comment closing date: August 15, 1978.

KENNETH E. BOLTON,
Executive Director, Minority Business Resource Center, Federal Railroad Administration.

[FR Doc. 78-21110 Filed 7-28-78; 8:45 am]

[4810-40]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular Public Debt Series-No. 17-78]

TREASURY NOTES OF AUGUST 15, 1981 SERIES N-1981

JULY 27, 1978.

1. INVITATION FOR TENDERS

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,500,000,000 of U.S. securities, designated Treasury Notes of August 15, 1981, Series N-1981 (CUSIP No. 912827 HX 3). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts may also be issued for cash to Federal Reserve Banks as agents of foreign and international monetary authorities.

2. DESCRIPTION OF SECURITIES

2.1. The securities will be dated August 15, 1978, and will bear interest

from that date, payable on a semiannual basis on February 15, 1979, and each subsequent 6 months on August 15 and February 15, until the principal becomes payable. They will mature August 15, 1981, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing U.S. securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Tuesday, August 1, 1978. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, July 31, 1978.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; federally insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5 percent of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made or completed on or before Tuesday, August 15, 1978, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediatly available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing U.S. securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Thursday, August 10, 1978, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Wednesday, August 9, 1978, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate iden-

tifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompy the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. GENERAL PROVISIONS

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulation governing the offering. Public announcement of such changes will be promptly provided.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

[FR Doc. 78-21239 Filed 7-27-78; 2:58 pm]

[4810-40]

[Department Circular, Public Dept Series—No. 18-78]

TREASURY NOTES OF AUGUST 15, 1985—Series B-1985

Invitation For Tenders

JULY 27, 1978.

1. INVITATION FOR TENDERS

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $3,000,000,000 of U.S. securities, designated Treasury Notes of August 15, 1985, Series B-1985 (CUSIP No. 912827 HY 1). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts may also be issued for cash to Federal Reserve Banks as agents of foreign and international monetary authorities.

2. DESCRIPTION OF SECURITIES

2.1. The securities will be dated August 15, 1978, and will bear interest from that date, payable on a semiannual basis on February 15, 1979, and each subsequent 6 months on August 15 and February 15, until the principal becomes payable. They will mature August 15, 1985, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing U.S. securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. SALE PROCEDURES

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, August 2, 1978. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 1, 1978.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers in the names of the customers and the amount for each customer are furnished. Others are only permitted to sumit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central bands and foreign states; Federal Reserve Banks; and Government accounts. Tenders from other must be accompanied by a deposit of 5 percent of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.250. That rate of interest will be paid on all of the securities. Based on suych interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised on the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section if final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made or completed on or before Tuesday. August 15, 1978, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Thursday, August 10, 1978, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Wednesday, August 9, 1978, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer indentification number) is not furnished. When payment is made in securities, an cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit sumitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be reqistered in names and forms different from those in the inscriptions or assignments of the securities presented, the Assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities of full-paid allotments, and to issue interim certificates

pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplimental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

[FR Doc. 78-21240 Filed 7-27-78; 2:58 pm]

[4810-40]

[Department Circular Public Debt Series—No. 19-78]

TREASURY BONDS OF 2003-2008

Invitation for Tenders

JULY 27, 1978.

1. INVITATION FOR TENDERS

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $1,500,000,000 of U.S. securities, designated Treasury Bonds of 2003-2008 (CUSIP No. 912810 CC 0). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts may also be issued for cash to Federal Reserve Banks as agents of foreign and international monetary authorities.

2. DESCRIPTION OF SECURITIES

2.1. The securities will be dated August 15, 1978, and will bear interest from that date, payable on a semiannual basis on February 15, 1979, and each subsequent 6 months on August 15 and February 15, until the principal becomes payable. They will mature on August 15, 2008, but may be redeemed at the option of the United States on and after August 15, 2003, in whole or in part, at par and accrued interest on any interest payment date or dates, on 4 months' notice of call given in such manner as the Secretary of the Treasury shall prescribe. In case of partial call, the securities to be redeemed will be determined by such method as may be prescribed by the Secretary of the Treasury. Interest on the securities called for redemption shall cease on the date of redemption specified in the notice of call.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public moneys. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing U.S. securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. SALE PROCEDURES

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Thursday, August 3, 1978. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, August 2, 1978.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11 percent. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5 percent of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a one-eighth of 1 percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of

noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. RESERVATIONS

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. PAYMENT AND DELIVERY

5.1. Settlement for allotted securities must be made or completed on or before Tuesday, August 15, 1978, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing U.S. securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Thursday, August 10, 1978, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Wednesday, August 9, 1978, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. GENERAL PROVISIONS

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

[FR Doc. 78-21241 Filed 7-27-78; 2:58 pm]

[7035-01]

INTERSTATE COMMERCE COMMISSION

Office of Hearings

[Notice No. 688]

ASSIGNMENT OF HEARINGS

JULY 26, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospecive assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 134755 (Sub-113), Charter Express, Inc., now assigned September 20, 1978, at Kansas City, MO, is canceled; application dismissed.

AB 1 (Sub-59), Chicago & North Western Transportation Co. abandonment near Heron Lake and Lake Wilson, in Jackson, Nobles, and Murray Counties, MN, now being assigned September 12, 1978 (9 days), at Slayton, MN, in a hearing room to be later designated.

MC 96007 (Sub-31F), Kenneth Hudson, Inc., d.b.a. Hudson Bus Lines, now assigned September 20, 1978, at Boston, MA, is canceled; application dismissed.

AB 7 (Sub-43), Chicago, Milwaukee, St. Paul & Pacific Railroad Co. abandonment near Paralta and Hopkinton, in Linn, Jones, and Delaware Counties, IA, now being assigned for September 11, 1978 (5 days), at Anamosa, IA, in a hearing room to be later designated.

MC 144071, J. A. Frate, Inc., is assigned for hearing September 26, 1978, at Chicago, IL, and will be held at room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 121236 (Sub-3), Service Transportation Lines, Inc., is assigned for hearing September 11, 1978, at Chicago, IL, and will be held at room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 94265 (Sub-255), Bonney Motor Express, Inc., is assigned for hearing September 6, 1978, at Chicago, IL, and will be held at room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 111231 (Sub-227), Jones Truck Lines, Inc., is assigned for hearing September 11, 1978, at Little Rock, AR and will be held at room 3412, Federal Office Building, 700 West Capitol Street.

MC 143743 (Sub-1), Fulton Trucking Co., Inc., is assigned for hearing September 11, 1978, at Atlanta, GA, and will be held at room 305, 1252 West Peachtree Street NW.

MC-F-13477, Arledge Transfer Inc.—purchase—Eugene C. Warren, d.b.a. Warren Trucking Co. is assigned for hearing October 2, 1978, at Chicago, IL, and will be held at room 1319, E. M. Dirksen Building, 219 South Dearborn Street.

MC 134906 (Sub-9), Cape Air Freight, Inc., is assigned for hearing September 12, 1978, at Atlanta, GA, and will be held at room 556, Federal Office Building, 1776 Peachtree Street NW.

MC 113908 (Sub-421), Erickson Transport Corp., is assigned for hearing September 12, 1978, at Chicago, IL, and will be held at room 834, 219 South Dearborn Street.

MC 31389 (Sub-235), McLean Trucking Co., now assigned September 18, 1978, at Wichita, KS, is canceled and transferred to modified procedure.

MC 65525 (Sub-23), White Brothers Trucking, now assigned October 4, 1978, at Chicago, IL, is canceled and transferred to modified procedure.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21101 Filed 7-28-78; 8:45 am]

[1505-01]

[Decisions Volume No. 11]

DECISION-NOTICE

Correction

In FR Doc. 78-19181 appearing at page 30158 in the issue for Thursday, July 13, 1978, on page 30160, first column, "MC 26396 (Sub-86F)" should read "MC 26396 (Sub-186F)".

[1505-01]

[Decisions Volume No. 10]

DECISION-NOTICE

Correction

In FR Doc. 78-19486 appearing at page 30960 in the issue for Tuesday, July 18, 1978, on page 30964, second column, eighth line of MC 123156 (Sub-5F), *"common"* should read *"contract"*.

[7035-01]

[MC-C-10147]

DEFINITION OF CASH LETTERS INTERPRETATION

Notice to all Parties

JULY 26, 1978.

At the request of William J. Bosies, attorney for American Bankers Association, the time for filing comments in the above-entitled proceeding has been extended from July 31, 1978, to August 31, 1978.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21101 Filed 7-28-78; 8:45 am]

[7035-01]

[Notice No. 132]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 1, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar days after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, and also in the ICC field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 4941 (Sub-37TA), filed May 31, 1978. Applicant: QUINN FREIGHT LINES, INC., 1093 North Montello Street, Brockton, MA 02401. Representative: John F. O'Donnell, 60 Adams Street, Milton, MA 02187. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lime* (except in bulk), (2) *returned shipments* of the above-specified commodities, (1) from the facilities of United States Gypsum Co. at Genoa, OH, to points in NY, NJ, PA, MD, and MA, (2) from points in the above-specified destination territory to the facilities of United States Gypsum Co. at Genoa, OH, for 180 days. Supporting shipper: United States Gypsum Co., 101 South Wacker Drive, Chicago, IL 60606. Send protests to: John B. Thomas, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 150, Causeway Street, Room 501, Boston, MA 02114.

MC 57239 (Sub-32TA), filed May 11, 1978, and published in the FEDERAL REGISTER issue of July 11, 1978, and republished as corrected this issue. Applicant: RENNER'S EXPRESS, INC., 1350 South West Street, Indianapolis, IN 46206. Representative: James R. Smith (same address as above). Authority sought to operate as *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), serving the facilities of Penny Products, Inc., at or near Trafalagar, IN, as an off-route point in connection with carrier's regular route authority, for 180 days. Supporting shipper: Penny Products, Inc., Red Gold Drive, Trafalgar, IN 46181. Send protests to: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204. The purpose of this republication is to show regular routes in lieu of irregular routes as previously published.

MC 95876 (Sub-243TA), filed May 31, 1978. Applicant: ANDERSON TRUCKING SERVICE, INC., P.O. Box 1377, 203 Copper Avenue North, St. Cloud, MN 56301. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. Authority sought to operate as *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural machinery, implements, equipment, and parts, and accessories therefor*, from Kaukauna, WI to points in AL, AR, CO, CT, DE, FL, GA, IL, IN, KS, KY, LA, ME, MD, MA, MI, MS, MO, MT, NE, NH, NJ, NM, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Badger Northland, Inc., 1215 Hyland Avenue, Kaukauna, WI 54130. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110

South 4th Street, Minneapolis, MN 55401.

MC 98864 (Sub-4TA), filed April 7, 1978, and published in the FEDERAL REGISTER issue of June 5, 1978, and republished as corrected this issue. Applicant: EDWARD SITAR TRUCKING CO., INC., 3251 Old Lee Highway, Suite 400, Fairfax, VA 22030. Representative: H. Neil Garson (same address as above). Authority sought to operate as *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel sheets and steel plates, pickled and oiled*, used in the manufacture of battery trays and battery parts, from the facilities of the Robinson Steel Co., at East Chicago, IN, to the facilities of Westinghouse Electric Corp., KW Battery Division, at London, KY; *battery trays and battery parts*, from the facilities of the Westinghouse Electric Corp., KW Battery Division, at London, KY, to the facilities of Electric Corp., KW Battery Division, at London, KY, to the facilities of the Westinghouse Electric Corp., KW Battery Division at Skokie, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: KW Battery Division, Westinghouse Electric Corp., Lawrence B. Sharpley, Traffic Manager, 3555 Howard Street, Skokie, IL 60076. Send protests to: Transportation Assistant Patricia A. Roscoe, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604. The purpose of this republication is to show East Chicago, IN, in lieu of East Chicago, IL.

MC 106920 (Sub-73TA), filed April 20, 1978, and published in the FEDERAL REGISTER issue of June 7, 1978, and republished as corrected this issue. Applicant: RIGGS FOOD EXPRESS, INC., P.O. Box 26, West Monroe Street, New Bremen, OH 45869. Representative: Betty Kominsk (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods and food products*, in mechanically refrigerated equipment (except in bulk), from Livonia, MI, to points in OH, PA, NY, NJ, MD, VA, WV, DE, CT, RI, MA, ME, VT, NH, and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Awrey Bakeries, Inc., 12301 Farmington Road, Livonia, MI 48150. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604. The purpose of this republication is to add the State of WV as previously omitted.

MC 107295 (Sub-880TA), filed May 31, 1978. Applicant: PRE-FEB TRANSIT CO., P.O. Box 146, 100 South Main Street, Farmer City, IL 61842. Representative: Duane Zehr (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum products*, from Grand Rapids, MI to points in MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Grand Rapids Gypsum Co., 201 Monroe Avenue, Grand Rapids, MI 49502. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 107615 (Sub-12TA), filed May 1, 1978, and published in the FEDERAL REGISTER issue of July 3, 1978, and republished as corrected this issue. Applicant: UNTCO, INC., 850 East Luzerne Street, Philadelphia, PA 19124. Representative: Richard A. Mehley, 1000 16th Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printed matter and products, materials, and supplies* used in the manufacture and production thereof, between East Greenville, PA, on the one hand, and, on the other, points in MD, DE, NJ, WV, VA, DC, and New York, NY, and points in Rockland, Suffolk, and Westchester Counties, NY, which are not within the New York, NY, commercial zone, for 180 days. Supporting Shipper: Brown Printing Co., Inc., Waseca, MN 56093. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106. The purpose of this republication is to add DE and VA to the territorial description as previously omitted.

MC 111375 (Sub-92TA), filed May 30, 1978, and published in the FEDERAL REGISTER issue of July 5, 1978, and republished as corrected this issue. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., P.O. Box 3358, Madison, WI 53704. Representative: Charles E. Dye (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Yogurt*, from Reed City, MI and its commercial zone to CO, ID, and UT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Yaplait, USA, Inc., 304 East Hammond, Otsego, MI 49078. Send protests to: Interstate Commerce Commission, Ronald A. Morken, District Supervisor, 139 West Wilson Street, room 202, Madison, WI 53703. The purpose of this republication is to show CO in lieu of CT as previously published.

MC 113828 (Sub-258TA), filed May 31, 1978. Applicant: O'BOYLE TANK LINES, INC., 1320 Fenwick Lane, Silver Spring, MD 20910. Representative: William P. Sullivan (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Natural latex*, from Savannah, GA to Haynesville, LA, for 180 days. Supporting shipper: Firestone Natural Rubber & Latex Co., P.O. Box 1223, Savannah, GA 31402. Send protests to: Interstate Commerce Commission, 12th and Constitution Avenue NW, room 1413 District Supervisor, W. C. Hersman, Washington, DC 20423.

MC 114569 (Sub-228TA), filed May 31, 1978. Applicant: SAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat byproducts* as described in sections A and C to the report in description of Motor Carriers Certificates 61 MCC 209 and 766 (except hides and commodities in bulk) from Pueblo, CO to Harrington, DE; Syracuse, NY; Philadelphia, Pittston, Pittsburgh, and Springhouse, PA; Chicago, IL; and So. Kearny, NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Alpha Beta Packing Co., 303 South Sante Fe, P.O. Box 316, Pueblo, CO 81002. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, 228 Walnut Street, Harrisburg, PA 17108.

MC 115654 (Sub-95TA), filed May 25, 1978. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Henry E. Seaton, 915 Pennsylvania Building, 13th and Pennsylvania Avenue NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs and related products* except commodities in bulk, moving in vehicles equipped with mechanical refrigeration, between Louisville, KY and points in AL, GA, KY, IN, OH, WV, TN, MS, MO, and IL, for 180 days. Restricted to traffic originating and terminating at points in the named States and also to traffic originating or terminating at the warehouse facilities of Louisville Freezed Center, Louisville, KY. Supporting shipper: Louisville Freezer Center, Louisville, KY. Send protests to: District Supervisor

Joe T. Tate, Room A422, Federal Building, 801 Broadway, Nashville, TN 37203.

MC 117344 (Sub-275TA), filed May 31, 1978. Applicant: THE MAXWELL CO., 10380 Evendale Drive, P.O. Box 15010, Cincinnati, OH 45215. Representative: John C. Spencer (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sugar and corn products*, in bulk, in tank, vehicles, from the facilities of Archer Daniels Midland Co. in Cincinnati, OH, to points in AR, IL, IN, IA, KS, KY, LA, MD, MI, MS, MO, NY, PA, TN, VA, WV, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Archer Daniels Midland Co., Wilson K. Cassell, Traffic Manager, Liquid Trucking, 4666 Faries Parkway, P.O. Box 1470, Decatur, IL 6252.

MC 117563 (Sub-4TA), filed May 31, 1978. Applicant: JOHN T. PESCHKE, (Box 506), Waubay, SD 57273. Representative: James T. Flescher, 1745 University Avenue, St. Paul, MN 55104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry animal and poultry feed in bag* or in bulk or in combination moving in the same truck equipped with self unloading equipment by auger discharge, from the facilities of Cargill, Nutrena Feed Division at New Richland, MN to points in SD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Cargill, Nutrena Feed Division, P.O. Box 9300, Minneapolis, MN 55440, Feed K. Coerper. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455 Federal Building, Pierre, SD 57501.

MC 119702 (Sub-59TA), filed May 31, 1978. Applicant: STAHLY CARTAGE CO., 130 A Hillsboro Avenue, P.O. Box 486, Edwardsville, IL 62025. Representative: Carl R. Wetzel, 119 South Main Street, Edwardsville, IL 62025. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Inedible tallow*, in bulk, in tank vehicles, from Mason City, IL, to St. Louis, MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: National By-Products, Inc., Mason City, IL. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 123111 (Sub-11TA), filed May 10, 1978, and published in the FEDERAL REGISTER issue of July 11, 1978, and republished as corrected this issue. Applicant: QUEENSWAY TANK LINES LTD., Queensway Road, Chesterville, ON, Canada. Representative: S. Harrison Kahn, Kahn & Kahn, Suite 733, Investment Building, Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Molton phthalic anhydride*, from the port of entry on the international boundary line between the United States and Canada located at Rooseveltown, NY, to points in NY and NJ restricted to traffic originating at Cornwall, ON, Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: BASF Canada Ltd., P.O. Box 430, Station St. Laurent, Montreal, PQ, Canada. Send protests to: Interstate Commerce Commission, U.S. Courthouse & Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260. The purpose of this republication is to show the correct territorial description as previously published.

MC 135874 (Sub-128TA), filed May 23, 1978, and published in the FEDERAL REGISTER issue of June 20, 1978, and republished as corrected this issue. Applicant: LTL PERISHABLES, INC., 550 East Fifth Street South, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials and supplies* (except commodities in bulk), from the facilities of Alside, Inc., North Hampton Township, OH, to points in IA, MN, NE, ND, SD, and WI, for 180 days. Restricted to traffic origination at the facilities of Alside, Inc., and destined to points in the named States. Supporting shipper: Alside, Inc., P.O. Box 2010, Akron, OH 44309. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building & U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401. The purpose of this republication is to show the complete scope of authority as previously omitted.

MC 136605 (Sub-60TA), filed May 31, 1978. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, 216 Trade Street, Missoula, MT 59807. Representative: W. E. Seliski (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wheat starch* used in the manufacture of Plywood, in bags or bulk, from Arkansas City, KS, to points in MT, ID, WA, OR, and CA, for 180 days. Supporting shipper: Richard O. Everett, District Manager, Manzanita International, Box 7996, Missoula, MT 59807. Send protests to: D/S Paul J. Labane, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 138469 (Sub-74TA), filed May 1, 1978, and published in the FEDERAL REGISTER issue of July 5, 1978, and republished as corrected this issue. Applicant: DONCO CARRIERS, INC., 2025 South Nicholas, P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Attorney at Law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bicycles and bicycle parts and accessories*, (1) from Secaucus, NJ, and Buffalo, NY, to points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WI, and WY; (2) from Port Clinton, OH to points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OK, OR, SC, SD, TN, TX, UT, WA, WI, and WY, for 180 days. (Restricted in (1) and (2) above to shipments originating at or destined to the facilities of Raleigh Industries of America, Inc.). Supporting shipper: Raleigh Industries of America, Inc., 1170 Commonwealth Avenue, Boston, MA 02134. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 215 Northwest Third, Oklahoma City, OK 73102. The purpose of this republication is to show North Carolina (NC) in lieu of SC in part (1) of the territorial description.

MC 138946 (Sub-9TA), filed May 26, 1978. Applicant: MARKET TRANSPORTATION, 33 Northeast Middlefield Road, Portland, OR 97211. Representative: Nick I. Goyak, One Southwest Columbia No. 555, Portland, OR 97258. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic materials, other than expanded, granules, NOI; plastic materials, liquid, NOI; plastic film or sheeting, other than cellulose; cellulose film or sheets; plastic netting; synthetic rubber crude; rubber accelerators, NOI; chemicals, NOI; cleaning compounds, liquid, NOI; cleaning compounds, other than liquid, NOI; dye intermediates, NOI; coal tar dyes, liquid or paste, NOI; titanium dioxide pigments; machinery, and machine parts, NOI; refrigerants, NOI, liquid or gas or dispersant gases, NOI; gasoline preservatives, NOI; alcohols, NOI; photographic paper, sensitized; dry plastics or photographic film, unexposed, sensitized; photographers materials, NOI; paper reproduction, NOI, sensitized; synthetic fiber, yarn or staple, NOI; cloth, synthetic fiber; paper or fiberboard, synthetic*

fiber; paint, stain or varnishes, NOI, lacquers, shellacs, or wood fillers; compounds, paint, or increasing, reducing, removing, or thinning; paint dry, NOI; paint drier, liquid; cement or adhesive, NOI; covering, wall; compounds, buffing or polishing including vehicle polish or wax; brushes, NOI, pads and paint applicators, hand roller type; sulfuric acid; hydrochloric (muriatic) acid; materials and supplies relating to the chemical industry; items are restricted against those moving in bulk. From the facilities of E. I. du Pont de Nemours & Co. at Alameda, Brisbane, South San Francisco, Antioch, and Hayward, CA, to points in OR and WA; and from Portland, OR to points in WA when in continuous movement from CA; empty containers and pallets from points in OR and WA to the facilities of E. I. du Pont de Nemours & Co. at Alameda, Brisbane, South San Francisco, Antioch, and Hayward, CA, under a continuing contract or contracts with E. I. du Pont de Nemours & Co., 1007 Market Street, Wilmington, DE 19898, for 180 days. Supporting shipper: E. I. du Pont de Nemours & Co., 1007 Market Street, Wilmington, DE 19898. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, 114 Pioneer, Courthouse, Portland, OR 97204.

MC 141617 (Sub-4TA), filed May 31, 1978. Applicant: EUGENE MCDONALD d.b.a. MCDONALD TRUCKING, P.O. Box 94, Selby, SD 57472. Representative: M. Mark Menard, 5301 North Cliff, P.O. Box 480, Sioux Falls, SD 57101. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Wallboard* from Pembina, ND, port of entry on the international boundary line between the United States and Canada over irregular routes, to Pierre, SD, under a continuing contract with Century Services, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Century Services, Inc., Box 1058, 319 South Coteau, Pierre, SD 57501, Carl L. Smith. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455 Federal Building, Pierre, SD 57501.

MC 143083 (Sub-5TA), filed May 9, 1978, and published in the FEDERAL REGISTER issue of July 11, 1978, and republished as corrected this issue. Applicant: C.T.S. LINES, INC., 602 Airport Road, Greenville, SC 29615. Representative: Robert W. Gerson, 1400 Candler Building, Atlanta, GA 30303. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Rugs, carpet, carpeting, carpet remnants, and tufted textile products,* from Dalton and Cartersville, GA, to AZ, AR, CA, IN, MS, NV, NM, OK, OR, TX, UT, and WA, under a continuing contract, or contracts, with Shaw Industries, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Shaw Industries, Inc., P.O. Drawer 2128, Dalton, GA 30720. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Building, 1400 Pickens Street, Columbia, SC 29201. The purpose of this republication is to include the State of OR in the destination territory.

MC 143621 (Sub-3TA), filed May 31, 1978. Applicant: TENNESSEE STEEL HAULERS, INC., 403 Maplewood Avenue, Nashville, TN 37210. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Steel* from Davidson County, TN to Al (except Birmingham), MS, and TN (except Memphis), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Production Steel, Inc., 1407 Elm Hill Pike, Nashville, TN 37210, Cumberland Valley Metals, Inc., 4301 Hillsboro Road, Nashville, TN, and I.K.G. Industries, 201 Fatherland Street, Nashville, TN 37212. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

MC 144645 (Sub-1TA), filed June 7, 1978. Applicant: ROBERT C. HANSEN, d.b.a. ROBERT HANSEN TRUCKING, Route 5, Box 282, Delavan, WI 53115. Representative: Wm. C. Dineen, 710 North Plankinton Avenue, Milwaukee, WI 53203. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Paint and varnish* from the facilities of Premier Paint & Varnish Co., Inc., at Elk Grove Village, IL, to points in IN, IA, MI MN, MO NE, OH, and WI, under a continuing contract with Premier Paint & Varnish Co., Inc., for 180 days. Supporting shipper: Premier Paint & Varnish Co., Inc., 2250 Arthur Avenue, Elk Grove Village, IL 60007. Sent protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 144807TA, filed May 26, 1978. Applicant: REIDHEAD TRUCKING, INC., 214 East Marilyn, Mesa AZ, 85202. Representative: Lewis P. Ames, 10th Floor, 111 West Monroe, Phoenix, AZ 85202. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (A) *Such commodities* as are manufactured, designed, constructed, fabricated, altered, and/or modified by Evans Steel & Manufacturing Co. from the facilities of Evans Steel & Manufacturing Co. at Gilbert AZ, to points in (1) AZ, CA, CO, ID, MT, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY, including points on the United States-Mexico international boundary line at Nogales, Douglas, and Lukeville, AZ, Eagle Rock and Columbus, NM, El Paso, Presidio, Del Rio, Eagle Pass, Laredo, and Brownsville, TX, and Tijuana and Calexico, CA; and (2) between Gilbert, AZ, and the Joyclin Pacific Galvanizing plant at Long Beach, CA. (B) *Such commodities* as are used or useful in the manufacture, design, construction, fabrication, alteration, transportation, or modification of the commodities in (A) above from points in CA, CO, ID, MT, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY to the facilities of Evans Steel & Manufacturing Co. at Gilbert, AZ, under a continuing contract, or contracts with Evans Steel & Manufacturing Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Evans Steel & Manufacturing Co., 9601 South Cooper Road, P.O. Box 1239, Gilbert, AZ 85234. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 144845TA, filed May 30, 1978. Applicant: MID-CAL BUILDING MATERIALS, INC., 4641 South Elm Avenue, Fresno, CA 93704. Representative: Marshall Ashby Smith, Jr., 2322 North Maroa Avenue, Fresno, CA 93704. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Lumber, plywood and related lumber products; composition prepared roofing; wallboard products; building material products; gypsum products,* shipments to be limited to truckload quantities only. From facilities of Celotex Corp., Los Angeles, CA, and facilities of Lundy Thagard Co., South Gate, CA, to facilities of American Pacific Supply, Inc., Bothell, WA; from facilities of Hamilton Distributing Co., Orange, CA, to facilities of Lacey Distributing Co., Tacoma, WA; from facilities of Paul Barber Hardwoods Co., Philomath, OR, to San Francisco, CA, and its commercial zone, and Los Angeles, CA, and its commercial zone; from Coos County, OR, Lane County, OR, and Linn County, OR, to facilities

of Pathfinder Forest Products, Inc., Los Angeles County, CA, and Orange County, CA, under a continuing contract with Paul Barber Hardwoods Co., Lacey Distributing Co., Inc., Pathfinder Forest Products, Inc., American Pacific Supply, Inc., for 180 days. Supporting shipper: Paul Barber Hardwoods Co., P.O. Box 830, Philomath, OR 97370, Lacey Distributing Co., Inc., 6117 South Sheridan, Tacoma, WA 98408, Pathfinder Forest Products, Inc., 503 South Glassell, Orange, CA 92666, American Pacific Supply, Inc., 10228 East Riverside, Bothell, WA 98011.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21100 Filed 7-28-78; 8:45 am]

[7035-01]

[Notice No. 133]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 2, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protests must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting form approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 45764 (Sub-30TA), filed June 8, 1978. Applicant: ROBBINS MOTOR TRANSPORTATION, INC., Industrial Hwy. and Saville Avenue, P.O. Box 38, Eddystone, PA 19013. Representative: Paul F. Sullivan, 15th & New York Avenue NW., Washington, DC 20005. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Containers,* loaded or empty, and boggies requiring special equipment by reason of size or weight, except household goods, restricted to traffic having a prior or subsequent movement by water, between Bridgeport and New Haven, CT; Boston, MA; Providence, RI; Erie, Philadelphia and Pittsburgh, PA; Baltimore, MD; Wilmington, DE; Buffalo and New York, NY; Camden, Jersey City, Port Elizabeth and Port Newark, NJ; Cleveland and Toledo, OH; Chesapeake, Newport News, Norfolk and Richmond, VA, and between the territory described above on the one hand, and, on the other, Wilmington, NC, and Charleston, SC, for 180 days. Supporting shippers: (1) J. A. McCarthy, Inc., 700 Lafayette Building, Philadelphia, PA 19106. (2) Yamashita-Shinnihon Steamship Co., Ltd., 71 Broadway, New York, NY 10006. (3) Maersk Line Agency, 510 Walnut Street, Philadelphia, PA 19106, and (4) Eckert Overseas Agency, Inc., 613 Lafayette Building, Philadelphia, PA 19106. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 51146 (Sub-601TA), filed June 8, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, 2661 South Broadway, Green Bay, WI 54306. Representative: John R. Patterson, 2480 East Commerical Boulevard, Ft. Lauderdale, FL 33308. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Brandy and wine* from the facilities of Guild Winery and East Side Winery at or near Lodi, CA and Christian Brothers Winery at or near Napa, CA to the facilities of Badger Liquor at or near Fond du Lac, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Badger Liquor, P.O. Box 1357, Fond du Lac, WI 54931 (Robert Fishelson). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 52861 (Sub-46TA), filed June 8, 1978. Applicant: WILLS TRUCKING, INC., 5755 Granger Road, Suite 615, Cleveland, OH 44131. Representative: Paul Beery, Beery & Spurlock Co., L.P.A., 275 East State Street, Columbus, OH 43215. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Scrap metals,* in dump vehicles, from Gary and East Chicago, IN and Chicago, IL to Taylor, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Huron Valley Steel, 41000 Huron River Drive, Bellville, MI 48111. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, 731 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 107527 (Sub-59TA), filed June 8, 1978. Applicant: POST TRANSPORTATION CO., P.O. Box 4827, Carson, CA 90745. Representative: R. Sherman Kirksey, 1970 East 213th Street, Carson, CA 90745. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Hydrofluosilicic acid,* in bulk, in tank vehicles, from Salt Lake City (Garfield), UT to points and places in CA, under a continuing contract or contracts with Stauffer Chemical Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Stauffer Chemical Co., P.O. Box 3050, Rincon Annex, San Francisco, CA 94109. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 115841 (Sub-635TA), filed June 8, 1978. Applicant: Colonial Refrigerated Transportation, Inc., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: Chester G. Groebel, Colonial Refrigerated Transportation, Inc., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk) from the facilities of Louisville Freezer Center at Louisville, KY to points in MO, NC, OH, SC, TN, and VA, for 180 days. Supporting shipper: Louisville Freezer Center, 2000 South Ninth Street, Louisville, KY 40208. Send protests to: Glenda Kuss, Transportation Assistant, Bureau of Operations, ICC, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

115904 (Sub-104TA), filed June 12, 1978. Applicant: GROVER TRUCKING CO., 1710 West Broadway, Idaho Falls, ID 83401. Representative: Irene Warr, 430 Judge Building, Salt Lake

City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, (1) from Chicago, IL, to AR, MO, NE, KS, KY, MN, and CO; (2) from Jersey City, NJ, to AR, LA, TN, and TX; (3) from Cannonsburg, PA, to TX, OK, LA, MN, VA, WV, IA, IL, KS, and NE; (4) from Wilmington, DE, to TX, OK, LA, MN, VA, WV, IA, IL, KS, and NE; and (5) from New Orleans, LA, to TN, MI, OH, MN, and KY, for 180 days. Applicant does not intend to tack or interline authority. Supporting shipper: Northern Pacific Lumber Co., P.O. Box 3915, Portland, OR 97208. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, Suite 110, 1471 Shoreline Drive, Boise, ID 83706.

MC 118989 (Sub-196TA), filed June 12, 1978. Applicant: CONTAINER TRANSIT, INC., 5223 South 9th Street, Milwaukee, WI 53221. Representative: Eugene Kraklow, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers and container ends*, from the facilities of Rockford Can Co. at or near Rockford, IL, to Croswell, Hart and Scottville, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Rockford Can Co., 208 Quaker Road, Rockford, IL 61105 (Oleg K. Ammossow). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 121066 (Sub-7TA), filed June 7, 1978. Applicant: NEBRASKA TRANSPORT CO., INC., P.O. Box 621, Scottsbluff, NE 69361. Representative: Lavern R. Holdeman of Peterson, Bowman, Larsen & Swanson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sugar, in bags and containers*, from the facilities of Great Western Sugar Co., at or near Ovid, CO, to Bennington, Blair, Elkhorn, Fullerton, Grand Island, Lincoln, Lynch, Neligh, Newport, North Platte, Omaha, Palmer and Scottsbluff, NE, and points in their respective Commercial Zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Great Western Sugar Co., Gary Evans, Assistant Traffic Manager, Box 5308, Terminal Annex, Denver, CO 80217. Send protests to: Max Johnston, District Supervisor, Interstate Commerce Commission, 285 Federal Building and U.S. Courthouse, 100 Centennial Mall North, Lincoln, NE 68508.

MC 121661 (Sub-2TA), filed June 7, 1978. Applicant: VAN WYK FREIGHT LINES, INC., 1018 Washington Street, P.O. Box 294, Grinnell, IA 50112. Representative: Russell H. Wilson, 3839 Merle Hay Road, Suite 200, Des Moines, IA 50310. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* with the usual exceptions of commodities in bulk in tank vehicles, explosives requiring special handling between Des Moines, Barnes City, Deep River, Delta, Gibson, Harper, Kalona, Keota, Keswick, Kinross, Riverside, Rose Hill, Sigourney, South English, Thornburg, Webster, Wellman, West Chester, What Cheer for 180 days. Applicant plans to tack with their Sub-1 and interline in Des Moines, IA. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (20) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 124170 (Sub-94TA), filed June 12, 1978. Applicant: FROSTWAYS INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 600 Enterprise Drive, Suite 222, Oak Brook, IL 60521. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, (except in bulk), in controlled temperature vehicles, from the facilities owned or utilized by J. H. Filbert, Inc., at or near Baltimore, MD, Anne Arundel, Baltimore, Howard and Prince Georges Counties, MD, to points in CT, DE, DC, IL, IN, KY, ME, MA, MI, MO, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and WI, for 180 days. Supporting shipper: J. H. Filbert, Inc., 3701 Southwestern Blvd., Baltimore, MD 21229 (Donald A. Granger Distribution Manager). Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

MC 124554 (Sub-23TA), filed June 7, 1978. Applicant: LANG CARTAGE CORP., 338 South 17th Street, P.O. Box 2055, Milwaukee, WI 53201. Representative: Richard C. Alexander, 710 North Plankinton Avenue, Milwaukee, WI 53203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale drug business houses, from LaCrosse, WI to points in Fairbault, Martin, Jackson, Cottonwood, Watonwan, Blue Earth, Redwood, Brown, Nicollet, LeSueur, Rice, Renville, Sibley, Scott, Carver, McLeod, Kandiyohi, Meeker, Wright, Pope, and Stearns Counties, MN, under a continuing contract or contracts with Yahr-Lange LaCrosse Drug Co., Inc., for 180 days. Supporting shipper: Yahr-Lange LaCrosse Drug Co., Inc., 200 Main Street, LaCrosse, WI 54601 (Clyde L. Cooper). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 128930 (Sub-2TA), filed June 12, 1978. Applicant: JOSEPH V. HEENAN, d.b.a. HEENAN TRUCKING CO., (9 Second Street, Tidioute, PA 16351. Representative: Joseph V. Heenan, 9 Second Street, Tidioute, PA 16351. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel*, from Cleveland, OH, to the plantsite of InterRoyal Corp. at Warren, PA. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with InterRoyal Corp., Deluxe Division, Warren, PA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: InterRoyal Corp., Deluxe Division, 151 Struthers Street, Warren, PA 16365. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 133453 (Sub-15TA), filed June 12, 1978. Applicant: TROJAN TRANSPORTATION, INC., 1616 Walnut Street, 24th floor, Philadelphia, PA 19103. Representative: Richard M. Ochroch, 327 South 17th Street, Philadelphia, PA 19103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Nonalcoholic beverages, in containers and materials, supplies and equipment* used in the manufacture, sale and distribution of the above, between Philadelphia, PA, Pennsauken, NJ., and points in the Philadelphia commercial zones, on the one hand, and, on the other, points and places in CT, MA, NY, OH, PA, RI, and VA, under a continuing contract, or contracts, with Boulevard

Beverage Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Boulevard Beverage Co., Inc., 2000 Bennett road, Philadelphia, PA 19116. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 138869 (Sub-15TA), filed June 7, 1978. Applicant: W. T. MYLES TRANSPORTATION CO., P.O. Box 321, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Plumbing fittings, fixtures, equipment, materials and supplies,* from Ferguson, KY, to points in AL, AR, AZ, CT, DC, DE, FL, GA, IL, IN, IA, KS, LA, MA, MD, ME, MI, MN, MS, MO, NC, NM, ND, NH, NJ, NY, NE, OH, OK, PA, RI, SC, SD, TN, TX, WI, VA, VT and WV, under a continuing contract, or contracts, with the Crane Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Crane Co., 300 Park Avenue, New York, NY 10022. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW, Room 300, Atlanta, GA 30309.

MC 141312 (Sub-5TA), filed June 8, 1978. Applicant: DOKTER TRUCKING CORP., P.O. Box 408, Weeping Water, NE 68463. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Mineral filler,* from Weeping Water, NE and points in its commercial zone to the facilities of CertainTeed Corp. at or near Kansas City, MO, under a continuing contract, or contracts, with CertainTeed Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: David H. Silvernail, Manager Transportation Operations, CertainTeed Corp., P.O. Box 860, Valley Forge, PA 19482. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Courthouse, 100 Centennial Mall North, Lincoln, NE 68508.

MC 142668 (Sub-12TA), filed June 12, 1978. Applicant: AERO DISTRIBUTING CO., INC., 7259 Delta Circle, Atlanta, GA 30336. Representative: K. Edward Wolcott, 235 Peachtree Street, NE., Suite 1200, Atlanta, GA 30303. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such merchandise* as is marketed by home products distributors for the account of Stanley Home Products, Inc., from Tuscaloosa, AL, to points in MS, under a continuing contract, or contracts, with Stanley Home Products, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Stanley Home Products, Inc., 116 Pleasant Street, Easthampton, MA 01027. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street, NW., Room 300, Atlanta, GA 30309.

MC 143383 (Sub-2TA), filed June 7, 1978. Applicant: DALE E. NICHOLSON, P.O. Box 97, Postosi, MO 63664. Representative: E. Richard Southern, 101 East High Street, Jefferson City, MO 65101. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Zinc and copper concentrates* from the facilities of Ozark Lead Co., near Corridon, MO to Glover, MO, under a continuing contract with Ozark Lead Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ozark Lead Co., 161 East 42d Street, New York, NY 10017. Send protests to: Peter E. Binder, Acting District Supervisor, Interstate Commerce Commission, 210 North 12th Street, room 1465, St. Louis, MO 63101.

MC 143648 (Sub-4TA), filed June 12, 1978. Applicant: CORALVILLE TRANSPORT, INC., R. R. No. 1, Lamont, IA 50650. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquified petroleum gas,* in tank vehicles, from the facilities of Cochin Pipeline, at or near New Hampton, IA, to points in WI, for 180 days. Supporting shipper: Cenex, 1185 North Concord, South St. Paul, MN. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 143649 (Sub-4TA), filed June 12, 1978. Applicant: FIGANBAUM TRUCKING, INC., Tripoli, IA 50676. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquified petroleum gas,* in tank vehicles, from the facilities of Pipeline, at or near New Hampton, IA, to points in WI, for 180 days. Supporting shipper: Cenex, 1185 North Concord, South St. Paul, MN. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 143794 (Sub-5TA), filed June 12, 1978. Applicant: EAST-WEST MOTOR FREIGHT, INC., 7270 Hobgood Road, Fairburn, GA 30213. Representative: Richard M. Tellelbaum, Serby & Mitchell, 3390 Peachtree Road NE., 5th Floor, Lenox Towers South, Atlanta, GA 30326. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Plastic disposable materials, equipment and supplies, health care products, and such commodities* as are utilized by hospitals, nursing homes, and laboratories, from the facilities of Pharmaseal Division, American Hospital Supply Corp., at or near Johnson City, TN, to El Paso, TX, and Los Angeles, CA, under a continuing contract, or contracts, with Pharmaseal Division, American Hospital Supply Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pharmaseal Division, American Hospital Supply Corp., 4401 Foxdale Avenue, Irwindale, CA 91706. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 144654 (Sub-1TA), filed June 7, 1978. Applicant: MAZ SYSTEMS, INC., 147 Hutton Street, Jersey City, NJ 07308. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by department stores and *materials, equipment and supplies* used in the conduct of such business (except commodities in bulk) between New York, NY Commercial Zone, on the one hand, and, on the other, points in DE, NJ, MD, NY, NC, OH, PA, VA, WV, and DC, under a continuing contract or contracts with S. E. Nichols, Inc., of New York, NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: S. E. Nichols, Inc., 500 Eighth Avenue, New York, NY 10018, Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

MC 144698 (Sub-1TA), filed June 7, 1978. Applicant: GAYLE A. GARNER d.b.a. GARNER TRUCKING CO., 510 North Lennox, Casper, WY 82601. Representative: Gayle A. Garner, 510 North Lennox, Casper, WY 82601. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Building ma-*

terials, equipment, and supplies including *steel buildings*, and *component parts, overhead doors, cranes, garbage disposable or dump bodies*, between points in WY and MT, Galion and Canton, OH, Galesburg, IL, Terre Haute, IN, Little Rock, AR, Denver, CO, Visiala, CA and Portland, OR, for 180 days. Restricted to transportation under continuing contract or contracts with Commercial Building Systems. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Commercial Building Systems, 1971 East Yellowstone, Casper, WY 82601. Send protests to: Paul A. Naughton, District Supervisor, Interstate Commerce Commission, room 105, Federal Building and Courthouse, 111 South Wolcott, Casper, WY 82601.

MC 144819R (Sub-1TA), filed June 12, 1978. Applicant: C. N. TRANSPORT, INC., 220 Northeast 46th, P.O. Box 82609, Oklahoma City, OK 73108. Representative: C. L. Phillips, Classen Terrace Building, Room 248, 1411 North Classen, Oklahoma City, OK 73106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat and meat products, and articles distributed by meat packinghouses*, from Louisville, KY, to Laredo, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Armour Food Co., 111 West Clarendon, Greyhound Tower, Phoenix, AZ 85077. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 144882 (Sub-1TA), filed June 8, 1978. Applicant: RAOUL DEDEAUX, d.b.a. Dart Service, 4270 Maywood Avenue, Vernon, CA 90058. Representative: R. Y. Schureman, 1545 Wilshire Boulevard, Los Angeles, CA 90017. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by wholesale or retail department, discount, or variety stores (except commodities in bulk), between Sparks, NV, on the one hand, and, on the other, points in CA, OR, and WA, under a continuing contract or contracts with K Mart Corp., for 180 days. Supporting shipper(s): K Mart Corp., 3100 West Big Beaver, Troy, MI 48084. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 144889TA, filed June 12, 1978. Applicant: RONWAL TRANSPORTATION, INC., 2600 Calumet Avenue, Hammond, IN 46320. Representative: Walter C. Rymarowicz, 2600 Calumet Avenue, Hammond, IN 46320. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from Lake and Porter Counties, IN, on the one hand, and, on the other points in that part of IL on, north, and east of a line beginning at the IN-IL State line and extending along IL Hwy 114 to junction IL Hwy 17, then along IL Hwy 17 to junction U.S. Hwy 66, then along U.S. Hwy 66 to junction U.S. Hwy 24, then along U.S. Hwy 24 to junction U.S. Hwy 150, then along U.S. Hwy 150 to junction IL Hwy 88, then along IL Hwy 88 to junction IL Hwy 2, then along IL Hwy 2, to the IL-WI State line, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately six statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Lois Stahl, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-21103 Filed 7-28-78; 8:45 am]

[1505-01]

[Volume No. 101]

MOTOR CARRIER, BROKER, WATER CARRIER, AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

Correction

In FR Doc. 78-18660 appearing at page 29206 in the issue for Thursday, July 16, 1978; on page 29209, third column, nineteenth line of MC 113651 (Sub-268F), insert "PA" after "TN".

[1505-01]

[Decisions Volume No. 71]

ORDER-NOTICE

Correction

In FR Doc. 78-16999 appearing at page 26836 in the issue for Thursday, June 22, 1978, on page 26842, third column, in the 18th line in the paragraph for No. MC 136818 (Sub-No. 28F), add "SD."

[1505-01]

[Decision Volume No. 8]

SPECIAL RULE 247 APPLICATIONS

Decisions-Notice

Correction

In FR Doc. 78-17326 appearing at page 27938 in the issue for Tuesday, June 27, 1978, on page 27946, first column, the 13th line of the paragraph for MC 135556 (Sub-No. 6F), "MV" should have read "WV".

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01]

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[M-151, Amdt. 7; July 25, 1978]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the July 25, 1978, agenda.

TIME AND DATE: 2:45 p.m., July 25, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 10e. Docket 31708, Empresa Guatemalteca de Aviacion (Aviateca) Enforcement Proceeding, discretionary review on Board initiative of initial decision ordering Aviateca to cease and desist denied-boarding violations (Memo 8089, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: This is a matter that requires Board action before August 17, 1978. Because of the individual Members' schedules, there will be no opportunity to hold a regularly scheduled meeting between July 25 and August 17, 1978. Accordingly, the following Members have voted that agency business requires the addition of Item 10e on the July 25, 1978, agenda and that no earlier announcement of this addition was possible:

Chairman, Alfred E. Kahn
Vice Chairman, G. Joseph Minetti
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

[S-1557-78 Filed 7-27-78; 11:52 am]

[6570-06]

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, August 1, 1978.

PLACE: Chairman's Conference Room, No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part of the meeting will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open to the public:

1. Proposed Memorandum of Understanding between the Federal Communications Commission (FCC) and EEOC concerning exchange of information and processing of discrimination charges filed against broadcasters.
2. Report on recent court decisions in *Hall* v. *EEOC* and *Stewart* v. *EEOC*.
3. Report on Commission Operations by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations: Matters closed to the public under the Commission's regulations at 29 CFR 1612.13.

NOTE.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat at 202-634-6748.

This notice issued July 25, 1978.

[S-1556-78 Filed 7-31-78; 11:52 am]

[6740-02

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FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 32368, published July 26, 1878.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 3:30 p.m., July 26, 1978.

CHANGE IN THE MEETING: Date and time have been changed to July 27, 1978, at 3:30 p.m.

KENNETH F. PLUMB,
Secretary.

[S-1558-78 Filed 7-27-78; 11:52 am]

[6740-02]

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JULY 26, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., August 2, 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—155TH MEETING, AUGUST 2, 1978, REGULAR MEETING

CAG-1. Docket No. RP75-8 (PGA No. 78-4), Commercial Pipeline Co.
CAG-2. Docket No. RI78-13, Mullins & Prichard.
CAG-3. Docket No. RI77-133, Jesse Franklin Rosett.
CAG-4. Docket Nos. CI77-572, American Petrofina Co. of Texas; CI77-617, Atlantic Richfield Co.; CI77-588, Petroleum, Inc.; CI77-613, Gulf Oil Corp.; and CI77-643, CNG Exploration, Inc.
CAG-5. Docket Nos. G-7526, G-12363, Amoco Production Co. Docket No. CI-78-166, Aminoil USA, Inc.
CAG-6. Docket No. CI78-444, Terra Resources, Inc.
CAG-7. Docket No. CI78764, Helmerich & Payne, Inc.
CAG-8. Docket No. CI75-38, Gulf Oil Corp.
CAG-9. Docket No. CI78-400, Amoco Production Co.
CAG-10. Docket Nos. CI77-497, CI77-826, CI77-830, and CI78-65, Mesa Petroleum Co.
CAG-11. Docket Nos. CS77-364, et al., George J. Ablah, d.b.a. Little George Oil Co. and Magnum Land Corp. (formerly George J. Ablah, d.b.a. Little George Oil Co.), et al.

CAG-12. Docket Nos. CS78-265, et al., Gene McDaniel, et al.
CAG-13. Docket Nos. CS77-87, et al., Cordillera Corp., et al.
CAG-14. Docket Nos. G-7393, et al., Gas Producting Enterprises, Inc., (successor to Colorado Oil & Gas Corp.), et al.
CAG-15. Docket No. G-2619, Phillips Petroleum Co.
CAG-16. Docket No. CP77-280, Transcontinental Gas Pipe Line Corp. Docket No. CP77-358, Texas Transmission Corp.
CAG-17. (A) Docket No. CP77-274, Michigan Consolidated Gas Co., Interstate Storage, Division. Docket No. CP77-253, Panhandle Eastern Pipe Line Co. (B) Docket No. CP78-270, Michigan Consolidated Gas Co. Docket No. CP78-329, Columbia Gas Transmission Corp. Docket No. CP78-367, Panhandle Eastern Pipe Line Co. Docket No. CP78-402, Michigan Wisconsin Pipe Line Co.
CAG-18. Docket No. CP78-344, Valley Gas Transmission, Inc.
CAG-19. Docket No. CP78-212, Transcontinental Gas Pipe Line Corp.
CAG-20. Docket No. CP74-162, Natural Gas Pipeline Co. of America. Docket No. CP74-126, El Paso Natural Gas Co.
CAG-21. Docket No. CP77-517, Texas Gas Transmission Corp. Docket No. CP78-59, Columbia Gas Transmission Corp.
CAG-22. Docket No. CP77-406, Colorado Interstate Gas Co.
CAG-23. Docket No. CP78-286, Gas Transport, Inc.
CAG-24. Docket No. CP78-328, Transcontinental Gas Pipe Line Corp.
CAG-25. Docket No. CP78-195, Columbia Gas Transmission Corp.
CAG-26. Docket No. CP76-122, Transcontinental Gas Pipe Line Corp.

I. PIPELINE RATE MATTERS

RP-1. Docket No. RP75-105 and RP75-106 (Consolidated Taxes), Columbia Gulf Transmission Co. and Columbia Gas Transmission Corp.
RP-2. Docket No. RP74-41, Texas Eastern Transmission Corp.
RP-3. Docket No. RP73-97, Kentucky West Virginia Gas Co.

II. PRODUCER RATE MATTERS

CI-1. Docket No. RP77-13, Arkansas Louisiana Gas Co.
CI-2. Docket No. RI78-14, Bradco Oil & Gas Co. and Bradco Properties, Inc.
CI-3. Docket No. G-18671, Dorchester Gas Producing Co. Docket Nos. AR64-1, et al., Area Rate Proceeding, et al. (Hugoton-Anadarko Area).

III. PIPELINE CERTIFICATE MATTERS

CP-1. Docket No. CP78-123, et al., Northwest Alaskan Pipeline Co.
CP-2. Docket No. CP78-194, Coronado Transmission Co.
CP-3. Docket No. CP77-653, Panhandle Eastern Pipeline Co., Trunkline Gas Co., and United Gas Pipeline Co.
CP-4. Docket No. CP-78-108, Columbia Gas Transmission Corp. Docket No. CP78-162, Texas Eastern Transmission Corp.

MISCELLANEOUS AGENDA—155TH MEETING, AUGUST 2, 1978, REGULAR MEETING

CAM-1. Gulf States Utilities Co.
CAM-2. National Energy Extension Service—DOE's proposed regulation for comprehensive program.
M-1 Docket No. RM78- , procedures for Commission review of denial of request for adjustment by the Secretary of Energy.
M-2. (A) Docket No. RA78-1, Lunday-Thagard Oil Co. (B) Docket No. RA78-2, Commonwealth Oil Refining Co. (C) Docket No. RA78-3, DOE Case No. DXE-0494 filed by Exxon Co., U.S.A.
M-3. (A) Docket No. RM78- , request for comments on problem areas to be considered in commission's revision of Part I Title 18 Code of Federal Regulations, Rules of Practice and Procedure. (B) Advisory Committee on Revision of Rules of Practice and Procedure.

POWER AGENDA—155TH MEETING, AUGUST 2, 1978, REGUEAR MEETING

CAP-1. Docket No. ER78-473, Central Louisiana Electric Co.
CAP-2. Docket No. ER78-227, Iowa-Illinois Gas & Electric Co., et al.
CAP-3, Docket No. ER78-397, Public Service Co., of Oklahoma.
CAP-4. Docket No. ER78-391, Interstate Power Co.
CAP-5. Docket No. ER78-192, Northern States Power Co. (Minnesota).
CAP-6. Docket No. ER77-588, The Washington Water Power Co.
CAP-7. Docket Nos. E-7740, E-9239 and ER76-716, Indiana & Michigan Electric Co.
CAP-8. Docket No. E-8121, Gulf States Utilities Co.
CAP-9. Docket No. ES78-35, Idaho Power Co.
CAP-10. Docket No. ES78-45, Iowa Public Service Co.
CAP-11. Docket No. ES78-46, El Paso Electric Co.
CAP-12. Docket No. ID-1722, John T. Kauffman.
CAP-13. Docket No. ID-1825, John V. Cleary, Jr.
CAP-14. Docket No. ID-1827, Raymond E. Donovan.
CAP-15. Docket No. ID-1828, Verner H. Condon.
CAP-16. Docket No. ID-1829, Edward A. Crooke.
CAP-17. Docket No. ID-1833, Fred W. Yeadon, Jr.
CAP-18. Project No. 82, Alabama Power Co.
CAP-19. Project No. 618, Alabama Power Co.
CAP-20. Project Nos. 1889 and 2485, Western Massachusetts Electric Co., the Connecticut Light & Power Co., the Hartford Electric Light Co.
CAP-21. Project No. 1894, South Carolina Electric & Gas Co.
CAP-22. Project No. 2543, Montana Power Co.
CAP-23. Project No. 2735, Pacific Gas & Electric Co.

I. ELECTRIC RATE MATTERS

ER-1.(A) Docket No. ER78-417, Kentucky Utilities Co. (B) Docket No. EL78-22, Jackson Purchase Electric Cooperative and Big Rivers Electric Cooperative. (C) Docket No. EL78-9, *Jackson Purchase Electric Cooperative Corporation and Big Rivers Electric Corporation* v. *Kentucky Utilities Co.*

II. LICENSED PROJECT MATTERS

P-1. Docket No. E-7440, *Alabama Water Improvement Commission* v. *Alabama Power Co.* Project Nos. 2165 and 2203. Alabama Power Co.
P-2. Project No. 2494, Puget Sound Power & Light Co.
P-3. Project No. 2157, Public Utility District No. 1 of Snohomish County, Wash., City of Everett.
P-4. Project No. 2712, Bangor Hydro-Electric Co.
P-5. Project No. 67, Southern California Edison. Co.

KENNETH F. PLUMB,
Secretary.

[S-1563-78 Filed 7-27-78; 11:52 am]

[7590-01]

5

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of July 17 (changes).

PLACE: Commissioner's Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

1. On Wednesday, July 19, the meeting titled "Discussion of OIA/OGC Inquiry in testimony of the Executive Director for Operations" (approximately 2½ hours, closed, exemption 1) scheduled for approximately 3 p.m. was canceled.
2. On Thursday, July 20, the meeting titled "Briefing on Reactor Licensing Schedules" (approximately 1 hour, public meeting) scheduled for 2 p.m. was canceled.
3. On Thursday, July 20, "The Affirmation Items" (approximately 10 minutes, public meeting) were rescheduled to July 25, 1978 at 9 a.m.
4. On Thursday, July 20, the meeting titled "Discussion of Settlement Proposal in Midland Special Proceeding" (approximately 30 minutes, closed, exemptions 6 and 9) was rescheduled to Friday, July 28 at 9 a.m.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE,
Office of the Secretary.

JULY 24, 1978.

[S-1559-78 Filed 7-27-78; 11:52 am]

[7590-01]

6

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: July 31, 1978.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

MONDAY, JULY 31

9:30 a.m.—Preliminary Budget Markup/Reclama (approximately 3 hours, closed, exemption 9).

2 p.m.—Preliminary Budget Markup/Reclama (approximately 2 hours, if required, closed, exemption 9).

TUESDAY, AUGUST 1

10:30 a.m.—Preliminary Budget Markup/Reclama (approximately 1½ hours, if required, closed, exemption 9).

2 p.m.—Preliminary Budget Markup/Reclama (approximately 2½ hours, if required, closed, exemption 9).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE,
Office of the Secretary.

JULY 24, 1978.

[S-1560-78 Filed 7-27-78; 11:52 am]

[8010-01]

7

SECURITIES AND EXCHANGE COMMISSION.

STATUS: Open meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

TIME AND DATE: Thursday, July 27, 1978, 10 a.m.

The following items will be considered by the Commission at an open meeting scheduled for Thursday, July 27, 1978, at 10 a.m.:

1. Proposed issuance of an order concerning temporary approval of the Consolidated Quotation Association (rescheduled from Wednesday, July 26, 1978, at 10 a.m.).

2. Consideration of various requests for exemption from certain provisions of Rule 11Acl-1 submitted by the Intermountain, Spokane, Cincinnati, and Philadelphia Stock Exchanges.

3. Proposed transmittal of comments to the House Committee on Interstate and Foreign Commerce and the Office of Management and Budget concerning H.R. 13032, a bill to amend the Securities Act of 1933 and the Investment Company Act of 1940 to encourage investment in small businesses.

Chairman Williams, Commissioners Pollack and Karmel determined that Commission business required consideration of these items and that no earlier notice therof was possible.

JULY 25, 1978.

[S-1561-78 Filed 7-27-78; 11:52 am]

[8010-01]

8

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of July 31, 1978, in Room 825, 500 North Capitol Street, Washington, D.C.

A closed meeting will be held on Wednesday, August 2, 1978, at 10 a.m. An open meeting will be held on Thursday, August 3, 1978, at 10 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402 (a)(8)(9)(i) and (10).

Chairman Williams, Commissioners Pollack, Loomis, and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Wednesday, August 2, 1978, at 10 a.m., will be:

Access to investigative files by Federal, State, or Self-Regulatory authorities.
Formal orders of investigation.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an inforcement nature.
Chapter X proceeding.
Opinion.
Regulatory matter bearing enforcement implications.

The subject matter of the open meeting scheduled for Thursday, August 3, 1978, at 10 a.m., will be:

1. Proposed adoption of amendment delgating authority to the Director of the Division of Enforcement to approve applications for relief from disqualification by certain individuals who have previously been allowed to re-enter the securities industry.

2. Consideration of the withdrawal of proposed amendment to Rule 306 under Regulation B under the Securities Act of 1933, which would require offerors to be registered brokers or dealers.

3. Consideration of a petition for rulemaking submitted by the Institute for Public Interest Representation, requesting that the Commission promulgate a rule defining responsibilities of an attorney whose client has, during the course of the representation, perpetrated a fraud any person or upon the Commission.

4. Proposed order extending the date upon which the delisting of Pacific Resources, Inc. stock from the Pacific Stock Exchange, Inc. becomes effective and extending the date of the exemption of certain persons from the requirements of Exchange Act Rule 17a-15 relating to the last sale reporting of Pacific Resources, Inc. stock transactions in the over-the-counter market.

FOR FURTHER INFORMATION, PLEASE CONTACT:

George Yearsich at 202-755-1100.

JULY 26, 1978.

[S-1562-78 Filed 7-27-78; 11:52 am]

federal register

MONDAY, JULY 31, 1978
PART II



FEDERAL TRADE COMMISSION

■

HART–SCOTT–RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

Premerger Notification; Reporting and Waiting Period Requirements

[6750-01]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER H—RULES, REGULATIONS, STATEMENTS AND INTERPRETATIONS UNDER THE HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

PREMERGER NOTIFICATION; REPORTING AND WAITING PERIOD REQUIREMENTS

AGENCY: Federal Trade Commission.

ACTION: Promulgation of final rules.

SUMMARY: The purpose of this document is formally to promulgate final rules implementing title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, relating to premerger notification. The document consists of final rules, including a Notification and Report Form, and a statement of basis and purpose. Under the statute, the Federal Trade Commission was directed to promulgate, with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, rules implementing a premerger notification program. The effect of the final rules is to implement such a program, by explaining the coverage of the program, certain exemptions from the program, and the means by which persons must comply with their obligations under the program.

EFFECTIVE DATE: August 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Malcolm R. Pfunder, Associate Director for Premerger Notification, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, telephone: 202-523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and the Assistant Attorney General advance notice and to wait certain designated periods before consummation of such plans. The transactions to which the advance notice requirement is applicable and the length of the waiting periods required are set out in the act, the complete text of which is reprinted below.

The rules are divided into three parts. Part 801 defines a number of the terms used in the act and the rules and explains which acquisitions are subject to reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the act. The Notification and Report Form, which is completed by persons required to file notification, is an appendix to part 803 of the rules. The amendment to the Clayton Act does not change the standards used in determining the legality of mergers and acquisitions, but instead provides the enforcement agencies with advance notice of, and information about, certain transactions, and with an opportunity to seek a preliminary injunction in Federal district court to prevent consummation of any such transactions which may, if consummated, violate the antitrust laws.

Section 7A of the Clayton Act provides:

"Sec. 7A. (a) Except as exempted pursuant to subsection (c), no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) and the waiting period described in subsection (b)(1) has expired, if—

"(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce:

"(2) (A) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $10,000,000 or more;

"(B) any voting securities or assets of a person not engaged in manufacturing which has total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $100,000,000or more; or

"(C) any voting securities or assets of a person with annual net sales or total assets of $100,000,000 or more are being acquired by any person with total assets or annual net sales of $10,000,000 or more; and

"(3) as a result of such acquisition, the acquiring person would hold—

"(A) 15 per centum or more of the voting securities or assets of the acquired person, or

"(B) an aggregate total amount of the voting securities and assets of the acquired person in excess of $15,000,000.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d).

"(b) (1) The waiting period required under subsection (a) shall—

"(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the 'Assistant Attorney General') of—

"(i) the completed notification required under subsection (a), or

"(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance,

from both persons, or, in the case of a tender offer, the acquiring person; and

"(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2).

"(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the FEDERAL REGISTER a notice that neither intends to take any action within such period with respect to such acquisition.

"(3) As used in this section—

"(A) The term 'voting securities' means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of dirctors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

"(B) The amount of percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

"(c) The following classes of transactions are exempt from the requirements of this section—

"(1) acquisitions of goods or realty transferred in the ordinary course of business;

"(2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

"(3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisitions;

"(4) transfers to or from a Federal agency or a State or political subdivision thereof;

"(5) transactions specifically exempted from the antitrust laws by Federal statute;

"(6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all informa-

tion and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

"(7) transactions which require agency approval under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), or section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842);

"(8) transactions which require agency approval under section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843), sections 403 and 408(e) of the National Housing Act (12 U.S.C. 1726 and 1730(a), or section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464), if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction;

"(9) acquisition, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

"(10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;

"(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and

"(12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B).

"(d) The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, United States Code, consistent with the purposes of this section—

"(1) shall require that the notification required under subsection (a) be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisitions may, if consummated, violate the antitrust laws; and

"(2) may—

"(A) define the terms used in this section;

"(B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

"(C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

"(e)(1) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.

"(2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section for an additional period of not more than 20 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person, (A) all the information and documentary material required to be submitted pursuant to such a request, or (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g)(2).

"(f) If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 7 of this Act or section 5 of the Federal Trade Commission Act, or an action is filed by the United States, alleging that a proposed acquisition violates such section 7 or section 1 or 2 of the Sherman Act, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies to the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection—

"(A) upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes; and

"(B) the motion for a preliminary injunction shall be set down for hearing by the district judge so designated at the earliest practicable time, shall take precedence over all matters except older matters of the same character and trials pursuant to section 3161 of title 18, United States Code, and shall be in every way expedited.

"(g)(1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than $10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

"(2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) or any request for the submission of additional information or documentary material under subsection (e)(1) of this section within the waiting period specified in subsection (b)(1) and as may be extended under subsection (e)(2), the United States district court—

"(A) may order compliance;

"(B) shall extend the waiting period specified in subsection (b)(1) and as may have been extended under subsection (e)(2) until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

"(C) may grant such other equitable relief as the court in its discretion determines necessary or appropriate.

upon application of the Federal Trade Commission or the Assistant Attorney General.

"(h) Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to

any duly authorized committee or subcommittee of the Congress.

"(i)(1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of Law.

"(2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act, the Federal Trade Commission Act, or any other provision of law.

"(j) Beginning not later than January 1, 1978, the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall annually report to the Congress on the operation of this section. Such report shall include an assessment of the effects of this section, of the effects, purpose, and need for any rules promulgated pursuant thereto, and any recommendations for revisions of this section."

STATEMENT OF BASIS AND PURPOSE OF RULES IMPLEMENTING TITLE II OF THE HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

On September 30, 1976, President Gerald Ford signed into law the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390. Section 201 of that statute added a new section 7A to the Clayton Act, 15 U.S.C. 18A (referred to in this Statement of Basis and Purpose as "the act"), relating to premerger notification.

The act creates a requirement that "persons" of specified size or larger, which intend to make voting securities or asset acquisitions of specified size or larger, must report their intentions in advance and provide information relevant to the transaction to the Antitrust Division of the Department of Justice and to the Federal Trade Commission. After reporting, those persons must wait a prescribed period of time before consummating the reported transaction. That waiting period may be extended by either enforcement agency by means of a request for additional information or documentary material. The act also contains 11 specific types of exemptions, along with a grant of rulemaking authority to define any terms used in the act, to create additional exemptions, and generally to carry out the purposes of the act.

The act provides for expedited consideration by a Federal district court in the event that either agency seeks a preliminary injunction to prevent consummation of an acquisition. It also contains penalty and enforcement provisions, a requirement that information filed by reporting persons not be made public except under certain circumstances, provisions clarifying the relationship between the act and certain substantive and procedural aspects of other antitrust laws, and the requirement of an annual report to the Congress.

Rulemaking authority under section 7A(d) of the act is conferred upon the Federal Trade Commission, and that provision requires that the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (referred to hereafter as the "Assistant Attorney General") concur in the rules. That section also makes applicable the informal rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. 553, and requires that any rules issued must be consistent with the purposes of the act.

Section 553 of the Administrative Procedure Act requires that an agency that intends to promulgate rules must first publish a "general notice of proposed rulemaking" in the FEDERAL REGISTER. After giving notice, the agency is required to "give interested persons an opportunity to participate in the rulemaking through submission of written data, views, arguments with or without opportunity for oral presentation." Thereafter the agency may adopt and issue final rules; incorporated in those rules must be "a concise general statement of their basis and purpose." The statute also requires that final rules of a substantive nature normally be published or served upon affected persons not less than 30 days before their effective date.

On December 15, 1976, the Federal Trade Commission, with the informal concurrence of the Assistant Attorney General, issued proposed rules and a proposed Notification and Report Form (sometimes referred to hereafter as the "form") to implement the act. The proposed rulemaking was published in the FEDERAL REGISTER of December 20, 1976, 41 FR 55488, and is hereafter referred to as the "original" rules and form. The 30-day comment period was extended by the Commission on January 12, 1977, and expired on February 18, 1977. One hundred thirty-three comments became part of the rulemaking record in connection with the original rules and form. A list of these comments, and of those received during the later comment period, appears at the end of the Statement of Basis and Purpose. Each comment has been assigned a number, and throughout this statement individual comments are referred to by these numbers.

Because of the extensiveness of public comment, it became clear to the Commission that some substantial revisions would have to be made in the original rules. On July 25, 1977, the Commission determined that additional public comment on the rules would be desirable and approved revised proposed rules and a revised proposed Notification and Report Form (hereafter referred to as the "revised" rules and form). The revised rules and form were published in the FEDERAL REGISTER of August 1, 1977, 42 FR 39040, and a 30-day comment period began on that date. In response to numerous requests for additional time for comment, the Commission on August 23, 1977, extended the comment period by 30 days, through September 30, 1977. A total of 116 comments were received on the revised rules and form.

Additional changes in the revised rules and form were made after the close of the comment period, and on February 14, 1978, the Commission gave its interim approval to final versions of the rules and form (referred to hereafter as the "final" rules and form). The Notification and Report Form was then transmitted to the General Acounting Office for review under the Federal Reports Act, 44 U.S.C. 3502. The General Accounting Office submitted its report to the Commission on May 12, 1978. The Commission formally promulgated the final rules and form and issued this Statement of Basis and Purpose on July 10, 1978. The Assistant Attorney General gave his formal concurrence on July 18, 1978. The final rules and form and this Statement of Basis and Purpose were published in the FEDERAL REGISTER of July 31, 1978, 43 FR 33451, and will become effective on August 30, 1978.

THE TRANSITIONAL RULE

Section 202 of the Antitrust Improvements Act of 1976 specified that section 201, containing new section 7A of the Clayton Act, would become effective 150 days after enactment, except for the rulemaking provisions contained in section 7A(d), which became effective upon enactment. Because final rules could not be promulgated prior to the effective date of the act (February 27, 1977), the Commission on January 27, 1977, with the concurrence of the Assistant Attorney General, promulgated a final rule, designated the Transitional Rule, which was published in the FEDERAL REGISTER of February 2, 1977, 42 FR 6365. The Transitional Rule created an exemption for all transactions consummated prior to the effective date of the final rules and specified the manner in which the final rules will be imple-

mented during the first 30 days following the effective date of the rules.

Under the Transitional Rule, any acquisition which is consummated before the effective date of these rules is exempt from all requirements of the act. Any cash tender offer which is consummated on or within 15 calendar days after the effective date of the rules and any other acquisition which is consummated on or within 30 calendar days after the effective date of the rules is exempt from the waiting period requirement of section 7A(a), subject to two other conditions. First, all persons required by the act and the rules to file notification with respect to the acquisition (or, for an acquisition subject to section 801.30, just the acquiring person) must file on or before the effective date of the rules. Second, if prior to consummation of the acquisition either enforcement agency makes a request for additional information or documentary material under section 7A(e) and section 803.20, then the waiting period normally deriving from such a request takes effect, and its expiration, termination or extension thereafter is governed by the act and the rules.

It should be emphasized that the Transitional Rule does not apply to any transaction that will be consummated more than 30 days (15 in the case of a cash tender offer) after the effective date of the rules; nor does it apply to any acquisition with respect to which the required notifications are not received on or before the effective date of the rules. Transactions of these two types are subject to the full notification and waiting period requirements of the act and the rules.

The Transitional Rule also states that completed notifications received prior to the effective date of the rules will be deemed filed on the effective date of the rules.

For purposes of the Transitional Rule and the rules in parts 801-803, the completion or consummation or "making" of an acquisition refers to the closing date, or the date on which title is transferred, rather than to the date on which a contract, agreement in principle or letter of intent is signed.

In the course of promulgating the Transitional Rule, the Commission considered comments suggesting that persons that had complied with the Commission's Resolution Requiring Notification and Submission of Special Reports Relating to Corporate Mergers or Acquisitions, dated August 15, 1974, 39 FR 35717 (October 3, 1974) (referred to hereafter as the "Commission's existing premerger notification program,") should be exempt from the requirements of the act and the rules. At that time the Commission, with the concurrence of the Assistant Attorney General, determined not to grant such an exemption. In the statement accompanying the Transitional Rule, the Commission explained:

> The Commission * * * believes that all merger transactions should be placed on the same footing at the inception of the new program and that firms engaging in such transactions will have ample warning of the final effective date of the rules to permit them to schedule consummation of those transactions accordingly. 42 FR at 6365-66.

Determining Whether the Act Applies

The act applies to any acquisition by an acquiring person of the assets or voting securities of an acquired person that meets the criteria of section 7A(a). Thus, the first step in analyzing whether the act applies to a specific acquisition of assets or voting securities is to determine the identify of the "acquiring person" and the "acquired person," and which assets or voting securities will be held "as a result of" the acquisition. One transaction may consist of, or may give rise, to, several distinct "acquisitions" potentially subject to the act. See the examples to § 801.2 (c) and (e) and to § 801.4.

To identify the "acquiring person," consult the definitions of "person," "entity," and "ultimate parent entity" in § 801.1(a) and the definition of "hold" in § 801.(c). First determine which entity will have beneficial ownership of the assets or voting securities to be acquired, and identify that entity's ultimate parent entity (as defined in § 801.1(a)(3)). The acquiring person consists of that ultimate parent entity and all entities that it controls directly or indirectly. The definition of "control" in § 801.1(b) will determine whether an entity is an ultimate parent entity and which entities are included within the acquiring person. If the entity that will hold the assets or voting securities to be acquired is controlled by another entity, one must follow the chain of control, locate the ultimate parent entity, and then determine all entities that that entity controls directly or indirectly. This will be the acquiring person.

Next determine the entity whose assets or voting securities are being acquired. See § 801.2(b). This will be the entity that prior to the acquisition has beneficial ownership of any assets, or is the issuer of any voting securities, which are to be acquired. The acquired person consists of the ultimate parent entity that controls the entity whose assets or voting securities are being acquired, along with all other entities that that ultimate parent entity controls directly or indirectly. See also § 801.2 (c), (d), and (e).

Having determined the identity of the acquiring and acquired persons, one must determine whether either person is engaged in commerce or in any activity affecting commerce. This is the "commerce text" of section 7A(a)(1); consult §§ 801.1(*l*) and 801.3 for further explanation of how this test is applied.

If the commerce test is satisfied, then the size-of-person test of section 7A(a)(2) must be analyzed. This test focuses upon the annual net sales and total assets of the acquiring and acquired persons. Section 801.11 explains how to determine these figures. It may also be necessary to determine whether the acquiring and acquired persons are "engaged in manufacturing," a term defined in § 801.1(j).

There are three different ways that the size-of-person test of section 7A(a)(2) may be satisfied. If the acquiring person has annual net sales or total assets of $100 million or more and the acquired person is engaged in manufacturing and has annual net sales or total assets of $10 million or more, then section 7A(a)(2)(A) is satisfied. If the acquiring person has annual net sales or total assets of $100 million or more and the acquired person is not engaged in manufacturing but has total assets of $10 million or more (net sales are irrelevant in this case), then section 7A(a)(2)(B) is satisfied. Finally, if the acquiring person has annual net sales or total assets of $10 million or more and the acquired person has annual net sales of $100 million or more, then section 7A(a)(2)(C) is satisfied, without regard to whether either person is engaged in manufacturing. If none of these three tests is satisfied, the act does not apply; if any of them is satisfied, it is then necessary to analyze the size-of-transaction test of section 7A(a)(3).

This test may be satisfied in any of five different ways, since the size-of-transaction test is satisfied whenever, as a result of the acquisition, the acquiring person would hold at least 15 percent, or more than $15 million worth, of either the assets or the voting securities of the acquired person, or more than $15 milion worth of both the assets and the voting securities of the acquired person.

In applying this test, one must first determine what will be held as a result of the acquisition. In general, the acquiring person in an assets transaction will hold only those assets which will change hands as a result of the transaction. See § 801.13(b)(1), but, for the moment, ignore the value of the assets; see also § 801.21. There is one significant exception: Whenever the acquiring person has acquired any assets from the same acquired person within 180 days preceding the signing of a contract, agreement in principle, or letter of intent to acquire additional assets, and the earlier-acquired assets have not been transferred to another

person, then § 801.13(b)(2) directs both persons to treat the earlier and the present transaction as if they were both occurring at the present time, unless § 801.15 requires otherwise. In other words, the two (or more) asset acquisitions must be aggregated, unless the earlier acquisitions fell within one of the exemptions listed in § 801.15. The effect of aggregation is that the assets acquired in the two (or more) transactions will be "held as a result of" the present transaction, for purposes of determining the dollar value of assets—but not the percentage of assets—being acquired under section 7A(a)(3).

The voting securities of the acquired person to be held by the acquiring person as a result of a transaction are determined by § 801.13(a)(1). In general, any securities which will be held by the acquiring person after the present transaction are held as a result of the present transaction, even if some of those securities were acquired earlier. Certain exceptions are stated in § 801.15 if an earlier acquisition was exempt under the act or rules.

The next step is to determine whether, as a result of the acquisition, the acquiring person will hold an aggregate total amount of assets and voting securities of the acquired person in excess of $15 million. The value of assets is the value at time of acquisition, and not the book value, and is determined by reference to § 801.10 (b) and (c). The value of voting securities to be held as a result of the acquisition is also the current value, determined by reference to section § 801.10 (a) and (c).

If an acquiring person would hold both assets and voting securities of the acquired person as a result of a transaction, the aggregate total amount of voting securities and assets must be determined under § 801.14 and subjected to the $15 million size-of-transaction test of section 7A(a)(3)(B). If the $15 million test is satisfied, the alternative 15-percent test of section 7A(a)(3)(A) may be disregarded, since the size-of-transaction has already been satisfied. If the $15 million test is not satisfied, then the next step is to determine the percentage of the acquired person's assets or voting securities which the acquiring person will hold as a result of the acquisition. This requires a computation, in the form of a fraction, in which the assets or voting securities to be held as a result of the acquisition are divided by the aggregate total amount of assets or voting securities of the acquired person.

In an assets acquisition, the numerator and denominator of this fraction will be dollar values obtained from the books of the acquired person. Section 801.12(d) explains how this computation is made, and § 801.12(c) makes clear that the denominator consists of the total assets of the entire acquired person. If as a result of the acquisition the acquiring person will hold 15 percent or more of the total assets of the acquired person, then section 7A(a)(3)(A) is satisfied.

For an acquisition of voting securities, the numerator and denominator of this fraction will be numbers of votes for directors of the issuer that voting securities presently entitle their holders to cast or, as a result of the acquisition, will entitle their holders to cast. Section 801.12 explains how this computation is made, and § 801.12(a) makes clear that the denominator consists of the total number of votes for directors of the issuer whose voting securities are being acquired. If as a result of the acquisition the acquiring person will hold 15 percent or more of the voting securities of the issuer, then section 7A(a)(3)(A) is satisfied.

Specific Treatment of Particular Types of Transactions

A series of rules in part 801 specify the manner in which particular types of transactions are treated under the act.

Whenever as a result of an acquisition (the "primary acquisition") an acquiring person will obtain control of an issuer which holds a noncontrolling block of voting securities of another issuer, then the acquisition of the other issuer's voting securities is a secondary acquisition which, by reason of § 801.4, is separately subject to the act and the rules.

Section 801.20 explains that acquisitions meeting the critieria of section 7A(a) and not otherwise exempted under the act or the rules are subject to the reporting and waiting period requirements of the act. This is true even though earlier acquisitions may also have been subject to the act; even though the acquiring person's holdings initially may have met or exceeded a notification threshold (see § 801.1(h)) before the effective date of the rules; and even though the acquiring person's holdings initially may have met or exceeded a notification threshold by reason of increases in market values or events other than acquisitions.

Section 801.30 explains that for certain types of transactions, the waiting period begins when only the acquiring person files notification, rather than when both persons file. In such cases, the acquired person must file within a specified number of days after the acquiring person files. The types of transactions to which this treatment applies are: (1) Acquisitions of voting securities on a national securities exchange or "over the counter" securities markets, (2) certain acquisitions of voting securities by shareholders of the target company in a tender offer, (3) acquisitions of voting securities by means of a tender offer, (4) secondary acquisitions, (5) acquisitions (other than mergers and consolidations) in which voting securities are acquired from someone other than the issuer or a related entity, (6) acquisitions resulting from conversion of convertible voting securities, and (7) acquisitions resulting from the exercise of options and warrants. Additional provisions relating to acquisitions of voting securities by shareholders of the target company in a tender offer are contained in § 801.31. Section 801.32 makes clear that conversion of convertible voting securities (see § 801.1(f)) is a potentially reportable acquisition under the act.

When the persons contributing to the formation of a new corporation receive voting securities of that corporation, § 801.40 must be consulted in order to determine whether these acquisitions are reportable. Section 801.40(b) contains its own size-of-person tests, which interpret those in section 7A(a)(2) in any transaction (except in connection with a merger or consolidation) in which a new corporation is formed. A special rule for determining the total assets of the new corporation is stated in § 801.40(c), and a special rule relating to the commerce test of section 7A(a)(1) is contained in § 801.40(d).

In general, § 801.40 applies to the formation of joint ventures organized in the corporate form, but the operation of the rule does not depend upon whether the parties or the enforcement agencies would consider the new corporation to be a "joint venture." Whenever a newly formed corporation issues sufficient voting securities to two or more persons, so that section 7A(a)(3) and § 801.40 (b) and (d) are satisfied, the transaction is reportable, although all such persons acquiring the new corporation's stock may not necessarily have to file notification. The new corporation does not, however, have to report its acquisitions of the assets which its shareholders have contributed as part of the transaction setting up the new corporation.

Finally, § 801.90 states that whenever a reportable transaction is recast in a different form or broken up into a series of transactions, or whenever any other device is employed for the purpose of avoiding the obligation to comply with the act and the rules, the form of the transactions is disregarded, and the obligation to comply with the act and the rules is determined by applying the act and the rules to the substance of the transaction.

EXEMPTIONS

If the commerce, size-of-person and size-of-transaction tests of section 7A(a) are all satisfied, one must next determine whether any exemptions apply. Statutory exemptions are found in section 7A (c)(1) through (c)(11). With respect to section 7A(c)(1), see § 802.1; with respect to section 7A (c)(6) and (c)(8), see § 802.6; as to section 7A(c)(8), see also § 802.8; concerning section 7A(c)(9), see § 802.9; and concerning section 7A(c)(10), see § 802.10.

Additional exemptions are found in the remainder of Part 802 of the rules. Each of the separate exemptions in the act and the rules must be separately consulted. More detailed explanations of these rules relating to exemptions appear below.

FILING REQUIREMENTS

If the criteria of section 7A(a) are met and the transaction is not entitled to exemption under the act or the rules, then the acquisition is reportable, and the procedures outlined in part 803 of the rules must be followed. The acquiring and acquired persons must file notification, and a waiting period must elapse, before the transaction may legally be consummated.

The Notification and Report Form is an appendix to part 803 of the rules and must be completed in accordance with § 803.1 and with the instructions appearing in § 803.2 and on the form itself. Whenever a person filing notification is unable to supply a complete response to any item on the form, it must provide a statement of reasons for noncompliance, in accordance with § 803.3. Each Notification and Report Form must be accompanied by an affidavit; consult § 803.5. Each form must also be certified; see § 803.6.

In the special case in which a foreign acquired person refuses to file notification, § 803.4 may permit another person to file on its behalf.

Under section 803.7, reported transactions must be consummated within one year following the expiration of the waiting period in order to avoid the necessity of an additional filing at a later date.

WAITING PERIOD

Sections 7A (a) and (b) state that, when notification is required with respect to an acquisition of assets or voting securities, that transaction may not legally be completed until notification has been accomplished and a 30-day waiting period has thereafter expired (only 15 days is required in the case of a cash tender offer).

Section 803.10(a) explains when the waiting period begins, and section 803.10(b) explains when it expires. Section 7A(b)(2) permits the Commission and the Assistant Attorney General to terminate the waiting period before it expires in certain cases, and section 803.11 explains the procedures governing termination.

REQUESTS FOR ADDITIONAL INFORMATION OR DOCUMENTARY MATERIAL

Section 7A(e) permits the Commission or the Assistant Attorney General, prior to expiration of the waiting period, to require the submission of additional information or additional documentary material relevant to an acquisition, from any person required to file notification, or from any officer, director, partner, agent or employee of any such person. Section 803.20 explains the procedure for such requests and details their impact upon the waiting period. Section 803.21 requires compliance with such requests within a reasonable time.

MISCELLANEOUS PROVISIONS OF THE ACT AND THE RULES

Section 7A(f) provides for expedited treatment by a United States district court of a motion by either enforcement agency for a preliminary injunction to prevent consummation of a transaction reportable under the act.

Sections 7A (g)(1) and (g)(2) provide the enforcement mechanisms for the act. Under section 7A(g)(1), any person (or any officer, director or partner thereof) who fails to comply with any provision of the act (or the rules) may be liable for a civil penalty of up to $10,000 for each day during which such person is in violation of the act. If the notification requirements of the act and the rules are not substantially complied with, section 7A(g)(2) permits either enforcement agency to commence an action in United States district court. Under this section, the court may order compliance and is required to extend the waiting period "until there has been substantial compliance." The act contains one exception: When a person whose stock is sought to be acquired by means of a tender offer (either cash or non-cash) has not complied, the waiting period may not be extended, although civil penalties may be assessed. Section 7A(g)(2)(C) also permits the court to "grant such other equitable relief as the court in its discretion determines necessary or appropriate."

Section 7A(h) states that any information or documentary material filed with the enforcement agencies under the act is exempt from disclosure under the Freedom of Information Act and that no such information or documentary material may be made public except "as may be relevant to any administrative or judicial action or proceeding." Section 7A(h) explicitly preserves to Congress and its committees and subcommittees the ability to obtain information filed with the enforcement agencies under the act.

Section 7A(i) contains two important explanations of the relationship between the act and other activities of the enforcement agencies. Under section 7A(i)(1), any action by either agency or any failure of either agency to take any action under the act has no effect on any proceeding or any other action at any time under any other provision of the Antitrust Improvements Act of 1976 or any other provision of law. Moreover, the ability of the enforcement agencies to make full use of the Antitrust Civil Process Act, the Federal Trade Commission Act, and any other provision of law "to secure at any time from any person documentary material, oral testimony, or other information" is unaffected by the premerger notification requirements of the act.

The Commission, with the concurrence of the Assistant Attorney General, is required by section 7A(j) to submit an annual report to Congress on the operation of the act.

Section 803.30 of the rules provides a mechanism whereby formal and informal interpretations of requirements under the act and the rules may be rendered. Section 803.90 provides for the separability of any provision of the rules or form, in the event that any provision is held invalid or inapplicable to any person or circumstances.

The final versions of the rules and form, and the detailed discussion of each which follows, are of necessity based upon certain factual assumptions. Only actual experience with the operation of the premerger notification program will show which of these assumptions are valid. Such experience may suggest amendments to the rules, and some of those amendments and the reasons articulated for them may differ with portions of this discussion.

PART 801 OF THE RULES

SECTION 801.1(a)(1)—PERSON

The term "person" appears 36 times in the act and is used in connection with virtually every subject with which the statute deals. It is the basic organizational unit to which the requirements of the act apply. Of particular importance are its uses in the tests for determining whether the act applies: The commerce test of section 7A(a)(1), the size-of-person test of section 7A(a)(2) and the size-of-transaction test of section 7A(a)(3). Two related statutory concepts, "acquiring" and "acquired" persons, are separately defined in § 801.2.

The definition states that a person is an ultimate parent entity together with all entities that it controls direct-

ly or indirectly. "Entity" is defined in § 801.1(a)(2), and comprehends natural persons, corporations, partnerships, joint ventures, unincorporated associations, trusts, and several other types of units. "Control" is defined in § 801.1(b) and means, in most cases, beneficial ownership of 50 percent or more of the voting stock. Control is effected directly if the voting stock is held without intermediaries; it is effected indirectly if direct control is held by controlled entities, agents, or other means. An "ultimate parent entity" is defined in § 801.1(a)(3), and means an entity that is not controlled by any other entity. A "person" thus can be visualized as a collection of entities headed by an ultimate parent entity and linked together by control relationships. These entities are referred to as being "included within" the person.

Four examples illustrate the rule. Example No. 1 illustrates the most typical case, that of a corporation with subsidiaries. Examples 2, 3, and 4 illustrate less common cases involving foreign governments, natural persons and entities included within two persons. The definition also notes an exception, § 801.12 (a) and (b), in which the term "person" is assigned a different meaning in connection with percentage computations.

BACKGROUND INFORMATION TO § 801.1(a)

Section 7A begins, "[N]o person shall acquire * * *" Although section 7 of the Clayton Act reaches only corporate acquisitions, Congress did not intend the definition of person to be limited to corporations. See 122 Cong. Rec. H10293 (daily ed. Sept. 16, 1976) (remarks of Rep. Rodino); 122 Cong. Rec. S15323 (daily ed. Sept. 7, 1976) (comparison of House and Senate versions with final compromise version). The definition of person accordingly embraces the variety of organizations contained in the definition of "entity." But for purposes of the size-of-person test of section 7A(a)(2), "person" could not mean just the particular entity which was acquiring or transferring legal title. If such a limited definition of person were adopted, the ultimate parent entity would be able to evade the requirements of the act by manipulating the entity to be involved in a transaction. For example, a large corporation could evade the size-of-person test of section 7A(a)(2) merely by arranging to have a small subsidiary participate in an acquisition. In order to give effect to the size-of-person test, "person" must mean the overall enterprise.

The rules solve this dilemma by introducing the term "entity" to serve in the first capacity, that of defining the basic organizational units (such as corporations, etc.) to which the act applies. The rules reserve the term "person" for the larger concept, used in the size-of-person test of section 7A(a)(2). See the Statement of Basis and Purpose to § 801.12, which also explains the exception in the definition provided in that rule.

The original rules did not employ the term "entity," and instead expressed the two meanings of "person" by using a more complex definition. The revised rules introduced the present definitional system. The final definition reformulates the language for clarity and to remove potential ambiguities, but does not alter the substance of the definition.

SECTION 801.1 (a)(2) ENTITY

The term "entity" does not appear in the act, but in the rules is part of the definition of the term "person," the basic unit to which the act applies. Section 801.1(a) defines a "person" as an ultimate parent entity and all entities that it controls directly or indirectly. "Entities" thus constitute the component parts of persons. The definition of "entity" sets forth a list of organizational units that can be included within a person.

The proviso at the end of the definition excludes the governments of foreign nations, the United States and the several States, as well as their agencies and political subdivisions, from qualifying as entities. Hence, these units are not subject to the act. However, corporations controlled by such units and engaged in commerce are entities, and may be subject to the requirements of the act.

BACKGROUND INFORMATION TO § 801.1(a)(2)

The need to introduce the term "entity" is explained in the statement of basis and purpose to §§ 801.1(a)(1) and 801.12. Revised § 801.1(a)(2) marked the initial appearance of the term, although the original rules had achieved a similar result by means of a more complex definition of "person." See the FEDERAL REGISTER notice accompanying the revised rules, 42 FR at 39042 (August 1, 1977).

The final definition differs only slightly from the revised version. The reference to an entity's domicile was deleted as unnecessary. The reference to joint ventures not yet formed has been conformed to the language of final § 801.40; the reason for its presence in the definition is explained in the statement of basis and purpose to that rule.

Foreign states, foreign governments, and their agencies are excluded from the definition of entity, but foreign governmental corporations engaged in commerce are entities. The definition draws this distinction because the activities of corporations engaged in commerce are invariably commercial activities, over which a U.S. court may have jurisdiction, whereas actions taken directly by States or governments are less likely to be subject to U.S. jurisdiction. Furthermore, the principle of comity, which seeks to assure amicable relations among nations, militates against the United States requiring a foreign state to comply with the reporting and waiting requirements of the act. By contrast, the principle of comity is less compelling with respect to the activities of governmental corporations. The distinction is generally supported by the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. 160-2-1611, which distinguishes between "commercial activities" of foreign states and agencies, which are not immune from the jurisdiction of the United States, and their noncommercial activities, which retain their immunity. 28 U.S.C. 1605(a)(2).

Similarly, the definition also excludes the States of the United States. The effect of the exclusion is that acquisitions by States are not subject to the act, because the act applies only to acquisitions involving persons. See Section 7A(a). The same is true of asset acquisitions from any of these political units. Stock acquisitions from them are not excluded under this rule, since the issuer of the stock, not the State or government, would be the acquired person. State-owned and U.S.-owned corporations are included within the definition of entity, for reasons similar to those applying to foreign governmental corporations.

SECTION 801.1(a)(3) ULTIMATE PARENT ENTITY

The term "ultimate parent entity" does not appear in the act. The rules employ the term in the course of defining the term "person." An "ultimate parent entity" is an entity that is not controlled by any other entity. The ultimate parent entity included within a person, therefore, is the entity that directly or indirectly controls all other entities within the person and is not itself controlled by any other entity.

An ultimate parent entity must be a unit that fits the definition of "entity" in § 801.1(a)(2). Thus, for example, a corporation engaged in commerce and wholly owned by a foreign government can be an ultimate parent entity, but the controlling government cannot, because it is not an entity. See example No. 2 to § 801.1(a)(1).

The ultimate parent entity included within a person is responsible for a person's compliance with the act and rules, under § 803.2(a). Because the concept of "person" is a creation of the act and rules and, therefore, a person may not have a generally recognized name embracing all its compo-

nents, the name of the ultimate parent entity is used to identify the person within which it is included. See page 2 of the notification and report form.

BACKGROUND INFORMATION TO § 801.1(a)(3)

The definition is part of the mechanism which constructs the definition of the term "person." The term did not appear in the original rules, and the definition is unchanged in substance from revised § 801.1(a)(3).

SECTION 801.1(B) CONTROL

The term "control" does not appear in the act, but the definition of the term is central to the entire scheme of the rules and indirectly affects the extent of coverage of the act. The language of the act imposes its requirements upon "persons," a term defined in § 801.1(a)(1) to consist of an ultimate parent entity and all entities which it controls directly or indirectly. Only after applying the definitions of control and person, can one determine whether the commerce test of section 7A(a)(1), the size-of-person test of section 7A(a)(2) and the size-of-transaction test of section 7A(a)(3) are satisfied, and thus whether the act applies. The definition of control is also important because the notification and report form, in general, requests revenue data and other information only for entities included within the person.

The definition of control consists of two tests; if either is satisfied, control exists. Subparagraph (b)(1) provides that holding 50 percent or more of the outstanding voting securities of an issuer constitutes control. This test invokes several other definitions and rules, which are necessary to apply the definition correctly. In particular, § 801.1(c) defines the term "hold;" § 801.1(f)(1) defines the term "voting securities;" and § 801.12 governs the calculation of the percentage. The second alternative test in the definition, subparagraph (b)(2), provides that control is also "the contractual power presently to designate a majority of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions." The example to the definition illustrates the most important use of the term, the linkage of entities into a "person."

Note that since both branches of the definition of control involve properties—the issuance of stock and the existence of directors or individuals exercising similar functions—which cannot be possessed by natural persons, natural persons may exercise control but cannot be controlled. This means that natural persons may be ultimate parent entities within a person, but may not become "included within a person" as controlled entities. See example No. 3 to § 801.1(a)(1) and example No. 2 to § 801.1(a)(3).

The language "in the case of unincorporated entities * * * individuals exercising similar functions" may in appropriate cases find application to organizational units other than corporations which are defined as entities in § 801.1(a)(2).

BACKGROUND INFORMATION TO § 801.1(b)

Although the term "control" does not appear in the act, the concept is implicit within it. It furnishes the link between the term "entity," which in the rules describes the types of units to which the act applies, and the term "person," which is used throughout the act and rules. The need for two terms in the definitional scheme is explained in the statements of basis and purpose to those definitions, § 801.1(a)(1) and (2) and the use of the term "control" arises within that definitional structure.

"Control" was defined at the level of 50 percent stock ownership for two reasons. First, it supplied an objective, easily administrable criterion. Second, except for cases in which the holding is exactly 50 percent, majority ownership will always enable the holder to direct the day-to-day activities of the controlled entity, even though for many large corporations, de facto control may arise from holdings well below 50 percent.

Several comments (e.g., 16, 115; 1050, 1088, 1102) suggested that control should stem only holdings of more than 50 percent, rather than exactly 50 percent, of the outstanding voting securities of an issuer. However, the final rule adheres to the position that a 50-percent holding constitutes control. If the shares of an issuer are evenly divided between two holders, it is more appropriate that the issuer be viewed as part of both "persons," for purposes of the size-of-person test of section 7A(a)(2) and size-of-transaction test of section 7A(a)(3), than as part of neither. In such a situation, each of the 50-percent holders may exercise control. Moreover, after a holder acquires 50 percent of the shares of an issuer, further acquisitions of those shares are exempt under section 7A(c)(3).

This first test of control has been retained without substantial change through the revised and final definitions. In the revised rule the word "ownership" was replaced by "holding," thus incorporating the definition of "hold." In the final rule the exclusion of the holdings of affiliates was deleted as unnecessary because of the final definition of "affiliate."

The second test in the definition can best be understood in the context of its derivation from the earlier drafts. In the original definition the second test attempted to identify actual or working control, however effected. It also contained a proviso excluding from the definition of control any power arising from conditions in financing contracts with certain specified lenders. The original version of the second test attracted approximately 25 comments, for the most part critical.

The comments made four principal criticisms. First, several comments (e.g., 9, 11, 78, 115) noted that the definition of control would determine the entities for which revenue and other data must be supplied on the Notification and Report Form. If the definition imputed control of an entity which the reporting person did not in fact control, a reporting person might be unable to supply the required data. Since failure to comply could result in civil penalties of up to $10,000 per day, these comments urged that the definition of control should require the submission of data concerning only those entities with respect to which the reporting person could in fact obtain such data.

A second group of comments (e.g., 9, 11, 78, 88, 95, 120) focused on the subjectivity of the original second test. These comments expressed concern about the potential expansiveness of two phrases in the definition, "dominant minority" and "other means," which they feared might include relationships other than stock ownership. They contended that different observers could reasonably arrive at different conclusions about whether control existed in a given instance. They also urged that, in view of the civil penalties provided for noncompliance with the act, the definition should focus upon objective criteria that would allow both reporting persons and the enforcement agencies to determine their obligations under the act with reasonable certainty.

The third and fourth groups of comments reflected more specialized concerns. A number of comments (e.g., 68, 81, 96, 105, 107, 108, 113) asserted that the second test of control, as applied to mutual funds, would regard an investment adviser that advises several separate mutual funds as controlling the funds. Thus, the several mutual funds would become part of the same "person," and their security holdings would be aggregated for purposes of the 15 percent or $15 million test of section 7A(a)(3). They contended that the legislative history of the act indicated a contrary congressional intent.

Finally, the fourth group of comments (e.g., 15, 83, 88, 98, 115, 120) criticized the proviso relating to financing. They maintained that the exclusion of powers arising from financ-

ing contracts should extend to all lenders, rather than to only those listed, since extensions of credit may come from many sources.

The definition was substantially revised in response to these comments. The revised version restricted control to contractual power to designate a majority of the board of directors. When such a contract exists, the controlling entity can direct the actions of the controlled entity and can presumably supply the data required by the Notification and Report Form without difficulty. All parties should be able to determine their obligations under the act with reasonable certainty based on objective criteria.

The limitation of control to these two instances also eliminated the criticism in the comments on the mutual fund issue and on the proviso about creditors; since control could only flow from the two specified relationships, these two problems no longer arose.

However, in addition to the revised definition, the FEDERAL REGISTER notice accompanying the revised rules solicited public comments on another possible modification of the second test of control. It would have defined control to include the power to designate or elect a majority of the directors of an issuer, without limiting the power to contractual instances only. The notice also solicited comments identifying "objective factors of voting control (or contractual power), without relying on a specific percentage of voting securities held." 42 FR at 39043 (August 1, 1977).

Nineteen comments expressed views about the revised definition and the FEDERAL REGISTER proposals. The comments uniformly supported the revised definition and opposed the proposals in the FEDERAL REGISTER notice. Most considered that the revised definition adequately addressed the concerns expressed in the comments to the original rules, while the new proposals would reintroduce the same subjectivity and uncertainty previously mentioned. The comments stressed the need for objective standards because of the civil penalty provisions of the act and viewed the proposals in the FEDERAL REGISTER notice as inadequate. Minority stockholdings, as well as other forms of influence, it was stated, could constitute the "power to designate or elect," but would not be capable of objective ascertainment.

The final rule retains the substance of the revised second test. The Commission believes that in this instance, the advantages of certainty in the application of the act outweigh the disadvantages of limiting the reach of the act. Should experience in administering the act reveal shortcomings in this approach, the definition can be revised.

Accordingly, the final definition makes only one change in the revised version of the second test. It expands the formulation "directors or trustees" to clarify that for unincorporated entities the definition will look to "individuals exercising similar functions" in place of the directors. This language does not apply, however, to banks or trust companies that designate the trustees of trusts they administer. In such cases, the definition of "hold," § 801.1(c), allocates the responsibility for filing notification.

SECTION 801.1(c) HOLD

Section 801.1(c) defines the term "hold," which is central to the structure of the rules. If the commerce test of section 7A(a)(1) and the size-of-person test of section 7A(a)(2) are met, the act applies to an acquistion if "as a result of such acquisition, the acquiring person would hold" 15 percent or $15 million worth of the voting securities or assets of the acquired person. Section 7A(a)(3) (emphasis supplied). The treatment of an acquisition thus depends upon what the acquiring person will hold as a result of the acquisition. See sections 801.13 and 801.15.

Section 801.1(c)(1) states the basic rule that a person "holds" voting securities or assets if that person is the beneficial owner of such securities or assets. The rules do not contain a definition of "beneficial ownership." Instead, the existence of beneficial ownership is to be determined in the context of particular cases with reference to the person or persons that enjoy the indicia of beneficial ownership, which include the right to obtain the benefit of any increase in value or dividends, the risk of loss of value, the right to vote the stock or to determine who may vote the stock, the investment discretion (including the power to dispose of the stock). It should be noted, however, that the concept of "beneficial ownership" for purposes of section 801.1(c) overlaps with, but is not identical to, the definition of beneficial ownership promulgated by the SEC for purposes of section 13(d) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78m. Thus, while a person may be a beneficial owner of securities for purposes of section 13(d) of that statute, it might not be the beneficial owner of those securities for purposes of the premerger notification rules, or vice versa.

Record ownership by itself is of no relevance in determining whether a person "holds" stock or assets under the rules. See the example following section 801.1(c)(1). Beneficial ownership may be effected directly (i.e., where the beneficial owner has legal title), or indirectly "through fiduciaries, agents, controlled entities or other means." This principle is subject to the provisions in subparagraphs (2) through (8) of the rule.

These subparagraphs clarify who the beneficial owner is or is deemed to be in particular situations. The holdings of spouses and minor children are by reason of section 801.1(c)(2) all attributable to one another, so that if any of them makes an acquisition, the holdings of all of them are aggregated for purposes of determining the total assets of the acquiring person and what it will hold as a result of the acquisition. See also section 803.2(a).

With certain exceptions, a trust, including a pension trust, is deemed under section 801.1(c)(3) to hold all assets and voting securities constituting the corpus of the trust; the trust (not the trustee) may thus become a reporting person. See the example in the rule. In the case of a revocable trust, and in the case of an irrevocable trust in which the settlor (i.e., he or she who creates the trust) retains a reversionary interest in the corpus, section 801.1(c)(4) makes the corpus of the trust the "holdings" of the settlor. In these situations the settlor, rather than the trust, would be required to comply with any obligations under the act.

Beneficiaries of all other types of trusts, including pension trusts and common trust funds or collective investment funds, are in section 801.1(c)(5) deemed not to hold any assets or voting securities constituting the corpus of such trusts, since the trusts are the holders." A bank or trust company that administers one or more common trust funds or collective investment funds is under section 801.1(c)(6) deemed the holder of the assets and voting securities constituting the corpus of each such fund, so that those assets and voting securities must all be aggregated with any other assets or voting securities which the bank or trust company may hold for its own account, if either the bank or one of its funds makes an acquisition. See the example following section 801.1(c)(6).

Section 801.1(c)(7) is designed to make clear that assets and voting securities held for the benefit of separate accounts administered by an insurance company are holdings of the company; unlike a trust, the separate account is not itself a holder.

Section 801.1(c)(8) states that in addition to its own holdings an entity (including an ultimate parent entity) holds all assets and voting securities held by entities which it controls directly or indirectly. Moreover, a person holds all assets and voting securities held by the entities included within it (i.e., held by the ultimate

parent entity and all entities which it controls). See section 801.1(a).

BACKGROUND INFORMATION TO SECTION 801.1(c)

Original section 801.05(c) defined the term "hold" in terms of the possession of either direct or indirect "ownership" or "control." Revised section 801.1(c) deleted the reference to "control" and defined the term "hold" as "record or beneficial ownership." Possible reporting requirements for persons having mere record ownership sparked a significant number of comments (e.g., 1062, 1070, 1071, 1090, 1108). The final rule reflects the recognition that record ownership by itself is not meaningful for purposes of analyzing the impact of an acquisition on competition. Beneficial ownership is a more reliable indicator of the holder's power to influence the management of the issuer. Record ownership of the shares does not normally indicate which person enjoys the attributes of beneficial ownership, in particular the right to vote or to designate who may vote the shares. Moreover, a variety of persons other than the beneficial owner may be the record owner of voting securities. (In many cases, of course, record owner and the beneficial owner will be the same person.)

Under the final rule it makes no difference who the record owner is. The person or persons that have the benefits and risks of ownership of securities or assets "hold" those securities or assets, and persons that acquire beneficial ownership must report their "acquisition" if the criteria of the act are satisfied.

The holdings of spouses and their minor children are aggregated under § 801.1(c)(2), so that natural persons cannot escape reporting merely by making separate purchases in the names of other natural persons within the immediate family. This limited aggregation rule does not extend to other "related" persons, such as brothers and sisters or parents (unless the beneficial owner is a minor child). The revised rule would have aggregated the holdings of spouses with those of their minor children, but not vice versa, and was thus incomplete. A related rule, § 803.2(a), states that a single Notification and Report Form shall be filed on behalf of a natural person, his or her spouse and minor children, in the event that any of them makes a reportable acquisition.

In general, under § 801.1(c)(5) the beneficiaries of a trust are deemed not to hold any assets or voting securities constituting the corpus of the trust, because the specific assets attributable to a specific beneficiary may be impossible to determine, and because the beneficiary may have no control over an acquisition (or disposition) of assets by the trust. The one exception to this general rule is found in § 801.1(c)(4), when the settlor is also a beneficiary; in that case, the settlor is deemed the holder of the trust's assets.

Since a trust is an "entity" within the meaning of § 801.1(a)(2), the trust will also be a person, unless the trust is controlled by another entity (other than a bank or trust company). Since a trust does not issue voting securities, under the rules it can be controlled by another entity only if the latter has a contractual power, under the trust indenture, to designate the trustee or, if there is more than one, a majority of the trustees. See §§ 801.1(a)(1) and 801.1(b)(2). For example, if a corporation appoints the trustees of an employee pension plan organized as a trust, then the corporation would control the trust under § 801.1(b)(2), and the trust would not be a separate "person" under the rules. On occasions when a trust is a separate person, the trust (normally through the trustee) must file notification and satisfy waiting period obligations if it makes a reportable acquisition. The holdings of a trust are not aggregated with those of any other entity for any purpose, unless the trust is controlled by or controls another entity. Thus, for example, if a bank is trustee of an individual trust, the bank will normally file notification on behalf of the trust whenever the trust makes a reportable acquisition. If the bank makes an acquisition for its own account, or for the account of another individual trust which it administers, the holdings of the individual trusts are not aggregated, nor are they aggregated with other holdings of the bank.

Special rules are applicable to common trust funds and collective investment funds, as defined in 12 CFR 9.18(a) (referred to hereafter as "collective investment funds"). Under § 801.1(c)(6), a bank or trust company which administers one or more collective investment funds holds the assets and voting securities constituting the corpus of each such fund. Therefore, the collective investment funds do not themselves hold any assets or voting securities, and as a result they will not themselves be subject to the act's requirements. Instead, the bank or trust company which administers such funds must comply with the act, if it applies. In order to determine whether a transaction is reportable, the bank or trust company must aggregate all assets and voting securities held for its own account with all assets and voting securities held by all collective investment funds which it administers. This aggregation does not include assets held in any other kinds of trusts which the bank may administer or for which it may be trustee.

Because of the degree of control which insurance companies typically exercise over their general and separate accounts, all assets and voting securities held for the benefit of any general or any separate account administered by such companies are, under § 801.1(c)(7), deemed holdings of the insurance company. These accounts are treated in a manner similar to that accorded to collective investment funds administered by a bank or trust company. Thus, all holdings of all such accounts are aggregated whenever the insurance company makes any acquisition for the benefit of any of those accounts.

Subparagraph (c)(8) states a conclusion which follows from the concept of control. Since under § 801.1(a) a person is defined as the collection of entities directly or indirectly under the control of an ultimate parent entity, it follows that the assets held by each of the entities included within a person are also held by the person. Similarly, each entity which is included within a person and controls another entity also holds any assets or voting securities held by the controlled entity. Thus, whenever the holdings of an entity must be determined, the holdings of that entity and those of each entity it controls must be aggregated.

At least one comment (1089) suggested that the Commission coordinate reporting requirements for certain types of persons or transactions with those promulgated by the Securities and Exchange Commission under section 13(d) of the Exchange Act. The SEC has adopted rules which define "beneficial ownership" so that a person having either the power to vote or the power to dispose of (i.e., investment discretion with respect to) voting securities would be deemed the beneficial owner of such securities, and would under section 13(d) have to report holdings of 5 percent or more of the stock of any issuer under SEC jurisdiction, and any changes in such holdings. Those rules became final on May 30, 1978. 43 FR 18484 (Apr. 28, 1978). The Commission's rules do not, however, adopt the SEC's position, which equates beneficial ownership with either voting power or investment discretion standing alone. After assessing the compatibility of the SEC's definition of "beneficial ownership" and the use of that concept in these rules, the Commission concluded that the legislative intent underlying each program and the goals of each program were sufficiently distinct to support the different usages of the term "beneficial ownership."

DELETION OF REVISED §§ 802.60 AND 802.61

Section 802.60 of the revised rules exempted "an acquisition by an agent on behalf of and at the specific direction of another person." Under that rule, an agent included a broker or dealer in securities, a trustee, or a fiduciary. The rule also stated that this exemption did not extend to the persons on whose behalf the acquisition was made.

Because the definition of "hold" in § 801.1(c)(1) has been modified to delete record ownership, § 802.60 of the revised rules is superfluous and has been deleted. Whenever any agent makes an acquisition on behalf of another person (whether or not at the specific direction of that other person), the agent does not become a beneficial owner and thus incurs no obligations under the act.

Section 802.61 of the revised rules exempted "an acquisition in escrow by an escrow agent pursuant to a written escrow agreement." That rule did not, however, exempt an acquisition by any person from an escrow agent, unless the assets or voting securities reverted to the original owner pursuant to the escrow agreement. The original rules contained a similar provision (§ 802.15).

Under the definition of "hold" in the final rules, the rule is no longer necessary, because an escrow agent does not become the beneficial owner of assets or voting securities held in escrow. An acquisition in escrow must be reported if beneficial ownership changes hands as a result of the acquisition; the same is true of an acquisition from an escrow agent.

SECTION 801.1(d) AFFILIATE

The term "affiliate" appears in the act only in section 7A(b)(3)(B), which states:

> The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate therof.

Thus, the holdings of afiliates of the acquiring person must be included in that person's holdings for the purpose of determining whether the size-of-transaction test of section 7A(a)(3), as well as the additional notification thresholds defined in § 801.1(h), are met with respect to a particular acquisition. Section 801.1(d) defines an "affiliate" of a person as an entity controlled directly or indirectly by the ultimate parent entity of that person.

The practical effect of the definition of "affiliate" is that only holdings of entities included within the acquiring person, and no holdings of entities not included within the acquiring person, are counted in determining what that person holds, and thus whether the act applies to an acquisition.

BACKGROUND INFORMATION TO § 801.1(d)

The final definition of "affiliate" differs from the original and revised definitions, both of which designated as affiliates certain persons or entities not included within the acquiring person and thus required aggregation of their holding with those of the acquiring person.

Original § 801.05(d) defined one person as an affiliate of another person if either person held 5 percent or more of the other person's outstanding voting securities or if one person was an officer, director, or partner of the other person. The definition was intended to identify entities that although not closely enough linked to be included within the acquiring person may nevertheless have a substantial similarity of interest with the acquiring person.

That definition attracted considerable critical comment. Several comments (e.g., 6, 15, 63, 88) argued that a 5 percent holding is too small a percentage to create any competitively significant link between a person and its "affiliate." Some of the comments suggested that a higher level of stock ownership, such as 20 or 25 percent, should be required for the "affiliate" relationship. Other comments (e.g., 49, 73, 78, 112) noted that since an acquiring person might not in fact control its affiliates, it would in many cases be impossible for a person to compel disclosure of its affiliate's stockholdings. Since the affiliate's stockholdings could determine whether the size-of-transaction test was satisfied, an acquiring person might not be able to find out whether a reporting requirement existed, or to comply fully with it, if it did.

A number of comments (e.g., 6, 63, 83, 88, 113) also criticized the concept that an officer, director, or partner could be an affiliate. They argued that since many companies have hundreds of officers, directors, and partners, it would be extremely burdensome to require a reporting person to find out what all of them held. Several comments (e.g., 7, 96, 105) argued that it would be unreasonable to aggregate the holdings of mutual funds, investment companies, or other institutions that are clients of the same investment adviser, either through the definition of "affiliate" or through other definitions. See the Statement of Basis and Purpose to § 801.1(b). Finally, several comments (e.g., 49, 73, 78) suggested that the confidentiality surrounding some acquisitions likely would be breached if an acquiring person had to contact its noncontrolled "affiliates" before the acquisition in order to determine the affiliates' holdings in the company to be acquired.

In response to these comments, revised § 801.1(d) considerably altered the definition of "affiliate." In order to decrease the reporting burden on acquiring persons and to obtain information only on more meaningful affiliations, the percentage of stock ownership constituting affiliation was increased from 5 to 25 percent. Furthermore, affiliation arising from one's status as an officer, director, or partner of another person was deleted. Information on these relationships, while potentially relevant, was deemed less essential and less useful than information on stockownership. Thus, the concept of "affiliation" was restricted in the revised rules to the holding of a stock interest of at least 25 but less than 50 percent (which is defined as "control" and would result in inclusion within the person). In addition, the revised rule specified that holdings of voting securities of only the ultimate parent entity of the reporting person or the affiliated person were to be counted in determining affiliation.

The comments on the revised definition, although fewer than those on the original rules, continued to object to defining "affiliate" to include noncontrolled entities. The comments (e.g., 1090, 1110) reiterated the contention that a person may be neither aware of nor able to compel disclosure of the holdings of a noncontrolled affiliate. Comment 1110 suggested that the definition of affiliate be tied more closely to the definition of "control," and that a corporation be considered an affiliate of a person only if 50 percent of its voting securities are owned by such person.

The final rules, in contrast to both of the earlier drafts, define "affiliate" as an entity controlled by the ultimate parent entity of a person. The concept of affiliation arising from a less-than-control relationship has been entirely deleted. The final rules thus incorporate a suggestion made by several comments (e.g., 78, 83, 112; 1110) that affiliation be defined no more broadly than the concept of control.

The final rules make this change because of what appeared to be potential administrative problems involved in any definition of affiliation that included less-than-control relationships. Although the Commission believes the act unmistakably affords it the power to define the term to include relationships short of control, the Commission considered it difficult to require disclosures of holdings of noncontrolled entities. Furthermore, in many cases, aggregation of these holdings also would have resulted in the imposition of a re-

porting requirement on a person whose holdings were less significant than those of its affiliate. For example, assume that A, a large corporation, acquires a 14-percent stock interest, valued at less than $15 million, in company X. This acquisition is not reportable under the act and rules. Assume that A also holds 25-percent of company F. Under the revised rules, F would have been an affiliate of A and A an affiliate of F. If F then purchases 1-percent of X, and the criteria of section 7A (a)(1) and (a)(2) are met, this acquisition would have been reportable under the revised rules, since for purposes of section 7A(a)(3), F would have aggregated its holdings of X stock with A's holdings of X stock. Therefore, F, the 1-percent shareholder of X, would have been required to report on its business activities, but A, the 14-percent shareholder of X, would not have been required to report, and no information would have been received by the agencies on its activities. Thus a great deal of relevant information would not have been obtained.

Defining the term "affiliate" by reference to the concept of control solves both of these problems. Since the only entities whose holdings are defined as relevant to determining the size of the transaction are those controlled by the reporting person, there should be no difficulty in obtaining information from such entities. In addition, the reporting person is always certain to be the most relevant person from a competitive standpoint.

The Commission does not consider it likely that many significant acquisitions will escape a reporting obligation because of the final definition of "affiliate." The 15-percent-or-$15 million threshold of section 7A(a)(3) is low enough that most major acquisitions will be reported well before the acquisition of control, even though the holdings of 25-percent-to-49-percent subsidiaries are excluded. Item 6 of the form was inserted, in part, so that once a reporting obligation exists, significant holdings in other companies by the reporting person, and significant holdings in the reporting person by others, can be identified. The form will reveal such holdings without affecting the basic concept of what transactions are reportable. See the Statement of Basis and Purpose to item 6.

The final definition of "affiliate" is supported by the legislative history of the act. A similar definition of "affiliate" was contained in the House-passed bill. See the final text of H.R. 14580 at 122 Congressional Record H8137 (daily ed. August 2, 1976). Although the definition was deleted from the final version of the act, the Commission believes that this deletion was intended to permit the agencies to define the term by rule rather than to preclude any particular definition. Note that since the term "person," which is closely connected with the term "affiliate," was not defined, a statutory definition of "affiliate" would thus have been impracticable. Furthermore, Senator Philip Hart, explaining the deletion on the Senate floor, clearly suggested that Congress intended the Commission to have maximum discretion in defining the term. See 122 Congressional Record S15417 (daily ed. September 8, 1976).

SECTION 801.1(e) UNITED STATES PERSON, UNITED STATES ISSUER, FOREIGN PERSON, FOREIGN ISSUER

Section 801.1(e) defines four terms relevant to determining the applicability of several exemptions relating to foreign commerce or foreign parties. These exemptions turn partly on whether certain persons or issuers are U.S. persons or issuers, or foreign persons or issuers. Subparagraph (e)(1)(i) defines a "U.S. person" as a person (other than a natural person) the ultimate parent entity of which is incorporated in the United States, is organized under the laws of the United States, or has its principal offices in the United States. Subparagraph (e)(1)(ii) similarly defines a "U.S. issuer" as an issuer which fulfills any of the above three criteria. A natural person is defined as a "U.S. person" if he or she is a citizen or resident of the United States.

Note that a person or issuer which fulfills any of the stated criteria is defined as a U.S. person or U.S. issuer. Thus, for example, a corporation incorporated abroad which has its principal offices in the United States is a U.S. person (or issuer). A natural person who resides in the United States but is not a U.S. citizen is nevertheless a "U.S. person." The term "United States" is defined in § 8-1.1(k) to include the several States, the territories, possessions, and commonwealths of the United States, and the District of Columbia.

Conversely, a person other than a natural person is defined in subparagraph (e)(2)(i) as a "foreign person" if its ultimate parent entity is not incorporated in the United States, is not organized under the laws of the United States, and does not have its principal offices within the United States. A foreign issuer is defined in subparagraph (e)(2)(ii) as an issuer which meets none of the three criteria for a "U.S. issuer." A natural person is defined as a "foreign person" if he or she is neither a citizen nor a resident of the United States.

The terms defined in § 801.1(e) do not appear in the act, which contains no special provision for transactions having foreign aspects. The terms appear in §§ 802.50 and 802.51, which exempt certain acquisitions by foreign persons and certain acquisitions of voting securites of foreign issuers or foreign assets. The terms "foreign person" and "foreign issuer" are also used in § 803.4, which provides that under certain circumstances another party to a transaction may file notification on behalf of a foreign acquired person that refuses to file. The term "U.S. issuer" is also used in item 9 of the Notification and Report Form, which requires the reporting person to list certain prior acquisitions of the voting securities of U.S. issuers.

For purposes of the definition, a person's "principal offices" refers to that single location which the person regards as the headquarters office of the ultimate parent entity. This location may or may not coincide with the location of its principal operations.

In determining whether a person other than a natural person is a U.S. person (or a U.S. issuer), one will ordinarily have to consider only two countries—the place of its principal offices, and the place of its incorporation or organization. The definition uses the concept "organized under the laws of the United States" as well as "incorporated in the United States" to encompass partnerships, associations, trusts, and other unincorporated units.

BACKGROUND INFORMATION TO § 801.1(e)

The primary purposes of this definition is to clarify the scope of the foreign commerce exemptions of §§ 802.50 and 802.51 and the special filing provision of § 803.4. The definitions establish objective criteria that can be easily applied by reporting persons and by the agencies. These definitions include as "U.S." persons or issuers those with significant ties to the United States; i.e., incorporation (or organization) or principal offices in the United States.

These definitions appear for the first time in the final rules. The original rules did not designate persons or issuers as "United States" or "foreign"; instead, the foreign commerce exemption embodied in original § 802.35 was premised on the absence of "substantial involvement" in United States commerce, as evidenced by United States sales or assets. Although the revised rules did not use the terms "U.S. person," "U.S. issuer," "foreign person," and "foreign issuer," they implicitly adopted similar criteria by referring to the domicile of persons and issuers. Revised §§ 802.50 and 802.51 would have exempted certain acquisitions by persons domiciled outside the

United States. Those rules, however, did not define "domicile."

The comment of the Department of State (1072) pointed out that the failure to define the concept of "domicile" in the revised rules could have led to confusion. The comment gave the example of a corporation organized under the laws of Delaware but having its principal place of business in a foreign country. It inquired whether such a corporation would be considered domiciled in the United States for the purposes of §§ 802.50 and 802.51. The comment expressed no preference between a place-of-business test or a place-of-incorporation test, and specifically noted that the Commission might choose to deny the foreign commerce exemptions if either the principal place of business or the place of incorporation were in the United States. The final definition adopts this suggestion.

For natural persons, a similar alternative test was inserted to clarify an ambiguity in the revised rules. Since the term "U.S. person" includes U.S. citizens, wherever domiciled, it includes some persons not "domiciled" in the United States. Similarly, anyone, of whatever citizenship, who resides in the United States is also considered a "U.S. person."

SECTION 801.1(f)(1) VOTING SECURITIES

The Act applies to acquisitions of "voting securities." "Voting securities" is defined in section 7A(b)(3)(A), and § 801.1(f)(1) basically restates the statutory definition. "Voting securities" are securities that at present or upon conversion entitle the owner or holder to vote for directors of any issuer or for individuals exercising similar functions in a non-corporate entity.

BACKGROUND INFORMATION OF § 801.1(f)(1)

No definition of "voting securities" appeared in the original rules. The revised definition incorporated the statutory definition. The final definition expands the statutory definition in only one respect. The phrase "or of any entity included within the same person as the issuer" was inserted so that if an entity issues securities which, upon conversion, will enable the holder to vote for directors of a different entity within the same person as the issuer, the issue is still one of "voting securities." Without the added phrase, such securities would not be "voting securities" within the meaning of section 7A(b)(3)(A) or § 801.1(f)(1). The added phrase assures that such securities are treated on an equal footing with all other convertibles when converted. See § 801.30(a)(6).

DELETED DEFINITION OF "SECURITY"

Section 801.1(e) of the original and revised rules defined the term "security." The definition listed the various interests in businesses deemed to be securities, as well as "in general, any interest or instrument commonly known as a 'security,'" or the right to purchase any such security.

The definition was deleted from the rules for two reasons. First, the statute uses only the term "voting securities," which is defined both in section 7A(b)(3)(A) and in § 801.1(f)(1). "Voting securities" is a unitary concept and as such its components need not be defined separately. See § 801.1(f)(1).

Moreover, the term "security" has a commonly understood meaning which poses no difficulty in the vast majority of transactions. Inherent in the deleted definition was a recognition of this commonly understood meaning. Thus, the deletion should effect no substantive change.

SECTION 801.1(f)(2) CONVERTIBLE VOTING SECURITY

Section § 801.1(f)(2) defines the term "convertible voting security" as a voting security that does not, at present, entitle its owner or holder to vote for directors of any entity. The definition was added to the final rules to emphasize the existence of a distinct scheme for the treatment of convertible voting securities ("convertibles"). See §§ 801.12(b), 801.15(a)(2), 801.32, and 802.31.

The distinction between convertibles and other voting securities is important for two related reasons. First, under the final rules the reporting and waiting period requirements of the act do not apply to convertibles until they are exchanged for voting securities presently entitled to vote. The acquisition of convertibles, unlike the acquisition of other voting securities, is always exempt (§ 802.31), but a "conversion" is a potentially reportable acquisition (§ 802.32). The second reason is a corollary of the first. For purposes of the 15 percent-or-$15 million size-of-transaction test of section 7A(a)(3), convertibles are disregarded entirely in computing the value or percentage of voting securities to be held or acquired. Section 801.12(b) provides that, for purposes of the 15 percent test of section 7A(a)(3)(A), it is irrelevant whether the acquiring person or others own convertible voting securities of the acquired person; these convertibles appear in neither the numerator nor the denominator of that percentage. Similarly, under § 801.15(a)(2), the value of convertible voting securities is ignored for purposes of the $15 million test of section 7A(a)(3)(B). The only time, in fact, that convertibles are "counted" is as assets on a person's last regularly prepared balance sheet, for purposes of the size-of-person test of section 7A(a)(2). See § 801.11(c)(2).

BACKGROUND INFORMATION TO 801.1(f)(2)

Section 7A(b)(3)(A) of the Act provides:

> The term "voting securities" means any securities which at present *or upon conversion* entitle the owner or holder therof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions. (Emphasis supplied.)

The only reference to convertible securities in the legislative history of the act was made by Chairman Rodino from the House floor. He stated:

> The House bill covered acquisitions of assets and "voting securities"—any debt or equity instrument entitling the holder to elect directors of a corporation. Nonvoting securities were completely exempt from the House-passed bill. However, nonvoting securities that can be converted into voting securities were covered "upon conversion," and compliance with the bill's notification and waiting requirements would thus have been required prior to conversion. In contrast, the Senate bill covered * * * nonvoting but convertible securities * * *. The compromise bill completely exempts acquisitions of nonvoting, nonconvertible debt or equity securities. Further, the compromise bill covers nonvoting but convertible securities upon acquisition, not conversion.
>
> 122 Cong. Rec. H10294 (daily ed. Sept. 16, 1978).

Neither section 7A(b)(3)(A) nor any other section of the act states when notification with respect to convertible securities is to take place. The legislative history provides very little guidance. The Commission, however, interprets the departure from the House-passed bill (to which the final rules largely return) as an effort by Congress to provide rulemaking flexibility in lieu of mandating that acquisitions of convertibles must be covered.

Section 7A(c)(2), the subsection of the act that exempts acquisitions of nonvoting securities, reinforces this position. Since it does not specifically exempt convertibles as nonvoting securities, it implicitly leaves the Commission free to determine whether to cover acquisitions of convertibles.

Moreover, the language of the act permits coverage at either the time of acquisition or the time of conversion: Either event is an "acquisition" potentially required by the act to be preceded by reporting and a waiting period. Indeed, nothing in the act prohibits coverage at both junctures. However, the Commission determined in the final rules that reporting at the time of conversion is most appropriate, and that reporting before conversion obviates the necessity of also reporting before acquisition.

From an antitrust standpoint, reporting at conversion is more useful. It is true that before conversion, convertible voting securities may confer upon their holder the power to influence, either directly or indirectly, the management of the issuer. But the conversion price attached to convertibles may make conversion economically unattractive. And the measurement of the potential voting power conferred by convertibles is highly speculative, since conversions by other holders may dilute the potential voting power of the person holding the convertibles. So although a substantial holding of convertible voting securities may give the holder some power to influence management, this power is far less significant than the ability actually to vote the securities. At conversion a more accurate picture of voting power in the hands of the owner or holder of those securities can be calculated.

In addition, convertible voting securities commonly change hands several times before conversion. By interposing the notification and waiting period requirements of the act only before conversion, the Commission minimizes the intrusion of the act into the capital markets.

Accordingly, § 802.31 of the final rules exempts all acquisitions of convertible voting securities, and § 801.32 explicitly designates conversions as acquisitions potentially subject to the act. The exclusion of convertibles from the 15 percent-or-$15 million size-of-transaction test of section 7A(a)(3), mentioned above, is consistent with the decision to disregard convertibles prior to conversion, except for purposes of section 7A(a)(2).

The revised rules had introduced the opposite approach to convertibles. Convertible voting securities were not differentiated from other voting securities, and their acquisition was reportable if the criteria of section 7A(a) were met. Percentages were calculated by means of a formula reflecting "partial dilution"—that is, only convertibles held or acquired by the acquiring person were regarded as already converted. For example, when determining the percentage of voting securities of an issuer held, the holder was obliged under revised § 801.12(b)(1)(i) to include within its holdings only those convertibles which were "convertible upon the occurrence of an event certain to occur within 5 years or convertible at the option of the holder." The denominator of that fractional computation was to reflect the number of votes presently entitled to be cast plus "the votes represented by conversion of voting securities of the issuer which are included in the numerator by reason of (the foregoing formula)." This procedure assessed the maximum voting power that the acquiring person could achieve within a reasonable period of time by means of conversions by disregarding the impact of convertibles of the issuer held by all others. In addition, revised § 802.31 exempted the subsequent conversion of convertibles.

The comments to the revised rules did not object to covering convertibles at time of acquisition, but did object to the formula for computing the percentage of voting securities that convertible voting securities represented. Several (e.g., 1026, 1070, 1090, 1102, 1108, 1115) perceived unfairness in not requiring full dilution in the percentage computations. One comment (1070) maintained that the language of the act mandated such treatment; for elaboration of that argument, see the Statement of Basis and Purpose to § 801.12(b). By ignoring all convertibles until exchanged for voting securities presently entitled to vote, the final rules eliminate this dispute and employ the most useful means of estimating voting power for purposes of an antitrust evaluation.

SECTION 801.1(f)(3) CONVERSION

The reporting and waiting period requirements of the act apply to acquisitions of "voting securities." The definitions of voting securities, section 7A(b)(3)(A) and section 801.1(f).1(f)(1), provide generally that a voting security is one that at present or *upon conversion* entitles the owner or holder to vote for directors of an issuer.

Section 801.1(f)(3) defines "conversion" as the exchange, without the payment of additional consideration, of voting securities not presently entitled to vote for voting securities entitling the owner or holder to vote for directors of any issuer. Transfer costs, fees, and payments made to complete fractional shares are not considered "additional consideration" in this context. The definition emphasizes that "conversion" represents an exchange *of* "voting securities," as defined in section 801.1(f)(1), *for* "voting securities" and that an exchange, as opposed to automatic maturation of inchoate rights, must take place to effect conversion. For example, if preferred shares become entitled to vote because dividends have been omitted, that occurrence is not a coversion and the act does not apply.

As a practical matter, although the definition of conversion means that convertible bonds and the like are voting securities, and that therefore reporting could be required prior to their acquisition, section 802.31 of the rules exempts all acquisitions of convertible voting securities from the requirements of the act. Thus, convertibles, like options and warrants, can be acquired without complying with the act, but compliance may be required prior to conversion or exercise.

BACKGROUND INFORMATION TO SECTION 801.1(F)(3)

The original rules did not address convertibles or the concept of "conversion." Revised section 801.1(f)(2), defined "conversion" but employed circular language. It stated essentially that conversion was the *conversion*, without the payment of additional consideration, of securities not presently entitled to vote into voting securities entitling the owner or holder to vote.

The requirement that the conversion be effected without additional consideration was essential in the revised rules to distinquish convertible securities, which are "voting securities," from options and warrants, which are not. Under those rules, convertibles would have been reportable at acquisition and exempt at conversion, while options and warrants would have been exempt at acquisition but potentially repoortable when exercised. See the Statement of Basis and Purpose to section 801.1(f)(2).

As stated above, the final rules treat convertibles in exactly the same way as options and warrants. The definition of "conversion" is present only to complete the scheme of the act, which uses the term in section 7A(b)(3)(A).

The final definition's emphasis on the *exchange* process addresses an issue raised by two comments (1070, 1090). Some issues of preferred stock entitle the owner or holder to vote for directors after the issuer has failed to pay dividends for a specified period of time. At acquisition, such preferred stock does not entitle its holder to vote; thus, the acquisition is not an acquisition of voting securities and is not reportable. Since the accrual of voting rights to such preferred stock is an automatic process and does not represent an exchange, this event is not a conversion, and again, is not reportable. Therefore, since preferred stock which entitles its owner or holder to vote upon default is not *converted* within the meaning of the rules when such voting rights accrue, is is a "voting security" only when presently entitled to vote—that is, only when the issuer is already in default. Acquisitions of this kind of preferred stock accordingly are subject to the reporting and waiting requirements of the act only if made during a period when voting rights have attached. On the othe hand, the acquisition of *voting* preferred stock is treated like any other acquisition of voting securities and is potentially reportable. If voting preferred may be converted into (exchanged for) voting common stock, this conversion is also subject to the requirements of the act if the criteria

of section 7A(a) are met. (Note, however, that if the exchange does not increase the holder's percentage of the voting securities of the issuer, it may be exempt. See section 7A(c)(10).)

The definition requires that *voting securities* be exchanged for voting securities to make clear that the aquisition of voting securities for cash or equivalent securities is not a conversion, and that cash and such securities therefore are not voting securities subject to the act.

SECTION 801.1(g)(1) TENDER OFFER

Section 801.1(g)(1) defines the term "tender offer," which appears in several places in the act and rules. The definition is important chiefly because the act and rules treat tender offers differently from other acquisitions in one important respect. A request for additional information and documentary material under section 7A(e) and section 803.20 normally extends the waiting period when directed to either party to an acquisition; however, for tender offers the waiting period is extended only when the request is directed to acquiring persons. In addition, other special treatment, summarized in the Statement of Basis and Purpose to section 801.1(g)(2), applies to cash tender offers.

The definition of "tender offer" incorporates the meaning of the term in section 14 of the Securities Exchange Act of 1934, 15 U.S.C. 78n. Neither the Exchange Act nor the rules and regulations issued under that act by the SEC define the term "tender offer," and the meaning of the term is instead found in case law and administrative precedent.

BACKGROUND INFORMATION TO SECTION 801.1(g)(1)

In its regulatory programs, the SEC has considered, but explicitly declined, defining the term "tender offer." In August 1976, the SEC issued proposed rules and schedules to implement sections 14(d) and 14(e) of the Exchange Act relating to tender offers. Exchange Act Release No. 34-12676 (August 2, 1976), 41 FR at 33004 (Aug. 6, 1976). The SEC stated that the dynamic nature of tender offers cautioned it to remain flexible in determining which types of transactions fall within the term. It specifically noted that its position did not limit the term to "so-called conventional tender offers whereby an offer is published by a person requesting that all or a portion of a class of a company's securities be deposited during a fixed period of time so that (the offeror) may purchase such securities * * * subject to specified conditions." Id. The release mentioned other types of bids and solicitations, which, depending on the circumstances, it might characterize as tender offers.

The definition in original section 801.05(f) was modeled after the SEC's description of a conventional tender offer. The SEC criticized this definition in its comment on the original rules (125), noting that there did not appear to be any reason to limit the tender offer provisions of the premerger notification rules to conventional tender offers. Accordingly, the SEC comment suggested adoption of the definition which appeared in the revised rules. In its comment on the revised rules (1058), the SEC supported the revised definition, which was retained without change in the final rules.

Section 801.1(g)(1), by referring to section 14 of the Exchange Act, invokes section 14(e) of that act, which, as interpreted by the SEC, embraces all tender offers without regard to the limitations contained in section 14(d). Exchange Act Release No. 34-12676 (Aug. 2, 1976), 42 FR at 33005 (Aug. 6, 1976). The Commission specifically adopts this broader meaning of the term "tender offer."

SECTION 801.1(g)(2) CASH TENDER OFFER

Section 801.1(g)(2) defines the term "cash tender offer." The act provides that for cash tender offers, the initial waiting period is 15 rather than 30 days (section 7A(b)(1)(B)), and may be extended only for 10, rather than 20, days after the response to a request for additional information or documentary material is received (section 7A(e)(2)). These statutory provisions are explicated in section 803.10(b), and references to the term also occur in other rules, e.g., section 801.30(b). The definition states that a cash tender offer is a tender offer in which cash is the only consideration offered to the holders of the voting securities sought to be acquired.

BACKGROUND INFORMATION TO SECTION 801.1(g)(2)

This definition merely states the plain meaning of the act. It appeared in the original rules as section 801.05(g) and in the revised rules as section 810.1(h), and attracted no comments.

SECTION 801.1(g)(3) NONCASH TENDER OFFER

Section 801.1(g)(3) defines the term "noncash tender offer." This term appears for the first time in section 802.23 of the final rules, an exemption rule which modifies the length of the waiting period when a cash tender offer is amended into a noncash tender offer, or vice versa. The definition provides that a noncash tender offer is any tender offer that is not a cash tender offer—that is, one in which any consideration other than or in addition to cash is offered to the holder of the voting securities to be acquired.

BACKGROUND INFORMATION TO § 801.1(g)(3)

This definition is the logical converse of the definition of cash tender offer.

SECTION 801.1(h) NOTIFICATION THRESHOLD

Section 801.1(h) defines the term "notification threshold." The term does not appear in the act. In the rules the term identifies the levels of stock ownership that may not be attained or surpassed by a person without first filing notification and observing a waiting period. The most important application of the term is in § 802.21, the exemption rule governing stock purchase above the 15-percent or $15 million level prescribed in the act.

To understand the term one must begin with the language of section 7A(a)(3), the size-of-transaction test. Notification and a waiting period are required if section 7A(a) (1) and (2) are satisfied, and if:

(3) *as a result of such acquisition, the acquiring person would hold* [15-percent or $15 million of the stock or assets of the acquired person]. (Emphasis supplied.)

The rules interpret this language to include *every* acquisition after which the acquiring person would hold more than 15-percent or $15 million of the stock of the acquired person, rather than only those acquisitions which initially raise the acquiring person's holdings to the 15-percent or $15 million level. See § 801.13(a). Therefore, every stock acquistion above the 15-percent or $15 million level becomes a potentially reportable transaction—reportable if section 7 (a)(1) and (a)(2) also are satisfied, and if no exemption applies. Section 802.21 exempts all acquisitions above the 15-percent or $15 million level except those attaining specified "notification thresholds," provided that certain timing and other conditions are satisfied. These levels of ownership, before which an additional notification and waiting period will be required, are defined in this rule as 15 percent of the stock of the acquired company, if valued at more than $15 million; 25 percent of the stock; and 50 percent of the stock. (The 15-percent or $15 million level contained in the act is inserted as the first notification threshold to facilitate the operation of § 802.21.) Section 801.12 governs the calculation of all percentages. For further explanation of the role of notification thresholds, see the Statement of Basis and Purpose to § 802.21.

Notification thresholds and the exemption conferred by § 802.21 apply only to acquisitions of voting securities. Any acquisition of assets that satisfies the three tests of section 7A(a) and is not exempted by the act and rules is reportable. In particular, any acquisition as a result of which the acquiring person would hold 15 percent or $15 million of the acquired person's assets is reportable, even though the reporting person may have previously filed notification with respect to an acquistion of assets from the same person. However, note that under § 801.13(b) assets cease to be assets of the acquired person after 180 days.

The other occurrences of the term are relatively minor and relate to the same purposes. For example, § 802.23(a) is a provision similar to § 802.21 in connection with tender offers. Section 803.7 uses the term in explaining the impact of that rule upon § 802.21. Several rules relating to the application of section 7A(a)(3) also refer to § 801.1(h)(1) in order to assure consistency between the rules and the act. See, e.g., §§ 801.14, 801.21.

BACKGROUND INFORMATION TO § 801.1(h)

Under § 801.13(a) every acquisition as a result of which the acquiring person would hold more than 15 percent or $15 million of the voting securities of the acquired person becomes a reportable acquisition if the tests of section 7A(a) (1) and (2) are satisfied. The Commission has determined, however, that to interpose the notification and waiting period requirements before every acquistion above the 15-percent or $15 million level would entail a burden on reporting persons and the enforcement agencies not justified by the additional information it would provide. See the Statement of Basis and Purpose to § 802.21. The definition of "notification threshold" identifies the points at which reporting subsequent to the 15-percent or $15 million level will be required.

The number of notification thresholds—four—was chosen because it serves the enforcement interests of the agencies without excessively taxing their administrative resources or burdening reporting persons. The particular percentage levels were selected as notification thresholds because they are appropriate levels for the agencies to review the significance of holdings of voting securities. Subparagraph (h)(1), the criterion of section 7A(a)(3), was selected by Congress as the first appropriate level. The second and third notification thresholds are appropriate because the act applies to the acquisition of the stock of companies ranging from quite large to quite small, and from widely to closely held corporations. Thus, working control or significant influence may arise at different points with respect to different companies. The 15-percent (when applicable) and 25-percent thresholds give the enforcement agencies adequate opportunities to assess the ability of a significant minority shareholder to influence or direct management.

The second threshold, which did not appear in the revised rules, was inserted because for larger companies, stock valued at $15 million may represent substantially less than 15 percent of the total number of outstanding shares. A holding that posed no antitrust concern at such a low percentage level may pose concern well before reaching the 25 percent threshold.

The final 50 percent threshold is appropriate because that level represents veto power, if not actual control, and because section 7A(c)(3) exempts acquisitions prior to which the acquiring person already held at least 50 percent of the shares.

The term "notification threshold" first appeared in the revised rules as § 802.21(a), but has been transferred to § 801.1, inwhich other terms are defined. The dollar amount in subparagraph (h)(1) has been corrected to an amount *exceeding* $15 million, to conform with section 7A(a)(3)(B). The reference in the revised rules to § 802.64 were necessary to accommodate institutional investors that first filed notification not at 15 percent or $15 million, but at the higher limits in that rule. However, § 802.21 has been reworded so that different notification thresholds for institutional investors are no longer required. Note that institutional investors, like other persons, are subject to the 25 percent and 50 percent thresholds.

SECTION 801.1(I)(1) SOLELY FOR THE PURPOSE OF INVESTMENT

The phrase "solely for the purpose of investment" occurs in two statutory exemptions, section 7(A)(c) (9) and (11), and in two exemption rules, §§ 802.9 and 802.64. The definition provides that so long as a person does not intend to participate in the formulation of the basic business decisions of an issuer, that person holds or acquires the issuer's voting securities "solely for the purpose of investment."

BACKGROUND INFORMATION TO § 801.1(i)(1)

The purpose of this definition is to limit the availability of the exemptions contained in section 7A(c) (9) and (11) of the act and §§ 802.9 and 802.64 of the rules to situations in which the acquiring person or the holder has no intention of participating in the management of the issuer. For further information, see the Statements of Basis and Purpose to §§ 802.9 and 802.64. Although the definition has been reworded to conform with the language of the act, its substance is unchanged from revised § 801.1(i). Original § 802.85(c) had excluded control holdings from the concept, but the original rules did not otherwise define the term.

In the FEDERAL REGISTER notice accompanying the revised rules, 42 FR at 39047 (Aug. 1, 1977), comments were invited on the suggestion that this definition be further limited by requiring that stock purchased for investment purposes not be voted. The comments (e.g., 1020, 1050, 1051, 1058, 1067, 1070, 1090, 1101, 1103, 1110, 1111) were unanimously negative, arguing that voting for directors, without more, was not inconsistent with investment purpose. The Commission has decided not to incorporate this limitation into the final definition. Therefore, merely voting the stock will not be considered evidence of an intent inconsistent with investment pupose. However, certain types of conduct could be so viewed. These include but are not limited to: (1) Nominating a candidate for the board of directors of the issuer; (2) proposing corporate action requiring shareholder approval; (3) soliciting proxies; (4) having a controlling shareholder, director, officer or employee simultaneously serving as an officer or director of the issuer; (5) being a competitor of the issuer; or (6) doing any of the foregoing with respect to any entity directly or indirectly controlling the issuer. The facts and circumstances of each case will be evaluated whenever any of these actions have been taken by a person claiming that voting securities are held or acquired solely for the purpose of investment and thus not subject to the act's requirements. In appropriate circumstances the Commission may investigate to determine whether an enforcement action under section 7A(g) is warranted.

Comment 1059 suggested that section 7A(c)(9) refers only to acquisitions, but not holdings, for investment purposes, and therefore this rule should not refer to holdings. But section 7A(c)(9) does refer to holdings: it provides that an acquisition "solely for the purpose of investment" is exempt only if, as a result of the acquistion, the amount of stock "acquired or *held*" does not exceed 10 percent of the issuer's outstanding shares (emphasis supplied). Furthermore, the reference to "holding" in the rule is necessary because of the possibility of multiple acquisitions below either the 10 percent limitation of section 7A(c)(9) or the 15 percent and $25 million level of § 802.64(b)(5). In such situations, the question arises whether previously acquired stock is "held"—and thus must be aggregated with a

subsequent acquisition. Such questions are answered by § 801.15, and it is therefore necessary to have a concept of holding as well as *acquiring* "solely for the purpose of investment."

If a person makes an exempt acquisition "solely for the purpose of investment" and later decides to participate in the management of the issuer, this change in intent does not require filing with respect to the exempt purchase, because the act applies only at the time of an acquisition. However, the change would require the person to file notification prior to any further acquisitions, whether or not exceeding the 10 percent limitation in section 7A(c)(9), if the criteria of section 7A(a) are met and the acquisition is not otherwise exempt.

SECTION 801.1(i)(2) INVESTMENT ASSETS

This definition defines "investment assets" to mean cash on hand or deposited in financial institutions, money market instruments (generally, commercial paper), and Goverment bonds. The term is used in connection with the foreign commerce exemptions (§§ 802.50, 802.51), in connection with filing on behalf of foreign persons refusing to file notification (§ 803.4), and in determining the total assets of a natural person (§ 801.11(d)).

BACKGROUND INFORMATION TO § 801.1(i)(2)

The use of the term "investment assets" is explained in the Statement of Basis and Purpose to each of the rules in which it appears. In general, these types of assets are believed to lack competitive significance.

This definition appears for the first time in the final rules. It replaces the term "assets held solely for investment purposes" which was used in §§ 802.50 and 802.51 of the revised rules, and an equivalent provision in original § 802.35.

SECTION 801.1(j) ENGAGED IN MANUFACTURING

Section 801.1(j) defines the phrase "engaged in manufacturing." The definition is relevant only to the size-of-person test of section 7A(a)(2). The size-of-person test can be satisfied in three ways, and two of the three—section 7A(a)(2) (A) and (B)—use the phrase "engaged in manufacturing."

Under the definition, a person is "engaged in manufacturing" if it produces and derives more than $1 million in aggregate annual sales or revenues from products within industries 2000-3999, as coded in the 1972 edition of the Standard Industrial Classification Manual, published by the Executive Office of the President, Office of Management and Budget. Since the definition applies to "persons," all the activities of the person, as defined in § 801.1(a)(1), must be considered. The definition specifies that the person must produce and derive the revenues from manufactured products, so that merely reselling manufactured products does not satisfy the definition.

BACKGROUND INFORMATION TO § 801.1(j)

The size-of-person test of section 7A(a)(2) has three branches. If the acquiring person has annual net sales or total assets of $100 million or more, then section 7A(a)(2)(A) provides that, if the acquired person is engaged in manufacturing, the test is satisfied if the acquired person has annual net sales or total assets of $10 million or more. If the acquired person is not engaged in manufacturing, then section 7A(a)(2)(B) provides that the test will be satisfied only if the acquired person has total assets of $10 million or more. For the third branch, it is irrelevant whether either the acquiring or the acquired person is engaged in manufacturing. Section 801.11 explains how to determine the annual net sales and total assets of a person.

Note that the definition is narrower than the standard for completing item 5 of the Form. That item requires a listing of all revenues derived from manufacturing activities regardless of whether those revenues exceed $1 million.

The definition refers to selected 4-digit (SIC code) industries because those classifications are commonly accepted as a basis for distinguishing manufacturing activities from nonmanufacturing activities. The original definition, § 801.05(h), did not provide for a threshold dollar amount of annual sales or revenues below which persons would not be deemed to be "engaged in manufacturing." The $1 million threshold amount was inserted in the revised rules in response to several comments (e.g., 15, 63, 115, 120) in order to distinguish *de minimis* from significant manufacturing operations. The final rules retain the revised definition.

SECTION 801.1(k) UNITED STATES

Section 801.1(k) defines the term "United States" to include each of the States, along with the territories, possessions and commonwealths of the United States, and the District of Columbia.

One of the two important applications of the term "United States" in the rules is to the foreign commerce exemptions, §§ 802.50 through 802.52, and the related definitions, in § 801.1(e). References in § 801.1(e) to the location of a person's or an issuer's principal offices or the residence of a natural person, and references in §§ 802.50 and 802.51 to the location of assets and to "sales in or into the United States" are all affected by this definition of the term "United States."

The other important application of the term "United States" appears in § 803.2(c)(1), which provides that responses to items 5, 7, 8, 9 and the Appendix to the Notification and Report Form shall be supplied only with respect to operations conducted within the United States. In addition, the term appears in § 801.1(a)(2), which states that "the United States, any of the States thereof, or any political subdivision or agency of either * * *" are not themselves included in the term "entity."

BACKGROUND INFORMATION TO § 801.1(k)

Original § 801.05(i) made no references to "possessions," and neither the original nor the revised definition referred to the several States. The reference to the several States in § 801.1(k) was inserted into the final rules so that an entity "incorporated in the United States" or "organized under the laws of any of the United States" (see § 801.1(e)) would include entities organized or incorporated under the laws of the several States.

Comment 1104 asserted that the Bureau of the Census collects data only from the continental United States and thus suggested that reference to the commonwealths, territories and possessions of the United States should be deleted from the rules. This suggestion was not adopted, for two reasons. First, Census data is collected from Puerto Rico, the Northern Mariana Islands, Guam, and the Virgin Islands, and statutory authority permits collection of data by the Bureau of the Census from "such other possessions and areas over which the United States exercises jurisdiction, control, or sovereignty." 13 U.S.C. 191(a) (1976). Second, for purposes of the foreign commerce exemptions, it would be inappropriate to regard these territories and possessions as being outside the United States.

Moreover, while the term "State" in section 7A(c)(4) is not defined in the rules, it is intended that transfers to or from any of the governments of the commonwealths, territories or possessions of the United States, or any political subdivisions thereof, are exempt under that subsection, which exempts "transfers to or from * * * a State or political subdivision thereof."

SECTION 801.1(l) COMMERCE

Section 801.1(l) defines the term "commerce" to have the same meaning as in section 1 of the Clayton Act, 15 U.S.C. 12, or 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

Section 7A(a)(1) contains the "commerce test" of the act. An acquisition which satisfies the size-of-person and

size-of-transaction tests of section 7A (a)(2) and (a)(3) is subject to the act only if

> the acquiring person, or the person whose voting securities or assets are being aquired, is engaged in commerce or in any activity affecting commerce * * *.

Section 801.3 interprets this test for all acquisitions except those in connection with the formation of joint venture or other corporations, to which § 801.40(d) applies. The term "commerce" does not appear elsewhere in the act or rules.

BACKGROUND INFORMATION TO § 801.1(*l*)

"Commerce" was not defined in the original rules. The final rules define the term in the same way as the revised rules did, except that the word "and" appearing between the statutory citations was changed to "or." The change makes clear that "commerce" includes definitions and interpretations of that term under either statute.

One comment (1059) implied that some confusion resulted from having "two definitions" of the term "commerce" in the rules and suggested that, since section 7A is part of the Clayton Act, that statute's definition should be adopted. The Commission has declined to adopt this suggestion. Congress intended that either the Clayton Act or the Federal Trade Commission Act, as well as the Sherman Act, could be used to challenged mergers or acquisitions. See section 7A(f). It is thus appropriate that a transaction which satisfies the commerce test of the act under either definition of the term "commerce" should be reportable.

Another comment (1086) suggested that the term "commerce" should be limited by a $1 million threshold similar to the provision of § 801.1(j). The comment stated no reason for this suggestion, and it was not adopted. While dollar thresholds appear in section 7A (a)(2) and (a)(3), none appears in section 7A(a)(1); had Congress believed a threshold to be desirable, it could have added one. Moreover, a threshold would probably be unworkable: it is not clear, for example, how one might determine whether a person was engaged in an activity affecting 1 million dollars' worth of commerce.

SECTION 801.1(m) THE ACT

This paragraph explains that references to "the act," which appear throughout the rules, mean section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390, and codified at 15 U.S.C. 18A. References to subsections of the act appearing in the rules are denoted "section 7A(a)(1)," "section 7A(d)(2)(B)," "section 7A(h)," etc., meaning, respectively, subsections (a)(1), (d)(2)(B), (h), etc., of the act.

Because of required FEDERAL REGISTER terminology, 1 CFR 21.10, 21.11, the word "section" is used in the rules to refer to sections of the rules (not to sections or subsections of the act, as the revised rules did). This usage departs from the language of the act itself, which used the term "section" to mean section 7A.

SECTION 801.2 ACQUIRING AND ACQUIRED PERSONS

Section 801.2 identifies the acquiring and acquired persons to a transaction for purposes of the act and rules. To apply the size-of-person test of section 7A(a)(2) and the size-of-transaction test of section 7A(a)(3), one must first identify the acquiring and acquired persons.

SECTION 801.2(a)—ACQUIRING PERSONS

Section 801.2(a) defines an "acquiring" person as any person that will hold voting securities or assets as a result of an acquisition. "Person" is defined in § 801.1(a)(1). "Hold" is defined in § 801.1(c), and, in general, means beneficial ownership. The rule also mentions several ways in which a person may acquire beneficial ownership, but these are supplied principally for emphasis since each is embodied in the definition of "hold."

An acquiring person may hold assets or voting securities either directly, or indirectly through controlled entities or other means. Thus, if agents, brokers, or other entities (whether or not controlled) are acquiring on behalf of a person, they will not "hold" within the meaning of § 801.1(c)(1) and need not file notification with respect to acquisitions made in that capacity. Only the beneficial owner will hold the voting securities and becomes the acquiring person.

The example illustrates the unique case of a corporation with two 50 percent shareholders. When such a corporation makes an acquisition, under the rules there are two acquiring persons.

BACKGROUND INFORMATION TO § 801.2(a)

No counterpart to any paragraph of § 801.2 appeared in the original rules.

Since the act repeatedly refers to acquiring and acquired persons, the revised rules added § 801.2 to explain the terms. The final rule makes several changes to revised § 801.2(a). For example, the revised rule identified an acquiring person as one which "is *acquiring* voting securities or assets." The size-of-transaction test of section 7A(a)(3), however, is couched in terms of the amount of voting securities or assets that "as a result of such acquisition, the acquiring person would *hold*" (emphasis supplied). Thus, the statute focuses on holding as a result of an acquisition rather than on the act of acquiring. This focus is reflected in the language of final § 801.2(a), which describes an acquiring person as one "which, as a result of an acquisition, will hold voting securities or assets * * *."

The revised rule also identified persons as acquiring persons even if holding through "brokers or other entities acting on behalf of and at the specific direction of such person." The reference to brokers was deleted altogether, because brokers, whether or not acting at the specific direction of a principal, typically do not acquire beneficial ownership of voting securities. Therefore, under the final rules the principal, and not the broker, would become the holder, and hence the acquiring person. Since this result is embodied in the definition of "hold," the quoted phrase was deleted as superfluous.

The revised rule had restricted acquiring persons to those acquiring assets other than cash. The final rule omits this exclusion from § 801.2 (a) and (b) because new § 801.21(a) makes clear that cash is not considered an asset when acquired.

No comments addressed any portion of revised § 801.2.

SECTION 801.2(b)—ACQUIRED PERSONS

Section 801.2(b), read together with § 801.12 (a) and (b), defines "acquired" person. For all but one purpose, the acquired person is the person within which the entity whose voting securities or assets are being acquired is included. The most important consequence of this definition arises in connection with acquisitions of voting securities from third-party holders. If voting securities are acquired from a holder not included within the same person as the issuer, then the acquired person is *not* the seller of the securities, but instead is the person within which the issuer is included. The latter person, rather than the transferor of the shares, must file notification. Example 1 to the paragraph illustrates this point. Since the term "hold" generally means beneficial ownership, see § 801.1(c), agents and other intermediaries are to be disregarded in determining whether a transferor is a third-party holder.

The general rule stated in § 801.2(b) is subject to one exception: Whenever the percentage of voting securities to be held or acquired is calculated, the issuer of those voting securities will be deemed the acquired person. Thus, if a person will acquire shares of a subsidiary of a corporation, the percentage test of section 7A(a)(3)(A) will be applied to the subsidiary, not to the entire "person" within which the subsidiary is included. See the Statement of Basis and Purpose to § 801.12 (a) and (b).

Example 2 to paragraph (b) illustrates the special case of the acquisition of a corporation with two 50 percent shareholders. Under the rule there will be two acquired persons in this situation.

BACKGROUND INFORMATION TO § 801.2(b)

Antitrust analysis requires that the acquired person be the person within which the issuer of voting securities is included, rather than the person transferring the shares, when the two are different. The relationship established by the acquisition, which will be the source of any competitive consequences, will be between the acquiring person and the issuer. Accordingly, the rule places the reporting obligation upon the person within which the issuer is included, and places no obligation upon the third-party transferor.

Revised § 801.30(a) had specifically made this point. The original rules did not address the subject.

The exclusion of cash as an asset when acquired, which appeared in the revised rule, has been deleted from the final rule because § 801.21(a) precludes considering cash as an asset for purposes of the 15-percent or $15-million test of section 7A(a)(3) throughout the rules.

SECTION 801.2(c)—ACQUIRED AND ACQUIRING PERSONS

Section 801.2(c) makes clear that a person may be both an acquiring and an acquired person in the same transaction. The example to paragraph (c) illustrates such a situation. When it arises, the parties to the acquisition must complete portions of the Notification and Report Form separately as acquiring and acquired persons. See § 803.2. A person need not complete two entire forms on such occasions; all that is necessary is to identify clearly the separate responses to the appropriate items.

Paragraphs (c) and (e) of the rule overlap. See the Statement of Basis and Purpose to § 801.2(e), below. Since under paragraph (e) the acquisitions are analyzed separately whenever voting securities are to be acquired from an acquiring person, one or both of the two acquisitions may not be reportable. For example, if an acquiring person is to acquire assets valued in excess of $15 million, the acquisition is reportable. However, if the acquiring person is to pay for the assets with cash plus its own stock valued at less than $15 million (and less than 15 percent of the total shares outstanding), the acquisitions would be analyzed separately. The person transferring the assets would then be an acquiring person, but the criteria of section 7A(a)(3) would not be satisfied as to its acquisition of the stock, and it would not be reportable. See also § 801.21(a).

BACKGROUND INFORMATION TO § 801.2(c)

Section 801.2(c) provides that persons may be both acquiring and acquired persons in the same transaction, because, as the example illustrates, each person may fit both descriptions. If so, the Notification and Report Form must be completed by each person in each capacity in order for the agencies to accurately evaluate the impact of the transaction upon competition. For the reasons why the form must be completed differently for acquiring and acquired persons, see the Statement of Basis and Purpose to § 803.2. A person also may be both an acquiring and an acquired person in a transaction described by § 801.2(e). However, under that paragraph, whenever more than one separately reportable acquisition results, separate Notification and Report Forms must be filed.

SECTION 801.2(d)—MERGERS AND CONSOLIDATIONS

This paragraph of the rule provides that mergers, consolidations, and other acquisitions combining all or part of the business of two or more parties are acquisitions within the meaning of the act. Each party to the acquisition is both an acquiring and acquired person, and if the acquisition is subject to the act, each will be required to file notification in both capacities in accordance with § 803.2(b).

BACKGROUND INFORMATION TO § 801.2(d)

The legislative history of the act permits no doubt that Congress intended the act to apply to mergers and other forms of business consolidations. For example, title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 is entitled "Premerger Notification." See also, e.g., the remarks of Chairman Rodino, 122 Cong. Rec. H10293-94 (daily ed. Sept. 16, 1976). However, the language of the act employs only the term "acquisition." Paragraph (d) of this rule simply makes clear that mergers and other business consolidations are "acquisitions" within the meaning of the act.

This paragraph of § 801.2 specifies that both parties to a merger or consolidation are, for purposes of the act and rules, both acquiring and acquired persons. In the typical merger in which all the activities of both persons are combined, designating each party as an acquiring person would provide sufficient information for the agencies, since under § 803.2 an acquiring person completes the Notification and Report Form with respect to all its activities. But since the act contemplates an acquiring and an acquired person for each transaction, the rule instead designates each party as both an acquiring and an acquired person. The dual designation does not involve multiple submissions of data, because for this type of transaction the reports filed by each person as an acquiring and an acquired person will be identical, and only one need be submitted. See § 803.2(b)(1)(iv).

The dual designation also proves useful for those mergers and consolidations in which less than all of the issuers included within one of the persons are to be merged or consolidated. Under § 803.2(b) that person, when reporting as an acquired person, will complete the Notification and Report Form with reference only to the entities to be involved in the merger or consolidation.

One comment (112) suggested that the rule provide objective criteria for designating the acquiring and acquired parties to a merger. For example, it suggested that unless the parties agreed otherwise, the person with the greater total assets could be designated the acquiring person. The Commission rejected this suggestion because this procedure would not assure submission of all necessary information.

SECTION 801.2(e)—ACQUISITIONS OF VOTING SECURITIES FROM AN ACQUIRING PERSON

Section 801.2(e) states that whenever voting securities will be acquired from an acquiring person in connection with an acquisition, that acquisition is to be separately analyzed under the act and rules. To some extent paragraph (e) overlaps paragraph (c) of this rule. If, for example, a seller of assets (an acquired person) receives the voting securities of the acquiring person as consideration, both paragraphs (c) and (e) are applicable. Under paragraph (c), each person is both an acquiring and an acquired person, and, if the criteria of section 7A(a) are satisfied, each acquisition is reportable. See the discussion and example in the Statement of Basis and Purpose to § 801.2(c).

The focus of paragraph (e) is somewhat different. If a shareholder of an acquired person will acquire voting securities from the acquiring person (or any issuer included within that person) in connection with an acquisition, only paragraph (e) would apply, because the shareholder is not an acquired person within the meaning of the rule. For example, in a non-cash tender offer, the acquired person is the issuer whose shares are to be acquired. Under paragraph (e), if any shareholder of the acquired person will be acquiring voting securities from the acquiring person, that acquisition is to be tested separately under the act and rules. If the shareholder would hold 15 percent or $15 million of the

voting securities of the issuer, and the criteria of section 7A (a)(1) and (a)(2) are also satisfied, the acquisition by the shareholder would be reportable. See also § 801.31. The example to paragraph (e) illustrates the analogous situation in connection with a merger.

When an acquisition is separately reportable, separate Notification and Report Forms must be submitted with respect to it.

BACKGROUND INFORMATION TO § 801.2(e)

This paragraph was added to the final rule to clarify that acquisitions of the type described, like other acquisitions, are subject to the act. The Statement of Basis and Purpose to § 801.31 explains the rationale for coverage, and for separate coverage, of such acquisitions.

SECTION 801.3 ACTIVITIES IN OR AFFECTING COMMERCE

Section 7A(a)(1) is the first of the three tests that must be satisfied before the act applies to an acquisition. If either the acquiring or the acquired person is engaged in commerce or in any activity affecting commerce, the test is satisfied. This rule interprets the test by providing that if the activities of any entity included within the acquiring or acquired persons are in or affect commerce, then that person is so engaged, and the commerce test of section 7A(a)(1) is met. The term "commerce" is defined in § 801.1(*l*).

BACKGROUND INFORMATION TO § 801.3

The final rule is unchanged from the revised rule and is substantially the same as § 801.15 of the original rules.

Some comments (e.g., 87, 112; 1102) suggested that the commerce test should be less inclusive when foreign transactions are involved. These comments have not been adopted, because restricted coverage of foreign transactions is accomplished by specific exemption rules, §§ 802.50–802.53. Similarly rejected was the suggestion in comment 1115 that the rule specifically refer to United States commerce. Since the term "commerce" is defined in § 801.1(*l*), there is no need to modify its use in this rule. Furthermore, such a limitation would potentially cause confusion. The definition adopts the meaning of the term contained in the two statutes most relevant to merger enforcement, the FTC Act and the Clayton Act. Those acts apply to both the domestic and foreign commerce of the United States.

Finally, comment 1086 suggested that a minimum dollar test be imposed in determining whether activities are in or affect commerce. Again, the Commission declined to so limit the act's jurisdictional coverage. Section 7A(a)(1) sets no such limits. Rather than exclude transactions on jurisdictional grounds, the rules exempt certain transactions that, because of their size, are of lesser competitive concern. See § 802.20.

SECTION 801.4 SECONDARY ACQUISITIONS

Whenever as a result of an acquisition (a "primary" acquisition) a person will obtain control of an issuer, as a result of the same acquisition the acquiring person will also hold any voting securities held by that issuer. See § 801.1(c)(8). If the issuer to be acquired holds voting securities of other issuers that it does not control, the rule terms acquisitions of those voting securities "secondary acquisitions" and provides that they are separately subject to the act and rules.

Making the primary and secondary acquisitions separately subject to the act and rules has three effects. First, the three tests of whether the act applies, section 7A(a) (1)–(3), are applied separately to each acquisition. Thus, for example, if the issuer of the stock to be acquired in the secondary acquisition does not meet the size-of-person test of section 7A(a)(2), the secondary acquisition would not be subject to the requirements of the act even though the primary acquisition might be. Second, as set forth in paragraph (b) of the rule, the exemptions contained in the act and rules are also applied separately. Subparagraph (b)(1) specifies that even if the primary acquisition is exempt, the secondary acquisition may be reportable. Conversely, subparagraph (b)(2) makes clear that if the primary acquisition is reportable, the secondary acquisition nevertheless may be exempt. Third, since the secondary acquisition, if reportable, is separate from the primary acquisition, separate Notification and Report Forms must be submitted with respect to it. Three examples illustrate the rule.

Note that secondary acquisitions include, in addition to the noncontrolling holdings of the issuer to be acquired in the primary acquisition, any noncontrolling holdings of entities controlled by such an issuer. See § 801.1(c)(8). The rule does not apply to acquisitions of voting securities of entities controlled by the issuer acquired in the primary acquisition. All such voting securities are acquired as part of the primary acquisition. See §§ 801.1 (a)(1), (b), and (c)(8). Nor does the rule apply if the acquiring person will not control or already controls the issuer to be acquired in the primary acquisition; secondary acquisitions occur only when, as a result of the primary acquisition, the acquiring person obtains control. Finally, note that the acquiring person must aggregate all its preexisting holdings, if any, with the voting securities to be acquired in a secondary acquisition, in determining whether the act or an exemption applies.

In the case of a merger or consolidation, each party will make secondary acquisitions of any noncontrolling stock holdings held by the other party prior to the merger or consolidation. Since § 801.2(d) designates each party to the acquisition as both an acquiring and acquired person, in its capacity as acquiring person each party will make secondary acquisitions of the non-controlling stock holdings of the issuer to be acquired.

The waiting period with respect to secondary acquisitions begins upon receipt of notification from only the acquiring person. See § 801.30 and the Statement of Basis and Purpose to that rule.

BACKGROUND INFORMATION TO § 801.4

An acquisition may violate the antitrust laws even though it is effected as a secondary acquisition. The rule merely clarifies that such acquisitions are within the ambit of the act and insures that the agencies review the competitive consequences of such acquisitions prior to consumation.

The rule appeared in the revised rules. The final version has been rewritten for clarity but reflects no substantive change. The terminology of the revised rule, "indirect acquisitions," has been changed to secondary acquisitions in order to avoid confusion arising from the use of the former term elsewhere in the rules. "Indirect acquisition" refers to an acquisition made through a controlled entity, an agent, or another means resulting in acquisition of beneficial ownership. See § 801.1(c).

Only one comment (1090) was received on the rule. It recommended that § 801.30 should be expanded to include acquisitions described by this rule, and that secondary acquisitions resulting from mergers should be specifically covered by the rule. The first proposal was adopted. No change was necessary to adopt the second suggestion, since § 801.2(d) provides that mergers and consolidations are acquisitions within the meaning of the act. Therefore, since primary acquisitions include mergers, secondary acquisitions resulting from mergers fall within the rule.

SECTION 801.10 VALUE OF VOTING SECURITIES AND ASSETS TO BE ACQUIRED

Section 801.10 governs the valuation of voting securities and assets to be acquired. The third criterion for coverage under the act, the size-of-transaction of test section 7A(a)(3), provides in general that as a result of the acquisition, the acquiring person must hold either 15 percent or $15 million of the

stock or assets of the acquired person. Section 801.10 explains how to determine whether the $15 million test is satisfied. (Section 801.12 explains how to determine whether the 15-percent test is satisfied.) The rule does not apply to the valuation of total assets fore the section 7A(a)(2) size-of-person test, which is governed by § 801.11.

Paragraph (a) of the rule treats the valuation of voting securities; paragraph (b) treats the valuation of assets. Both paragraphs employ the term "market price," "acquisition price," and "fair market value," and these terms are explained in paragraph (c).

Section 801.13 also pertains to valuation. It provides valuation rules for voting securities and assets of the acquired person that are already held by the acquiring person prior to the acquisition at issue; for that reason, § 801.10 begins, "[e]xcept as provided in § 801.13 * * *." Section 801.13 also utilizes, by reference, the terms defined in paragraph (c) of this rule.

BACKGROUND INFORMATION TO § 801.10

The words "to be acquired," which were not in the revised rule, were inserted into the title and first sentence of the rule to distinquish the rule even more clearly from § 801.11, relating to total assets as suggested by comment 89. With the new title, subparagraph (b)(1) of the revised rule, which was a reminder to consult § 801.11 to determine the total assets of a person, was deleted as unnecessary.

SECTION 801.10(a)—VOTING SECURITIES

Paragraph (a) prescribes the method of valuing voting securities to be acquired. In brief, the value is the higher of the market price or acquisition price. If neither market nor acquisition price can be ascertained, the fair market value is used. The procedures for determining "market price," "acquisition price," and "fair market value" are set forth in paragraph (c). The rule utilizes market quotations only from a "national securities exchange" or "interdealer quotation system of a national securities association registered with the U.S. Securities and Exchange Commission." "National securities exchange" means any securities exchange registered with the SEC under section 6 of the Securities Exchange Act of 1934, 15 U.S.C. 78f, and thus includes the regional stock exchanges. The only interdealer quotation system currently registered with the SEC is the National Association of Securities Dealers Automated Quotation (NASDAQ) service.

BACKGROUND INFORMATION TO § 801.10(a)

Section 801.10(a) defines the $15 million test of section 7A(a)(3)(B) to mean the greater of the acquisition and market prices. If the acquisition price exceeds the market price, designating the acquisition price as the value is appropriate because the value of the acquisition to the parties is greater. Market value reflects present supply and demand for a stock. A major acquisition, such as a tender offer, may change that equilibrium more quickly than the market can reflect it, thus making market value a less appropriate test of the value of the transaction to the parties. On the other hand, if the market price exceeds the acquisition price, the market price must be employed as the value for purposes of the act. The rule invokes the procedure for determining fair market value only as a last resort, when neither market nor acquisition price is available.

The precedessor of the rule, original § 801.20, had provided that the value was the market price, or, if none, the higher of the acquisition price and fair market value. A number of comments (e.g., 15, 48, 63, 71, 120) complained that no board of directors would ever assign a fair market value different from the acquisition price, and that the required determination of fair market value would prove expensive and troublesome. The comments recommended that the acquisition price be determinative, and the fair market value reserved for occasions when the securities have no ascertainable dollar value. The revised rule reflects this recommendation, and no comments on this aspect of the revised rule were received.

SECTION 801.10(b)—ASSETS

Paragraph (b) prescribes the method of valuing assets to be acquired. The rule provides that the value is the fair market value of the assets, or, if the acquisition price is determined and is greater than the fair market value, the acquisition price. The procedures for determining fair market value, which are set forth in paragraph (c), therefore must be applied in connection with every acquisition of assets. If the reporting person has designated the acquisition price as the value of the assets, the agencies will treat this designation as a representation by the filing person that the fair market value has been determined to be equal to or less than the acquisition price. Again, the term "acquisition price" is defined in paragraph (c).

BACKGROUND INFORMATION TO § 801.10(b)

The valuation of assets is analogous to that of voting securities, except that for assets no market price generally exists, and the fair market value substitutes for it. If the parties assign an acquisition price greater than the fair market value, then the acquisition price becomes the value of the assets because that is the value to the parties. If the fair market value is greater, it, rather than the acquisition price, becomes the value.

Original § 801.20(b) specified that the value would be the highest of the fair market value, book value, and acquisition price. The comments on paragraph (a) of the original rule were for the most part equally directed to paragraph (b)—that is, the required determination of fair market value was said to be unnecessary and troublesome when the acquisition price had been determined. However, the revised rule retained the requirement for assets, deleting only the reference to book value as irrelevant and unlikely to exceed the greater of the other two values. See comment 77. Although several comments (1059, 1102, 1108) continued to call for the elimination of fair market value, the final rule retains it. In many cases, the acquisition price of assets may not be known at the time of filing. Note that the revised and final rules modify the procedure for determining fair market value, making it significantly more flexible. See the Statement of Basis and Purpose to § 801.10(c)(3).

SECTION 801.10(c)

Paragraph (c) defines the terms "market price," "acquisition price" and "fair market value" used in this rule and § 801.13.

SECTION 801.10(c)(1)—MARKET PRICE

Subparagraph (c)(1) provides instructions for determining the market price separately for transactions subject to § 801.30 and for other transactions. Section 801.30, in general, applies to acquisitions on stock exchanges and other transactions not involving agreement between the acquiring and acquired persons. See the Statement of Basis and Purpose to that rule.

For transactions subject to § 801.30, clause (i) provides that the market price is the lowest closing quotation or bid price within the 45 calendar days preceding either the receipt of the notice by the acquired person required by § 803.5(a), or, if the act does not apply to the transaction, the consummation of the acquisition. For other transactions, clause (ii) provides that the market price is the lowest closing quotation or bid price within the 45 or fewer calendar days preceding the consummation of the acquisition, but not extending back prior to the day before execution of any contract, agreement in principle or letter of intent to merge or acquire. Clause (iii) specifies that if the security was not traded within the time period set forth, the last preceding trade or bid should be

used, notwithstanding the time limitations of clause (ii). Clause (iii) also provides that if quotations are available in more than one market, the person filing notification may select any such quotation.A

Both clauses (i) and (ii) give the parties the benefit of a decline in market price by providing that the value is the lowest price within time periods not only prior to filing notification but also prior to consummating the acquisition. For example, assume that, in an acquisition in which the 15-percent test of section 7A(a)(3)(A) is not satisfied, the parties have filed notification because the market price exceeded $15 million, even though the acquisition price is less than $15 million. If the market price falls during the waiting period, the rule would assign a new value and the $15 million test would no longer be satisfied. Therefore, the act would no longer apply, and the parties would be free to consummate the acquisition, even though notification had already been filed. (Note that a change in market price can have no effect upon whether the 15-percent test of section 7A(a)(3)(A) is satisfied, because the percentage of stock or assets does not depend on market price. See § 801.12. In addition, if the 15-percent test had been satisfied, the decline in market price may make the acquisition exempt under § 802.20.)

Finally, the rule also allows parties to determine with assurance that the act does not apply. If on a given day the market price results in a value of less than $15 million for an acquisition, that price may or may not be the lowest price for the following 45-day period. But so long as the acquisition is consummated within 45 days following that date, under the rule the value of the acquisition can be no greater, and thus will be less than $15 million, and the parties need not file notification or observe a waiting period.

Background Information to § 801.10(c)(1)

The previous versions of the rule, original § 801.20 and revised § 801.10, would have directed selection of a market price within a specified number of days before filing notification. Two comments (1026, 1108) noted that this procedure did not permit a firm determination that an acquisition was not reportable—since no notification was contemplated, the time period for selecting the market price could not be identified, and consequently the parties were presumably imperiled by the risk that a rise in market prices would render the acquisition reportable shortly before the planned consummation date. In order to cure this problem, the final rule makes two changes. First, it provides for selecting the market price within a time period prior to either receipt of the notice preceding notification under § 803.5(a), or the date of consummation. Second, it provides that the market price is the lowest price within the 45-day period preceding consummation, so that a market price indicating that the transaction need not be reported assures the parties of their ability to consummate for that length of time.

Since the rule specifies the lowest price within the 45-day period, the parties need not agree to perform the valuation as of any particular date. Antagonistic parties therefore cannot select dates that lead to inconsistent conclusions about whether the acquisition is reportable. And the lowest price gives the parties the benefit of a decline in the market price, as discussed above.

The time period was lengthened to 45 days in order to provide adequate time for planning while still reflecting a reasonably current value. Comment 1115 noted that the few days afforded by the revised rule may have been insufficient. However, the 45-day period may not extend back to any days prior to the day before execution of a contract, agreement in principle, or letter of intent to acquire, since the parties presumably entered into their agreement on the basis of market prices prevailing at that time.

The subparagraph distinguishes between transactions subject to § 801.30 and those that are not, because, for the former there typically will be no objective reference point for the time period until the acquisition is consummated or the notice preceding notification is received by the acquiring person. By contrast, for consensual (non-§ 801.30) transactions, the date of execution of the contract, agreement in principle or letter of intent marks the reference date.

The SEC's comment (1058) suggested the inclusion, in clauses (i) and (ii), of bid prices on interdealer quotation systems, and the treatment in clause (iii) of situations in which the stock has not been traded.

Section 801.10(c)(2)—Acquisition Price

Subparagraph (c)(2), "acquisition price," specifies that the acquisition price includes the value of all consideration for the voting securities or assets to be acquired. This means, for example, that cash, voting securities, nonvoting securities, tangible and intangible assets and assumption of liabilities, if consideration for an acquisition, must all be valued in computing the acquisition price.

Background Information to § 801.10(c)(2)

Determination of the acquistion price is part of the procedure for implementing the $15 million test of section 7A(a)(3)(B). Section 801.10(c)(2) states that the acquisition price is the value of all the consideration for the acquisition.

The original rules contained no counterpart to subparagraph (c)(2). Instead, original § 801.20(c) provided that if securities were to be furnished as consideration for an acquisition, they were to be valued according to this rule. That provision was deleted from the revised rule as superfluous, since the recipient of securities furnished as consideration must use this rule to value them. The final rule provides instructions for determining the value of voting securities to be acquired by any person, and the revised and final rules effect no change by the deletion. Comment 1090 requested reinstatement of such language and the suggestion accordingly was rejected as unnecessary. The final provision is identical to the revised provision except for minor editorial revisions.

Comment 115 suggested that the value of installment contracts be discounted to reflect the present worth of the payments. This suggestion was rejected. The value of an installment contract is the value of the total payments of principal to be made under the contract, but excluding interest.

Section 801.10(c)(3)—Fair Market Value

Subparagraph (c)(3) provides that the fair market value shall be determined in good faith by the board of directors of the ultimate parent entity included within the acquiring person, or, if the ultimate parent entity is unincorporated, by officials exercising similar functions. The board or officials may delegate the actual process of making that determination, but in any case remain responsible for it. The determination can be performed at any time, but must reflect the fair market value as of any day within 60 calendar days prior to either filing notification or consummating the acquisition. If the 60-day period expires before filing or closing, the parties would no longer be entitled to rely on the value previously determined, and if in doubt about whether to close without filing notification, the acquiring person would be obliged to make a new determination. Item 2(d)(i) on the form, however, which requests the approximate value of assets to be acquired, would not alone require a determination if the parties were otherwise certain that the act applied. The example illustrates these points.

BACKGROUND INFORMATION TO § 801.10(c)(3)

The rule provides that the acquiring person makes the determination, so that the parties to the acquisition can resolve with certainty whether the act applies. If the acquiring and acquired person each made determinations, or if the rule required the two sides to agree on a fair market value, the rule could lead to inconsistent conclusions about whether filing notification and observing the waiting period was required.

The rule provides that the determination of fair market value must reflect the value as of any day within 60 days prior to either filing notification or consummating the acquisition for the same reasons discussed in connection with market price—in brief, to permit the parties to determine with certainty whether or not they must comply with the act prior to an acquisition. The 60-day limitation is intended to allow enough time for a determination but still assure that the fair market value assigned is reasonably current.

The final rule on fair market value exhibits significant changes from both the original and revised rules.

Original § 801.20 did not have a separate paragraph instructing how to determine the fair market value, but had equivalent language within paragraphs (a) and (b) pertaining to securities and assets, respectively. The original rule arguably did not permit the board of directors to delegate the determination, and was criticized by numerous comments (e.g., 38, 48, 58, 74, 77, 98, 112, 115, 120). Imposing the responsibility upon the board of directors, the comments stated, would require a costly and time-consuming independent appraisal, and the value determined by management ought to suffice. Although the original rule did not seek to preclude such an appraisal, the revised rule explicitly permitted the board to delegate the determination. The final rule substitutes the word "function" for "responsibility" to make clear that the board of directors cannot disavow the determination if compliance with the act and rules is drawn into question. One comment on the revised rule (1061) suggested that the board of directors of the ultimate parent entity should be allowed to delegate the determination to a subsidiary, and the final rule clarifies that this is permitted by replacing the word "person" in the revised rule by "entity."

Two comments (29, 104) suggested that an accurate determination of fair market value may be impossible until after the acquisition closes, and that the rule should permit an estimate. This suggestion was not explicitly adopted because it seemed unnecessary to state that in some circumstances the determination of fair market value may require a good faith estimate. Note that the instructions to the notification and report form explicitly permit estimates and provide that the sources of the estimates must be indicated.

Two other comments (92, 115) suggested that acquisitions of patents and other forms of intangible property could not be readily assigned a fair market value, and that the rule should specifically permit valuing such assets at zero. This proposal was rejected, for the same reason that the rule insists upon comparison of the acquisition price to the fair market value: That the acquisition price alone may be difficult to determine at the time of filing notification. In such cases there may be no alternative but to determine the fair market value of the intangible property.

The final rule modifies the last sentence of the revised rule, as noted earlier, to reflect determinations of fair market value which establish that notification is not required, and to expand the 15-day period to 60 days.

SECTION 801.11 ANNUAL NET SALES AND TOTAL ASSETS

Section 801.11 explains how to compute the annual net sales and total assets of a person. The terms "annual net sales" and "total assets" occur primarily in the size-of-person test of section 7A(a)(2). In general, either the acquiring or the acquired person must have annual net sales or total assets of at least $100 million, while the other must have annual net sales or total assets of at least $10 million before the act applies; but see section 7A(a)(2)(B) (for acquired persons not "engaged in manufacturing," a term defined in § 801.1(j), only total assets satisfy the test).

Section 801.12(d)(2) of the rules also provide that the total assets of a person serve as the denominator in determining the percentage of assets to be held or acquired; thus the rule also contributes to determining whether the third test for application of the act, the size-of-transaction test of section 7A(a)(3), is satisfied. In addition, the terms "annual net sales" and "total assets" appear elsewhere in the rules, most notably in § 801.40, which contains its own size-of-person test applicable to the formation of a joint venture or other corporation, and § 802.20, which exempts certain small acquisitions.

Since the chief purpose of the rule is to determine whether the act applies, persons need not use the rule to compute precise figures for annual net sales or total assets if they are certain that the act either does or does not apply. None of the items on the notification and report form requires a statement of the annual net sales or total assets of either party, and item 3(a), which requests the percentage of assets to be held or acquired, may be answered by estimating the total assets figure for the denominator of the percentage. See the statement of basis and purpose to item 3(a). Section 801.11 prescribes a method by which persons that are unsure whether the size-of-person test of section 7A(a)(2) or the percentage-of-assets test of section 7A(a)(3) is satisfied can resolve definitively whether the act applies.

Except for § 801.40, the rule does not explicitly refer to other rules, but an understanding of the definition of "person," § 801.1(a)(1), is essential to applying the rule correctly. The rule presupposes identification of the "person" the annual net sales and total assets of which are to be determined.

The rule consists of four paragraphs. Paragraph (a) expresses the general principle that all sales and assets of the person are included, whether foreign or domestic. Paragraph (d) constitutes a limited exception to this principle for natural persons. Paragraph (b) sets forth the general rule that the annual nets sales and total assets shall be as stated on the person's financial statements, with two provisos that may modify the figures on such statements. Paragraph (c) specifies exactly which statements are to be consulted.

SECTION 801.11(a)

Paragraph (a) states that the annual net sales and total assets of a person include all net sales and all assets, whether foreign or domestic, except as provided in paragraph (d), which excludes certain assets of natural persons.

By including both foreign and domestic sales and assets, paragraph (a) makes clear that foreign assets, operations or subsidiaries may not be disregarded for purposes of the size-of-person test of section 7A(a)(2) or the percentage-of-assets test of section 7A(a)(3)(A) even though foreign operations may affect the applicability of certain exemptions under §§ 802.50-802.52.

The term "net sales" has its common meaning, that is, sales less (or exclusive of) returns, discounts, excise taxes, and the like. See § 801.11(b) and its Statement of Basis and Purpose. The costs of production or materials may not be deducted. Persons that do not have "sales" should use net receipts, revenues, or other comparable figures.

Of course, the sales and assets of a "person" include the sales and assets of all of its component entities. See § 801.1(a)(1).

BACKGROUND INFORMATION TO § 801.11(a)

Original § 801.25 corresponds to this rule, and paragraph (c) of the original rule corresponds most nearly to paragraph (a) of the final rule. The comments to original paragraph (c) addressed matters that appear in other paragraphs of the final rule.

Revised § 801.11 set the rule into its current format, and the final version of paragraph (a) retains the revised version with only two changes. It inserts the word "net" before "sales," to clarify that deductions normally made from gross sales under the person's accounting procedures, e.g., returns, discounts, etc., are permitted. The term "sales" does not, however, mean net income after costs of goods sold, as one comment (1088) suggested. Congress manifestly intended the act to reach acquisitions by large firms, and while sales are a useful measurement of size for this purpose, profitability is not.

The final rule also inserts the word "held," to incorporate all of the concepts of ownership that the definition of that term imports. See § 801.1(c).

SECTION 801.11(b)

Paragraph (b) provides that the annual net sales and total assets of a person shall be as stated on the financial statements specified in paragraph (c), with a number of exceptions and provisos.

First, the paragraph states that the total assets of a joint venture or other corporation at the time of its formation are not determined under this rule, but shall be determined in accordance with § 801.40(c).

Second, subparagraph (b)(1) requires that the annual net sales and total assets of the person reflect the annual net sales and total assets of every entity included within the person. If the financial statements of the ultimate parent entity do not reflect consolidation of the net sales and total assets of all the entities included within the person, the annual net sales and total assets must be recomputed to include the nonduplicative annual net sales and nonduplicative total assets of each such unconsolidated entity. The term "nonduplicative" makes clear that the consolidation may not consist simply of adding the sales and assets of unconsolidated entities, since, for example, the parent corporation's interest in an unconsolidated entity have have been carried as an asset on the parent corporation's books; therefore, to add the assets of the unconsolidated entity without subtracting the asset already reflected would be to count the same assets twice. The example following subparagraph (b)(2) illustrates this point.

Next, subparagraph (b)(2) requires that the financial statements (and any restatements necessary to comply with the previous subparagraph) must, insofar as possible, be prepared in accordance with the accounting principles normally used by the person. The financial statements must be of a date not more than 15-months prior to filing notification or consummating the acquisition.

Note that neither the financial statements required by this rule, nor the restatements directed by paragraph (b), must necessarily be submitted as such in response to the Notification and Report Form. Item 4 of the form explains in detail which documents must be submitted.

BACKGROUND INFORMATION TO § 801.11(b)

Paragraph (b) creates the framework for determining the annual net sales and total assets of a person. Since annual net sales and total assets are accounting concepts, the rule logically employs financial statements to derive figures for these terms. The rule requires modifying the figures shown on the statements only to the extent necessary to conform to the pattern of the act and rules.

The total assets of a joint venture or other corporation at the time of its formation are determined under § 801.40 instead of this rule.

Since the annual net sales and total assets must reflect the entire person, the financial statements must reflect consolidation of the sales and assets of each entity included within the person. Comment 89 asserts that under the original rules, consolidation of the total assets of controlled entities may unfairly inflate a person's size for purposes of the section 7A(a)(2) size-of-person test, because it attributed to the person all of the assets of an entity that could be "controlled" with only a minority interest. The revised and final rules in most cases will not cause the same result, since the definition of control insures that the person holds at least 50 percent of the controlled entity's stock. On occasions when control arises from contractual power to designate a majority of the board of directors, consolidation is justified for the same reasons underlying the existence of control in such situations—basically, the similarity of interest for purposes of antitrust analysis. See the Statement of Basis and Purpose to § 801.1(b).

Likewise, subparagraph (b)(1) requires that the recomputation of annual net sales and total assets result in nonduplicative figures so that the recomputation does not unfairly inflate a person's size. Two comments (15, 29) suggested that the rule define "nonduplicative," but the revised and final rule retain the term without additional explanation, as adequately descriptive of the result sought. The term was extended to net sales as well as total assets in response to comment 29.

Paragraph (b) of original § 801.25 would have required a different restatement of the financial statements: if a material change in net sales or total assets had occurred after the date of the statement, which could reasonably have been expected to increase the annual net sales or total assets to the levels of section 7A(a)(2), the rule required either preparation of a new statement or compliance with the act as though the test of section 7A(a)(2) had been satisfied. Revised subparagraph (b)(2) preserved a similar provision and encompassed dispositions as well as acquisitions since the last statement. However, no consistent, easily administrable way could be found to require restatement of annual net sales when a business had been acquired or disposed of after the beginning of the fiscal year. The final rule abandons the approach as not worth the added complexity.

Subparagraph (b)(2) requires the financial statements and any restatements to be prepared insofar as possible in accordance with the accounting principles normally used by the reporting person, so that novel procedures are not adopted in order to circumvent the act. Original § 801.25(a) would have required certified financial statements prepared in accordance with Regulation S-X of the Securities and Exchange Commission. A number of comments (e.g., 15, 59, 63, 78, 83, 93, 120) criticized this provision as unnecessary and burdensome to privately held companies and foreign firms, which are not subject to regulations by the SEC and thus may not have certified financial statements prepared in accordance with Regulation S-X. Therefore, the revised rule called only for financial statements prepared in accordance with generally accepted accounting principles. Comment 1090, however, noted that generally accepted accounting principles would still be incompatible with several other provisions in the rule: for example, generally accepted accounting principles may not permit consolidation of some majority-owned entities and would not permit restatement of annual net sales for businesses acquired during the fiscal year. Accordingly, the comment suggested deleting the words "generally accepted," and the final rule adopts the suggestion. For similar reasons, the final rule requires use of the accounting principles normally used only insofar as possible.

The 15-month limitation insures that the statements reflect annual net sales during the most recent fiscal

year. The original rule would have permitted statements prepared only within 1 year, rather than 15 months, of the date of filing notification. A number of comments (e.g., 29, 63, 78, 83, 88, 93, 115, 120) attacked the limitation as inadequate to allow preparation of the statement after the close of the fiscal year, and the revised and final rules provide for 15 months.

The final rule modifies the 15-month restriction so that statements within 15 months of consummating the acquisition, as well as filing notification, qualify. In that way, parties to an acquisition can resolve whether they satisfy the size-of-person test of section 7A(a)(2) even if not required to file notification. The change also allows persons to secure the benefit of a decrease in annual net sales or total assets. If during the waiting period a new regularly prepared financial statement appears and reveals that the act no longer applies, the parties need not comply with the act.

SECTION 801.11(c)

The two subparagraphs of paragraph (c) specify exactly which figures on the financial statements are the annual net sales and total assets of the person. Since paragraph (c) is subject to the provisions of paragraph (b), the annual statement must consolidate the net sales and total assets of all entities included within the person, use the accounting principles normally used by the person, and be prepared as of a date within 15 months of the date of filing or consummation.

Subparagraph (c)(1) provides that the annual net sales of a person shall be as stated on the last regularly prepared annual statement of income and expense of the person. See the Statement of Basis and Purpose to paragraph (b) of this rule, above.

Subparagraph (c)(2) specifies that the total assets of the person shall be as stated on the last regularly prepared balance sheet of the person. "Assets" means assets disregarding liabilities but less depreciation if the accounting principles normally used by the person so provide. "Regularly prepared," as used in both subparagraphs, means that the statement was prepared both at the time a statement would normally be prepared and in the normal fashion that such a statement would be prepared. Internal balance sheets prepared for management and not audited or disseminated to the public may satisfy this standard.

If no statements of income and expense or balance sheets are regularly prepared, statements must be prepared if necessary to determine whether the act applies.

An example illustrates the paragraph.

BACKGROUND INFORMATION TO § 801.11(c)

Paragraph (c) had no equivalent in the original or revised rules. Each of the earlier versions provided that the annual net sales and total assets of a person should be as stated on the financial statements of the person. The earlier rules would also have required restatement of the annual net sales and total assets to reflect certain changes occurring since the beginning of the fiscal year; see the Statement of Basis and Purpose to paragraph (b). The final rule abandoned that approach and instead inserted paragraph (c).

SECTION 801.11(d)

Paragraph (d) relates to the determination of total assets for natural persons. The total assets for a "person" of which the ultimate parent entity is a natural person are, under paragraph (b) of this rule, as stated on a balance sheet which consolidates all the entities which the natural person controls, directly or indirectly. See also § 801.1(a)(1), (b). However, paragraph (d) permits a natural person to omit from such a balance sheet all assets except "investment assets" (a term defined in § 801.1(i)(2) to mean, in substance, cash and equivalents, and Government bonds), voting securities and other income-producing property. Thus, a natural person compiling such a balance sheet could omit the value of assets such as a personal residence, automobile and other personal (non-income-producing) property.

The phrasing of the rule makes clear that all voting securities are regarded as income-producing property. Similarly, "income-producing property" means any property held for investment or for the production of income, whether or not actually producing income.

The "annual net sales" of a natural person will be the annual net sales of all entities (including partnerships) he or she controls, plus any annual net sales from proprietorships. Of course, a natural person may not have compiled a balance sheet, regularly prepared or otherwise, reflecting all such entities. As discussed above in connection with paragraph (a), the annual net sales and total assets of a "person" need be determined according to the rule only if the person is in doubt about whether compliance with the act is necessary.

Since paragraph (a) of the rule includes all assets "held," and because the definition of "hold" provides that the holdings of spouses and minor children are treated as though held in common (see § 801.1(c)(2)), a natural person's balance sheet, to comply with the rule, must reflect all investment assets, voting securities and other income-providing property held by the spouse or minor children of a natural person, or by the parents if the person is a minor child.

BACKGROUND INFORMATION TO § 801.11(d)

The assets excluded by this paragraph are generally irrelevant to any antitrust concerns that may arise from an acquisition, and thus their exclusion for purposes of determining whether the act applies is appropriate.

In general, the rules treat natural persons, corporations, and other entities alike. This rule adheres to that principle by aggregating all entities, however unrelated in their business activities, that are under the common control of the ultimate parent entity (whether a corporation or natural person) and by consolidating the annual net sales and total assets of all such entities.

Original § 801.25(d) would have excluded all assets of a natural person other than partnership assets. Comment 63 criticized the provision, noting that Congress must have intended the act to cover acquisitions by natural persons, but that excluding all assets of natural persons effectively exempted such acquisitions, since section 7A(a)(2) would never be satisfied.

Revised § 801.11(d) was quite similar to the final rule. Comment 1090 criticized the inclusion of all income-producing assets, arguing that only those related to control of a trade or business were relevant to antitrust considerations. However, that criterion seemed difficult for the agencies to administer and the parties to apply. Furthermore, it could result in artificial understatement of the size of natural persons by comparison with corporate persons or others, for which the criterion would not apply. Accordingly, the final rule retains as the test "income-producing" property. The final rule also clarifies the test by specifically including in the total assets all investment assets and voting securities.

SECTION 801.12 CALCULATING PERCENTAGE OF VOTING SECURITIES OR ASSETS

Section 801.12 prescribes the method of calculating the percentage of voting securities or assets to be held or acquired. Whenever the act or rules refer to a percentage, the percentage must be determined by applying this rule.

In general terms, the rule provides that the percentage of voting securities is the percentage of the total votes for directors of the issuer which the acquiring person will be entitled to cast after the acquisition. The percentage of assets is the ratio of the book value of the assets to be held as a result of the acquisition to the total assets of the person (not the entity)

from which acquired. However, these general statements are subject to certain modifications and exceptions contained in the rule.

In many instances calculation of the precise percentage of assets or voting securities to be held or acquired may be unnecessary. For example, any acquisition as a result of which the acquiring person will hold assets of the acquired person valued (under §§ 801.13 and 801.10) at more than $15 million will satisfy the size-of-transaction test without regard to the percentage held or acquired. Conversely, § 802.20 will exempt any acquisition of assets for which the corresponding figure is less than $10 million, without regard to the percentage of assets to be held or acquired. For voting securities, the situation is similar, except that the exemptions under §§ 802.20 and 802.21 may require calculation of percentages.

SECTION 801.12 (a), (b)—VOTING SECURITIES

Paragraph (a) provides that whenever the act and rules refer to the percentage of voting securities of the acquired person, the issuer whose voting securities are being acquired shall be deemed the acquired person for that purpose. Therefore, the percentage of voting securities is calculated with reference only to the voting securities of the issuer to be held or acquired, in the manner prescribed by paragraph (b). Since the term "person" normally refers to all entities under common control, see § 801.1(a)(1), the use of the issuer rather than the person as the denominator of the percentage calculation represents a departure from the usage of the term "person" elsewhere in the rules. For this reason, the definition of "person" begins, "Except as provided in paragraphs (a) and (b) of § 801.12 * * *." The example following § 801.12(a) illustrates this point.

Paragraph (b) prescribes a formula for computing an exact percentage. The numerator is the number of votes for directors that voting securities presently entitle the holder to cast, or, as a result of the acquisition, will entitle the acquiring person to cast. This instruction requires application of the definition of "hold" contained in § 801.1(c), and § 801.13, which tells which voting securities are to be held "as a result of" an acquisition, before the correct number of votes can be ascertained. Votes that the holder may cast because of proxies obtained from other persons are not included in the numerator.

The denominator of the computation is the total number of votes for directors that all outstanding shares are entitled to cast. If the acquisition will increase the number of outstanding shares, clause (b)(1)(ii) specifies that the larger number should be used in the denominator. Otherwise, subparagraph (b)(2) directs that treasury shares and authorized but unissued shares should not be included for purposes of determining the number of votes presently entitled to be cast. Finally, for purposes of determining the number of outstanding voting securities of an issuer, subparagraph (b)(3) permits a person to rely on the most recent information set forth in filings with the SEC, if any, unless the person knows or has reason to believe that that information is inaccurate.

Two examples following § 801.12(b) illustrate application of the percentage formula.

BACKGROUND INFORMATION ON VOTING SECURITIES

Applying the percentage test to the issuer whose voting securities are being acquired sparked considerable controversy in the comments. The controversy ultimately arises, however, from the fact that the act itself uses the term "person" in at least two different senses. The act phrases each of the three tests that must be satisfied before the act applies to an acquisition—the commerce test of section 7A(a)(1), the size-of-person test of section 7A(a)(2), and the size-of-transaction test of section 7A(a)(3)—in terms of "person." For purposes of the size-of-person test of section 7A(a)(2), the relevant "person" must be the entire corporate structure, rather than just the company or subsidiary which is making the acquisition. If the size-of-person test depended upon the size of the particular corporation making an acquisition, rather than the overall corporate structure, the act would become easily susceptible of evasion. Accordingly, § 801.1(a)(1) defines "person," in general, as the entire corporate structure, and § 801.11 applies the size-of-person test to that "person." Likewise § 801.3 appropriately applies the commerce test of section 7A(a)(1) to the same, overall "person."

However, the 15-percent test of section 7A(a)(3)(A) poses a problem. As the FEDERAL REGISTER notice accompanying the revised rules explained:

> For example, suppose the transaction involves the purchase by a large corporation of a subsidiary of another large corporation. The definition of "person" as the entire corporate structure would dictate that the selling corporation's entire corporate structure be considered the "acquired person" for purposes of the $100 million or $10 million size criteria. But if the selling corporation and its subsidiary each issue their own stock, then a specific number of the subsidiary's shares cannot conveniently be expressed as a percentage of either the shares of the parent, or the combined shares of the parent and its subsidiary corporations. The problem is not as acute when the acquisition is of assets rather than voting securities, since assets could be valued without reference to the corporate forms.
>
> (42 FR at 39042 (Aug. 1, 1977).)

The revised rules addressed this problem by introducing the term "entity" to mean the component parts of a "person." See § 801.1(a)(2). For purposes of the size-of-transaction test of section 7A(a)(3), the revised rules designated as the "acquired person" the entity (rather than the person) whose voting securities or assets were being acquired. The original rules had accomplished the same result, without using the term "entity," by means of a more complex definition of "person." That scheme, in essence, defined the term "person" differently for the different tests for coverage.

The comments criticized original § 801.30(a) and revised § 801.12(a), the predecessors of the final rule. In general, the comments argued that different definitions of the single term "person" were impermissible. Some of the comments (e.g., 63, 89; 1042, 1050, 1091) complained that the scheme "expanded" the coverage of the act. Others (e.g., 120; 1042, 1050, 1059, 1091) disagreed that the different contexts required different meanings for the term "person." They noted that Congress used the term "issuer" in section 7A(c)(3), (c)(9) and (c)(10) and therefore inferred that Congress, by failing to sue the term "issuer" in section 7A(a)(3), did not intend the agencies to substitute the word "issuer" for "person" in that context. Still others (82; 1042) noted that the rule could be circumvented by first collapsing a subsidiary into the parent corporation, and that therefore the rule made coverage under the act turn upon the form of corporate organization.

The Commission did not agree with these comments. Unless Congress intended the 15-percent test of section 7A(a)(3)(A) to reach acquisitions not meeting the $15 million test of section 7A(a)(3)(B), the former provision would not appear in the act. Section 7A(d) of the act assigns the Commission the power to define the terms of the act and to prescribe rules to implement the act. The use of the term "issuer" elsewhere in the act does not preclude its use in any definition or rule. The argument in the comments thus reduces to insisting that the term "person" ought to carry the same meaning in all instances. But since "person" must mean a collection of entities for purposes of the section 7A(a)(2) size-of-person test, demands for consistency were not constructive to the extent that they failed to suggest a way to apply the 15-percent test of section 7A(a)(3)(A) when shares of one corporation of a multicorporate person are to be acquired.

Of the other comments, one (1091) dismissed the problem as one for the agencies to solve. Two comments (1059, 1070) conceded that application of the percentage test on any basis other than the issuer was inconvenient.

Comment 1042, however, suggested that the agencies should treat the shares of a subsidiary as assets of the parent corporation and calculate a percentage on that basis. This proposal was rejected. First, it is inconsistent with the statutory scheme—restated in § 801.21(b)—which deals separately with assets and voting securities. In addition, the proposal proves unworkable for third-party transactions since even though the seller is not the relevant person for purposes of an antitrust analysis, the proposal would calculate the percentage with reference to that person.

As the FEDERAL REGISTER notice accompanying the revised rules noted, 42 FR at 39042 (August 1, 1977), the agencies also considered another set of definitions. It would have defined the acquiring person to be the entire corporate structure, while defining the acquired person to be the entity whose voting securities (or assets) were being acquired, and all entities it controlled. Although this would have cured the inconsistency discussed above, it would have introduced another inconsistency—differing definitions for acquiring and acquired persons. It also would have permitted large corporations to evade the size-of-person test of section 7A(a)(2) by conducting transactions through small subsidiaries. As indicated in the FEDERAL REGISTER notice, this alternative was rejected.

Accordingly, the Commission retained the substance of the revised rule. The final version of paragraph (a) reflects only editorial differences from the revised rule.

The final version of paragraph (b) simplifies the revised rule, because the percentage formula no longer need accommodate convertible voting securities. The final rules makes convertible securities reportable, if at all, upon conversion, whereas the revised rules would have made the acquisition of convertible voting securities a potentially reportable event. This change in approach is discussed in the Statement of Basis and Purpose to § 801.1(f)(2). Under the revised rules, conversions would not have prompted additional reports to the agencies. Therefore, the formula in paragraph (b) had to assess the voting power potentially represented by convertibles whenever acquired (or held). On the other hand, since under the final rules conversions must be preceded by filing notification and waiting, the agencies will be able to assess the competitive impact of the conversion. Therefore, the voting formula in paragraph (b) can disregard the voting power potentially represented by unconverted convertibles.

A number of comments (e.g., 1026, 1070, 1090, 1102, 1115) criticized revised § 801.12(b) because it computed its percentages assuming conversion of only the convertibles held by the acquiring person, rather than all outstanding convertibles. Most of these comments no longer apply to the final rule, because the final rule does not assume conversion of any voting securities. However, one comment (1070) argued that section 7A(b)(3)(A), the definition of voting securities contained in the act, requires that the rule compute percentages assuming full dilution, that is, conversion of all outstanding convertible voting securities.

The Commission does not agree. Section 7A(b)(3)(A) provides:

> The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

Comment 1070 argued that this language compelled that all convertible securities be considered voting securities for all purposes, and therefore be treated as converted for purposes of percentage calculations. However, this interpretation ignores the function of the definition. Subsection (b)(3)(A) of the act simply empowers the Commission to bring convertible voting securities within its ambit, a matter which, but for the words "or upon conversion," might not be free from doubt. The Commission does not interpret the language of the definition to require that the agencies treat convertible voting securities in any particular fashion, as the Statement of Basis and Purpose to § 801.1(f)(2) explains in detail.

Paragraph (b) expresses the percentage formula in terms of the number of votes to be cast, rather than the number of shares, in order to accommodate (to the extent possible) multiple classes of voting securities or other voting arrangements differing from a single class of voting stock that elects the entire board of directors.

The formula includes only votes that voting securities entitle the holder to cast, and therefore excludes votes cast by proxies. Example 2 to paragraph (b) makes this point.

Subparagraph (b)(2) excludes authorized but unissued voting securities and treasury shares from the percentage formula simply to confirm that such shares are not "outstanding."

The final rule adds new subparagraph (b)(3) in response to comment 1089. Persons applying the percentage test can rely upon the total number of outstanding voting securities shown in the most recent filing with the SEC, if any, unless they know or have reason to believe that information to be inaccurate. This language is patterned after SEC rule 13d-1(d), 17 CFR 240.13d-101(d), 43 FR 18484 at 18496 (April 28, 1978).

SECTION 801.12 (c), (d)—ASSETS

Section 801.12(c) provides that whenever the act and rules refer to the percentage of assets of the acquired person, the "acquired person" is the person whose assets are being acquired. This treatment differs from that accorded voting securities in paragraph (a), which specifies that the issuer whose voting securities are to be acquired is the "acquired person." Instead, when the percentage test is applied to assets, the denominator of the percentage fraction will be calculated with reference to entire "person."

Paragraph (d), which specifies the exact ratio which composes the percentage, confirms this treatment. Subparagraph (d)(2) provides that the denominator for the percentage ratio is the total assets, determined in accordance with § 801.11, of the acquired person. The numerator of the fraction is the book value of the assets to be acquired as shown on the books of the acquired person. The assets to be acquired do not include any previously-acquired assets identified by § 801.13(b)(2); only the assets subject to the current acquisition, identified in § 801.13(b)(1), need be considered for the percentage-of-assets test of section 7A(a)(3)(A).

BACKGROUND INFORMATION ON ASSETS

The final rule made two important changes in the application of the percentage test of section 7A(a)(3)(A) to assets.

The first change is the shift from "entity" to "person" in paragraph (c). Under both original section 801.30(b) and revised section 801.12(c), the entity from which the assets were to be acquired would have been the "acquired person" for purposes of the percentage test. The earlier versions, in effect, took the same position that the final rules take as to voting securities. The comments criticized the earlier versions; in general, the comments discussed above in connection with voting securities were equally directed to the assets provisions of the rules. Their arguments generally urged that the "acquired person" for purposes of the percentage test should be the entire person from which the assets are acquired, rather than the specific entity from which acquired, because the section 7A(a)(2) size-of-person test and the section 7A(a)(3) size-of-transaction test ought both to employ a

consistent meaning of "acquired person."

The final rule adopts the position proposed by the comments as to assets, even though it rejects the comments as to voting securities. The chief reason for the difference is that no practical problem prevents the rules from employing the larger "person" in applying the percentage test to assets, as it does for voting securities. The book value of assets, no matter from which entity within the person acquired, can be compared to the total assets of the person. By contrast, the impossibility of expressing the shares of a subsidiary as any percentage of the voting securities of the parent corporation prevented the rules from comparing voting securities to any entity or combination of entities other than the issuer.

Thus, the final rule achieves as much consistency between the terms governing each of the three tests of section 7A(a) as is possible.

The second important change effected by the final rule is in the numerator of the percentage fraction. Revised § 801.12(d)(1) would have valued the assets to be acquired at the value assigned by § 801.10(b) for purposes of the $15 million test. The final rule substitutes the book value of the assets on the books of the acquired person. Several comments (e.g., 1040, 1090) noted that the numerator revalued the assets to be acquired, in order to reflect current values, but that the denominator reflected total assets at book value, which is typically lower than current value. The comments maintained that the resulting percentage would be exaggerated, and indeed, could exceed 100 percent. To cure this anomaly, subparagraph (d)(1) of the final rule provides that the book value of the assets on the books of the acquired person is to be the numerator. Although book value may understate the actual value of the assets, the resulting ratio is likely to be reasonably accurate.

Comment 1115 questioned whether intangible assets such as patents and goodwill are to be valued and included in the percentage-of-assets calculation. Since the final rule makes no distinction between types of assets, these assets, like any others, are to be included at book value in the percentage calculation.

For purposes of the percentage-of-assets test of section 7A(a)(3)(A), the numerator does not include any assets of the acquired person previously acquired by the acquiring person. Section 801.13(b)(2) includes the value of such assets under certain circumstances for purposes of the $15 million test of section 7A(a)(3)(B). The Statement of Basis and Purpose to § 801.13(b)(2) explains why such assets are excluded from the percentage-of-assets test.

SECTION 801.13 VOTING SECURITIES OR ASSETS TO BE HELD AS A RESULT OF ACQUISITION

Section 801.13 interprets the statutory phrase, "as a result of." Notification and a waiting period are required if section 7A(a)(1) and (2) are satisfied, and if "*as a result of* such acquisition, the acquiring person would hold (15 percent or $15 million of the stock or assets of the acquired person.)" Section 7A(a)(3) (emphasis added). This rule identifies which voting securities and assets will be considered to be held "as a result of" an acquisition. The rule also provides instructions for valuing the voting securities and assets identified by the rule.

Several other provisions of the rules are indispensable in applying § 801.13. Chief among these is § 801.15, which excepts from this rule certain acquisitions of assets and voting securities which were exempt from the requirements of the act at the time of their acquisition (or would have been had the act and rules been in effect). Although this rule would provide that some such assets and voting securities are held as a result of an acquisition, § 801.15 constitutes an exception to this rule and may provide that some of them are not so held.

In addition, the definition of "hold," § 801.1(c), is important, since voting securities or assets must first be "held" before they may be held as a result of an acquisition. And the valuation provisions of the rule invoke the valuation procedures set forth in § 801.10(c).

Paragraph (a) of the rule treats voting securities, and paragraph (b) of the rule addresses assets.

SECTION 801.13(a) VOTING SECURITIES

The first sentence of § 801.13(a)(1) states the entire substance of the rule regarding voting securities: All voting securities of the issuer that will be held by the acquiring person after the acquisition are voting securities held as a result of the acquisition. Section 801.15, though, constitutes an exception to this rule for certain voting securities exempt when acquired, as described above. See that rule and its Statement of Basis and Purpose.

The rule has two important consequences. First, the number of transactions or the length of time between acquisitions becomes irrelevant in determining whether the act applies. The acquiring person after the acquisition either will or will not hold, cumulatively, 15 percent or $15 million of the issuer's outstanding voting securities.

Second, the rule means that every acquisition after which the acquiring person will hold more than 15 percent or $15 million of the voting securities of the acquired is one in which the 15 percent or $15 million test of section 7A(a)(3) is satisfied. Therefore, every acquisition after which the acquiring person would hold 15 percent or $15 million of the acquired person's voting securities—rather than only those which initially raise the acquiring person's holdings to that level—becomes a reportable acquisition if the two other tests of section 7A (a)(1) and (2) are satisfied. Therefore, large holdings of voting securities that antedate the effective date of the act and rules must be reported before being increased. Note, however, that § 802.21 exempts acquisitions above the 15 percent or $15 million level for 5 years after an initial notification except for those meeting or exceeding specified notification thresholds.

This rule also prescribes the value to be assigned to voting securities held as a result of an acquisition. Subparagraph (a)(1) provides that the value of the voting securities is the sum of the value of the voting securities to be acquired, determined in accordance with § 801.10, and the value of the voting securities held prior to the acquisition, determined in accordance with subparagraph (a)(2).

Subparagraph (a)(2) of the rule provides that, for securities traded on a national securities exchange or quoted on an inter-dealer quotation system, the value is the market price calculated in accordance with § 801.10(c)(1); for other securities, the value is the fair market value determined in accordance with § 801.10(c)(3). The practical effect of the subparagraph is to require revaluation of the previously held securities to reflect current value. Of course, revaluation may affect whether the act applies. A pre-existing holding acquired for less than $15 million may become worth more than $15 million, thus rendering any further purchases reportable.

The examples illustrate the rule, and cross-reference §§ 801.20 and 801.15.

BACKGROUND INFORMATION TO § 801.13(a)

Acquisitions raising the holdings of the acquiring person to meet or exceed the 15 percent or $15 million level of section 7A(a)(3) self-evidently meet the standard of that subsection of the act. The only aspect of the rule addressed by the comments was the construction of "as a result of" that permits the agencies to require notification and a waiting period in connection with acquisitions subsequent to the one reaching the 15 percent or $15 million level of section 7A(a)(3). Original § 801.50 first contained this interpretation, which several comments (e.g., 11, 73, 84; 1059) challenged. The comments characterized it as an at-

tempt to achieve retroactive coverage of partial acquisitions or to accumulate "dossiers" on major companies by means of repetitive reports. (The original rules would have required reporting and waiting at every 5 percent interval above the 15 percent or $15 million level; § 802.21 of the revised and final rules lessens the burden of repetitive reports considerably.) Other comments simply noted that the construction "could have gone the other way" (63) or implicitly supported the interpretation (78, 96). However, to adopt the opposite position would be to assert that large securities holdings (short of control) may be increased without limit if only the 15 percent or $15 million level could be surpassed before the act and rules take effect. But the Commission believes that it is unreasonable to construe the act in a manner which would leave the enforcement agencies powerless to detect and investigate such holdings. The act manifests an intention that the agencies should be informed of large securities holdings whenever an acquisition takes place, and the rule is faithful to that intention.

The revised rule cast the rule into its present form, and the final rule retains the revised rule save for editorial changes and the reference to new § 801.15.

SECTION 801.13(B)—ASSETS

Section 801.13(b)(1) provides that all assets to be acquired in an acquisition will be assets held as a result of the acquisition. It also provides that the value of such assets shall be determined in accordance with § 801.10.

Subparagraph (b)(2) provides that, under certain circumstances, assets previously acquired by the same acquiring person will be considered assets to be held as a result of the acquisition, for purposes of the $15 million test of section 7A(a)(3)(B) only. Previously acquired assets will be assets held as a result of a subsequent acquisition if:

The subsequent acquisition is also of assets of the same acquired person;

The assets were acquired within 180 days of the execution of the contract, agreement in principle, or letter of intent to make the subsequent acquisition;

The acquiring person still holds the assets previously acquired; and

Section 801.15 does not dictate otherwise.

If the criteria are met, the acquiring and acquired persons must treat the earlier acquired assets as though they had not been previously acquired but were to be acquired as part of the subsequent acquisition. This treatment applies only for purposes of the $15 million test of section 7A(a)(3)(B) and not for purposes of the 15-percent test of section 7A(a)(3)(A). The value of the previously acquired assets in such cases shall be the value determined in accordance with § 801.10 as of the time of their acquisition.

Since subparagraph (b)(2) does not apply for purposes of the 15-percent test of section 7A(a)(3)(A), only the assets to be acquired in an acquisition need be considered in computing the percentage figure. See also § 801.12(d)(1).

Subparagraph (b)(2) also has no effect upon the size-of-person test of section 7A(a)(2). The total assets of all persons remain, under § 801.11(c)(2), as stated on the last regularly prepared balance sheet of the person, regardless of subsequent acquisitions or dispositions not reflected on the balance sheet.

The example at the end of the rule illustrates the operation of subparagraph (b)(2).

BACKGROUND INFORMATION TO § 801.13(b)

Section 801.13(b)(1) merely states the obvious in declaring that assets to be acquired in an acquisition will be held as a result of that acquisition.

The criteria for application of subparagraph (b)(2) can be more easily understood with reference to its basic purpose. Subparagraph (b)(2), by including assets acquired within the preceding 180 days, prevents persons from evading the $15 million test of section 7A(a)(3)(B) by dividing an acquisition into two or more smaller acquisitions, each valued at less than $15 million. Subparagraph (b)(2) would still allow such a scheme to succeed, so long as the agreement to make each of the smaller acquisitions was executed at least 180 days after the consummation of the previous one. Note, however, that if the parties agreed to execute a series of formal contracts more than 180 days apart, the transactions might be viewed as one, depending upon when beneficial ownership passes.

Each aspect of subparagraph (b)(2) relates to this purpose. The 180-day period, for example, is sufficiently long to discourage the type of evasion described. In addition, after a period of time assets cease to be attributable to the person from which acquired and become assets of the acquiring person. The length of the period did not attract any comment.

The subparagraph's application is limited to the $15 million test of section 7A(a)(3)(B) for two reasons. First, attempting to incorporate the previously acquired assets into the percentage test would pose practical problems. Section 801.12(d) provides that the denominator of the percentage is the total assets of the acquired person, but the denominator could shift during the 180 days, reflecting the first sale of assets. Therefore, the percentages computed for each asset acquisition would not be comparable to one another and could not be added together. And if the denominator is held constant at the total assets level of the acquired person at the time of the first acquisition, then a substantial disparity from the actual percentage could arise. Second, acquisitions of assets which satisfy the 15-percent test of section 7A(a)(3)(A), but which do not satisfy the $15-million test of section 7A(a)(3)(B), will frequently be exempt in any event, because § 802.20 exempts such acquisitions valued at $10 million or less. Although two comments (63, 83) questioned the omission of the percentage test from original § 801.35, the predecessor of final § 801.13(b)(2), the final rule refrains from introducing such complexity and problematical calculation in order to secure reports for asset acquisitions valued at more than $10 million but not exceeding $15 million.

Similarly, the value of the earlier acquired assets is not used to adjust the total assets of either the acquiring or the acquired person for purposes of the size-of-person test of section 7A(a)(2). If the figures shown on the balance sheets were adjusted in order to reflect earlier acquisitions or dispositions of assets, the adjustment would affect whether compliance with the act was required only when it changed the total assets of one party to exceed or fall short of either the $10 million or $100 million figure in section 7A(a)(2). Although revised § 801.13(b)(2) had attempted to make such adjustments, the final rule jettisons the scheme as more complex than the result warrants.

The final rule also reflects, in another context, the limited purpose of the provision. The original and revised rules declared assets of the acquired person to be assets held as a result of any acquisition by the acquiring person within the following 180 days—that is, for purposes of subsequent acquisitions of either voting securities or assets. The final rule includes the previously acquiring assets only when the subsequent acquisition is also of assets. See clause (i). The change confines subparagraph (b)(2) more closely to its principal purpose of preventing evasion, but also embodies another principle. A prior acquisition of stock, because of the influence the shareholder may exert upon management, may contribute to the subsequent sale of assets. Therefore, aggregating the dollar amounts of the two acquisitions (which the phrase, "aggregate total amount of voting securities and assets" in section 7A(a)(3) and § 801.14 will do) is appropriate. However, once assets are sold, they confer no continuing ability to participate in the affairs

of the acquired person, and so prior acquisitions of assets need not be considered for purposes of subsequent acquisitions of stock. Accordingly, the final version of subparagraph (b)(2) does not label previously acquired assets to be assets held as a result of a subsequent acquisition of stock (and therefore § 801.14 does not compel aggregation of the stock and asset values for purposes of the $15 million test in such cases).

The final rule makes several other changes in the revised rule. The reference to new § 801.15 is added, since that rule constitutes an exception and provides that certain assets are not held as a result of an acquisition, even though § 801.13 might declare otherwise. See comment 15. The reference to § 801.1(h)(1) was inserted to assure consistency between rules and statute. Section 801.1(h)(1) is the first "notification threshold" and simply restates the test of section 7A(a)(3) for use in § 802.21, and elsewhere; for more information, see §§ 801.1(h) and 802.21. The final rule measures the 180-day period back from the date of execution of the contract, agreement in principle or letter of intent, rather than the date of filing of notification as was provided in the revised rule. This change was made in order to clarify that the aggregation of the previous and current asset acquisitions may determine whether notification is required, rather than presuppose notification and measure the 180-day period from the date of its filing, as did the revised rule. And the final rule requires that the earlier acquired assets must still be held by the acquiring person at the time of the execution of the agreement, since disposing of the assets would seemingly eliminate any cumulative anticompetitive effect flowing from the earlier asset acquisition.

SECTION 801.14 AGGREGATE TOTAL AMOUNT OF VOTING SECURITIES AND ASSETS

Section 801.14 explains the phrase "aggregate total amount of voting securities and assets" which appears in the size-of-transaction test of section 7A(a)(3)(B). That test is satisfied if, as a result of an acquisition, the acquiring person will hold an aggregate total amount of voting securities and assets in excess of $15 million. The rule provides that the "aggregate total amount" is the sum of the values of the voting securities and assets to be held as a result of an acquisition, as determined under the rules.

To apply the rule, add the values of the voting securities and assets to be held as a result of an acquisition. Paragraph (a) of the rule specifies that the value of voting securities to be held as a result of an acquisition is to be determined in accordance with § 801.13(a), and paragraph (b) provides that the value of assets to be held as a result of an acquisition is to be determined in accordance with § 801.13(b). Two examples illustrate the rule.

BACKGROUND INFORMATION TO § 801.14

This rule interprets section 7A(a)(3)(B) and states the plain meaning of that provision. Original § 801.40 attracted little comment, and revised § 801.15 attracted no comment. The final rule is unchanged in substance and reflects only clarifying editorial changes and the renumbering of other rules. The examples have been revised.

SECTION 801.15 AGGREGATION OF VOTING SECURITIES AND ASSETS THE ACQUISITION OF WHICH WAS EXEMPT

Section 801.15 interprets the size-of-transaction test of section 7A(a)(3). That test will be satisfied whenever as a result of an acquisition, the acquiring person will hold 15 percent or $15 million of the assets or voting securities of the acquired person. This rule explains whether assets and voting securities acquired in transactions exempt under the act or rules will be deemed held as a result of an acquisition.

This rule applies only when the acquiring person is simultaneously acquiring both exempt and nonexempt assets or voting securities of the same acquired person, or is acquiring nonexempt assets or voting securities after previously acquiring exempt assets or voting securities of the same acquired person. Because its application is narrowly limited to situations combining exempt and nonexempt acquisitions, the rule should apply to relatively few transactions.

In general, § 801.13 specifies which assets and voting securities are deemed held as a result of an acquisition. This rule constitutes an exception to § 801.13, declaring that notwithstanding § 801.13 certain assets and voting securities acquired in exempt transactions will not be held as a result of an acquisition. For this reason, reference to § 801.15 appears at the beginning of § 801.13.

Since § 801.15 determines which assets and voting securities count toward satisfying the size-of-transaction test of section 7A(a)(3), it necessarily will affect the application of the rules determing the value of the voting securities or assets to be held or acquired (§ 801.10), the percentage of assets or voting securities to be held or acquired (§ 801.12), and the aggregate total amount of voting securities and assets to be acquired (§ 801.14). The rule is not relevant to the size-of-person test of section 7A(a)(2), or to the rule implementing that test, § 801.11.

The rule applies both to current and to past exempt acquisitions. For current acquisitions, the rule permits the acquiring person, in deciding whether the size-of-transaction test of section 7A(a)(3) is satisfied, to disregard assets or voting securities that are exempt under the listed provisions of the act and rules. Thus, if the acquiring person is acquiring a mixture of exempt and nonexempt assets and voting securities in a single acquisition, only the nonexempt assets and voting securities need be considered in determining whether the test of section 7A(a)(3) is satisfied. Example No. 1 to the rule illustrates this point. Of course, if only exempt assets or voting securities are being acquired, the acquisition is exempt and need not be reported regardless of whether the particular exemption is listed in the rule.

The rule also entitles the acquiring person to disregard certain past exempt acquisitions, although applying the rule becomes more complicated in such situations. First, if the current acquisition is exempt under any provision of the act or rules, whether or not listed in this rule, this rule does not apply. Second, the acquiring person must verify that under § 801.13 the assets or voting securities previously acquired would be deemed held as a result of the current transaction. As a practical matter, this will fail to be true in only three instances: when the acquiring person has disposed of the assets or voting securities in the interim; when the earlier acquisition was of assets, and the subsequent acquisition is to be of voting securities (§ 801.13(b)(2)); and when both the earlier and current acquisitions are of assets of the acquired person, but the earlier acquisition took place more than 180 days prior to the execution of the contract, agreement in principle or letter of intent with respect to the current acquisition of assets. In the last-mentioned case the assets are no longer deemed those of the acquired person, and thus they cannot be relevant for purposes of section 7A(a)(3). See § 801.13(b)(2).

If under § 801.13 the acquiring person would hold the earlier-acquired assets or voting securities as a result of the current acquisition, and if the earlier acquisition was exempt under one of the listed provisions of the act or rules, this rule allows the acquiring person to disregard those assets or voting securities for purposes of the size-of-transaction test of section 7A(a)(3). Example No. 2 to the rule illustrates this point.

Additionally, if the earlier acquisition occurred before the act and rules went into effect, the rule still permits the assets or voting securities acquired earlier to be disregarded if, had the act and rules been in effect, the acqui-

sition would have been exempt under a listed provision. Example No. 3 to the rule illustrates this case.

In each of the last two instances, if the earlier acquisition was exempt (or would have been exempt, had the act and rules been in effect) under a provision of the act or rules not mentioned in this rule, the acquiring person cannot disregard the earlier acquisition for purposes of applying the size-of-transaction test to the current acquisition. For example, voting securities exempt when acquired under section 7A(c)(10) will be deemed held as a result of any subsequent acquisitions of voting securities or assets of the same issuer.

Section 801.15(b) is applied similarly, but represents a slightly different approach. Earlier acquisitions which when acquired were exempt under one of the listed provisions will not be held as a result of a subsequent transaction "unless the limitations contained in section 7A(c)(9) or those sections do not apply, or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held as a result of the acquisition * * *." This means, in the case of section 7A(c)(9), that if the 10-percent limitation contained in that exemption will not be exceeded by the aggregate of the prior exempt acquisitions and the current acquisition, the voting securities previously acquired and to be acquired under the exemption will not be held as a result of the acquisition. If the aggregate of the prior and current acquisitions would exceed the 10-percent figure, all of the holdings are considered "held." Likewise, the limitation contained in section 7A(c)(9) that the acquisition be solely for investment purposes must apply to the current acquisition; if it does not, both the voting securities previously acquired under section 7A(c)(9), and the voting securities to be acquired (which would not be exempt under section 7A(c)(9)) will be held as a result of the acquisition. Example No. 4 to the rule illustrates § 801.15(b).

The principal consequence of finding that voting securities exempt when acquired under section 7A(c)(9) are not held is that the acquiring person may acquire voting securities of other issuers included within the same acquired person, or assets of the same acquired person, without having the section 7A(c)(9) securities count toward the aggergate total amount of voting securities and assets of the acquired person that, if exceeding $15 million, would make the subsequent acquisition reportable.

The exemption rules listed in paragraph (b) contain parallel limitations that must continue to apply ("qualitative limitations"), or not be exceeded ("numerical limitations"), if acquisitions under those sections are to be not held under the rule. In § 802.50(a)(2), there is the qualitative limitation that the assets must be located outside the United States, and the numerical limitation that the sales in or into the United States attributable to the assets in the acquired person's most recent fiscal year must not meet or exceed $10 million. In § 802.50(b), there is the qualitative limitation that the issuer be foreign, and two numerical limitations are expressed in subparagraphs (b)(1) and (b)(2) of that rule. In § 802.51(b), there is the qualitative limitation that the issuer be foreign, and the numerical limitations in subparagraphs (b)(1) and (b)(2). In § 802.64, there are the qualitative limitations of subparagraphs (b)(1)-(3), and the numerical limitations of subparagraphs (b)(4) and (b)(5).

Section 801.15(c) is similar to paragraph (b) of the rule. Voting securities that were exempt when acquired under section 7A(c)(11)(A) will not be held unless additional voting securities of the same issuer have been or are being acquired.

Background Information to § 801.15

This rule had no couterpart in the original or revised rules, although a number of comments (for example, 1059, 1070, 1089, 1099, 1100) suggested similar concepts.

Under this rule, assets and voting securities acquired under certain exemption provisions of the act and rules may be disregarded for purposes of the size-of-transaction test of section 7A(a)(3). Each of the provisions was selected, in general, because the rationale for the exemption indictates that counting the acquisition toward making subsequent acquisitions reportable would not serve enforcement interests. By contrast, the exemptions provisions of the act and rules omitted from § 801.15 were omitted either because the opposite conclusion was reached, or because whether the assets or voting securities are held makes no difference in such situations. The listed provisions will be treated first, followed by the omitted provisions. For convenience, each will be discussed in the content of a prior acquisition exempt under the exemption provision in question, followed by a subsequent acquisition, although the rule makes clear that it is equally applicable to acquisitions occurring prior to the effective date of the act and rules that would have been exempt and to simultaneous acquisitions.

Exemption Provisions Listed in § 801.15

Certain acquisitions of goods or realty transferred in the ordinary course of business are exempt under section 7A(c)(1) and § 802.1, which interprets the statutory exemption. Since section 7A(c)(1) is listed in § 801.15, such acquisitions are not counted toward making later acquisitions reportable. Because of the nature of goods and realty, and because of the limitations inherent in the concept "ordinary course of business," it is unlikely that these acquisitions will be relevant to subsequent acquisitions.

If acquisitions were exempt from reporting under section 7A (c)(5) or (c)(6), then the underlying transaction is exempt from the antitrust laws. If that is true, no enforcement purpose can be served by counting the acquisition toward making later acquisitions reportable, and accordingly § 801.15 lists those exemptions.

Insection 7A (c)(7) and (c)(8), Congress has determined that certain transactions which require agency approval need not be subject to the full requirements of the act, even though they are not exempt from the antitrust laws generally. Thus acquisitions exempt from reporting under sections 7A (c)(7) or (c)(8) or under § 802.8 are not relevant for purposes of subsequent acquisitions.

Acquisitions of voting securities solely for the purpose of investment are exempt under section 7A(c)(9) if the acquiring person's holdings as a result of these acquisitions do not exceed 10 percent of the outstanding voting securities of the issuer. Section 801.15(b) provides that, as long as the investment purpose limitation continues to be satisfied and the 10 percent limitation has not been or will not be exceeded, these acquisitions are not counted for purposes of other or subsequent transactions, since the rationale for the section 7A(c)(9) exemption continues to apply. They are counted, however, in determining whether a person holds 10 percent or more of the outstanding shares of the issuer.

Similarly, acquisitions of assets by certain types of acquiring persons in the ordinary course of business, exempt under section 7A(c)(11)(B), are not held by the acquiring person for purposes of subsequent transactions. The aggregation provisions of § 801.13(b)(2) are not applied to such assets because the opportunities for evasion of the act seem minimal. However, voting securities acquired by the same types of persons pursuant to a plan of reorganization under the bankruptcy laws or pursuant to a plan of dissolution, while exempt under section 7A(c)(11)(A), are held (under § 801.15(c)) when additional voting securities of the same issuer have been or are being acquired in a transaction which is not itself exempt. The means

of acquisition does not affect the ability of the acquiring person to influence or control the issuer after the acquisition.

Convertible voting securities are never deemed held for purposes of section 7A(a)(3) or the notification thresholds of § 801.1(h). See the Statement of Basis and Purpose to § 801.1(f)(2).

The several exemptions relating to foreign commerce are handled in two different ways. For purposes of making later acquisitions reportable, acquisitions exempt under certain of those provisions never result in the acquiring person's holding the assets or voting securities acquired; acquisitions exempt under others may under certain circumstances. In the former category are acquisitions by United States persons of assets located abroad that generate no sales in or into the United States (§ 802.50(a)(1)); acquisitions by foreign persons of assets located abroad, regardless of whether sales in or into the United States are generated by such assets (§ 802.51(a)); acquisitions by or from a foreign government-controlled entity of assets located in the same country as the foreign government, or of voting securities issued by an entity organized under the laws of the same country (§ 802.52); and certain foreign banking transactions subject to the approval of the Federal Reserve System (§ 802.53). The considerations of jurisdiction and comity which underlie the exemptions themselves also suggest that assets and voting securities acquired pursuant to these exemptions should not be counted for purposes of later acquisitions.

On the other hand, certain of the foreign commerce exemptions depend for their applicability upon the fact that the impact of an acquisition upon United States foreign commerce is limited. Accordingly, assets or voting securities acquired pursuant to these exemptions also are not counted for purposes of subsequent acquisitions, so long as the limitations stated in the exemption rules will not be exceeded. Sections 802.50(a)(2), 802.50(b) and 802.51(b) fall into this category, and under § 801.15(b) acquisitions exempt under these sections are only counted toward testing the limitations contained in those sections. Example 4 to the rule illustrates § 801.15(b) with respect to § 802.50(a)(2). Similar procedures apply to §§ 802.50(b) and 802.51(b), both of which relate to acquisitions of voting securities of foreign issuers. The foreign issuer's holdings of U.S. assets and the annual net sales and total assets of any U.S. issuer whose stock is held by the foreign issuer must be examined in order to determine whether the acquiring person holds the voting securities it acquired in a previous exempt transaction, and thus whether a subsequent acquisition is exempt.

Assets and voting securities acquired by creditors and insurers in the ordinary course of business under the exemption in § 802.63 are not counted for purposes of subsequent acquisitions of assets or voting securities of the same acquired persons. An acquisition exempt under § 802.63 is not likely to become a predicate for the acquiring person's attempting to gain control of the acquired person. On the other hand, a creditor or insurer may make unrelated investments in the acquired person with which it would be inappropriate to aggregate assets or voting securities acquired under the exemption.

Acquisitions by institutional investors that satisfy the various limitations of § 802.64 do not result in the acquiring person's holding the voting securities of the issuer. So long as those limitations continue to apply or are not exceeded, the rationale for the exemption continues to apply. If the limitations are exceeded or do not apply, then all voting securities of the acquired person of which the acquiring person is beneficial owner or is deemed the holder (see § 801.1(c)) are held by the acquiring person for purposes of additional acquisitions.

Finally, acquisitions subject to an order of the Commission or any Federal court, and thereby exempt under § 802.70, do not result in the acquiring person holding those assets or voting securities for purposes of additional acquisitions, since presumably the supervision of the Commission or court ensures that all competitive considerations have been or will be carefully weighed.

Exemption Provisions Not Listed in § 801.15

Under § 801.15, previous acquisitions exempt under sections 7A (c)(2), (c)(3), (c)(4), and (c)(10) are held for purposes of the size-of-transaction tests of section 7A(a)(3) and the notification thresholds of § 801.1(h), since these statutory exemptions are not listed in § 801.15. Acquisitions of non-voting securities or other obligations exempt under section 7A(c)(2) are irrelevant for purposes of making later acquisitions reportable, because the act applies only to acquisitions of voting securities. Thus it makes no difference that technically they are "held," because they do not affect either the dollar or percentage computations applicable to voting securities (§§ 801.10, 801.12, 801.13, 801.14), and because these securities or other obligations are deemed not to be assets of the acquired person (§ 801.21). While voting securities acquired under a section 7A(c)(3) exemption are deemed held for purposes of later acquisitions of the same person's securities the later acquisitions are themselves exempt if prior to that transaction the acquiring person holds at least 50 percent of the outstanding voting securities of the acquired person. So long as the later acquisitions are exempt, it is not significant whether the voting securities acquired under the section 7A(c)(3) exemption are held. Furthermore, if some voting securities are disposed of, so that acquisitions subsequent to the one exempt under section 7A(c)(3) are not exempt under section 7A(c)(3), the voting securities acquired under the section 7A(c)(3) exemption must be deemed held so that the later acquisition becomes reportable.

Acquisitions exempt under section 7A(c)(4) because they involve transfers to or from a Federal agency or from a State or political subdivision are deemed held for purposes of later acquisitions. If the later acquisition involves the transfer of assets of, or voting securities issued by, a Government agency, it will also be exempt. On the other hand, if a Government agency were to make an exempt transfer of voting securities of a non-governmental issuer, and if the acquiring person were later to purchase additional voting securities of the same issue, all the holdings of that issuer's voting securities by the acquiring person must be aggregated by the acquiring person to determine its holdings. This aggregation is appropriate because the fact that voting securities were acquired from a governmental entity does not affect the possible use of such securities by the acquiring person to influence or control the issuer.

Voting securities acquired in a transaction exempt under section 7A(c)(10) and § 802.10 must be counted for purposes of all later acquisitions. While the acquisition of voting securities by means of stock dividends or stock splits is exempt, these securities are not qualitatively different from any other voting securities of the acquired person, and thus the acquiring person is deemed to hold them for purposes of subsequent acquisitions. In addition, a contrary conclusion would mean that a stock dividend or stock split actually would reduce the acquiring person's percentage holdings as measured under the rules.

With respect to exemption provisions in the rules, under § 801.15 certain exempt acquisitions of assets or voting securities will result in the acquiring person's holding such assets or voting securities for purposes of later acquisitions. The exemptions in this category are §§ 802.20, 802.21, 802.23, 802.30, 802.40, 802.41, 802.51 (c) and (d), 802.60 and 802.71.

Acquisitions which are exempted by § 802.20 are those which, while techni-

cally within the requirements of the act, generally seem too small to merit detailed pretransaction antitrust scrutiny. These acquisitions, like those which are too small to satisfy the reporting criteria of the act, may become more significant if similar acquisitions follow. Likewise, those acquisitions of voting securities exempt under § 802.21 because notification previously has been filed may not increase the holdings of the acquiring person significantly enough to warrant an additional filing. But the holdings which result from these exempt acquisitions must be aggregated with all voting securities of the acquired person held by the acquiring person in order to give an accurate picture of the latter's ability to influence or control the issuer.

Voting securities acquired under the procedures outlined in § 802.23 are indistinguishable from the issuer's voting securities acquired in any other manner. The same is true of voting securities acquired by means of an intraperson transaction exempt under § 802.30. Thus the holdings resulting from each of these exemptions are counted for purposes of determining whether later acquisitions are reportable.

Acquisitions of voting securities in the process of forming a joint venture or other corporation may be reportable under § 801.40. When the transaction forming the joint venture or other corporation is complete, the shareholders of the joint venture or other corporation obviously continue to hold the shares of that corporation. That is true whether or not the acquisitions are exempt under § 802.40 because the corporation being formed is a nonprofit entity within the meaning of the sections of the Internal Revenue Code cited in § 802.40. Similarly, while the new corporation by reason of § 802.41 never has to report its acquisitions of assets in the transaction forming that corporation, the assets are held by the new corporation after formation and must be counted for purposes of any subsequent acquisitions by or from the corporation.

An acquisition by a foreign person of less than $10 million of assets located in the United States (other than investment assets) is exempt under § 802.51(c), but those assets are held by the acquiring person as a result of the acquisition. Thus, an additional asset acquisition by the acquiring person, if falling within the aggregation provisions of § 801.13(b)(2), will be exempt only if the aggregate value of the U.S. assets (other than investment assets) acquired in both the earlier and the later acquisitions is less than $10 million.

Section 802.51(d) exempts transactions in which both the acquiring and the acquired persons are foreign, if the combined annual sales of the two persons in or into the United States are less than $110 million and if the two persons' combined total assets located in the United States (other than investment assets) are less than $110 million. Both assets and voting securities acquired under this exemption are held for purposes of future acquisitions (subject, in the case of the assets, to the aggregation provisions of § 801.13(b)(2)), since the cumulative impact of the transactions on foreign commerce determines the availability of the exemption.

Securities underwriters which are exempt under § 802.60 from reporting certain acquisitions of voting securities nevertheless hold those voting securities as a result of their acquisition and continue to hold such securities for purposes of any subsequent acquisitions.

Finally, when an acquisition is the result of a gift, intestate succession, testamentary disposition or transfer by a settlor to an irrevocable trust, the transaction is exempt under § 802.71 because the recipient typically does not cause the transaction to occur and is thus unlikely to use the transaction to further an anticompetitive purpose. After the transaction is complete, however, the recipient's ability to use the voting securities or assets acquired under this exemption is indistinguishable from that of other acquiring persons, and thus that person is deemed to hold what was acquired under the exemption.

Deletion of Revised § 801.20

Revised § 801.20 stated that any particular acquisition, even if part of a sequence of transactions that will eventually exceed the threshold levels of section 7A(a)(3), was not subject to the requirements of the act unless as a result of the particular acquisition the acquiring person's holdings would meet or exceed a threshold level of section 7A(a)(3). Original § 801.45 was a similar provision.

The final rules omit revised § 801.20 as unnecessary. The proposed rule merely restated a conclusion that followed from § 801.13—that any particular transaction was subject to the requirements of the act only if, as a result of that transaction, the holdings of the acquiring person satisfied the size-of-transaction test of section 7A(a)(3).

Section 801.20 acquisitions subsequent to exceeding threshold

When a person has previously made an acquisition of assets or voting securities, this rule clarifies the acquiring person's obligation to file notification and comply with the waiting period requirements with respect to a later acquisition of the assets or voting securities of the same acquired person. The rule states that such notification and compliance is required:

(a) Even though the earlier acquisition or acquisitions may have been reportable;

(b) Even though the prior acquisitions may have resulted in the acquiring person's meeting or exceeding a notification threshold (as defined in § 801.1(h)) prior to the effective date of the act or the rules; and

(c) Even though a notification threshold may previously have been met or exceeded by reason of increases in market values or events other than acquisitions.

The basic principle underlying the act and incorporated in the rules is that every acquisition as a result of which the acquiring person's holdings meet or exceed the statutory notification threshold of section 7A(a)(3) and § 801.1(h)(1) gives rise to an obligation to file notification and comply with the waiting period requirements. See the Statement of Basis and Purpose to § 801.13. Section 802.21 substantially modifies this basic principle for acquisitions of voting securities when notification has previously been filed with respect to a transaction involving the same parties, and for that reason § 802.21 is specifically mentioned in the beginning portion of this rule.

This basic principle is also subject to the commerce test of section 7A(a)(1) and the size-of-person test of section 7A(a)(2), to each of the exemptions contained in section 7A(c)(1) through section 7A(c)(11), and to each of the exemptions in part 802 of the rules. In other words, if the statutory criteria are not met, or if the later acquisition is exempt under either the act or the rules, § 801.20 does not create a reporting obligation.

When a notification threshold is met or exceeded by reason of an event other than an acquisition, no filing or waiting period obligations arise at that time. Thus, for example, if a person acquired voting securities worth less than $15 million, and the market price of those securities thereafter rose above $15 million, that increase in market price would not by itself create a reporting obligation, because the price increase is not an acquisition within the meaning of section 7A(a). Similarly, if a person acquired less than 15 percent of the shares of an issuer, and thereafter the issuer purchased enough of its own stock so that the originally purchased shares constituted more than 15 percent of the shares then outstanding, no notification would be required, because the increase in percentage holdings did not result from an acquisition by the person whose holdings met or exceeded a notification threshold. However,

in either of these situations, if the acquiring person thereafter purchased any additional shares, notification would be required with respect to that subsequent transaction. See example No. 2 to this rule.

This rule merely clarifies the operation of other rules (notably § 801.13) and does not change the results obtained by application of those rules.

BACKGROUND INFORMATION TO § 801.20

Original § 801.50 and revised § 801.21 were similar to the final rule. A number of comments relating to the original version are discussed in the Statement of Basis and Purpose to § 801.13, and there were no comments on the revised rule.

SECTION 801.21 SECURITIES AND CASH NOT CONSIDERED ASSETS WHEN ACQUIRED

Section 801.21 clarifies that neither cash nor securities of an issuer unrelated to the person from which acquired are to be considered "assets" of that person for purposes of the 15 percent or $15 million test of section 7A(a)(3). The rule thus excludes a possible literal interpretation of the term "assets" which could have made an acquisition of cash or securities reportable as an acquisition of the "assets" of the person from which acquired.

The heading of the rule states that it applies to the size-of-transaction test of section 7A(a)(3), the notification threshold that restates that test (§ 801.1(h)(1)), and the rules implementing the test (§§ 801.12(d)(1) and 801.13(b)). Paragraph (a) directs that cash is not to be considered an asset of the person from which it is received. Paragraph (b) provides that securities, whether voting or nonvoting, are not to be viewed as assets of third-party holders. Three examples illustrate the rule.

Note that even though the cash and securities are not assets for purposes of section 7A(a)(3) when acquired, after acquisition they must be reflected on the acquiring person's next regularly prepared balance sheet as assets for purposes of the size-of-person test of section 7A(a)(2).

This rule also affects § 801.2, which identifies acquiring and acquired persons for purposes of the act and rules. Section 801.21(a) makes clear that if cash is the only consideration for the voting securities of an issuer, the acquired person will not thereby acquire any "assets" of the acquiring person and therefore will not become both an acquiring and acquired person within the meaning of § 801.2(c). The acquiring person, likewise, will not be transferring any of its "assets" by paying cash, and thus does not also become an acquired person. The same result follows whenever an acquisition is of securities issued by an entity not included within the person from which acquired. The person transferring the securities does not transfer "assets" and become an acquired person; instead, under § 801.2(b) the acquired person is the person within which the issuer is included. See example No. 1 to § 801.2(b).

BACKGROUND INFORMATION TO § 801.21

This rule appears for the first time in the final rules. It was added in order to avoid situations in which a literal reading of the term "assets" could result in the imposition of meaningless reporting and waiting period requirements upon transferors of cash or securities of unrelated issuers. Cash generally lacks competitive significance, and so treating it as an asset would not further the purposes of the act. Nor would filings by third-party holders of voting securities advance the purposes of the act, since only the relationship between the acquiring person and the issuer is likely to have competitive consequences. In such cases § 801.2(b) appropriately rests the obligation to comply with the act upon the person within which the issuer whose voting securities are to be acquired is included.

SECTION 801.30 TENDER OFFERS AND ACQUISITIONS OF VOTING SECURITIES FROM THIRD PARTIES

Section 801.30 applies to certain enumerated types of transactions that may be initiated by the acquiring person without the agreement of the acquired person. For these acquisitions, the waiting period begins upon receipt of only the acquiring person's Notification and Report Form, rather than both the acquiring and acquired persons' forms. The rule ensures that a hostile or indifferent issuer cannot prevent the beginning of the waiting period by failing to file notification.

Paragraph (a) specifies the seven types of acquisitions to which the rule applies. These are acquisitions on a national securities exchange or through an inter-dealer quotation system registered with the SEC; certain acquisitions by offerees of noncash tender offers described in § 801.31; tender offers, which are defined in § 801.1(g)(1); secondary acquisitions, which are described in § 801.4; all acquisitions (other than mergers and consolidations) in which voting securities will be acquired from holders other than the issuer or an entity included within the same person as the issuer; conversions, which are defined in § 801.1(f)(3); and the exercise of options or warrants that were issued by the acquired person and that are subject to a currently effective registration statement filed with the SEC. For these acquisitions, subparagraph (b)(1) specifies that the waiting period begins when notification is received from the acquiring person. Subparagraph (b)(2) requires the acquired person in such acquisitions to file notification no later than 5 p.m. eastern time on the fifteenth (or, in the case of a cash tender offer, the tenth) day thereafter. If the fifteenth (or, in the case of a cash tender offer, the tenth) day falls on a weekend or Federal holiday, the acquired person must file notification by 10 a.m. eastern time on the next business day.

This rule does not affect the length of the waiting period. Section 803.10 governs the length of the period, and also explains when receipt of a notification is effective.

Three examples illustrate the rule.

BACKGROUND INFORMATION TO § 801.30

Except with respect to tender offers, the original rules made no special provision for acquisitions of blocks of stock from third parties unrelated to the issuer or through securities exchanges or other open-market transactions.

That approach tracked the statutory language describing the required waiting periods. The act provides for a 30-day waiting period that commences when notification is filed by both the acquiring and acquired persons. The only exception relates to tender offers. Section 7A(a) states in part:

> [N]o person shall acquire * * * any voting securities * * * of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification * * * and the waiting period * * * has expired * * *.

Section 7A(b)(1) likewise states in part:

> The waiting period required under [§ 7A](a) shall—
> (A) Begin on the date of receipt * * * of * * * the completed notification required under [§ 7A](a) * * * from both persons, or, in the case of a tender offer, the acquiring person * * *.

This result was inadequate, however, because absent special provision, third-party and open-market acquisitions (other than tender offers) would have been subject to the same rules as two-party acquisitions. As noted in several comments (e.g., 9, 19, 49, 63, 74, 78, 93, 96, 115), unless the beginning of the waiting period is conditioned solely upon filing by the acquiring person, an apathetic or hostile issuer could frustrate the transaction merely by neglecting to file notification. The waiting period thus might never begin to run. The Commission believes that notwithstanding the language of section 7A(a) and (b)(1), these types of acquisitions are more closely analogous to tender offers than to two-party consensual acquisitions.

As Chairman Rodino stated on the House floor, lengthy delays in the waiting period for tender offers.

> will give the target firm plenty of time to defeat the offer, by abolishing cumulative voting, arranging a speedy defensive merger, quickly incorporating in a state with an antitakeover statute, or negotiating costly lifetime employment contracts for incumbent management. And the longer the waiting period, the more the target's stock may be bid up in the market, making the offer more costly—and less successful.
>
> (122 Cong. Rec. H10294 (daily ed. Sept. 16, 1976))

Although the Williams Act does not apply, these same basic concerns—including delay, avoidance, and detrimental impact on the capital market—all exist with respect to third-party acquisitions other than tender offers. See generally, 122 Cong. Rec. S15417 (daily ed. Sept. 8, 1976); id. at H10293-94 (daily ed. Sept. 16, 1976).

The final rule extends to analogous types of transactions the treatment accorded tender offers. In each type of acquisition listed in paragraph (a), treatment under the standard two-party rules could delay or preclude the acquisition. Therefore, in each case the waiting period begins when notification is filed by the acquiring person. The difficulties in applying the normal two-party rules are particularly pronounced in the case of those acquisitions that are part of other acquisitions, such as acquisitions of an acquiring person's stock by offerees in a tender offer (§ 801.31) and secondary acquisitions (§ 801.4). In these instances, even if the acquired person chooses to file notification, it may well be hard-pressed to do so quickly. Often the acquired person is unaware of the acquisition until the acquiring person is ready to file notification. In these situations—unlike negotiated acquisitions—the acquired person usually will not have begun to prepare its form or have undertaken a preliminary analysis of the legality of the acquisition. As comment 1090 suggested, delay by acquired persons in these related acquisitions could easily impede the main acquisitions, often with severly detrimental effects.

In subparagraph (a)(5), mergers and consolidations are excluded from the treatment afforded by the rule because even though acquisitions are made from third-party holders, such transactions are typically consensual. Therefore, the rationale for the rule, the danger that an issuer will seek to frustrate the transaction, does not apply.

In subparagraph (a)(7), the two limitations placed upon the types of options that qualify for treatment under the rule seek to prevent improper use of the rule by means of characterizing consensual acquisitions as the exercise of spurious "options." Note that although these limitations exclude "put" and "call" options from subparagraph (a)(7), acquisitions of stock resulting from the exercise of such options typically would qualify under other subparagraphs of paragraph (a).

Revised § 801.30 was substantially similar to the final rule. Although in stating the coverage of the rule it mentioned only tender offers and transactions described in § 801.30(a)(5) of the final rule, its coverage would have been similar to that of the final rule because the types of transactions identified in the final version of paragraph (a) overlap to a considerable extent. For example, acquisitions made on a securities exchange are usually acquisitions from third parties. The final version of paragraph (a) was expanded merely to clarify the scope of the rule.

Paragraph (a) of the revised rule, which identified the acquired person, was deleted from the final rule. Since § 801.2(b) identifies the acquired person, repetition of the point is unnecessary. The effect, however, remains the same: The acquired person is that collection of entities within which the issuer of the voting securities to be acquired is included. The seller of the securities—if it is not also the acquired person—has no obligation to file notification. See also § 801.21(b).

The statutory authority for compelling the acquired person in a tender offer to file notification lies in the last sentence of section 7A(a). Comment 1075 complained that for the acquired person to file notification within the time limits prescribed by subparagraph (b)(2) could be burdensome, because the acquired person would be preoccupied with evaluating the fairness of the tender offer or with other aspects of the acquisition. However, the act mandates that the agencies review the acquisition during the waiting period. Much of the information necessary for a review of the acquisition is in the hands of the issuer. The length of time afforded the acquired person by the rule is the maximum that will still permit the agencies to perform their duties.

SECTION 801.31 ACQUISITIONS OF VOTING SECURITIES BY OFFEREES IN TENDER OFFERS

This rule applies only to those noncash tender offers in which the stockholders of the issuer whose shares are sought to be acquired will receive voting securities from the offeror as full or partial consideration for their shares. Section 801.2(e) provides that such acquisitions are separately subject to the requirements of the act and rules if the criteria of section 7A(a) are satisfied. Section 801.31 details the procedures to be followed regarding the notification and waiting period for such acquisitions, and provides for an optional escrow arrangement to facilitate the underlying tender offers. The term "noncash tender offer" is defined in § 801.1(g)(3).

When an acquisition is separately reportable, separate Notification and Report Forms must be submitted with respect to it. Paragraph (a) of the rule provides that the waiting period—that is, the separate waiting period with respect of the acquisition by the offeree, distinct from the waiting period with respect to the tender offer—begins when the offeree files notification. See §§ 801.30 and 803.10(a)(1). Paragraph (b) requires the person within which the issuer of the shares to be acquired by the offeree is included to file notification within 15 days thereafter. Note that the shares to be acquired by the offeree need not necessarily be those of the tender offeror. Paragraph (c) provides that a request for additional information will extend the waiting period in accordance with § 803.20(c). Finally, paragraph (d) creates a special escrow mechanism that can be used if the tender offeror would otherwise be unable to acquire the shares tendered by the offeree, because the waiting period with respect to the offeree's acquisition of the voting securities furnished by the offeror has not expired. The rule permits the voting securities destined for the offeree to be placed into escrow for the benefit of the offeree, so that the tender offeror may accept the tendered shares and complete the tender offer as soon as the waiting period with respect to the tender offer expires, even if the waiting period with respect to the acquisition by the offeree has not expired. The escrow agreement may be structured in any way determined by the parties, and may provide for the transfer of alternative consideration to the offeree in the event that either agency secures an injunction against the offeree's acquisition of shares from the offeror. The only limitation on the escrow agreement provided by the rule is that the shares placed in escrow cannot be voted by anyone during the pendency of the escrow.

An example illustrates the rule.

BACKGROUND INFORMATION TO § 801.31

This rule, which had no counterpart in either the original or revised rules, was added in order to clarify that acquisitions of voting securities by offerees of tender offers may be separately reportable, to detail the procedural aspects of such acquisitions, and to eliminate, by means of the escrow provision of paragraph (d), the risk that tender offers could be delayed or frustrated by complications arising in connection with such acquisitions.

As with any other acquisition, an acquisition described by this rule is subject to the requirements of the act whenever the criteria of the act are satisfied and no exemption applies. It is separately subject to the act because the potential antitrust problems posed by the acquisition differ from those posed by the underlyng tender offer. The antitrust analysis of the tender offer will focus upon the relationship of the tender offeror and issuer whose shares are sought to be acquired. The analysis of the offeree's acquisition, by contrast, will typically focus upon the relationship between the offeree—the acquiring person—and the issuer of the shares that the offeree will acquire from the tender offeror. Since different parties are involved, separate application of the act is necessary.

Acquisitions described by the rule are specifically mentioned in § 801.30(a)(2) as qualifying for that section's special treatment. As with other acquisitions falling under that rule, the waiting period commences when notification is filed by the acquiring person, in this case the offeree of the tender offer. The acquired person, the issuer of the securities to be acquired by the offeree, must file notification within 15 days thereafter. Section 801.30 treatment for these acquisitions facilitates completion of the tender offer. It will be particularly important if the voting securities furnished by the offeror are not issued by the offeror, in which case the issuer may regard its filing requirement with indifference or hostility. For further explanation of the rationale for § 801.30 treatment, see the Statement of Basis and Purpose to that rule.

The escrow arrangement permitted by paragraph (d) of the rule is designed to permit noncash tender offers to be consummated before the expiration of any waiting periods imposed on the acquisitions of voting securities being offered as consideration. Without this provision, consummation of the tender offer could be delayed, and conflict with the Williams Act could result.

The escrow provision prohibits any person from voting any shares placed in escrow during the pendency of the escrow. Because voting presents the risk of anticompetitive activity, the Commission determined that this indicium of beneficial ownership should not pass to the offeree prior to the expiration of the waiting period.

SECTION 801.32 CONVERSION AND ACQUISITION

Section 801.32 declares that a conversion is an acquisition within the meaning of the act. Therefore, if the criteria of section 7A(a) are satisfied, the acquisition of voting securities by means of a conversion must be preceded by notification and observance of the waiting period. Note that conversions are among the transactions for which the waiting period commences upon receipt of the acquiring person's Notification and Report Form. See § 801.30(a)(6).

The term "conversion" is defined in § 801.1(f)(3).

An example illustrates the rule.

BACKGROUND INFORMATION TO § 801.32

A conversion of convertible voting securities into securities presently able to vote for directors involves an exchange in which the holder acquires voting securities and surrenders convertibles as consideration for that acquisition. See § 801.1(f)(3). The fact that one type of voting securities is exchanged for another does not alter the fact that the exchange involves an acquisition of voting securities.

Therefore, the purpose of this rule is merely to clarify the Commission's interpretation of the act; the rule does not create any obligation which would not exist in its absence.

Several of the final rules implement the treatment of convertible voting securities. This rule insures that persons acquiring voting securities by means of conversions first file notification and observe a waiting period, if the criteria of section 7A(a) are met. Section 802.31 exempts acquisitions of convertible voting securities. For a complete explanation of the manner in which the rules treat convertible voting securities, see the statement of Basis and Purpose to § 801.1(f)(2); see also §§ 801.1(f)(3) and 802.31.

SECTION 801.40 FORMATION OF JOINT VENTURE OR OTHER CORPORATIONS

Section 801.40 announces the criteria by which to identify those joint ventures or other corporations the formation of which, because of the acquisition of voting securities of the new entity by its parents, will trigger the requirements of the act. The rule specifies which such transactions must be reported. It also enables acquiring persons reporting such acquisitions to complete properly item 5(d) of the form, which relates exclusively to such transactions.

The phrase "joint venture or other corporation" means that the formation of any corporation, whether or not denominated a joint venture by the parties, is potentially subject to the reporting and waiting period requirements of the act. (This rule applies to the formation of all corporations except those formed in connection with mergers and consolidations, which are treated under § 801.2(d).) Since the formation of a new corporation all of the voting securities of which will be held by one person will be an intraperson transaction exempt from the requirements of the act under § 802.30, as a practical matter only the formation of corporations the voting securities of which will be held by two or more persons is potentially subject to the act. And since the rule applies only to the formation of corporations, the formation of entities other than corporations is by virtue of this rule, not brought within the coverage of the act and need not be preceded by compliance with the act's requirements.

As with any other acquisition, the requirements of the act need be observed only if the criteria of section 7A(a) are met. Paragraph (a) identifies the acquiring and acquired persons in such a transaction. Paragraphs (b), (c), and (d) of the rule explain the application of the criteria of section 7A(a) to such acquisitions, and an example illustrates their application.

Paragraph (a) of the rule provides that the persons contributing to the formation of a joint venture or other corporation are acquiring persons. Since they will acquire and hold voting securities of the new entity, the rule parallels § 801.2(a). Even though the new entity may also acquire assets or voting securities from the contributors, notwithstanding § 801.2(c) the contributors are deemed acquiring persons only, and the new entity is an acquired person only. Under § 802.41, however, the joint venture or other corporation need not file notification in connection with its own formation.

The criteria of paragraph (b) constitute the size-of-person test of section 7A(a)(2) in connection with the formation of a new corporation. An acquiring person is subject to the requirements of the act if it has annual net sales or total assets of $100 million or more, if at least one other contributor has annual net sales or total assets of $10 million or more, and if the joint venture or other corporation will have $10 million or more in total assets. If, on the other hand, the new corporation will be of $100 million size, its formation is reportable if two or more of its shareholders are of $10 million size or larger. In the latter case, each contributor of $10 million size is required to file notification and wait. For acquiring persons, § 801.11 governs calculation of annual net sales and total assets; for the new corporation, § 801.40(c) determines the total assets for purposes of this rule.

Paragraph (b) also makes clear that the act applies only if the size-of-transaction test of section 7A(a)(3) is satisfied. In the context of the formation of a joint venture or other corporation, the test will be satisfied as to a particular acquiring person if, as a result of the transaction forming the corporation, the acquiring person

would hold 15 percent or $15 million of the new corporation's stock.

Under § 801.40(c), the total assets of a joint venture or other corporation at the time of its formation will be deemed to include (1) all assets that, as of the time of formation, the parents have agreed to transfer or for which agreements have been obtained for the new entity to acquire at any time, and (2) all credit or other obligations that, as of the time of formation, the parents have agreed to extend or guarantee at any time. Paragraph (c) supplants § 801.11, the rule that normally governs the calculation of total assets, only at the time of its formation, for purposes of paragraph (b) of this rule. If the joint venture or other corporation after its formation acquires or is acquired by another entity, its total assets and annual net sales at that time would be determined under § 801.11.

Paragraph (d) interprets the commerce test of section 7A(a)(1) for transactions forming a joint venture or other corporation. It provides that the test is satisfied either if the activities of any acquiring person are in or affect commerce, or if the person filing notification should reasonably believe that the new entity will be engaged in activities in or affecting commerce.

Two additional rules complete the treatment of the formation of joint venture or other corporations: Section 802.40 exempts acquisitions of voting securities in connection with the formation of certain tax-exempt, nonprofit corporations, and § 802.41 exempts the new corporation from filing notification in connection with its own formation.

Background Information to § 801.40

The earlier versions of the rules, which were drafted in terms of joint ventures rather than joint venture or other corporations, generated a substantial number of comments during both the first and second comment periods. Many comments insisted that Congress had not intended the act to apply to joint ventures and therefore that including them within the ambit of the rules was improper. (See, e.g., 16, 47, 57, 59, 62, 83, 84; 1018, 1019, 1025, 1030, 1046, 1060, 1068, 1069, 1070, 1075, 1086, 1087, 1088, 1096, 1097.) These arguments were based on inferences drawn from legislative history and other sources outside title II of the Antitrust Improvements Act, as well as from the specific language of section 7A. Specifically, the comments noted that title II omitted mention of joint ventures (16, 83, 84), and contrasted the explicit references to joint ventures in title I of the Antitrust Improvements Act, the Antitrust Civil Process Act amendments, 15 U.S.C. 1311 (57, 67). One comment (92) also suggested that, since Congress had eliminated from an earlier draft a clause giving the Commission the power to expand the scope of the act's coverage, coverage should not be "expanded" by rule to embrace joint ventures. Comment 47 argued that since, in contrast to a merger, there is no problem "unscrambling" the assets of a joint venture if after its formation it is found to be anticompetitive, preconsummation review is less imperative. Finally, one comment (59) objected to coverage because the Commission's existing premerger notification program does not reach joint ventures.

The Commission finds, however, that nothing in the act's legislative history indicates that Congress did not intend for the act to reach acquisitions of voting securities in connection with the formation of new corporations. To the contrary, the language of the act indicates that, except for the qualifications of section 7A(a) and the exemptions in section 7A(c), Congress intended that the act reach all acquisitions of voting securities—regardless of the types of transactions in which they occur. The comments that objected to joint venture coverage were focused on the formation of the new entity rather than on the acquisition of its voting securities. Since under the act the former is irrelevant and coverage of the latter is beyond doubt, these comments were rejected.

The formation of new corporations in connection with mergers or consolidations is excluded from the rule, since the character and likely competitive consequences of such transactions are dissimilar to those treated under this rule.

"Joint Venture or Other Corporation"

It became apparent after the first comment period that there is no commonly understood and generally accepted definition of "joint venture." The comments suggested that thousands of common business arrangements in different industries could be construed as joint ventures. These business arrangements range from coproduction ventures in the motion picture industry (e.g., 67, 78, 116) to joint bidding, exploration and drilling in the oil and gas industry (e.g., 3, 5, 8, 16, 24, 34, 46, 72) to real estate development and shopping center construction projects (e.g., 10, 60, 81, 83). It was clear from the comments that there was no consensus whether any, some, or all of these arrangements were "joint ventures" and thus whether their formation would have been a reportable event under those rules. The comments insisted that these common joint arrangements are unlikely to violate the antitrust laws, and that because of the frequency with which they are used, the reporting and waiting period requirements would impose substantial hardships on the venturers.

The Commission thus sought more information about joint ventures. The Federal Register notice accompanying the revised rules invited comments detailing the types and forms of organizations of joint ventures that would have been reportable under the revised rules (42 FR at 39044 (Aug. 1, 1977).

This invitation attracted 52 comments. These comments revealed that in the industries in which joint business arrangements are most commonly formed to effect day-to-day operations—the oil, gas, and other extractive industries (e.g., 1018, 1019, 1022, 1024, 1025, 1033, 1034, 1046, 1056, 1060, 1069, 1075, 1081, 1084, 1087, 1088, 1096, 1097, 1107); the construction industry (e.g., 1015, 1047, 1077, 1092, 1112, 1113, 1114); the real estate investment and development and shopping center development industries (e.g., 1064, 1065, 1070, 1079, 1085); the motion picture industry (e.g., 1066); and financing transactions (e.g., 1071, 1089) very few of those arrangements typically are incorporated. They also suggested that although the venturers are sometimes competitors, the ventures usually do not engage in marketing and are primarily risk-sharing devices. As a general rule, in these day-to-day joint ventures the participants provide a pro rata share of the expenses and take in kind from the output of the venture. They frequently are formed for a single, specific purpose (e.g., bidding on a lease or project, making a movie, or completing a specific project) and often are dissolved when that purpose has been accomplished or abandoned. The comments also expressed concern that the coverage of "joint ventures" under the revised rules was ambiguous.

The approach to joint ventures adopted in the final rules meets these concerns. Section 801.40 applies to "joint venture or other corporations." When a new corporation is formed, it typically issues its stock to those contributing capital. The language of the rule makes clear that the formation of any corporation, regardless of what the parties call it, potentially gives rise to a reportable acquisition of voting securities by every shareholder. This approach obviates the need to decide whether an entity should be termed a joint venture, because the concept of "corporation" is unambiguous. Moreover, it emphasizes that it is not the *formation* of the corporation upon which the act (and similarly, the rules) focuses, but rather the acquisition of a corporation's voting securities.

There is evidence that Congress intended coverage of acquisitions by or of noncorporate entities. Section 7A(b)(3)(A) states:

> The term "voting securities" means any securities which * * * entitle the owner or holder thereof to vote for the election of directors of the issuer *or, with respect to unincorporated issuers,* persons exercising similar functions. (Emphasis supplied.)

However, the Commission has instructed its staff to monitor the formation of joint business arrangements of all types and forms and to determine, after a year of operation, whether the rules provide appropriate coverage. The fact that persons contributing to the formation of a noncorporate joint venture are not required to report and wait prior to the transaction should not, of course, be construed as a Commission statement that such transactions are free from antitrust concerns. See section 7A(i).

Size-of-person and Size-of-Transaction Tests

The rule adapts acquisitions in connection with the formation of joint ventures, which alway involve at least three parties, to the basic two-party framework of the act by separately pairing each parent with the joint venture or other corporation, and then testing the pair against a modified version of the size-of-person test of section 7A(a)(2), and the size-of-transaction test of section 7A(a)(3). Thus with respect first to the size-of-person test, if the joint venture or other corporation is of $10 million size (determined under paragraph (c) of the rule), a parent of $100 million size may be required to report. If the new entity will have $100 million or more in total assets, an acquiring person with annual net sales or total assets of $10 million may be required to report. This aspect of § 801.40(b) is drawn directly from section 7A(a)(2).

In each of these cases, however, paragraph (b) of the rule imposes an additional requirement not present in section 7A(a)(2)—the participation of another person of $10 million size forming the corporation. See § 801.40 (b)(1)(iii), (b)(2)(iii). Thus, a parent of $100 million size contributing to the formation of a corporation of $10 million size need only report and wait if a second contributor is of $10 million size. This additional contributor may not itself be required to report. If neither it nor the joint venture or other corporation are of $100 million size, when paired they will not satisfy the test of § 801.40(b) (because they would not satisfy the test of section § 7A(a)(2)).

Likewise, each pair, composed of an acquiring person and the acquired person (new entity), must satisfy the size-of-transaction test of section 7A(a)(3) before the acquiring person need report. If the particular acquiring person as a result of the acquisition forming the new corporation will not hold either 15 percent or $15 million of the voting securities of the new corporation, it need not report.

This approach to coverage in final § 801.40(b) differs in two respects from that taken in the original rules. First, the size criteria were stated as exemptions in original § 802.30, rather than as coverage criteria in original § 801.55. Second, the original rules addressed only the situation in which parents of $100 million and $10 million sizes were involved as acquiring persons, regardless of the size of the new entity. The revised rules transferred the size criteria to § 801.40 and expanded them to include two parents of $10 million size contributing to the formation of a $100 million joint venture. As comment 95 observed, the latter situation reflects section 7A(a)(2)(C), which is applicable to all other types of acquisitions.

Comment 16 suggested that a joint venture should be exempt from the notification and waiting period requirements unless all of the acquiring persons have net sales on total assets of $100 million or more. This suggestion was rejected. Clearly section 7A(a)(2) authorizes the Commission to go further than that. If the acquired person (the new entity) has net sales or total assets of $100 million or more, an acquiring person may be of $10 million size and, if the size-of-transaction tests are met, it will be subject to the act. Another comment (63) suggested that if the formation transaction is reportable, all the contributors should be required to report. This comment was also rejected, since, as discussed above, paragraph (b) is closely modeled after those combinations of acquiring and acquired persons that satisfy the size-of-person test of section 7A(a)(2).

Comment 57 suggested that, since section 7A(a)(1) is stated in the present tense, coverage of joint ventures at formation is improper. First, it argued, securities cannot be acquired from a person not yet in existence, and second, the act should not apply unless the acquired person satisfies the size-of-person test at the time of acquisition. The Commission is unpersuaded by these arguments. Section 7A(d)(1) grants the Commission the power to define the terms of the act, and the rules define "person" to include a joint venture or other corporation not yet formed. Section 801.1(a)(2) defines "entity" to include "any joint venture or other corporation which has not been formed but the acquisition of the voting securities in which, if already formed, would require notification under the act and these rules * * *." And under § 801.1(a)(1) a "person" is composed of entities. Thus, since a joint venture not yet formed may be a "entity," it also may be a "person." Somewhat similarly, § 801.40(c) adapts the size-of-person test to the formaton of a joint venture or other corporation, notwithstanding the fact that the corporation, by one view, does not have total assets at the time of formation. The Commission believes this treatment is reasonable and permissible for the reasons previously stated.

Total Assets of Joint Venture or Other Corporation

Paragraph (c) of the rule provides that the assets of the new entity will include (1) all assets that the parents have agreed to transfer or for which agreements have been obtained for the new entity to acquire at any time, and (2) all credit or other obligations that the parents have agreed to extend or guarantee at any time. The paragraph focuses upon the agreement at the time of formation; however, the new entity's assets are not limited to those contributed at formation. Thus, if the contributors agree to form a joint venture or other corporation and agree to contribute assets each year for a specified number of years, the total assets of the new entity for the size-of-person and percentage-of-assets tests will be the total of all contributions over the several years. See the example to the rule. This approach to total assets is followed because, at least at formation, the timing of the contribution of assets to a new entity is totally within the control of the contributors. The Commission considers it reasonable to rely on agreements entered into by those contributors for purposes of calculating the entity's size.

The emphasis of the original rule was different. Original § 801.55(d) provided that assets of a joint venture included all assets intended to be contributed to the venture within 1 year of formation. Numerous comments (e.g., 25, 26, 74, 84, 92) objected that reliance on the parents' intentions made the act's coverage turn on a purely subjective determination and therefore was unworkable. Comment 95 suggested—and the Commission agreed—that the assets of the joint venture need not be restricted to those contributed during the first year; instead, it urged that all assets that the contributors intended to commit during the life of the new entity should be tallied. The revised rule thus looked to those assets and loans that the venturers (or any other persons) had agreed to contribute or guarantee at any time. It was adopted in the final rule with only minor revi-

sions for clarity and conformity with other language of the rule.

COMMERCE TEST

Paragraph (d) provides that the commerce test of section 7A(a)(1) is satisfied, for purposes of this rule, if the activities of any acquiring person are in or affect commerce, or if the filing person should reasonably believe that the activities of the joint venture or other corporation will be in or affecting commerce. Section 7A(a)(1) states that the act applies if "the acquiring person, *or* the person whose voting securities or assets are beng acquired, is engaged in commerce or in any activity affecting commerce * * *." [Emphasis supplied.] Since the word "or" is disjuncative, the test is satisfied if only the acquiring person is engaged in commerce or an activity affecting commerce, within the meaning of that term in § 801.1(*l*).

Moreover, it is appropriate to find the commerce test satisfied, if the joint venture or other corporation to be created will engage in commerce. Under the definition of "entity," the joint venture or other corporation qualifies as a "person," as discussed above. And since the joint venture or other corporation merely by its formation may exert an effect on commerce it is appropriate to consider its future activities in or affecting commerce for purposes of the commerce test at the time of its formation.

Original § 801.55(c) would have provided that a joint venture would be deemed engaged in commerce or an activity affecting commerce if the persons contributing to its formation intended that it be so engaged within 1 year of formation. Revised § 801.40(d) eliminated the 1-year limitation, and instead focused upon whether the agreement among the contributors, rather than the contributors themselves, contemplated that the activities of the joint venture would be in or affecting commerce. The formulation in the final rule, the reasonable belief of the person filing notifiction, both establishes an objective standard and unambiguously calls for its application by the particular person filing notification.

SECTION 801.90 TRANSACTIONS OR DEVICES FOR AVOIDANCE

Section 801.90 prohibits transactions or devices entered into or employed for the purpose of avoiding the obligation to comply with the notification and waiting period requirements of the act. It provides that whenever the parties to an acquisition appear to have structured their transaction in order to avoid the requirements of the act, the Commission will apply the act and the rules to the substance rather than to the form of the transaction. The rule serves as a warning that the enforcement agencies may seek civil penalties or equitable relief under section 7A(g) whenever it appears that the act's reporting and waiting period requirements apply and have not been observed.

For purposes of determining whether transactions or devices for avoidance have been employed, of obvious relevance will be the existence of reasons other than avoidance for the manner in which a particular transaction is consummated. Each situation, therefore, will be considered on its own merits.

Two examples illustrate the rule.

BACKGROUND INFORMATION TO § 801.90

Because of the broad variety of transactions subject to the act and the unavoidable complexity of the act and rules, persons may be able to structure acquisitions to avoid the act and rules in ways not specifically contemplated by the act and rules. Even if a complex rule or set of rules could be constructed to prohibit such maneuvers, a general prohibition is preferable. Any transaction or sequence of transactions that appear to have been devised in order to avoid reporting obligations will be disregarded, and the substance of the underlying transaction will detemine whether the act applies.

This rule appears for the first time in the final rules.

PART 802 OF THE RULES

SECTION 802.1 ACQUISITION OF GOODS OR REALTY IN THE ORDINARY COURSE OF BUSINESS

Section 802.1 interprets and expands the exemption contained in section 7A(c)(1) which exempts "acquisition of goods or realty transferred in the ordinary course of business."

Paragraph (a) of the rule extends the section 7A(c)(1) exemption to acquisitions of voting securities, when the issuer's assets consist solely of realty and other assets incidental to the ownership of realty. In such cases, acquisition of the voting securities of the realty corporation will be viewed as acquisition of the realty. This treatment does not mean that every acquisition of either real estate or the stock of real estate corporations is automatically entitled to exemption under section 7A(c)(1). The rule means only that if an acquisition of realty would be exempt under section 7A(c)(1), the exemption will not be lost simply because the realty purchase is accomplished by making a stock acquisition, so long as the issuer meets the limitations set forth in the rule.

Paragraph (b) of the rule provides that an acquisition shall not be exempt under section 7A(c)(1) if, as a result of the acquisition, the acquiring person will hold all or substantially all of the assets of an entity (or of an operating division of an entity). None of the goods or realty to be acquired may be considered "transferred in the ordinary course of business" if such a situation will arise. The only exceptions are entities described in paragraph (a) of the rule. All of the assets of such an entity—i.e., the realty and related assets—may be acquired in the ordinary course of business, and such an acquisition may be exempt under section 7A(c)(1). Likewise, all of the voting securities of such a corporation may be so acquired, since under paragraph (a) such an acquisition will be treated as an acquisition of realty.

BACKGROUND INFORMATION TO § 802.1

This rule appears for the first time in the final rules.

Paragraph (a) appears because the Commission determined that the applicability of this exemption should not depend upon the form of the acquisition. At least from an antitrust standpoint, whether real estate is acquired directly or by acquiring voting securities would seem to make no difference. Comments 83 and 1070 recommended a provision resembling paragraph (a).

Paragraph (b) excludes from the concept of ordinary course of business acquisitions of all or substantially all of the assets of an entity. A person which transfers all or substantially all of its assets normally does not do so in the ordinary course of business. Furthermore, the Commission has determined that Congress did not intend to exempt such acquisitions under section 7A(c)(1). See, e.g., 122 Congressional Record S15417 (daily edition, September 8, 1976) (remarks of Senator Hart).

SECTION 802.6 FEDERAL AGENCY APPROVAL

Section 7A(c)(6) exempts from the requirements of the act and rules—

> * * * transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

And section 7A(c)(8) exempts—

> * * * transactions which require agency approval under section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843), section 403 or 408(e) of the National Housing Act (12 U.S.C. 1726 and 1730a), or section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464), if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction.

Section 802.6 identifies, for purposes of sections 7A (c)(6) and (c)(8), what is included in the term "information and documentary material." It provides that a person availing itself of these exemptions must file one copy of all documents, application forms, and all other written submissions of any type whatsoever filed with another agency in connection with the acquisition. Alternatively, the filing person may submit one copy of an index describing all such "information and documentary material," provided that the index is accompanied by a certification that any information or documents indexed but not provided will be supplied within 10 calendar days of a request by the Commission, Assistant Attorney General, or a delegated official of either. The Federal Trade Commission has delegated its power to make such requests to the Director Deputy Directors and Associate Director for Premerger Notification of the Bureau of Competition, without power of redelegation. All materials ("information and documentary material" or indices therof) must be submitted to the offices of the agencies designated in § 803.10(c).

Section 802.53, which invokes the procedure set forth in this section regarding the index, is thus likewise subject to the same provisions regarding submission of the index, requests for the underlying documents, and delegation of the power to make such requests by the Federal Trade Commission.

BACKGROUND INFORMATION TO § 1802.6

Under original § 802.75, a person that elected to file an index of information and documentary material in lieu of copies of all such filings was required merely to certify that copies of such materials would be provided to the agencies upon request. The final rule adds the requirement that the filing person be prepared to submit the materials with 10 days.

One comment (15) questioned whether the "contemporaneous filing" requirement to the act and rule applied to transactions for which agency approval had been sought, but not formally conferred, prior to the effective date of the rules. The comment suggested that the rule be amended to make clear that the "contemporaneous filing" provision does not apply to documents submitted to agencies before the effective date of the rules.

An amendment of this sort does not appear necessary. The Commission interprets the requirement of "contemporaneous" submissions to mean that material filed with another agency prior to the effective date of the rules need not be submitted to the Commission and Assistant Attorney General. The Commission construes the exemption to apply in such cases, even though the prior submission of the documents prevents contemporaneous filing and, consequently, no documents are filed.

For the same reason, if the initial submissions commencing proceedings that may lead to such agency approval were made before the effective date of the rules, the filing of supplemental submissions is not required, regardless of when such submissions are made. Such supplemental submissions would not be useful in the review process. However, new original filings with other agencies occurring after the effective date of the rules must of course be contemporaneously filed with the Federal Trade Commission and Assistant Attorney General in order to gain exemption under section 7A(c)(6).

SECTION 802.8 CERTAIN SUPERVISORY ACQUISITIONS

Section 7A(c)(8) of the act specifically exempts a limited class of acquisitions subject by statute to the approval of the Federal Home Loan Bank Board ("FHLBB") or the Federal Savings and Loan Insurance Corporation ("FSLIC") from the requirements of the act, provided that copies of the information and documentary material filed with the FHLBB or FSLIC are also contemporaneously filed with the Commission and the Assistant Attorney General at least 30 days prior to consummation of the transaction. This rule completely exempts certain emergency acquisitions of failing savings and loan associations (known as supervisory acquisitions) from any filing requirement if the agency whose approval is required finds that approval of the transaction is necessary to prevent the probable failure of one of the institutions involved.

This specialized exemption has relevance only to a limited class of transactions—acquisitions and mergers of savings and loan associations which by statute require the approval of the FHLBB. There are several types of such transactions. The FHLBB has the statutory power under section 5 of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464, to approve or disapprove a merger, consolidation, or purchase of the assets of a Federal savings and loan association. In its capacity as operating head of the FSLIC, it also has the power under section 403 of the National Housing Act, 12 U.S.C. 1726, to approve or disapprove mergers of savings and loan associations insured by the FSLIC. In the same capacity, the FHLBB exercises a similar power, under section 408(e) of the National Housing Act, 12 U.S.C. 1730a(e), to approve or disapprove the acquisition of control by a savings and loan holding company of a savings and loan association.

BACKGROUND INFORMATION TO § 802.8

This exemption was suggested by the FHLBB in its comment (1) on the original rules. The exemption for supervisory acquisitions—those in which the FHLBB or the FSLIC approves (and often arranges) acquisition of a failing savings and loan association in order to save it from imminent failure—is based on the need for extremely speedy action in such cases. The 30-day waiting period provided in section 7A(c)(8) might be too long, because the savings and loan association might fail before the period expires, resulting in the payment of savings account insurance claims by the FSLIC and the depletion of the corporation's insurance reserves. This failure could have an adverse effect on other financial institutions and on the confidence of savers in such institutions.

Further, the exemption from the waiting period requirement reflects a judgment that, as the FHLBB suggested, supervisory acquisitions are not likely to violate the antitrust laws since the disappearing association is always a failing institution.

An exemption for supervisory mergers and acquisitions is also consistent with other existing law and practice in the area of regulation of financial institutions. For example, in bank mergers subject to section 18(c) of the Federal Deposit Insurance Company Act, 12 U.S.C. 1828(c) (exempt from reporting under this Act by reason of 7A(c)(7)), the Attorney General ordinarily has thirty days to review the competitive impact of a proposed transaction, but this period may be dispensed with if immediate action is necessary to prevent the probable failure of one of the institutions. 12 U.S.C. 1828(c)(4).

For these reasons the Commission accepted the suggestion of the FHLBB and exempted supervisory transactions under the relevant statutory provisions from reporting and observing any waiting period at all.

SECTION 802.9 ACQUISITIONS SOLELY FOR THE PURPOSE OF INVESTMENT

This rule interprets the exemption contained in section 7A(c)(9) of the act. The rule provides that if an acquisition is made solely for the purpose of investment, as defined in § 801.1(i)(1), the acquiring person need not observe the reporting and waiting period requirements of the act, regardless of the dollar value of voting securities held or acquired, so long as its holdings as a result of the acquisition will not exceed 10 percent of the issuer's voting securities. The act limits the exemption to acquisitions of voting securities.

If as a result of an acquisition the acquiring person's holdings would exceed 10 percent of the voting securities of the issuer, investment intent is no longer relevant, and the section 7A(c)(9) exemption can no longer apply.

Section 801.12 governs the calculation of percentages for this provision, as for all other provisions of the Act and rules.

BACKGROUND INFORMATION TO § 802.9

The rule merely interprets the exemption conferred by section 7A(c)(9). The FEDERAL REGISTER notice accompanying the revised rules stated:

> Because of the difficulty in establishing criteria for determining when voting securities are held "solely for the purpose of investment," the Commission also invites comment on the desirability of exempting from the reporting requirments all acquisitions of voting securities which do not result in the acquiring person holding more than 10 percent of the outstanding voting securities of the issuer regardless of the acquiring person's intent.
>
> 42 FR at 39047 (Aug. 1, 1977).

A number of comments (e.g., 1053, 1059, 1070, 1077, 1110, 1111) endorsed the suggestion that investment intent should be disregarded and that all acquisitions below the 10 percent level should be exempt. The Commission declined to follow this course for two reasons. First, the language of section 7A(c)(9) clearly makes the acquiring person's intentions a relevant consideration. Second, such an exemption would, when large corporations are involved, eliminate the $15 million reporting threshold of section 7A(a)(3)(B), contrary to congressional intent.

Original § 802.85 would have required an acquiring person to file a short statement at the time of purchase in order to qualify for the section 7A(c)(9) exemption. The statement was to contain the names of the acquiring person and the issuer, the percentage of the latter's voting securities held before and after the acquisition, and a declaration that the voting securities would be held solely for the purpose of investment. A number of comments (e.g., 63, 89, 105, 112, 115, 120) questioned the Commission's legal authority to require such a statement. The revised rules did not contain any similar filing requirement, and none has been included in the final rules. The principal result of requiring such statements would have been to disclose holdings of less than 10 percent of the shares of an issuer, and in general holdings of 5 percent or more will be disclosed in any event by the filing of a schedule 13D with the SEC. The Commission believes that it has the authority to insert such a requirement at a later date, should it appear necessary to monitor compliance with section 7A(c)(9) more closely.

For further information, see the definition of "solely for investment purpose," § 801.1(i)(1), and its Statement of Basis and Purpose.

SECTION 802.10 STOCK DIVIDENDS AND SPLITS

Section 7A(c)(10) exempts

> Acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer * * *.

This exemption was designed to apply to two common types of stock acquisitions: Those resulting from stock splits and pro rata stock dividends. Section 802.10 makes this explicit.

BACKGROUND INFORMATION TO § 802.10

Neither of the two types of acquisitions exempted by the rule increases the holder's ability to influence management decisions vis-a-vis other shareholders, even though, under certain circumstances, these acquisitions may increase the market value of that person's stock holdings.

Original § 802.90 exempted only the two types of aquisitions exempted by the final rule. In response to comment 63, revised § 802.10 also exempted acquisitions of voting securities "pursuant to an issue of new shares offered proportionately to all shareholders." The revised rule generated no comments. However, this provision was deleted from the final rule because it appeared to exceed the criterion of section 7A(c)(10). The fact that a new issue of voting securities is offered proportionally to all shareholders does not insure that the offer will be accepted (or accepted proportionally) by all shareholders. Thus, acquisitions which result from such an offering may increase the acquiring person's share of the outstanding voting securities of the issuer. Accordingly, the Commission determined to eliminate that portion of the revised exemption.

SECTION 802.20 MINIMUM DOLLAR VALUE

This rule exempts certain acquisitions as a result of which the acquiring person would hold 15 percent or more of the voting securities or 15 percent or more of the assets of the acquired person, but the aggregate total amount of voting securities and assets so held will be $15 million or less (i.e., the 15-percent test of section 7A(a)(3)(A) will be satisfied, but the $15 million test of section 7A(a)(3)(B) will not). The rule exempts acquisitions as a result of which the acquiring person would not hold either (a) assets of the acquired person valued at more than $10 million, or (b) voting securities conferring control of an issuer which, together with all entities that it controls, has annual net sales or total assets of $10 million or more.

BACKGROUND INFORMATION TO § 802.20

The purpose of this rule is to eliminate reporting and waiting period requirements with respect to certain relatively small acquisitions that are clearly reportable under the act. For example, if a $100 million person were to make an acquisition of assets from a $10 million person, the transfer of as little as 15 percent of the assets of that person, worth as little as $1.5 million, would be subject to a reporting requirement. Further, because percentage holdings of voting securities are calculated with reference only to the issuer (see § 801.12(a)), potentially some even smaller acquisitions of voting securities may, by reason of section 7A(a)(3)(A), be reportable. For example, if the same $100 million person were to acquire 15 percent of the voting securities of an entity included within the $10 million acquired person, that transaction would be reportable but for this rule, regardless of the size of the entity.

It is clear from the language of the act that Congress did not intend to limit the coverage of the act to large acquisitions; instead, the act expressly applies to transactions between large parties, including some relatively small acquisitions.

Nevertheless, the Commission believes that certain relatively small transactions (frequently involving only a portion of the stock or assets of the acquired person) that might be reportable under the act are sufficiently unlikely to have a significant anticompetitive impact that imposition of the act's requirements would not represent an appropriate use of public resources. These transactions are exempted by § 802.20. As with any other exemption rule, of course, either agency may challenge an acquisition under a substantive antitrust law, notwithstanding exemption from section 7A. See section 7A(i).

Original § 802.40 and the revised and final versions of § 802.20 all exempt asset acquisitions as a result of which the acquiring person will not hold assets of the acquired person valued at more than $10 million.

The original version also would have exempted acquisitions as a result of which the acquiring person would not hold voting securities of the acquired person valued at more than $10 million, so long as the transaction did not confer control of any issuer. Several comments (e.g., 45, 81, 120) pointed out that, as long as that provision placed no limitation on the size of the

issuer, reporting requirements might still extend to transactions which conferred control of issuers of de minimis size. In response, the revised rule exempted all acquisitions of voting securities valued at less than $10 million which did not confer control of an issuer with annual net sales or total assets of $10 million or more. Acquisitions of voting securities valued at more than $10 million were not exempt under the revised rule, regardless of whether such acquistions conferred control of an issuer.

In the final rule, the exemption does not depend on the value of the voting securities, although the rule does not apply (as neither of the earlier versions applied) to an acquisition as a result of which the acquiring person will hold voting securities of the acquired person valued at more than $15 million. (If such voting securities are valued at more than $15 million, section 7A(a)(3)(B) is satisfied, and § 802.20 is inapplicable.) If such voting securities are valued at $15 million or less, the final rule exempts the acquisition unless it will confer control of an issuer which (together with any entities which that issuer controls) has annual net sales or total assets of $10 million or more.

In addition, while the revised version of § 802.20 did not apply to the formation of joint ventures (see comment 1059), the final version treats acquisitions in connection with the formation of joint venture or other corporations in the same way that it does all other acquisitions. In light of the changes in § 801.40 which result in similar treatment for joint venture and other corporations, the distinction in revised § 802.20 no longer seemed appropriate. Under the final rule, a person which, in a transaction forming any corporation, acquires sufficient voting securities of the newly formed corporation to require reporting under the act may take advantage of the exemption in §802.20 if it applies. Thus if three or more (but fewer than seven) persons, each having $100 million or more in assets or sales, form a joint venture corporation and acquire equal amounts of its stock, and if the assets of that corporation, as measured by §801.40(c), are $10 million or more, this rule would apply. Section 801.40 would require each acquiring person to report its acquisition of voting securities of the newly formed corporation, because each person would hold more than 15 percent of the shares of an entity with total assets of $10 million or more. (If there were seven or more persons acquiring equal shares no one person would hold as much as 15 percent.) However, under § 802.20, if none of the acquiring persons would be acquiring voting securities valued in excess of $15 million and since none of the acquiring persons would obtain control of an issuer of $10 million size, each person's acquisition would be exempt under § 802.20. If any one person were acquiring voting securities valued in excess of $15 million, or if any one (or two, if there were only two) of the acquiring persons were obtaining control of this issuer, each such person's acquisition would not be exempt under § 802.20, although the acquisitions of the other persons might be. See the Statement of Basis and Purpose to § 801.40.

One comment on the original rule (95) pointed out that the rule would permit acquisition of 25 percent of the stock of a $40 million company or 15 percent of a $66 million company. That is not technically correct, since the amount of stock that may be purchased without reporting is determined by the value of the stock acquired, not by the size of the company, although the value of the stock may be related to the value of the company's assets. (If it is assumed that the aggregate value of a company's outstanding shares is equal to its total assets, then the final rule could permit acquisition of as much as 37.5 percent of a $40 million company, or 22.7 percent of a $66 million company, or 49.9 percent of a $30 million company; any greater percentage would in each case result in a holding of stock valued in excess of $15 million, and the exemption would not apply.) That comment questioned the wisdom of exempting such transactions without a detailed study of their frequency and effect. The Commission did not believe it appropriate to impose reporting obligations and to expend scarce law enforcement resources on relatively small stock acquisitions, since the benefit to the public is less likely to be as significant in these situations. While the thrust of this comment may have been that the exemption had been extended to inappropriately large transactions, it did not suggest an alternative means of distinguishing relatively small acquisitions from those that may have a more substantial impact upon a significant amount of commerce. After the effective date of these rules, the Commission staff will continue to monitor mergers and acquisitions brought to their attention by members of the public, reports in the trade press and other sources. If it appears from this experience that the balance between administrative cost and the benefits of enforcement should be shifted because the exemptions in § 802.20 are unduly broad, the Commission will consider narrowing them.

Comment 1042 suggested that § 802.20 should exempt all transaction involving less than $15 million worth of stock or assets, in order to eliminate the "anomaly" of reaching very small transactions. The Commission believes that, if Congress had intended such a result, the act could easily have been worded so as to achieve it. The fact that the act contains an alternative percentage test in section 7A(a)(3)(A) and dollar test in section 7A(a)(3)(B) indicates a clear congressional intention to reach at least some acquisitions that satisfiy only the percentage test. Adoption of this suggestion thus seems inappropriate.

Comment 1061 suggested that if a person containing an institutional investor holds a noncontrolling stock interest in another person, the former should be permitted to purchase up to $10 million of the assets of the latter without reporting. The rationale underlying the comment apparently was that a small acquisition of assets does not gain additional significance by reason of the acquiring person's holding of the seller's voting securities for investment. Section 801.15(b) of the final rules adopts a similar procedure, but extends it to all acquisitions of voting securities exempt under section 7A(c)(9) or § 802.64, so long as the limitations of those respective exemptions are not exceeded.

Finally, comment 1075 suggested increasing the $10 million coverage threshold in the rule for capital-intensive industries, on the theory that small acquisitions in such industries are less likely to have an impact on competition than in less capital-intensive industries. The comment did not, however, propose a means of implementing this suggestion, and the Commission regards it as unworkable. It is also unclear whether the premise underlying the suggestion is necessarily correct, and the comment offered no factual support for it. The difficulty of generalizing about the impact of mergers and acquisitions upon competition suggests the inadvisability of eliminating reporting requirements as a result of similar generalizations about whether an industry is "capital-intensive."

SECTION 802.21 ACQUISITIONS OF VOTING SECURITES NOT MEETING OR EXCEEDING GREATER NOTIFICATION THRESHOLD

In general, if a person has previously complied with the act, § 802.21 exempts for a period of 5 years additional acquisitions of the voting securities of the same acquired person, so long as the acquiring person's holdings do not meet or exceed the next higher "notification threshold." The rule also replaces § 802.22 of the revised rules and permits the acquiring person, if its holdings decrease below the level for which it originally filed notification, to meet or exceed that level again within 5 years without filing notifica-

tion. The rule does not exempt any acquisitions of assets.

Under the act, every acquisition after which the acquiring person would hold more than 15 percent or $15 million of the stock of the acquired person is potentially reportable. Section 801.13 interprets the phrase "as a result of" in section 7A(a)(3), the size-of-transaction test for application of the act. Under § 801.13, every acquisition after which the acquiring person would hold more than 15 percent or $15 million of the stock of the acquired person satisfies this criterion, rather than only acquisitions that first raise the acquiring person's holdings to the 15 percent or $15 million level. See the statement of basis and purpose to that rule.

Section 802.21, in substance, exempts all acquisitions above the 15 percent or $15 million level except those meeting or exceeding notification thresholds or those occurring more than 5 years after the earlier notification.

The rule conditions the exemption upon three requirements, set forth in paragraphs (a), (b), and (c). First, the acquiring person (in the acquisition for which the exemption is being considered) must have filed notification with respect to an earlier acquisition of the same issuer's stock, and all other persons required by the rules to file with respect to the earlier acquisition must also have done so. Second, the waiting period with respect to the earlier acquisition must have expired or been terminated, and the expiration or termination must have occurred within 5 years of the acquisition being considered for exemption. Finally, the acquisition must not increase the holdings of the acquiring person to meet or exceed a notification threshold greater than the greatest threshold surpassed in the earlier acquisition.

The term "notification threshold" is defined § 801.1(h). In brief, the four thresholds are (1) the 15 percent or $15 million level of section 7A(a)(3); (2) 15 percent of the outstanding voting securities of the issuer, if valued at more than $15 million; (3) 25 percent of the outstanding voting securities of the issuer; and (4) 50 percent of the outstanding voting securities of the issuer. See also the statement of basis and purpose to § 801.1(h)(1). Thus, as the example to § 802.21 illustrate, after complying with the act for an acquisition of 15 percent of the stock of an issuer, the acquiring person can increase its holdings to any amount below 25 percent of the stock within 5 years of the end of the earlier waiting period without again filing notification and waiting; after acquiring 25 percent, up to 50 percent within 5 years, and so on. Once a person holds 50 percent or more of the outstanding voting securities of an issuer, further acquisitions are exempt under section 7A(c)(3).

Note that under § 803.7, the earlier notification entitles the reporting person to meet or exceed only those notification thresholds with respect to which the earlier notification was filed, and that were actually achieved within a period of 1 year. After 1 year the notification expires, and though the person may use this rule to raise its holdings to just under the next greatest threshold, it may not meet or exceed a higher threshold without again filing notification. See the example to § 803.7.

Example No. 5 to the rule illustrates the other feature of the rule: That if for some reason the acquiring person reduces its holdings below a threshold for which it filed notification and waited, it can (within 5 years of the expiration of the waiting period) cross the same notification threshold again without filing and waiting. Of course, after recrossing the threshold, it may acquire additional shares so long as it does not meet or exceed the next threshold.

Since acquisitions of assets are not exempted by the rule, any acquisition of assets that satisfies the three tests of section 7A(a) and is not exempted by the act or rules, is reportable. In particular, any acquisition as a result of which the acquiring person would hold 15 percent or $15 million of the assets of the acquired person is reportable, even though the reporting person may have previously filed notification with respect to an acquisition of assets from the same person. Note, however, that under § 801.13(b) assets cease to be assets of the acquired person, and become assets of the acquiring person, after 180 days.

Background Information to § 802.21

The language of the act indicates that Congress contemplated agency review of stock acquisitions not only at the 15 percent or $15 million level, but also at additional, higher levels of ownership. Further review is desirable because holdings that may be innocuous at low levels may pose antitrust concerns at higher levels. Section 801.13 construes the phrase "as a result of" to fulfill this congressional purpose; see the statement of basis and purpose to that rule.

However, this principle would not justify notification and a waiting period prior to every acquisition above the 15 percent or $15 million level. The delay and expense of repeated filings would be extremely burdensome to reporting persons and would present too substantial an administrative burden for the enforcement agencies. Nor would such notifications serve any enforcement purpose. Percentage holdings varying by a few percentage points will in most cases have equivalent antitrust significance, and periodic review at the levels of the notification thresholds, or within the timing constraints of § 802.21, should be sufficient. The rule insures that the agencies learn of appreciable increases in holdings by imposing the reporting requirements at the prescribed notification thresholds, and insures that the agencies learn of changed circumstances by imposing the reporting requirement in any event after 5 years. Of course, in a particular case an acquisition exempted by the rule may prove to have antitrust significance, and the fact that the acquisition was exempt under this (or any other) rule does not preclude either agency from challenging the acquisition. See section 7A(i).

The reasons why these precise ownership levels were selected as notification thresholds are detailed in the statement of basis and purpose to § 801.1(h). The 5-year limitation is discussed in connection with paragraph (b) of this rule.

The final version of the rule reflects important modifications both from revised § § 802.21 and 802.22 and from related provisions in the original rules.

The definition of "notification thresholds," which appeared in the revised rules as § 802.21(a), has been transferred to § 801.1(h) because the term proves useful in other rules as well.

Paragraph (a) of the rule is unchanged from revised § 802.21(b)(1). The Commission rejected suggestions in the comments (e.g., 74, 77, 120) that submissions under the existing FTC premerger notification program should satisfy the requirement of a prior report, or that the requirement should be eliminated. The existing program's report form is not as comprehensive or detailed as the notification and report form, and the breadth of the exemption conferred by the rule warrants the more penetrating initial inquiry.

Paragraph (b), however, significantly alters revised § 802.21(b)(2). The final rule inserts the requirement that the waiting period for the earlier acquisition must have expired or been terminated in order to insure that the agencies have completed their review of the competitive consequences of the acquisition. In addition, by measuring the time period from the date of expiration or termination of the waiting period, rather than the date of filing notification, the time period for exemption is a full 5 years.

Paragraph (b) of the final rule also lengthens the 180-day period contained in the revised rule into a 5-year period during which subsequent acquisitions may qualify for the exemption.

Numerous comments had protested the 180-day restriction, urging variously 1 year (1053, 1090, 1091, 1101), 2 years (1044, 1077, 1090), 5 years (1059) or its deletion altogether (1086). The comments argued that changed business activities of the parties would not change the Government's enforcement intentions often enough to justify the burden of compliance with the act at such brief intervals. The comment of the Securities and Exchange Commission (1058) had also expressed concern that 180 days from the date of filing might not be long enough to avoid conflict with proposed SEC rule 14d-6, which would require tender offerors to pay the tender offer price for all purchases within 40 days after the close of the offer. The final rule sets the time period at 5 years because, in addition to the reasons expressed by the comments, the Bureau of the Census undertakes its comprehensive economic censuses every 5 years, so that by the time the exemption ceases to be available the agencies will have new census data to compares with the data submitted.

Final § 802.21(c) replacess revised § 802.22, which exempted acquisitions recrossing notification thresholds, by rewording revised § 802.21(b)(3). Instead of prohibiting attainment of any notification threshold, as did the revised rule, the final version of paragraph (c) prohibits only reaching or exceeding a greater notification threshold than the highest one attained in connection with the earlier notification. Thus, any number of acquisitions raising or lowering holdings across a notification threshold earlier attained are fully exempt, and § 802.22 has been deleted. The comments on § 802.22, which almost exclusively recommended lengthening the time period for the exemption (1059, 1077, 1086, 1090, 1091), have been acknowledged by combining the rule with the 5-year period adopted for § 802.21.

The final version of § 802.21(c) also accomodates the insertion of § 803.7 into the final rules. Its phrasing, "the greatest notification threshold met or exceeded in the earlier acquisition" means the greatest threshold met or exceeded within the 1-year period before the notification expires under § 803.7. See the example to that rule.

Original § 802.45 would have adopted a different exemption scheme for acquisitions subsequent to compliance with the act. It would have allowed incremental increases of 5 percent of an issuer's voting securities, without time limit, above the holdings reflected by the original notification, provided that the incremental acquisition would not confer control of the issuer. ("Control" in the original rules was defined to mean control in fact, regardless of the percentage held.) Several comments on the revised rule (1044, 1059, 1077, 1090) recommended adoption of both schemes: Permitting acquisitions up to thresholds within a time period, as the final rule does, and incremental acquisitions of a de minimis percentage above the last notification filed, without time limit. Comment 1059, for example, argued that the two exemptions served different needs, but that both were desirable. The final rules do not provide for a de minimis exemption without time limit, partly because of the lengthening of the time period for the exemption to 5 years. De minimis incremental acquisitions that cross a notification threshold are thought to warrant examination for the reasons underlying the notification thresholds, while those occurring more than 5 years after the waiting period from the previous filing do not merit exemption because the businesses of the acquiring and acquired persons, the market or the product may have changed.

The original rules also contained a provision, § 802.50, allowing a "short report" in place of the notification and report form for acquisitions between the same parties within 1 year of filing notification with respect to the earlier acquisition. The final rules omit this procedure since § 802.21 embodies a more comprehensive exemption.

Finally, the rules adopt no exemption for multiple acquisitions of assets by the same acquiring person from the same acquired person. Since one group of assets does not necessarily bear any relation to another, the competitive significance of each acquisition of assets is unique and must be evaluated on its own merits. Comment 63 supported this view. In any event, the problem is much less acute since, while voting securities potentially remain voting securities of the acquired person indefinitely, acquired assets become assets of the acquiring person after 180 days. See § 801.13(b)(2).

SECTION 802.23 AMENDED OR RENEWED TENDER OFFERS

Section 802.23 modifies the notification and waiting period requirements of the act under certain circumstances when a tender offeror amends or renews a tender offer with respect to which it previously filed notification.

Except in three situations, the rule fully exempts amended or renewed tender offers from any notification or waiting period requirement under the act. The rule does not affect reporting and waiting period obligations with respect to the original offer. If none of the three exceptions applies, the acquiring person is free to amend or renew its tender offer, and to consummate the acquisition, for up to one year after the expiration of the waiting period, in accordance with the provisions of section 803.7.

The rule applies only when the amended or renewed tender offer seeks to acquire voting securities of the same issuer as did the original tender offer. An amended tender offer is one that alters only the terms of the offer; a renewed tender offer is one that reopens the time period for offerees to tender their stock. An offer may be both amended and renewed.

In order for the rule to apply, the tender offeror must have filed notification with respect to the original offer. The rule applies whether or not the acquired person has filed notification, since under section 801.30(b)(2) the acquired person need not file until fifteen (or, in the case of cash tender offers, 10) days after filing by the acquiring person.

Paragraphs (a), (b), and (c) describe the three instances in which the rule grants only a partial exemption. First, under paragraph (a), if the number of voting securities the offeror seeks to acquire pursuant to an amended offer will meet or exceed a greater notification threshold than earlier reported, the offeror must complete and file a new Notification and Report Form, and a new waiting period will commence. The acquired person, however, is required to file only once. If the acquired person already filed notification in response to the offeror's first filing, its obligation is discharged (unless it receives a request for additional information under section 7A(e) and section 803.20). If the acquired person has not yet filed notification by the time of the second notification by the offeror, the acquired person must nevertheless file no later than the time it becomes due in respose to the first notification. The term "notification threshold" is defined in section 801.1(h). See also section 802.21.

Second, under paragaph (b), if a non-cash tender offer is amended to become a cash tender offer, the offeror must file a copy of the amended offer with the enforcement agencies, in the manner prescibed in section 803.10(c). The waiting period will expire 15 days after that filing, or 30 days after the original filing, whichever is earlier. Since the expiration date is determined by section 803.10(b), it is subject to extension by requests to the acquiring person for additional information or documentary material under section 7A(e) and section 803.20 or by court order under section 7A(g)(2) and to early termination under section 7A(b)(2) and section 803.11. When a non-cash tender offer is amended to become a cash tender offer, the acquired person's obligations are not affected. It must file no later than the time determined by the

tender offeror's first notification, and remains subject to a second request, although the waiting period is not thereby extended.

Third, if a cash tender offer is amended to become a non-cash tender offer, the offeror again must file a copy of the amended offer with the enforcement agencies in the manner specified by section 803.10(c). The waiting period will expire 15 days after that filing, or 30 days after the original filing, whichever is later. Again, the obligation of the acquired person to file notification is unaffected and is determined by the date of the original notification, and both parties remain subject to second requests.

In each of the latter two instances, the rule may be applicable even though the waiting period begun by the original offer has expired or been terminated.

If a waiting period is to be extended by a request for additional information or documentary material under section 7A(e) and section 803.20, the length of the extension is determined by the character of the tender offer at the time the response is received—that is, ten days if a cash tender offer, 20 days if a non-cash tender offer.

BACKGROUND INFORMATION TO § 802.23

The purpose of this rule is to minimize the reporting and waiting period obligations for amended or renewed tender offers, while still ensuring that the agencies receive sufficient information and advance notice to fulfill the purposes of the act.

If a tender offer is amended or renewed under circumstances other than those described in the three paragraphs of the rule, the amendment or the renewal is unlikely to have competitive consequences appreciably different from those of the original offer, as to which notification has already been filed. The agencies' decision whether to challenge the acquisition will probably not be affected by the amendment or renewal. Accordingly, the rule exempts such amendments and renewals altogether.

Amended and renewed offers described in paragraph (a), however, present different concerns. Since a higher notification threshold will be met or exceeded, a new notification and a new waiting period are required just as they would be for sequential acquisitions under § 802.21. In such cases, the increased holdings warrant fresh scrutiny by the agencies. The acquiring person's Notification and Report Form is necessary to inform the agencies of the amended acquisition. However, the rule exempts the acquired person from filing again since its Form will contain adequately current information. If the amendment is made before the acquired person has filed notification in response to the original tender offer, it must still file that notification.

If a non-cash tender offer is amended to become a cash tender offer, the acquiring person would be subject to a waiting period no longer than 15 days (before any extension), simply by filing a new notification. Paragraph (b) of the rule further relaxes the waiting period, by permitting it to expire at the end of the original 30 day period if that is earlier. The earlier expiration date is practicable because the agencies, upon receipt of notification for the original non-cash tender offer, would have had 30 days to decide whether to challenge the acquisition, and because the change in the nature of the consideration should not unduly complicate the agencies' review of the acquisition. The copy of the tender offer is needed to inform the agencies of the amendment, while the acquired person's re-filing would be redundant and is eliminated.

When a cash tender offer is amended to become a non-cash tender offer, the waiting period expires 15 days from the filing of the amended tender offer, or 30 days from the original filing, whichever is later, Again, since the agencies' review of the acquisition should be completed within 30 days from the original filing, the rule affords the agencies adequate time. Again, the copy of the tender offer is needed to inform the agencies of the amendment, but the acquired person is not required to file again.

Note that for non-cash tender offers, § 801.31 facilitates the agencies' review by ensuring that any significant holdings resulting from acquisitions of voting securities by offerees of the tender offer will be separately reportable.

By minimizing the notification and waiting period requirements, the rule minimizes multiple reporting in the event that a tender offeror changes the terms of its offer in response to competing offers by other prospective purchasers.

The rule first appeared as revised § 802.23, which had several limitations not present in the final rule.

First, revised § 802.23(a) would have required the amended or renewed tender offer to be consummated within 180 days of the filing of the earlier notification. This period has been lengthened to the 1-year period of § 803.7. The change should resolve the concern of the SEC expressed in comment 1058. The SEC had feared that the 180-day period might not be long enough for the tender offeror to comply with state laws delaying tender offerors, and with proposed SEC rule 14d-6, which would integrate with the tender offer certain purchases of securities within 40 days after its termination. Comments 1086 and 1090 also criticized the 180-day limit.

Second, revised § 802.23(b) would not have exempted the amended offer if it offered as consideration voting securities that had not been offered as consideration in the original offer. This restriction was deleted because § 801.31 assures that the agencies will learn of any significant holding resulting from acquisition of voting securities by offerees of the tender offer. Comment 1090 noted this point in substance.

SECTION 802.30 INTRA-PERSON TRANSACTIONS

This rule provides generally that whenever the acquiring and acquired persons are (or, when a wholly owned subsidiary is being formed, will be) the same person, the acquisition is exempt from the reporting and waiting period requirements of the act. Acquiring persons are defined by § 801.2(a), and for this purpose acquired persons are identified by § 801.2(b). Acquisitions of both assets and voting securities are exempt under the rule. Note that for voting securities, the acquired person is the person within which the issuer whose voting securities are to be acquired is included, and is not the person from which the voting securities are to be acquired (unless they are the same). See example No. 1 to § 801.2(b).

Thus, example No. 1 to this rule illustrates that any transaction between entities included within the same person (save for an exception noted below) is exempt. Example No. 2 illustrates that the formation of a new wholly owned subsidiary is exempt. And example No. 4 illustrates that a corporation's repurchase of its own stock is exempt. Redemptions and retirements of shares are likewise exempt. In each of these cases the acquiring and acquired persons are the same.

The rule contains two exceptions. First, the formation of a new corporation will not be exempt under the rule if the voting securities of the new corporation will be held by more than one person. Example No. 5 to the rule illustrates this exception. Second, the acquiring and acquired persons must be included within the same person because of holdings of voting securities. The definition of control, § 801.1(b), determines whether an entity is included within a person. If an entity is included within the person under the other test of control, i.e., because a contract permits the person to name a majority of the board of directors of that entity, acquisition of the shares of that entity is not exempt under this rule. Example No. 3 illustrates this point.

BACKGROUND INFORMATION TO § 802.30

Section 7A(c)(3) exempts:

acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition * * *.

This exemption expresses a Congressional determination that such acquisitions are unlikely to raise questions under the antitrust laws that were not raised by acquisition of the 50- percent interest. The rule extends the exemption to other situations to which the same rationale applies: transfers of assets between subsidiaries of the same parent, formations of new wholly owned subsidiaries, repurchases of stock by a corporation, and the like.

The two exceptions to the rule deny the exemption because this rationale does not apply. The contracts underlying contractual control may be less permanent than controlling ownership interests. In addition, termination of a contractual control relationship will generally not give rise to a reporting requirement, whereas transfer of a controlling block of stock will. Comment 1061 questioned withholding the exemption for such situations, but the final rule adheres to the position. The formation of a joint venture or other corporation having two or more shareholders is also excluded, because the combination of two different persons is an event posing precisely the kinds of antitrust concerns that the act directs the agencies to review.

The final version of the rule rephrases the previous versions, revised § 802.32 and original § 802.25. The revised rule used somewhat cumbersome language to exempt the formation of a subsidiary, which is achieved explicitly in the final rule. The final rule states that the acquiring and acquired persons are or will be the same person because the new corporation may not yet exist.

Since the reworded final rule exempts repurchases and redemptions, the final rules omit revised section 802.30 as superfluous.

Revised section 802.32 had excluded the formation of all joint ventures, but in response to comment 1070 the final rule makes clear that joint ventures involving the participation of only one person are exempt under the rule. A joint venture between subsidiaries of the same corporation would be exempt.

Comment 25 suggested that purchases of a corporation's shares should be exempt not only if made by the corporation for its own account, but also if made for the account of an employee's stock or pension plan. Under final section 801.2(a), the acquiring person is the person that as a result of the acquisition will hold the voting securities, and section 801.1(c) defines "hold" to mean beneficial ownership. Therefore, when the corporation acquires shares "for the account of" an employees' stock or pension plan, the acquisition would be exempt under this rule if the corporation becomes the beneficial owner, but would not be exempt under this rule if, for example, a pension trust became the beneficial owner. See section 801.1(c)(3). The latter acquisition may, however, be exempt under section 7A(c)(9) or under section 802.64. Likewise, the definition of "hold" answers the inquiry in comment 1058, because when other persons act on behalf of a corporation to repurchase its own stock, the corporation becomes the beneficial owner and the acquisitions are exempt under this rule.

SECTION 802.31 ACQUISITION OF CONVERTIBLE VOTING SECURITIES

Section 802.31 exempts the acquisition of convertible voting securities from the requirements of the act. The term "convertible voting security" is defined in section 801.1(f)(2). Note that section 801.32 specifies that the conversion of convertible voting securities is a potentially reportable acquisition.

BACKGROUND INFORMATION TO section 802.31

Revised section 802.31 exempted from the requirements of the act the conversion of convertible voting securities into voting securities presently entitled to vote. Under the revised rules. the reporting requirements would have attached when the convertibles were acquired. Under the final rules, however, the acquisition of voting securities that results from the conversion of convertibles is the event requiring the holder to report. The acquisition of convertible votion securities is exempt. For a full explanation of the rationale for the exemption, see the Statement of Basis and Purpose to section 801.1(f)(2); see also sections 801.1(f)(3) and 801.32.

SECTION 802.40 EXEMPT FORMATION OF JOINT VENTURE OR OTHER CORPORATIONS

Section 802.40 exempts from the requirements of the act the acquisition of voting securities in connection with the formation of a joint venture or other corporation if the newly-formed entity will be not for profit within the meaning of sections 501(c) (1)-(4), (6)-(15), (17)-(20) or (d) of the Internal Revenue Code.

BACKGROUND INFORMATION TO section 802.40

Section 802.40 exempts the formation of any corporation, whether or not termed a joint venture, that will be not for profit within the meaning of any of the cited sections of the Internal Revenue Code ("Code"). The types of organizations thereby exempted include: Corporations created by act of Congress and acting as instrumentalities of the United States, section 501(c)(1) of the Code; holding companies for otherwise tax-exempt organizations, section 501 (c)(2); religious, charitable, scientific, literary, or educational organizations that are not substantially dedicated to lobbying efforts, section 501(c)(3); civic leagues or employee asssociations, section 501(c)(4); business leagues. chambers of commerce, real estate boards, boards of trade, or professional football leagues, section 501(c)(6); recreation clubs, section 501(c)(7); fraternal lodges that provide insurance benefits to members or their dependents, section 501(c)(8); employee beneficiary associations, section 501(c)(9); domestic fraternal lodges that devote their net earnings to religious, charitable, scientific, literary, educational and fraternal purposes, section 501(c)(10); certain local teachers' retirement fund associations, section 501(c)(11); local benevolent life associations or other cooperative companies, if at least 85 percent of their income consists of amounts collected from members to meet losses and expenses, section 501(c)(12); cemeteries and burial societies operated solely for the benefit of their members, section 501(c)(13); certain credit unions, section 501(c)(14); small mutual insurance (other than marine or life) companies or associations, section 501(c)(15); certain trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, section 501(c)(17); certain pension trusts funded solely by employee contributions, section 501(c)(18); certain organizations of war veterans, section 501(c)(19); certain organizations formed as part of a qualified group legal services plan or plans, section 501(c)(20); and certain religious and apostolic organizations, section 501(d).

All these types of organizations are operated solely for the benefit of society of some segment thereof, or for the benefit of a specific membership. They either are not usually engaged in commerce within the meaning of the act and rules or are specifically prohibited from permitting any of their net earnings to inure to the benefit of any private shareholder or other individual. In light of these characteristics, it was considered unlikely that the formation of a joint venture or other corporation of one of these varieties would violate the antitrust laws, and this exemption was thus provided.

The formation of some species of organizations exempt from income taxes remains nonetheless subject to the re-

quirements of the act and rules. Section 501(c)(5) of the Code exempts "[l]abor, agricultural, or horticultural organizations," and section 501(c)(16) provides that farmers' cooperatives organized to finance crop operations of their members are tax-exempt even if they have capital stock that is owned by the associations or their members, pay dividends, and accumulate and maintain a reserve. Organizations tax-exempt under these two sections of the Code—unlike organizations tax-exempt under the other cited sections of the Code—often engage in activities that are in or significantly affect commerce. The tax-exempt status of these organizations does not insure that a combination of certain persons forming such "joint venture or other corporations" will be free from antitrust concerns. In fact, the identity of the persons contributing to the formation of such organizations is essential to determining whether the activities of the organizations so formed may be exempt from the antitrust laws under section 6 of the Clayton Act or under the Capper-Volstead Act, 7 U.S.C. section 291. Since agricultural or horticultural organizations and farmers' cooperatives may exist in the corporate form and may be organized to produce and market goods or services, the fact that they are tax-exempt is not sufficient justification to exempt their formation from the requirements of the act and rules.

Revised § 802.40 exempted the formation of tax-exempt, nonprofit joint ventures from the requirements of the act. The FEDERAL REGISTER notice accompanying the revised rules invited comments identifying and discussing other types of joint ventures or other corporations that are unlikely to violate the antitrust laws and should thus be exempted from the requirements of the act. It stated:

> [T]he Commission would like to know in greater detail the reasons that formation of specific types of joint ventures might be unlikely to violate the antitrust laws, as many of the comments have alleged. Given the fact that some judgment concerning the possible anticompetitive impact of a joint venture must be made by the enforcement agencies at the time of its formation, the Commission specifically invites comments concerning appropriate tests that would prospectively distinguish ventures which might raise possible anticompetitive consequences from those that are unlikely to do so.
>
> The Commission has difficulty with the suggestions, made in a significant number of comments received in response to the originally proposed rules, that narrow exemptions relating to specific types of joint ventures in particular industries would be appropriate. The Commission invites specific suggestions concerning principles of general application to broad classes of joint ventures, regardless of the specific industry or particular purpose of the venture, which may serve to didtinguish those ventures raising little likelihood of antitrust problems. The Commission is not inclined to grant exemptions absent clear indication that they are warranted under the Act. Comments which do not attempt to relate suggested exemptions to the underlying purposes of the act are not likely to be helpful to the Commission.

(42 FR at 39044 (Aug. 1, 1977).)

Despite this instruction, numerous comments persisted in urging industry-specific exemptions. See the Statement of Basis and Purpose to § 801.40. The Commission does not believe that the formation of a particular type of joint venture is less likely to be anticompetitive simply because it is commonly used in a particular industry. Nothing revealed in the comments eliminates this concern. Other comments suggested that "method of operation" exemptions be introduced into the rules. These exemptions would have extended to the formation of joint ventures that would not market products or services outside the venture (e.g., 1027, 1059, 1068); to joint ventures organized to perform a single contract or organized for a limited time period (e.g., 1059, 1092, 1112, 1113); or to joint ventures with public policy goals (1050).

These limiting conditions, however, do not necessarily render the formation of such ventures unlikely to violate the antitrust laws. Ventures that will not market manufactured products (or real estate or services) other than to their parents may in fact raise numerous anticompetitive problems, including market foreclosure and increased entry barriers. Such effects are even more likely if the venturers maintain a customer-supplier relationship prior to formation of the venture.

A great many problems surround the suggested "single purpose, limited duration" exemption. First, the distinction between a single project or single contract and some larger undertaking is necessarily artificial. A single contract, for example, could call for undertaking a project continuing over many years, or the production of a large number of units could be designated a single project. The "limited duration" criterion also is inherently vague and would introduce an unacceptable level of subjectivity into the rule. It is not always clear whether a new entity will be permanent or temporary, and what constitutes a limited period of time. Any period of time chosen to delineate such a "limited duration" would necessarily be arbitrary. Moreover, the duration of a new entity might be limited at formation but extended thereafter: No reporting requirement would have attached at formation under this proposal, and none would have attached at extension. This would have created a large and improper loophole in the reporting scheme.

Finally, public policy motivation, evidenced perhaps by absence of profit (as opposed to tax-exempt status), is not a satisfactory safeguard. The mere absence of profit, particularly in a situation in which a joint venture or other new corporation has a vertical relationship with its parents, simply may mean that the parents have elected to take their profits at a different level of operations. Moreover, these kinds of exemptions are unavailable in connection with acquisitions involving already existing corporations. Accordingly, the proposals in these comments were rejected.

SECTION 802.41 JOINT VENTURE OR OTHER CORPORATIONS AT TIME OF FORMATION

Section 802.41 exempts newly formed joint venture or other corporations from filing notification in connection with their own formation. The exemption reaches only the transactions involving formation and does not extend to subsequent acquisitions by or from the newly formed corporation.

BACKGROUND INFORMATION TO § 802.41

Since it is the combination of the persons that form the new entity (and not the new entity standing alone) that presents antitrust issues when a new corporation is formed, the Notification and Report Forms submitted by the parents of the new corporation will provide the information necessary to evaluate the competitive impact of the combination. Any data relevant to the intended activities of the new entity would appear on the parents' forms. The new entity would have no history and its report would provide no additional detail with respect to the consequences of its own formation.

Original § 801.55(b) and revised § 802.41 also provided that a newly formed joint venture (the acquired person in the formation transaction) need not file notification with respect to its formation. Final § 802.41 retains this exemption. The examples to the rule were revised and enlarged in the final version to make clear the distinction between formation transactions and subsequent transactions, as to which the new entity (or the person within which it is included) would be required to file notification. Whenever a joint venture or other corporation acquires assets or voting securities of another person or sells its own assets or stock—other than in connection with its formation—and the criteria of section 7A(a) are satisfied, it must comply with the reporting and waiting requirements of the act like any other acquiring or acquired person.

No comments were received on this rule.

SECTION 802.50 ACQUISITIONS OF FOREIGN ASSETS OR OF VOTING SECURITIES OF A FOREIGN ISSUER BY UNITED STATES PERSONS

This rule exempts certain acquisitions by United States persons of assets located outside the United States or of voting securities of a foreign issuer. It does not apply to acquisitions by foreign persons, which are treated in § 802.51. The terms "United States person," "United States issuer," "foreign person" and "foreign issuer" are defined in § 801.1(e).

Paragraph (a) of the rule governs asset acquisitions. It exempts the acquisition of assets located outside the United States to which no sales in or into the United States are attributable. It also exempts the acquisition of assets located outside the United States to which less than $10 million of sales in or into the United States were attributable during the acquired person's most recent fiscal year. The exemption of a foreign assets acquisition by a United States person thus turns entirely upon the United States sales, if any, attributable to the assets to be held. It is of no consequence in this context whether the acquired person is a United States person or a foreign person.

The term "as a result of" the acquisition is used in the sense described in § 801.13(b). In order to determine whether this exemption is applicable, therefore, the acquiring person must aggregate all assets of the acquired person it is acquiring in the present transaction and has acquired in the previous 180 calendar days. If all such assets together had $10 million or more in sales attributable to them in the most recent fiscal year, the exemption is not applicable, as indicated in example No. 2 to the paragraph.

Paragraph (b) of the rule concerns voting securities. It exempts acquisitions by United States persons of the voting securities of a foreign issuer unless that issuer (together with all entities it controls) holds assets located in the United States (other than investment assets and securities of another person) having an aggregate book value of $10 million or more, or made aggregate sales in or into the United States of $10 million or more in its most recent fiscal year. The term "investment assets" is defined in § 801.1(i)(2). The value of these types of United States assets held by a foreign issuer does not count toward the $10 million threshold above which the exemption does not apply.

BACKGROUND INFORMATION TO § 802.50

This rule, like its companion rule, § 802.51, is intended to exempt several classes of transactions having only a limited nexus with United States commerce. The commerce criterion of section 7A(a)(1) requires only that either the acquiring or the acquired person be engaged in commerce or in any activity affecting commerce. The act thus permits coverage of a great many transactions that have some or even predominant foreign aspects. This rule, like the other "foreign commerce" exemptions, is designed to exempt some of these acquisitions—those with only a minimal impact on United States commerce. The Commission also recognizes that considerations of comity may be significant in the area of international business transactions. With respect to some acquisitions whose principal impact is foreign, it is appropriate for the agency in its discretion to exercise a self-imposed limitation and decline to subject them to the act's requirements. The exemption from the notification and waiting period obligations does not, of course, imply an exemption from the substantive antitrust laws.

The rule fixes the threshold of impact on United States commerce at $10 million largely because section 7A(a)(2) of the act uses that figure as the minimum size for a person in a reportable transaction. In each instance when foreign assets or voting securities are being acquired by a United States person, the nexus with United States commerce will be as great as that statutory threshold.

The final rule is largely similar to revised § 802.50 but incorporates some changes. The final rules partially restructure the foreign commerce exemptions so that all acquisitions by foreign persons are treated in § 802.51, which in the revised rules had treated only acquisitions by foreign persons from other foreign persons. Final § 802.50 applies only to acquisitions by United States persons. The final rules thus differentiate between acquisitions by foreign persons and acquisitions by United States persons; the former must have a more substantial link to United States commerce before they are reportable. For further information, see the Statement of Basis and Purpose to § 802.51.

The final rule's reference to "investment assets" as one of the types of assets that may be excluded in counting a foreign issuer's holdings in the United States pursuant to subparagraph (b)(1) represents a clarification and limitation of the exclusion in the revised rule. That rule would have excluded "assests held solely for investment purposes" from this computation. The purpose of the exception remains unchanged: To exclude assets that do not reflect a substantial business presence in the United States and generally have little competitive significance. However, the Commission does not believe that the term "assets held solely for investment purposes" has any well-understood or administrable meaning. Therefore, as implied in the FEDERAL REGISTER notice accompanying the revised rules, the reference to "assets held solely for investment purposes" has been deleted. See 42 FR at 39047 (Aug. 1, 1977). Instead, final § 802.50(b)(1) instructs the acquiring person to exclude "investment assets," which are defined in § 801.1(i)(2), as well as voting or nonvoting securities of another person.

In addition, final § 802.50 refers to "United States" persons and "foreign" issuers. The revised rule had referred to issuers "domiciled outside the United States." As a result of the definitions inserted in final section 801.1(e) and the deletion of the concept of domicile, this reference was altered. See the Statement of Basis and Purpose to section 801.1(e).

The original rules did not distinguish between acquisitions by foreign persons and those by United States persons. Original section 802.35, the only foreign commerce exemption in those rules, would have exempted acquisitions by any person of voting securities of an issuer not substantially involved in United States commerce or of assets to which no substantial involvement in United States commerce was attributable. The revised rules refined this exemption to provide separate exemptions, with differing criteria, depending on the identity of the acquiring and acquired persons. This is essentially the pattern followed in the final fule.

Several comments (e.g., 1059, 1063) expressed disagreement with the differing treatment accorded to foreign persons and United States persons. They argued that the special provisions for foreign persons might prejudice American firms abroad, since a foreign firm might prefer to deal with another foreign firm in order to avoid a reporting requirement. This differing treatment, according to comment 1063, is also inconsistent with the asserted principle that the antitrust laws should be enforced without regard to nationality. These comments suggested that a uniform but higher threshold of impact on United States commerce should be applicable to all foreign transactions. Comment 1063, for example, suggested a $50 million or even a $100 million test instead of the $10 million test in revised section 802.50.

These comments were rejected because it is not clear that transactions below these higher thresholds are unlikely to violate the antitrust laws, and because the considerations of comity that also underlie this exemption were lessened when a transaction has at least a $10 million nexus with United

States commerce. The differing treatment for acquisitions by United States persons is also justified, since such acquisitions may be more likely to violate the antitrust laws.

Comment 1099 asserted that section 802.50(a)(1) was superfluous, because assets to which no United States sales were attributable would also qualify as assets to which less than $10 million of United States sales were attributable, and thus would be exempt under § 802.50 (a) (2). However, the structure of final § 801.15 clarifies the difference in treatment. Under § 801.15(a)(2), assets to which no United States sales are attributable may be disregarded in determining whether subsequent acquisitions of assets from the same acquired person meet the $15 million test of section 7A(a)(3)(B); Such assets are not considered held by the acquiring person for that purpose. On the other hand, since § 802.50(a)(2) is listed in § 801.15(b) rather than § 801.15(a)(2), assets acquired in transactions exempt under § 802.50(a)(2) *are held* for purposes of the $15 million tet of section 7A(a)(3)(B), once the $10 million United States sales threshold is met. Thus, assets to which some United States sales were attributable must be aggregated with any additional assets that the acquiring person within 180 days agrees to acquire, for purposes of the $15 million test of section 7A(a)(3)(B), and hence for determining whether the act applies. See § 801.13(b)(2) and § 801.15, and the Statement of Basis and Purpose to those rules.

SECTION 802.51 ACQUISITIONS BY FOREIGN PERSONS

This rule exempts certain acquisitions by foreign persons, a term defined in § 801.1(e). Paragraphs (a) through (d) of the rule describe the circumstances in which the exemption applies.

Paragraphs (a) and (c) relate to asset acquisitions. Paragraph (a) exempts all acquisitions by foreign persons of assets located outside the United States. In contrast with the exemption in § 802.50(a), which treats acquisitions of foreign of foreign assets by United States persons, this exemption does not depend upon the United States sales, if any, attributable to the foreign assets. Paragraph (c) exempts assets. Paragraph (c) exempts acquisitions by foreign persons of less than $10 million of assets (excluding investment assets) in the United States. The term "investment assets" is defined in § 1801.(i)(2).

Paragraph (b) relates to voting securities acquisitions. It exempts acquisitions by foreign persons of voting securities of foreign issuers, except in two circumstances. If the acquisition of the foreign issuer will give the acquiring foreign person control either of an issuer that holds assets (other than investment assets) located in the United States with an aggregate book value of $10 million or more, or of a United States issuer with annual net sales or total assets of $10 million or more, the acquisition is not exempt under paragraph (b). Example 2 illustrates this paragraph.

Paragraph (d) applies to both voting securities and asset acquisitions. It exempts all transactions in which both the acquiring and the acquired persons are foreign persons, unless either their aggregate annual sales in or into the United States, or their aggregate total assets located in the United States, total $110 million or more. Note that paragraphs (a) through (d) are to be read in the alternative, and that an acquisition is exempt if any one (or more) of these paragraphs is satisfied. For example, if a foreign person acquires $20 million of assets located in the United States from another foreign person, the transaction is not exempt under paragraph (c), but it may still be exempt under paragraph (d), depending on the United States sales and assets of the acquiring and acquired persons.

BACKGROUND INFORMATION TO § 802.51

Like § 802.50, this rule exempts certain acquisitions by foreign persons because of their minimal relationship to United States commerce. See the Statement of Basis and Purpose to § 802.50.

As explained in the Statement of Basis and Purpose to § 802.50, this treatment represents a change from the revised rules, which distinguished from all other foreign-commerce transactions those acquisitions involving *only* foreign persons. All other transactions with foreign aspects could be exempted only under the more limited exemption of revised § 802.50.

This change was made in the final rules because the Commission believes that an anticompetitive impact upon United States commerce is less likely to occur when a foreign person is acquiring foreign assets or voting securities, regardless of who the acquired person is. Since the anticompetitive impact, if any, results from the transfer of the stock or assets to the acquiring person, the identity of the acquiring person is of greater antitrust significance than the identity of the acquired person. In addition, considerations of comity are more significant whenever a foreign person is the acquiring person. Therefore, the final rules distinguish acquisitions by foreign persons, which benefit from the broader exemption of this rule, from acquisitions by United States persons, which may be exempt under § 802.50.

Paragraph (a) of the rule states that the acquisition by a foreign person of foreign assets is never reportable. Acquisitions by foreign persons of foreign assets generally have a less substantial connection with United States commerce, regardless of any United States sales attributable to the assets, and are therefore less likely to violate the antitrust laws. Paragraph (c) provides that the acquisition by a foreign person of less than $10 million of United States assets is not reportable. This threshold was adopted in part to parallel the size-of-person tests in section 7A(a)(2) and the exemption in § 802.20(a).

Paragraph (b) sets out criteria for acquisitions of voting securities of foreign issuers roughly parallel to the exemption of voting securities acquisitions below a minimum dollar amount in § 802.20.

Paragraph (d) is substantially identical to revised § 802.51(a)(1) and thus retains an aggregate sales or assets test for acquisitions involving only foreign persons. The $110 million threshold was adopted to approximate the criteria of section 7A(a)(2), which provide various combinations of total assets or annual net sales requirements, each totaling $110 million. It appears appropriate and consistent with congressional intent not to exempt a transaction involving two foreign persons with a United States presence similar in size to the general criteria of the act for all persons. Note that unlike the section 7A(a)(2) test, the test of § 802.51(d) can be met, e.g., by a foreign acquiring person with United States sales of $60 million and a foreign acquired person with such sales of $50 million.

Like final § 802.50, final § 802.51 uses the term "investment assets" for the first time and deletes the concept of "domicile" found in the revised rules. For the reasons for these changes, see the Statement of Basis and Purpose to § 802.50.

Comment 1035 criticized the revised rule for allegedly placing an inappropriate barrier in the path of a foreign company contemplating a U.S. acquisition. The final rules reject this comment and retain a reporting and waiting period requirement in most cases when a foreign person acquires the stock of a U.S. issuer or assets located in the United States. The transfer of such voting securities or assets, even to a foreign person, is considered to be of potential competitive significance. When the transaction is otherwise reportable, there is no doubt of U.S. jurisdiction and the potential antitrust concerns outweigh any considerations of comity.

Comment 1099 argued that a greater nexus to U.S. commerce should be required before acquisitions involving

only foreign persons are subject to the act. The comment cited considerations of comity and the greater interest a foreign country may have in the transaction, and suggested that the reporting and waiting period obligations might be reduced in situations when only foreign persons are involved. Comment 1100 also cited comity as a reason not to impose a waiting period on "non-U.S. transactions" or on companies domiciled in countries with a greater interest in the transaction. Although final § 802.51 provides several exemptions for acquisitions involving only foreign persons, the Commission did not choose to broaden these exemptions further. The reason is that the Commission believes acquisitions not exempt under § 802.51 potentially have important anticompetitive impact upon U.S. commerce. The considerations of comity cited in the comments have been taken into account in framing the exemption. Therefore, the suggestion in comment 1099 that the reporting and waiting period obligations be reduced for reportable transactions involving foreign persons was rejected.

Comment 1100 noted that since the $110 million threshold of § 802.51(d) involves aggregating the U.S. sales or assets of both persons in the transaction, an acquisition by a foreign person with no U.S. contacts of a foreign person with $110 million in U.S. sales may be reportable. The comment suggested that a minimum of $10 million in U.S. sales or assets by both foreign persons be required, since it viewed as extremely unlikely the chances that a violation of U.S. law could result if the acquiring person had no U.S. contacts. This suggestion was rejected. The Commission does not view it as unlikely that an antitrust violation can arise when a foreign person with no sales or assets in the United States makes an acquisition of a person with substantial U.S. assets or sales.

Similarly, comment 1116 argued that all transactions involving only foreign persons are unlikely to violate the antitrust laws and urged their exemption. This suggestion was rejected. In the limited circumstances in which such transactions are reportable, there will always be a significant impact on U.S. commerce in terms of assets, sales, or both.

For a discussion of the comments on the differing treatment accorded to foreign firms and U.S. firms, see the Statement of Basis and Purposes to § 802.50.

§ 802.52 ACQUISITIONS BY OR FROM FOREIGN GOVERNMENTAL CORPORATIONS

This rule exempts certain acquisitions of assets or voting securities in which a foreign governmental corporation is a participant. The acquisitions exempted by the rule are those of assets located within a foreign state, or of voting securities of an issuer organized under the laws of a foreign state, if the ultimate parent entity of either the acquiring person or the acquired person is controlled by the foreign state, the government of that state, or an agency thereof.

Since foreign states, foreign governments, and agencies thereof (other than corporations engaged in commerce) are not "entities" as defined in § 801.1(a)(2), they therefore cannot be "persons," nor can they be included within "persons," under § 801.1(a)(1). The act does not apply to acquisitions by or from foreign governments because the act applies only to acquisitions of assets or voting securities by or from persons. See section 7A(a). The act does apply to acquisitions of voting securities of noncontrolled (third-party) issuers from foreign governments, since the foreign state then would not be the acquired person; but for the same reason, in such cases this rule would not apply. This rule thus concerns only acquisitions by corporations engaged in commerce that are ultimately controlled by foreign governments, or acquisitions of the voting securities or assets of such corporations.

An example illustrates the rule.

BACKGROUND INFORMATION TO § 802.52

The transactions exempted by this rule are considered to be so directly involved with the acts of foreign states within their own borders as to merit exemption. Since the interests of a sovereign are generally paramount within its own borders, to require a State-controlled corporation to file notification with respect to these transactions might violate principles of international comity. In addition, acquisitions or dispositions by corporations controlled by a foreign government of assets located within the foreign country are in many cases considered acts of State and may be substantively immune from U.S. antitrust law.

This exemption appeared in substantially similar form in revised § 802.52; it did not appear in the original rules. However, the final rule changes three provisions of the revised rule. First, the revised rule would have required the acquiring or acquired person to be a corporation more than half of whose voting securities are held by a foreign state before the exmption applied; the final rule requires the ultimate parent entity of either person to be controlled by a foreign state. The change makes clear that the exemption is equally applicable if the involvement of the governmental corporation is effected through subsidiaries. The change also substitutes control for the "more than half" formulation and refers to persons rather than corporations (as suggested by comment 1072), for consistency with the rest of the rules. Second, the revised rule would have exempted only acquisitions "solely" of assets located within the foreign state or voting securities of a foreign issuer. The final rule deletes the word "solely," so that the exemption applies even if assets or voting securities located outside the foreign state in question, e.g., in the United States, are also being acquired in a transaction. In such a situation only the nonexempt portion of the transaction is reportable. See § 803.2(c)(2). Last, the final rule substitutes the concept of "organized under the laws" of a foreign state for the undefined and potentially ambiguous term "domicile" used in the revised rule. See the Statement of Basis and Purpose to § 801.1(e).

Comments 1063 and 1072 recommended that § 802.52(b) should exempt acquisitions of voting securities when the issuer's principal place of business, rather than its place of incorporation, is the foreign state involved. The suggestion was rejected because comity considerations, as well as the potential act of State defense, are strongest in the case of an issuer incorporated in the relevant foreign state.

Comment 1063 argued that if foreign governmental corporations must file notification with the agencies for nonexempt acquisitions, American firms may become handicapped in competing for business transactions involving foreign governmental corporations. Citing comity and the desirability of American firms participating in such transactions, the comment urged that foreign governmental corporations be exempted from filing notification even when the acquisition was not exempt. This recommendation was rejected. Sections 802.50 and 802.51 exempt acquisitions in which the United States lacks a substantial interest in or nexus to the acquisition. This rule exempts acquisitions that might give rise to particularly sensitive issues of comity. When neither rationale applies and the acquisition is not exempt, the interest of the United States in comprehensive evaluation of the acquisition will generally outweigh the foreign state's interest in avoiding the burden of filing notification. Moreover, adopting the suggestion would undercut the distinction made between governments, whether foreign or domestic, which are not subject to the act, and governmental corporations, which in general are subject to the act. See § 801.1(a)(2) and its Statement of Basis and Purpose. Accordingly, all persons, including foreign governmental corporations, must file notification with respect to nonexempt acquisitions.

In the FEDERAL REGISTER notice accompanying the revised rules, the Commission stated that it would consider excluding from the exemption indirect acquisitions of assets located in the United States and indirect acquisitions of voting securities of United States issuers. 42 FR at 39045 (August 1, 1977). The Department of State in its comment (1072) opposed narrowing the exemption, citing the considerations supporting the exemption, and the likelihood that the agencies would learn of any acquisition of interest to them from public sources. In view of this comment, the final rule did not adopt the change proposed in the FEDERAL REGISTER.

SECTION 802.53 CERTAIN FOREIGN BANKING TRANSACTIONS

This rule exempts acquisitions that require the consent or approval of the Board of Governors of the Federal Reserve System ("the Board") under section 25 or section 25(a) of the Federal Reserve Act from the requirements of the act on the same basis as those transactions listed in section 7A(c)(8), which require approval of the Board under section 4 of the Bank Holding Company Act.

The rule applies only to acquisitions by national banks of securities of entities engaged in foreign or international banking, which according to the applicable statutes and Board regulations transact, at most, only minimal business in the United States. This rule, like section 7A(c)(8), requires that copies of all information and documentary material filed with the Board be contemporaneously filed with the antitrust agencies at least 30 days prior to consummation of the acquisition. One of the provisions of § 802.6 is also made applicable to filings under this rule: Instead of filing with the antitrust agencies all documents filed with the Board, the reporting persons may provide an index describing all such material together with a certification that any such information not provided will be provided within 10 calendar days of a request to do so.

Under section 25 of the Federal Reserve Act, 12 U.S.C. 601-604, a national bank may, with the Board's approval, invest directly in the stock of a foreign bank not engaged in any activity in the United States (except activities that, in the judgment of the Board, are incidental to its international or foreign business). Under the same section, a national bank, with the Board's approval, may also make indirect investments in foreign banks by acquiring stock in a U.S. corporation principally engaged in international or foreign banking, either directly or through foreign subsidiaries. Such a corporation, to be eligible for investments by national banks, must enter into an agreement with the Board, under 12 U.S.C. 603, to restrict its operations or conduct its business in such manner or under such limitations as the Board may prescribe. This type of corporation is known as an "agreement" corporation.

A national bank may also, under section 25(a) of the Federal Reserve Act, 12 U.S.C. 611-631 (the "Edge Act"), invest in the stock of a United States or foreign corporation (known as an "Edge Act corporation") chartered with the Board's approval to engage in foreign or international banking or other foreign financial operations. An Edge Act corporation may, with the Board's consent, acquire and hold stock of foreign non-banking companies that do not transact any business in the United States other than activities incidental to their international or foreign business. 12 U.S.C. 615.

All of these types of investments require the consent or approval of the Board and are thus exempted by this rule. The Board, in granting or withholding this consent, is empowered by section 11 of the Clayton Act, 15 U.S.C. 21, to enforce section 7 of the Clayton Act as it applies to stock acquisitions by banks, banking associations and trust companies. The Board's policy is to refer to the Assistant Attorney General all applications received pursuant to those provisions that appear to present antitrust issues.

BACKGROUND INFORMATION TO § 802.53

This rule had no counterpart in the original or the revised rules. Several comments (e.g., 90, 91; 1071) suggested that a new rule be inserted to exempt these acquisitions. The major reason they are exempted in the final rules is to achieve similarity of treatment with acquisitions subject to the approval of the Board under section 4(c)(13) of the Bank Holding Company Act of 1956, which are exempted under section 7A(c)(8). The standards applicable to those transactions—acquisitions by bank holding companies of shares of companies that do not do business in the United States except as an incident to their foreign business—are substantially the same as those applicable to agreement and Edge Act corporations. In each case, similar restrictions limit the amount of U.S. business that may be conducted by a company in which a national bank has an interest.

Accordingly, in each case the requirement of prior approval by the Board, along with the Board's working relationship with the Assistant Attorney General, should, in conjunction with the requirement that the antitrust agencies receive copies of the material filed with the Board (or indexes of such documents) 30 days in advance of consummation, suffice to identify any potential competitive problems. The final rules thus take the position that it would be inconsistent to require that investments made pursuant to sections 25 or 25(a) of the Federal Reserve Act fully comply with the notification and waiting period requirements, while similar acquisitions made pursuant to section 4(c)(13) of the Bank Holding Company Act have a qualified exemption.

Some of the transactions exempted by this rule may also be exempt from the act by virtue of § 802.50, which, inter alia, exempts certain acquisitions of voting securities of foreign issuers by U.S. persons. But when Edge Act and agreement corporations are U. S. persons, acquisitions of their stock by a national bank will never be exempted by § 802.50.

Several comments (e.g., 90, 91; 1071) recommended that transactions requiring Board approval under either the Bank Holding Company Act or the Federal Reserve Act be completely exempted from all reporting, including the section 7A(c)(8) requirement of contemporaneous filing. They asserted that these types of transactions are not likely to violate the antitrust laws, since the only companies in which an interest may be acquired are those with only incidental activities in the United States. This approach was rejected. The Commission believes that such transactions may present antitrust concerns. The Federal Reserve Board's comment (91) itself noted that three applications for approval have in the past been referred to the Assistant Attorney General for review. The procedure provided in section 7A(c)(8) should be adequate to identify any other such transactions that may pose competitive questions.

SECTION 802.60 ACQUISITIONS BY SECURITIES UNDERWRITERS

This rule exempts acquistions of voting securities if (1) the acquiring person is acting as a securities underwriter, (2) the acquisition is made in the ordinary course of the business of the acquiring person, and (3) the acquisition is made in the process of underwriting. Because securities underwriters that purchase shares from issuers for resale to securities dealers or the investing public become beneficial owners of those securities prior to resale, and because such temporary holdings may exceed the limitations of § 802.64(b)(5), many acquisitions made in the process of an underwriting are subject to the act and, but for this exemption, would be reportable.

For the exemption to apply, the acquiring person must be functioning as in underwriter with respect to the particular voting securities to be acquired.

BACKGROUND INFORMATION TO § 802.60

This exemption is appropriate because a securities underwriter purchasing shares under the circumstances stated in the rule typically does not retain those shares for any period of time or use those shares to influence the management of the issuer. As long as all three limiting conditions in the rule are satisfied at the time of acquisition, the acquisition is exempt, regardless of the length of time the shares may subsequently be retained by the underwriter. However, during the time that such shares remain in the hands of the underwriter, they are "held" by the underwriter for purposes of § 801.1(c). Thus if the underwriter acquires any additional shares not in the process of underwriting, it must aggregate the shares to be acquired with any shares that are still held as a result of an acquisition that was exempt under § 802.60, in order to determine whether the subsequent transaction is reportable.

Original § 802.10(a) exempted acquisitions by brokers or dealer in securities if the acquistion was made in the process of underwriting. Revised § 802.62 extended the exemption to any person (not just a broker or dealer) but added the requirements that (1) the person be acting as an underwriter and making the acquisition for its own account, and (2) the acquisition be made in the normal course of business, solely for investment purposes, and in the process of an underwriting. The final rule deletes the separate requirement that the acquisition be made by the underwriter for its own account, since acquisitions by underwriter in the process of underwriting normally satisfy that requirement. Moreover, if an acquisition were made for the account of another person, that person, rather than the underwriter, would hold the securities and would thus be subject to reporting obligations. See § 801.1(c).

Comment 1091 also suggested deleting the requirement that an acquisition by an underwriter be made solely for investment purposes. The comment pointed out that such purchases normally are not made "for investment," as that term is generally understood, but rather for resale. The Commission agreed with the comment's suggestion that if an underwriter is "acting as a securities underwriter" when purchasing voting securities "in the process of underwriting," the additional requirement that the acquisition be solely for the purpose of investment is unnecessary to insure that the underwriter's purchase will not likely be used to influence the management of the issuer. This limiting requirement was therefore deleted from the final rule.

SECTION 802.63 CERTAIN TRANSACTIONS BY CREDITORS AND INSURERS

This rule exempts from the requirements of the act certain types of acquisitions made by creditors and insurers in the ordinary course of business. The rule should be read in conjunction with section 7A(c)(11), which exempts "acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan or reorganization or dissolution; or (B) assets in the ordinary course of its business," and section 7A(c)(1), which exempts "acquisitions of goods or realty transferred in the ordinary course of business."

Paragraph (a) of the rule exempts several types of acquisitions by creditors: Acquisitions of collateral or receivables, acquisitions in foreclosure or upon default, acquisitions in connection with the establishment of a lease financing and acquisitions in connection with a bona fide debt work-out. The rule provides that such acquisitions are exempt only "if made by a creditor in a bona fide credit transaction entered into in the ordinary course of the creditor's business." Any transaction made with the primary motivation of extending credit to the debtor, as opposed to a transaction structured as a financing transaction for purpose of evading a reporting requirement, may be considered "bona fide."

Paragraph (b) exempts acquisitions by insurers pursuant to a condition in an insurance contract relating to fidelity, surety or casualty obligations. The rule thus exempts acquisitions commonly made in connection with an insurer's normal insurance business. It does not exempt purchases of voting securities or assets made by insurance companies as investors in securities markets or elsewhere. Those transactions may, however, be exempt unde section 7A(c)(9) and § 802.9, or under § 802.64.

BACKGROUND INFORMATION TO § 802.63

This rule exempts certain routine transactions by creditors and insurers in the ordinary course of business. They are typically not undertaken with the intention of influencing the affairs of the acquired person or even necessarily with the intention of making an investment. The acquiring person may not desire to retain the acquired property, such as assets or stock acquired in default or foreclosure situations, and the acquired assets or stock may frequently be disposed of as speedily as possible. Many transactions covered by this rule occur by operation of law, such as acquisitions by insurance companies of insured property upon payment of a claim under a casualty-loss insurance contract. In general, these acquisitions take place in circumstances and for reasons different from those underlying corporate mergers, acquisitions, tender offers, and similar transactions.

These transactions occur with great frequency in the insurance, banking, and finance industries. To interpose the act's notification and waiting period requirements before such acquisitions would severly impede the normal and essential procedures of these industries without achieving any significant gain in antitrust enforcement.

The original rules did not contain any exemption for creditors and insurers. During the first comment period, however, the Commission specifically solicited comments on the proper interpretation of section 7A(c)(11). Statements were requested on the questions of "with what frequency, and under what circumstances, do banks, banking associations, trust companies, investment companies, and insurance companies acquire voting securities pursuant to a plan of reorganization or dissolution, or assets (as distinguished from securities) in the normal course of business," and "to what extent the reporting and waiting requirements of (the act) may impede normal business practices by such companies." 41 FR at 55490 (December 20, 1976). Revised § 802.63 was drafted in response to a large number of comments from the banking and insurance communities explaining the reasons for exempting various common types of transactions in their industries.

For example, with respect to creditors' transactions, comment 90 described several customary bank financing transactions that the comment considered not competitively significant. The comment observed that banks often engage in lease financings, conditional sales transactions, and other arrangements in which they receive a security interest in property of various types, including voting securities. Transfers of property in foreclosure situations, including transfers to banks from their customers, are also common banking transactions. In credit transactions, banks frequently purchase from customers large quantities of accounts receivable, which may well exceed $15 million in value or be more than 15 percent of the customer's assets. The comment argued that these and similar common bank financing transactions have no competitive significance since they do not transfer to banking institutions managerial control over significant competitive assets; indeed, they may increase competition by assisting companies to raise needed capital. The comment suggested a broad exemption of

all acquisitions of voting securites or assets "by or from a bank or banking association in the ordinary course of its business."

Comment 97 suggested that acquisitions by financial institutions of voting securities be exempt if they arise from an event stipulated in a loan contract, such as a default. The comment stated that such acquisitions may be involuntary and thus may not be accompanied by an intent to obtain control. Moreover, banks are generally prohibited by law from holding securities for their own interest and must dispose of any they own within a specified time. Comment 102 also urged the exemption of acquisitions of stock or assets upon foreclosure. The Federal Deposit Insurance Corporation in its comment (56) also noted that section 7A(c)(11) appears to exempt relatively temporary acquisitions by banks arising from the liquidation of a defaulted loan.

With respect to transactions by insurers, several comments (e.g., 73, 77, 83, 98, 110) recommended that various types of transactions made in the normal course of the business of insurance be exempted. Specifically, comment 77 urges that acquisitions of securites or assets by an insurer pursuant to its insurance claims or surety operations be exempt. The comment explained that after an insurance company issues a surety bond to quarantee the performance of services by a building contractor, it may acquire some or all of the contractor's assets if the latter defaults. Alternatively, an insurance company often gains title, by operation of law, to the assets of an insured or a third party after it has paid a claim relating to those assets—for example, when a large quantity of stock certificates are lost by an insured brokerage firm and the insurance company pays the loss. If any of the certificates are later found, they become the insurer's property. The comment also noted that insurance companies, like banks and finance companies, frequently acquire the stock or assets of corporations pursuant to bankruptcy reorganizations, foreclosures, and similar proceedings relating to loan defaults, and urged the exemption of such acquisitions. These comments, like the comments relating to creditors' transactions, all noted that in the acquisitions for which an exemption was proposed, the acquiring person has no intention of permanently acquiring any business assets.

Revised § 802.63 thus exempted acquisitions by creditors in bona fide credit transactions entered into in the ordinary course of the creditor's business, of collateral, in foreclosure, or upon default. It also exempted acquisitions by an insurer in the ordinary course of business, pursuant to a suretyship contract, or in the exercise of a right of subrogation.

The final rule represents an expansion of the exemption granted in the revised rule. Several comments on the revised rule suggested that it would not have exempted certain types of credit transactions that generally raise no antitrust concern. First, since the terms "creditor" and "credit transaction" were not defined, several comments (e.g., 1050, 1059, 1062) suggested that it was not clear whether transactions such as lease financings, conditional sales contracts, factoring operations, and other hybrid credit arrangements, which might be interpreted as assets acquisitions, were exempt. In a common type of lease financing, several equity investors contribute part of the cost of the leased equipment to a trustee (the owner trustee). The owner trustee, usually a commercial bank, then borrows the remaining funds from other investors (usually other institutional investors) and purchases the equipment, which is then leased to the actual user. Often, a second trust is established that takes a security interest in the leased property to protect the rights of the equity investors. The comment argued that none of these various "acquisitions" should be subject to the act. Any uncertainty on this point was removed in the final rule, which now specifically exempts transactions in connection with a bona fide lease financing.

Comment 1073 also suggested that the revised rule, which was limited to acquisitions of collateral in foreclosure or upon default, failed to exempt certain functionally similar transactions in which no formal foreclosure or default takes place. The term "collateral," the comment stated, may be limited to the acquisition of a security interest in tangible rather than intangible property, and the use of the words "in a bona fide credit transaction" might be interpreted as not including acquisitions by a creditor made at some time other than the commencement of a credit transaction or not specifically identified with a particular credit transaction. For example, in a bona fide debt work-out, a transaction whereby all or part of a debtor's obligations to one or more creditors are reorganized, the debtor's assets or voting securities, which may not technically be termed collateral, may be conveyed to a creditor. The comment argued that the economic and business realities of such transactions are substantially identical to the foreclosure of a pre-existing security interest and thus should be treated similarly. The final rule adopts this suggestion and exempts acquisitions of receivables in credit transactions and acquisitions in connection with bona fide debt workouts.

Several comments (e.g., 1031, 1103) also suggested that the exemption in the revised rules for acquisitions by insurers was unclear. These comments pointed out that the revised rule may not have exempted certain acquisitions by insurers arising out of requirements in insurance contracts that technically were considered neither suretyship contracts nor acquisitions pursuant to rights of subrogation. Since the revised rule sought to exempt all acquisitions by insurers in the ordinary course of business occurring pursuant to conditions in contracts of insurance, the final rule exempts acquisitions arising from conditions in fidelity, surety, and casualty contracts.

Several comments (e.g., 1038, 1070, 1073) also maintained that the revised rule did not adequately solve a number of creditor's-rights problems arising from public auction or bankrupcy sales. They stated that application of the statute to such transactions might chill bidding by large companies and hinder such sales generally, since speed is often a critical factor in protecting creditors' interests. They therefore suggested that sales under the supervision of a bankruptcy court be exempt, and, more generally, that sales by creditors and insurers of property obtained pursuant to foreclosure or default be exempt so that creditors can obtain maximum value for foreclosed collateral. These recommendations were rejected. Purchases at bankruptcy sales may pose antitrust concerns, as may subsequent dispositions of property acquired pursuant to a credit relationship. A bankruptcy court has no responsibility to consider antitrust issues relating to dispositions of the debtor's property. Any timing problems resulting from the necessity to observe the waiting period may be mitigated by requests for early termination of the waiting period under sections 7A(b)(2) and 803.11.

The final rule specifically exempts acquisitions of receivables in connection with a bona fide credit transaction. Thus an assignment of accounts receivable, with or without recourse, is exempt. Such transactions are crucial to the operation of consumer sales and credit institutions and, although they may occasionally meet the criteria of section 7A(a) of the act, they do not generally have antitrust implications. But for this rule, such assignments of receivables would not be exempt; although receivables are typically transferred in the ordinary course of business, they are neither goods nor realty. Cf. section 7A(c)(1).

Furthermore, there is an explicit reference in the legislative history of the act to the fact that these acquisi-

tions ought to be exempt. Explaining the differences between the final bill and the original House and Senate versions, Senator Philip Hart stated on the floor of the Senate:

> Section 7A(c)(2) exempts acquisitions of bonds, mortgages, deeds of trusts, or other obligations which are not voting securities and section 7A(c)(1) exempts acquisitions or goods or realty transferred in the ordinary course of business. It is the intention of the managers that these provisions exempt consumer receivables and loans or other obligations, which are not voting securities, which are traditional financing arrangements and which normally are sold to banks or other financing agencies and acquired in the normal course of business.

122 Cong. Rec. S15417 (daily ed., Sept. 8, 1976).

SECTION 802.64 ACQUISITIONS OF VOTING SECURITIES BY CERTAIN INSTITUTIONAL INVESTORS

This rule provides a higher initial reporting threshold than that contained in section 7A(a)(3) of the act for certain voting securities purchases made by institutional investors. The rule does not apply to acquisitions of assets. Paragraph (a) of the rule lists the types of entities, denominated institutional investors, which may be entitled to the rule's special treatment. Paragraph (b) exempts acquisitions of voting securities by institutional investors whenever the conditions set forth in subparagraphs (b)(1) through (b)(5) are satisfied. Paragraph (c) sets forth two exceptions to the exemption—situations when the exemption does not apply even though paragraph (b)'s conditions are met.

Paragraph (a) of the rule contains an exclusive list of fourteen types of entities that can qualify for the rule's special treatment. Subject to the exceptions contained in paragraph (c), paragraph (b) exempts acquisitions of voting securities made by institutional investors as a result of which the acquiring person's holdings either would not exceed 15 percent, or would not exceed $25 million, of the issuer's voting securities, so long as four other conditions are met. First, the acquisition must be made by an entity that is one of the types of institutional investors listed in paragraph (a) of the rule. Second, the acquisition must be made in the ordinatry course of the institutional investor's business. Third, the acquisition must be made "solely for the purpose of investment" as that term is defined in § 801.1(i)(1). Finally, as a result of the acquisition the acquiring person must not control the issuer.

If each of these conditions is met, the rule effectively eliminates the initial statutory reporting threshold of section 7A(a)(3) and § 801.1(h)(1). The rule allows an institutional investor to acquire voting securities without being subject to the requirements of the Act until its holdings exceed both 15 percent and $25 million. The acquisition that would first result in a holding exceeding both 15 percent and $25 million in value is reportable, and the waiting period must be observed. Once this initial reporting threshold is crossed, further acquisitions by institutional investors are treated exactly like those of other acquiring persons. Note that an institutional investor will never have to make a subsequent report upon reaching the 15 percent threshold of § 801.1(h)(2), since that threshold will be surpassed by the exemption provided in this rule. Thus, only the 25 percent threshold of § 801.1(h)(3) and the 50 percent threshold of § 801.1(h)(4) will apply.

In addition, since § 802.64(b)(5) refers to the holdings of the acquiring person, rather than the acquiring institutional investor entity, the rule does not permit each institutional investor within the same person to hold 15 percent and $25 million worth of an issuer's voting securities before reporting. That limitation thus applies to the aggregate holdings of all institutional investor entities included within the same person.

Paragraph (c) contains two limitations to the exemption granted by paragraph (b). These exceptions apply even though all of the conditions in paragraph (b) are satisfied. If either of these limiting conditions exists, the institutional investor's acquisitions are not exempt under paragraph (b), and the normal reporting thresholds of section 7A(a)(3) and § 801.1(h) apply.

The first exception, § 802.64(c)(1), provides that when the voting securities of an institutional investor are being acquired, if the acquiring person includes an institutional investor entity of the same type as the issuer or an entity controlled by the issuer, the exemption does not apply. For this purpose, each of the numbered subparagraphs in paragraph (a) of the rule is a "type." The second limitation, § 802.64(c)(2), withdraws the exemption granted in paragraph (b) whenever any voting securities of the issuer whose voting securities are to be acquired are already held by an entity included within the acquiring person that is not also an institutional investor.

BACKGROUND INFORMATION TO § 802.64

By providing a higher initial reporting threshold for voting securities purchases by institutional investors, this rule was designed to minimize the act's impact upon these entities' normal operations. The anticompetitive potential of the transactions exempted by the rule is low, and acquisitions by institutional investors that may have competitive significance should be reached by the notification threshold of this rule or by one of the exceptions of paragraph (c).

Paragraph (a) lists the types of entitiee entitled to the exemption. Acquisitions by any of the types of entities listed in paragraph (a) of the rule are likely to have a relatively insubstantial effect on competition, assuming that the conditions described in paragraph (b) exist and that neither of the exceptions in paragraph (c) apply. Some of these investors, such as nonprofit entities, are constrained by law or by their charters from participating in the management of most business corporations. Pension trusts, insurance companies and others are limited by their fiduciary duty to the ultimate beneficiaries of their investment. Entities such as broker-dealers and investment companies frequently engage in acquisitions that may meet the criteria of the act, but they generally have no interest in affecting the management of the companies whose stock they buy. The rule thus attempts to reduce the disruption of the securities markets that could result from requiring them to report and observe a waiting period before such acquisitions.

The conditions in paragraph (b) are intended to assure that the acquisitions exempted are in fact unlikely to violate the antitrust laws. Subparagraphs (b)(1) and (b)(2) simply state the basic criterion that the acquisition of voting securities must be made in the ordinary course of business by an institutional investor, as defined in paragraph (a). Subparagraph (b)(3), requiring that the purchase be made "solely for the purpose of investment," as defined in § 801.1(i), excludes from the exemption any acquisitions made by institutional investors with the intent of influencing management. The reasoning behind this exemption does not apply to such investments, and therefore they are treated like ordinary acquisitions. Similarly, the exclusion of control acquisitions in subparagraph (b)(4) is necessary, since if an institutional investor gains control, it will invariably participate in the management of the issuer. Subparagraph (b)(5), which states the special size-of-transaction test for such acquisitions, is designed to permit the majority of them to be exempt, while retaining the act's coverage for the very largest ones, which may, because of their size, have anticompetitive consequences.

The limitations contained in paragraph (c) are designed to impose the act's usual reporting and waiting period requirements on acquisitions that seem to pose a greater potential for anticompetitive impact even though the criteria of paragraph (b) are satisfied. Acquisitions described by

subparagraph (c)(1) may indicate increasing concentration in an area of commerce related to the business of the type of institutional investor acquired. And the limitation of subparagraph (c)(2), which withdraws the exemption whenever any voting securities of the issuer are held by an entity included within the acquiring person that is not also an institutional investor, is present because the existence of such holdings calls into question the investment intent of the acquiring person. In each case, the special treatment for institutional investors afforded by the rule is not extended.

The original rules did not address acquisitions by institutional investors. Instead, the FEDERAL REGISTER notice accompanying their publication contained a "Statement With Respect to Certain Financial Transactions and Institutions" that specifically solicited comments on the treatment to be accorded normal business transactions by institutional investors (41 FR at 55490 (Dec. 20, 1976)). The revised rule resulted from these comments.

The list in paragraph (a) of the 14 types of entities that can qualify for the rule's special treatment is generally similar to the list in the revised rule, with certain changes. Mutual funds were deleted as superfluous in light of the inclusion of registered investment companies in (a)(6). The general inclusion of trusts was replaced by a narrower reference to qualified employee pension or other benefit trusts in (a)(10), because there are many types of trusts that may hold or acquire voting securities for purposes other than investment, to which the exemption would not be appropriate.

Added to the list of qualifying institutional investors were the following: Savings banks, (a)(2); building and loan companies, (a)(3); regulated small business and minority small business investment companies, (a)(9); bank holding companies, (a)(11); subsidiaries of institutional investors that perform functions that the institutional investors would ordinarily perform themselves, (a)(12); and holding companies that essentially own only other institutional investors, (a)(13). These entities were added in response to numerous comments, because they have similar characteristics to the other types of entities entitled to the exemption.

Comment 1070 suggested that real estate investment trusts (REIT's) be added. Since the holdings of REIT's will typically be either real estate or stock in realty holding companies, which may be exempt under § 802.1(a) when purchased, institutional investor status is not necessary to exempt their acquisitions. Furthermore, to the extent that REIT's may make short-term investments in other types of voting securities, the exemption in section 7A(c)(9) may often apply.

Comment 1090 also suggested partnerships holding voting securities for investment, investment advisers, and insurance company separate accounts as candidates for institutional investor status. The specific inclusion of insurance company separate accounts is unnecessary because subparagraph (a)(5) defines insurance companies as institutional investors, and because under § 801.1(c)(7) insurance companies hold all voting securities in their separate accounts. Thus, insurance company special accounts are in effect covered by the exemption given the insurance company. Partnerships holding voting securities for investment and investment advisers were rejected because no adequate reasons for affording institutional investor status to such entities were advanced, and because the safeguards characterizing the entities listed in § 802.64(a) do not appear to be present. These two types of entities, of course, may avail themselves of the exemption afforded by section 7A(c)(9) when appropriate.

Comment 1100 proposed that foreign entities of the types listed in paragraph (a) should be expressly included as institutional investors for purposes of the rule. This suggestion was not adopted. In certain cases, according foreign entities this treatment would be inappropriate; for example, foreign banks are not covered by the Glass-Steagall Act, 12 U.S.C. 24, and are therefore not prohibited from investing in common stock for their own account. Although it is possible that certain types of foreign entities will qualify as institutional investors under this rule's provisions, the comment did not supply adequate justification for a general provision on this point.

The final version of paragraph (b) is unchanged in substance from revised § 802.64. The final version of subparagraph (c)(1), however, is somewhat less restrictive than that contained in the revised rule. The revised rule would have withdrawn the exemption whenever voting securities of any type of institutional investor were to be acquired by an institutional investor. This change was made so that the rule would be less disruptive of normal capital markets. The final rule modifies revised § 802.64(c)(2), which would have withheld the exemption if the acquiring institutional investor was controlled by an entity that was not an institutional investor. The Commission considered that the revised rule's limitation was potentially too restrictive of normal investment operations of institutional investors, which are commonly controlled by other types of entities. The Commission will, for the time being, rely upon the conditions set forth in paragraph (b) of the rule in order to prevent evasion of the act's normal reporting requirements by entities controlling institutional investors.

CHOICE OF ALTERNATIVE PROPOSED RULES

The revised rules contained two alternative reporting schemes for institutional investors, §§ 802.64 and 802.64a. Revised § 802.64 was essentially similar to the final rule. Section 802. 64a would have required an annual report of acquisitions qualifying under the rule during the preceding year, but no waiting period. The FEDERAL REGISTER notice accompanying the rules invited comments as to which approach should be adopted. 42 FR at 39046 (August 1, 1977).

Neither exemption scheme is compelled by the statute. On the contrary, section 7A(c)(9) indicates an apparent congressional intent to subject institutional investors to the preacquisition reporting and waiting period requirements of the act. Thus, the Commission has adopted revised § 802.64 and has rejected the postacquisition reporting approach of revised § 802.64a. Similarly rejected were those comments (e.g., 1020, 1043, 1050, 1054, 1067, 1083, 1089, 1110, 1111) that either expressly or by implication proposed eliminating all reporting and waiting requirements when the conditions of subparagraphs (b) (1)–(4) were satisfied.

The adoption of the preacquisition reporting scheme with its higher initial reporting threshold is also based upon the Commission's belief that the section 7A(c)(9) exemption may not in fact be sufficient for the ordinary operations of institutional investors. The holdings of institutional investors in particular issuers may frequently exceed 10 percent and $15 million, thus making reportable numerous acquisitions that merit exemption because of the restrictions of paragraph (b). However, the Commission believes that on those presumably rare occasions when an institutional investor's holdings exceed both 15 percent and $25 million the potential for anticompetitive consequences is sufficiently great to warrant obtaining a preacquisition report and imposing a waiting period. Except in instances in which control of an issuer would change hands (when subparagraph (b)(4) would preclude the exemption), the adoption of § 802.64a would have deprived the agencies of a primary enforcement tool encouraged by the act—the preliminary injunction. The fact that antitrust problems can arise well before holdings reach the 50-percent (control) level reinforced the selection of § 802.64 over § 802.64a.

The comments that expressed a preference between the two ap-

proaches contained in the revised rules were divided. Numerous reasons were given for selecting one option or the other. Nearly all the comments, regardless of which rule they preferred, however, were concerned with the reporting burden and interference with normal investment operations. The Commission believes that the changes between the revised and final rule versions of § 802.64, together with the significant amendment of the definition of "hold," see § 801.1(c), will greatly reduce the impact of the act upon institutional investors in both of these areas of concern.

SECTION 802.70 ACQUISITION SUBJECT TO ORDER

This rule exempts two common types of acquisitions from the requirements of the act. Paragraph (a) exempts acquisitions of assets and voting securities from parties subject to divestiture orders issued by the Commission or, at the instigation of the Commission or the Department of Justice, by a Federal court. Paragraph (b) exempts any acquisition in which the acquiring party is subject to an order of the Commission or a Federal court that requires Commission, Justice Department, or judicial approval of the acquisition, and for which approval has been obtained.

BACKGROUND INFORMATION TO § 802.70

Because the information normally obtained by the courts, the Commission, or the Department of Justice in these divestiture situations will be much the same as that required by the Notification and Report form, the Commission determined that the imposition of the act's requirements was unnecessary. These groups of acquisitions are by their nature already subject to careful antitrust scrutiny by the agencies.

Comment 1026 suggested that the rule also should exempt acquisitions expressly permitted by the terms of Commission or Federal court orders. The Commission is unaware of any order that, by its terms, permits the acquisition of specifically identified assets or voting securities, and no example was cited.

A number of comments (e.g., 1026, 1027, 1042, 1053, 1059, 1063, 1076, 1077, 1100) requested reinstatement of the business review/advisory opinion exemptions that appeared in § 802.05 (c) and (d) of the original rules and were deleted from the revised rules. The deleted exemptions would have exempted acquisitions approved by the Commission under its advisory opinion procedure, 16 CFR 1.1, or by the Antitrust Division under its business review procedure, 28 CFR 50.6. These exemptions have not been restored in the final rules. As the FEDERAL REGISTER notice accompanying publication of the revised rules explained:

> [S]ince the statute envisions that either the Commission or the Antitrust Division may investigate or seek to enjoin a projected acquisition, both agencies must receive completed Notification and Report Forms from the parties to the transaction. Even if one agency or the other were able to determine ahead of time that it would not investigate or challenge a particular transaction, the Commission feels that the other agency should be able to obtain sufficient information to permit its own informed judgment on the possible anticompetitive consequences of that transaction.
>
> (42 FR at 39045 (Aug. 1, 1977).)

Furthermore, the Commission has never felt itself legally bound by business review letters issued by the Antitrust Division. Similarly, the Antitrust Division has not believed that its ability to challenge an acquisition was restricted by a Commission advisory opinion. Moreover, the exemptions would be philosophically at odds with section 7A(b)(2) of the act, in which Congress required the agreement of both agencies in order to grant early termination of a waiting period.

A statement of enforcement intent at the end of the waiting period was suggested in comment 1077 as an alternative to the business review/advisory opinion exemption. Such a proposal would transform the act from a premerger notification program to a premerger clearance system. The Commission does not plan to effect such a metamorphosis since it is clear from section 7A(i)(1) of the act that Congress permitted both the Commission and the Antitrust Division to be free to proceed against any acquisition even though no action was taken within the waiting period.

SECTION 802.71 ACQUISITIONS BY GIFT, SUCCESSION OR DEVISE, OR BY IRREVOCABLE TRUST

This rule exempts acquisitions resulting from gifts, intestate succession, testamentary dispositions, and transfers into irrevocable trusts by settlors. Acquisitions by trusts from persons other than settlors are not exempted by the rule. For such acquisitions the trust is the acquiring person, and the tests of section 7A(a) determine whether the act applies. See § 801.1(c)(3).

Note that transfers by a settlor into a revocable trust, or into any trust in which a settlor retains a reversionary interest, also are not exempted by the rule. However, such transfers are not reportable because the rules disregard the transfer. Under § 801.1(c)(4), the settlor continues to hold the assets or voting securities constituting the corpus of such trusts.

BACKGROUND INFORMATION TO § 802.71

The acquisitions exempted by the rule are typically involuntary and without consideration. The Commission believes that the likelihood of an antitrust violation resulting from such an acquisition is significantly less than from cases in which an acquiring person actively seeks to purchase assets or voting securities.

In response to comments 1071 and 1089, the rule exempts transfers into inter vivos trusts.

PART 803 OF THE RULES

SECTION 803.1 NOTIFICATION AND REPORT FORM

Paragraph (a) of this rule provides that the notification required by the act shall be the notification and report form, which is an appendix to Part 803 of the rules. All persons required by the act and the rules to file notification are directed to comply by completing and filing the notification and report form (or a photostatic or other equivalent reproduction of the form) in accordance with the instructions on the form and those contained in the rules. This portion of the rule also explains where copies of the form may be obtained, either in person or by mail. Paragraph (b) of the rule states that any person filing notification may, in addition to the submissions required by the rule, submit any other information or documentary material that it believes will be helpful to the enforcement agencies in assessing the impact of the acquisition upon competition. If the parties attempt to anticipate the analysis of the enforcement agencies or believe the information in the form provides and incomplete picture, they may wish to augment their submissions in an effort to clarify or expand upon any required information or to demonstrate that the transaction would not violate the antitrust laws if consummated.

BACKGROUND INFORMATION TO § 803.1

Section 7A(d)(1) directs the Commission by rule to "require that the notification required (by the act) be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisitions may, if consummated, violate the antitrust laws * * *." The Commission finds that complete responses to each of the items on the notification and report form, along with copies of the documentary materials required to be submitted with the form, are necessary and appropriate to enable the Commission and the Assistant Attor-

ney General to discharge their responsibilities under the act.

Paragraph (a) of the final rule appears essentially as it did in original § 803.05(a) and revised § 803.1(a). Original § 802.50 contained a reference to a short form, which was to have been filed when acquiring persons made additional acquisitions of assets or voting securities of the same acquired person after filing a notification and report form. Since the short form reporting mechanism was eliminated from the revised and final rules, the reference to it was deleted. See the statement of basis and purpose to § 802.21.

Paragraph (b) was added in the final rules. Its purpose is to encourage persons filing notification to provide any other information or materials that may be helpful to the enforcement agencies in assessing the impact of a reportable transaction upon competition.

The revised rule contained two paragraphs (§ 803.1 (b) and (c)) that referred the the Commission's existing reporting programs relating to certain acquisitions in the grocery and dairy industries. These programs require submission of special reports 60 days in advance of consummation of transactions to which they apply. The purpose of these paragraphs was to coordinate the timing requirements for persons required to file both under the act and rules and under either the grocery or the dairy acquisitions reporting program.

These provisions were eliminated from the final rule. The Commission has determined that it can accomplish the same purpose by altering the reporting obligations contained in its grocery and dairy acquisitions reporting programs. Because those programs were promulgated under the Federal Trade Commission Act, the anticipated changes do not appear in these rules but will appear in amended orders to be issued under the FTC Act.

When those orders are amended, persons required to file notification under the act which are to acquire voting securities or assets of a person engaged (in whole or in part) in wholesale or retail grocery distribution (SIC Groups 514 and 541, respectively) will, in addition to the notification required by § 803.1(a), simultaneously file FTC Forms 1859 A and B with Supplement, completed in accordance with the instructions contained on those forms and in the Commission's amended order. Persons required to file notification under the act which are to acquire voting securities or assets of a person engaged (in whole or in part) in the processing or distribution of Class I milk products (SIC product classes 20262 and 20264) will, in addition to the notification required by § 803.1(a), simultaneously file FTC Special Report on Acquisitions and Mergers by Corporations in the Fluid Milk Products Industry, completed in accordance with the instructions thereon and the Commission's amended order.

Because the requirement to file either the grocery or the dairy reporting forms does not stem from these rules, but from separate orders under the FTC Act, that requirement does not constitute a request for additional information within the meaning of section 7A(e) or § 803.20. As in the past, the special grocery and dairy reports will be filed only with the Commission.

SECTION 803.2 INSTRUCTIONS FOR NOTIFICATION AND REPORT FORM

Section 803.2 prescribes instructions for completing the Notification and Report Form. Some of its provisions are not contained within the form itself, and reference to § 803.2 is essential if the Form is to be completed correctly.

Paragraph (a) of the rule designates which entities or natural persons may file notification on behalf of the "person" to which the language of the act refers. Paragraphs (b) and (c) prescribe limited or separate responses for certain items on the Notification and Report Form under certain circumstances. Paragraph (d) defines the term "dollar revenues" that appears throughout the form.

SECTION 803.2(a)

Paragraph (a) of the rule specifies which entities may file notification on behalf of a "person" to which the act and rules apply. The first clause supplies the general rule: That the ultimate parent entity included within the person filing notification is responsible for filing the Notification and Report Form. Although paragraph (a) permits the ulimate parent entity to authorize another entity included within the same person to file the form on its behalf, the responsibility for fully complying with the act and rules nevertheless remains with the ultimate parent entity. The authorization need not be formalized; all that is necessary is that the entity actually filing the form submit a form complying with the act and rules.

A natural person who is the ultimate parent entity of a person required to file notification must do so just like any other ultimate parent entity. Notification may be filed on behalf of a natural person by a "legal representative." The term "legal representative" contemplates an attorney in fact, a legal guardian or custodian, or any other equivalent person. Of course, natural persons who control other entities may also authorize other entities included within the "person" to file on their behalf.

The proviso at the end of the paragraph directs that, notwithstanding other provisions in the rules, a natural person, spouse and minor children shall file only one Notification and Report Form reflecting the holdings of all of them. The example to the paragraph illustrates the proviso.

Section 803.4 also addresses the filing of the form, and contains a special procedure for certain circumstances when foreign persons refuse to file notification.

BACKGROUND INFORMATION TO § 803.2(a)

The general rule stated by paragraph (a), that the responsibility for filing the Notification and Report Form lies with the ultimate parent entity included within the person, is appropriate because the ultimate parent entity "controls" every other entity included within the person. See § 801.1(a)(1). The ultimate parent entity therefore can direct the actions of the other entities included within the person. Permitting the ultimate parent entity to delegate the task of filing the form reflects the fact that in some instances the ultimate parent entity may not be in the best position to gather the data necessary to complete the form.

The rule specifies that the preacquisition ultimate parent entity is to file notification in order to forestall any confusion if the ultimate parent entity of one or more of the reporting persons is to change as a result of the acquisition.

The provision permitting a legal representative of a natural person to file notification on behalf of a natural person simply attempts to ease the mechanics of compliance in such cases. The provision regarding the spouse and minor children of a person is necessary because the definition of "hold" in § 801.1(c)(2) attributes the holdings of a natural person, spouse and minor children to each other. In effect, each is viewed as holding the combined holdings of the group. Section 801.2, therefore, would designate each member of the group as an acquiring or acquired person if any of them is. Since multiple forms reflecting the same holdings are unnecessary, the rule provides that only one form should be filed.

No equivalent to § 803.2(a) appeared in the original rules. The final rule reflects only minor changes from revised § 803.2(a).

The revised rule provided that if a person had two ultimate parent entities, both would be required to file. This situation could have arisen only when an entity controlled by two persons, such as a corporation with two 50 percent shareholders or a two-

person partnership, was party to a reportable acquisition. This provision was deleted because the final rules now treat such an entity as being part of two persons, rather than as one person with two ultimate parent entities. See the example to § 801.2(a). Under the final rules, each ultimate parent entity is required to file notification as part of a "person" comprising itself, the entity of which control is shared, and any other entities it may control (but not the other ultimate parent entity with which it shares control).

The proviso in the revised rule stated that either the natural person(s) or the trustee(s) could file the form in such cases. This provision was deleted since § 801.1(c)(3), part of the definition of "hold," provides that a trust generally "holds" securities which it acquires. Therefore, the trust, rather than its beneficiaries or its trustee(s), is the entity (and "person") to which the act applies.

SECTION 803.2 (b)

Paragraphs (b) and (c) of the rule instruct persons completing the Notification and Report Form that for certain acquisitions the acquiring or acquired persons must submit limited or separate responses to certain items on the form. The items on the form to which the paragraphs apply include those requiring the submission of revenue, geographic and other data. If the form is not completed in accordance with this rule, the enforcement agencies may be unable to determine whether the transaction may violate the antitrust laws, and may reject the form as improperly filed under § 803.10(c)(2) or may request additional information under section 7A(e) and § 803.20.

Clause (b)(1)(i) specifies that, in responding to items 5-9 and the appendix, acquiring persons must provide data with respect to all their activities.

Clause (b)(1)(ii) provides that in an acquisition of assets, the acquired person must respond only with respect to the assets to be acquired. If the assets to be acquired represent the entire acquired person, then the acquired person's response will be the same as it would have been without the instruction; but if the assets to be acquired represent only part of the acquired person, then that person must restrict its responses to the assets to be acquired.

Clause (b)(1)(iii) is analogous to clause (b)(1)(ii) for acquisitions of voting securities. For example, if only one subsidiary of the acquired person is being acquired, then the acquired person should report on the activities of only that subsidiary (and any entities controlled by that subsidiary).

Clause (b)(1)(iv) specifies that persons that are both acquiring and acquired persons must respond separately in the manner that paragraph (b) directs, if such responses will be different. This situation will occur, for example, when less than all of the assets, or voting securities of a subsidiary, of the acquired person is to be acquired, and the acquired person is to receive stock or assets of the acquiring person in return. The acquired person will thus become an acquiring person as well; see § 801.2(c). In such cases the reporting person will submit data first as an acquiring person with respect to all its activities, and separately as an acquired person with respect only to the assets or voting securities to be acquired. Separate reponses to the items, clearly labeled, are sufficient, rather than two entire Notification and Report Forms.

Items 7-9 of the form require the person filing notification first to decide whether it and other reporting persons derive revenues in one or more of the same four digit SIC code industries. Section 803.2(b)(1) dectates that in an asset acquisition, for example, the acquired person for purposes of items 7-9 should regard itself as deriving only the dollar revenues attributable to the assets to be acquired. Subparagraph (b)(2) of the rule requires the acquiring person, in the course of completing items 7-9, to compare its dollar revenues to only those same dollar revenues—that is, those attributable to the assets to be acquired. Subparagraph (b)(2) does this by directing the acquiring person, for purposes of the comparisons in items 7-9, to regard the acquired person in the manner specified by clauses (b)(1)(ii) and (b)(1)(iii) of the previous subparagraph.

Note that subparagraph (b)(1) also applies to items 7-9. Therefore, the acquired person, if it is also an acquiring person, must under clause (b)(1)(iv) answer items 7-9 separately in its capacity as an acquiring person (i.e., with respect to all its activities) as well as with respect to the assets or voting securities to be acquired, if the responses would be different.

An example illustrates paragraph (b).

BACKGROUND INFORMATION TO § 803.2 (b)

The responses to items 5-9 of the Notification and Report Form will provide much of the data that the agencies will use to gauge the competitive impact of the acquisition. Paragraph (b), by specifying limited or separate responses, insures that the data supplied will enable the agencies to perform their initial review with reference to the specific impact of the acquisition. Thus, clause (b)(1)(i) specifies that acquiring persons must provide data on all their activities, because all their activities will be under common control with the stock or assets to be acquired. The proposal in comment 1027, which suggested that the acquiring person should disclose only activities matching or related to activities of the acquired person, was rejected. This approach is inappropriate since the purpose of the act is to permit the agencies to do their own analysis, rather than rely on the parties for that purpose.

Clauses (b)(1)(ii) and (b)(1)(iii), restricting the data submitted by the acquired person to the assets or voting securities to be acquired, are essential to a meaningful evaluation of partial acquisitions. Without the instruction, the data relevant to the assets or voting securites to be acquired would be mingled with the data reflecting assets or subsidiaries of the acquired person not being acquired. Comment 1115 complained that this requirement may be a hardship if the information is maintained by the filing person on a consolidated basis. The Commission believes that regardless of any hardship, the information is indispensable, and therefore meets the statutory standard of section 7A(d)(1) as "necessary and appropriate" to determine whether the acquisition may violate the antitrust laws. In addition, the data will in many cases have been segregated by the parties in the course of negotiating or analyzing the acquisition.

For the same reasons that other acquiring persons must disclose all their activities acquired persons that are also acquiring persons likewise must do so. Such persons report separately in each capacity because of the different focus of the antitrust analysis in each instance: In one case, the acquiring person's acquisition of the acquired person's assets or subsidiary, and in the other, the acquired person's holdings of the acquiring person's stock. Clause (b)(1)(iv) accomplishes this result.

Comment 1059 suggested language to clarify that the acquired person must meet the criterion of section 7A(a)(3)—i.e., must satisfy the 15 percent-or-$15 million size-of-transaction test—independently as an acquiring person, before the more burdensome responses as an acquiring person must be provided. The comment cited the example of a $20 million asset sold principally for cash. The comment suggested that inclusion of a minor noncash asset, or a small amount of voting securities, should not trigger the acquired person's responsibility to file as an acquiring person. The final rules reach this result by means of § 801.2(e), which provides that in such cases the acquisition of the stock or

assets of the acquiring person is separately subject to the act, i.e., is not subject to the act and rules unless separately satisfying the criteria of section 7A(a), and § 801.21, which provides that cash is not an asset when acquired. See the Statements of Basis and Purpose to §§ 801.2(e) and 802.21.

Subparagraph (b)(1) (the four clauses just discussed) appeared in the original rules as the "Special Instruction" on page 2 of the Notification and Report Form and attracted virtually no comment. Its content was thought more appropriately embodied as a rule, and it appeared in the revised rules as § 803.2(b). Final § 803.2(b)(1) retains revised § 803.2(b) with only stylistic changes.

Subparagraph (b)(2) was added to the final rule to cure the omission noted by comment 1070. Responses to items on the form that require comparisons between the activities of the acquiring and acquired persons will yield responses meaningful to the agencies' review only of the acquiring person compares its activities to the specific assets or voting securities about which the acquired person reports.

SECTION 803.2(c)

Paragraph (c) provides two additional instructions for completing items 5, 7, 8, 9, and the appendix to the form.

Subparagraph (c)(1) provides that information shall be supplied only with respect to operations conducted within the United States. See § 801.1(k).

Subparagraph (c)(2) provides that data need not be supplied with respect to assets or voting securities to be acquired, the acquisition of which is exempt from the reporting and waiting-period requirements of the act under any provision of the act or rules.

BACKGROUND INFORMATION TO § 803.2(c)

Subparagraph (c)(1) is necessary to assure that the responses are as nearly as possible comparable to the data published by the U.S. Bureau of the Census in its Economic Censuses. It appeared on the instruction page of the Notification and Report Form in the original rules (and still appears there) and was added to § 803.2(c) of the revised rules. The final rules retain the provision unchanged save for adjusting the item numbers on the form.

The only comment to address the provision (1053) suggested that a dollar revenue threshold of $1 million in an SIC category should be satisfied before data must be supplied concerning that SIC category. The suggestion was rejected for the reasons stated in the Statement of Basis and Purpose to the various parts of item 5 of the form.

Subparagraph (c)(2) confirms that exempt acquisitions are totally exempt from the requirements of the act and are not subject to disclosure on the form even if acquired along with nonexempt assets or voting securities. The provision attracted no comments and was retained in the final rules without change.

SECTION 803.2(d)

Paragraph (d) of the rule defines the term "dollar revenues," which appears throughout the Notification and Report Form. The term identifies which goods and services are to be taken into account for purposes of the form and how they are to be valued. It occurs in two principal contexts on the form. First, item 5 requires persons filing notification to disclose the dollar revenues derived in various SIC-based categories. Second, responses to items 7–9 are conditioned upon more than one reporting person's deriving dollar revenues in the same industry.

For manufacturing operations, dollar revenues are value of shipments; for nonmanufacturing operations, dollar revenues are other appropriate measures of receipts, including, for example, insurance premiums and sales commissions. The definition specifies the treatment of returns, allowances, and the like. Dollar revenues include interplant transfers.

BACKGROUND INFORMATION TO § 803.2(d)

The definition was devised in order to permit comparison between the data supplied in item 5 on the form and the data compiled by the U.S. Bureau of the Census in its economic censuses. The Census Bureau denominates its figures "value of shipments" for manufacturing operations, and "value of sales" for nonmanufacturing operations. The term "dollar revenues" was selected because "value of shipments" and "value of sales" are essentially equivalent, and "dollar revenues" embraces both census terms.

The definition of "dollar revenues" in the original rules appeared on page 1 of the Notification and Report Form. It was transferred into § 803.2(d) of the revised rules along with other instructions to the Notification and Report Form; as part of a consolidation of most of the substantive instructions into the rules. The revised definition contained only stylistic changes, except that the last sentence of the original definition, requiring an explanation of the dollar revenues in certain two-digit SIC major groups, was transferred into items 5(a) and 5(c). The final definition is identical to the revised definition.

The only aspect of the definition which attracted comment was the inclusion of interplant transfers. Several comments (15, 26, 74; 1102) questioned this provision, suggested that it was burdensome, or requested its deletion. Interplant transfers were retained because their inclusion is essential if the data on the form are to be comparable to the census of manufactures. One comment (74) was incorrect in asserting that the census figures do not include interplant transfers; see, e.g., 1 U.S. Bureau of Census, Census of Manufactures, 1972, XXIX.

SECTION 803.3 STATEMENT OF REASONS FOR NONCOMPLIANCE

Section 803.3 requires that a complete response must be supplied to each item on the Notification and Report Form, and to any request for additional information under section 7A(e) and § 803.20. Whenever a person filing notification is unable to supply a complete response to any item on the form, any part of an item or any portion of a request for additional information, the person must submit a statement of reasons for noncompliance. Such a statement must indicate why the person is unable to supply a complete response; what information is required for a complete response; who, if anyone, has the required information; and what efforts were made to obtain that information. A separate statement must be provided for each item, part of an item, or portion of a request that is not fully answered.

Under section 7A(b)(1)(A), the waiting period begins when the reporting persons submit completed notification and report forms, or, if any responses are not complete, the forms to the extent completed together with statements of the reasons for such noncompliance. Section 7A(e)(2) contains a similar provision with respect to requests for additional information. Section 7A(g)(2) states that if a person fails substantially to comply with either of these requirements, a U.S. district court may order compliance and (with one exception) is required to extend the waiting period until there has been substantial compliance. The only exception is that when the issuer in a tender offer has failed substantially to comply, the court may order compliance but may not extend the waiting period. See section 7A(g)(2).

A complete response, within the meaning of the act and rules, is one that supplies all requested information. Anything less than a complete response potentially is not substantial compliance. The rule does not define substantial compliance, and the agencies contemplate resolving whether a person has substantially complied on a case-by-case basis. The provisions of § 803.3 are designed to focus on the information necessary to determine whether the filing person actually

cannot supply the required information or documents, or whether the failure is based on a mere unwillingness to comply or misunderstanding of what is required by a particular item.

BACKGROUND INFORMATION TO § 803.3

The legislative history supports the focus of the rule. Senator Hart indicated:

> The submission of (the statement of reasons for noncompliance) is clearly not a substitute for compliance with the notification obligation. The explanation will, however, serve two salutary purposes. First, it will tend to reduce the disagreement between the agencies and the persons subject to the Act since the antitrust authorities will be informed of the reasons underlying noncompliance. Second, the explanation will be useful in any civil penalty proceeding that may be brought under subsection (g)(1).
>
> 122 Cong. Rec. S15417 (daily ed. Sept. 8, 1976).

By specifying in advance the type of information that must be included in the statement, the rules attempt to minimize such "disagreement between the agencies and the persons subject to the act." In most cases, a controversy over the adequacy of a response to an item on the form or a request for additional information should be resolvable by reference to the statement of reasons for noncompliance. Vague, uninformative reasons for noncompliance could necessitate requests for additional information or documentary material pursuant to section 7A(e) and § 803.20, or an action in district court under section 7A(g)(2).

The original rule would have required a somewhat more detailed statement of reasons for noncompliance. Original § 803.25(b) required that whenever "less than a complete response has been supplied," the filing person must indicate what additional work would be required to furnish the complete response; and whether a complete response was being prepared, and if so, when it would be submitted. See original § 803.25(b) (4), (5).

The original rule was refined and amended. Revised § 803.3 made clear that statements of reasons for noncompliance must indicate why the filing person cannot submit, rather than merely has not submitted, a complete response to any item on the form. The revised rule also specified that the rule applies to requests for additional information. The final rule added the requirement that a statement of reasons for noncompliance must describe all efforts made to obtain the required information from another person that has it.

These revisions were made, in part, to emphasize that the situations in which a person will be deemed "unable" to supply a complete response will be construed narrowly. A complete response cannot be supplied, for instance, if necessary information is in the hands of a person that refuses to make it available to the filing person. That it will be costly or burdensome to obtain requested information will not necessarily excuse a failure to comply substantially; nor does the fact that another person has the requested information, standing alone, excuse a filing person from seeking and submitting the information. The acceptability of reasons for noncompliance will be determined on a case-by-case basis.

Several comments (103, 115; 1108) disputed the Commission's basic authority to promulgate a rule specifying what should be included in the statement of reasons for noncompliance. However, section 7A(d) clearly gives the Commission such power.

Other comments suggested that the rule was too inflexible (1076) or misleading (1059) because the statute requires substantial rather than absolute compliance. These comments were rejected. The information necessary to complete the form is the type that a filing person normally can provide from its records, and complete compliance is necessary for the agencies to perform the review envisioned by the act. Thus, it is the Commission's position that anything less than complete compliance potentially is not substantial compliance. Another comment (1086) suggested that persons should be permitted to decide which items on the form are relevant or irrelevant to the acquisition and to answer only those items they deem relevant at the risk of a request for additional information. This approach is inappropriate; all items on the form were designed to evoke the information most relevant to an antitrust analysis. Therefore, an incomplete response to any item on the form diminishes the ability of the enforcement agencies to make a well-informed evaluation of the acquisition. A decision on the part of a filing person that an item is irrelevant does not relieve that person of the obligation to provide a complete response to the item.

SECTION 803.4 FOREIGN PERSONS REFUSING TO FILE NOTIFICATION

In certain situations in which a foreign acquired person refuses to file the notification required by the act and the rules, this rule permits any other party to the transaction to file notification on behalf of the foreign person. This provision is set forth in paragraph (a) of the rule; paragraphs (b), (c), and (d) establish the procedural framework for this special type of notification. The term "foreign person" is defined in § 801.1(e)(2)(i).

Under paragraph (a), the rule applies only to transactions to which § 801.30 does not apply—that is, to consensual two-party acquisitions. In addition, the rule applies only if the foreign person is an acquired person. Finally, the rule applies only if no assets located in the United States (other than investment assets) and no voting securities of United States issuers are to be acquired. If any assets located in the United States or voting securities of United States issuers are to be acquired indirectly—that is, because they are held by the issuer to be acquired—the rule is inapplicable. The term "investment assets" is defined in § 801.1(i)(2). The rule thus applies principally to acquisitions by United States persons that fail to gain exemption under § 802.50.

Paragraph (b) requires that the person filing on behalf of the foreign person must state in the affidavit required under § 803.5(b) that the foreign person has refused to file notification, and must explain all efforts it has made to obtain that person's compliance. Paragraph (c) provides that the substitute filing must contain all information and documentary material required of the foreign person that is reasonably available to the person actually filing. For example, information located abroad in the possession of the foreign person that the person refuses to disclose may not be reasonably available. If some information or documentary material is not available, the person filing on behalf of the foreign person must so indicate, but need not supply a formal statement of reasons for noncompliance as provided in § 803.3.

According to paragraph (d), however, even when this substitute filing procedure is used, the foreign person remains the "person filing notification" for the purposes of the Act and the rules. Therefore, the foreign person still may be issued a request for additional information under section 7A(e) and § 803.20, and the waiting period will be extended until twenty days after that person has responded. Section 803.4 does not permit substitute responses to a request for additional information under section 7A(e) and § 803.20. If a foreign acquired person refuses to respond to a second request, it is possible that the waiting period will continue indefinitely. (Note, however, that despite the pendency of a second request, the agencies retain the power to terminate the waiting period sua sponte pursuant to § 803.11(c). See the example to § 803.20(c).)

BACKGROUND INFORMATION TO § 803.4

The purpose of this rule is to permit the consummation of certain consensual two-party transactions when a foreign acquired person refuses to file notification. Under the limited circum-

stances described in the rule, another party to the acquisition may file on behalf of the foreign person so that the waiting period can begin, as section 7A(b)(1) requires, upon receipt of notification from both the acquiring and acquired persons. (The problem does not arise for transactions covered by § 801.30, because that rule conditions the start of the waiting period on receipt of only the acquiring person's completed Form.)

If either agency requires additional information or finds that some information not supplied on the form is needed for its analysis, a foreign person will not be able to thwart the agency's investigation by refusing to respond to a request for additional information. Paragraph (d) of the rule makes clear that the "person required to file notification," to which a request for additional information may be addressed, remains the foreign person. If the foreign person does not respond to the second request, the waiting period will not expire and the person may be subjected to a suit for compliance under section 7A(g) after failing to respond within a reasonable time. See § 803.21. In this situation, since the foreign person will in many cases have exclusive access to the additional information or documentary material requested, it is inappropriate to permit another party to the transaction to respond.

This rule does not permit another party to transaction to file on behalf of a foreign acquiring person under any circumstances. Furthermore, for similar reasons, the rule applies only to acquisitions of foreign assets and of voting securities of a foreign issuer.

This rule had no counterpart in the original or the revised rules. It was inserted in the final rules partly in response to comments (e.g., 1059, 1063) that argued that noncompliance by foreign persons may prevent U.S. companies from consummating certain kinds of transactions. The rule also responds in part to comment 87, which recommended an ad hoc exemption rule to permit the consummation of transactions in which a foreign acquired person refuses to file notification. For discussion of that specific suggestion, see the Statement of Basis and Purpose on the "ad hoc exemption" issue, below.

SECTION 803.5 AFFIDAVITS REQUIRED

Section 803.5 requires that affidavits attesting that certain pre-notification obligations have been fulfilled must accompany each Notification and Report Form. It thus governs when notification may be filed.

Paragraph (a) provides that before notification may be filed in connection with acquisitions described in § 801.30, the acquired person must receive from the acquiring person certain information relevant to the acquisition. In addition, in the case of a tender offer, the intention to make the offer must have been publicly announced. Paragraph (b) provides that in all other acquisitions notification may be filed after a contract, agreement in principle or letter of intent to merge or acquire has been executed.

Subparagraphs (a)(1) specifies the information that, in all acquisitions to which § 801.30 applies, the issuer of the voting securities must receive from the acquiring person. The information must be delivered to the issuer by certified or registered mail, by wire or by hand to its principal executive offices.

Subparagraph (a)(2) provides that the acquiring person must attest that it has a good faith intention to make the acquisition and, in the case of tender offers, that the intention to make the offer has been publicly announced. The public announcement may be effected by a press release announcing the acquiring person's intention to make the offer, by a filing under a state statute that has the effect of publicly announcing the acquiring person's intention to make the offer, or by actually publishing and commencing the offer. (In the latter case, of course, the tender offer could not be consummated until the waiting period expires or is terminated.)

Paragraph (b) of the rule provides that for all transactions to which § 801.30 does not apply—typically transactions which the parties have negotiated directly with each other—notification must be accomplished by an affidavit stating that a contract, agreement in principle, or letter of intent to merge or acquire has been executed. Thus, the parties may file notification at any time after one of those types of documents has been executed.

The rule requires that the affidavits be attached to the front of the notification. A Notification and Report Form submitted without the affidavits required by this rule is a deficient filing and will not begin the running of the waiting period. See § 803.10(c)(2).

BACKGROUND INFORMATION TO § 803.5

By requiring that certain affidavits accompany the Notification and Report Form, § 803.5 accomplishes two purposes. First, it ensures that the acquired person is informed of its obligation to file notification when the acquired person may not otherwise be aware of that duty. Second, it governs when persons may file notification.

Subparagraph (a)(1) accomplishes the first purpose of the rule, that of informing the acquired person of its obligation to file notification in instances when it might not be aware of the facts. Those instances are transactions of the types described in § 801.30, which do not necessarily involve agreement between the acquiring and acquired persons. The information set forth in clauses (a)(1)(i)-(vi) of the rule will provide the issuer with certain information necessary to complete its Form as an acquired person.

The requirement that the acquiring person attest that the information has been received (not merely that it has been sent) is intended to make certain that a delay in delivery will not reduce the time available to the acquired person to prepare and file its notification or the time within which the enforcement agencies must complete their review. The rule specifies that the information may be transmitted to the offices of the acquired person by wire primarily in order to accommodate foreign transactions.

Several comments (e.g., 19, 73, 74, 78, 93) suggested that original § 803.15 was inadequate in that open market or other acquisitions of voting securities from third-party holders (other than tender offers) were not addressed by the rule and were improperly included with consensual acquisition in paragraph (b). Revised § 803.4 added subparagraph (a)(1) to accommodate such acquisitions.

Revised § 803.4 also would have provided for service of the information by any means permitted under rule 4(d) of the Federal Rules of Civil Procedure. That provision would have permitted service to individuals or places other than the acquired person's principal executive offices, and consequently might have introduced a degree of uncertainty and delay into the timing of the waiting period. Accordingly, the reference to the Federal Rules of Civil Procedure was deleted, and final § 803.5(a)(1) specifies the permissible means of transmitting the information.

The final version also refers to § 803.30 transactions instead of referring to "tender offers and other acquisitions of voting securities from third parties." This change simply reflects the rephrasing and clarification of § 803.30. See the Statement of Basis and Purpose to that rule.

Two considerations motivate the inclusion of subparagraph (a)(2) and paragraph (b), which require a good faith intention to make the acquisition, public announcement of tender offers, and execution of a contract, agreement in principle or letter of intent. First, those provisions ensure that the parties intend to consummate the acquisition, and are not using notification as a means of testing the agencies' enforcement intentions. Because of the time and resource constraints upon the agency staffs, the agencies could not tolerate review of

hypothetical transactions. Second, the requirement assures that the forms will contain sufficiently definitive information about the transaction to permit accurate analysis.

The original rule, § 803.15, would have required that in tender offers, the offeror must attest that the tender offer had been "published, sent or given" to the security holders of the issuer of the voting securities to be acquired. The SEC, in its comment (125) on the original rule, supported this provision. The comment urged that pre-commencement notification not be required. A pre-commencement notification, requirement, it said, would have "(tipped) the balance of regulation in favor of the subject company and undermined the extreme care taken by Congress in enacting the Williams act to balance the interest of both the bidder and the subject company, while providing full and fair disclosure to investors and others." See also the Statement of Basis and Purpose to § 803.30.

However, several comments (e.g., 12, 63, 93, 96) objected to this provision. Since some State statutes require persons intending to make certain types of tender offers to file notice of their intentions significantly in advance of making the offers, the waiting period required by the act would not begin to run until after the waiting period required by State law. Therefore, these comments requested that notification be permitted before commencement of the tender offer.

Revised § 803.4 eliminated the requirement that the tender offer be "published, sent or given" to security holders of the acquired issurer before notification could be filed. It substituted the requirements that the offeror state its good faith intention to make the acquisition, and that the tender offer must have been publicly announced.

Since filings under most State statutes of the type referred to by the comments have the effect of making public the acquiring person's intention to make the offer, the revised (and final) rule permits notification prior to commencement of the tender offer when such a filing has been made. In permitting such notifications, the commission, as it stated in the FEDERAL REGISTER notice accompanying the revised rules, 42 FR at 39046-47 (August 1, 1977), takes no position about whether any State statute requiring any type of filing by the acquiring person in a tender offer is preempted by Federal statute or regulations, or may be otherwise unlawful. The Commission specifically does not endorse or oppose the principle of required disclosure of planned tender offers which underlies such statutes.

The SEC suggested in its second comment (1058) that in view of the uncertainties surrounding tender offers (including the possible effects of State statutes, the increasing incidence of competing tender offers and possiblity of litigation in connection with tender offers), the affidavit required in paragraph (a) should reflect only a good faith intent to make an offer, rather than the intent to make an acquisition. The final rule retains the word "acquisition," although as the comment noted developments subsequent to the attestation may thwart the tender offer.

Another comment (1102) suggested that public announcement of the tender offer should not be necessary when there is no legal requirement of publication. However, the purposes of the requirement support retaining it even when public announcement is not otherwise compelled.

Original § 803.15(b) and revised § 803.4(b) would have allowed notification only when a contract or agreement in principle had been executed. Several comments (e.g., 15, 93; 1040) however, urged that the execution of a letter of intent represented a sufficiently definite transaction to satisfy the agencies' concerns, and so the letter of intent was added to final § 803.5(b).

Several comments (e.g., 1011, 1090) objected to the requirement still present in paragraph (b) that a written agreement must be executed before notification can be filed. Comment 1011 suggested that since some acquisitions involve no written agreement prior to closing, the rules should permit notification regarding acquisitions not reduced to writing, provided that they are consummated within 180 days after the expiration of the waiting period. Similarly, comment 1019 urged that the affidavit mandated by paragraph (b) is improper since agreements to merge or otherwise acquire voting securities or assets of another company often are not reduce to writing for some time after they are made. It suggested that the waiting period should be permitted to commence and expire before finalization of the terms of the acquisition, rather than after the terms have been embodied in a written agreement. Not withstanding the comments, the agencies believe that oral agreements to engage in significant acquisitions are unusual. In view of the important purposes served by the requirement, the suggestions made by these two comments have been rejected.

SECTION 803.6 CERTIFICATION

This rule states that the notification required by the act and the response to a request for additional information under section 7A(e) and § 803.20 must be certified and specifies who may perfom that certification. With respect to notification, paragraph (a) provides that any general partner in a partnership or any officer or director of a corporation may do so. When a reporting person has neither officers, directors nor partners, the certification may be provided by any individual exercising functions similar to those of an officer, director or general partner. A natural person filing notification, or his or her legal representative, must certify a filing by or on behalf of such person.

Paragraph (b) requires that additional information or documentary material submitted pursuant to a request under section 7A(e) and § 803.20 must be accompanied by a certification in the format appearing at the end of the notification and report form, completed in accordance with paragraph (a) of this rule by the person or individual to whom the request was directed.

Paragraph (c) requires that the individual who certifies the form or a response to a request for additional information must possess actual authority to provide such certification on behalf of the person filing notification or responding to such request.

The certification consists of a sworn statement appearing at the end of the Notification and Report Form, which reads as follows:

> This Notification and Report Form, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

BACKGROUND INFORMATION TO § 803.6

The purpose of the certification requirement is twofold. First, the certification places upon the individual who signs it the responsibility for determining that, to the best of that individual's knowledge, the information provided is true, correct, and complete in accordance with the act and the rules. Second, the certification is intended to estop the person on whose behalf the report is filed from later denying the completeness or accuracy of the information provided on the form, in the event that either enforcement agency seeks to introduce any such information into evidence in any proceeding. It is also possible that criminal prosecutions of certifying individuals might be appropriate if, for example, data has been knowingly falsified. The certification language is similar to that which has been used for a number of years on the reporting

forms under the Commission's existing premerger notification program.

The certification requirement appeared in original § 803.20 and in revised § 803.5 in substantially the same form as the final rule, except that the listing of who may provide certification is somewhat expanded from that appearing in the original rule. Paragraph (b) of the final rule was inserted to insure that responses to requests for additional information and documentary material are also certified, for the same reasons applying to the initial notification.

Several comments in response to the original rules discussed the certification requirement. One (15) suggested deletion of the word "actual" from the phrase "actual authority" in subparagraph (b) of the rule, but provided no reason or explanation. The term "actual authority" is meant to insure that the certifying individual possesses the authority to certify. In other words, an individual may not perform a certification unless he or she has been authorized to do so by the person on whose behalf the report is filed. See §§ 801.1(a)(1), 803.2(a).

Another comment (28) objected to the certification requirement for an acquired firm, suggesting that this might constitute a warranty of some kind to the acquiring company. The comment did not explain why that result might occur, but in any case no such result is intended by the Commission.

Two comments (74, 88) suggested that the certification requirement was unreasonable. The former suggested that the certification attest merely "that a good faith effort to produce and deliver the information specified has been made." That comment also suggested "a modified certification format where certain categories of information or styles of presentation are practically, but not absolutely, beyond the ability of the reporting person." Comment 88 suggested that a "substantially accurate" standard be substituted for the "true, correct and complete" language in the certification. The Commission believes that each of these suggestions is inappropriate.

Section 7A(g)(2) requires substantial, rather than complete, compliance with the notification requirement and with any request for additional information. It is the function of the rules to define full compliance and to specify the content of the statement of reasons for noncompliance to be supplied whenever the act and the rules are not fully complied with. See section 7A(b)(1)(A)(ii), (e)(2)(B), § 803.3. The instructions on the Notification and Report Form permit the use of "best estimates" when books and records that provide accurate answers to items on the form are not available. Subject to these exceptions, the rules require full and complete compliance, and the certification at the end of the form attests that this requirement has been satisfied by providing information that is accurate and complete to the best of the knowledge of the individual who signs the form on behalf of the filing person.

SECTION 803.7 EXPIRATION OF NOTIFICATION

Section 803.7 provides that notification with respect to and acquisition expires 1 year after the related waiting period expires. Once notification expires, the situation is just as though notification had not been filed, and the parties must report and wait before any acquisition subject to the act may be consummated.

For acquisitions of assets, therefore, the rule means that the acquisition must be consummated within 1 year following the expiration of the waiting period.

For acquisitions of voting securities, the rule works in tandem with § 802.21. After an earlier acquisition with respect to which notification was filed, § 802.21 exempts, under certain conditions, acquisitions of voting securities not meeting or exceeding the next greater notification threshold than that attained in connection with the earlier notification. After notification expires, no notification threshold greater than the highest one met or exceeded within 1 year after expiration of the waiting period may be crossed without again filing notification, even if notification has been filed regarding a higher threshold. The term "notification threshold" is defined in § 801.1(h).

An example illustrates the rule. For more information, see the statements of basis and purposes to §§ 801.1(h) and 802.21.

Background Information to § 803.7

This rule serves two purposes. First, it limits the acquiring person to a reasonable period of time—1 year from the expiration of the waiting period—during which to consummate the acquisition described in the notification. If the acquisition is to be consummated after that time, the possibility of changed circumstances warrants a fresh review by the enforcement agencies.

Second, the rule minimizes the likelihood that filings under the act will be used as a means of testing the agencies' enforcement intentions with respect to acquisitions that the reporting persons have no present intention to make. In this context the rule supplements § 803.5(a)(2), which requires that acquiring persons submit an affidavit with the form stating a good faith intention to make the acquisition.

This rule appears for the first time in the final rules.

SECTION 803.10 RUNNING OF TIME

Persons required by the act to file notification of an acqusition must thereafter wait 30 days (or, for a cash tender offer, 15 days) before consummating the transaction. This rule explains the procedures for determining precisely when this waiting period begins and ends.

Under § 803.10(a), the waiting period begins on the date of receipt of the notification and report form, or, if the form is not completed, upon receipt of the form to the extent completed and a statement or statements of reasons for noncompliance in accordance with § 803.3. Under subparagraph (a)(1), the waiting period for acquisitions to which § 801.30 applies begins when the acquiring person's form is received by both agencies. Subparagraph (a)(2) provides that for all other acquisitions, the waiting period begins when notification is received from all persons required to file.

Paragraph (b) of the rule describes how to determine the expiration date of the waiting period. Unless extended by a request for additional information under section 7A(e) and § 803.20 or by district court under section 7A(g)(2) or terminated under § 803.11, the waiting period ends at 11:59 p.m. eastern time on the 30th (or, for cash tender offers, the 15th) calendar day following the beginning of the waiting period. If extended by a request for additional information or documentary material, the waiting period expires 20 days (or in the case of a cash tender offer 10 days) after the receipt of such information or documentary material by the requesting agency. Not every request for additional information extends the waiting period; those directed to the acquired person in a tender offer do not, under section 7A(a)(2) and § 803.20(c). The paragraph also indicates that § 802.23, the exemption rule relating to amended or renewed tender offers, may provide that the waiting period ends on a different date.

If a request for additional information is issued early in the waiting period and is answered promptly, the 20- or 10-day extension could run simultaneously with the original waiting period. Subparagraph (b)(2)(ii) provides, however, that unless terminated pursuant to § 803.11, the waiting period cannot expire earlier than it would have expired if no request had been issued. See example No. 1 to the rule.

In the event that requests for additional information are directed to more than one person, the waiting

period is extended until 20 days after the receipt by the requesting agency of the information requested from all such persons. Example No. 2 to the rule illustrates this point.

Subparagraph (c)(1) specifies that the date of receipt of notification, for purposes of determining when the waiting period begins, is the date on which delivery is effected by hand or by certified or registered mail during normal business hours to the offices designated in the rule. If delivery is effected after 5 p.m. eastern time (that is, after the close of normal business hours) or on any day other than a regular business day (such as a Saturday, Sunday, or Federal holiday) the date of receipt is considered to be the next regular business day. If delivery to both agencies is not effected on the same date, the later date is deemed the date of receipt.

Under subparagraph (c)(2), a notification and report form, or a response to a request for additional information, that does not comply with the rules is insufficient to begin the running of time. In particular, if any item of the form is not fully completed, or any information or documentary material is not completely supplied, a statement of reasons for noncompliance conforming to § 803.3 must be submitted. Likewise, the affidavit(s) required by § 803.5 must accompany the acquiring person's notification. If a deficient filing is received, the Commission or the Assistant Attorney General will promptly notify the person of the deficiencies so that the person can rectify them. However, time will not begin to run until the deficiencies are cured.

BACKGROUND INFORMATION TO § 803.10

Section 7A(b)(1) provides that the waiting period "shall begin on the date of receipt by the Federal Trade Commission and the Assistant Attorney General" of the completed notification, or the notification to the extent completed and a statement of reasons for noncompliance in accordance with § 803.3. Section 7A(e)(2) provides that this waiting period may be extended by a request for additional information or documentary material for 20 (or, in the case of cash tender offers, 10) days after the appropriate agency receives all requested data. Under section 7A(b)(1)(A), the waiting period begins upon receipt of notification from both the acquiring and acquired persons, or, in a tender offer, from the acquiring person only.

Original § 803.10 matched the statutory scheme: Only for tender offers would the waiting period have begun upon receipt of the acquiring person's notification. Consequently, for all other acquisitions not involving a two-party agreement, in which the issuer may be indifferent or hostile, the original rules would have permitted such an issuer to prevent the waiting period from starting, and the transaction from taking place, by not filing. As explained in the statement of basis and purpose to § 801.30, with regard to beginning the waiting period the final rules treat all nonconsensual acquisitions similarly to the treatment afforded tender offers by the act. Final § 803.10(a)(1) thus makes clear that for all acquisitions to which § 801.30 applies, the waiting period begins as soon as the acquiring person files notification. The acquired person in such transactions must file notification no later than the 15th day (or, in the case of cash tender offers, the 10th day) after the date of receipt of the acquiring person's notification. See § 801.30(b)(2).

A request for additional information issued to the acquiring or acquired person before the waiting period expired automatically extends the waiting period, except for requests directed to acquired persons in tender offers. See section 7A(e)(2) and § 803.20(c)(2). Under those sections and subparagraph (b)(2) of this rule, whenever the waiting period for tender offers is extended it expires on the 20th day (or in the case of a cash tender offer, on the 10th day) following the receipt from the offeror of all additional information requested. A request for additional information in connection with all other types of acquisitions extends the waiting period for 20 days following the receipt of additional information from all persons required to submit it.

Comment 1086 suggested that if a request for additional information is made to the issuer whose stock is being acquired from a third party, the waiting period should be extended only for 20 days from the date the request is issued. However, the comment's concern that such an acquired person could indefinitely extend the waiting period by not responding to the request has been addressed by the addition of § 803.21 to the final rules. See the statement of basis and purpose to that rule.

Numerous technical changes were made from the revised rule. The time of receipt after which delivery would be deemed effected on the following day was changed from 3 to 5 p.m. to reflect the close of normal business hours. The time of day when the waiting period expires was changed from 5 to 11:59 p.m. This change provides the agencies with the full 30 (or 15) days within which to review the acquisition and reflects the statutory intent that parties wait the full 30 or 15 days before consummating.

A technical change urged in comment 1059 was rejected. That comment suggested that the date of receipt of mailed forms and additional information at the mailrooms of the agencies rather than at the premerger notification offices, be deemed the "date of receipt." The comment expressed concern that reporting persons should not be subject to the uncertainty of guessing how long delivery from the mailrooms to the specified offices would take and should not bear the risk of delays over which they have no control. While it is true that requiring receipt at the offices that will undertake the review could subject the reporting person to some delay, this procedure will permit the agencies to review the submissions for the full waiting periods. Moreover, guesswork as to the date of receipt is eliminated if delivery is effected by mail with return receipt requested, or by hand. A reporting person that chooses not to employ one of these means of delivery retains the risk of delay.

Subparagraph (c)(2) of the rule provides that unless the notification and report form is submitted in compliance with the rules, it is not "recieved," and the waiting period therefore does not begin. Similarly, the rule provides that whenever a response to a request for additional information does not comply with the rules, it too is not "received." In the latter instance, the waiting period remains in effect until the deficiency is cured and for 20 days (in the case of cash tender offers, 10 days) thereafter.

The rule is intended to deal with instances of procedural noncompliance such as, for example, when the form or a response to a request for additional information has not been certified; when one or more of the affidavits required by § 803.5 are missing; when a required statement of reasons for noncompliance (see § 803.3) is missing or incomplete; or when the data submitted does not reflect the operations of the correct portions of the reporting person's business as required by § 803.2. In these or other instances of procedural noncompliance the Commission will promptly notify the reporting person so that the problem(s) can be corrected.

This provision generally will not be applicable when all items on the form or questions in a request for additional information have been properly answered or a complete statement of reasons for noncompliance explains any incomplete responses. In these situations any question of whether there has been substantial compliance with the act and the rules will be resolved by a district court as provided in section 7A(g)(2).

SECTION 803.11 TERMINATION OF WAITING PERIOD

Section 803.11 implements section 7A(b)(2) of the act. It sets forth the conditions and procedures under which the waiting period for an acquisition may be terminated prior to its normal expiration. Generally, the Commission and the Assistant Attorney General will terminate a waiting period only if termination has been requested in writing by one of the persons filing notification.

Paragraph (a) of the rule sets forth the conditions which must exist before a request for termination of a waiting period will be considered. First, all persons required by the act and the rules to file notification must have done so. Second, it must have been determined that no request for additional information will be made, or if any such requests have been made, the responses must have been received. Third, both the Commission and the Assistant Attorney General must have agreed that no further action (e.g., request for additional information, suit under section 7A(g), or action challenging the acquisition) is to be taken during the waiting period.

Paragraph (b) of the rule automatically denies any request for termination which is pending at the time a request for additional information is issued to any person, whether the request for termination accompanied the filing of notification or was submitted afterwards. In such a situation, no formal notice of denial will normally be given.

Paragraph (c) provides that a waiting period may be terminated either upon the written request (filed with the offices designated in § 803.10(c)) of any person that has filed notification, or sua sponte by the agencies without regard to the conditions contained in paragraph (a). The sua sponte termination provision makes it unnecessary to resubmit a request which was denied by operation of paragraph (b). Once a request has been made, it will be treated as continuing. In addition, this provision gives the Commission and the Assistant Attorney General the power, in appropriate circumstances, to terminate a waiting period even though a request for additional information remains unanswered.

Section 803.11(c) makes termination effective upon notice by telephone to any requesting person, states that written confirmation of termination will be sent to all parties that filed notification, and restates the requirement of section 7A(b)(2) that notice of termination must be published in the FEDERAL REGISTER.

The Federal Trade Commission has delegated the power to terminate the waiting period under section 7A(b)(2) and this rule to the Director and Deputy Directors of the Bureau of Competition, without power of redelegation.

BACKGROUND INFORMATION TO § 803.11

Section 7A(b)(2) provides:

> The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period * * * and allow any person to proceed with any acquisition subject to the (the act), and promptly shall cause to be published in the FEDERAL REGISTER a notice that neither intends to take any action within such period with respect to such acquisition.

Paragraph (a) of the rule announces the conditions the agencies will require before a request for early termination will be granted.

Two comments from the same organization (120; 1059) took issue with the provision in paragraph (c) of the rule that notice of all terminations shall be published in the FEDERAL REGISTER. The comments argued that Section 7A(b)(2) authorizes publication of a notice of termination only when the termination occurs within "the initial * * * 30-day waiting period." The comments contended that publication of notice that a "*supplemental* waiting period" (emphasis in comment 120) has been terminated is not authorized by section 7A(b)(2) and would violate the confidentiality quarantees of section 7A(h).

This argument was rejected. Section 7A(b)(2) does not merely "authorize" publication of notices of termination. The language of the statute is mandatory and imposes an obligation on the Commission and the Assistant Attorney General to publish notice of all such terminations in the FEDERAL REGISTER. There is no basis for distinguishing between notices terminating waiting periods of ordinary length and those terminating waiting periods that have been extended by requests for additional information. Rather than contemplating an original waiting period followed by a "supplemental" waiting period, section 7A(b)(1)(B) creates only one waiting period that may be extended by a request for additional information or by a court order under section 7A(g)(2). Since there is only one waiting period, which may or may not be extended, section 7A(b)(2) requires that all notices of termination be published in the FEDERAL REGISTER, regardless of when during that waiting period the termination occurs.

In addition, to the extent that any of the contents of published termination notices constitute "information * * * filed * * * pursuant to (the act)" within the meaning of section 7A(h), the Commission concludes that section 7A(b)(2) makes a necessary exception to section 7A(h).

Comment 1075 suggested that before termination is considered, it should be requested by the acquired person, especially in third-party (§ 801.30) transactions, or by both parties. The Commission recognizes that in hostile takeovers, the interests of the acquiring and acquired personsl are divergent. But those conflicting interests alone would not appear to justify a rule which would give an advantage to an acquired company resisting the takeover. If the acquisition may be anticompetitive, a request for early termination is unlikely to be granted no matter which party or how many parties request it. If it does not appear anticompetitive, the Commission has no basis upon which to require that requests come from one party or the other, or that they be unanimous. Thus the suggestion was not adopted.

The rule retains the flexibility to terminate a waiting period sua sponte chiefly because § 803.20(c)(2) automatically extends the waiting period when a request for additional information is issued. The Commission and the Assistant Attorney General may occasionally be able to reach the determination set forth in subparagraph (a)(3) of this rule even though not all requested information has been provided by all the parties. In such instances, the waiting period may nevertheless be terminated. See also the statements of basis and purpose to §§ 803.4 and 803.21.

SECTION 803.20 REQUESTS FOR ADDITIONAL INFORMATION OR DOCUMENTARY MATERIAL

Section 7A(e) of the act permits the Commission and the Assistant Attorney General, before the expiration of the waiting period, to require one submission of additional information or documentary material from each person filing notification with respect to an acquisition. Section 803.20 details the procedures by which the agencies request additional information and persons filing notification comply with them. Paragraph (a) identifies the persons and individuals subject to such requests; paragraph (b) describes who may make the request, how the request is to be communicated, and when the request is effective; paragraph (c) details the impact of such requests on the waiting period; and paragraph (d) provides that all such requests must be clearly identified and should be distinguished from requests for clarification or amplification of responses.

Any person required to file notification may be required to respond to one request for additional information or documents, and more than one party to an acquisition may be required to do so. Furthermore, the act and rule specifically provide that such requests may be made of one or more entities within a filing person or of one or

more officers, directors, partners, agents, or employees of the filing person. Thus requests for additional information or documentary material are not limited to the ultimate parent entity (the entity responsible for filing notification under § 803.2(a)), or to an entity authorized to file on its behalf.

Although either agency may issue a request for additional information, subparagraph (b)(1) provides that such a request may not be issued by both agencies to the same person or to any entity or individual within that person. The rule provides that the Commission and Assistant Attorney General may delegate the authority to make requests for additional information.

Pursuant to subparagraph (b)(2), a written request for additional information is effective when received by the ultimate parent entity of the person to which the request is directed (or the entity filing on its behalf). If the request is communicated in person or by telephone, it is effective when communicated, provided that a written confirmation is mailed within the 30-day waiting period to the ultimate parent entity (or the entity filing on its behalf). A request made to a natural person will be sent to the reporting person to which the individual is related; see § 803.20(b)(3). Such a request is effective as to the individual when it is effective as to the reporting person to which he or she is related. In addition, a written copy of the request will be delivered to the individual by hand, or by registered or certified mail.

Clause (b)(2)(ii) also requires that the filing person identify an individual who will be available during normal business hours throughout the waiting period, at a telephone number supplied in item 10 of the form, to respond to inquiries concerning notification. Telephoned requests for additional information will be made to that individual; written confirmation will be mailed to the ultimate parent entity of the filing person.

Subparagraph (c)(1) provides that, with one exception, the waiting period for an acquisition will remain in effect until all additional information requested has been submitted, even if the waiting period would have expired but for the request. The sole exception is that a request directed to the person whose voting securities are sought to be acquired in a tender offer, or to any officer, director, partner, agent, or employee of such a person, will not extend the waiting period. The target of the tender offer must still respond to the request within a reasonable time under § 803.21, and may be subject to an enforcement proceeding under section 7A(g).

Subparagraph (c)(2) makes extension of the waiting period automatic. For cash tender offers, a request for additional information or documentary material extends the waiting period for 10 days after receipt of the requested information from the acquiring person. For all other acquisitions, the waiting period is extended automatically for 20 days from receipt of the requested information from all persons to which a request was addressed, except the acquired person in a tender offer. See of § 803.10 and the example to § 803.20(c)(2).

Subparagraphs (d)(1) and (d)(2) emphasize the difference between requests for additional information under section 7A(e) and requests for clarification or amplification of a response to an item on the form. All requests for additional information or documentary material must be identified as such, regardless of the manner in which they are communicated. However, the agencies may make other inquiries not so identified. These are not to be considered requests for additional information, and they do not extent the waiting period.

The Federal Trade Commission has delegated the power to make requests for additional information or documentary material under section 7A(e) and this rule to the Director, the Deputy Directors, and the Associate Director for Premerger Notification of the Bureau of Competition, without power of redelegation.

BACKGROUND INFORMATION TO § 803.20

Comment 63 questioned whether the act permits the delegation of authority to make requests for additional information. The comments suggested that section 7A(e)(2), which provides that "the Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period," contemplates that the discretion of the Commission or Assistant Attorney General must be exercised before the consummation of a merger or acquisition may be postponed by a second request. The Commission's view is that section 7A(e)(2) should be read consistently with established agency policy. The Commission, under the authority provided by reorganization plan No. 4 of 1961, may delegate certain of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board. Pursuant to that authority, the Commission has delegated to (among others) the Director, Deputy Directors, and Assistant Directors of the Bureau of Competition limited authority to initiate investigations. Since requests for additional information or documentary material may be compared to the initiation of investigations, decisions to issue such requests are similarly delegable.

Paragraph (c) extends the waiting period for all requests except those directed to acquired persons in tender offers. Requests directed to acquired persons in other transactions listed in § 801.30 thus extend the waiting period. For a discussion of the possibility that such acquired persons can thereby stall the consummation of a transaction, see the statement of basis and purpose to § 803.21.

Comments 120 and 1059 argued that the rule's automatic extension of the waiting period is inconsistent with the provision of section 7A(e)(2) that, if a request for additional information is made, the Commission or Assistant Attorney General may, "in its or his own discretion," extend the initial waiting period for "not more than" 20 days (or 10) days in the case of a cash tender offer). These comments interpret this language to require an individualized, discretionary judgment in every case as to whether and for how long the waiting period should be extended. The Commission rejected this suggestion and does not interpret the act in this manner. It believes that this approach might seriously interfere with the agencies' review of all relevant information and thus with the purposes of the act. In many cases, it will be impossible to predict, before the information is submitted, what materials will be supplied in response and how long it will take to review them. Since any further extension requires an order of a district court, the waiting period must be automatically extended for a full 20 (or 10 days. If the review is completed in less time, the extended waiting period may be terminated early under section 7A(b)(2) and § 803.11.

Comment 37 argued that the act does not permit extension of the waiting period while a request for additional information is outstanding. It argued that a request made late in the waiting period should have to be "reasonable" enough to be capable of a response within the original waiting period. This suggestion was rejected, since it would effectively prevent the agencies from making meaningful second requests late in the waiting period—a result not contemplated by the statute. Furthermore, the notion that requests for additional information must be answerable within the minimum statutory waiting period is inconsistent with the language of section 7A(3)(2), which contemplates extension of that period.

Numerous comments (e.g. 59, 77, 112, 115, 120; 1059) expressed concern that misunderstandings could occur if requests for additional information were issued orally. It should be noted that the rule provides that requests made in person or by telephone are effective only if a written confirmation is subse-

quently mailed during the waiting period.

Comment 25 suggested that "clarification" and "amplification" be defined; otherwise, if a person construed a request for additional information as a "clarification" or "amplification" it could violate the act if it then consummated a transaction without additional waiting. This ambiguity disappears in light of paragraph (d), which requires specific identification of requests for additional information and documentary material.

SECTION 803.21 ADDITIONAL INFORMATION SHALL BE SUPPLIED WITHIN REASONABLE TIME

Section 803.21 requires persons receiving requests for additional information or documentary material to supply the information and documentary material (or, if the request is not fully complied with, a statement of reasons for noncompliance in accordance with § 803.3) within a reasonable time. See section 7A (b)(1)(A) and (e), and § 803.30.

BACKGROUND INFORMATION TO § 803.21

This new rule is designed primarily to prevent an acquired person in a transaction subject to § 801.30 from frustrating the acquisition. Without this provision, an uncooperative acquired person could delay the expiration of the waiting period indefinitely by not responding to a request for additional information.

The act addresses this problem only in the context of tender offers. Section 7A(e)(2) provides that the waiting period cannot be extended by a request for additional information to an acquired person in a tender offer. Rather than extend this treatment to all other § 801.30 transactions, the Commission opted to impose a general obligation on all recipients to respond within a reasonable time to requests for additional information. This decision resulted from a balancing of conflicting interests. To imitate the statutory treatment of tender offers (i.e., to permit the waiting period to expire before the requesting agency receives the additional information from the acquired person) would frustrate the congressional intent of assuring that the enforcement agencies have adequate information to analyze the transaction. Although there was also a congressional concern that persons be able to conclude other nonconsensual transactions despite the recalcitrance of the acquired person, the act does not provide treatment for such transactions similar to that regarding tender offers. The Commission determined that imposing a specific duty on acquired persons to comply with requests for additional information within a reasonable time would create sufficient incentive to assure that neither congressional interest is frustrated.

A second purpose of the rule is to facilitate investigations of tender offers. In all other types of acquisitions, if the acquired person fails to respond to the request, then the waiting period will remain in effect indefinitely, blocking the acquisition (unless the agencies terminate the waiting period under § 803.11, despite the pendency of the request). But since the act provides that for tender offers the waiting period will not be extended, an acquired person, by failing to respond to a second request, could prevent the agencies from obtaining the information necessary to review the acquisition before it took place. Again, the congressional purpose would be frustrated.

Therefore, the rule creates an affirmative obligation to submit requested information within a reasonable time. A filing person's failure to comply with this obligation could subject that person to civil penalties under section 7A(g)(1) or equitable relief under section 7A(g)(2). What constitutes a reasonable time must be judged on a case-by-case basis, considering all the facts and circumstances.

Comments 1090 and 1108 recommended that the treatment accorded by the act to tender offers be followed, although 1090 mentioned the institution of a rule like § 803.21 as an alternative. Another suggestion offered by comment 1086 is discussed in the statement of basis and purpose to § 803.10. All of these suggestions were rejected since the Commission believes that this rule represents the most appropriate balance of the competing interests.

Note that under § 803.11(c) the enforcement agencies may terminate a waiting period sua sponte, despite the pendency of a request for additional information. See the example to § 803.20(c)(2). This course of action might be chosen, for example, if the agencies determine from other sources that the acquisition is unlikely to violate the antitrust laws, and if it has become apparent that the acquired person is delaying its response in an attempt to forestall consummation of the acquisition.

SECTION 803.30 FORMAL AND INFORMAL INTERPRETATIONS OF REQUIREMENTS UNDER THE ACT AND THE RULES

This rule creates a mechanism for requesting and giving both formal (written) and informal (oral) interpretations of requirements under the act and rules. Paragraph (a) authorizes the Commission staff to consider requests for formal or informal interpretations, and explains how a request for a formal interpretation shall be made and what it must contain. It permits the staff, in its discretion, to render either a formal or an informal response to any request, however made, or to decline to render any advice.

Paragraph (b) permits the Commission staff, in its discretion, to refer to the Commission any request for interpretation, however made. Paragraph (c) specifies that when formal interpretations are given by either the Commission staff or the Commission itself they must be given with the concurrence of the Assistant Attorney General or his or her designee.

Paragraph (d) states that either the Commission or the Assistant Attorney General may rescind any formal interpretation previously given; in that event, the party that originally requested the interpretation must be notified of the rescission in writing.

Under paragraph (e), the Commission will publish in the FEDERAL REGISTER a summary of formal interpretations given by the Commission (but not those given by the staff) and any rescissions of formal Commission interpretations.

BACKGROUND INFORMATION TO § 803.30

This rule serves several purposes. First, it authorizes the Commission staff to give both formal and informal interpretations of the act and the rules. It thus recognizes that persons who are or may be subject to the act may frequently require information and advice concerning their obligations, and that the staff should respond to their needs for the program to function. Requests for advice may be made orally by phone or in person, or they may be made in writing. The same variety of responses is available to the staff, so that straightforward problems can be handled expeditiously, while more difficult questions are given more deliberate consideration.

Second, the rule permits the staff, within its sole discretion, to refer novel or complex (or any other) questions to the Commission, thereby giving the Commission the opportunity to render formal interpretations in response. The rule does not, however, give any person the right to obtain an interpretation directly from the Commission or to "appeal" a staff interpretation to the Commission. Nor does it obligate the Commission to give its interpretation (or to take any action whatsoever) in response to any request.

A final purpose of § 803.30 is to give the Assistant Attorney General a role in the issuance of formal interpretations. The reason for participation by the Assistant Attorney General is that under section 7A(d) the rules themselves must be promulgated by the Commission with concurrence of the Assistant Attorney General.

Neither the Commission nor the Assistant Attorney General is bound by either the formal or the informal interpretations of the staff under this rule. However, it is envisioned that the Commission or the Assistant Attorney General would, prior to taking any action contrary to a position embodied in a formal interpretation of the staff, first withdraw that opinion and give notice of that rescission to the party that originally requested the interpretation.

The purpose of the FEDERAL REGISTER summary described in paragraph (e) of the rule is to inform the public of the enforcement agencies' position on complex or novel issues referred by the staff, so that these interpretations may assist compliance with the act and the rules. All formal interpretations will be available for public inspection and copying in the Public Reference Branch of the Commission (Room 130 of the main Federal Trade Commission Building in Washington, D.C.).

Revised § 803.30 was more limited than the final rule, providing only for formal interpretations, and only by the Commission with the concurrence of the Assistant Attorney General.

SECTION 803.90 SEPARABILITY

Section 803.90 states that if any provision of the rules or form is held invalid, or the application of the rules or form to any person or circumstances is held invalid, to the extent possible neither other provisions nor application of the provision in question to other persons or circumstances shall be affected. The reporting and waiting period obligations are to remain in effect to the full extent not specifically invalidated.

BACKGROUND INFORMATION TO § 803.90

Section 803.90 appears for the first time in the final rules.

OTHER COMMENTS

SUNSET RULE

Comment 1049 proposed the adoption of a "sunset" provision, providing for the expiration of the rules 4 years from the day they become effective. Comments 1059 and 1063 endorsed this suggestion. The final rules, however, do not adopt this proposal, and thus, like the original and the revised rules, do not contain a "sunset" or automatic expiration provision.

Comment 1049 made three arguments for the inclusion of the "sunset" provision. The comment contended that mandatory periodic review of the rules by the antitrust agencies is desirable because: (1) The rules represent a new type of undertaking for the agencies and make antitrust enforcement more of a "regulatory" process than ever before, (2) the rules are experimental and complex and only time can tell whether their scope was properly framed, and (3) the provision that amendments be made by rule with the participation of both agencies is cumbersome and may make change difficult to achieve. The "sunset" provision, the comment declared, would oblige the agencies to examine the rules after a reasonable period of time and make whatever changes appear necessary.

The Commission, though rejecting the mechanism proposed by this suggestion, agrees with certain of its underlying premises. The actual experience of operating the premerger notification program will unquestionable suggest changes in the rules and form that cannot be anticipated prior to the effective date. The agencies intend to respond to questions or unexpected difficulties with the rules by means of formal and informal interpretations under § 803.30 when appropriate, and by amendment to the rules when necessary. However, the adoption of a "sunset" provision would introduce the possibility of a lapse in coverage. If the rules are to expire at some stated time, a renewed program would have to be promulgated by rule in advance of that time to insure that no such lapse occurs. The rulemaking scheme of section 7A(d) requires that both agencies agree on a new set of rules, and if no agreement is achieved for some reason, they will be faced with an intolerable problem. In the Commission's view, the possibility that the program could thus be suspended because no rules implement it—a situation directly opposed to the intent of the statute, which contains no "sunset" provision and contemplates a permanent program—is unacceptable.

Furthermore, section 7A(j) requires that the Commission, with the concurrence of the Assistant Attorney General, annually prepare a report to Congress on the operation of the act, including an assessment of the effects of the act and of the effects, purpose, and need for the rules, and any recommendations for revision of the act. This annual procedure compels the periodic review of the workings of the rules and of any necessary changes. Thus, the primary objective of a "sunset" rule is achieved by section 7A(j). It is also achieved in the rulemaking section of the Administrative Procedure Act, pursuant to which the rules are promulgated. Any interested person has the right to petition for the issuance, amendment, or repeal of a rule. 5 U.S.C. 553(e). Anyone who believes a rule is unworkable, unfair, or unduly burdensome may petition for its amendment or repeal, and anyone who believes a new rule should be added can petition for its addition. Rulemaking petitions afford an opportunity for consideration of any suggestion or review of any rule.

One additional comment (1100), while not literally endorsing a "sunset" provision, recommended that the rules should provide for public review and discussion of the program after the first 2 years and regular review thereafter. The Commission does not find it necessary to adopt such a rule. Informal and formal interpretations, annual reports to Congress, and petitions under section 553 of the Administrative Procedure Act should insure adequate public participation.

EFFECTIVE DATE OF FINAL RULES

At least two comments (1032, 1070) suggested that the Commission provide a period longer than 30 days between the publication of the final rules in the FEDERAL REGISTER and their effective date. Thirty days is the minimum time allowable under the Administrative Procedure Act, 5 U.S.C. 553(d), except in special circumstances. Comment 1032 suggested that the Commission allow a longer period, of unspecified duration, in order to afford other Federal agencies adequate time to conform their regulations to the final rules, as necessary. Comment 1070 proposed a period of at least 90 days so that affected segments of the business community could digest the final rules and institute appropriate compliance programs. The comment stated that the complexity of the act and the rules would necessitate more than 30 days, especially for financial institutions with wide-ranging investment activities.

Although the Commission did not adopt these suggestions, the result these comments desire has nevertheless been achieved. On February 14, 1978, the Commission tentatively approved and made public the final version of the rules and form. Interested business and government entities were thus made aware of the final rules several months before the effective date and have had adequate time to make the appropriate preparations. It is therefore unnecessary to provide an effective date later than 30 days after publication.

RETURN OF MATERIALS SUBMITTED

Several comments (e.g., 70, 120; 1050, 1059) suggested that the rules should provide that all documents and information submitted under the premerger notification program be returned after a decision has been made not to challenge an acquisition, or after the completion of any proceedings opposing the acquisition. Another comment (1023) proposed that the agencies adopt a policy of prompt return, though it did not specifically suggest adding a rule for this purpose.

The comments made several arguments supporting the prompt return of the data submitted. For example, comment 1050 declared that since the legislation was intended solely to allow the agencies to determine whether or not to challenge an acquisition prior to its completion, no statutory purpose would be served by retaining the material after this determination has been made. Comment 1023 stressed the "highly sensitive and confidential nature of the data," apparently fearing that improper disclosure would be more likely to occur if the agencies retained the documents. Comment 1059 asserted that the premerger notification program was not intended by Congress as a means of obtaining an economic data base for generalized research and inferred that if the documents are not to be used for such purposes, they therefore ought to be returned after the agencies decide not to challenge an acquisition.

The Commission rejected these proposals because they take an excessively narrow view of the agencies' enforcement responsibilities and the permissible uses of materials received under the act. Section 7A(i)(1) explicitly states that an acquisition not challenged by either agency during the waiting period may still be challenged after its expiration. Nothing in the language or legislative history of the act appears to prohibit the use of data submitted under the act for subsequent challenge to a reported acquisition or, in fact, for any other law enforcement purpose. A challenge after the waiting period might result from subsequent developments, such as additional acquisitions. Submitted material can also be useful in investigations and challenges to other acquisitions. To return the materials after the waiting period expires could seriously hinder later enforcement efforts.

The confidentiality issue raised by comment 1023 is not considered a major problem. See section 7A(h) of the act and the statement of basis and purpose under the heading "confidentiality," below.

DUPLICATION OF FILINGS UNDER EXISTING NOTIFICATION PROGRAM

Two comments (1044, 1082) noted that under certain circumstances a firm that has previously filed notification of an acquisition under the Commission's existing premerger notification program must file again under the act and rules. Specifically, a transaction reported under the old program because the agreement was concluded before the effective date of the act must also be reported under the act if it will be consummated after the effective date. The comments objected that the dual filing requirement would be burdensome and unfair and would unnecessarily delay the completion of such acquisitions. They suggested that no further filing be required under the act and rules for transactions previously reported under the existing program.

The Commission did not adopt this suggestion, choosing to place all transactions on the same footing under the act. The Commission has already addressed this issue in the statement of basis and purpose to the transitional rule implementing the act, 42 FR 6365-66 (February 2, 1977).

However, the Commission has amended its existing premerger notification program to provide that, as of the effective date of the premerger notification rules, persons that file, and persons that are not required to file, a notification and report form under the act and the rules need not file a special report under the Commission's existing premerger notification program.

AD HOC EXEMPTIONS

Comments 87 and 1063 proposed that a rule permit the agencies, in appropriate circumstances, to grant ad hoc discretionary exemptions from the filing and waiting-period requirements. This approach was rejected. Section 7A(d)(2)(B) of the act requires that all exemptions be made by rule in accordance with 5 U.S.C. 553. Therefore, all exemptions must be of general application. Ad hoc exemptions of otherwise reportable transactions are apparently not permitted.

TRANSACTION SUBJECT TO PUBLIC UTILITY HOLDING COMPANY ACT

Comment 1084 recommeded that transactions subject to SEC approval under section 9 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79i, be granted a limited exemption on the same terms as the transactions exempted by section 7A(c)(8) of the act and § 802.8 of the rules. The comment urged conditioning the exemption upon filing copies of all information and documentary material filed with the SEC contemporaneously with the antitrust agencies at least 30 days prior to consummation. The comment suggested this exemption in order to provide the agencies with a form of pretransaction notification yet avoid duplicative filings.

The transactions to which this comment refers are: (1) direct or indirect acquisitions by public utility holding companies of "any securities or utility assets or any other interest in any business," and (2) acquisitions of any securities of a public utility company by any person which is an affiliate of such company as well as of any other public utility or public utility holding company, or becomes such an affiliate as a result of the acquisition. 15 U.S.C. 79i(a). These types of acquisitions require approval by the SEC before consummation.

The Commission rejected this proposal because it is unable to conclude that these acquisitions are unlikely to violate the antitrust laws. It thus believes that the comment failed to provide adequate justification for the proposed exemption.

CONFIDENTIALITY

Several comments made suggestions concerning the confidential treatment to be accorded materials submitted in response to the form or to requests for additional information. Several of these comments specifically referred to the nondisclosure provision of section 7A(h). That subsection exempts all such material from disclosure under the Freedom of Information Act, and provides as well that:

> no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

One group of comments (e.g., 48, 70, 101, 120; 1050, 1059) urged the Commission to promulgate rules which state the agencies' interpretation of section 7A(h) and spell out what steps the agencies plan to take to preserve the confidentiality it requires. For example, comment 120 suggested, among other things, that the rules provide that all data and documents submitted in the premerger notification program be maintained in a separate file by the Secretary of the Commission and by an appropriate Department of Justice custodian; that they be inspected only at one location at each agency and only by the employees assigned to the particular premerger investigation; and that no other copies be made.

The Commission did not promulgate a rule concerning section 7A(h) because it did not believe rulemaking to be necessary or appropriate for this purpose. The act is unequivocal that no public disclosure may be made, and the agencies will take appropriate measures to assure this confidentiality.

The Commission also rejected the specific suggestions in comment 120 that the documents not be copied, that they be maintained only at one location at each agency, and that they be inspected only by the premerger office employees. The Commission believes it is not only unnecessary but also inappropriate to restrict access to the documents and information to particular agency staff members. Confidential information received under this program will be accorded the same treatment accorded to confiden-

tial information obtained by other means, such as by subpoena.

Comment 1050 cited *FTC* v. *Atlantic Richfield Co.*, 567 F. 2d 96 (D.C. Cir. 1977), in support of the suggestion that materials received under this program should not be made available by the agencies to individuals not involved in the premerger review process. The Commission takes the view that the *Atlantic Richfield* case has no relevance to this situation. In *Atlantic Richfield*, the court suggested "various plausible arguments" (id. at 103) for the proposition that the FTC rules of practice and the due process clause bar the Commission staff participating in an adjudicative proceeding before an administrative law judge from obtaining access to documents or information obtained pursuant to subpoena in a separate FTC investigation, without notice to the parties and approval of the administrative law judge. The court ordered the Commission to make public its own interpretation of its rules, but did not purport to mandate the content of that interpretation. This interpretation was recently issued by the Commission and would in no way bar use of materials obtained through this program in any other Commission investigation or proceeding.

The Commission interprets the provision of section 7A(h) that the information submitted may be made public "as may be relevant to any administrative or judicial action or proceeding" to authorize making it public, in the agency's discretion, in any proceeding brought by or against the Commission or the Assistant Attorney General, whether the submitting person is a party or not. Nothing in the legislative history or intent of the act supports the more limited interpretations urged implicitly by comment 1050 and explicitly by other comments (e.g., 70, 120). Comments 70 and 120 suggested that the materials should only be made public in judicial or administrative proceedings brought by the Government to challenge the particular acquisition that is the subject of the notification and then only when the reporting person is a party. However, comment 120 conceded in a footnote that if the use of the submitted data is not so limited, it should at least be limited to proceedings against the submitting party. The comment argued that to use the data against another party would make a mockery of the statute and would undermine the effectiveness of the act.

The Commission does not agree. The language of the act contemplates that the data may be made public by the Commission or the Assistant Attorney General in any administrative or judicial proceeding to which the Commission or the Department of Justice is a party. There is no reason to believe that the act's effectiveness will be hampered by such a policy. As long as information is lawfully obtained, it may be used by the agencies for any law enforcement purpose.

Comment 1075 suggested that whenever material submitted pursuant to the act is to be used in an administrative or judicial proceeding, the submitting person should be given prior notice so that a protective order may be sought in appropriate situations. When the submitting person is a party to the proceeding, no special notice procedures are contemplated since the act contemplates such use by the agencies. The comment was therefore viewed as applying to situations in which the person that submitted the material is not a party to the proceeding in which the material is to be introduced.

Because section 7A(h) does not restrict or qualify the ability of the agencies to use submitted material, the Commission does not believe that any formal notice provision is required by the act, and none has been adopted in the final rules. However, the Commission recognizes that reporting persons have an interest in protecting their sensitive competitive data from public disclosure in the course of law enforcement proceedings to which they are not parties. Therefore, as a matter of policy, the Commission and the Assistant Attorney General will instruct their staffs in such cases to give persons reasonable notice, when possible, prior to introduction or other use of such material that would result in its becoming part of the public record of the proceeding.

Two comments (70, 120) urged that 10 days' notice be provided to the reporting party before the data is submitted to Congress. Within the constraints sometimes imposed by congressional requests for data, the Commission and Assistant Attorney General will also instruct their staffs to give reporting persons reasonable notice of any release of such data to Congress, when possible.

Comment 120 suggested a rule to limit permissible disclosure to congressional committees or subcommittees to "official" requests made by majority vote containing an intent to respect the confidential nature of the information. This suggestion was rejected. It is inappropriate to attempt to prescribe by rule the procedural acceptability of a Congressional request.

RISK ARBITRAGEURS

Comment 1095 urged that acquisitions of voting securities in risk arbitrage transactions be entirely exempted from the act. According to the comment, risk arbitrageurs are investment banking firms or other securities dealers that, upon the announcement of a pending merger, acquisition, or tender offer, buy the securities of the company to be acquired or sell short the securities of the acquiring company. They realize a profit if the merger actually takes place as planned, since ordinarily the value of the stock of the acquired person increases and the value of the acquiring person's stock declines. The comment stated that arbitrageurs assume substantial capital risks but serve a useful function by helping to stabilize the frequently volatile market resulting from a merger or tender offer announcement. The comment recommended that arbitrage transactions be exempted since arbitrageurs do not ordinarily hold voting securities on a long-term basis, nor do they typically have any interest in participating in the business decisions of the companies whose stock they purchase. It argued that they are competitively irrelevant and serve only a market-stabilizing function.

This comment was rejected. Arbitrageurs should not be treated differently from other institutional investors that enjoy only a limited exemption under § 802.64. Since arbitrageurs may qualify as broker-dealers within § 802.64(a)(9), their purchases of voting securities in the ordinary course of business solely for the purpose of investment may be exempt under the final rules until their holdings reach the level of at least 15 percent of the outstanding stock of the issuer worth at least $25 million. Beyond that point, arbitrageurs, like all other institutional investors, must comply with the act.

Specifically, the Commission was not satisfied that the holdings of arbit rageurs never have anticompetitive consequences. There is no assurance, when an arbitrageur makes a purchase of stock, that it will not hold the shares for a longer period than it anticipates or that it will not act to influence or control management. In some circumstances, it is possible that the existence of large holdings by arbitrageurs may have an effect on management. In addition, it seems difficult to define with any degree of accuracy or certainty, for the purpose of drafting an exemption, which transactions are to be considered arbitrage transactions, and the comment did not suggest a solution.

NOTIFICATION AND REPORT FORM

CONCEPT OF FORM

The notification and report form appears as an appendix to part 803 of the rules. It is designated in § 803.1 as the notification required by section 7A(a) of the act. Thus, in cases of noncompliance use of § 803.10(c)(2) procedures or the enforcement proceedings specified in sections 7A (g)(1) and

(g)(2) may follow if the form is not properly completed and filed. As § 803.1(a) states, all persons required by the act to file notification must do so by completing and filing a copy of the form, including any documents required to be supplied in response to any items on the form. The form is designed to provide the Commission and the Assistant Attorney General with the information necessary and appropriate for an initial evaluation of the potential anticompetitive impact of an acquisition. Its completion by all parties required to file will ordinarily permit both agencies to determine whether the waiting period should be allowed to expire, or whether a request for additional information should be made under section 7A(e) and § 803.20, potentially leading to a preliminary injunction or administrative proceeding challenging the acquisition, or to an enforcement action under section 7A(g).

The form is not intended to elicit all potentially relevant information relating to an acquisition. Relevant information not specifically requested by any of the items on the form may be obtained by either agency by means of a request for additional information under section 7A(e) and § 803.20. The reporting person may also supply additional information voluntarily pursuant to § 803.1(b).

The information requested by the form includes, in summary:

The identities of the persons involved and the type of acquisition (item 1);

A description of the voting securities or assets to be acquired and of the means by which the acquisition is to be carried out (item 2);

The percentage and total dollar amount of the assets and voting securities of the acquired person to be held by the acquiring person as a result of the acquisition (item 3);

Copies of various SEC filings, annual reports and financial statements of the reporting person, as well as studies or analyses of the acquisition (item 4);

A listing of dollar revenues derived by the reporting person, broken down separately by industry, product class, and product (item 5);

Information about the entities included within the reporting person, as well as information about the shareholders of the reporting person and the shareholdings of the reporting person in other persons (item 6);

Geographic market information relating to industries in which the reporting person and another party to the acquisition both derived dollar revenues (item 7);

Information about revenues resulting from certain vendor-vendee relationships existing between the reporting person and another party to the acquisition (item 8);

Any other recent acquisitions by the acquiring person in an industry from which both it and the acquired person derive dollar revenues (item 9).

The purpose of the act is to assist the agencies in identifying, before they are consummated, transactions that may violate the antitrust laws. Section 7A(d)(1) therefore provides that the Commission "shall require that the notification * * * be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate" to enable the agencies "to determine whether such acquisitions may, if consummated, violate the antitrust laws." The Commission has determined that each of the items on the form fulfills the statutory mandate.

Another possible course of action, which was rejected by the Commission, would have been to require only a perfunctory notification and seek detailed data by means of requests for additional information. This course, which several comments (e.g., 1023, 1080) suggested, was rejected for several reasons. First, this position misconceives the amount of information necessary to make even a tentative determination of whether a transaction may violate the antitrust laws. The act clearly contemplates that the initial notification should contain all information and documents "necessary and appropriate" for the purpose of determining the competitive impact of the acquisition. It explicitly leaves to the Commission, with the concurrence of the Assistant Attorney General, the determination of what constitutes such information. A perfunctory initial report would not fulfill the congressional intent expressed in section 7A(d)(1).

Second, to require a shorter initial notification would more frequently lead to the issuance of a request for additional information, with its consequent delay and burden on the reporting person or persons. If second requests were issued more frequently, the average waiting period would be longer, rather than shorter, than it would be with a more comprehensive initial notification procedure. In many cases the more data the receipt of which is deferred, the greater would be the ultimate burden on the reporting person.

One comment (1059) suggested that the interests of reporting persons would be better served if the most burdensome questions were made optional and the reporting person allowed to balance for itself the risk of a second request. The comment argued that for clearly innocuous acquisitions and clearly irrelevant information, the reporting burden, and the agencies' burden of reviewing this information, could thus be mitigated. The Commission did not adopt this suggestion. The Commission believes that section 7A(e) provides the mechanism of requests for additional information in order to assist the agencies in their efforts to obtain additional information about acquisitions that the agencies believe, based on information contained in the initial report, may require a petition for judicial or administrative relief. To permit optional compliance with the provisions of the initial report would undermine the usefulness of the second request mechanism, would seriously hinder the agencies in their efforts to carry out their congressionally mandated review, and would be administratively unworkable.

Furthermore, optional compliance with the provisions of the form could create a temptation on the part of reporting persons to withhold potentially crucial information concerning an acquisition's impact on competition. In order to discourage such practices, the agencies would be forced routinely to make second requests for information not supplied on the Form. This result would create longer delays for reporting persons, and would defeat the purpose of the suggestion.

Several comments (e.g., 1011, 1023) complained about what they felt was an excessive burden of paperwork related to the form. The Commission has determined that the information required is only that which is necessary and appropriate to implement the congressional mandate to create an effective premerger notification program.

EXPLANATION AND INSTRUCTIONS

The explanation and instructions found on pages 1-3 of the notification and report form are intended to supply certain basic information. They must be read in conjunction with the act and the rules. Some of the explanations and instructions for completing the form are found in the rules themselves, especially in § 803.2. The terms used in the form are defined in the rules rather than in the form itself. The definition of one term used in the form but not the rules, "dollar revenues," has been moved from the "definitions" portion of the form, where it was in the original form, to § 803.2(d). The balance of the terms are defined in § 801.1

As § 803.1(a) implies, one need not necessarily file notification by completing a preprinted copy of the form provided by one of the agencies. Photostatic or other equivalent reproductions are permitted, and many items requiring detailed responses will require separate additional sheets.

The third paragraph of the instructions describes how many copies of the form are to be sent to each agency and gives their addresses. The affidavit required by § 803.5 should be attached to the front page. Without the affidavit, notification is incomplete. See the Statement of Basis and Purpose to § 803.5.

A box is provided on the first page of the form for the reporting person to check whether the acquisition is a cash tender offer. This box gives the agency staff immediate notice that the waiting period is only 15 days and begins upon receipt of the acquiring person's form, as provided in section 7A(b)(1)(B), and that review must therefore be expedited.

The "name and date" blanks are provided to help the agency staff immediately identify the report as belonging to a particular person. The blanks under (b) and (c) call for additional information when rules are employed permitting an entity other than the ultimate parent entity to file notification; see the discussions of § 803.2(a) and 803.4 on these instances. The name of the reporting person is repeated at the top of each page of the form in order to assure the identification of each page should they become accidentally separated.

In general, the form employs the Standard Industrial Classification ("SIC") system employed by the Bureau of the Census. The SIC-based product and industry categories are available in the "Standard Industrial Classification Manual" and other publications; the instructions provide the exact citation for that volume as well as for additional publications noted as references for 5-digit (SIC-based code) product class and 7-digit (SIC-based code) product. For 7-digit product codes ending in 00, the instructions request that more detailed information be supplied from appendix A to the Numerical List of Manufactured Products, because codes ending in 00 do not provide sufficient detail on the precise product involved.

The instructions provide that if precise information is not available, best estimates may be supplied, but must be indicated by the notation "est." The sources of such estimates must also be indicated. Furnishing an estimate in these circumstances will ordinarily not be regarded as a failure to supply a complete response within the meaning of § 803.3 and does not require a statement of reasons for noncompliance as provided in that section. Persons which have information on a fiscal year, rather than calendar year, basis may supply the requested data for the fiscal year which most nearly corresponds to the calendar year specified.

The final paragraph of the instructions reminds the individual completing the form of certain special provisions of § 803.2 that may increase or decrease the amount of information required. These provisions are explained in the Statement of Basis and Purpose to § 803.2.

ITEM 1(a)

Item 1(a) requires the reporting person to check boxes to indicate the basic character of the reportable transaction. All applicable boxes should be checked.

ITEM 1(b)

Item 1(b) requires the reporting person to indicate whether it is the acquiring or acquired person in the transaction, or, when applicable, both. If the reporting person is both an acquiring and an acquired person in a single transaction, it need not submit two entirely separate reports. It may instead file one report as both an acquired and an acquiring person, but must respond to certain items separately in each capacity. See § 803.2(b).

BACKGROUND INFORMATION TO ITEM 1(b)

Original item 1(b) required listing all "active entities" included within the reporting person. The final form requires listing the entities included within the reporting person in response to item 6(a). See the Statement of Basis and Purpose to item 6.

ITEM 1(c)

Item 1(c) requires the name and address of the preacquisition ultimate parent entity.

ITEM 1(d)

Item 1(d) requires the reporting person to indicate the legal form or orgainzation of the reporting person, i.e., corporation, partnership, etc. If a corporation, the reporting person must indicate the state of incorporation; if a partnership, the state of jurisdiction.

ITEM1(e)

Item 1(e) requires the reporting person to indicate whether the data submitted on the notification and report form is furnished by calendar or fiscal year, and if by fiscal year, the dates of the fiscal year.

ITEM 1(f)

Item 1(f) need not be completed if the ultimate parent entity is itself the acquiring or acquired entity. If the acquiring or acquired entity is not the ultimate parent entity listed in item 1(c), the reporting person must identify the name and mailing address of the acquiring or acquired entity, and (if applicable) its state of incorporation. The percentage of voting securities of this entity held by the ultimate parent entity described in item 1(c) must also be indicated. If the ultimate parent entity controls the acquiring or acquired entity indirectly, the report must describe this indirect control.

DELETION OF REVISED ITEM 1(g)

See the Statement of Basis and Purpose to item 6.

ITEM 2(a)

Item 2(a) requires the reporting person to list the name and mailing address of each acquiring and acquired person, whether or not each such person is itself required to report. The major instance in which fewer than all the parties to an acquisition may be required to file notification is the creation of a joint venture or other corporation. See § 801.40(b).

Item 2(a) requires a brief description of the assets or voting securities to be acquired, the consideration to be received by the acquired person and, if known, the identity of any holders other than the issuer from which the voting securities are to be acquired. Acquisitions from holders other than the issuer may occur in tender offers and the other types of transactions described in § 801.30. In tender offers for widely-held entities, as well as in purchases of stock traded on securities exchanges, the number of such holders will be extemely large. Item 2(a) thus requires disclosing the identity of nonissuer holders only when the acquired entity is not widely held.

BACKGROUND INFORMATION TO ITEM 2(a)

Original item 2(a) required the listing of all other companies "involved in the transaction." A number of comments (e.g., 25, 28, 71, 112, 120) criticized the use of this phrase as ambiguous, since it could conceivably refer to (among others) law firms, banks, escrow agents, auditors, brokers, or other persons incidentally participating in the acquisition. The item did not seek to identify so broad a category of persons. Final item 2(a) clarifies that only acquiring and acquired persons and, if applicable, non-issuer holders need be listed.

ITEM 2(b)

Item 2(b) requires the reporting person to indicate, if known, the scheduled consummation date of the acquisition. If the date is unknown at the time of filing, an estimated date should be provided and the basis of the estimate explained. If the parties have agreed to a formula by which the closing date will be determined (e.g., "60 days after termination of the waiting period"), this formula should be provided.

ITEM 2(c)

Item 2(c) requires the reporting person to describe the manner in which the acquisition is to be carried out, including the expected dates of major events in the acquisition, such as stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers, etc.

BACKGROUND INFORMATION TO ITEM 2(c)

Original item 2(c) required the description of "each necessary step" in the transaction. A number of comments (e.g., 71, 89, 112) criticized the use of this phrase as overly broad or unnecessary for law enforcement purposes. In addition, others (e.g., 30; 1098) argued that this provision might require the submission of information not available to the reporting company at the time of filing. Two comments (28, 112) recommended that the only vital date for law enforcement purposes should be the prospective closing date of the transaction.

The language of final item 2(c) has been clarified. The use of the phrase "necessary steps" has been abandoned. Instead, reporting companies are required to describe generally the intended course of the transaction including the expected dates of major events. The item gives examples of such events.

ITEM 2(d)(i)

Item 2(d)(i) need be completed only by persons engaged in an assets acquisition; persons engaged in an acquisition of voting securities need not submit this information. The item requires the reporting person to describe and provide an approximate dollar value for all general classes of assets (other than cash and securities) to be acquired by each party to the acquisition. If the acquisition is the formation of a joint venture or other corporation, the description must include all general classes of assets to be acquired by the joint venture pursuant to agreement among the persons forming the corporation.

For each general class of assets, the reporting person must (when applicable) indicate the page or paragraph number of the contract or other document submitted with the form in which the assets are more particularly described.

The term "general classes of assets" refers to general types and catagories of assets, rather than any specific meaning in accounting terminology or otherwise. Examples are land, merchandise inventory, manufacturing inventory, manufacturing plants, retail stores, goodwill and other intangibles. The term "approximate dollar value" refers to an approximation of value, rather than a value resulting from a formal appraisal.

BACKGROUND INFORMATION TO ITEM 2(d)(i)

Original item 2(d)(i) required the reporting person to describe "all * * * assets" to be acquired. The final version of the item refines this requirement to permit the description of general classes of assets.

A number of comments (e.g. 1057, 1098) criticized item 2(d)(i) on the grounds that the compilation of this data would be too burdensome. The Commission believes that information concerning general classes of acquired assets is necessary and appropriate to antitrust analysis, and is unlikely to constitute a significant burden for reporting persons. Another comment (77) suggested that any description of assets be limited to the degree of detail necessary in order to identify the product or service generated by the asset. The latter comment has been adopted in substance in the final version of this item.

Another comment (1086) suggested that reporting companies will have difficulty determining "approximate dollar values" for classes of assets without undertaking an extensive appraisal of those assets. The "approximate dollar value" requirement of item 2(d)(i) is intended only to provide the agencies with a rough estimate of the value of each class of acquired assets. It does not require an appraisal. The more structured determination of dollar value under § 801.10 applies to the aggregate dollar value of all assets to be acquired, and it must be reported under item 3. If the acquired person holds only one class of assets, that value is the proper response to item 2(d)(i) as well as item 3.

However, if the acquired person holds more than one class of assets, and the acquiring person is acquiring more than one such class, item 2(d)(i) requires more detail. The aggregate dollar value should in this case be broken down into approximate dollar values for each general class of acquired assets. Alternatively, the book value of each class of the acquired assets can be used if it bears a reasonable relationship to fair market value.

ITEM 2(d)(ii)

If the acquiring person, at the time of the signing of the agreement to acquire assets of the acquired person, holds any assets of that person that it acquired in the previous 180 days, it must describe and provide a dollar value for each general class of the earlier-acquired assets. The rule applies only if the second acquisition is of assets, not voting securities. See § 801.13(b)(2). The term "dollar value" means "approximate dollar value," as employed in item 2(d)(i). See the statement of basis and purpose to item 2(d)(i).

ITEM 2(e)

Item 2(e) need be completed only by parties to a voting securities acquisition. The item requires all reporting persons to provide, for each issuer whose voting securities will be acquired, information on the classes and dollar values of those issuers' voting securities. When voting securities of an issuer are being acquired indirectly, those securities are not listed in response to this item, although the issuers of such securities will be listed in response to item 6(a) of the acquired person's form. Similarly, when voting securities are being acquired in a secondary acquisition, those securities are not listed in response to this item on the form submitted for the primary acquisition, since separate notification and report forms must be submitted for the secondary acquisition. See the statement of basis and purpose to § 801.4. This information must be submitted for all classes of securities, regardless of whether securities within a particular class will actually be acquired in the transaction. This information is relevant to the review process since it will assist the agencies in determining the actual degree of control arising from the acquisition. The required information includes:

(i) A list of all classes of voting securities that will be outstanding after the acquisition (regardless of whether stock in each particular class will be acquired in the transaction), and a list of all classes of non-voting securities that will be acquired in the acquisition. When more than one class of voting securities is outstanding, the reporting person must include a description of the voting rights of each class;

(ii) The total number of shares of each class listed under (i) that will be outstanding after the acquisition;

(iii) The total number of shares of each class listed under (i) that will be acquired in the acquisition;

(iv) The identity of each person acquiring the securities of any class listed under (i);

(v) The dollar value of securities of each class listed under (i) that are to be acquired in the acquisition (for purposes of determining dollar value, the provisions of § 801.10(a) must be followed);

(vi) The total number of shares of each class of securities listed under (i) that will be held by the acquiring person(s) after the acquisition;

(vii) The percentage of each class of securities listed under (vi) that will be held by the acquiring person(s) after the acquisition;

For subsections (iii)-(vii), if there is more than one acquiring person, sepa-

rate data must be submitted for each such person.

BACKGROUND INFORMATION TO ITEM 2(e)

The version of item 2(a) appearing in the original form required the description of assets to be received in the transaction. These provisions were redesignated item 2(d) in the revised and final forms. Revised and final item 2(e) require the description of voting securities to be acquired.

A number of comments (e.g., 26, 30; 1098) stated that the information sought was too detailed and would impose an undue burden on the reporting person. The Commission disagrees. This type of data is easily available to reporting persons. In order to evaluate fully a voting securities acquisition, the agencies must be informed of the details of the acquisition and its effect on the capital structure of the acquired person. If this information is not obtained, the agencies' evaluation will be incomplete. Another comment (77) suggested that since item 2(e) does not reflect the transfer of new issues or treasury stock, the form should be amended to require the submission of data concerning the pre- and post-acquisition capital structures of the acquired issuer. The Commission has concluded that the submission of preacquisition data would be unnecessary for law enforcement purposes. Any anti competitive effect arising from the transaction will be primarily the result of the post acquisition structure.

ITEM 2(f)(i)

Item 2(f)(i) requires that the reporting person furnish copies of final or most recent versions of all documents constituting the agreement between the acquiring and acquired persons. Only documents embodying the actual agreement are requested, and ancillary documents need not be submitted. If only a letter of intent has been signed, it should be provided. In the case of a tender offer, the acquiring person should submit a copy of the tender offer, and the acquired person need not do so. For secondary acquisitions and transactions described by § 801.31, the background of the acquisition should be explained, but no documents need be submitted. If there are no such documents because of the nature of the transaction (for example, when the acquiring person intends to acquire voting securities on a stock exchange or exercise a conversion privilege), no submission in response to this item is required.

BACKGROUND INFORMATION TO ITEM 2(f)(i)

The predecessor of this item, original item 2(g), required the reporting person to furnish copies of all documents "relating to" the acquisition. A substantial number of comments criticized this provision.

A number of comments (e.g., 37, 47, 63, 71, 77, 87, 90, 103, 112, 115) criticized the item as too broadly worded and likely to require the production of largely irrelevant documents. Several comments (e.g., 11, 37, 63, 88, 112) suggested possible limitations on the item, including limiting it to documents that are "governing," "basic," "in sufficiently final form" or contain "material terms." While the suggested terms were considered unworkably imprecise, they do describe in a general sense those documents that the Commission believes are necessary and appropriate to preliminary review. Accordingly, the Commission concluded that the scope of the item should be narrowed considerably. Final item 2(f)(i) requires the submission of only those documents that actually constitute the agreement, and no ancillary documents.

Several comments (e.g., 41, 77, 90) suggested that documents containing confidential business and financial information should be exempt from submission. The Commission believes that these comments are the result of an erroneous interpretation of the scope and purpose of the act. The act exempts no relevant information from disclosure to the enforcement agencies, regardless of its sensitivity or confidentiality. If anything, a careful reading of the act indicates that the congressional intention was exactly the opposite. Section 7A(h) specifically exempts information and documents received by the agencies pursuant to the act from disclosure under the Freedom of Information Act. Thus, it appears that Congress envisioned the submission of confidential information. In light of the statutory language, the final rules take the position that no exception will be made under item 2(f)(i) merely because the contents of these documents are allegedly confidential.

ITEM 2(f)(ii)

Item 2(f)(ii) requires the reporting person to furnish an index containing a brief description of each ancillary document or class of documents related to the agreement underlying the reported acquisition. The phrase "related to" is considerably broader than the term "constitute" used in item 2(f)(i). Specific examples of relevant ancillary documents include documents relating to personnel matters, third-party financing agreements, leases, subleases and other documents relating to the transfer of realty. An index to these documents will permit the agencies to identify particular documents in a second request.

BACKGROUND INFORMATION TO ITEM 2(f)(ii)

Original item 2(g) would have required the submission of all documents related to the transaction. This item, which first appeared in the revised form, requires the submission of an index of ancillary documents, rather than the documents themselves.

A number of comments suggested that the compilation of such an index was unnecessary (1044, 1104) and too burdensome (1044, 1053). However, an index of ancillary documents is both necessary and appropriate to antitrust review. The information contained in such an index will permit the agencies to identify particular documents appropriate to second requests, should such requests be necessary.

Another comment (1028) suggested that the required compilation of an index was beyond the statutory authority because the information contained in the index would be irrelevant to antitrust considerations. The Commission disagrees. Section 7(A)(d)(1) states that the notification shall contain such relevant information and doucmentary material as is necessary and appropriate to enable the agencies to determine whether the acquisition will violate the antitrust laws. The documents required to be indexed in item 2(f)(ii) are expressly limited to those "relating to" the reported acquisition. The agencies have found such documents to be useful in evaluating the legality of past acquisitions. Thus, the information submitted in response to item 2(f)(ii) falls within the mandate of section 7A(d)(1). Furthermore, inasmuch as the compilation of an index will be essentially a clerical function, it cannot be said to be an excessively burdensome task.

ITEM 3

Item 3 requires the reporting person to state the percentage of assets and voting securities of the acquired person, and the aggregate total dollar amount of such assets and securities, that will be held by each acquiring person as a result of the acquisiton. In the majority of transactions, reporting persons will respond to either 3(a) or 3(b), but not both. All reporting persons must respond to 3(c). The responses to item 3 are intended to confirm the basis on which the acquisition meets the size-of-transaction test of section 7A(a)(3).

Item 3 requires only approximations of the percentages and aggregate total dollar amounts of assets and voting securities. Particularly as to those criteria of the 15 percent or 15 million test that are self-evidently either satisfied or not satisfied, precise figures are not required. Furthermore, the reporting persons may concede that certain cri-

teria contained in item 3 are satisfied, and submit approximate answers to those criteria that are not satisfied.

BACKGROUND INFORMATION TO ITEM 3

Item 3 is intended to be a recapitulation of the 15 percent or $15 million test of section 7A(a)(3).

Several comments (e.g., 5, 120) suggested that information submitted under item 3(b) would be superfluous inasmuch as the same information is required under item 2(e). This interpretation is incorrect. The information contained in item 3 is needed to verify the computations of the reporting persons under section 7A(a)(3) and thus that the act applies to the transaction. The information contained in item 2(e), on the other hand, provides a more detailed picture of the overall capital structure of the acquired person. That information is designed to assist substantive antitrust review by the law enforcement agencies and has no bearing on the reportability of the transaction. For this reason item 3 is not duplicative. Furthermore, since the response to item 3 will require no more than disclosure of the calculations the reporting person must perform under section 7A(a)(3), the item cannot be said to constitute an unreasonable burden upon reporting persons.

Revised item 3 would have required separate reporting for the holdings of the acquiring ultimate parent entity and its affiliates. Since the final rules define the term "affiliate" to exclude persons or entities not included within the acquiring person, see § 801.1(d), final item 3 has been amended to remove this separate reporting requirement.

ITEM 4

Item 4 requires the reporting person to furnish copies of a number of documents commmonly prepared for filing with the SEC or for other corporate purposes. The reporting person must submit copies of its own documents and, if entities included within the reporting person have their own documents that are different from those of the reporting person, copies of those entities' documents as well.

In the heading to the item, the reference to documents "of the person filing notification" merits explanation. If the person is a corporation that treats all its controlled (as defined in § 801.1(b)) subsidiaries as components of a single unit, then the documents "of the person" naturally will be the documents that apply to that corporation.

ITEM 4 (a)

Item 4(a) requires the reporting person to furnish copies of certain documents if they were filed with the SEC within 3 years prior to the date of filing the notification and report form, or if they are to be filed contemporaneously with the SEC in connection with the acquisition. These documents include the most recent proxy statement and most recent form 10-K. In addition, all registration statements, forms 10-Q and forms 8-K filed since the end of the period reflected by the most recent form 10-K must be submitted. If the acquisition is a tender offer, schedule 14D-1 must also be submitted if it has already been filed with the SEC or will be filed with the SEC contemporanously with the filing of the notification and report form with the Commission and the Assistant Attorney General. If schedule 14D-1 has not been filed with the SEC prior to the filing of the notification and report form, and will not be filed contemporanously with the notification and report form, it need not be submitted in response to item 4(a).

BACKGROUND INFORMATION TO ITEM 4(a)

The documents requested by item 4(a) contain information which will prove helpful to the enforcement agencies in evaluating the impact of the acquisition upon competition. Since these documents will be readily at hand, requiring their submission imposes no undue burden on reporting person.

If the reporting person does not have copies of responsive documents readily available, the reporting person may instead identify each document and indicate its date and place of filing.

Item 4(a) has undergone some change since the original form. First, original item 4(a) required the submission of the most recently filed copies of all enumerated types of documents, regardless of how long ago such documents may have been filed. Several comments (e.g., 11, 15, 59, 77, 104) argued that only relatively recent documents would be useful for review purposes. Accordingly, the final item required that such documents be submitted only if they were filed with the SEC within the 3 years prior to the date of filing of the notification and report form. Second, the revised item required the reporting person to submit all registration statements filed with the SEC during the 3 years prior to the filing of the premerger notification report. Comment 1091 noted that all of this information, to the extent not outdated, would be included in the most recent form 10-K. The final version requires the submission of only those registration statements filed since the end of the period reflected by the most recent form 10-K.

The SEC comment (1058) suggested that problems could arise with regard to the filing of SEC schedule 14D-1, relating to tender offers. The comment suggested that in many cases tender offerors will not have access to all of the information required to be disclosed under schedule 14D-1 at the time of submission of the notification and report form and thus may not have prepared schedule 14D-1 at time of filing the form. Under these circumstances, to require the submission of schdule 14D-1 at the time of filing might delay the filing until schedule 14-1 was completed. The comment recommended that item 4(a) of the notification and report form be construed in such a manner as to require schedule 14D-1 to be submitted to the Commission and the Assistant Attorney General as a supplement to item 4(a) contemporaneously with its filing with the SEC.

The final version of item 4(a) does not follow the suggestion of the SEC. The final rules require that the reporting person submit schedule 14D-1 in response to item 4(a) only if the schedule has already been filed with the SEC or will be filed with the SEC contemporaneously with the filing of the notification and report form. Instead of requiring a supplemental filing, whenever the schedule is unavailable at the time the acquiring person completes item 4(a), the agencies may request it as part of a second request. Furthermore, reporting persons may wish to submit schedule 14D-1 voluntarily as a supplement to item 4(a). See § 803.1(b).

Another comment (35) suggested that submission of the requested documents under item 4(a) was unnecessary because these documents are available from the SEC. Although the documents are generally available, the agency staffs will be under severe time constraints in reviewing filings under the act. Obtaining the required documents for each reporting person would be extremely time-consuming. The added burden of requiring the agencies to obtain these documents from the SEC would impede the effective and timely review envisioned by the act. By contrast, for reporting persons the burden of submitting copies of these documents should be minimal, if copies are available.

Finally, comment 77 suggested that reporting persons furnish only those documents filed with the SEC that contain primarily financial statements, rather than nonfinancial information such as proxy statements. The final version of the item does not follow this suggestion. Regardless of the presence of financial statements, SEC filings are likely to contain information concerning the structure, operations and plans of the person that will facilitate review of the acquisition by the agencies.

ITEM 4(b)

Item 4(b) requires the reporting person to furnish copies of the most recent annual reports and annual audit reports of the person filing notification and of all unconsolidated United States issuers included within the person. In addition, if the most recent regularly prepared balance sheets of the person or of the unconsolidated United States issuers contain information more recent than (and different from) that contained in the most recent annual report and annual audit report, the balance sheets must also be submitted. This situation may arise, for example, when the most recent regularly prepared balance sheet is a quarterly or monthly balance sheet prepared after the most recent annual report. The term "unconsolidated issuer" means an entity whose operations and financial position are not reflected in the financial statements of the ultimate parent entity or the entire reporting person. It is immaterial for purposes of item 4(b) whether such unconsolidated issuers are involved in the reported acquisition. The term "United States issuer" is defined in § 801.1(e)(1)(ii). Note that all persons must respond to item 4(b) without regard to whether they are required to file reports with the SEC.

BACKGROUND INFORMATION TO ITEM 4(b)

The annual reports, audit reports, and balance sheets to be submitted in response to item 4(b) constitute basic data that the agencies will employ in gaging the likely impact of the acquisition upon competition. Original item 4(b) would have required the submission of "all documents issued during the 3 years prior to the filing of this report which contain information directly pertaining to the reported transaction." A large number of comments (e.g., 15, 28, 30, 37, 41) criticized the breadth and obscurity of this language. In response to these comments, the information sought under original item 4(b) is described in more detail in the final version of item 4(c).

The revised version of item 4(b) was substantially similar to the final version. However, revised item 4(b) would have required the reporting person to furnish information for all unconsolidated entities included within the reporting person. Several comments (e.g., 1026, 1094, 1099) criticized the requirement of submitting such documents for unconsolidated foreign entities. One comment (1094) suggested that the submission of such documents for unconsolidated foreign entities might violate foreign corporate secrecy statutes. The Commission reexamined the need for these statements, and determined that information regarding foreign entities can be relegated to requests for additional information. Accordingly, final item 4(b) requires the submission of annual reports, annual audit reports, and regularly prepared balance sheets only for unconsolidated "United States issuers" included within the reporting person. This amendment renders item 4(b) consistent with items 5, 7 through 9, and the insurance appendix, which require the submission of information with respect to United States operations alone. See § 803.2(c).

ITEM 4(c)

Item 4(c) requires the submission of all studies, surveys, analyses and reports prepared by or for officers or directors for the purpose of evaluating or analyzing the acquisition with respect to various aspects of competition.

The reporting person must submit only those documents prepared in connection with the reported acquisition. Documents pertaining to other mergers or acquisitions by the acquiring person, even if in the same market as the acquired person in the reported transaction, need not be submitted. Further, only those documents relating to markets, competition, competitors, potential for sales growth or expansion into product or geographic markets, and geographic and product market shares need be supplied. Documents relating to other matters, such as pension arrangements, labor contracts, financing agreements or securities matters need not be supplied. Finally, only documents prepared "by or for any officer(s) or director(s)" need be submitted. Officers or directors of any entity included within the reporting person meet this standard. The language "by or for" embraces documents prepared by any persons, including consultants, for officers or directors. The date of preparation and name and title of the individual who prepared each document must be indicated if not contained in the document itself.

BACKGROUND INFORMATION TO ITEM 4 (c)

Item 4(c) requires the submission of documents that the Commission views as essential to perform preliminary evaluations of mergers or acquisitions adequately. Internal documents of the parties to an acquisition provide a perspective on matters of antitrust concern that even detailed statistical information is unlikely to yield. SIC data, while the most satisfactory data available, are occasionally imperfect for determining product markets. Likewise, the other items on the form, while designed to elicit appropriate information, cannot be expected to answer all of the basic questions in every acquisition. The agencies have found from past experience that the viewpoints of the participants are extremely valuable in analyzing the antitrust implications of an acquisition and have determined that some of these perceptions are indispensable to the preliminary review envisioned by the act. As later portions of this discussion indicate, the final version of the items represents a substantial reduction in the scope of the document request.

Furthermore, the documents submitted under this item will enable the agency staffs to determine rapidly which statistical information is likely to be important. Since the waiting period may provide a very short time in which to analyze a relatively complex acquisition, acceleration of the review process by means of internal documents is essential.

Item 4(c) and its earlier drafts provoked many critical comments. Comment 35, for instance, suggested that any information derived from documents sought under either version of the item would be speculative at best. Numerous other comments considered the documents more properly the subject of a request for additional information and documentary material (e.g., 59, 85, 87, 94, 111, 115, 120; 1075, 1104), or a discovery motion in the course of litigation (e.g., 112; 1108). The Commission disagrees. Item 4(c) requests the production of a narrow class of documents that is necessary and appropriate for purposes of preliminary antitrust review. As noted by Congressman Rodino on the House floor:

> [I]n most cases, the Government will be requesting the very data that is already available to the merging parties, and has already been assembled and analyzed by them. If the merging parties are prepared to rely on it, all of it should be available to the Government.

122 Cong. Rec. H10293 (daily ed. Sept. 16, 1976). Documents analyzing or evaluating a merger generally form the basis of a party's decision to proceed with an acquisition. As such, those documents are highly relevant for review purposes. In light of the agencies' congressional mandate to evaluate reported mergers and acquisitions effectively, any further limitation on the scope of item 4(c) would seriously impair the agencies' efforts to fulfill their delegated responsibility.

A large number of comments (e.g., 37, 59, 63, 70, 77, 78, 101, 109, 111, 112, 120; 1050, 1088) recommended that documents containing sensitive financial information or trade secrets be exempt from production under item 4(c). This suggestion was rejected. The Commission believes that fears of improper public disclosure of confidential information are unfounded in light of § 7A(h). That subsection pro-

vides that information filed with the agencies is exempt from disclosure under the Freedom of Information Act, and may not be made public except in an administrative or judicial proceeding, or to Congress.

Other comments (e.g., 59, 63, 77, 109, 111, 1044, 1058) suggested that documents protected by the attorney-client or other privileges should be exempt from disclosure under item 4(c). The Commission has declined to follow this suggestion. Section 7A(d)(1) contemplates the submission of all relevant documents and provides no exemption for privileged documents. Therefore, none is provided in the rules. If allegedly privileged documents are withheld, notification is incomplete and a statement of reasons for noncompliance conforming to § 803.3 must be submitted. Whether a reporting person has substantially complied with the act and rules when allegedly privileged documents have been withheld will be determined on a case-by-case basis by the enforcement agencies, and, when necessary, by courts under section 7A(g).

Original item 2(h), the predecessor of item 4(c), was considerably broader than the final item. It would have required submission of all documents prepared within the 3 years preceding notification that "discuss the reasons for or analyze the proposed transaction." In addition, it would have called for any documents that pertain to markets, competitors, expansion, etc., into any product or service manufactured or sold by the other reporting company.

Most of the comments received were highly critical of this original, broader draft. Numerous comments (e.g., 15, 28, 30, 37, 47, 59, 85, 103, 111, 112, 120) objected that the item was burdensome. Others (e.g., 47, 59, 78, 112) suggested that much of the information submitted would be irrelevant for purposes of reviewing the antitrust implications of the reported acquisition. These comments led to a substantially streamlined revised version of the request. Revised item 4(c) would have required the submission of documents prepared "by or for any officer(s) or director(s) for the purpose of evaluating, or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product and geographic markets." Thus, the revised version would have required the submission of documents prepared for the purpose of evaluating or analyzing the reported acquisition alone, and excluded documents prepared for other purposes. Although a number of comments (e.g., 1029, 1050, 1075, 1098, 1104, 1108) still objected to the inclusion of the item, this version was adopted unchanged in the final rules. By so limiting the scope of documents required under item 4(c), the Commission acknowledges that the agencies may not gain access to some relevant documents at the time of their initial review. However, requiring the submission of a broader range of documents would entail searches of historical files by reporting persons for documents prepared at other times for other purposes, and could produce too large a number of documents for purposes of effective preliminary antitrust review. Since additional documents may be sought by either agency in a request for additional information and documentary material under section 7A(e) and § 803.20 or other discovery procedures, the limitation on the scope of documents required under item 4(c) is unlikely to impede effective review of reported acquisitions.

The proviso in item 4(c) that only those documents prepared "by or for any officer(s) or director(s)" need be submitted also represents a considerable limitation of the language contained in its predecessor. Original item 2(h) would have required the submission of all documents "prepared by or for the company." Yet a number of comments (e.g., 1053, 1108) urged that the language be further limited to encompass only directors or "high-level management." These suggestions were rejected. The criterion in the item is easily administrable and should yield a reasonable number of genuinely important documents.

DELETION OF REVISED ITEM 4(d)

Item 4(d) first appeared in the revised form, but has been deleted from the final notification and report form. Item 4(d) would have required the reporting person to describe its overall planning process and to name the individuals responsible for planning possible entry into the product or geographic markets of other parties to the transaction.

A number of comments criticized revised item 4(d). In general, these comments described item 4(d) as burdensome and unnecessary (e.g., 1075, 1086, 1098) and of doubtful relevance for purposes of preliminary antitrust review (e.g., 1057, 1104). The type of information sought in item 4(d) was considered by most comments to be more properly the subject of a request for additional information and documentary material (e.g., 1059), if not a discovery motion in litigation (e.g., 1044, 1055, 1108). One comment (1075) described the type of information sought as confidential and beyond the scope of discovery.

The Commission has concluded that at the present time the type of information requested in item 4(d) does not seem necessary to obtain at the preliminary review stage. Accordingly, item 4(d) has been deleted from the final notification and report form. Should experience under the act indicate that this conclusion should be reexamined at some time in the future, the Commission may consider amending the form to include an item along the lines of revised item 4(d). In addition, persons filing notification may wish to provide such information voluntarily pursuant to § 803.1(b), since the enforcement agencies may request such information as part of a request for additional information or documentary material pursuant to section 7A(e) and § 803.20.

ITEM 5

Item 5 requires the submission of annual revenue data by single four-digit standard industrial classification ("SIC") code industries, and, for manufacturing industries, by five-digit (SIC-based code) product classes and seven-digit (SIC-based code) products. The SIC code is employed by the U.S. Bureau of the Census to identify products and services for which aggregate data is published in the Bureau's various economic census and its annual survey of manufactures.

Item 5 requires the submission of dollar revenue data for the most recent year and for 1972, the year of the last economic censuses. Upon publication of the 1977 economic censuses by the Bureau of the Census, item 5 will be amended. The revenue data requested by item 5 is by design similar to that required by the Bureau of the Census in its economic censuses and annual survey of manufactures, so that the data provided in response to item 5 will be reasonably comparable with the aggregate data contained in those publications. Because of the similarity of the inquiry, reporting persons should be generally familar with the derivation of such information from their books and records.

An important distinction exists, however, between the data submitted to the Bureau of the Census and that required by item 5. Data is submitted to the Bureau of the Census on an establishment basis (i.e., a separate report is submitted for each plant or other facility operated by the reporting firm). By contrast, the information submitted in response to item 5 must be an aggregate figure for all operations of the reporting person in each relevant four-, five-, or seven-digit category. While some companies maintain such data on a consolidated basis, others do so only with respect to smaller operating units, such as divisions or establishments. In the latter situations, the reporting person needs simply to combine by category the dollar revenues of all establishments operated by each entity included within the reporting person, and then

combine by category the dollar revenues of all such entities. The "total dollar revenues" provided in response to the various inquiries in item 5 will thus be an aggregate figure representing the entire operations of the reporting person in each relevant four-, five-, or seven-digit (SIC code) category.

A second distinction will arise in certain cases. The instructions to the form require that reporting persons employ the four-digit industry categories contained in the 1972 edition of the "Standard Industrial Classification Manual," and the seven-digit (SIC-based code) product categories contained in the numerical list of manufactured products, "1972 Census of Manufactures" (MC72-1.2) (new 1972 SIC basis) or volume II, "Industry Statistics," "1972 Census of Manufactures." The categories contained in these reference materials reflect the categories employed by the Bureau of the Census in its tabulation and publication of the 1972 economic censuses. The Commission is aware that companies reporting for purposes of the 1972 censuses were instructed to report on the basis of the SIC format contained in the 1967 economic censuses and that a number of 1967 census categories were changed at the time of publication of the 1972 economic censuses. For those categories in which such changes occurred, reporting persons may be able to comply with item 5 by reviewing underlying records compiled in accordance with the 1967 classifications for purposes of the 1972 economic censuses, and retabulating such data according to 1972 classifications. The Commission has determined that any inconvenience so occasioned is unavoidable in light of the agencies' need to be able to compare quickly an individual company's submissions with published census aggregate data.

Information must be submitted according to 1972 classifications in response to items 5(a) (revenues by industry for 1972), 5(b)(i) (revenues by product for 1972), 5(b)(iii) (revenues by product class for most recent year), 5(c) (revenues for nonmanufacturing industries for the most recent year) and, if census classifications are known, 5(b)(ii) (new or deleted products since 1972).

The note above item 5(a) cautions that § 803.2 of the rules may require limited or separate responses to item 5 by the person filing notification. The instructions contained in § 803.2 are significant in several ways.

First, § 803.2(b) requires limited or separate responses by acquired persons filing notification. Acquiring persons must complete item 5 with respect to all entities included within the acquiring person. Acquired persons must complete item 5 with respect to only those assets being acquired or that issuer whose securities are being acquired (and all entities controlled by such issuer). Responses not so confined do not comply with the instructions and will be treated as deficient.

Second, § 803.2(c)(1) provides that information need not be provided with respect to operations conducted outside the United States. See § 801.1(k).

Third, § 803.2(c) also provides that information need not be supplied with respect to assets or voting securities the acquisition of which is exempt. For further explanation of this brief summary, see the statement of basis and purpose to § 803.2.

The term "dollar revenues" used in item 5 is defined in § 803.2(d).

BACKGROUND INFORMATION TO ITEM 5

A large number of comments were received concerning the submission of data by SIC code categories. First, several comments (e.g., 48, 109) suggested that the use of aggregated dollar volumes was unduly burdensome since reporting persons are required to furnish data to the Bureau of the Census by establishment and will not have aggregate figures readily available. The Commission finds this argument to be without merit. If, as the comment suggests, reporting persons have unaggregated revenue data available on an establishment or other basis, the compilation of aggregate figures will require, at most, the simple addition of establishment and entity figures. This burden is likely to be minimal.

Second, a number of comments (e.g., 120; 1050, 1159, 1108) informed the Commission that many companies do not employ SIC-based categories data in their internal accounting procedures. Several of these comments recommended that if reporting companies do not normally organize their internal records by SIC-based categories, those persons should be permitted to report under other systems. Suggested systems included the system employed by the reporting person, if that system approximates the SIC format (e.g., 26, 120; 1050); any generally accepted accounting system (e.g., 1059); or any system used by all of the parties to a transaction (e.g., 1077). Alternatively, another comment (29) suggested that reporting companies be permitted to use the format of Financial Accounting Standard No. 14, "Financial Reporting for Segments of a Business Enterprise", at least as an option in lieu of seven digit reporting. The Commission has considered these suggestions and concluded that final item 5 should continue to require the submission of data under the SIC-based categories. For effective antitrust review, the agency staffs must be able to determine the impact of an acquisition on the market for a particular product, group of products, or service. The agency staffs will be able to perform this review only if the data submitted by reporting persons can be compared to data for the entire market. Data for the entire market is difficult to establish unless all persons submit revenue figures under a basically uniform classification system. Since there may be as many internal accounting systems as there are reporting persons, data reflecting diverse internal accounting systems are not a useful basis for review. Such data would not be readily comparable with the aggregate data published by the Bureau of the Census, which provides, through the SIC code, the most generally available and widely used source of universe data. While the Commission is well aware that the SIC code is not a perfect system, it has concluded that information reported by SIC-based categories currently provides the only feasible basis for effective preliminary review of reported acquisitions within the time limits imposed by the act.

Furthermore, the use of SIC-based categories should not be unduly burdensome. Reporting persons are presumably required to compile SIC-based data for submission to the Bureau of the Census. Thus, reporting persons may have available, in addition to regular accounting books and records, other records compiled to aid in answering comparable inquiries in reports to the Bureau of the Census. In addition, the reporting persons' experience in the preparation of Census reports should substantially reduce the burden of completing item 5.

Another comment (94) suggested that item 5 be clarified to indicate whether SIC-based data is requested on an "establishment basis" or a "product class basis" as those terms are used by the Bureau of the Census. "Establishment basis" and "product class basis" are methods by which the Bureau of the Census reports data which it has collected and do not affect the method by which data is reported, either to census or on the form. Therefore, this suggestion was not followed. The item requests aggregate data for the person filing notification.

Reporting persons may believe that information contained in a previously or contemporaneously submitted Corporate Patterns Report ("CPR") or Special Report on Mergers and Acquisitions in the Dairy Industry ("Dairy Industry Report") is responsive to a subpart of item 5. The Commission believes that because of the definition of "person" contained in the premerger notification rules, § 801.1(a), and the distinction between the reporting person's obligations as an acquiring or acquired person, § 803.2(b), such instances will be rare. However, if in fact

the exact information required by item 5 is contained in a CPR or Dairy Industry Report, the reporting person may complete the applicable subpart of item 5 by identifying the portion of the specific CPR or Dairy Industry Report that contains the responsive data.

The staff is presently reviewing its Special Report on Mergers and Acquisitions in the Food Distribution Industries ("Food Industries Report") and will recommend to the Commission that the Food Industries Report be amended to eliminate any duplication between it and item 5 of the form.

CENSUS ACT

Other comments (e.g., 15, 59, 115, 120; 1050) suggested that to required submission of revenue data by reference to SIC-based categories used by the Bureau of the Census is impermissible in view of section 9 of the Census Act, 13 U.S.C. section 9, which provides, in applicable part, that retained copies of reports filed with the Bureau of the Census may not be required by other Government agencies.

This claim is not unique to the present form. In litigation concerning the Commission's Corporate Patterns Survey Report ("CPR") and Line of Business Report ("LB"), the court rejected the same argument and held that the Census Act does not preclude the Commission from requiring answers to questions concerning shipments similar or identical to questions asked in a census report. *In re FTC Corporate Patterns Report Litigation*, 432 F. Supp. 291, 304–07 (D.D.C. 1977), appeal pending, Nos. 77–1728, et al., (D.C. Cir.). The Commission believes that its request for data based on census classifications is not impermissible under section 9.

In any event, there is a strong statutory basis for the required submission of data according to SIC-based categories in the notification and report form, regardless of the outcome of the CPR litigation. Item 5 seeks information pursuant to the express mandate of the act, in which Congress, aware of the Commission's use of such classifications in its previous premerger notification program, provided in section 7A(d)(1) that the Commission

> shall require that the notification required [by the act] be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisitions may, if consummated, violate the antitrust laws.

Congress instructed the Commission to determine what information is necessary and appropriate, and in what form such information should be submitted, in order for the enforcement agencies to fulfill their statutory mandate. The Commission has determined that the submission of data according to SIC-based categories is necessary and appropriate in order to make a preliminary determination of the lawfulness to reported acquisitions under the antitrust laws.

ITEM 5(a)

Item 5(a) requires the reporting person to submit information concerning the four-digit (SIC code) industries in which the reporting person engaged in 1972. For each such four-digit industry, the reporting person must indicate the industry code number, the census description of the industry corresponding with the code, and total dollar revenues for the year 1972.

The reporting person must report the revenue derived during 1972 by all entities presently included within the person filing the notification and report form, regardless of whether such entities were included within the reporting person during 1972. Thus, data submitted in response to item 5(a) will include revenues derived during 1972 from the operations of entities acquired by the reporting person since 1972.

Special instructions are provided for reporting persons engaged in certain non-manufacturing industries.

BACKGROUND INFORMATION TO ITEM 5(a)

Item 5(a) requests dollar revenues by four-digit (SIC code) industry for 1972 in order to estimate the reporting person's share of the relevant four-digit industries. The year 1972 was chosen so that the data provided can be compared to the aggregate figures for the industry published in the 1972 Economic Censuses.

Original item 5(a) would have required the submission of four-digit industry data for both 1972 and the most recent year. The revised version of the form deleted the most recent year data from item 5(a) and added two new items. Item 5(b)(iii) required the submission of most recent year five-digit product class data for manufacturing industries. Another new item, 5(c), required the submission of most recent year four-digit industry data for non-manufacturing industries. The final version of the Form retains this arrangement.

Several comments (e.g., 59, 80) stated that compiling four-digit data for 1972 would be cumbersome, time-consuming and expensive, and might require the reconstruction of documents no longer available since records underlying census reports need only be retained for three years (104). Similarly, another comment (11) suggested that data for 1972 would be outdated and irrelevant and suggested that item 5(a) should require the submission of four-digit industry data for the past 1 or 2 years alone. These suggestions either are without merit or result from a misunderstanding of the purposes of the act. First, compiling such data should present no undue burden for reporting persons. Item 5(a) requests the submission of four-digit industry data for 1972 alone. Reporting persons should still have available ordinary books and records for relatively recent years, including 1972. Furthermore, because 1972 was a year for which reporting persons presumably had to collect this type of data for purposes of the economic censuses, reporting persons may also have available other records complied for use in the preparation of 1972 census reports.

Second, the use of 1972 data is essential at the present time for antitrust review purposes. The last year for which complete data from the economic censuses was published by the Bureau of the Census was 1972. Thus, it is the most recent year for which detailed statistical breakdowns of market universes exist.

Another group of comments (e.g., 115; 1050, 1108) suggested that reporting persons be permitted to omit dollar revenues totaling less than a threshold figure. This suggestion was also rejected. Small dollar values may, under certain circumstances, constitute a significant share of particular markets. For these markets the imposition of a minimum dollar threshold might seriously impair the review process. Moreover, the burden entailed is unlikely to be significant.

Finally, one comment (1104) suggested that the submission of data by four-digit industry for 1972 was superfluous because such data would merely be an aggregation of the data for all the seven-digit (SIC-based code) products included within that four-digit industry, which would be supplied in response to item 5(b)(i). In view of the serious time constraints under which the agencies will review reported acquisitions, the Commission has determined that the minimal burden of aggregation entailed in response to item 5(a) should be borne by reporting persons rather than by the agencies.

ITEM 5(b)(i)

Item 5(b)(i) requires reporting persons to submit information concerning each seven-digit (SIC-based code) product manufactured by the reporting person in 1972. For each seven-digit product within SIC major groups 20–39, the reporting person must supply the Census description of the product and the total dollar revenues derived during 1972. As noted in the instructions to the form, for seven-digit product codes ending in 00 the reporting person instead should submit information by the more de-

tailed product breakdown provided in appendix A to the Numerical List of Manufactured Products, 1972 "Census of Manufactures" (MC72-1.2).

The reporting person must report the revenue derived during 1972 by all entities presently included within the person filing the notification and report form, regardless of whether such entities were included within the reporting person during 1972. Thus, data submitted in response to item 5(b)(i) will include 1972 revenues of entities and assets acquired by the reporting person since 1972.

BACKGROUND INFORMATION TO ITEM 5(b)(i)

Item 5(b)(i) requests dollar revenues by seven-digit product in order to estimate the reporting person's share of the relevant seven-digit product markets. The year 1972 was chosen so that the data provided can be compared to the aggregate figures published for the 1972 Census of Manufactures.

A number of comments questioned the use of seven-digit product data for 1972. Several (e.g., 11, 32, 103, 109; 1059) recommended that seven-digit product data be required only for products in those four-digit industries in which the acquiring and acquired persons both derive revenues, or for products with respect to which a customer-supplier relationship exists. These suggestions have been rejected for several reasons.

First, reporting persons may have incomplete knowledge of whether the other party derives dollar revenues in the same four-digit industry. Particularly, but not only, in acquisitions accomplished through tender offers, the reporting person may be unaware of all of the operations of the other reporting person. In such cases the agencies would be forced to make requests for additional information and documentary material under section 7A(e) and § 803.20 in an effort to obtain basic rather than supplementary data.

Second, a limitation of seven-digit product information to those cases in which there is a four-digit industry overlap would be inappropriate for analysis of vertical or product extension acquisitions. In such cases the agencies would not necessarily receive any seven-digit product revenue data in those industries between which vertical relationships or product extensions are probable, since a four-digit overlap would be fortuitous. Again, the request for additional information would have to be used to obtain basic, rather than specialized, market data.

Other comments (e.g., 29, 104; 1029) suggested that the seven-digit product data requested in item 5(b)(i) is too detailed, or that such information should be submitted only if annual dollar revenues exceeded a specific threshold figure (e.g., 29, 74, 103, 115; 1050, 1108). Both of these suggestions have been rejected. In order to evaluate fully the possible anticompetitive effects of reported acquisitions, the agencies must have access to reasonably detailed and complete information. Exclusive reliance on four- and five-digit data or insertion of an arbitraty dollar revenue threshold could seriously impair the agencies' ability to perform this review and would thus frustrate the purposes of the act. Furthermore, the added burden on reporting persons to report all information should be minimal.

Original item 5(b)(i) would have required the submission of seven-digit product data for both 1972 and the most recent year. It also would have required a statement of the percentage of dollar revenues attributable to exports.

Quite a few comments (e.g., 26, 29, 32, 37, 88, 104, 115; 1029) maintained that compiling seven-digit data for years other than census years would be unduly burdensome, asserting that few companies collect or maintain such data at that level of detail except for years for which they are required to respond to Bureau of the Census inquiries. Other comments (e.g., 15, 35, 85, 94, 99) protested that since the Bureau of the Census does not require manufacturers to submit separate reports for exports, very few companies maintain separate export records and the compilation of export data would be unduly burdensome to reporting persons.

In response to these comments, revised item 5(b)(i) deleted both the requirement of dollar revenues by seven-digit product in the most recent year and the separate breakdown for export figures. Instead, item 5(b)(iii) was added, requiring reporting persons to submit dollar revenues for the most recent year by five-digit (SIC-based code) product categories. No provision in the form was made for the separate reporting of export information, which can be obtained, if necessary, by a request for additional information or documentary material under § 7A(e) and § 803.20. The final form retains revised item 5(b)(i) without change, except for addition of a clarifying instruction.

ITEM 5(b)(ii)

Item 5(b)(ii) requires the reporting person to identify each manufactured product that has been added or deleted since 1972. Products must be identified by seven-digit product category unless the reporting person is unsure of the proper seven-digit product category for a product added since 1972, in which case the product may be identified in the manner ordinarily used by the reporting person. For each such product the reporting person must indicate the year of addition or deletion and, for products added, total dollar revenues during the most recent year.

The instructions to item 5(b)(ii) clarify that, while products added due to the acquisition of entities since 1972 should be reported in response to item 5(b)(i), products deleted since 1972 by reason of the disposition of assets or voting securities should be included in response to this item.

BACKGROUND INFORMATION TO ITEM 5(b)(ii)

Item 5(b)(ii) first appeared in the revised rules, and is similar to item 6(b) of the special report form for the Commission's existing premerger notification program. Comment 1023 asserted that the information sought under item 5(b)(ii) was irrelevant for purposes of antitrust analysis. This comment is without merit. It is possible that product lines of reporting persons have changed considerable since 1972, the year of the last census of manufacturers. Effective preliminary antitrust analysis of a merger or acquisition requires review of the most current information available. The submission of such information is thus both necessary and appropriate for review purposes.

ITEM 5(b)(iii)

Item 5(b)(iii) requires the reporting person to submit information concerning each five-digit (SIC-based code) product class in which the reporting person is engaged. For each product class within SIC major groups 20-39 (manufacturing industries), the reporting person must indicate the product class code number, the census description of the product class and the total dollar revenues derived during the most recent year. Total dollar revenue data should reflect revenues derived by all entities that are included within the reporting person at the time the form is filed.

BACKGROUND INFORMATION TO ITEM 5(b)(iii)

Item 5(b)(iii) requests dollar revenues by five-digit product class for the most recent year in order to obtain information concerning the current activities of reporting persons. By comparing this data to the aggregate figures for the product class published in the annual survey of manufactures, the agencies will be able to approximate the reporting person's share of the relevant five-digit product classes.

For the origin of item 5(b)(iii), see the statement of basis and purpose to item 5(b)(i).

Comment 1077 suggested that a request for five-digit product class data for the most recent year was inappro-

priate because such data would not be comparable to the seven-digit product data for 1972 submitted under item 5(b)(i). However, five-digit dollar revenues for the most recent year can be compared generally to seven-digit dollar revenues for 1972 by simply aggregating all seven-digit revenues for products within the same five-digit product class. While the two types of data might not be strictly comparable because the market changes between 1972 and the most recent year, the comparison will provide the agencies with a useful preliminary evaluation of changes since 1972 in the reporting person's share of relevant product markets. Should either agency decide to investigate the acquisition in depth, it could secure more comparable data by means of a request for additional information under section 7A(e) and § 803.20, or by other means.

ITEM 5(c)

Item 5(c) requires reporting persons to submit the dollar revenues derived in the most recent year in four-digit (SIC code) nonmanufacturing industries, that is, industries in all SIC major groups other than 20-39. For each four-digit industry, the reporting person must indicate the four-digit code number, the census description of the industry and the total dollar revenues derived in the most recent year. Total dollar revenue data should reflect revenues derived by all entities that are included within the reporting person at the time the form is filed. Industries for which dollar revenues totaled less than $1 million may be omitted.

Special instructions are provided for insurance carriers, credit agencies other than banks, security and commodity brokers, holding and other investment offices, and real estate companies.

BACKGROUND INFORMATION TO ITEM 5(c)

Item 5(c) is designed to provide the agencies with current information concerning the nonmanufacturing activities of reporting persons.

Original item 5(c) would have required the reporting person to state, by seven-digit product categories, the dollar value of products imported into the United States for resale. A large number of comments criticized this requirement. Several comments (e.g., 35, 99, 115) suggested that few companies kept segregated data concerning imports. Other comments (e.g., 32, 59, 88, 115) suggested that even if such data existed, it would not be maintained by seven-digit (SIC-based code) product categories.

In response to these comments, the Commission reexamined the submission of import data under item 5(c). While the Bureau of the Census publishes monthly reports concerning aggregate value for imported products and commodities, the classification system employed in such reports is based on the Tariff Schedules of the United States ("TSUS"), 19 U.S.C. 1202. The TSUS is provided by the Tariff Act of 1930 and bears no relation to the SIC system. Thus, aggregate data provided in reports employing the TSUS would not be comparable to aggregate data provided in census publication employing the SIC system. In light of these facts, the Commission has determined that a separate breakdown of import data will not be required at the initial review stage. Should a separate breakdown of imports be desired, either agency may request such information in a request for additional information or documentary material pursuant to section 7A(e) and § 803.20. Accordingly, the provisions of original item 5(c) were deleted from the revised and final versions of the Notification and Report Form.

Comment 1022 suggested that the $1 million threshold in item 5(c) be raised to $10 million. This suggestion was rejected. Firms are generally not required to compile and submit to the Bureau of the Census information concerning their nonmanufacturing activities during noncensus years. The $1 million threshold was thus inserted to lessen the burden for reporting persons that would not otherwise compile annual data by four-digit industry for such years. Inserting a higher threshold might prevent the agencies from being informed of significant economic activities of reporting persons and thus could seriously impair review of acquisitions.

ITEM 5(d)

Item 5(d) need be completed only by acquiring persons engaged in the formation of a joint venture or other corporation. The item requires the reporting person to provide various information concerning the creation and planned operations of the corporation and the respective interests of all participating persons.

Specific information required to be submitted includes:

(i) The identity of the corporation, and its mailing address.

(ii) A description of the agreements creating the corporation, including:

(A) The value and timing of each acquiring person's contribution to the corporation. This description should include contributions in any form, including cash, voting securities of any issuer, real estate, equipment, patent rights, trademarks, etc. All contributions envisioned by the forming parties at the time of formation should be described, regardless of when the contributions will actually be made.

(B) Any contracts or agreements to obtain assets or capital for the corporation from sources other than the persons forming it. Examples of contracts or agreements to obtain assets include contracts for the purchase or lease from third parties of real estate, equipment, patent rights, or trademarks by or on behalf of the corporation. Examples of contracts or agreements to obtain capital include the sale of the securities of the corporation to third parties, and loans from banks or other sources.

(C) Whether and in what amount the persons forming the corporation have agreed to guarantee its credit or obligations. The description of such guarantee arrangements will include guarantees of loans, leases of equipment and real estate, and credit purchases.

(D) The consideration each person forming the corporation will receive in exchange for its contribution(s). This description would include all forms of consideration that the persons forming the corporation will acquire, including voting securities, nonvoting securities, debt instruments or other securities. The response should also reveal any rights to future consideration such as rights to patents or technology, mineral discoveries or other assets developed by the corporation.

(iii) A general description of the business in which the corporation will engage, including locations of facilities and geographic market areas.

(iv) The four-digit (SIC code) industries in which the corporation will derive income. For corporations which will be engaged in manufacturing, the five-digit (SIC-based code) product classes in which it will derive revenues must also be identified.

BACKGROUND INFORMATION TO ITEM 5(d)

Revised item 5(d) required the reporting of various types of data from institutional investors. These provisions are subsumed in item 6 of the final version, and former item 5(d) has been deleted.

Item 5(e) of the revised form has been redesignated item 5(d) in the final form. The language of the revised version of item 5(e) has been amended to conform to the final version of § 801.40, which uses the term "joint venture or other corporation."

ITEM 6

Item 6 must be completed by all persons required to file notification except acquired persons in transactions in which only assets are to be acquired. It requests three kinds of information.

In response to paragraph (a) of this item, reporting persons must list the name and headquarters mailing address of each entity included within

the person filing notification. At the option of the reporting person, entities with total assets of less than $1 million may be omitted from this listing.

Paragraph (b) requires a separate listing with respect to each entity included within the person filing notification whose voting securities are held by one or more persons other than the person filing notification. For each entity meeting this criterion a separate list containing the following information must be provided: The name of the issuer, the designation of each class of voting securities of that issuer which is held by other persons, the name and headquarters mailing address of each other person (if any) which holds 5 percent or more of the outstanding voting securities of the class, and the number and percentage of such securities held by that person. For purposes of this paragraph, percentages are computed by class of voting securities, rather than according to § 801.12. An example of a listing for each issuer would be:

XYZ SUBSIDIARY

Class A common:
ABC Co., 123 Main Street, Chicago, Ill. 60603, 5,000 shares (6.2 percent)
DEF Corp., 456 Seventh Avenue, New York, N.Y. 10017, 7,500 shares (9.3 percent)
Class B common:
GHI Co., and its subsidiaries, 789 Texas Avenue, Dallas, Tex. 75201, 1,000 shares (10 percent)

At the option of the reporting person, the listing may be omitted with respect to any entity included in the reporting person the total assets of which are less than $10 million.

Paragraph (c) of the item requires a single listing by the reporting person, if that person holds voting securities of any issuer not included within the person. The required listing is an aggregate of those holdings and shows: The issuer and class of securities, the number and percentage of outstanding securities held, and, at the option of the reporting person, the entity within the person filing notification that actually holds the securities. The filing person is permitted to omit its holdings of less than 5 percent of the outstanding voting securities of any issuer; in addition, holdings of any number or percentage of the outstanding voting securities of issuers with total assets of less then $10 million may also be omitted.

BACKGROUND INFORMATION TO ITEM 6

This item appears on the notification and report form for the first time in the final rules but is derived from items 1(b) of the original form and 1(g), 2(e)(ii), 3(b) and 5(d) of the revised form. Item 5(d) of the revised form requested information similar to items 6(a) and 6(c), but only with respect to institutional investor entities included within the person filing notification and holdings of voting securities by such institutional investors.

Item 1(b) of the original form requested information similar to item 6(a); the earlier version requested the name, mailing address, and date and state of incorporation (if applicable) of each "active entity" included within the reporting person. The comments criticized the requirement to list active entities on two grounds. First, a number of comments (e.g., 26, 112, 120) suggested that the meaning of the term "active entity" was unclear. That term has been used for some time in the Commission's existing premerger notification program. For purposes of the final form, however, it makes no difference whether an entity included within the reporting person is an "active entity"; item 6(a) requires a listing of all entities, whether or not they are "active," although entities with minimal assets may be excluded.

A second suggestion in the comments (e.g., 11, 74, 77, 109) was that subsidiaries below a certain size, or foreign subsidiaries not doing a significant amount of business in U.S. commerce, should be excluded. In response, a size threshold of $1 million has been inserted into item 6(a) of the final form. Entities with total assets of less than that amount may be omitted from the listing. If it is easier for the reporting person simply to list all entities, regardless of whether they are larger than that threshold, that is also permissible. Since item 6 relates to stock holdings, the Commission did not believe that the extent of an entity's sales was an appropriate threshold for item 6(a). Since the size of a reporting person under the act may be as small as $10 million (assets or sales), the Commission did not believe it appropriate to permit entities larger than $1 million in size—perhaps representing 10 percent of the reporting person—to be excluded from the required listing.

The Commission decided not to provide a separate exclusion for foreign subsidiaries based upon the amount of business done in the United States. One important purpose of the listing in item 6(a) is to permit evaluation of the information requested in item 6(b)—that is, the identification of persons that hold the stock of the reporting person or of any entities included within that person. For that purpose, the Commission believes it is not relevant whether the entity included within the reporting person is a foreign entity or a domestic entity. Holdings of stock in any entity included within the reporting person may be relevant to an assessment of the impact of an acquisition upon competition. Thus the reporting person is required to list all of its component entities.

Item 6(b) applies whenever 5 percent or more of the stock of any entity included within the reporting person is held by one or more persons other than the reporting person. In that event, the reporting person is required to list the issuer and class of that issuer's stock, to identify the holder, and to state the number and percentage of those shares so held. The reporting person may, at its option, omit this information if the issuer's total assets are less than $10 million. In responding to item 6(b) the reporting person may find it helpful to consult copies of schedules 13D and 13G filed with the SEC. The SEC requires that copies of such filings be sent to the issuer, 17 CFR 240.13d-1 (a) and (b). However, the reporting person should remember that the beneficial owner for purposes of the SEC schedules will not necessarily be the same as the holder for purposes of the rules and form and, in the case of schedule 13G, that the information may not be current. The reporting person must also list any other 5 percent holders of which it has knowledge, even if no schedules 13D or 13G have been filed with the SEC. The terms "person" and "hold" used here have the same meanings as they do throughout the rules.

Item 6(c) requires disclosure of stock of issuers not included within the person filing notification which is held by that person. If the issuer has assets of less than $10 million, or if the holdings do not equal or exceed 5 percent of the outstanding shares of the issuer, the information need not be submitted. Again, this optional approach is taken because some reporting persons may find it more convenient to report all holdings than to separate those which do not meet the optional criteria of item 6(c).

The three parts of item 6 are designed to alert the enforcement agencies to situations in which the potential antitrust impact of the reported transaction does not result solely or directly from the acquisition, but may arise from direct or indirect shareholder relationships between the parties to the transaction. This may occur, for example, when a significant shareholder of the acquiring person already holds shares of the acquired person, or when an entity whose stock is held (but which is not controlled) by the acquiring person either holds stock of the acquired person or is partly controlled by the acquired person. A comparison of the acquiring and acquired persons' responses to items 6(b) and 6(c) should reveal such situations.

A similar comparison may also reveal other situations of possible antitrust concern. Examples might be occasions when a person known to be a

competitor or customer or supplier of one of the parties is also a significant shareholder of the other party, or when the acquiring company holds stock in a competitor or customer or supplier of the acquired company or vice versa.

The addition of item 6, coupled with changes in the definition of "affiliate" in § 801.1(d), has made it possible for items 1(g), 2(e)(ii), and 3(b) of the revised form to be deleted. Those items had requested information concerning "affiliates" (as defined in those earlier rules) of the acquiring person, when those affiliates held stock or assets of the acquired person, or when the affiliates were doing business in any industry in which the acquired person was also doing business.

The kinds of information required by item 6 are analogous to the kinds of information which the agencies would have obtained in response to the original and revised versions of the form, if the earlier versions of the definition of "affiliate" had been retained. Item 6 is thus a response to the narrowing of that definition to encompass only entities included within the reporting person. Item 6 also represents a recognition that the information sought in revised item 5(d), concerning the holdings of institutional investors, is potentially equally relevant to the analysis of transactions not involving an institutional investor. When entities which are not under common control are nevertheless related to one another by shareholdings, the agencies must assess the relevance of that relationship in the course of their assessment of the competitive impact of an acquisition involving one of those entities directly.

In a transaction in which only assets are to be acquired, the stock holdings of, and stock holdings in, the acquired person would not be affected by the transaction. Thus, the acquired person need not respond to item 6 in this situation. The acquiring person responds to this item in all cases, and the acquired person must respond whenever any voting securities will be acquired.

ITEM 7

Item 7 is designed to provide information about geographic markets. Whenever any party to an acquisition knows or has reason to believe that it derives dollar revenues from any of the same four-digit (SIC code) industries as any other party, it must identify the geographic areas in which it derives those dollar revenues. The item must be completed separately for each four-digit industry in which such an overlap of dollar revenues occurred during the most recent year. If the transaction is the formation of a joint venture or other corporation, the reporting person should compare the four-digit industries in which it derived revenues to those in which the new corporation is expected to derive revenues (without time limit), as well as to those in which other acquiring persons, whether or not required to report, derive revenues.

Item 7(a) requires identification, by code number and description, of the four-digit industries in which the overlap exists or is believed to exist. Item 7(b) calls for the name of every other party to the transaction which is engaged in that industry. Item 7(c) seeks geographic information about the reporting person's operations in each four-digit industry listed in item 7(a). Each of the five subparts of item 7(c) combines various two-digit SIC major groups which, because of their industry characteristics, lend themselves to similar treatment. Note that although item 7(c) refers to two-digit major groups for convenience and brevity, the information is sought by four-digit industry within those groups.

Item 7(c)(i) applies to manufacturing industries, those four-digit industries within SIC major groups 20–39. It calls for geographic information about where manufactured products are sold in substantially the same form, whether by the person filing notification or by others to whom such products have been sold or resold. If manufactured products are consumed in or incorporated into the manufacture of other goods, the response should reveal where the product is sold to such manufacturers, and not where the remanufactured product is ultimately sold. In other words, the geographic areas sought are all areas in which the product is consumed or sold as an identifiable unit, rather than as a component of another product. For example, if the manufactured product is axles, the response should disclose where the axles are sold, and not where the vehicles into which the axles are incorporated are sold. If the product is simply resold without alteration, all such sales, through the sale to the final purchaser, are sought.

The areas must be identified by States, or, if desired, portions of States. Only the listing by States is required. The optional finer breakdown is intended to be used whenever the parties believe that the listing by States could be misleading in the antitrust analysis of the acquisition. The item specifies a knowledge and belief standard for the response, since manufacturers may not know the precise geographic distribution of their products.

For item 7(c)(ii), which applies to four-digit industries within SIC major groups 1–17 and 40–49, the reporting person must list the States or portions thereof in which the agricultural, mining, or other specified operations are conducted. For item 7(c)(iii), which applies to four-digit wholesale trade industries within SIC major groups 50 and 51, the reporting person must list the States or portions thereof in which customers are located.

For item 7(c)(iv), which applies to four-digit industries in SIC major groups 52–62 and 64–89, the reporting person must furnish a list, arranged by State, county, and city or town, of addresses of establishments from which dollar revenues were derived. "Establishment" means any retail location, location where services are offered or rendered, or other business location from which dollar revenues were derived. Item 7(c)(v) calls for a list of the States in which the reporting person is licensed to write insurance.

No dollar revenues need be provided in response to any part of this item.

BACKGROUND INFORMATION TO ITEM 7

Item 7 is a slightly altered version of item 6 of the revised form. Final item 7(a) and 7(c)(i)–(iii) are substantially similar to the corresponding provisions of revised item 6. Because revised item 6(b)—which sought a complete list of establishments, regardless of the nature of the industry—has been deleted, and because many SIC major groups had no specific requirement beyond that, a new item 7(c)(iv) has been added. For those groups, reporting persons are required to list their business locations. Item 7(c)(v) is essentially the same as revised item 6(c)(iv).

Some of the comments (e.g., 1053) appear to have interpreted revised items 6(c)(i)–(iii) to require the geographic analysis by portions of States in all cases. The final version of the item makes clear that a breakdown finer than by States is optional. Comment 1055 suggested that a reporting party should be able to report that it sells nationwide and thereby eliminate the need to list every State. The Commission has no objection to such a practice. In fact, so long as a clearly defined geographic area can be determined, other simplified methods of reporting would also be acceptable, e.g., all States east of the Mississippi River, all States except California and Texas. Not acceptable because of their imprecise nature, however, would be such descriptions as the west coast, the Midwest, or Southern New England.

Some comments (e.g., 1026, 1040) complained that manufacturers would not be able to supply geographic resale information by plant-of-origin. Neither revised item 6(c)(i) nor final item 7(c)(i) requires such a breakdown. A number of comments (e.g., 1029, 1053, 1055, 1059, 1075, 1086, 1104, 1108) also suggested that manufacturers generally do not know where their products are resold, that it would be difficult (if

not illegal) for them to obtain that information, and that the information is in any event irrelevant to an antitrust analysis. There can be no doubt that when the parties to an acquisition are engaged in the production and sale of the same or a closely related product, an inquiry into where those products are sold is necessary and appropriate to any antitrust analysis of the transaction. Therefore, comments raising issues of relevance and burden must be rejected. Furthermore, the Commission does not believe that it is illegal, without more, for a manufacturer merely to know or to determine the general geographic areas where its products are resold to their ultimate users. Therefore, comments suggesting that it might be unlawful to collect the required information have also been rejected.

Contrary to the assertions made in the comments regarding the availability of information on areas of resale of manufactured products, the Commission's experience has been that manufacturers invariably know where their products are sold, regardless of the number of intermediate resellers involved. This is not to say that manufacturers will always know the name and address of every reseller of every product, although this often may be the case, especially when the manufacturer sells directly to its retailers. Nor is such detailed information necessary for the purpose of responding to this item. Important here is the fact that a manufacturer will always know, at least in general terms (i.e., States or portions thereof), the geographic areas in which its product has penetrated the market. Because this information is crucial to establishing production quotas and marketing plans, opening new sales outlets (either wholesale or retail) and making related business decisions, the Commission has little doubt that at this level of generality the requested information will be readily available in all but the most unusual situations.

Comments 1029, 1053, 1059, and 1108 argued that responses to this item should not be required unless the reporting person (or persons) derived a minimum dollar amount of revenue in the four-digit industry. The suggested amounts range from $1 million to $5 million. The Commission is unable to conclude that geographic areas in which less than such sums are derived from the sale of identical or similar products are competitively irrelevant and therefore need not be reported. Since the transfer of control of a company as small as $10 million in annual sales may be reportable, a $1 million minimum potentially could eliminate a geographic analysis of roughly 10 percent of the company's business; a $5 million minimum could eliminate nearly half the business of a $10 million company and significant portions of the sales of much larger companies which may be direct competitors. In addition, even where such amounts are not a major portion of a reporting person's sales, they can easily often represent a major portion of a local or regional market. The suggestion, therefore, has been rejected.

Comment 1040 requested clarification of the location of a sale for purposes of revised item 6(c)(i), now item 7(c)(i). The relevant States are those in which the purchaser will consume or substantially alter the character of the product or incorporate it into another product, or in which the final purchaser of the original product is located. The location of the sales office that sold the goods or the plant that shipped the goods is not relevant to this item.

ITEM 8

Item 8 requests information on any vendor-vendee (customer-supplier) relationships existing in the most recent year between an acquiring person and an acquired person with respect to any manufactured product that the vendee either resells or consumes in or incorporates into the manufacture of a product. Manufactured products that the vendee does not resell or use in the manufacturing process, such as office supplies and equipment, need not be included in the response. However, the vendor need not have been the manufacturer of the product.

If the acquisition is the formation of a joint venture or other corporation, the reporting person must determine whether the new corporation will supply any of the persons forming it—the acquiring persons under § 801.40—with any manufactured product which any of the persons forming the corporation purchased from any other of those persons in the most recent year. The persons forming the joint venture must respond to the item if they should reasonably believe that the joint venture will commence supplying a product in the future, without time limit.

If such a relationship exists or will exist, reporting persons which are vendees of any such product, and only such persons, are required to list the following information: the product purchased, the vendors of the product that are party to the acquisition, and the dollar amount purchased from each such vendor during the most recent year. Manufactured products are defined as those within two-digit SIC major groups 20–39. The reporting person may, at its option, omit from this listing any products purchased in annual amounts of less than $1 million.

The item states that products, the manufacture, consumption, or use of which by the vendee is not attributable to the assets to be acquired (in an asset acquisition) or to the issuer whose voting securities are to be acquired (in a stock acquisition), may also be omitted. Thus, if a person acquires a subsidiary of the person from which it purchases a certain manufactured product, it need not list that product in item 8 unless the subsidiary (or any issuer it controls) sells the product.

BACKGROUND INFORMATION TO ITEM 8

The purpose of item 8 is to identify certain instances in which a reported acquisition may result in vertical foreclosure or in an increase in vertical integration in an industry. Only vendees are required to respond to this item because vendors may not know the purpose for which the vendee purchases the product. The item is limited to manufactured products because the Commission believes those vertical relationships are more likely to violate the antitrust laws.

The item is virtually identical to item 7 of the revised form, with editorial changes necessitated by the alteration in final § 801.40 relating to the formation of joint venture and other corporations. Revised item 7, however, had considerably narrowed the scope of the analogous items 8 (a) and 8 (b) of the original form.

Items 8(a) and 8(b) of the original form inquired more broadly into potential vertical antitrust issues presented by a transaction. They requested data on all products or services manufactured or sold by either the acquiring or the acquired person (regardless of the buyer) that were used or consumed by the other party (regardless of the seller). Final item 8, on the other hand, is limited to manufactured products, not services, and only to those products sold directly by one reporting person to another party to the transaction.

Several comments on the original rules (11, 37, 59, 74, 103) noted that a company often has little or no information on who the final purchasers of its products are (in the case of an indirect sales relationship) and that compilation of the requested data would thus be extremely burdensome. The Commission decided to adopt the sug-

gestion made in comment 59 and to limit the question to direct vendor-vendee situations.

Several comments (e.g., 35, 37, 63, 103, 1022, 1029) urged that the $1 million reporting floor for sales of any product by one person to another be raised to $5 million or $10 million. The Commission did not adopt these suggestions. Since the size of a reporting person under the act may be as small as $10 million in assets or sales, raising this threshold might eliminate the reporting of a vendor-vendee relationship in a particular product which accounts for 50 percent or even 100 percent of a person's sales. The purpose of the $1 million floor is to eliminate the reporting of transactions or relationships which are less likely to be significant. Setting this figure any higher might exclude some highly significant relationships.

Comments 1086 and 1098 argued that, even as revised and limited, this item is excessively burdensome for reporting persons that are vendees. The Commission did not accept this argument. Ordinarily, information on major suppliers, the products supplied, the dollar volume, and the uses made by the company of the product is readily available in most companies. As explained above, this information is necessary and appropriate to the agencies' consideration of the vertical aspects of a proposed transaction, and completion of this item will therefore be required, regardless of burden.

ITEM 9

Item 9 is to be answered only by the acquiring person and requires it to supply information about certain prior acquisitions. In particular, it must report its domestic acquisitions (within the previous 10 years) of the voting securities or assets of other companies which derived dollar revenues in any industry in which both it and the acquired person in the present transaction are also substantially engaged.

The acquiring person is asked to go through a two-step process. First, it is to determine each four-digit (SIC code) industry in which it derived $1 million or more in dollar revenues in the most recent year. Of those four-digit (SIC code) industries, it should determine those in which, in the case of a stock acquisition, to its knowledge or belief the issuer whose stock will be acquired also derived $1 million or more in dollar revenues in the same year, or, in the case of an assets acquisition, those in which, to its knowledge or belief, $1 million or more in revenues was attributable to the assets to be acquired. If the acquiring person identifies any industries through this procedure, it must provide certain specified information.

This second step consists of listing the acquiring person's previous acquisitions of entities or assets engaged in any of the four-digit (SIC code) industries identified in the first step. It must list acquisitions within the past 10 years of voting securities of U.S. issuers which derived any dollar revenues from any industry it has identified, as well as of assets located in the United States to which any dollar revenues in that industry were attributable. The term "U.S. issuer" is defined in § 801.1(e). In addition, the acquiring person is required to provide, for each such prior acquisition, the name and address of the entity acquired, its total assets and net sales in the year prior to the acquisition, the type of acquisition (securities or assets), the date of the acquisition, and the particular four-digit industry or industries involved. Only acquisitions of more than 50 percent of the voting securities or assets of entities which had annual net sales or total assets greater than $10 million in the year prior to the acquisition need be reported.

BACKGROUND INFORMATION TO ITEM 9

The purpose of this item is to assist the agencies in identifying any prior acquisitions by the acquiring person that may suggest a pattern of acquisitions in a particular industry by that person. The present transaction may frequently take on competitive significance in the light of others in the same industry involving the same acquiring person. Such a pattern may indicate a significant anticompetitive trend and thus may be an important factor in the agencies' ultimate decision as to whether to challenge the acquisition. Reporting persons are unlikely to find the inquiry burdensome, since a somewhat broader inquiry has been complied with routinely in the Commission's existing premerger notification program.

The 10-year limit was felt to demark a reasonable period for which to obtain this information on the form, even though earlier acquisitions may be of significance. Information regarding earlier acquisitions can be obtained by requests under section 7A(e) and § 803.20 when necessary. The item permits the omission of prior transactions that did not involve the acquisition of more than 50 percent of the voting securities or assets of a person with preacquisition sales or assets of $10 million, since smaller acquisitions are likely to be less significant from an antitrust standpoint.

This item contains a major change from both its predecessors, item 7 of the original form and item 8 of the revised form. Both of the earlier drafts required information about both domestic and foreign mergers and acquisitions.

Several comments (e.g., 11, 15, 59, 63, 70, 99, 109) objected to this requirement and suggested limiting its scope to prior acquisitions of companies with some connection to U.S. commerce. A number of comments on the revised form (e.g., 1044, 1048, 1094, 1099, 1109) similarly made the argument that some minimum amount of U.S. revenue should be required before a prior acquisition became reportable in response to this item.

The final rules require information only with respect to prior acquisitions of voting securities of U.S. issuers and of assets located in the United States. This change as made partly in response to the comments and partly to reflect the reasoning behind the foreign commerce exemptions in the rules, particularly §§ 802.50 and 802.51. It should be noted, however, that certain acquisitions excluded under item 9 may not be exempt under § 802.50 or § 802.51 or any other rule. For example, an acquisition by a U.S. person of the voting securities of a foreign company with assets in the United States greater than $10 million is not exempt under § 802.50, but need not later be included in a response to item 9, since only prior acquisitions of voting securities of U.S. issuers must be reported under this item.

Another reason for this limitation in item 9 is that it makes the coverage of this item consistent with the general instructions applicable to items 5, 7 through 9, and the insurance appendix contained in § 803.2(c)(1). These, as noted above, require information only with respect to operations conducted within the United States. The reason for this instruction is that census data relating to SIC codes is collected only with respect to revenues derived from establishments located within the United States. See the statement of basis and purpose to § 803.2(a).

In addition to the change relating to foreign mergers and acquisitions, the final version of this item also contains several editorial revisions. The structure of the question has been reworded to suggest the two-step process, which should assist reporting persons in correctly answering the item.

ITEM 10

Item 10 asks for the name, title, business address, and business telephone number of the individual to contact regarding the notification and report form. Section 803.20(b)(2)(ii) provides that a request for additional information or documentary material is effective if telephoned and a written confirmation is mailed during the waiting period. It therefore requires that the reporting person keep a designated individual reasonably available during normal business hours throughout the waiting period to re-

ceive such a telephoned request. The request is effective, and the waiting period is extended, as soon as this individual receives the telephoned request (providing the written confirmation is thereafter mailed during the original waiting period). Requests for clarification pursuant to § 803.20(d)(2) may also be telephoned to the individual named.

BACKGROUND INFORMATION TO ITEM 10

This item, which appeared below the certification on the original form, and as item 9 on the revised form, attracted no comments and was retained with only minor editorial changes. For further information, see the statement of basis and purpose to § 803.20.

CERTIFICATION

See the statement of basis and purpose to § 803.6.

APPENDIX TO NOTIFICATION AND REPORT FORM: INSURANCE

Whenever voting securities of an insurance carrier are to be acquired directly or indirectly, each reporting person that contains an entity operating as an insurance carrier (SIC major group 63) must provide information concerning various types of insurance operations during the most recent year. The information required by the insurance appendix should be submitted for SIC major group 63 in lieu of the data required under item 5(c). However, reporting persons that complete the insurance appendix must also complete item 5(c) with respect to their activities in industries other than SIC major group 63.

For life insurance operations, reporting persons must provide the amount of premium receipts (calculated on an accrual basis) and new insurance issued in the United States for specific types of life and health insurance and annuities. For property liability insurance the reporting person must provide, for each line of insurance specified in part 2 of the underwriting and investment exhibit of the carrier's annual convention statement, the amount of direct and net premiums written. For title insurance, the reporting person must provide, for each line of insurance specified in part 2 of the underwriting and investment exhibit of the carrier's annual convention statement, the amount of net direct insurance premiums written and the amount of direct insurance premiums earned.

BACKGROUND INFORMATION TO INSURANCE APPENDIX

The Bureau of the Census does not publish revenue data for insurance operations. Thus, no "universe" figures for entire markets exist under the SIC system. The categories employed in the insurance appendix are derived from categories found in various trade publications. These include the "Life Insurance Fact Book", published by the American Council of Life Insurance; "Insurance Facts", published by the Insurance Information Institute; publications of the A. M. Best Co.; and reports of various State insurance commissions. Thus, the data requested in the insurance appendix should be generally comparable to the universe figures revealed in those publications.

The insurance appendix is based on an appendix to the special report required under the Commission's existing premerger notification program.

No comments addressed the insurance appendix.

COMMENTS

Received in response to Dec. 20, 1976, publication of proposed rules implementing title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 relating to premerger notification (comment period Dec. 20, 1976-Jan. 19, 1977)

No.	Date of letter	Organization
1	12-30-76	Federal Home Loan Bank Board.
2	12-29-76	American Council of Life Insurance.
3	12-28-76	Exchange Oil & Gas Corp.
4	12-17-76	U.S. Senate, Committee on the Judiciary, Subcommittee on Antitrust and Monopoly (Howard E. O'Leary, Jr., Esq.).
5	1-17-77	Getty Oil Co.
6	1-14-77	Pillsbury, Madison & Sutro (Wallace L. Kaapcke, Esq.).
7	1- 6-77	Investment Co. Institute.
8	1-11-77	Texas Pacific Oil Co., Inc.
9	1-11-77	Skadden, Arps, Slate, Meagher & Flom (Stephen M. Axinn, Esq.).
10	1-17-77	National Realty Committee.
10A	1-11-77	Do.
11	1-14-77	American Standard, Inc.
12	1-19-77	Foley & Lardner (Edwin P. Wiley, Esq.).
13	1-17-77	Stanley M. Dub, Esq.
14	1-19-77	The Association of the Bar of the City of New York, Committee on Trade Regulation (Eleanor M. Fox, Esq., and Peter D. Standish, Esq.).
15	1-15-77	Ohio State Bar Association, Antitrust and Corporate Counsel Sections (David Holmquist, Esq., and John F. McClatchey, Esq.).
16	1-21-77	Marathon Oil Co.
17	1-14-77	American Petrofina, Inc.
18	1-14-77	Skadden, Arps, Slate, Meagher & Flom (Stephen M. Axinn, Esq.).
19	1-13-77	David Lasky, Esq.
20	1-14-77	American Insurance Association.
21	1-11-77	Miller, Anderson, Nash, Yerke & Wiener (John J. DeMott, Esq.).
22	1-19-77	Nixon, Hargrave, Devans & Doyle.
23	1- 3-77	Prof. Stanley E. Boyle.
24	1-21-77	General American Oil Co. of Texas.
25	1-19-77	The B. F. Goodrich Co.
26	1-17-77	The Gulf Cos.

COMMENTS—Continued

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No.	Date of letter	Organization
27	1-27-77	Federal Communications Commission.
28	1-18-77	The Nestle Co., Inc.
29	1-18-77	American Institute of Certified Public Accountants.
30	1-19-77	Winthrop, Stimson, Putnam & Roberts (Terence H. Benbow, Esq.).
31	1-19-77	United States League of Savings Associations.
32	1-18-77	Allis-Chalmers Corp.
32A	1-19-77	American Life Insurance Association.
33	1-19-77	Dresser Industries, Inc.
34	1-18-77	National Exploration Co.
34A	1- 8-77	Do.
35	1-19-77	Union Oil Co. of California.
36	1-19-77	Do.
37	Undated	Chadwell, Kayser, Ruggles, McGee & Hastings, Ltd. (David A. Nelson, Esq.).
38	1-17-77	C. Daniel Ward, Esq.
39	1-13-77	Interstate Commerce Commission.
40	1-17-77	United States Steel Corp.
41	1-17-77	Suburban Propane Gas Corp.
42	1-19-77	Federal Communications Commission.
43	1-19-77	Arnold & Porter (Robert B. Hummel, Esq.).
44	1-21-77	Financial Accounting Standards Board.
45	1-18-77	Sperry Rand Corp.
46	1-19-77	American Gas Association.
47	Undated	Holiday Inns, Inc.
48	1-19-77	General Counsel of the U.S. Department of Commerce.
49	1- 8-77	American Financial Corp.
50	1-19-77	Chamber of Commerce of the United States.
51	1- 7-77	Federal Maritime Commission.
52	1-19-77	General Counsel of the Treasury.
53	1-18-77	Federal Maritime Commission.
54	1- 5-77	National Association of Manufacturers.
55	1-18-77	Comptroller of the Currency.
56	1-31-77	Federal Deposit Insurance Corporation.
57	1-18-77	American Natural Gas Service Co.
58	1-18-77	Minnesota Mining & Manufacturing Co.
59	Undated	National Association of Manufacturers.
60	2- 7-77	Intereal Co.
61	2- 7-77	The Associated General Contractors of America.
62	2-11-77	Cook & Henderson, P.C. (Marlow W. Cook, Esq., and James F. Falco, Esq.).
63	2- 9-77	Sec. 7 (Clayton Act) Committee of the ABA Antitrust Section (Eleanor M. Fox, Esq.).
64	2-10-77	Thelen, Marrin, Johnson & Bridges (Frank D. MacDowell, Esq.).
65	2- 9-77	Gatenbey, Spuller & Law (Cooperative Food Distributors of America).
66	2- 1-77	Civil Aeronautics Board.
67	2-16-77	Motion Picture Association of America, Inc.
68	2-14-77	Investment Co. Institute.
69	2-14-77	Perini Corp.
70	2- 9-77	General Mills, Inc.
71	2-16-77	Allied Chemical.
72	2-15-77	Columbia Gas System Service Corp.
73	2-115-77	David H. Marks, Esq.
74	2-17-77	Ashland Oil, Inc.

COMMENTS—Continued

Received in response to Dec. 20, 1976, publication of proposed rules implementing title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 relating to premerger notification (comment period Dec. 20, 1976–Jan. 19, 1977)

No.	Date of letter	Organization
75	2-15-77	Texas Pacific Oil Co., Inc.
76	2-15-77	American General Insurance Co.
77	2-17-77	Aetna Life & Casualty Co.
78	2-18-77	Association of the Bar of the City of New York, Committee on Trade Regulation.
79	2-16-77	National Association of Independent Insurers.
80	2-16-77	Minnesota Mining & Manufacturing Co.
81	2-18-77	Skadden, Arps, Slate, Meagher & Flom (Blaine V. Fogg, Esq.).
82	2-16-77	Cadwalader, Wickersham & Taft (Horace P. Moulton, Esq.).
83	2-17-77	American Council of Life Insurance.
84	2-18-77	Howrey & Simon (William J. Boyd, Esq.).
85	2-17-77	International Telephone & Telegraph Corp.
86	2-18-77	Department of Army Engineers.
87	2-18-77	Covington & Burling (Exxon Corp.).
88	2-18-77	W. R. Grace & Co.
89	2-18-77	Sullivan & Cromwell.
90	2-18-77	Shearman & Sterling (Citicorp).
91	2-18-77	Board of Governors of the Federal Reserve System.
92	2-14-77	McBride, Baker, Wienke & Schlosser (James H. Ryan, Esq.).
93	2-16-77	Association of the Bar of the City of New York, Committee on Securities Regulation (John E. Merow, Esq.).
94	2-18-77	Glassman-Oliver Economic Consultants, Inc.
95	2-18-77	Hon. John F. Seiberling, Member of Congress.
96	2-18-77	Hon. Edward M. Kennedy, U.S. Senator.
97	2-18-77	American Bankers Association.
98	2-17-77	American Insurance Association.
99	2-14-77	Borden, Inc.
100	2-16-77	Dillingham Corp.
101	2-17-77	Financial Executives Institute.
102	2-17-77	Foley & Lardner (Edwin P. Wiley, Esq.).
103	2-18-77	Grocery Manufacturers of America.
104	2-18-77	Haskins & Sells, Certified Public Accountants.
105	2-18-77	Hill, Christopher and Phillips, P.C. (Association of Closed-End Investment Companies).
106	2-18-77	Independent Bankers Association of America.
107	2-17-77	Investment Counsel Association of America, Inc.
108	2-18-77	Investors Diversified Services, Inc.
109	2-18-77	Machinery & Allied Products Institute.
110	2-15-77	Metropolitan Life Insurance Co.
111	2-18-77	Morgan Stanley & Co., Inc.
112	2-18-77	Nixon, Hargrave, Devans & Doyle.
113	2-17-77	Ropes & Gray (Edward P. Lawrence, Esq.).
114	2-16-77	Thelen, Marrin, Johnson & Bridges (Frank D. McDowell, Esq.).
115	2-16-77	Union Carbide Corp.

COMMENTS—Continued

Received in response to Dec. 20, 1976, publication of proposed rules implementing title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 relating to premerger notification (comment period Dec. 20, 1976–Jan. 19, 1977)

No.	Date of letter	Organization
116	2-18-77	Weil, Gotshal & Manges (Columbia Pictures Industries, Inc.).
117	2-16-77	Westinghouse Electric Corp.
118	2-22-77	Chairman of the Board of Governors, Federal Reserve System.
119	2-18-77	Department of the Army, Office of the Chief of Engineers.
120	2-18-77	Chamber of Commerce of the United States.
121	2-18-77	U.S. Department of the Interior.
122	2-18-77	American Gas Association.
123*	2-28-77	International Council of Shopping Centers
124*	2-27-77	American Insurance Association.
125*	3-21-77	Securities and Exchange Commission.
126*	3- 9-77	Hon. Peter W. Rodino, Jr., Member of Congress (to Hon. Griffin B. Bell, Attorney General).
127*	3-28-77	Donald I. Baker, Assistant Attorney General.
128*	3-18-77	American Insurance Association.
129*	5-31-77	Hon. Peter W. Rodino, Jr., Member of Congress (to Michael Pertschuk, Chairman, Federal Trade Commission).
130*	5-31-77	Hon. Peter W. Rodino, Jr., Member of Congress (to John H. Shenefield, Acting Assistant Attorney General).
131*	6-14-77	Independent Bankers Association of America.
132*	6-17-77	J. C. Penney Co., Inc.
133**	12- 7-76	Covington & Burling (Exxon Corp.).

*This comment was received after the comment period.

**This comment was received before the comment period.

COMMENTS

Received in response to Aug. 1, 1977, publication of revised proposed rules implementing title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 relating to premerger notification (comment period Aug. 1–Sept. 30, 1977)

No.	Date of letter	Organization
1001	8- 8-77	Covington & Burling (Exxon Corp.).
1002	8- 8-77	American Council of Life Insurance.
1003	8- 4-77	American Insurance Association.
1004	Undated	Federal Communications Commission.
1005	8-15-77	American Bankers Association.
1006	8-12-77	Association of the Bar of the City of New York, Committee on Trade Regulation (Peter D. Standish, Esq.).
1007	8-17-77	Grocery Manufacturers of America, Inc.
1008	8-18-77	Arnold & Porter (Robert B. Hummel, Esq.).

COMMENTS—Continued

Received in response to Aug. 1, 1977, publication of revised proposed rules implementing title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 relating to premerger notification (comment period Aug. 1–Sept. 30, 1977)

No.	Date of letter	Organization
1009	8-19-77	Cleary, Gottlieb, Steen & Hamilton (J. Eugene Marans, Esq.).
1010	8-17-77	German American Chamber of Commerce.
1011	8-17-77	Sperry Rand Financial Corp.
1012	8-16-77	Sec. 7 (Clayton Act) Committee of the ABA Antitrust Section (Stephen M. Axinn, Esq.).
1013	8-18-77	International Trade Committee of the ABA Antitrust Section (Barry E. Hawk, Esq.).
1014	8-19-77	Shaw, Pittman, Potts & Trowbridge (Institute of Foreign Bankers).
1015	8-19-77	Department of the Army, Office of the Chief of Engineers.
1016	8-18-77	Sullivan & Cromwell.
1017	8-23-77	W. R. Grace & Co.
1018	8-22-77	Getty Oil Co.
1019	8-26-77	Texas Pacific Oil Co., Inc.
1020	8-29-77	Investment Co. Institute.
1021	8-24-77	Stuart Paul Jasper, Esq.
1022	8-29-77	Union Oil Co. of California.
1023	8-26-77	Dresser Industries, Inc.
1024	8-25-77	The Gulf Cos.
1025	8-26-77	Tenneco Oil.
1026	8-24-77	Union Carbide Corp.
1027	8-29-77	Pillsbury, Madison & Sutro (Wallace L. Kaapcke, Esq.).
1028	8-24-77	Suburban Propane Gas Corp.
1029	8-26-77	Chadwell, Kayser, Ruggles, McGee & Hastings, Ltd. (David A. Nelson, Esq.).
1030	8-26-77	American Natural Service Co.
1031	8-30-77	National Association of Independent Insurers.
1032	8-29-77	Federal Home Loan Bank Board.I601033
	8-25-77	Hunt Oil Co.
1034	8-30-77	Shank, Irwin, Conant. Williamson & Grevelle (Ray B. Williamson, Esq., and Karen S. Bedell, Esq.).
1035	8-16-77	BOC International, Ltd.
1035A	2- 7-77	Do.
1036	8-23-77	Imperial Group, Ltd.
1037	8-26-77	The Depository Trust Co.
1038	8-26-77	Sidley & Austin (Mark E. MacDonald, Esq.).
1039	8-31-77	Metropolitan Life Insurance Co.
1040	8-26-77	Diamond Shamrock Corp.
1041	8-29-77	Gatenbey, Spuller & Law (Cooperative Food Distributors of America).
1042	8-29-77	Cadwalader, Wickersham & Taft (Horace P. Moulton, Esq.).
1043	8-29-77	Prof. Roy A. Schotland.
1044	8-30-77	American Standard, Inc.
1045	8-30-77	Medusa Corp.
1046	8-29-77	General American Oil Co. of Texas.
1047	9- 2-77	U.S. Department of the Interior (Office of the Secretary).
1048	8-31-77	General Mills, Inc.I601049
	8-30-77	Prof. Donald I. Baker.
1050	9- 7-77	Standard Oil Co. (Indiana).
1051	9-13-77	Hill, Christopher & Phillips, P.C. (Association of Publicly Traded Investment Funds).
1052	9-12-77	Sambo's Restaurants, Inc.
1053	9-13-77	Allis-Chalmers Corp.
1054	9-20-77	Comptroller of the Currency.
1055	9-20-77	International Telephone & Telegraph Corp.
1056	9-21-77	Exchange Oil & Gas Corp.
1057	9-26-77	General Mills, Inc.

COMMENTS—Continued

Received in response to Aug. 1, 1977, publication of revised proposed rules implementing title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 relating to premerger notification (comment period Aug. 1-Sept. 30, 1977)

No.	Date of letter	Organization
1058	9-29-77	Securities and Exchange Commission.
1059	9-29-77	Chamber of Commerce of the United States.
1060	9-29-77	General Crude Oil Co.
1061	9-27-77	Aetna Life & Casualty Co.
1062	9-30-77	Shearman & Sterling (Citicorp).
1063	9-29-77	Covington & Burling (Exxon Corp.).
1064	9-30-77	Winston & Strawn (International Council of Shopping Centers).
1065	9-29-77	Building Owners & Managers Association International.
1066	9-29-77	Motion Picture Association of America.
1067	9-29-77	Investment Council of America, Inc.
1068	9-27-77	Continental Oil Co.
1069	9-30-77	Texaco Inc.
1070	9-30-77	American Council of Life Insurance.
1071	9-30-77	Morgan Guaranty Trust Co.
1072	9-30-77	U.S. Department of State.
1073	9-28-77	Bank of America.
1074	9-29-77	National Association of Small Business Investment Companies.
1075	9-29-77	Allied Chemical.
1076	9-29-77	The Nestle Co., Inc.
1077	9-29-77	Ashland Oil, Inc.
1078	9-30-77	Independent Bankers Association of America.
1079	9-28-77	Squire, Sanders & Dempsey (Edward J. DeBartolo Corp.).
1080	9-26-77	McCormick & Co., Inc.
1081	9-29-77	Coastal States Gas Corp.
1082	9-26-77	Doherty, Rumble & Butler (Thomas E. Rohricht, Esq.).
1083	9-29-77	Board of Governors of the Federal Reserve System.
1084	9-28-77	Columbia Gas System Service Corp.
1085	9-26-77	The Rouse Co.
1086	9-30-77	Financial Executives Institute.
1086A	10-12-77	Do.
1087	9-30-77	Independent Petroleum Association of America.
1088	9-29-77	Marathon Oil Co.
1089	9-30-77	American Bankers Association.
1090	9-30-77	Association of the Bar of the City of New York, Committee on Securities Regulation (Leonard M. Leiman, Esq.).
1091	9-30-77	Sullivan & Cromwell.
1092	9-30-77	The Associated General Contractors of America.
1093	9-26-77	Montgomery Ward & Co., Inc.
1094	9-28-77	Nestle Enterprises, Inc.
1095	9-30-77	Breed, Abbott & Morgan.
1096	9-30-77	American Petroleum Institute.
1097	9-29-77	Transco Cos., Inc.
1098	9-29-77	Winthrop, Stimson, Putnam & Roberts (Terence H. Benbow, Esq.).
1099	9-30-77	International Trade Committee of the ABA Antitrust Section (Barry E. Hawk, Esq.).
1100	9-29-77	Association of the Bar of the City of New York, Committee on Trade Regulation (Peter D. Standish, Esq.).
1101	9-30-77	Morgan Stanley & Co., Inc.
1102	9-30-77	Ohio State Bar Association, Antitrust and Corporate Counsel Sections (Victor Marsh, Jr., Esq., and John P. McClatchey, Esq.).
1103	9-30-77	American Insurance Association.

COMMENTS—Continued

Received in response to Aug. 1, 1977, publication of revised proposed rules implementing title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 relating to premerger notification (comment period Aug. 1-Sept. 30, 1977)

No.	Date of letter	Organization
1104	9-28-77	Borden, Inc.
1105	9-30-77	Shaw, Pittman, Potts & Trowbridge (Institute of Foreign Bankers).
1106	9-29-77	Husky Oil Co.
1107	9-29-77	United Energy Resources, Inc.
1108	10- 3-77	Kellogg Co.
1108A	10- 3-77	Do.
1109	9-29-77	Lord, Day & Lord (Stephen M. Hudspeth, Esq.).
1110	10- 7-77	American Financial Corp.
1111	10- 3-77	Continental Bank.
1112	10- 5-77	Dillingham Corp.
1113	9-28-77	Hon. Charles McC. Mathias, Jr., U.S. Senator.
1113A	10-14-77	Federal Trade Commission.
1114	9-29-77	Associated General Contractors of America, Inc. (Oregon Columbia Chapter).
1115	10-11-77	The Gulf Cos.
1116*	11-25-77	Fair Trade Commission (Japan) (Jotaro Yabe, Counselor).

*This comment was received after the comment period.

Pursuant to section 7A(d) of the act, 15 U.S.C. 18a(d), the Federal Trade Commission, with the concurrence of the Assistant Attorney General, hereby formally promulgates the following rules to amend title 16, chapter I, by adding new parts 801, 802, and 803 as set forth below.

Issued July 18, 1978.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

The Federal Trade Commission promulgates the rules contained in this part (801) pursuant to section 7A(d) of the Clayton Act, 15 U.S.C. 18A(d), as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

PART 801—COVERAGE RULES

Sec.

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AUTHORITY: Sec. 7A(d) of the Clayton Act, 15 U.S.C. 18A(d), as added by sec. 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

§ 801.1 Definitions.

When used in the act and these rules—

(a)(1) *Person.* Except as provided in paragraphs (a) and (b) of § 801.12, the term "person" means an ultimate parent entity and all entities which it controls directly or indirectly.

Examples: 1. In the case of corporations, "person" encompasses the entire corporate structure, including all parent corporations, subsidiaries and divisions (whether consolidated or unconsolidated, and whether incorporated or unincorporated), and all related corporations under common control with any of the foregoing.

2. Corporations A and B are each directly controlled by the same foreign state. They are not included within the same "person," although the corporations are under common control, because the foreign state which controls them is not an "entity" (see § 801.1(a)(2)). Corporations A and B* are the ultimate parent entities within persons "A", and "B" which include any entities each may control.

3. Since a natural person is an entity (see § 801.1(a)(2)), a natural person and a corporation which he or she controls are part of the same "person." If that natural person controls two otherwise separate corporations, both corporations and the natural person are all part of the same "person."

4. See the example to § 801.2(a).

(2) *Entity.* The term "entity" means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, foundation, fund, institution, society, union, club or other group organized for any purpose, whether incorporated or not, wherever located and of whatever citizenship; or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such; or any joint venture or other corporation which has not been formed but the acquisition of the voting securities or other interest in which, if already formed, would require notification under the act and these rules: *Provided, however,* That the term "entity" shall not include any foreign state, foreign government, or agency thereof (other than a corporation engaged in commerce), nor the

*Throughout the examples to the rules, persons are designated ("A", "B," etc.) with quotation marks, and entities are designated (A, B, etc.) without quotation marks.

United States, any of the States thereof, or any political subdivision or agency of either (other than a corporation engaged in commerce).

(3) *Ultimate parent entity.* The term "ultimate parent entity" means an entity which is not controlled by any other entity.

Examples: 1. If corporation A holds 100 percent of the stock of subsidiary B, and B holds 75 percent of the stock of its subsidiary C, corporation A is the ultimate parent entity, since it controls subsidiary B directly and subsidiary C indirectly, and since it is the entity within the person which is not controlled by any other entity.

2. If corporation A is controlled by natural person D, natural person D is the ultimate parent entity.

3. P and Q are the ultimate parent entities within persons "P" and "Q." If P and Q each own 50 percent of the voting securities of R, then P and Q are both ultimate parents of R, and R is part of both persons "P" and "Q."

(b) *Control.* The term "control" (as used in the terms "control(s)," "controlling," "controlled by," and "under common control with") means either (1) holding 50 percent or more of the outstanding voting securities of an issuer; or (2) having the contractual power presently to designate a majority of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions.

Example: Corporation A holds 100 percent of the stock of corporation B, 75 percent of the stock of corporation C, 50 percent of the stock of corporation D, and 30 percent of the stock of corporation E. Corporation A controls corporations B, C and D, but not corporation E. Corporation A is the ultimate parent entity of a person comprised of corporations A, B, C and D, and each of these corporations (but not corporation E) is "included within the person."

(c) *Hold.* (1) Subject to the provisions of subparagraphs (2) through (8) of this paragraph, the term "hold" (as used in the terms "hold(s)," "holding," "holder" and "held") means beneficial ownership, whether direct, or indirect through fiduciaries, agents, controlled entities or other means.

Example: If a stockbroker has stock in "street name" for the account of a natural person, only the natural person (who has beneficial ownership) and not the stockbroker (which may have record title) "holds" that stock.

(2) The holdings of spouses and their minor children shall be holdings of each of them.

(3) Except for a common trust fund or collective investment fund within the meaning of 12 CFR 9.18(a) (both of which are hereafter referred to in this paragraph as "collective investment funds"), and any revocable trust or an irrevocable trust in which the settlor retains a reversionary interest in the corpus, a trust, including a pension trust, shall hold all assets and voting securities constituting the corpus of the trust.

Example: Under this subparagraph the trust—and not the trustee—"holds" the voting securities and assets constituting the corpus of any irrevocable trust (in which the settlor retains no reversionary interest, and which is not a collective investment fund). Therefore, the trustee need not aggregate its holdings of any other assets or voting securities with the holdings of the trust for purposes of determining whether the requirements of the act apply to an acquisition by the trust. Similarly, the trustee, if making an acquisition for its own account, need not aggregate its holdings with those of any trusts for which it serves as trustee. (However, the trustee must aggregate any collective investment funds which it administers; see subparagraph (6) of this paragraph.)

(4) The assets and voting securities constituting the corpus of a revocable trust or the corpus of an irrevocable trust in which the settlor(s) retain(s) a reversionary interest in the corpus shall be holdings of the settlor(s) of such trust.

(5) Except as provided in subparagraph (4) of this paragraph, beneficiaries of a trust, including a pension trust or a collective investment fund, shall not hold any assets or voting securities constituting the corpus of such trust.

(6) A bank or trust company which administers one or more collective investment funds shall hold all assets and voting securities constituting the corpus of each such fund.

Example: Suppose A, a bank or trust company, administers collective investment funds W, X, Y and Z. Whenever person "A" is to make an acquisition, whether of not on behalf of one or more of the funds, it must aggregate the holdings of W, X, Y and Z in determining whether the requirements of the act apply to the acquisition.

(7) An insurance company shall hold all assets and voting securities held for the benefit of any general account of, or any separate account administered by, such company.

(8) A person holds all assets and voting securities held by the entities included within it; in addition to its own holding, an entity holds all assets and voting securities held by the entities which it controls directly or indirectly.

(d) *Affiliate.* An entity is an affiliate of a person if it is controlled, directly or indirectly, by the ultimate parent entity of such person.

(e)(1)(i) *United States person.* The term "United States person" means a person the ultimate parent entity of which—

(A) Is incorporated in the United States, is organized under the laws of the United States or has its principal offices within the United States; or

(B) If a natural person, either is a citizen of the United States or resides in the United States.

(ii) *United States issuer.* The term "United States issuer" means an issuer which is incorporated in the United States, is organized under the laws of the United States or has its principal offices within the United States.

(2)(i) *Foreign person.* The term "foreign person" means a person the ultimate parent entity of which—

(A) Is not incorporated in the United States, is not organized under the laws of the United States and does not have its principal offices within the United States; or

(B) If a natural person, neither is a citizen of the United States nor resides in the United States.

(ii) *Foreign issuer.* The term "foreign issuer" means an issuer which is not incorporated in the United States, is not organized under the laws of the United States and does not have its principal offices within the United States.

(f)(1) *Voting securities.* The term "voting securities" means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer, or of an entity included within the same person as the issuer, or, with respect to unincorporated entities, individuals exercising similar functions.

(2) *Convertible voting security.* The term "convertible voting security" means a voting security which presently does not entitle its owner or holder to vote for directors of any entity.

(3) *Conversion.* The term "conversion" means the exchange, without the payment of additional consideration, of voting securities which do not presently entitle the owner or holder to vote for directors of the issuer, or of an entity included within the same person as the issuer, for securities which do so entitle the owner or holder. Transfer costs and fees, and any payments made to complete fractional shares, shall not be additional consideration within the meaning of this subparagraph.

Examples: 1. The acquisition of convertible debentures which are convertible into common stock without the payment of additional consideration is an acquisition of "voting securities." However, § 802.31 exempts the acquisition of such securities from the requirements of the act.

2. Options and warrants are not "voting securities" for purposes of the act, since the payment of additional consideration is necessary to exercise the options or warrants. Notification need not be filed prior to the acquisition of options and warrants, but may be required prior to exercising them.

(g)(1) *Tender offer.* The term "tender offer" means any offer to purchase voting securities which is a tender offer within the meaning of

section 14 of the Securities Exchange Act of 1934, 15 U.S.C. 78n.

(2) *Cash tender offer.* The term "cash tender offer" means a tender offer in which cash is the only consideration offered to the holders of the voting securities to be acquired.

(3) *Non-cash tender offer.* The term "non-cash tender offer" means any tender offer which is not a cash tender offer.

(h) *Notification threshold.* The term "notification threshold" means:

(1) Fifteen percent of the outstanding voting securities of an issuer, or an aggregate total amount of voting securities and assets of the acquired person valued in excess of $15 million;

(2) Fifteen percent of the outstanding voting securities of an issuer, if valued in excess of $15 million;

(3) Twenty-five percent of the outstanding voting securities of an issuer; or

(4) Fifty percent of the outstanding voting securities of an issuer.

(i)(1) *Solely for the purpose of investment.* Voting securities are held or acquired "solely for the purpose of investment" if the person holding or acquiring such voting securities has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer.

Example: If a person holds stock "solely for the purpose of investment" and thereafter decides to influence or participate in management of the issuer of that stock, the stock in no longer held "solely for the purpose of investment."

(2) *Investment assets.* The term "investment assets" means cash, deposits in financial institutions, other money market instruments, and instruments evidencing government obligations.

(j) *Engaged in manufacturing.* A person is "engaged in manufacturing" if it produces and derives annual sales or revenues in excess of $1 million from products within industries 2000-3999 as coded in the Standard Industrial Classification Manual (1972 edition) published by the Executive Office of the President, Office of Management and Budget.

(k) *United States.* The term "United States" shall include the several States, the territories, possessions, and commonwealths of the United States, and the District of Columbia.

(l) *Commerce.* The term "commerce" shall have the meaning ascribed to that term in section 1 of the Clayton Act, 15 U.S.C. 12, or section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

(m) *The act.* References to "the act" refer to section 7A of the Clayton Act, 15 U.S.C. 18A, as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390. References to " section 7A()" refer to subsections thereof. References to "this section" refer to the section of these rules in which the term appears.

§ 801.2 Acquiring and acquired persons.

(a) Any person which, as a result of an acquisition, will hold voting securities or assets, either directly or indirectly, or through fiduciaries, agents, or other entities acting on behalf of such person, is an acquiring person.

Example: Assume that corporations A and B, which are each ultimate parent entities of their respective "persons," created a joint venture, corporation V, and that each holds half of V's shares. Therefore, A and B each control V (see § 801.1(b)), and V is included within two persons, "A" and "B." Under this section, if V is to acquire corporation X, both "A" and "B" are acquiring persons.

(b) Except as provided in paragraphs (a) and (b) of § 801.12, the person(s) within which the entity whose assets or voting securities are being acquired is included, is an acquired person.

Examples: 1. Assume that person "Q" will acquire voting securities of corporation X held by "P" and that X is not included within person "P." Under this section, the acquired person is the person within which X is included, and is not "P."

2. In the example to paragraph (a) of this section, if V were to be acquired by X, then both "A" and "B" would be acquired persons.

(c) For purposes of the act and these rules, a person may be both an acquiring person and an acquired person in a single transaction.

Example: Corporation A (an entity within person "A") plans to transfer certain of its assets to corporation B (an entity within person "B") in return for voting securities of B. Since corporation A is acquiring voting securities, "A" is an acquiring person; since corporation B is acquiring assets, "B" is also an acquiring person. In addition, both "A" and "B" are acquired persons, since the assets of A are being acquired, and the voting securities of B are being acquired.

(d) A merger, consolidation, or other transaction combining all or any part of the business of two or more persons shall be an acquisition subject to the act, and each party to such a transaction shall be both an acquiring and an acquired person.

(e) Whenever voting securities are to be acquired from an acquiring person in connection with an acquisition, the acquisition of voting securities from the acquiring person shall be separately subject to the act.

Example: Suppose that corporations A and B are to merge, and that "A" and "B" have filed notification. A will be the surviving corporation, and the shareholders of B will receive stock of A in exchange for their B shares. Under this section, the acquisition of A shares by the shareholders of B is separately subject to the act. Thus, if "C," a shareholder of B, will receive sufficient shares of A to satisfy section 7A(a)(3), and if "A" and "C" meet the criteria of section 7A(a) (1) and (2), then "C's" acquisition of A's voting securities would be separately subject to the requirements of the act. Before "C" may acquire the voting securities of "A," "C" must file notification as an acquiring person, "A" (an acquiring person in the merger) must file notification as an acquired person, and "C" and "A" must observe a waiting period with respect to the acquisition of A shares by "C"—which is separate from the waiting period with respect to "A" and "B."

§ 801.3 Activities in or affecting commerce.

Section 7A(a)(1) is satisfied if any entity included within the acquiring person, or an entity included within the acquired person, is engaged in commerce or in any activity affecting commerce.

Examples: 1. A foreign subsidiary of a U.S. corporation seeks to acquire a foreign business. The acquiring person includes the U.S. parent corporation. If the U.S. corporation, or the foreign subsidiary, or any entity controlled by either one of them, is engaged in commerce or in any activity affecting commerce, section 7A(a)(1) is satisfied. Note, however, that §§ 802.50-802.52 may exempt certain acquisitions of foreign businesses or assets.

2. Even if none of the entities within the acquiring person is engaged in commerce or in any activity affecting commerce, the acquisition nevertheless satisfies section 7A(a)(1) if any entity included within the acquired person is so engaged.

§ 801.4 Secondary acquisitions.

(a) Whenever as a result of an acquisition (the "primary acquisition") an acquiring person will obtain control of an issuer which holds voting securities of another issuer which it does not control, then the acquisition of the other issuer's voting securities is a secondary acquisition and is separately subject to the act and these rules.

(b) *Exemptions.* (1) No secondary acquisition shall be exempt from the requirements of the act solely because the related primary acquisition is exempt from the requirements of the act.

(2) A secondary acquisition may itself be exempt from the requirements of the act under section 7A(c) or these rules.

Examples: 1. Assume that acquiring person "A" proposes to acquire all the voting securities of corporation B. This section provides that the acquisition of voting securities of issuers held but not controlled by B or by any entity which B controls are secondary acquisitions by "A." Thus, if B holds more than $15 million of the voting securities of corporation X (but does not control X), and "A" and "X" satisfy sections 7A (a)(1) and (a)(2), "A" must file notification separately with respect to its secondary acquisition of voting securities of X. "X" must file notification within fifteen days after "A" files, pursuant to § 801.30.

2. If in the previous example "A" acquires only 50 percent of the voting securities of B,

the result would remain the same. Since "A" would be acquiring control of B, all of B's holdings in X would be attributable to "A."

3. In the previous examples, if "A's" acquisition of the voting securities of B is exempt, "A" may still be required to file notification with respect to its secondary acquisition of the voting securities of X, unless that acquisition is itself exempt.

§ 801.10 Value of voting securities and assets to be acquired.

Except as provided in § 801.13, the value of voting securities and assets to be acquired shall be determined as follows:

(a) *Voting securities.* (1) If the security is traded on a national securities exchange or is authorized to be quoted in an interdealer quotation system of a national securities association registered with the U.S. Securities and Exchange Commission—

(i) And the acquisition price has been determined, the value shall be the market price or the acquisition price, whichever is greater; or if

(ii) The acquisition price has not been determined, the value shall be the market price.

(2) If subparagraph (1) of this paragraph is inapplicable—

(i) But the acquisition price has been determined, the value shall be the acquisition price; or if

(ii) The acquisition price has not been determined, the value shall be the fair market value.

(b) *Assets.* The value of assets to be acquired shall be the fair market value of the assets, or, if determined and greater than the fair market value, the acquisition price.

(c) For purposes of this section and § 801.13(a)(2):

(1) *Market price.* (i) For acquisitions subject to § 801.30, the market price shall be the lowest closing quotation, or, in an interdealer quotation system, the lowest closing bid price, within the 45 calendar days prior to the receipt of the notice required by § 803.5(a) or prior to the consummation of the acquisition.

(ii) For acquisitions not subject to § 801.30, the market price shall be the lowest closing quotation, or, in an interdealer quotation system, the lowest closing bid price, within the 45 or fewer calendar days which are prior to the consummation of the acquisition but not earlier than the day prior to the execution of the contract, agreement in principle or letter of intent to merge or acquire.

(iii) When the security was not traded within the period specified by this subparagraph, the last closing quotation or closing bid price preceding such period shall be used. If such closing quotations are available in more than one market, the person filing notification may select any such quotation.

(2) *Acquisition price.* The acquisition price shall include the value of all consideration for such voting securities or assets to be acquired.

(3) *Fair market value.* The fair market value shall be determinded in good faith by the board of directors of the ultimate parent entity included within the acquiring person, or, if unincorporated, by officials exercising similar functions; or by an entity delegated that function by such board or officials. Such determination must be made as of any day within 60 calendar days prior to the filing of the notification required by the act, or, if such notification has not been filed, within 60 calendar days prior to the consummation of the acquisition.

Example: Corporation A, the ultimate parent entity in person "A," contracts to acquire assets of corporation B, and the contract provides that the acquisition price is not to be determined until after the acquisition is effected. Under paragraph (b) of this section, for purposes of the act the value of the assets is to be the fair market value of the assets. Under paragraph (c)(3), the board of directors of corporation A must in good faith determine the fair market value. That determination will control for 60 days whether "A" and "B" must observe the requirements of the act; that is, "A" and "B" must either file notification or consummate the acquisition within that time. If "A" and "B" neither file nor consummate within 60 days, the parties would no longer be entitled to rely on the determination of fair market value, and, if in doubt about whether required to observe the requirements of the act, would have to make a second determination of fair market value. Note that since item 2(d)(i) of the Notification and Report Form only requests the approximate dollar value of assets, a second formal determination of the fair market value would not be necessary for that purpose.

§ 801.11 Annual net sales and total assets.

(a) The annual net sales and total assets of a person shall include all net sales and all assets held, whether foreign or domestic, except as provided in paragraph (d) of this section.

(b) Except for the total assets of a joint venture or other corporation at the time of its formation which shall be determined pursuant to § 801.40(c), the annual net sales and total assets of a person shall be as stated on the financial statements specified in paragraph (c) of this section: *Provided:* (1) That the annual net sales and total assets of each entity included within such person are consolidated therein. If the annual net sales and total assets of any entity included within the person are not consolidated in such statements, the annual net sales and total assets of the person filing notification shall be recomputed to include the nonduplicative annual net sales and nonduplicative total assets of each such entity; and

(2) That such statements, and any restatements pursuant to subparagraph (1) of this paragraph (insofar as possible), have been prepared in accordance with the accounting principles normally used by such person, and are of a date not more than 15 months prior to the date of filing of the notification required by the act, or the date of consummation of the acquisition.

Example: Person "A" is composed of entity A, subsidiaries B1 and B2 which A controls, subsidiaries C1 and C2 which B1 controls, and subsidiary C3 which B2 controls. Suppose that A's most recent financial statement consolidates the annual net sales and total assets of B1, C1, and C2, but not B2 or C3. In order to determine whether person "A" meets the criteria of section 7A(a)(2), as either an acquiring or an acquired person, A must recompute its annual net sales and total assets to reflect consolidation of the nonduplicative annual net sales and nonduplicative total assets of B2 and C3.

(c) Subject to the provisions of paragraph (b) of this section:

(1) The annual net sales of a person shall be as stated on the last regularly prepared annual statement of income and expense of that person; and

(2) The total assets of a person shall be as stated on the last regularly prepared balance sheet of that person.

Example: Suppose "A" sells assets to "B" on January 1. "A's" next regularly prepared balance sheet, dated February 1, reflects that sale. On March 1, "A" proposes to sell more assets to "B." "A's" total assets on March 1 are "A's" total assets as stated on its February 1 balance sheet.

(d) No assets of any natural person, other than investment assets, voting securities and other income-producing property, shall be included in determining the total assets of a person.

§ 801.12 Calculating percentage of voting securities or assets.

(a) *Voting securities.* Whenever the act or these rules require calculation of the percentage of voting securities to be held or acquired, the issuer whose voting securities are being acquired shall be deemed the "acquired persons."

Example: Person "A" is composed of corporation A1 and subsidiary A2; person "B" is composed of corporation B1 and subsidiary B2. Assume that A2 proposes to sell assets to B1 in exchange for common stock of B2. Under this paragraph, for purposes of calculating the percentage of voting securities to be held, the "acquired person" is B2. For all other purposes, the acquired person is "B." (For all purposes, the "acquiring persons" are "A" and "B.")

(b) *Percentage of voting securities.* Whenever the act or these rules require calculation of the percentage of voting securities of an issuer to be held or acquired, the percentage shall

be the ratio, expressed as a percentage, which—

(i) The number of votes for directors of the issuer which voting securities presently entitle the holder to cast, or, as a result of the acquisition, will entitle the acquiring person to cast, bears to; and

(ii) The total number of votes for directors of the issuer which presently may be cast, or which will be entitled to be cast, after the acquisition, whichever is greater.

(2) Authorized but unissued voting securities and treasury voting securities shall not be considered securities presently entitled to vote for directors of the issuer.

(3) For purposes of determining the number of outstanding voting securities of an issuer, a person may rely upon the most recent information set forth in filings with the U.S. Securities and Exchange Commission, unless such person knows or has reason to believe that the information contained therein is inaccurate.

Examples: 1. In the example to paragraph (a), to determine the percentage of B2's voting securities which will be held by "A" after the transaction, all voting securities of B2 held by "A," the "acquiring person" (including A2 and all other entities included in person "A"), must be aggregated. If "A" holds convertible securities of B2 which meet the definition of voting securities in § 801.1(f), these securities are to be disregarded in calculating the percentage of voting securities held by "A."

2. Under this formula, any votes obtained by means of proxies from other persons are also disregarded in calculating the percentage of voting securities to be held or acquired.

(c) *Assets.* Any person whose assets are being acquired shall be deemed an "acquired person" in calculating the percentage of assets to be held or acquired for purposes of section 7A(a)(3)(A).

Example: In the example to paragraph (a), for purposes of calculating the percentage of assets to be held, the "acquired person" is "A."

(d) *Percentage of assets.* Whenever the act or these rules require calculation of the percentage of assets of a person to be held or acquired, the percentage shall be the ratio, expressed as a percentage, which—

(1) The book value (on the books of the acquired person) of the assets to be acquired (see § 801.13(b)(1)), bears to; and

(2) The total assets of the acquired person, determined in accordance with § 801.11.

Example: In the example to paragraph (a), the percentage of assets to be acquired by "B" is determined by dividing the book value of A2's assets being acquired, by the total assets of "A," determined in accordance with § 801.11.

§ 801.13 Voting securities or assets to be held as a result of acquisition.

(a) *Voting securities.* (1) Subject to the provisions of § 801.15, all voting securities of the issuer which will be held by the acquiring person after the consummation of an acquisition shall be deemed voting securities held as a result of the acquisition. The value of such voting securities shall be the sum of the value of the voting securities to be acquired, determined in accordance with § 801.10(a), and the value of the voting securities held by the acquiring person prior to the acquisition, determined in accordance with subparagraph (2) of this paragraph.

(2) The value of voting securities of an issuer held prior to an acquisition shall be—

(i) If the security is traded on a national securities exchange or is authorized to be quoted in an interdealer quotation system of a national securities association registered with the United States Securities and Exchange Commission, the market price calculated in accordance with § 801.10(c)(1); or

(ii) If subdivision (i) of this subparagraph is not applicable, the fair market value determined in accordance with § 801.10(c)(3).

Examples: 1. Assume that acquiring person "A" holds $19 million of the voting securities of X, and is to acquire another $1 million of the same voting securities. Since under paragraph (a) of this rule all voting securities "A" will hold after the acquisition are held "as a result of" the acquisition, "A" will hold $20 million of the voting securities of X as a result of the acquisition. "A" must therefore observe the requirements of the act before making the acquisition, unless the present acquisition is exempt under § 7A(c), § 802.21 or any other rule.

2. See § 801.15 and the examples to that rule.

3. See § 801.20 and the examples to that rule.

(b) *Assets.* (1) All assets to be acquired from the acquired person shall be assets held as a result of the acquisition. The value of such assets shall be determined in accordance with § 801.10(b).

(2)(i) If the acquiring person has signed a letter of intent or entered into a contract or agreement in principle to acquire assets from the acquired person, and

(ii) Subject to the provisions of § 801.15, if the acquiring person has acquired any assets from the acquired person within the 180 calendar days preceding the signing of such agreement and such assets are presently held by the acquiring person, then only for purposes of section 7A(a)(3)(B) and § 801.1(h)(1), both the acquiring and the acquired persons shall treat such assets as though they had not previously been acquired and are being acquired as part of the present acquisition. The value of any assets previously acquired which are subject to this subparagraph shall be determined in accordance with § 801.10(b) as of the time of their prior acquisition.

Example: Acquiring person "A" proposes to make two acquisitions of assets from acquired person "B," 90 days apart, and wishes to determine whether notification is necessary prior to the second acquisition. For purposes of the percentage test of § 7A(a)(3)(A), "A" would hold only the assets it acquired in the second acquisition. For purposes of the $15 million test of § 7A(a)(3)(B), however, "A" must aggregate both of its acquisitions and must value each as of the time of its occurrence.

§ 801.14 Aggregate total amount of voting securities and assets.

For purposes of section 7A(a)(3)(B) and § 801.1(h)(1), the aggregate total amount of voting securities and assets shall be the sum of:

(a) The value of all voting securities of the acquired person which the acquiring person would hold as a result of the acquisition, determined in accordance with § 801.13(a); and

(b) The value of all assets of the acquired person which the acquiring person would hold as a result of the acquisition, determined in accordance with § 801.13(b).

Examples: 1. Acquiring person "A" previously acquired $6 million of the voting securities (not convertible voting securities) of corporation X. "A" now intends to acquire $8 million of X's assets. Under paragraph (a) of this section, "A" looks to § 801.13(a) and determines that the voting securities are to be held "as a reult of" the acquisition. Section 801.13(a) also provides that "A" must determine the present value of the previously acquired securities. Under paragraph (b) of this section, "A" looks to § 801.13(b)(1) and determines that the assets to be acquired will be held "as a result of" the acquisition, and are valued under § 801.10(b) at $8 million. Therefore, if the voting securities have a present value of more than $7 million, the asset acquisition is subject to the requirements of the act since, as a result of it, "A" would hold an aggregate total amount of the voting securities and assets of "X" in excess of $15 million.

2. In the previous example, assume that the assets acquisition occurred first, and that the acquisition of the voting securities is to occur within 180 days of the first acquisition. "A" now looks to § 801.13(b)(2) and determines that because the second acquisition is of voting securities and not assets, the asset and voting securities acquisitions are not treated as one transaction. Therefore, the second acquisition would not be subject to the requirements of the act by reason of section 7A(a)(3)(B) since the value of the securities to be acquired does not equal or exceed $15 million.

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

Notwithstanding § 801.13, for purposes of section 7A(a)(3) and § 801.1(h), none of the following will be held as a result of an acquisition:

(a) Assets or voting securities the acquisition of which was exempt at the time of acquisition (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under—

(1) Sections 7A(c) (1), (5), (6), (7), (8), and (11)(B);

(2) Sections 802.8, 802.31, 802.50(a)(1), 802.51(a), 802.52, 802.53, 802.63, and 802.70;

(b) Assets or voting securities the acquisition of which was exempt at the time of acquistion (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under section 7A(c)(9) and §§ 802.50(a)(2), 802.50(b), 802.51(b) and 802.64 unless the limitations contained in section 7A(c)(9) or those sections do not apply or as a result of the acquisiton would be exceeded, in which case the assets or voting securities so acquired will be held; and

(c) Voting securites the acquistion of which was exempt at the time of acquisiton (or would have been exempt, had the act and these rules been in effect), or the present acquisition of which is exempt, under section 7A(c)(11)(A) unless additional voting securities of the same issuer have been or are being acquired.

Examples: 1. Assume that acquiring person "A" is simultaneously to acquire $50 million of the convertible voting securities of X and $12 million (which is less than 15 percent) of the voting common stock of X. Although the acquistion of the convertible voting securities is exempt under § 802.31, since the overall value of the securities to be acquired is greater than $15 million, "A" must determine whether it is obliged to file notification and observe a waiting period before acquiring the common stock. Because § 802.31 is one of the exemptions listed in paragraph (a)(2) of this rule, "A" would not hold the convertible voting securities as a result of the acquisition. Therefore, since as a result of the acquisition "A" would hold only the common stock, the test of section 7A(a)(3) would not be satisfied, and "A" need not observe the requirements of the act before acquiring the common stock.

(Note, however, that the $50 million of convertible voting securities would be reflected in "A's" next regularly prepared balance sheet, for purposes of § 801.11.)

2. In the previous example, the rule was applied to voting securities the present acquisition of which is exempt. Assume instead that "A" had acquired the convertible voting securities prior to its acquisition of the common stock. "A" still would not hold the convertible voting securities as a result of the acquisition of the common stock, because the rule states that voting securities the previous acquisition of which was exempt also fall within the rule. Thus, the test of section 7A(a)(3) would again not be satisfied, and "A" need not observe the requirements of the act before acquiring the common stock.

3. In example 2, assume instead that "A" acquired the convertible voting securities in 1975, before the act and rules went into effect. Since the rule applies to voting securities the acquisition of which would have been exempt had the act and rules been in effect, the result again would be identical. If the rules had been in effect in 1975, the acquisition of the convertible voting securities would have been exempt under § 802.31.

4. Assume that acquiring person "B," a United States person, acquired from corporation X two mines located abroad, and assume that the acquisition price was $40 million. In the most recent year, sales in the United States attributable to the mines were $6 million, and thus the acquisition was exempt under § 802.50(a)(2). Within 180 days of that acquisition, "B" seeks to acquire a third mine from X, to which United States sales of $7 million were attributable in the most recent year. Since under § 801.13(b)(2), as a result of the acquisition, "B" would hold all three mines of X, and the $10 million limitation in § 802.50(a)(2) would be exceeded, under paragraph (b) of this rule, "B" would hold the previously acquired assets for purposes of the second acquisition. Therefore, as a result of the second acquisition, "B" would hold assets of X exceeding $15 million, would not qualify for the exemption in § 802.50(a)(2), and must observe the requirements of the act before consummating the acquisition.

§ 801.20 Acquisitions subsequent to exceeding threshold.

Acquisitions meeting the criteria of section 7A(a), and not otherwise exempted by section 7A(c) or § 802.21 or any other of these rules, are subject to the requirements of the act even though:

(a) Earlier acquisitions of assets or voting securities may have been subject to the requirements of the act;

(b) The acquiring person's holdings initially may have met or exceeded a notification threshold before the effective date of these rules; or

(c) The acquiring person's holdings initially may have met or exceeded a notification threshold by reason of increases in market values or events other than acquisitions.

Examples: 1. Person "A" acquires $10 million of the voting securities of person "B" before the effective date of these rules. If "A" wishes to acquire an additional $6 million of the voting securities of "B" after the effective date of the rules, notification will be required by reason of section 7A(a)(3)(B).

2. In example 1, assume that the value of the voting securities of "B" originally acquired by "A" has reached a present value exceeding $15 million. If "A" wishes to acquireaT3 any additional voting securities or assets of "B," notification will be required. See § 801.13(a).

§ 801.21 Securities and cash not considered assets when acquired.

For purposes of section 7A(a)(3) and §§ 801.1(h)(1), 801.12(d)(1) and 801.13(b):

(a) Cash shall not be considered an asset of the person from which it is acquired; and

(b) Neither voting or nonvoting securities nor obligations referred to in section 7A(c)(2) shall be considered assets of another person from which they are acquired.

Examples: 1. Assume that acquiring person "A" acquires voting securities of issuer X from "B," a person unrelated to X. Under this subparagraph, the acquisition is treated only as one of voting securities, requiring "A" and "X" to comply with the requirements of the act, rather than one in which "A" acquires the assets of "B," requiring "A" and "B" to comply. See also example 2, to § 801.30. Note that for purposes of section 7A(a)(2)—that is, for the next regularly prepared balance sheet of "A" referred to in § 801.11—the voting securities of X must be reflected after their acquisition; see § 801.11(c)(2).

2. In the previous example, if "A" acquires nonvoting securities of X from "B," then under this section the acquisition would be treated only as one of nonvoting securities of X (and would be exempt under section 7A(c)(2)), rather than one in which "A" acquires assets of "B," requiring "A" and "B" to comply. Again, the nonvoting securities of X would have to be reflected in "A's" next regularly prepared balance sheet for purposes of section 7A(a)(2).

3. In example 1, assume that "B" receives only cash from "A" in exchange for the voting securities of X. Under this section, "B's" acquisition of cash is *not* an acquisition of the "assets" of "A," and "B" is not required to file notification as an acquiring person.

§ 801.30 Tender offers and acquisitions of voting securities from third parties.

(a) This section applies to:

(1) Acquisitions on a national securities exchange or through an interdealer quotation system registered with the United States Securities and Exchange Commission;

(2) Acquisitions described by § 801.31;

(3) Tender offers;

(4) Secondary acquisitions;

(5) All acquisitions (other than mergers and consolidations) in which voting securities are to be acquired from a holder or holders other than the issuer or an entity included within the same person as the issuer;

(6) Conversions; and

(7) Acquisitions of voting securities resulting from the exercise of options or warrants which are—

(i) Issued by the issuer whose voting securities are to be acquired (or by any entity included within the same person as the issuer); and

(ii) The subject of a currently effective registration statement filed with the United States Securities and Ex-

change Commission under the Securities Act of 1933.

(b) For acquisitions described by paragraph (a) of this section:

(1) The waiting period required under the act shall commence upon the filing of notification by the acquiring person as provided in § 803.10(a); and

(2) The acquired person shall file the notification required by the act, in accordance with these rules, no later the 5 p.m. eastern time on the 15th (or, in the case of cash tender offers, the 10th) calendar day following the date of receipt, as defined by § 803.10(a), by the Federal Trade Commission and Assistant Attorney General of the notification filed by the acquiring person. Should the 15th (or, in the case of cash tender offers, the 10th) calendar day fall on a weekend day or federal holiday, the notification shall be filed no later than 10 a.m. eastern time on the next following business day.

Examples: 1. Acquiring person "A" proposes to acquire from corporation B the voting securities of B's wholly owned subsidiary, corporation S. Since "A" is acquiring the shares of S from its parent, this section does not apply, and the waiting period does not begin until both "A" and "B" file notification.

2. Acquiring person "A" proposes to acquire $20 million of the voting securities of corporation X on a securities exchange. The waiting period begins when "A" files notification. "X" must file notification within 15 calendar days thereafter. The seller of the X shares is not subject to any obligations under the act.

3. Suppose that acquiring person "A" proposes to acquire 50 percent of the voting securities of corporation B which in turn owns 30 percent of the voting securities of corporation C. Thus "A's" acquisition of C's voting securities is a secondary acquisition (see § 801.4) to which this section applies because "A" is acquiring C's voting securities from a third party (B). Therefore, the waiting period with respect to "A's" acquisition of C's voting securities begins when "A" files its separate Notification and Report Form with respect to C, and "C" must file with 15 days thereafter. "A's" primary and secondary acquisitions of the voting securities of B and C are subject to separate waiting periods; see § 801.4.

§ 801.31 Acquisitions of voting securities by offerees in tender offers.

Whenever an offeree in a noncash tender offer is required to, and does, file notification with respect to an acquisition described in § 801.2(e):

(a) The waiting period with respect to such acquisition shall begin upon filing of notification by the offeree, pursuant to §§ 801.30 and 803.10(a)(1);

(b) The person within which the issuer of the shares to be acquired by the offeree is included shall file notification as required by § 801.30(b);

(c) Any request for additional information or documentary material pursuant to section 7A(e) and § 803.20 shall extend the waiting period in accordance with § 803.20(c); and

(d) The voting securities to be acquired by the offeree may be placed into escrow, for the benefit of the offeree, pending expiration or termination of the waiting period with respect to the acquisition of such securities; *Provided however,* That no person may vote any voting securities placed into escrow pursuant to this subparagraph.

Example: Assume that "A," which has annual net sales exceeding $100 million, makes a tender offer for voting securities of corporation X. The consideration for the tender offer is to be voting securities of A. "S," a shareholder of X with total assets exceeding $10 million, wishes to tender its holdings of X and in exchange would receive shares of A valued at $16 million. Under this section, "S's" acquisition of the shares of A would be an acquisition separately subject to the requirements of the act. Before "S" may acquire the voting securities of A, "S" must first file notification and observe a waiting period—which is separate from any waiting period that may apply with respect to "A" and "X." Since § 801.30 applies, the waiting period applicable to "A" and "S" begins upon filing by "S," and "A" must file with respect to "S's" acquisition within 15 days pursuant to § 801.30(b). Should the waiting period with respect to "A" and "X" expire or be terminated prior to the waiting period with respect to "S" and "A," "S" may wish to tender its X-shares and place the A-shares into a nonvoting escrow until the expiration or termination of the latter waiting period.

§ 801.32 Conversion an acquisition.

A conversion is an acquisition within the meaning of the act.

Example: Assume that acquiring person "A" wishes to convert convertible voting securities of issuer X, and is to receive common stock of X valued at $20 million. If "A" and "X" satisfy the criteria of section 7A(a)(1) and section 7A(a)(2), then "A" and "X" must file notification and observe the waiting period before "A" completes the acquisition of the X common stock, unless exempted by section 7A(c) or these rules. Since § 801.30 applies, the waiting period begins upon notification by "A," and "X" must file notification within 15 days.

§ 801.40 Formation of joint venture or other corporations.

(a) In the formation of a joint venture or other corporation (other than in connection with a merger or consolidation), even though the persons contributing to the formation of a joint venture or other corporation and the joint venture or other corporation itself may, in the formation transaction, be both acquiring and acquired persons within the meaning of § 801.2, the contributors shall be deemed acquiring persons only, and the joint venture or other corporation shall be deemed the acquired person only.

(b) Unless exempted by the act or any of these rules, upon the formation of a joint venture or other corporation, in a transaction meeting the criteria of section 7A (a)(1) and (a)(3) (other than in connection with a merger or consolidation), an acquiring person shall be subject to the requirements of the act if:

(1)(i) The acquiring person has annual net sales or total assets of $100 million or more;

(ii) The joint venture or other corporation will have total assets of $10 million or more; and

(iii) At least one other acquiring person has annual net sales or total assets of $10 million or more; or

(2)(i) The acquiring person has annual net sales or total assets of $10 million or more;

(ii) The joint venture or other corporation will have total assets of $100 million or more; and

(iii) At least one other acquiring person has annual net sales or total assets of $10 million or more.

(c) For purposes of paragraph (b) of this section the assets of the joint venture or other corporation shall include:

(1) All assets which any person contributing to the formation of the joint venture or other corporation has agreed to transfer or for which agreements have been secured for the joint venture or other corporation to obtain at any time, whether or not such person is subject to the requirements of the acts; and

(2) Any amount of credit or any obligations of the joint venture or other corporation which any person contributing to the formation has agreed to extend or guarantee, at any time.

(d) The commerce criterion of section 7A(a)(1) is satisfied if either the activities of any acquiring person are in or affect commerce, or the person filing notification should reasonably believe that the activities of the joint venture or other corporation will be in or will affect commerce.

Example: Persons "A," "B," and "C" agree to create new corporation N, a joint venture. "A" has more than $100 million in annual net sales. "B" has more than $10 million in total assets. Both "C" 's total assets and its annual net sales are less than $10 million. "A," "B," and "C" are each engaged in commerce. The corporations have agreed to make an aggregate initial contribution to the new entity of $6 million in assets and to make additional contributions of an aggregate $6 million in each of the next three years. Under paragraph (c), the assets of the new corporation are $24 million. Under paragraph (b), only "A" must file notification, and only then if "A" meets a criterion of section 7A(a)(3)—that is, if it will be acquiring 15 percent or $15 million of the voting securities of the new entity. N need not file notification; see § 802.41.

§ 801.90 Transactions or devices for avoidance.

Any transaction(s) or other device(s) entered into or employed for the purpose of avoiding the obligation to comply with the requirements of the act shall be disregarded, and the obligation to comply shall be determined by applying the act and these rules to the substance of the transaction.

Examples: 1. Suppose corporations A and B wish to form a joint venture. A and B contemplate a total investment of $30 million in the joint venture; persons "A" and "B" each have total assets in excess of $100 million. Instead of filing notification pursuant to § 801.40, A creates a new subsidiary, A1, which issues half of its authorized shares to A. Assume that A1 has total assets of $1,000. "A" then sells 50 percent of its A1 stock to "B" for $500. Thereafter, "A" and "B" each contribute $15 million to A1 in exchange for the remaining authorized A1 stock (one-fourth each to "A" and "B"). A's creation of A1 was exempt under § 802.30; its sale of A1 stock to "B" was exempt under § 802.20; and the second acquisition of stock in A1 by "A" and "B" was exempt under § 802.30 and sections 7A(c) (3) and (10). Since this scheme appears to be for the purpose of avoiding the requirements of the act, the sequence of transactions will be disregarded. The transactions will be viewed as the formation of a joint venture corporation by "A" and "B" having over $10 million in assets. Such a transaction would be covered by § 801.40 and "A" and "B" must file notification and observe the waiting period.

2. Suppose "A" wholly owns and operates a chain of twenty retail hardware stores, each of which is separately incorporated and has assets of less than $10 million. The aggregate fair market value of the assets of the twenty store corporations is $60 million. "A" proposes to sell the stores to "B" for $60 million. For various reasons it is decided that "B" will buy the stock of each of the store corporations from "A". Instead of filing notification and observing the waiting period as contemplated by the act, "A" and "B" enter into a series of five stock purchase-sale agreements for $12 million each. Under the terms of each contract the stock of four stores will pass from "A" to "B". The five agreements are to be consummated on five successive days. Because, after each of these transactions, the store corporations are no longer part of the acquired person (§ 801.13(a) does not apply because control has passed, see § 801.2), and because § 802.20(b) exempts the acquisition of control of each of the store corporations, none of the contemplated acquisitions would be subject to the requirements of the act. However, if the stock of all of the store corporations were to be purchased in one transaction, no exemption would be applicable, and the act's requirements would have to be met. Because it appears that the purpose of making five separate contracts is to avoid the requirements of the act, this section would ignore the form of the separate transactions and consider the substance to be one transaction requiring compliance with the act.

The Federal Trade Commission promulgates the Rules contained in this part (802) pursuant to section 7A(d) of the Clayton Act, 15 U.S.C. 18A(d), as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

PART 802—EXEMPTION RULES

Sec.

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AUTHORITY: Sec. 7A(d) of the Clayton Act, 15 U.S.C. 18A(d), as added by sec. 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390.

§ 802.1 Acquisitions of goods or realty in the ordinary course of business.

(a) *Acquisitions of voting securities of entities holding only realty.* For purposes of section 7A(c)(1), an acquisition of the voting securities of an entity whose assets consist or will consist solely of real property and assets incidental to the ownership of real property (such as cash, prepaid taxes or insurance, rentals receivable and the like) shall be deemed an acquisition of realty.

(b) *Certain acquisitions of assets.* No acquisition of the goods or realty of an entity (except for entities described in paragraph (a) of this section) shall be made "in the ordinary course of business" within the meaning of section 7A(c)(1), if, as a result thereof, the acquiring person will hold all or substantially all of the assets of that entity or an operating division thereof.

§ 802.6 Federal agency approval.

For the purposes of section 7A (c)(6) and (c)(8), the term "information and documentary material" includes one copy of all documents, application forms, and all written submissions of any type whatsoever. In lieu of providing all such information and documentary material, or any portion thereof, one copy of an index describing such information and documentary material may be provided, together with a certification that any such information or documentary material not provided will be provided within 10 calendar days upon request by the Federal Trade Commission or Assistant Attorney General, or a delegated official of either. Any material submitted pursuant to this section shall be submitted to the offices specified in § 803.10(c).

§ 802.8 Certain supervisory acquisitions.

A merger, consolidation, purchase of assets, or acquisition requiring agency approval under sections 403 or 408(e) of the National Housing Act, 12 U.S.C. 1726, 1730a(e), or under section 5 of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464 shall be exempt from the requirements of the Act, including specifically the filing requirement of section 7A(c)(8), it the agency whose approval is required finds that approval of such merger, consolidation, purchase of assets, or acquisition is necessary to prevent the probable failure of one of the institutions involved.

§ 802.9 Acquisition solely for the purpose of investment.

An acquisition of voting securities shall be exempt from the requirements of the act pursuant to section 7A(c)(9) if made solely for the purpose of investment and if, as a result of the acquisition, the acquiring person would hold ten percent or less of the outstanding voting securities of the issuer, regardless of the dollar value of voting securities so acquired or held.

Examples: 1. Suppose that acquiring person "A" acquires 6 percent of the voting securities of issuer X, valued at $30 million. If the acquisition is solely for the purpose of investment, it is exempt under section 7A(c)(9).

2. After the acquisition in example 1, "A" decides to acquire an additional 7 percent of the voting securities of X. Regardless of "A" 's intentions, the acquisition is not exempt under section 7A(c)(9).

3. After the acquisition in example 1, acquiring person "A" decides to participate in the management of issuer X. Any subsequent acquisitions of X stock by"A" would not be exempt under section 7A(c)(9).

§ 802.10 Stock dividends and splits.

The acquisition of voting securities, pursuant to a stock split or pro rata stock dividend, shall be exempt from the requirements of the act under section 7A(c)(10).

§ 802.20 Minimum dollar value.

An acquisition which would be subject to the requirements of the act and which satisfies section 7A(a)(3)(A), but

which does not satisfy section 7A(a)(3)(B), shall be exempt from the requirements of the act if as a result of the acquisition the acquiring person would not hold:

(a) Assets of the acquired person values at more than $10 million; of

(b) Voting securities which confer control of an issuer which, together with all entities which it controls, has annual net sales or total assets of $10 million or more.

Examples: 1. Acquiring person "A" intends to acquire 66 percent of the voting securities of corporation X from X's ultimate parent entity, W, and "A" holds no other assets or voting securities of acquired persons "W". X has no subsidiaries and does not have annual net sales or total assets of $10 million. If the postacquisition value of "A"'s holdings of voting securities of X would be $15 million or less, the acquisition would be exempt under this section.

2. Assume that acquiring person "B" holds voting securities of corporation Q valued at $9 million. "B" now intends to acquire assets of Q valued at $7 million. Since the aggregate total amount of voting securities and assets of "Q" to be held by "B" would exceed $15 million, section 7A(a)(3)(B) would be satisfied, and the acquisition would not be exempt under this section.

3. Assume that acquiring person "C" holds $5 million of the voting securities of corporation R, an entity included within person "T." "C" now proposes to acquire $8 million of the assets of corporation S, also an entity included within person "T," representing 20 percent of "T's" total assets. Section 7A(a)(3)(B) is not satisfied because the aggregate total amount of "C's" holdings in acquired person "T" will be less than $15 million. Although section 7A(a)(3)(A) would be satisfied by the asset acquisition, it will nevertheless be exempt under paragraph (a) of this section.

§ 802.21 Acquisitions of voting securities not meeting or exceeding greater notification threshold.

An acquisition of voting securities shall be exempt from the requirements of the act if:

(a) The acquiring person and all other persons required by the act and these rules to file notification filed notification with respect to an earlier acquisition of voting securities of the same issuer;

(b) The waiting period with respect to the earlier acquisition has expired, or been terminated pursuant to § 803.11, and the acquisition will be consummated within 5 years of such expiration or termination; and

(c) The acquisition will not increase the holdings of the acquiring person to meet or exceed a notification threshold greater than the greatest notification threshold met or exceeded in the earlier acquisition.

Examples: 1. Corporation A acquires 15 percent of the voting securities of corporation B and both "A" and "B" file notification as required. Within five years of the expiration of the original waiting period, "A" acquires additional voting securities of B but not in an amount sufficient to meet or exceed 25 percent of the voting securities of B. No additional notification is required.

2. In example 1, "A" continues to acquire B's securities. Before "A's" holdings meet or exceed 25 percent of B's outstanding voting securities, "A" and "B" must file notification and wait the prescribed period, regardless of whether the acquisition occur within five years after the expiration of the earlier waiting period.

3. In example 2, suppose that "A" and "B" file notification at the 25 percent level and that, within 5 years after expiration of the waiting period, "A" continues to acquire voting securities of B. No further notification is required until "A" plans to make the acquisition that will give it 50 percent ownership of B. (Once "A" holds 50 percent, further acquisitions of voting securities are exempt under section 7A(c)(3).

4. Assume that "C" is an institutional investor whose prior acquisitions of corporation D's voting securities were exempt under § 802.64. "C" now proposes to purchase additional voting securities of D which will result in holdings exceeding 15 percent and $25 million. "C" and "D" therefore file notification and observe the waiting period. Under this section within the 5 years following the expiration of the waiting period "C" may further increase its holdings in D to any amount below 25 percent (regardless of dollar value) without again filing notification. Section 802.64 exempted "C" from filing notification at the thresholds defined in subparagraphs (1) or (2) of § 801.1(h); thereafter, since "C" filed notification with respect to an acquisition which resulted in its holding more than 15 percent of D's voting securities valued at more than $25 million, the next notification threshold "greater than the greatest notification threshold met or exceeded in the earlier acquisition" is 25 percent of D's voting securities. (See paragraph (c) of this section and § 801.1(h)(3).)

5. This section also allows a person to recross any of the threshold notification levels—15 percent/$15 million, 15 percent if greater than $15 million, 25 and 50 percent—any number of times within 5 years of the expiration of the waiting period following notification for that level. Thus, if in example 1, "A" had disposed of some voting securities so that it held less than 15 percent of the voting securities of B, and thereafter had increased its holdings to more than 15 percent but less than 25 percent of B, notification would not be required if the increase occurred within 5 years of the expiration of the original waiting period. Similarly, in examples 2 and 3, "A" could decrease its holdings below, and then increase its holdings above, 25 percent and 50 percent, respectively without filing notification, if done within 5 years of the expiration of those respective waiting periods.

§ 802.23 Amended or renewed tender offers.

Whenever a tender offer is amended or renewed after notification has been filed by the offeror, no new notification shall be required, and the running of the waiting period shall be unaffected, except as follows:

(a) If the number of voting securities to be acquired pursuant to the offer is increased such that a greater notification threshold would be met or exceeded, only the acquiring person need again file notification, but a new waiting period must be observed;

(b) If a noncash tender offer is amended to become a cash tender offer, (1) one copy of the amended tender offer shall be filed in the manner prescribed by § 803.10(c) with the Federal Trade Commission and Assistant Attorney General, and (2) subject to the provisions of § 803.10(b)(1), the waiting period shall expire on the 15th day after the date of receipt (determined in accordance with § 803.10(c)) of the amended tender offer, or on the 30th day after filing notification, whichever is earlier; or

(c) If a cash tender offer is amended to become a noncash tender offer, (1) one copy of the amended tender offer shall be filed in the manner prescribed by § 803.10(c) with the Federal Trade Commission and Assistant Attorney General, and (2) subject to the provisions of § 803.10(b)(1), the waiting period shall expire on the 15th day after the date of receipt (as determined in accordance with § 803.10(c)) of the amended tender offer, or on the 30th day after filing notification, whichever is later.

Examples: 1. Assume that corporation A makes a tender offer for 20 percent of the voting securities of corporation B and that "A" files notification. Under this section, if A subsequently amends its tender offer only as to the amount of consideration offered, the waiting period so commenced is not affected, and no new notification need be filed.

2. In the previous example, assume that A makes an amended tender offer for 27 percent of the voting securities of B. Since a new notification threshold will be crossed, this section requires that "A" must again file notification and observe a new waiting period. Paragraph (a) of this section, however, provides that "B" need not file notification again.

3. Assume that "A" makes a tender offer for shares of corporation B. "A" includes its voting securities as part of the consideration. "A" files notification. Five days later, "A" changes its tender offer to a cash tender offer, and on the same day files copies of its amended tender offer with the offices designated in § 803.10(c). Under paragraph (b) of this section, the waiting period expires (unless extended or terminated) 15 days after the receipt of the amended offer (on the 25th day after filing notification), since that occurs earlier than the expiration of the original waiting period (which would occur on the 13th day after filing).

4. Assume that "A" makes a cash tender offer for shares of corporation B and files notification. Six days later, "A" amends the tender offer and adds voting securities as consideration, and on the same day files copies of the amended tender offer with the offices designated in § 803.10(c). Under paragraph (c) of this section, the waiting period expires (unless extended or terminated) on the 13th day following the date of filing of notification (determined under § 803.10(c)), since that occurs later than the 15th day after receipt of the amended tender offer (which would occur on the 21st day).

§ 802.30 Intra-person transactions.

An acquisition (other than the formation of a joint venture or other corporation the voting securities of which will be held by two or more persons) in which, by reason of holdings of voting securities, the acquiring and acquired persons are (or as a result of formation of a wholly owned entity will be) the same person, shall be exempt from the requirements of the act.

Examples: 1. Corporation A merges its two wholly owned subsidiaries S1 and S2. The transaction is exempt under this section.

2. Corporation B creates a new wholly owned subsidiary. The transaction is exempt under this section.

3. Corporation A, which controls corporation B by a contract giving A the power to name a majority of B's directors, but which holds no voting securities of B, proposes to acquire 15 percent of B's voting securities. The transaction is not exempt under this section, since "A" and "B" are not the same person "by reason of holdings of voting securities."

4. Corporation A repurchases a portion of its voting securities in a series of transactions involving numerous sellers. All of these acquisitions are exempt under this section. The redemption or retirement of securities would likewise be exempt under this section.

5. Corporations A and B (which are not included within the same person) form a new corporation, C. A and B will each hold C's voting securities upon formation. This section is inapplicable, and the acquisitions of C's voting securities by A and B are not exempt.

§ 802.31 Acquisitions of convertible voting securities.

Acquisitions of convertible voting securities shall be exempt from the requirements of the act.

Example: This section applies regardless of the dollar value of the convertible voting securities held or to be acquired and even though they may be converted into 15 percent or more of the issuer's voting securities. Note, however, that subsequent conversions of convertible voting securities may be subject to the requirements of the act. See § 801.32.

§ 802.40 Exempt formation of joint venture or other corporations.

Acquisitions of the voting securities of a joint venture or other corporation at the time of formation under § 801.40 shall be exempt from the requirements of the act if the joint venture or other corporation will be not for profit within the meaning of Sections 501(c)(1)-(4), (6)-(15), (17)-(20) or (d) of the Internal Revenue Code.

§ 802.41 Joint venture or other corporations at time of formation.

Whenever any person(s) contributing to the formation of a joint venture or other corporation are subject to the requirements of the act by reason of § 801.40, the joint venture or other corporation need not file the notification required by the act and § 803.1.

Examples: 1. Corporations A and B, each having sales of $100 million, each propose to contribute $10 million in cash in exchange for 50 percent of the voting securities of a new corporation, N. Under this section, the new corporation need not file notification, although both "A" and "B" must do so and observe the waiting period prior to receiving any voting securities of N.

2. In addition to the facts in example 1 above, A and B have agreed that upon creation N will purchase 100 percent of the voting securities of corporation C for $15 million. Because N's purchase of C is not a transaction in connection with N's formation, and because in any event C is not a contributor to the formation of N, "A," "B" and "C" must file with respect to the proposed acquisition of C and must observe the waiting period.

§ 802.50 Acquisitions of foreign assets or of voting securities of a foreign issuer by United States persons.

(a) *Assets.* In a transaction in which assets located outside the United States are being acquired by a U.S. person:

(1) The acquisition of assets located outside the United States, to which no sales in or into the United States are attributable, shall be exempt from the requirements of the act; and

(2) The acquisition of assets located outside the United States, to which sales in or into the United States are attributable, shall be exempt from the requirements of the act unless as a result of the acquisition the acquiring person would hold assets of the acquired person to which such sales aggregating $10 million or more during the acquired person's most recent fiscal year were attributable.

Examples: 1. Assume that "A" and "B" are both U.S. persons. "A" proposes selling to "B" a manufacturing plant located abroad. Sales in or into the United States attributable to the plant totaled $8 million in the most recent fiscal year. The transaction is exempt under this paragraph.

2. Sixty days after the transaction in example 1, "A" proposes to sell to "B" a second manufacturing plant located abroad; sales in or into the United States attributable to this plant totaled $5 million in the most recent fiscal year. Since "B" would be acquiring the second plant within 180 days of the first plant, both plants would be considered assets of "A" now held by "B." See § 801.13(b)(2). Since the total annual sales in or into the United States exceed $10 million, the acquisition of the second plant would not be exempt under this paragraph.

(b) *Voting securities.* An acquisition of voting securities of a foreign issuer by a U.S. person shall be exempt from the requirements of the act unless the issuer (including all entities controlled by the issuer) either:

(1) Holds assets located in the United States (other than investment assets and voting or nonvoting securities of another person) having an aggregate book value of $10 million or more; or

(2) Made aggregate sales in or into the United States of $10 million or more in its most recent fiscal year.

Example: "A," a U.S. person, is to acquire the voting securities of C, a foreign issuer. C has no assets in the United States, but made aggregate sales into the United States of $12 million in the most recent fiscal year. The transaction is not exempt under this section.

§ 802.51 Acquisitions by foreign persons.

An acquisition by a foreign person shall be exempt from the requirements of the act if:

(a) The acquisition is of assets located outside the United States;

(b) The acquisition is of voting securities of a foreign issuer, and will not confer control of:

(1) An issuer which holds assets located in the United States (other than investment assets) having an aggregate book value of $10 million or more, or

(2) A U.S. issuer with annual net sales or total assets of $10 million or more;

(c) The acquisition is of less than $10 million of assets located in the United states (other than investment assets); or

(d) The acquired person is also a foreign person, the aggregate annual sales of the acquiring and acquired persons in or into the United States are less than $110 million, and the aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets) are less than $110 million.

Examples: 1. Assume that "A" and "B" are foreign persons with aggregate annual sales in or into the United States of $200 million. If "A" acquires the assets of "B," and if no assets in the United States or voting securities of U.S. issuers will be acquired, the transaction is exempt under paragraphs (a) and (c).

2. In example 1, assume that "A" is acquiring "B's" stock and that included within "B" is issuer C, a U.S. issuer whose total assets are valued at $12 million. Since C's voting securities will be acquired indirectly, and since "A" thus will be acquiring control of a U.S. issuer with total assets of more than $10 million, the acquisition cannot be exempt under this section.

3. In the previous examples, assume that "A" is a U.S. person. This section does not apply, since the acquiring person must be a foreign person.

§ 802.52 Acquisitions by or from foreign governmental corporations.

An acquisition shall be exempt from the requirements of the act if:

(a) The ultimate parent entity of either the acquiring person or the acquired person is controlled by a foreign state, foreign government, or agency thereof; and

(b) The acquisition is of assets located within that foreign state or of voting securities of an issuer organized under the laws of that state.

Example: The government of foreign country X has decided to sell assets of its wholly owned corporation, B, all of which are located in foreign country X. The buyer is "A," a U.S. person. Regardless of the aggregate annual sales in or into the United States attributable to the assets of B, the transaction is exempt under this section. (If such aggregate annual sales were less than $10 million, the transaction would also be exempt under § 802.50.)

§ 802.53 Certain foreign banking transactions.

An acquisition which requires the consent or approval of the Board of Governors of the Federal Reserve System under section 25 or section 25(a) of the Federal Reserve Act, 12 U.S.C. 601, 615, shall be exempt from the requirements of the act if copies of all information and documentary material filed with the Board of Governors are contemporaneously filed with the Federal Trade Commission and Assistant Attorney General at least 30 days prior to consummation of the acquisition. In lieu of such information and documentary material or any portion thereof, an index describing such material may be provided in the manner authorized by § 802.6.

§ 802.60 Acquisitions by securities underwriters.

An acquisition of voting securities by a person acting as a securities underwriter, in the ordinary course of business, and in the process of underwriting, shall be exempt from the requirements of the act.

§ 802.63 Certain acquisitions by creditors and insurers.

(a) *Creditors.* An acquisition of collateral or receivables, or an acquisition in foreclosure, or upon default, or in connection with the establishment of a lease financing, or in connection with a bona fide debt work-out shall be exempt from the requirements of the act if made by a creditor in a bona fide credit transaction entered into in the ordinary course of the creditor's business.

(b) *Insurers.* An acquisition pursuant to a condition in a contract of insurance relating to fidelity, surety, or casualty obligations shall be exempt from the requirements of the act if made by an insurer in the ordinary course of business.

Examples: 1. A bank makes a loan and takes actual or constructive possession of collateral in any form. Since the bank is not the beneficial owner of the collateral, the bank's receipt of it is not an acquisition which is subject to the requirements of the act. However, if upon default the bank becomes the beneficial owner of the collateral, that acquisition is exempt under this section.

2. This section exempts only the acquisition by the creditor or insurer, and not the subsequent disposition of the assets or voting securities. If a creditor or insurer sells voting securities or assets that have come into its possession in a transaction which is exempt under this section, the requirements of the act may apply to that disposition.

§ 802.64 Acquisitions of voting securities by certain institutional investors.

(a) *Institutional investor.* For purposes of this section, the term "institutional investor" means any entity of the following type:

(1) A bank within the meaning of 15 U.S.C. 80b-2(a)(2);

(2) Savings bank;

(3) Savings and loan or building and loan company or association;

(4) Trust company;

(5) Insurance company;

(6) Investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.);

(7) Finance company;

(8) Broker-dealer within the meaning of 15 U.S.C. 78c(a)(4) or (a)(5);

(9) Small Business Investment Company or Minority Enterprise Small Business Investment Company regulated by the U.S. Small Business Administration pursuant to 15 U.S.C. 662;

(10) A stock bonus, pension, or profit-sharing trust qualified under section 401 of the Internal Revenue Code;

(11) Bank holding company within the meaning of 12 U.S.C. 1841;

(12) An entity which is controlled directly or indirectly by an institutional investor and the activities of which are in the ordinary course of business of the institutional investor;

(13) An entity which may supply incidental services to entities which it controls directly or indirectly but which performs no operating functions, and which is otherwise engaged only in holding controlling interests in institutional investors; or

(14) A nonprofit entity within the meaning of sections 501(c)(1)-(4), (6)-(15), (17)-(20), or (d) of the Internal Revenue Code.

(b) *Exemption.* An acquisition of voting securities shall be exempt from the requirements of the act, except as provided in paragraph (c) of this section, if:

(1) Made directly by an institutional investor;

(2) Made in the ordinary course of business;

(3) Made solely for the purpose of investment;

(4) As a result of the acquisition the acquiring person would not control the issuer; and

(5) As a result of the acquisition the acquiring person would hold either:

(i) Fifteen percent or less of the outstanding voting securities of the issurer; or

(ii) Voting securities of the issuer valued at $25 million or less.

(c) *Exception to exemption.* Notwithstanding paragraph (b) of this section:

(1) No acquisition of voting securities of an institutional investor of the same type as any entity included within the acquiring person shall be exempt under this section; and

(2) No acquisition by an institutional investor shall be exempt under this section if any entity included within the acquiring person which is not an institutional investor holds any voting securities of the issuer whose voting securities are to be acquired.

Examples: 1. Assume that A and its subsidiary, B, are both institutional investors as defined in paragraph (a) of this section, that X is not, and that the conditions set forth in subparagraphs (2), (3) and (4) of paragraph (b) of this section are satisfied. Either A or B may acquire voting securities of X worth in excess of $25 million as long as the aggregate amount held by person "A" as a result of the acquisition does not equal or exceed 15 percent of X's outstanding voting securities. If the aggregate holdings would equal or exceed 15 percent, "A" may acquire no more than $25 million worth of voting securities without being subject to the requirements of the act.

2. In example 1, assume that B plans to make the acquisition, but that corporation B's parent, corporation A, is not an institutional investor and is engaged in manufacturing. Subparagraph (c)(2) provides that acquisitions by B can never be exempt under this section if A owns any amount of X's voting securities.

3. In example 1, the exemption does not apply if X is also an institutional investor of the same type as either A or B.

4. Assume that H is a holding company which controls a life insurance company, a casualty insurer and a finance company. The life insurance company controls a data processing company which performs services for the two insurers. Any acquisition by any of these entities could qualify for exemption under this section.

5. In example 4, if H also controls a manufacturing entity, H is not an institutional investor, and only the acquisitions made by the two insurance companies, the finance company and the data processing company can qualify for the exemption under this section.

§ 802.70 Acquisitions subject to order.

An acquisition shall be exempt from the requirements of the act if:

(a) The voting securities or assets are to be acquired from an entity ordered to divest such voting securities or assets by order of the Federal Trade Commission or of any Federal court in an action brought by the Federal Trade Commission or the Department of Justice; or

(b) The acquiring person or entity is subject to an order of the Federal

Trade Commission or of any Federal court requiring prior approval of such acquisition by the Federal Trade Commission, such court, or the Department of Justice, and such approval has been obtained.

§ 802.71 Acquisitions by gift, intestate succession or devise, or by irrevocable trust.

Acquisitions resulting from a gift, intestate succession, testamentary disposition or transfer by a settlor to an irrevocable trust shall be exempt from the requirements of the act.

The Federal Trade Commission promulgates the Rules contained in this Part (803), and Notification and Report Form set forth in the appendix to this Part (803), pursuant to section 7A(d) of the Clayton Act, 15 U.S.C. 18A(d), as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

PART 803—TRANSMITTAL RULES

Sec.

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Appendix—Antitrust Improvements Act Notification and Report Form for Certain Mergers and Acquisitions.

AUTHORITY: Sec. 7A(D) of the Clayton Act, 15 U.S.C. 18A(D), as added by sec. 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

§ 803.1 Notification and Report Form.

(a) The notification required by the act shall be the Notification and Report Form set forth in the appendix to this Part (803), as amended from time to time. All acquiring and acquired persons required to file notification by the act and these rules shall do so by completing and filing the Notification and Report Form, or a photostatic or other equivalent reproduction thereof, in accordance with the instructions thereon and these rules. Copies of the Notification and Report Form may be obtained in person from the Public Reference Branch, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, D.C., or by writing to the Premerger Notification Office, Room 303, Federal Trade Commission, Washington, D.C. 20580.

(b) Any person filing notification may, in addition to the submissions required by this section, submit any other information or documentary material which such person believes will be helpful to the Federal Trade Commission and Assistant Attorney General in assessing the impact of the acquisition upon competition.

§ 803.2 Instructions applicable to Notification and Report Form.

(a) The notification required by the act shall be filed by the preacquisition ultimate parent entity, or by any entity included within the person authorized by such preacquisition ultimate parent entity to file notification on its behalf. In the case of a natural person required by the act to file notification, such notification may be filed by his or her legal representative: *Provided however,* That notwithstanding § 801.1(c)(2) and § 801.2, only one notification shall be filed by or on behalf of a natural person, spouse and minor children with respect to an acquisition as a result of which more than one such natural person will hold voting securities of the same issuer.

Example: Jane Doe, her husband and minor child collectively hold more than 50 percent of the shares of family corporation F. Therefore, Jane Doe (or her husband or minor child) is the "ultimate parent entity" of a "person" composed to herself (or her husband or minor child) and F; see paragraphs (a)(3), (b) and (c)(2) of § 801.1. If corporation F is to acquire corporation X, under this paragraph only one notification is to be filed by Jane Doe, her husband and minor child collectively.

(b)(1) Except as provided in subparagraph (2) of this paragraph and paragraph (c) of this section, items 5-9 and the Appendix to the Notification and Report Form must be completed—

(i) By acquiring persons, with respect to all entities included within the acquiring person;

(ii) By acquired persons, in the case of an acquisition of assets, only with respect to the assets to be acquired;

(iii) By acquired persons, in the case of an acquisition of voting securities, with respect to only the issuer whose voting securities are being acquired, and all entities controlled by such issuer; and

(iv) By persons which are both acquiring and acquired persons, separately in the manner that would be required of acquiring and acquired persons under this paragraph, if different.

(2) For purposes of items 7-9 of the Notification and Report Form, the acquiring person shall regard the acquired person in the manner described in subdivisions (ii) and (iii) of the previous subparagraph.

Example: Person "A" is comprised of entities separately engaged in grocery retailing, auto rental, and coal mining. Person "B" is comprised of entities separately engaged in wholesale magazine distribution, auto rental and book publishing. "A" proposes to purchase 100 percent of the voting securities of "B" 's book publishing subsidiary. For purposes of item 5, under clause (b)(1)(i), "A" reports, the activities of all its entities; under clause (b)(1)(iii), "B" reports only the operations of its book publishing subsidiary. For purposes of items 7-9, under subparagraph (2) of this paragraph "A" must regard "B" as consisting only of its book publishing subsidiary, and must disregard the fact that "A" and "B" are both engaged in the auto rental business.

(c) In response to items 5, 7, 8, and 9 and the appendix to the Notification and Report Form—

(1) Information shall be supplied only with respect to operations conducted within the United States; and

(2) Information need not be supplied with respect to assets or voting securities to be acquired, the acquisition of which is exempt from the requirements of the act.

(d) The term "dollar revenues," as used in the Notification and Report Form, means value of shipments for manufacturing operations, and sales, receipts, revenues, or other appropriate dollar value measure for operations other than manufacturing, f.o.b. the plant or establishment less returns, after discounts and allowances and excluding freight charges and excise taxes. Dollar revenues including delivery may be supplied if delivery is an integral part of the sales price. Dollar revenues include interplant transfers.

§ 803.3 Statement of reasons for noncompliance.

A complete response shall be supplied to each item on the Notification and Report Form and to any request for additional information pursuant to section 7A(e) and § 803.20. Whenever the person filing notification is unable to supply a complete response, that person shall provide, for each item for which less than a complete response has been supplied, a statement of reasons for noncompliance which includes at least the following information:

(a) Why the person is unable to supply a complete response;

(b) What information would have been required for a complete response;

(c) Who, if anyone, has the required information, and a description of all efforts made to obtain it.

§ 803.4 Foreign persons refusing to file notification.

(a) In an acquisition to which § 801.30 does not apply, and in which

no assets (other than investment assets) located in the United States and no voting securities of a United States issuer will be acquired directly or indirectly, if a foreign acquired person refuses to file notification, then any other person which is a party to the acquisition may file notification on behalf of the foreign person. Such notification shall constitute the notification required of the foreign person by the act and these rules.

(b) Any person filing on behalf of the foreign person pursuant to this section must state in the affidavit required by § 803.5(b) that such foreign person has refused to file notification and must explain all efforts made by the person filing on behalf of the foreign person to obtain compliance with the act and these rules by such foreign person.

(c) Any notification filed on behalf of a foreign person pursuant to this section must contain all information and documentary material reasonably available to the person filing on behalf of the foreign person which such foreign person would be required to provide. Whenever information or documentary material is not reasonably available, the person filing on behalf of the foreign person shall so indicate on the Notification and Report Form, and need not supply the statement of reasons for noncompliance required by § 803.3.

(d) Any foreign person on whose behalf notification has been filed by another person pursuant to this section shall be a "person filing notification" for purposes of the act and these rules. Nothing in this section shall exempt a foreign person from the requirements of the act or these rules with respect to a request for additional information or an extension of the waiting period pursuant to section 7A(e) and these rules.

§ 803.5 Affidavits required.

(a)(1) *Section 801.30 acquisitions.* For acquisitions to which § 801.30 applies, the notification required by the act from each acquiring person shall contain an affidavit, attached to the front of the notification, attesting that the issuer whose voting securities are to be acquired has received notice in writing by certified or registered mail, by wire or by hand delivery, at its principal executive offices, of:

(i) The identity of the acquiring person;

(ii) The fact that the acquiring person intends to acquire voting securities of the issuer;

(iii) The specific classes of voting and nonvoting securities of the issuer, and the number of securities of each such class sought to be acquired;

(iv) The fact that the acquisition may be subject to the act, and that the acquiring person will file notification under the act with the Federal Trade Commission and Assistant Attorney General;

(v) The anticipated date of receipt of such notification under § 803.10(c); and

(vi) The fact that the person within which the issuer is included may be required to file notification under the act.

(2) The affidavit required by this paragraph must also state the good faith intention of the person filing notification to make the acquisition, and, in the case of a tender offer, that the intention to make the tender offer has been publicly announced.

Example: This subparagraph permits the tender offeror to file notification at any time after the intention to make the tender offer has been publicly announced.

(b) *Non-section 801.30 acquisitions.* For acquisitions to which § 801.30 does not apply, the notification required by the act shall contain an affidavit, attached to the front of the notification, attesting that a contract, agreement in principle or letter of intent to merge or acquire has been executed.

§ 803.6 Certification.

(a) The notification required by the act shall be certified:

(1) In the case of a partnership, by any general partner thereof;

(2) In the case of a corporation, by any officer or director thereof;

(3) In the case of a person lacking officers, directors, or partners, by any individual exercising similar functions;

(4) In the case of a natural person, by such natural person or his or her legal representative.

(b) Additional information or documentary material submitted in response to a request pursuant to section 7A(e) and § 803.20 shall be accompanied by a certification in the format appearing at the end of the Notification and Report Form, completed in accordance with paragraph (a) of this section by the person or individual to whom it was directed.

(c) In all cases, the certifying individual must possess actual authority to make the certification on behalf of the person filing notification.

§ 803.7 Expiration of notification.

Notification with respect to an acquisition shall expire 1 year following the expiration of the waiting period. If the acquiring person's holdings do not, within such time period, meet or exceed the notification threshold with respect to which the notification was filed, the requirements of the act must thereafter be observed with respect to any notification threshold not met or exceeded.

Example: A files notification that 26 percent of the voting securities of corporation B are to be acquired. One year after the expiration of the waiting period, A has acquired only 22 percent of B's voting securities. Although § 802.21 will permit "A" to purchase any amount of B's voting securities short of 25 percent within 5 years from the expiration of the waiting period, A's holdings may not meet or exceed the 25 percent notification threshold without "A" and "B" again filing notification and observing a waiting period.

§ 803.10 Running of time.

(a) *Beginning of waiting period.* The waiting period required by the act shall begin on the date of receipt of the notification required by the act, in the manner provided by these rules (or, if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance in accordance with § 803.3) from:

(1) In the case of acquisitions to which § 801.30 applies, the acquiring person;

(2) In the case of all other acquisitions, all persons required by the act and these rules to file notification.

(b) *Expiration of waiting period.* (1) For purposes of section 7A(b)(1)(B), the waiting period shall expire at 11:59 p.m. Eastern Time on the 13th (or in the case of a cash tender offer, the 15th) calendar day (or if § 802.23 applies, such other day as that section may provide) following the beginning of the waiting period as determined under paragraph (a) of this section, unless extended pursuant to section 7A(e) and § 803.20, or section 7A(g)(2), or unless terminated pursuant to section 7A(b)(2) and § 803.11.

(2) Unless further extended pursuant to section 7A(g)(2), or terminated pursuant to section 7A(b)(2) and § 803.11, any waiting period which has been extended pursuant to section 7A(e)(2) and § 803.20 shall expire at 11:59 p.m. Eastern Time—

(i) On the 20th (or, in the case of a cash tender offer, the 10th) day following the date of receipt of all additional information or documentary material requested from all persons to whom such requests have been directed (or, if a request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance in accordance with § 803.3), by the Federal Trade Commission or Assistant Attorney General, whichever requested additional information or documentary material, at the office designated in paragraph (c), or

(ii) As provided in subparagraph (1) of this paragraph, whichever is later.

(c)(1) *Date of receipt and means of delivery.* For purposes of this section the date of receipt shall be the date on which delivery is effected to the desig-

nated offices (Premerger Notification Office, Room 303, Federal Trade Commission, Washington, D.C. 20580, and Director of Operations, Antitrust Division, Room 3214, Department of Justice, Washington, D.C. 20530) during normal business hours. Delivery effected after 5 p.m. eastern time on a regular business day, or at any time on any day other than a regular business day, shall be deemed effected on the next following regular business day. Delivery should be effected directly to the designated office(s), either by hand or by certified or registered mail. If delivery of all required filings to all offices required to receive such filings is not effected on the same date, the date of receipt shall be the latest of the dates on which delivery is effected.

Examples: 1. In an acquisition other than a cash tender offer, assume that a request for additional information is issued to a person on the second day of the waiting period, and that the person supplies the response 5 days later. Under subparagraph (b)(2)(ii), the waiting period remains in effect through the 30th day, even though the 20th day after receipt of such additional information would occur earlier.

(2) *Deficient filings.* If notification or a response to a request for additional information or documentary material received by the Commission or Assistant Attorney General does not comply with these rules, the Commission or the Assistant Attorney General shall promptly notify the person filing such notification or response of the deficiencies in such filing, and the date of receipt shall be the date on which a filing which complies with these rules is received.

§ 803.11 Termination of waiting period.

(a) Except as provided in paragraph (c) of this section, no waiting period shall be terminated pursuant to section 7A(b)(2) unless—

(1) All notifications required to be filed with respect to the acquisition by the act and these rules (or, if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance in accordance with § 803.3) have been received,

(2) It has been determined that no additional information or documentary material pursuant to section 7A(e) and § 803.20 will be requested, or, if such additional information or documentary material has been requested, it (or, if a request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance in accordance with § 803.3) has been received, and

(3) The Federal Trade Commission and the Assistant Attorney General have concluded that neither intends to take any further action within the waiting period.

(b) Any request for additional information or documentary material pursuant to section 7A(e) and § 803.20 shall constitute a denial of all pending requests for termination of the waiting period.

(c) The Federal Trade Commission and the Assistant Attorney General may in their discretion terminate a waiting period upon the written request of any person filing notification, or, notwithstanding paragraph (a) of this section, sua sponte. A request for termination of the waiting period shall be sent to the offices designated in § 803.10(c). Termination shall be effective upon notice to any requesting person by telephone, and such notice shall be given as soon as possible. Such notice shall also be confirmed in writing to each person which has filed notification, and notice thereof shall be published in the FEDERAL REGISTER in accordance with section 7A(b)(2).

Example: See the example to § 803.20(c).

§ 803.20 Requests for additional information or documentary material.

(a)(1) *Persons and individuals subject to request.* Pursuant to section 7A(e)(1), the submission of additional information or documentary material relevant to the acquisition may be required from one or more persons required to file notification, and, with respect to each such person, from one or more entities included therein, or from one or more officers, directors, partners, agents, or employees thereof, if so required by the same request.

Example: A request for additional information may require a corporation and, in addition, a named officer or employee to provide certain information or documents, if both the corporation and the officer or employee are named in the same request. See subparagraph (b)(3) of this section.

(2) All the information and documentary material required to be submitted pursuant to a request under paragraph (a)(1) of this section shall be supplied to the Commission or to the Assistant Attorney General, whichever made such request, at the office designated in § 803.10(c), or, if such request is not fully complied with, a statement of reasons for noncompliance pursuant to § 803.3 shall be provided for each item or portion of such request which is not fully complied with.

(b)(1) *Who may require submission.* A request for additional information or documentary material with respect to an acquisition may be issued by the Federal Trade Commission or its designee, or by the Assistant Attorney General or his or her designee, but not by both to the same person, any entities included therein, or any officers, directors, partners, agents, or employees of that person.

(2) *When request effective.* A request for additional information or documentary material shall be effective—

(i) In the case of a written request, upon receipt of the request by the ultimate parent entity of the person to which the request is directed, (or, if another entity included within the person filed notification pursuant to § 803.2(a), then by such entity), within the original 30-day (or, in the case of a cash tender offer, 15-day) waiting period (or, if § 802.23 applies, such other period as that section provides); or

(ii) In the case of a request communicated in person or by telephone, upon communication of the request, provided that a written confirmation of the request is mailed within the original 30-day (or, in the case of a cash tender offer, 15-day) waiting period (or, if § 802.23 applies, such other period as that section provides). The person filing notification shall keep a designated individual reasonably available during normal business hours throughout the waiting period through the telephone number supplied on the certification page of the Notification and Report Form. A request for additional information or documentary material need be communicated by telephone only to that individual. The written confirmation of the request shall be mailed to the ultimate parent entity of the person filing notification, or, if another entity included within the person filed notification pursuant to § 803.2(a), then to such entity.

(3) *Requests to natural persons.* A request addressed to an individual, requiring that he or she submit additional information or documentary material, shall be transmitted to the person filing notification of which the individual is an ultimate parent entity, officer, director, partner, agent or employee, and shall be effective as to that individual when effective as to the person filing notification pursuant to subparagraph (2) of this paragraph. A written copy of the request shall also be delivered to the individual by hand, or by registered or certified mail at his or her home or business address.

Example: A designee of the Federal Trade Commission sends, by certified letter which is received within the 30-day waiting period, a written request for additional information to corporation W, the ultimate parent entity within a person which filed notification. The request is effective under clause (b)(2)(i). If the letter also addressed a request for documentary material to the secretary of corporation W, a named individual, under subparagraph (b)(3), the request would likewise be effective as to the individual upon receipt of the letter by W. In the latter case, the Federal Trade Commission also would send a copy of the request to the

Secretary of the corporation at his or her home or business address.

(c) *Waiting period extended.* (1) During the time period when a request for additional information or documentary material remains outstanding to any person other than, in the case of a tender offer, the person whose voting securities are sought to be acquired by the tender offeror (or any officer, director, partner, agent or employee thereof), the waiting period shall remain in effect, even though the waiting period would have expired (see § 803.10(b)) if no such request had been made.

(2) A request for additional information or documentary material to any person other than, in the case of a tender offer, the person whose voting securities are being acquired pursuant to the tender offer (or any officer, director, partner, agent or employee thereof) shall in every instance extend the waiting period for a period of 20 (or, in the case of a cash tender offer, 10) calendar days from the date of receipt (as determined under § 803.10) of the additional information or documentary material requested.

Example: Acquiring person "A" desires to acquire voting securities of corporation X on a securities exchange, and files notification. Under § 801.30, the waiting period begins upon filing by "A," and "X" must file within 15 days thereafter. Assume that before the end of the waiting period, the Assistant Attorney General issues a request for additional information to "X." Since the transaction is not a tender offer, under subparagraph (c)(1) the waiting period is extended until "X" supplies the requested information; under subparagraph (c)(2), the waiting period is extended for 20 days beyond the date on which "X" responds.

Note that under § 803.21 "X" is obliged to respond to the request within a reasonable time; nevertheless, the Federal Trade Commission and Assistant Attorney General could, notwithstanding the pendency of the request for additional information, terminate the waiting period sua sponte pursuant to § 803.11(c).

(d)(1) *Identification of requests.* Every request for additional information or documentary material shall be clearly identified as such, whether communicated in person, by telephone or in writing, and shall clearly identify the person, entity or entities, or individual(s) to which it is addressed.

(2) *Request for clarification.* No request for clarification or amplification of a response to any item on the Notification and Report Form, whether communicated in person, by telephone or in writing, shall be considered a request for additional information or documentary material within the meaning of section 7A(e) and this section.

§ 803.21 Additional information shall be supplied within reasonable time.

All additional information or documentary material requested pursuant to section 7A(e) and § 803.20 (or, if such request is not fully complied with, the information or documentary material submitted and a statement of the reasons for such noncompliance in accordance with § 803.3) shall be supplied within a reasonable time.

§ 803.30 Formal and informal interpretations of requirements under the Act and the rules.

(a) The Commission staff may consider requests for formal or informal interpretations as to the obligations under the act and these rules of any party to an acquisition. A request for a formal interpretation shall be made in writing to the offices designated in § 803.10(c), and shall state: (1) All facts which the applicant believes to be material, (2) the reasons why the requirements of the act are or may be applicable and (3) the question(s) that the applicant wishes resolved. The Commission staff may, in its discretion, render a formal or informal response to any request, however made, or may decline to render such advice.

(b) In the sole discretion of the staff, any request for interpretation may be referred to the Commission.

(c) Formal interpretations by the Commission staff or by the Commission shall be rendered with the concurrence of the Assistant Attorney General or his or her designee.

(d) Any formal interpretation shall be without prejudice to the right of either the Commission or the Assistant Attorney General to rescind any such interpretation rendered pursuant to this section. In the event of such rescission, the party which requested the interpretation shall be so notified in writing.

(e) The Commission shall publish a summary of formal interpretations by the Commission, and any rescissions thereof, in the FEDERAL REGISTER.

§ 803.90 Separability.

If any provision of the rules in this Subchapter (H) (including the Notification and Report Form) or the application of any such provision to any person or circumstances is held invalid, neither the other provisions of the rules nor the application of such provision to other persons or circumstances shall be affected thereby.

Approved by GAO
B-180229 (R0516)
Expires 5-31-81

PART 803 -- APPENDIX
ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM
FOR CERTAIN MERGERS AND ACQUISITIONS

THIS FORM IS REQUIRED BY LAW and must be filed separately by each person which, by reason of a merger, consolidation or acquisition, is subject to § 7A of the Clayton Act, 15 U.S.C. § 18A, as added by Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. No. 94-435, 90 Stat. 1390, and rules promulgated thereunder (hereinafter referred to as "the rules" or by section number). The statute and rules are set forth in the Federal Register at page ; the rules may also be found at 16 CFR Parts 801-03. Failure to file this Notification and Report Form, and to observe the required waiting period before consummating the acquisition, in accordance with the applicable provisions of 15 U.S.C. § 18A and the rules, subjects any "person," as defined in the rules, or any individuals responsible for noncompliance, to liability for a penalty of not more than $10,000 for each day during which such person is in violation of 15 U.S.C. § 18A.

All information and documentary material filed in or with this form is confidential. It is exempt from disclosure under the Freedom of Information Act, and may be made public only in an administrative or judicial proceeding, or disclosed to Congress or to a duly authorized committee or subcommittee of Congress.

Complete and return two notarized copies (with one set of documentary attachments) of this Notification and Report Form to Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, and three notarized copies (with one set of documentary attachments) to Director of Operations, Antitrust Division, Room 3214, Department of Justice, Washington, D.C. 20530. The central office for information and assistance with respect to matters in connection with this Notification and Report Form is Room 303, Federal Trade Commission, Washington, D.C. 20580, phone (202) 523-3894.

AFFIDAVIT

Be sure that the affidavit required by § 803.5 is attached to this page.

CASH TENDER OFFERS

If this acquisition is a cash tender offer, check: [ ]

Ant. Form C4 (7/78)

Notification and Report Form (Part 803 -- Appendix) Continued

INSTRUCTIONS

Each answer should identify the item to which it is addressed. Attach separate additional sheets as necessary in answering each item; each additional sheet should identify the item to which it is addressed. Voluntary submissions pursuant to § 803.1(b) should be so identified. If unable to answer any item fully, give such information as is available and explain why the answer is incomplete, as provided by § 803.3. If books and records which provide accurate answers are not available, enter best estimates and indicate the sources or bases of such estimates. Estimated data should be followed by the notation, "est." All financial information should be rounded to the nearest thousand dollars.

All references to "year" refer to calendar year. If the data are not available on a calendar year basis, supply the requested data for the fiscal year reporting period which most nearly corresponds to the calendar year specified. References to "most recent year" mean the most recent calendar or fiscal year for which the requested information is available.

This Notification and Report Form requests information regarding dollar revenues and lines of commerce at three levels. All persons must submit certain data at the 4-digit (SIC code) industry level. To the extent that dollar revenues are derived from manufacturing operations (SIC major groups 20-39), data must also be submitted at the 5-digit product class and 7-digit product levels (SIC-based codes). In reporting by "4-digit (SIC code) industry" you should refer to the 1972 edition of the Standard Industrial Classification Manual published by the Executive Office of the President, Office of Management and Budget. In reporting information by "5-digit (SIC-based code) product class," and by "7-digit (SIC-based code) product," you should refer to one or both of the following reference publications published by the U.S. Bureau of the Census: (a) Numerical List of Manufactured Products, 1972 Census of Manufactures (MC72-1.2) (New 1972 SIC basis); (b) Volume II, "Industry Statistics," 1972 Census of Manufactures. In reporting information by "5-digit (SIC-based code) product class" you may also refer to the code appearing in the "Product Class Reference List" shown in the Instruction Manual for the Annual Survey of Manufactures. In reporting information by "7-digit (SIC-based code) product" you may also refer to the applicable "Product Reference Lists" appearing in the Instruction Manual of the various Current Industrial Reports surveys (monthly, quarterly, or annual) conducted by the U.S. Bureau of the Census. For product codes ending in 00, submit information by product as listed in Appendix A to the Numerical List of Manufactured Products cited above.

In responding to items 5, 7, 8 and 9 and the Insurance Appendix --

-- supply information only with respect to operations conducted within the United States, including its commonwealths, territories, possessions and the District of Columbia. See §§ 801.1(k), 803.2(c)(1);

-- information need not be supplied with respect to assets or voting securities currently being acquired, the acquisition of which is exempt under the statute or rules. See § 803.2(c)(2).

In responding to items 5-9 and the Insurance Appendix, limited or separate responses may be required of a person filing notification. See § 803.2(b).

Notification and Report Form (Part 803 -- Appendix) Continued

Name_____ Date_____

- - - -

Notification and Report Form (Part 803 -- Appendix) Continued

Name _____ Date _____

- - - -

Notification and Report Form (Part 803 -- Appendix) Continued

Name_____ Date_____

5(c) Dollar revenues by non-manufacturing industry. Provide the following information on the aggregate operations of the person filing notification for the most recent year for each 4-digit (SIC code) industry in SIC major groups other than 20-39 in which the person engaged. If such data have not been compiled for the most recent year, estimates of dollar revenues by 4-digit industry may be provided if a statement describing the method of estimation is furnished. Industries for which the dollar revenues totaled less than one million dollars in the most recent year may be omitted. All persons filing notification should include the total dollar revenues for the most recent year derived by all entities which are included within the person filing notification at the time this Notification and Report Form is prepared.

Insurance carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within SIC major group 63, and, if voting securities of an insurance carrier are being acquired directly or indirectly should complete the Insurance Appendix to this Form. Credit agencies other than banks; security and commodity brokers, dealers, exchanges, and services; and holding and other investment offices (2-digit SIC major group 61, 62, and 67) and real estate companies (2-digit SIC major group 65) should identify or explain the dollar revenues reported (e.g. dollar sales, receipts, etc.).

4-DIGIT (SIC CODE) INDUSTRY		TOTAL DOLLAR REVENUES (SPECIFY YEAR: _____)
INDUSTRY CODE	DESCRIPTION	

Notification and Report Form (Part 803 -- Appendix) Continued

Name_____ Date_____

6 This item need not be completed by a person filing notification only as an acquired person if only assets are to be acquired.

(a) Entities within person filing notification. List the name and headquarters mailing address of each entity included within the person filing notification. Entities with total assets of less than $1 million may be omitted.

(b) Shareholders of person filing notification. For each entity included within the person filing notification the voting securities of which are held (see § 801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds five percent or more of the outstanding voting securities of the class, and the number and percentage held by that person. Holders need not be listed for entities with total assets of less than $10 million.

(c) Holdings of person filing notification. If the person filing notification holds voting securities of any issuer not included within the person filing notification, list the issuer and class, the number and percentage held, and (optionally) the entity within the person filing notification which holds the securities. Holdings of less than five percent of the outstanding voting securities of any issuer, and holdings of issuers with total assets of less than $10 million, may be omitted.

Notification and Report Form (Part 803 -- Appendix) Continued

Name_____ Date_____

8 Did the acquired person and an acquiring person maintain a vendor-vendee relationship during the most recent year with respect to any manufactured product (or, if the acquisition is the formation of a joint venture or other corporation (see § 801.40), will the joint venture or other corporation supply to any of the persons forming it any manufactured product which such person purchased from another such person during the most recent year) which the vendee either resells or consumes in or incorporates into the manufacture of any product? If so, persons filing notification which are vendees of such product(s) should list each product purchased, identify each vendor which is a party to the acquisition from which the product was purchased, and state the dollar amount of the product purchased from that vendor during the most recent year.

Manufactured products are those within 2-digit SIC major groups 20-39. Any product purchased from the vendor in an aggregate annual amount not exceeding $1 million, or the manufacture, consumption or use of which is not attributable to the assets to be acquired, or to the issuer whose voting securities are to be acquired (including entities controlled by the issuer), may be omitted.

Notification and Report Form (Part 803 -- Appendix) Continued

Name _____ Date _____

- -

10. Print or type the name and title, address, and telephone number of the individual to contact regarding this Notification and Report Form. See § 803.20(b)(2)(ii).

_____
(Name and Title)

_____
(Business Address)

_____
(Business Telephone Number)

CERTIFICATION (see § 803.6)

This Notification and Report Form, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required data, the information is, to the best of my knowledg true, correct, and complete in accordance with the statute and rules.

_____
(TYPE OR PRINT NAME AND TITLE)

_____ _____
(Signature) (Date)

Subscribed and sworn to before me at the City of _____, State of _____

this _____ day of _____, 19__, _____
(Notary Public)

My Commission Expires _____

Notification and Report Form (Part 803 -- Appendix) Continued

2. Property Liability Insurance

A. Provide for the most recent year the amount of direct premiums written in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your carrier's annual convention statement.

B. Provide for the most recent year the amount of net premiums written in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your carrier's annual convention statement.

3. Title Insurance

A. Provide for the most recent year the amount of net direct title insurance premiums written in the United States.

B. Provide for the most recent year the amount of direct title insurance premiums earned in the United States.

[FR Doc. 78-20466 Filed 7-28-78; 8:45 am]

Federal Register

MONDAY, JULY 31, 1978
PART III



FEDERAL COMMUNICATIONS COMMISSION

■

ACCOUNTS AND FINANCIAL REPORTING FOR TELEPHONE COMPANIES

Proposed Revision

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 31, 33, 42 and 43]

[Docket No. 78-196; FCC 78-453]

REVISION OF ACCOUNTS AND FINANCIAL REPORTING FOR TELEPHONE COMPANIES

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes revision of system of accounts kept by largest telephone companies, because recent experience has shown that existing accounts do not provide a basis for setting rates of particular services. The effects include eliminating many expensive special studies, simplifying determining whether rates are just and reasonable, facilitating the prescription of rates by the FCC, and making it possible to measure carrier efficiency.

DATES: Comments must be received before September 15, 1978. Reply comments must be received before November 1, 1978.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Dr. David Chessler, Common Carrier Bureau, 202-632-7084.

SUPPLEMENTARY INFORMATION: In the matter of revision of the uniform system of accounts and financial reporting requirements for telephone companies (parts 31, 33, 42, and 43 of the FCC's Rules). Notice of proposed rulemaking.

Adopted: June 28, 1978.

Released: July 21, 1978.

INTRODUCTION

1. In 1913, the Nation's telephone companies first became subject to a uniform system of financial accounts. This system was established by the Interstate Commerce Commission, whose regulatory control then included telephone and telegraph companies. Following the establishment of the Federal Communications Commission (hereinafter "FCC" or "Commission") pursuant to the Communications Act of 1934, the FCC assumed regulatory control over the communications industry. In 1935, the FCC adopted the current uniform system of accounts (USOA), based largely on the accounts which had previously been promulgated by the Interstate Commerce Commission. Although the uniform system of accounts has been modified on numerous occasions, the basic structure of the USOA has remained essentially unchanged since its inception in 1935. The uniform system of accounts for telephone companies is codified as parts 31 and 33 of the FCC's rules (47 CFR parts 31 and 33).[1] Requirements concerning record retention are contained in part 42, and reporting requirements are prescribed in part 43 of the FCC's rules (47 CFR parts 42 and 43).

2. Section 220 of the Communications Act (47 U.S.C. § 220) gives the Commission broad powers to prescribe a uniform system of accounts. Specifically, section 220(a) authorizes the Commission to:

> * * * prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to this Act, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys.

Furthermore, Section 220 (g) provides that:

> After the Commission has prescribed the forms and manner of keeping of accounts, records, and memoranda * * *, it shall be unlawful * * * to keep any other accounts, records, or memoranda than those so prescribed or such as may be approved by the Commission or to keep the accounts in any other manner than that prescribed or approved by the Commission.

The scope of the Commission's authority to prescribe a uniform system of accounts under section 220 of the Act has been given an expansive interpretation by the courts. The Opinion in *American Telephone & Telegraph Co.* v. *United States*, 299 U.S. 232 (1936), a case involving the Commission's initial action prescribing a uniform system of accounts for telephone companies, states:

> This court is not at liberty to substitute its own discretion for that of administrative officers who have kept within the bounds of their administrative powers. To show that these have been exceeded in the field of action here involved, it is not enough that the prescribed system of accounts shall appear to be unwise or burdensome or inferior to another. Error or unwisdom is not equivalent to abuse. What has been ordered must appear to be "so entirely at odds with fundamental principles of correct accounting" * * * as to be the expression of a whim rather than an exercise of judgment.

Id. at 236-37 (citations omitted). Subsequent cases involving section 220 have followed this broad interpretation of our authority to prescribe systems of accounts. *United States* v. *New York Telephone Co.*, 326 U.S. 638 (1946); *New England Telephone & Telegraph Co.* v. *United States*, 53 F. Supp. 400, 411 (U.S.D.C., Mass. 1943).

3 The USOA is used by the FCC to review the operations of the communications common carriers subject to our jurisdiction. The USOA encompasses both balance sheet and income statement accounts. Among the major categories of balance sheet accounts are telephone plant, other capital investments, current assets, prepaid accounts, stock, long-term debt, current liabilities, and retained earnings. Among the categories of income accounts are operating revenues, other income, operating expenses and taxes.[2]

4. After reviewing all the various accounts and subaccounts in the USOA, it is apparent that the USOA in its present form focuses on company-wide financial and operating data, rather than information useful for modern regulation or effective managerial control and planning. Historically the USOA has been useful to the Commission in reviewing such matters as overall investment and expense levels, property valuation and depreciation rates. Furthermore, the USOA has provided a basis for Commission review of overall revenue requirements, including a determination of a fair rate of return computed on an appropriate rate base.

5. However, in recent years, it has become apparent that the USOA does not provide the industry with an effective tool for managing its resources in the current multi-service environment, or the Commission with the type of information that is necessary to regulate an increasingly complex telecommunications industry. When the USOA was first established, telephone companies offered only two basic types of services—local and long distance. Today, on the other hand, a large variety of services is available including: Local exchange service, long distance message telecommunications service (MTS), wide area telephone service (WATS), digital data service (DDS), private line telegraph, private line telephone, audio/radio, television and various other private line and specialized services. Furthermore, almost all of these services are offered on both an intrastate and interstate basis.

6. In recent years, our rate cases have dealt increasingly with rate levels and rate structures of specific services, and less with overall company-wide rate of return and revenue requirements. The starting point in setting appropriate rate levels and rate structures is a determination of the relevant costs of providing the service(s) under investigation. Accordingly, the Commission has consistently maintained "that the cost of providing serv-

[1] In addition, 38 State commissions have prescribed the FCC's USOA. Thus we recognize that any revisions to the USOA developed herein may have a direct impact on State commissions.

[2] These categories are representative of the types of accounts presently included in the USOA, but this listing is not intended to be all-inclusive. For a complete listing of all the accounts in the current USOA, see appendix A.

ice constitutes the most reliable criterion available for determining just, reasonable, and non-discriminatory rates."[3] Furthermore, we have stated "that cost of providing service is at the heart of the statutory requirements under sections 201-205 of the Act for just, reasonable and non-discriminatory rates, and that costs are to be directly controlling in the fixing of rates" or must at least provide the benchmarks from which to measure any departure therefrom.[4] Thus the primary ratemaking criterion is cost of service. To effectively regulate on a cost of service basis, we need reliable figures on operating revenues, plant investment and operating expenses and subcategories thereof, broken down both by regulatory jurisdiction (i.e., interstate versus intrastate) and by individual service categories. Because the focus of the USOA is on company-wide results, it has proven to be of little, if any, help in resolving issues concerning the appropriate rate levels and rate structures of the various services.

7. The importance of accurate and reliable costs has been highlighted by recent decisions. In our decision in docket No. 18128, in which the lawfulness of the rate levels of each of A.T. & T.'s interstate services was determined, we stated:

> The ascertainment of what constitutes the actual cost of providing a category or subcategory of service is essential to the performance of our regulatory functions. More specifically, in order to determine whether rate levels and rate level relationships are just, reasonable, or not unduly discriminatory, the actual full costs of providing service must be known and certain, irrespective of whether rates are in direct relationship to costs or depart therefrom. In the latter case the ascertainment of actual full costs still provides the relevant standard to aid in the determination of lawfulness of rates. (In the absence of such knowledge the Commission is unable to identify with certainty the presence of interservice cross-subsidization.)[5]

In our phase II final decision in the A.T. & T. rate case,[6] we noted the failure of the USOA to present a full picture of all the relevant costs:

> Without belaboring the problems relating to the accounting system or enumerating all its deficiencies, we need simply say that we recognize the inadequacies of the uniform system of accounts for our regulatory purposes. In recent decisions involving A.T. & T. interstate services, * * * we were hampered in our ability to determine the lawfulness of Bell's rates and rate structure by the lack of information as to investment, expenses and revenues associated with specific services and sub-services. Although A.T. & T. conducted special studies for this purpose, even these, we found, were inadequate.[7]

Recognizing these inadequacies, we concluded that "the uniform system of accounts is outdated for current regulatory needs. * * *"[8]

8. In addition to our own statements regarding the USOA, two consulting firms have also recently reviewed and commented upon the USOA. The "Study of Common Carrier Accounting and Depreciation Practice and Policy," prepared for the Office of Telecommunications Policy by Peat, Marwick, Mitchell & Co., presented a broad overview of the present USOA for telephone companies and an analysis of the accounting and depreciation practices of telephone companies operating within the requirements of the USOA. As part of its project, Peat, Marwick, Mitchell & Co. was to assess the effectiveness of the USOA in providing the types of information necessary to regulate a company's operations and to propose necessary modifications. The study concluded that the current USOA provides appropriate data for aggregate rate level information, but does not provide the pertinent information to determine and assess the costs of separate telephone services. What is needed, the study concluded, is a computerized, fully integrated uniform data system capable of providing several matrices of revenues and costs by such bases as cost of service categories, class of customers, function, product, and others. Thus existing reporting categories should be maintained but supplemented with additional information. To the extent interservice cross-subsidy exists in competitive markets, revenues and expenses by type of service are needed to determine the cope and magnitude of any such cross-subsidies. for rates to be related to the cost of providing services, plant account, revenue, and expense information must be available both by service and type of equipment used. In addition, investment costs should be isolated on a year-by-year basis so that the trend of these costs is known. Finally a breakdown of expenses and investment-related costs into a fixed and semi-fixed format is necessary in order to judge alternative pricing policies.

9. Also in recognition of the inadequacies of the present USOA, a research contract was awarded by the Commission to Mathtech, a subsidiary of Mathematica, Inc., to determine the information requirements of the Commission's Common Carrier Bureau. Specifically, Mathtech was asked to:

(1) Determine what data are necessary for effective regulation.

(2) Advise as to how the USOA could be revised to utilize modern cost accounting methods.

(3) Propose extensions of the USOA to avoid continual special cost studies such as long run incremental and fully distributed cost analyses.

(4) Propose extensions of the USOA to permit additional or improved allocation methods.

(5) Suggest possible rule changes calling for more relevant cost studies on a periodic basis.

(6) Suggest supplemental or modified reporting formats.

(7) Provide for fixed and variable categories of expense for intrastate and interstate areas of service.

In its report, Mathtech noted that special studies rather than USOA data provide the underlying cost support for tariff filings. Mathtech recommends a data base approach to changing the USOA wherein costs are traced to a service or groups of services and assigned to accounts representing the performance of specific technical or business functions. Thus, revenue, expense, plant assignment and other data would be accumulated in supplementary records which could then be procesed or "massaged" by allocative and other rules to serve particular needs. Mathtech proposed a redefinition of existing expense and telephone plant accounts to match more closely a functional type of organization. For the expense accounts new account groups are offered to reflect the changing business functions conducted currently by telephone carriers. For the plant accounts the major recommendation calls for separate account groups for equipment that performs switching and equipment associated with interexchange or exchange circuits. Revenue accounts are to be disaggregated to provide more detail on services from the demand side by calling for a separate subaccount for allowed tariff variations. Also, nondollar quantities reflecting activity levels associated with the cost accounts are to be collected in order to use the functional breakdown to develop unit costs and statistical cost functions which can then be applied to estimate the costs of a particular service according to functions utilized. Mathtech contends that, under its approach, it will be possible to produce (1) conventional accounting reports to meet the traditional needs of regulators for rate level information; (2) cost studies including those which fully allocate costs to services; and (3) various special analyses.

Proposed Revisions to the USOA

10. The present USOA does not provide sufficient detail on the relation-

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[3] *Private Line Rate Cases*, 34 FCC 244, 297 (1961), 34 FCC 217, 231 (1963), *ITT World Communications, Inc. et al.*, 29 FCC 2d 493, 495 (1971).

[4] *WATS*, 59 FCC 2d 671, 678 (1976). See also *A.T. & T.*, 61 FCC 2d 587, 609 (1976).

[5] *A.T. & T. Private Line Services*, 61 FCC 2d 587, 668 (1976).

[6] *A.T. & T Rate Case (Phase II Final Decision)*, 64 FCC 2d (1977).

[7] Ibid at par. 213.

[8] Ibid at par. 311.

ship of costs and their causes to meet a variety of objectives in the telecommunications industry. The FCC and State regulatory agencies which follow the USOA, are unable to assess the efficiency of carrier operations and decisionmaking, and are forced to rely on "special studies" (ad hoc accounting) for such review purposes. Similarly, the carriers themselves must perform such studies for managerial decisionmaking, as they do not have basic disaggregated data in the present accounts. The present USOA has plant investment accounts [9] structured to depreciation categories. In addition, the supportive data which permits auditing, the continuing property record (CPR) requirements,[10] are intended to support depreciation and retirement accounting and do not support a breakdown of costs either along jurisdictional lines or among services.

11. As a consequence of the introduction of competition in the specialized services and terminal equipment areas of telecommunications, and the development and use of technology available in some cases only to specialized users of telecommunications and not users of monopoly services, more specific service-related (and sub-service-related) cost and revenue information is required than previously was the case. Such information is needed both by the carriers in arriving at managerial pricing decisions (and technology-introduction decisions) and by regulators in assessing the validity of these decisions. Increasingly, this type of information is being sought in State and Federal ratemaking proceedings, and the existing USOA has been found ill-adapted to generating this information, or for verifying the validity of information otherwise obtained (often through completion of "special studies").

12. To remedy the inadequacies of the current USOA, we are proposing a comprehensive modification of the existing accounting system as a whole (see appendices D, E, and F). It is our intention that the revised accounting system which will result from this proceeding will constitute a single data base serving the following functions: (1) It will form the basis for financial reports, including both balance sheet and income statement reporting. (2) It will serve as a data base and a foundation for managerial decisionmaking and internal management reports by the carriers. (3) It will provide sufficiently detailed disaggregated cost and revenue information for derivation of costs and revenues of individual services and rate elements, for pricing decisions and other managerial decisionmaking by the carriers. (4) It similarly will provide detailed disaggregated cost and revenue information for derivation of costs and revenues of individual services and rate elements, for rate review and continuing surveillance purposes of this Commission (and other regulatory bodies which adopt the revisions) and provide a basis for rate prescription, where appropriate. (5) It will facilitate the breakdown of costs between interstate and intrastate jurisdictions ("juridictional separations"). (6) It will permit analysis of facility and plant utilization, including studies of the causes for each category of expenditure and review of service quality and service efficiency. And (7) it will be structured so as to allow for regulatory and independent auditing and tracing of questioned entries.

13. Use of a single data base for these multiple purposes will have desirable effects, both for the carriers and for regulators. The carriers will reap the benefit of reducing or eliminating costly and time-consuming "special studies" which they now are performing for managerial decisionmaking and regulatory purposes, as they will have an existing data base which could be used to generate this information directly. From our regulatory perspective, continuing surveillance will again become possible (it is currently not feasible to perform continuing surveillance on specific services, as service-related costs and revenues are only reported in the form of "special studies") and the occurrence of ambiguities and conflicting results will be virtually eliminated. Moreover, service-related cost and revenue reporting through the system of accounts which we are proposing will be amenable to auditing; this has not been the case of the "special studies" which we (and State regulatory agencies) have received in recent years.

14. We wish to emphasize that we are not merely seeking to develop the basic accounts, subaccounts and primary allocation records (see paragraph 33) from which cost of service and other relevant information may be derived. We are also seeking to arrive at a system of supporting records which will both provide the detail and flexibility required for effective regulation of cost-based rates, and which will allow suitable auditing and tracing procedures to be employed. Flexibility is essential, for as time passes it is likely that new service categories will be established, with a resulting need to regroup cost elements to derive appropriate revised service costs. In order to derive the costs of a new (or existing) service, one would first identify the relevant accounts, sub-accounts, primary allocation records and supporting records, and subsequently apply whatever cost of service methodology has been prescribed by the Commission to the accounting information; we do not want a revised USOA to be tied to any particular cost of service methodology, as such methodologies may well change with time, with changing technology, or with relevant economic or legal considerations. Thus, while we discuss accounting considerations in terms of our decision in docket No. 18128 (a proceeding concerned with the appropriate cost of service allocation methodology to be used for rate review purposes), we wish to emphasize that such discussion is predicated only on the identification in that proceeding of data-gathering requirements, and not on its conclusionary rate-review principles. It is anticipated that all tariff and facility applications and depreciation studies will be based solely on the data in the USOA and required supporting records, through the use of a cost of service manual that will be part of these accounts, and which will be proposed at a later date. Comments are invited as to whether this proposal (appendices D and E) is adequate for all regulatory purposes, what additional data may be required for some purposes, and what these data might be.[11]

15. It is evident that, in order to facilitate the necessary allocations of costs and revenues, the production function, or the factors involved in the provision of service (production of services) will be fundamental to the new accounting structure. Thus, we must examine the means used to provide telecommunications services. Once the factors involved in the production of services are clarified, an accounting structure flexible enough to accommodate new or changed production factors brought about by advances in technology can be built around them. In its simplest terms, the provision of telephone service involves forming a communications path which is available so that people (or machines) can converse with one another. A typical call along such a path would traverse some or all of the following types of telephone plant: (1) A telephone or some other type of station (terminal) equipment; (2) the local loop (connection between the customer's premises and the central office); (3) main distribution frame (MDF); (4) switching equipment; (5) billing equipment (local

[9] The plant accounts are the major category of balance sheet accounts, and for that reason much of the following discussion will concentrate on the deficiencies of these accounts and our proposed changes thereto.

[10] 47 CFR § 31.2-2.6 and appendix B to part 31.

[11] It has been alleged that proper adoption of "equal life group" accounting as proposed by some carriers would require even more extensive records of plant be kept. Carriers are invited to discuss what additional information (such as the establishment of separate subaccounts for each year's accretions of plant in each account) would be required to implement anything other than straight line vintage group depreciation under our proposal.

or long distance); (6) interoffice trunks; (7) multiplex equipment; and (8) intercity transmission equipment (radio equipment, microwave towers, coaxial cables, etc.). Of course other types of plant are required to support the entire operation, such as land and buildings, test boards and other central office test equipment, maintenance and repair vehicles and equipment, and furniture and office equipment.

16. While not all inclusive, this list is representative of the types of plant accounts which are being proposed in the new USOA. Thus we are proposing to establish accounts along functional and/or technological lines. In such a system, all costs would be recorded in a manner which would allow the service or facility being supported to be identified. To provide the requisite degree of detail, collection of cost and revenue data should begin at the wire center or central office, which is the hub upon which subscriber lines converge. Since common costs are incurred at the wire center, for example, the cost of power for several different kinds of equipment or functions, no smaller entity can usefully serve as the collection point for cost and revenue information. Furthermore, the wire center is self-contained in the provision of local telephone service and serves as the gateway to the toll network. Toll transmission data would be collected at the span, which is a transmission facility of fixed cross section (ultimate capacity) and technology, lying completely between nodes of the network (points of which "branching" can occur, that is, where a message has a "choice" of which route it will follow). Multiplex equipment, a switch, or a point of intersection of three or more cable or microwave legs will always mark the division point between spans. A full set of cost accounts would be kept for spans. In the case of interlocal transmission facilities within an exchange, we propose that they be aggregated for accounting purposes, accompanied by a rigorously defined boundary between administrative exchanges. It may be necessary to collect certain types of expense and revenue data (marketing expenses and various overheads, for example) at a higher level of aggregation than the wire center, but here too parallel statistical records would permit their allocation to functions or services.[12] The proposed accounts are therefore technologically based so as to provide costs of all potential services by building up such costs from the discrete elements of the accounts and records. Comments are invited as to whether the proposed accounts and records are adequate to permit such buildup of costs for potential services, or what additional information would be needed.

17. We recognize the need for a system of accounting which will be responsive to ongoing technological developments in switching, transmission, and other areas. Therefore, the scope of the revised USOA is intended to be broad enough to encompass changes in the very nature of the industry's productive processes. It cannot be assumed that services as presently constituted will continue to be supplied in their historical fashion. Indeed, this type of development is evident at the switching/terminal interface where terminal offerings may be supplanted through use of the capabilities of electronic switches. On the other hand, "smart terminals" may provide certain central office functions. Furthermore, the revised USOA and its supplementary records must be capable of handling both those service changes induced by technology and those that may occur at the behest of management itself. Clearly this latter option exists even in a static technological world. The categories of the accounting system are to be interpreted narrowly. All new types of plant and new tariff offerings will require the creation of temporary subaccounts to isolate all costs and revenues until the Commission can determine the appropriate final treatment.

18. In summary, our goal in proposing a revised and expanded USOA is to develop a single data base which will serve multiple purposes and be used by both internal management and State and Federal authorities. It is our intention that the proposed modifications will be both broad enough and flexible enough to accomplish this goal.

Items of Inquiry

19. While we have endeavored to make our proposal as complete as possible, we nevertheless realize that certain matters have not been addressed. In the following paragraphs, we will be discussing and requesting comments on those matters which have been intentionally omitted from the proposal, those matters which are ambiguous and in need of clarification, and those matters which need further refinement. Indeed, since we are placing in issue the industry's basic informational requirements (cost of service, jurisdictional separations, financial and tax data, and management decisionmaking), we welcome comments from the regulated industry, the academic community, the accounting profession, and other interested parties. Furthermore, we invite comments, not only on the specific matters discussed below, but also on any other relevant matters directly related to the proposed USOA modifications.

Definitions

20. At the outset, we invite comments concerning basic definitions of terms. Parties should address specification of terms which are both subject to generic use in the telecommunications industries and which will have special accounting relevancy in designing a multipurpose recording and reporting system. Examples include such general taxonomic expressions as central office, wire center, and fungible facilities or expenses. Where applicable, terms considered to be synonyms for those defined should be specified (e.g., "direct" or nonfungible). Furthermore, differentiations should be made between terms that are in common use but are seldom defined in costing or in accounting related studies (e.g., channel, circuit, actual and potential, airline, section, and route "miles"), and those already subject to special usage (e.g., spare, administrative, test, or unused "circuits").

21. Three terms which have been used throughout the proposed plant accounts—"common," "fungible," and "other"—deserve special mention. All three of these terms are used to describe plant which cannot be readily placed in accounts discretely identifiable by service. "Common" describes plant which is used for two or more of the purposes described by the accounts listed on the same account level within the hierarchy of the accounts. Common plant is, of course, allocated to the services that share it in the facilities datum (derived from the accounts and supporting primary allocation records) and such allocation is fixed. "Fungible" describes plant which could be used for two or more of the purposes described by the accounts listed on the same account level within the hierarchy of the accounts, but which at a given point in time is actually used for only one purpose. Thus, fungible plant could, at a given point in time, be assigned to a discrete account, but, because of a change in its use at a different point in time, could be assigned to a different account. The allocation in the facilities datum is, of course, fixed. "Other" describes plant which does not fall into any of the discrete accounts, or the common or fungible accounts. "Other" is normally intended to capture only insignificant amounts of investment. We invite comments concerning our definition and use of "common" and "fungible" accounts. Specifically, we invite comments on whether it is necessary or appropriate to use both accounts or whether such use would prove to be unduly confus-

[12] We sometimes use the term "primary recordation location," for the location at which data of any particular type will be recorded—wire center, transmission span, or exchange area, etc.

ing and whether all plant should be assigned to service based accounts at installation, so that the datum would be in the accounts rather than the underlying primary allocation records. With respect to the use of "other" accounts, we invite comment on establishment of a general rule as to when an "other" account should be broken down into two or more specific accounts (e.g., greater than $100,000 or greater than 5 percent of all the accounts listed on the same account level as the "other" account in question).

22. As indicated above (paragraph 16), the cost accumulated in the accounts, subaccounts, primary allocation records (see paragraph 33) and supporting records will ultimately be distributed among the various services either by direct assignment or in accordance with prescribed allocation procedures. As noted in paragraph 13, with the passage of time, the offerings of the carriers may change, new services may be added, old ones dropped, or existing ones modified. Therefore, we invite comments as to how the accounts, subaccounts, primary allocation records and supporting records can be structured so as to provide maximum flexibility in the assignment and allocation of the appropriate costs to individual services.

23. In defining terms, various quantity (as opposed to dollar) measures and, in fact, conceptualizations associated with the production function or supply of telecommunications services should be specified. Examples include measures related to facility capacity and fill (by facility type) as well as to facility usage (e.g., Erlangs). Clearly, proposed definitions will be of little practical import if the particular quantities of measure considered to be of relevance are left unspecified. Similarly, parties attempting to define terms should delineate the conditions or assumptions they have made regarding supply of telecommunications services. For example, if it is presumed that new capacity will be added through the device of overbuilds on existing routes, rather than through the construction of new routes themselves, this assumption would influence the choice of capacity measure and, indeed, suggestions regarding the design of revised USOA accounts and supplemental records. Thus, all implicit "understandings" regarding technology in use, engineering "rules of thumb" which might influence facility utilization, constraints on networks or productive design due to regional, economic, or competitive assumptions, and other factors contributing to use of such terms as "capacity" in a particular fashion should be specified.

24. In structuring their responses to this notice, parties should submit proposed definitions relevant to their suggested revisions of the USOA. Parties should include these definitions as an integral part of their submissions. If it is felt that existing definitions of important terms in such documents as the NARUC separations manual, or Bell's FDC implementation manual are adequate for their purposes, this should be so stated. In no case should a party submit comments or recommendations without addressing the definition of terms used. Indeed, all criticisms of our proposals should be accompanied by recommendations of alternative approaches. We have attempted to select the approach that best develops the information needed to determine cost of service and perform other regulatory functions, with a minimum of disruption to industry procedures. All criticism should be accompanied by counterproposals that are demonstrated to produce fully equivalent information with less cost, or even better and more relevant information at the same cost. Unsupported statements that some aspect of the proposal is costly or inadequate will not be very useful.

Attribution of Costs to Services and the Need for Nonfinancial Data

25. In developing a new accounting system, we must take into account, not only the general requirements set out above (see paragraphs 10–17), but also many other specific factors. Some of these factors arise from the particular requirements of some of our recent decisions [13] and others arise from industry structure considerations.

26. Our decision in docket No. 18128 keynoted the Commission's need for cost of service information in addition to the financially oriented data currently provided by the USOA. Revisions to USOA data anticipated under this proceeding can be directly related to our objective of accountability, especially respecting the historical and retrospective aspects of this fundamental regulatory goal.[14] However, accurate and timely data also will serve our other objectives concerned with realization of fair and full competition, clarification of market rules, and the achievement of equity between customers and a substantive level of allocative and productive efficiency.[15]

27. To accomplish our objectives, we stipulated certain supportive materials and other information which we required to assess the lawfulness of rate levels and rate level relationships.

We hold that revisions to any existing service rate level or rate relationship to other service's rates must be supported by a showing of the overall impact of such revisions. This showing is to include proper estimates of cost function changes and cross-elasticity data, the subsequent rate structure, and the rate base revenue requirements (and changes in these factors) for each of the various Bell services. Data must herein be presented in a manner consistent with our guidelines concerning such matters as the proper ratemaking methodology and distribution of facilities among services. Recognition of the overall impact of such changes is consistent with our requirements below concerning establishment and updating of an assignment of all facilities, and use of a full recorded costs, historical causation basis of ratemaking.[16]

28. Recognizing the deficiencies in fully distributed cost methods 1 and 7, the Commission ordered Bell and Western Union to consult with the Common Carrier Bureau staff to revise FDC methods 1 and 7 to the extent necessary to bring them into conformance with docket No. 18128 decision.[17] These meetings have resulted in the development of Bell's fully distributed cost implementation manual (FDC manual).[18] An examination of the FDC manual highlights the need for the revised USOA to incorporate large amounts of both financial and nonfinancial information, which will be necessary to carry out the required allocations.

29. Bell's FDC manual provides various procedures for the allocation of the operating expense accounts (600 series), including maintenance expenses, depreciation and amortization expenses, traffic expenses, commercial expenses, general office salaries and expenses, and other operating expenses. Of those expenses not directly attributed to service categories, many categories are allocated on the basis of related proportions of book costs or investment accounts. Accounts for which this allocation method is particularly important include mainte-

[13] See notes 5 and 6, supra.

[14] *AT&T Private Line Services, supra* note 5 at 610.

[15] Id. at 609–618.

[16] Id. at 662.

[17] *AT&T Private Line Services, supra* note 5 at 668.

[18] An interim FDC manual was completed in January 1977, and was to have been used by Bell for its June 1977 tariff filings. The FDC manual was to be reviewed for purposes of refinement between January and June (this review period was extended to August 1, 1977). Consequently, changes to the manual may occur subsequent to this initial notice of proposed rulemaking and, indeed, further supplementary notices may be issued to reflect these changes or proposal of a manual to be included in our Rules. The discussion below refers to the existing manual. No references to this position of any of the participants to the implementation process, including the Bell System, other telephone carriers, the cost analysis task force, or, indeed, the Commission itself. Bell's FDC manual is set out in appendix B hereto.

nance, depreciation, and certain "other" (e.g., 668, 675) operating expenses. Also of importance as attribution bases are service revenues and various labor hour allocative mechanisms. Commercial expenses are the most significant of those expense categories allocated to service based on revenues. On the other hand, traffic expenses are most illustrative of accounts attributed on the basis of traffic operator (i.e. labor hour) work units.

30. The FDC manual provides for allocations of income accounts and general department services. When not directly attributed, income accounts are allocated by procedures primarily relying upon revenue and book cost bases of attribution. For the most part, general department services, excepting the legal department are considered unattributable on any direct basis. These accounts are attributed on the basis of several proportional measures including services' related book costs, wages, or total attributed annual costs.

31. The major balance sheet plant accounts (100.1), for purposes of establishment of the initial datum, are allocated on the basis of certain facilities usage bases. Interchange circuit plant (limited to line haul investment for coaxial cables and radio facilities) is first broken into Facilities Available For Future Growth (FAFFG) and non-FAFFG components.[19] The former category is then allocated on the basis of the relationship of forecasted growth in equivalent circuit route miles, while the latter (and other line haul investment) is allocated based on a distribution of route miles by mileage band derived from relevant studies. Many other bases of allocation are used for the remaining balance sheet accounts. For example, plant under construction (100.2) and property held for future use (110.3) are allocated to services based on measures of forecasted services' usage of facilities. On the other hand, satellite Earth stations investment (100.5) is allocated based on current relative use of circuits. Depreciation reserve (171) is allocated through the use of estimated reserve ratios by class of plant. Certain remaining unattributable amounts are allocated based primarily on the proportional relationship of each service's directly attributable investment in account 100.1.

32. In summary, if an extended and improved cost allocation FDC manual is adopted by the Commission, the USOA will have to accommodate the storage of much financial, operating, statistical, and other data. Without this detailed data, little progress beyond the traditional costing procedures of the telephone industry could be made. The customary manner of costing is to assign or allocate categories of plant to various services and subsequently develop ratios (to be applied to gross plant already allocated) for estimating the various expenses to be allocated to each service. Many expenses may not be closely related to allocated gross plant, so that a system which can relate expenses directly to the relevant services is to be preferred. Also, it is important for certain analyses to be able to distinguish between fixed and variable expenses the former being those which do not vary as output varies and the latter those which do vary with output. Furthermore, in order for the Commission to be able to make judgments about the economic rationality of investments in plant and equipment, the process of granting section 214 certificates should be tied to the costing procedures provided for in the USOA. This type of coordination would help prevent excessive or insufficent investments, that is, those which would not be economically justified in view of the relevant demand and cost considerations. Thus a revised USOA which provides the essential unifying base for the key regulatory functions will obviate the need for special studies, which often must be developed under "crash program" conditions.

33. We have devoted a great deal of our discussion to the development of Bell's FDC manual and we have attached a copy of that manual to this notice. However, these actions should not be interpreted as an expression of approval or official sanction of the Bell FDC manual. It may well be the case that a different form of manual or an extensively modified one is to be preferred particularly in light of the more precise additional information that will become available. The Bell FDC manual is an attempt to allocate cost on the basis of historical cost causation using existing accounting and separations data and some special studies. Due to the limitations of the information now generated, the Bell manual uses many simplifying assumptions and approximations. furthermore, some of the rather expensive special studies produced by Bell, notably REDCAP, substantially duplicate other special studies that must be done for separations purposes, with only a small gain in additional information. We intend that the revised accounts should simplify the cost study process, while making possible, by eliminating the need for rough approximations, even more precise measures of the economic costs of telecommunications services. Similarly, the accounting we have prescribed for DDS and DSDS [20] is not compatable with these proposals, because it is based on the present accounts. We expect that the DDS and DSDS accounts will ultimately comport with the general accounts we prescribe. In short, we see the DDS-DSDS rules, like the Bell method 7 manual as illustrative of the deficiencies of the present chart of accounts which require such approximations and special studies. See para. 48, below.

RECONCILIATION AND WAIVER PROCESS

34. With regard to cost of service, the decision in docket No. 18128 specified use of FDC method 7's "before-the-fact", cost causational basis for attribution of expenses and investment. This attributional approach necessarily involves forecasting processes and fixity of plant costs by service over time (absent reconciliation with experienced use or grant of a waiver). As concerns the planning of facility construction, we invite comments concerning the precise point at which service assignments should be made and accounting records estabished to fix cost incidence. This may occur when facilities are proposed or approved, when funds are committed, when orders are placed, or when a specific implementation schedule is delineated. We are particularly interested in the construction of plant which is fungible, i.e., plant which, after it is in place, can be put to a myriad of uses. We recognize that in addressing this question of cost "incidence," responses might vary depending on the type of plant and equipment as well as the "level of planning" considered (e.g., construction of a new central office or route versus merely an increment to existing facilities).

35. FDC method 7's cost causational, attributional approach contrasts with FDC method 1's current or relative usage allocative technique. Our decision in docket No. 18128 stipulates that method 1 results might be used to indicate the need for a reassignment of plant.[21] We have taken notice in our reconsideration and clarification of the decision of the need for the revised USOA "to provide us with data, records, and accounts for waiver process reconciliation and accounting." [22] In this regard, reconciliation of forecast and actual plant usage data (i.e., comparison of revised FDC (fully distributed cost) method 7 and actual re-

[19] We take no position as to whether it is meaningful to distinguish FAFFG as a special subcomponent of plant, nor as to whether FAFFG, if it is measured, should be measured only as to certain classes of plant. However, to the extent that FAFFG is considered a valid concept, comments are invited as to how it should be distinguished from property held for future use.

[20] *AT&T Dataphone Service* FCC 77-393 (released June 17, 1977) at paras. 6-8.

[21] *AT&T Private Line Services, supra* note 5, at 667.

[22] *AT&T Private Line Services* ("Reconsideration Order"), 64 FCC 2d 971 (1977) at note 14.

sults) would be considered parallel to our examination of carrier or other submissions under the waiver process. Furthermore, "USOA revisions * * * should also provide us with data to assess the appropriateness of service category definitions." [23] Included here would be a review of the implications of such carrier options as providing new services, combining existing services, or offering special service features (e.g., bulk discounts and quality or line conditioning variations). We request comment on what provisions are necessary in the rules for the accounting and primary allocation records to facilitate the Commission's recognition of circumstances requiring reconciliation and to permit the Commission to order the necessary accounting changes to accomplish such reconciliation. We also request comment on the sort of accounting changes and transfers that might be ordered by the Commission in the reconciliation process.

36. Underlying the reconciliation and waiver process and specifications of what constitutes a "service" are our concerns respecting utilization of facilities, as well as correlation of plant utilization and the construction/investment decision process. In this regard we will consider measures to ensure consistency between section 214 information and the revised USOA. Further, we are concerned with the matter of appropriate definitions of usage, capacity, and other items central to the cost of service area. Thus, we may incorporate into the revised USOA, such information as that pertaining to the datum as well as allocative factors of a forecast or historical plant utilization nature. We must, therefore, examine methods for recording, classifying, summarizing, and accessing data in both quantitative or phyical unit form and in financial terms.

37. Our decision in docket No. 18128 specified that the carrier may request a waiver of our requirement that a service's rates are to be based on fuly distributed method 7 costs. Such waivers could be granted if the carrier could justify departures from FDC-7 for purposes of realizing specified operating efficiencies or levels of demand. We intend to include in the revised USOA the accounts appropriate for recording in the proper detail all essential elements relating to the granting of a waiver. The waiver request would have to be supported by evidence as to cross elasticities between services, unit costs, measures of efficiency and other relevant considerations. We request comments concerning the nature and extent of evidence that could be deemed sufficient for the granting of a waiver of the FDC-7 requirement for particular services.

[23] Id. at note 15.

38. In our reconsideration of docket No. 18128, we stipulated that facility construction applications and actual utilization of facilities should be part of the process of reconciling actual and forecast data.[24] Thus, cost of service information must include such nondollar data as relative assignment to services of facility ratios (forecast and actual) and utilization ratios (forecast and actual). Thus, since the absolute amount of plant and its efficient usage are called into question, as well as the proper distribution of plant (of whatever amount) between services, we invite comments concerning proper measures of utilization (fill) as well as of usage or distribution of plant between services.

Jurisdictional Separations

39. Another important factor which much be taken into account is the "separations" process. Much telephone plant (perhaps a third or more of the total) is used in common to provide both interstate and intrastate telephone services. It is this common plant which gives rise to special difficulties in separations, the process of allocating property, revenues, expenses, taxes and reserves between the interstate and intrastate jurisdictional classifications. These allocations are carried out in accordance with procedures set forth in the "Separations Manual." [25] Basically, the process involves the assignment or allocation of amounts appearing in the uniform system of accounts (costs of plant and other related items) to the two jurisdictional categories. The directly assignable amounts are handled with relative ease but the "common" items must be allocated in accordance with the principle of relative use. The separations manual is concerned to a large extent with the development of relative use factors to be applied in the allocative process.

40. It is important to recognize here that all allocations (where direct assignment is not possible) are made on a "relative use" basis. This is in contrast to the "cost causation" approach of FDC method 7 which has been prescribed by the Commission for allocating costs to each interstate service.[26] Thus in order to arrive at cost of service, two allocations must be made. First, costs must be allocated to the various services in accordance with FDC method 7 methodology, and second the interstate service costs must be determined through the separations procedures. The fact that the two allocations are accomplished by different mechanisms may lead to certain inconsistencies which will have to be accounted for in any revised USOA.

41. Since jurisdictional separations information is oriented toward current usage rather than causational allocative rules, we invite comments concerning accounting for separated plant within the cost of service facilities datum. Since records must be maintained so that such plant can be "fixed" by service, are our proposals adequate to accomplish such fixing? Further, do our proposals permit records be maintained so that separated but fixed plant can be subject to the reconciliation or waiver processes? We note that these processes may involve reassignment between services whenever a disparity between forecast and actual usage exists. Such disparities may involve events that can be forecast by the carrier (e.g., State and interstate traffic growth), or those that occur as a result of the actions of State commissions or exogeneous factors.

Functional Expense Accounts

42. The expense accounts presently prescribed in the USOA constitute a hybrid departmental-functional mixture. As a result of organizational changes which have occurred in the telephone industry since the USOA was promulgated, a lack of uniformity has arisen among telephone companies, even among companies within the same system, in the posting of amounts to accounts depending upon each company's organizational structure. Our proposed system of accounts contains functional expense accounts so that regardless of an individual company's current organizational structure or any subsequent changes, its posting of amounts to accounts shall remain constant between accounting periods. This should promote uniformity in accounting and improve the usefulness of the cost data reported to the Commission. For example, if maintenance expense and depreciation expense were recorded for narrowly defined types of plant, in geographic areas that are under the direct control of a line supervisor, proper investment and replacement decisions would be facilitated. If investment, depreciation reserve, and maintenance and depreciation expense were all collected in parallel classification structures, not only would cost attribution for rate making be facilitated, but so would cost attribution for management. We would then have to concern ourselves with revising prescribed expense accounts only as new functions arose or as existing functions were changed to reflect changing methods of providing telephone services. We invite comments on the use of this general approach

[24] *AT&T Private Line Services, supra* note 19, at par. 28.

[25] *See* Part 67 of the Commission's Rules and Regulations (47 CFR Part 67). A copy of the Separations Manual is set out in appendix C.

[26] *AT&T Private Line Services, supra* note 5 at 645-49.

and on the specific accounts we have proposed which are intended to implement this approach. Comments should specifically address both the types of functional accounts which should be included, as well as the level of detail which should be attempted. For purposes of regulation, management and analysis, the expenses of each operating company should be classified by function, but each functional category should, in turn, be divided between the various services.[27] The system can be visualized as a two-dimensional spread sheet with the functions being designated as row headings and the services as column headings. The amounts for each row are spread among the columns. Thus total expenses for a given service are found by totaling the amounts in the appropriate column. In order for the system to yield satisfactory results, the functional amounts, when they are incurred, must be "tagged" with the appropriate service label. A detailed discussion of this process is given in appendix F, which describes the basic expense record system. For the purpose of this document, we have generally used a linear layout to list expense accounts, except for maintenance expense where we gave an example of the spread sheet approach we prefer. We expect that the spread sheet approach would be ideal for most accounts, revenue, plant and expense. Therefore we request comments as to the accounts for which this approach is preferable and those for which it is not.

Depreciation Accounts

43. We propose, as part of the revised system of accounts, that depreciation records be kept for each subaccount at the level of the primary recordation of data: The wire center, the transmission span, and possibly the exchange or other administrative area (the primary recordation location.) In the course of dockets 16258 and 18128, much was said about depreciation. But such information is of very limited usefulness, since existing accounts and methods are not suitable for developing costs by service category. An example of the problems encountered is seen in the case of transmission plant. Users of television relay service (video program transmission service) alleged that they were being overcharged, since the carrier transmitted the signals over old, fully depreciated transmission facilities, but developed the rates under the assumption that the facilities were of average age. Although this argument seems to have some plausibility, it cannot be satisfactorily weighed and judged, for the required information does not exist. The reason is that under the present group plan of depreciation, there can be no such thing as fully depreciated plant. All plant of whatever age each year causes some depreciation expense and makes its contribution to an overall reserve. Some plant may be retired "underdepreciated" and some "overdepreciated," but on average, plant is precisely fully depreciated when retired, as ensured by the actuarial procedures employed. Such depreciation methods, while sufficient for purposes of determining a company-wide revenue requirement, do not meet the needs of a system intended to provide fully distributed costs for each service rendered. From the point of view of economic analysis, all methods of public utility depreciation except sinking funds and retirement reserve (which, strictly speaking, is not depreciation) result in the collection of too high a return in the early years of the life of the plant and too low a return in the later years. Such a differential should be reflected in the various returns among services, particularly in view of the fact that services using older plant will presumably have higher maintenance charges than services utilizing newer plant. The allocation of the depreciation reserve to primary accounting locations (wire center, transmission span and exchange or administrative area) will not require a high order of record keeping. Although the expense records and basic property records used in a causational service cost accounting system are so flexible that they could attribute cost to the individual retirement unit, and allocate it to service, we see little advantage in doing so. However, we are aware that some schools of thought among the carriers believe that functional accounting for plant will, in fact, require the maintenance of costs by retirement unit. We therefore set forth the following question as an item of inquiry: Does the retirement unit, as the entry into the basic property record serve a useful purpose in rate making? To the extent that the retirement unit will be of use for determining unit costs or for other purposes, we pose as another item of inquiry the following questions: Can any use be made of costs of retirement units if maintenance and depreciation expense and the depreciation reserve are not kept at the retirement unit level as well? What factors, if any, prevent the keeping of reserves and expenses by service, jurisdiction and time period?

Plant Under Construction (PUC) Property Held For Future Use (PHFFU) Facilities Available For Future Growth (FAFFG)

44. In our proposed revisions to the USOA, we have proposed accounts for both plant under construction (PUC) and property held for future use (PHFFU). As an initial step, we are proposing to establish separate accounts in each of these categories for plant intended to be placed in service within 1 year (allowable in the rate base) and plant not intended to be placed in service within 1 year (not allowable in the rate base). We will then require, as subaccounts of each, the same detail as required for plant in service. In addition, to maintain a datum (at least for certain interexchange plant) FAFFG and non-FAFFG elements might need to be broken out separately, assuming that FAFFG can be meaningfully distinguished from PHFFU, as discussed elsewhere. It also assumes that FAFFG can be measured in a precise way, since future capacity is uncertain because technology is changing. This will require definition of these elements and the relations of their dollar amounts to both forecast and actual use, definition of capacity, and of quantitative allocative factors. Those parties supporting the concept of identifying FAFFG should evaluate the viability of identifying the first cost elements of such plant, and be prepared to identify and recapture increments of capacity and related costs, as they are added or removed from plant in service.

More Detailed Breakdown of Certain Accounts

45. While we have endeavored to make our proposed revisions to the USOA as comprehensive and detailed as possible, we recognize that there are several areas where much more detail will be required. We have identified several of these areas in the plant accounts and our proposal respecting each of these accounts is indicated by an asterisk (*). In addition, we have indicated what we believe might be the appropriate type of breakdown required. We invite comments on the appropriate breakdown of each of the accounts for which further breakdown is indicated. In addition parties should feel free to suggest a further breakdown of any other accounts not specifically mentioned above, whether plant accounts or otherwise.

46. We believe the various accounts we have proposed are appropriate,

[27] A.T. & T. has been working for some years on a functional accounting system that is not intended to develop cost of service as a major output. We request A.T. & T. to present a breakdwon of all spending to date on the functional accounting system, by year, company, and purpose. We request, too, that A.T. & T. state what changes have been and will be necessary to cause their functional accounting system to develop cost of service for all tariffed services. We also request that A.T. & T. estimate all future expenditures necessary for its functional accounting system until it can be fully adopted in all companies. Finally, we request that A.T. & T. state what changes to its proposed system would be necessary as a result of the proposed new USOA.

when viewed from a purely logical point of view. However, because we are unfamiliar with the magnitude of the dollar amounts which will be recorded in each of the proposed accounts, it is possible that some of these accounts will show only nominal amounts, while some other accounts may be too grossly aggregated. It would be helpful if we could receive estimates as to dollar magnitudes of each of our proposed accounts. Therefore, we request each carrier filing comments herein, to submit an estimate of the dollar magnitude of each of our proposed accounts, for a representative telephone operating company. In addition, where any changes to our proposal are proposed, an estimate of the dollar magnitudes of each newly proposed account should be given. Furthermore, AT&T is additionally requested to submit such dollar magnitude estimates on a consolidated company-wide basis as well. In budget hearings before the Senate Appropriations Committee on May 8, 1978 the following dialog took place:

Senator. HOLLINGS. What do you project now * * *?

Mr. FERRIS. I would say it would be 1980, 1981 before we could get the full system developed * * *.

Senator. HOLLINGS. Three years before we can intelligently look at the problem? * * * Can't we do that before everybody's term expires?

Mr. FERRIS. I think we can do it in 12 months if we have the resources * * *.

Senator HOLLINGS. It seems like you could design a system within a three-month period and they could comply in the next fiscal year, then by the end of 1979 we could have an answer

Mr. FERRIS. I think we can if you will give us the resources * * *.

In view of the urgency expressed, we request comments on the following implementation schedule for our proposal, and any alternatives.

1. Revenue accounts—adopted and used as the basis for reports for the year in which the new system is adopted. (These are presently fully computerized.)

2. Expense accounts—adopted and used as the basis for reports beginning 1 year after the new system is adopted.

3. Plant accounts—adopted and used as the basis for reports beginning 2 years after the system is adopted.

4. Primary allocation records—adopted and used as the basis for reports at the same time as their associated accounts.

If respondents expect any difficulty in compliance with this schedule, they should state the problem, its causes, and propose an alternative schedule. If the difficulty is one of cost, respondents should provide a complete breakdown of the cost estimate (e.g., programming, retraining managers, retraining workers) for each major element of the system.

MATHTECH REPORT

47. Despite its reliance on FDC method 1,[28] we feel parties should comment on several of the more general aspects of the Mathtech report. To what degree should even the broadest engineering characteristics of provision of telecommunications services become an intrinsic part of the logic of the revised USOA? Mathtech, for example, ties its data base and accounting logic into the modern physical configuration of the telephone network (i.e., the use of station equipment, exchange circuit plant, switching facilities local and toll central offices), and interexchange circuit plant (between toll offices or between local and toll offices)).[29] How long would such logic apply: (1) When a company engages only in exchange distribution and short haul interchange operations, (2) when certain functions become "mixed" (e.g., when switching is provided on the customer's premises or when certain terminal functions are provided at the central office), (3) when technological advances alter the supply functions for telecommunications services (e.g., when new physical components are added or existing ones are deleted or merged), (4) when telephone carriers supply important services or products outside of telecommunications, or (5) when several parallel but distinct and incommensurate supply functions are used to provide telecommunications services? The ability to audit and the stability of an accounting system, as well as the costs and benefits or recurrent changes, are important considerations here. Further, the ability of those responsible for actually recording data and maintaining records to comprehend the system chosen must be taken into account.

48. Mathtech proposed that records of plant or expenses that can be directly attributed to services or groups of services should be segregated at their earliest point of incidence. Moreover, we have suggested that records for A.T. & T.'s DDS and DSDS services should be kept in a similar fashion.[30] However, as stated in paragraph 33, our DDS and DSDS order is based on what is possible with the present chart of accounts, amounting to little more than another unauditable special study, and is not a model for a new system of accounts.

USOA AND ECONOMIC DATA

49. At a Future Planning Conference on alternatives and improvements to rate of return regulation held at the Commission in July 1976, a number of the participants noted the unavailability of data necessary to perform essential economic research relevant to the telecommunications industry, public policies, and regulations. A typical comment is that of Roger Noll:

> Unfortunately, there is simply no empirical literature on the effects of regulation on costs, input choices and prices in telecommunications. Part of the problem is the difficulty researchers face in assembling data to estimate valid demand, cost and production relations, with only demand studies prominent in the literature. * * *[31]

50. As noted above, the major purpose of the current USOA was to yield revenue requirement information. However, the original purpose of the USOA and its subsidiary records is different from the uses to which many now wish to apply them. Today the Commission must answer questions other than those referring simply to the overall revenue requirement of the firm. We face a myriad of issues. For example, our inquiry into the economic effects of competition (docket No. 20003)[32] sought answers to a number of questions such as the existence of economies of scale, directions and levels of subsidies and the effects of competition on the separations process. Examination of each of these issues involved considerable research. But thorough, definitive research in many of these issues was hindered for a lack of data to perform proper studies. As an example, a key argument of the established carriers was the existence of economies of scale. If such economies exist, it is argued that diversion of traffic from the established carriers causes potentially lower unit costs to be foregone. Economies of scale may be measured through econometric estimation of production or cost functions. This involves definition of output (production) measures and the accumulation of data concerning productive inputs (e.g., capital and labor). However, the records of the Commission do not contain a definition nor recordation of units of outputs which can encompass the total

[28] Revisions to the USOA suggested by Mathtech were made when the Commission had before it the recommended decision of the Common Carrier Bureau in docket 18128, which suggested that the Commission adopt the current or relative use allocative principles of FDC method 1, and thus Mathtech oriented its report toward such an allocative approach.

[29] Our proposal generally follows the same approach.

[30] AT&T Dataphone Digital Service, FCC 77-393 (released June 17, 1977), at pars. 6-8.

[31] Noll, Roger G., "Empirical Studies of Utility Regulation", *Rate of Return Regulation*, proceedings of the Federal Communications Commission's Future Planning Conference, July 12 and 13, 1976, p. 18. Similar sentiments were expressed by other participants, including Carson E. Agnew, Robert Crandall and Lawrence Darby.

[32] *Customer Interconnection*, 61 FCC 2d 766 (1976).

activity of the firms under the purview of our regulation.

51. The existence of such data, its uses and the results which researchers discover are not merely academic. Questions of entry, pricing and industry structure are before us constantly. Few decisions are made which have no discernible economic impact. It is to the advantage of the Commission and the firms it regulates to have the fullest spectrum of information and research which can practically be made available.

52. It is apparent that certain types of basic information are essential in the production of economic studies and must be incorporated into the USOA and its supporting primary allocation records to the fullest extent possible. In addition to definitions and records of units of outputs, the system should include data on prices (rate schedules) input quantities (labor, materials and supplies) and input costs. Historical costs per unit of output should be determined for total outputs of each service periodically. A continuing record of the embedded cost of debt should be maintained, as well as the proceeds, discounts and premiums of equity issues. Sufficient data should also be retained to determine direct and indirect costs by service category, where such costs are understood to conform to the economic definitions (as closely as possible). Finally, information appropriate to the development of incremental costs for each service and each operating company as a whole should also be maintained.

53. Other useful information would entail better identification of final (e.g., call attempts) and intermediate outputs (e.g., installations). Information on network functions (e.g., switching and transmission) by technology, as well as identification of costs as fixed or variable and common or dedicated, may find wide application. Other improvements could be made in the reporting of toll and local costs, costs by state or separations study area and the value of purchases from affiliates and non-affiliates further broken down by materials and services and suppliers' profits (for affiliated companies or subsidiaries). Finally, depreciation, retirement and salvage data, referred to proper accounts could be provided in more detail.

54. The costs of providing certain of the above data would undoubtedly be very high if special studies had to be utilized as their source. However, since we are considering a comprehensive change in the system of accounts, it appears that it would be feasible to set up a means of supplying such information on a regular basis at a reasonable cost. In designing revisions and changes to the USOA, we wish to consider all significant uses of the data. Such an approach will yield better information and make future empirical studies of telecommunications more rigorous and relevant to policy formulation. The ability to quantify and analyze the relevant production, cost and demand relationships will aid the Commission by providing a continuous, factual economic basis for decisionmaking.

55. As we have stated, to the extent reasonably feasible, we wish to revise the USOA and its supplemental records in a manner which would yield a data base which would facilitate economic research and analysis. We invite comments from economists and members of related disciplines concerning what data can usefully be gathered through the USOA and its supplemental records. Those individuals or groups who have performed telecommunications-related economic research are encouraged to recount the problems which they have encountered in executing their studies. Descriptions of specific data which was unavailable and the format in which pertinent information could be reported are desirable. We expect that some suggestions may be accomplished with simple format changes while others may necessitate substantive changes in reporting requirements. We seek comments as to whether such information can be gathered at a cost commensurate with the expected benefits. We also invite comments as to revisions of the USOA which would facilitate decisionmaking by the carriers, such as changes permitting functional cost comparisons. It has been claimed that the presently used accounting system provides hidden incentives for the firm to make uneconomic decisions. We invite comments on this point and seek suggestions as to how the USOA can be changed so as to provide incentives which improve carrier efficiency and the quality of regulatory and managerial decisions.

Reporting Requirements

56. A further limitation of the USOA for analytical purposes is its design as a paper accounting system rather than a computerized one. Much of the information that is needed by the Commission is either not contained in the accounting records or extremely difficult to retrieve therefrom. Furthermore, reports and data based on the USOA are often difficult to utilize effectively because they are not in a computer readable form. Thus, the redesign of the accounts around the capabilities of the computers used to keep the actual records will enable the Commission to lower the burden of the cost of reporting while it will enhance the uses to which we can put the reports. Further, the capabilities of the computer are such that the Commission could readily receive occasional or special reports at negligible expense to the carriers provided the capacity to generate such reports were inherent in the accounting system. Therefore, any proposed changes should be geared toward a computerized data base USOA.

57. We invite comments on what reporting requirements we should establish once the basic USOA revisions are accomplished. Specifically, parties should address the question of what types of reports should be required of the carriers on an annual basis and what types should be required on a monthly or other basis. In formulating their proposals, parties should address the reporting requirements in terms of both financial and nonfinancial information. At a minimum, we would expect each carrier to submit a complete report containing every financial account and all required nonfinancial information (including primary allocation records) at least once a year. Certain summary reports containing less detail could be filed on a more frequent basis. For purposes of auditing and making analyses of carrier performance, we propose that a detailed computer tape of specified information be submitted annually. The basic report would contain the financial accounts and primary allocation records for each point of primary recordation of data. (See paragraph 43 and appendix E.) As appropriate, data would be submitted for wire centers, transmission spans, exchanges, administrative areas or total companies (the so-called "primary recordation locations"). It is anticipated that at each level some costs and revenues would be directly assignable to services, while others would ultimately have to be allocated. Such assignments and allocations would be performed according to procedures specified in parts 31 and 43 of the Commission's rules, the details to be developed at a later date in this inquiry. Included in such reports would, of course, be such basic items as the annual balance sheet and income statement from which overall performance is assessed, as well as other reports having a lesser degree of aggregation, such as would be required for reporting costs of individual services. We invite comment on these proposals and on the question of how computerization would affect the ability to generate more detailed reports on a regular basis. Finally, we invite comments on what types of special (as opposed to regular periodic) reports the system should be designed to generate.

Auditability and Accounting Issues

58. A fundamental requirement of any regulatory accounting system is that it be auditable. This requirement

is manifested in sections 213(e)—(f) and 220(c)-(d) of the Communications Act, sections which give the accounting entries (e.g. a right to inspect and examine "all accounts, records and memoranda, including all documents, papers and correspondence * * * kept or required to be kept by * * * carriers"). The procedures by which data is recorded should be clear, so that it is possible to trace the amounts in any account back to source and other supporting documents. We believe that our proposed revisions will readily facilitate audits, for we have created a direct link between the economic event (expenditure or receipt) and the final recordation in an account. We have further strengthened this relationship by defining "cost centers" (usually wire centers and transmission spans) as the loci of much primary accounting data, and this will ease the task of the auditor in ascertaining the basis of recorded accounts. We also believe that the details of the expense record and specific estimating systems for recording data enhance the auditor's capabilities, and promote the auditor's role in verifying the proper assignment of economic events to accounts. Nevertheless, we invite comment on additional structural safeguards which should be built into a revised USOA to further enhance auditing and entry verification in this age of computer-maintained accounts.

59. Our proposal accounts for only some station connection costs. The treatment of other station connection investment or expense awaits our determination in RM-3017, A.T. & T.'s proposal to change some accounting. New and amended rules may also be required because of the changed operating environment resulting from the equipment registration program. Among the specific accounting items that need attention and for which we invite comment are:

(1) Accounting for gains and losses on the sale of terminal equipment both new and in-place; (2) accounting for the sale of inside wiring; (3) accounting for the removal of company telephones from customers' premises when customers provide their own equipment; (4) accounting for the repair of customer provided equipment; (5) determination of the cost of equipment to be sold and the repair charges to be imposed—direct costs and overheads; (6) whether these operations will be conducted under tariff; (7) whether operating or nonoperating accounting treatment of gains and losses on these transactions is appropriate.

We also invite comments on accounting to insure that gains and losses on property sold from or previously included in a rate base account shall accrue to the ratepayers.[33] Several differences exist between Part 31 as written and as proposed to be revised, and so-called generally accepted accounting principles. We solicit comments on these differences as an item of inquiry. Two of the more significant items concern accounting for investments in affiliated companies (cost basis versus equity basis of investment) and accounting for financing type leases (expensing versus capitalization of lease costs).

Impact on Carriers-Generally

60. As noted, the existing system of accounts has remained largely unchanged since its promulgation in 1913 and no longer meets the needs of management or of regulation. Our proposed revision would necessitate advancing in the system of accounts from methods of manual posting and ledger entry to those of the high speed digital computer. When a new system reflecting 65 years of accounting progress is set side-by-side with the old one, the changeover may appear burdensome. That a major accounting system updating is necessary, we have no doubt. Indeed, we are aware that Bell is attempting to implement a vast internal system-wide functional accounting system which requires revisions to existing management information and data systems and retraining of workers.[34] With these factors in mind, we have been conscious of administrative and economic costs. For example, we believe the proposals on plant accounting and expense records should necessitate but minimal retraining of rank and file employees, and even of managers. Most of the detail that must be recorded and assignments or allocations that must be made will be done within the computer by correlating various types of information that presently exist but do not now enter the system.

Impact on Small Carriers; Needs of State Commissions

61. At present, telephone companies subject to this Commission's accounting rules which have annual operating revenues exceeding $250,000 ("class A telephone companies") are required to keep all of the accounts prescribed in part 31 of our rules which are applicable to their affairs. Companies which have annual operating revenues between $100,000 and $250,000 ("class B telephone companies") may keep certain condensed accounts for operating revenues and operating expenses. We are aware that the changes we are proposing are extensive and that concern may exist among many of the smaller independent telephone companies as to how they can reasonably meet our new requirements. Further, to the extent that State regulatory agencies routinely adopt our accounting rules as their own, intrastate companies not directly subject to our jurisdiction may be affected. However, we are also alware that for settlement purposes many independent telephone companies already are maintaining, in considerable detail, cost data of the type discussed in this notice. While we would prefer to have the same accounting and reporting rules for all carriers directly subject to our jurisdiction, we recognize the possibility that we might adopt less stringent or detailed requirements for some smaller telephone companies.

62. In view of the level of detail needed to determine service-related costs, and the burdens this may occasion on smaller regulated firms which do not currently use data processing-based accounting, we invite comments concerning the degree of accounting uniformity we should require among companies that will be subject to the provisions of the revised USOA. Should the Commission only exercise its authority to prescribe accounts for larger telephone companies such as class A carriers? How should we define "larger" carriers for this purpose, e.g., in terms of revenues or assets, and at what levels? It might be expected, for example, that such carriers would act as price leaders for the industry, and thus extend new regulatory standards to the remainder of the industry indirectly through market pressures. Should our rules require the use of uniform data storage or retrieval mechanisms of any particular type or function (e.g., specific data processing techniques) absent a showing of undue burden to a particular carrier? Should the same level of detail in supplemental records or subaccounts be required of all reporting carriers? Clearly, these questions go beyond a mechanistic assessment of the regulatory role of accounting systems, and must be addressed in the context of the soicio-political and legal environment in which the Commission operates. We request comments on a specific proposal that the new system of accounts apply only to carriers with over $1,000,000 in operating revenues. What questions will we be unable to answer if we do not apply these accounts to all class A carriers? What changes for other class A and B carriers are needed for compatability with this system if it is adopted only for the largest carriers, as proposed?

63. Finally, in view of the pattern whereby many State commissions currently prescribe the use of the FCC's accounting system for those companies under their jurisdiction, we invite comments concerning the needs and desires of State commissions which might be satisfied in the rules which we finally adopt herein.

[33] AT&T Rate case (Phase II Final Recession) 64 FCC 2d at par. 175, (1977).

[34] See note 27 supra.

64. Accordingly, *it is hereby ordered*, Pursuant to sections 4(i), 4(j), 213, 220 and 403 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i)-(j), 213, 220 and 403, that rulemaking is hereby instituted in the above-captioned matter.

65. *It is further ordered*, Pursuant to section 220(i) of the Communications Act, 47 U.S.C. § 220(i), that notice be given to each State commission of the above rulemaking proceeding, and that the Secretary shall serve a copy of this notice on each State commission.

66. *It is further ordered*, That interested parties may file comments on the issues, objectives and proposed requirements discussed herein no later than September 15, 1978, and that replies to such comments may be filed no later than November 1, 1978. In accordance with the provision of § 1.419 of the Commission's rules (47 CFR § 1.419), an original and seven copies of all statements, briefs or comments shall be furnished the Commission. All comments received in response to this notice will be available for public inspection in the docket reference room in the Commission's Offices in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

NOTE.—Appendix A "Chart of Accounts for uniform system of accounts for class A and B telephone companies", Appendix B "Fully distributed cost implementation manual" and Appendix C "Separations manual" (February 1978) have been deleted: A copy is available from the FCC Secretary, Room 222, 1919 M Street NW., Washington, D. C. 20554.

APPENDIX D

PROPOSED REVISED UNIFORM SYSTEM OF ACCOUNTS

REVENUE ACCOUNTS[1/]

(Asterisk denotes further breakdown will be required - see main text and other appendices).

I. Interstate Revenues

A. Message Telecommunications Service

1. Direct Dialed
   (a) Weekday Rate
      Residential
      Business
      Government

   (b) Evening Rate
      Residential
      Business
      Government

   (c) Night and Weekend Rate
      Residential
      Business
      Government

2. Operator Assisted
   (a) Person to Person
      1) Weekday Rate
         Residential
         Business
         Government
         Public Telephone

      2) Evening Rate
         Residential
         Business
         Government
         Public Telephone

      3) Night and Weekend Rate
         Residential
         Business
         Government
         Public Telephone

   (b) Station to Station
      1) Weekday Rate
         Residential
         Business
         Public Telephone

      2) Evening Rate
         Residential
         Business
         Government
         Public Telephone

      3) Night and Weekend Rate
         Residential
         Business
         Government
         Public Telephone

B. Wide Area Telecommunications Services*
   1. Outward WATS
      Business
      Government
      other

   2. Inward WATS
      Business
      Government
      Other

   3. Other WATS Revenues (Toll Calling Plan)

* At such time as "just and reasonable rates" are submitted for WATS, we expect to expand WATS revenue reporting catagories to include for example a breakdown of revenues by tariffed rate band, flat charges, usage charges, and equipment charges as well as by class of user. Due to the uncertainty of when these new rates will go into effect, we have not proposed a detailed set of accounts based on the current structure of WATS.

C. Private Line Services[2/]
   1. Less Than Voice Grade Services
      Interexchange Channels
      Intraexchange Channels

1/ New services, like transaction telephone (if allowed) would require the creation of new revenue accounts. Major service revisions, like Multi-schedule Private Line, would require the creation of new accounts for each rate element, pending FCC determination of appropriate treatment. Such accounts would be temporary, and would not require prior Commission permission. For each such account established, a primary allocation record would also be established.

Each account will consist of two numbers-the amount for the company's own collection from its customers, and the positive or negative amount of its net receipts from or payments to others by way of settlements and division of revenues. Although settlements are not presently attributed to individual services, the commission's need for rate of return calculations by individual service and rate element forces us to make such attribution.

2/ Terminal equipment charges would be sub- accounts for the types of terminal equipment listed in the station equipment plant accounts.

Channel Arrangements
Station Terminations
Central Office Equipment
Terminal Equipment*
recurring
non-recurring) for all above

2. Voice Grade Service-other than data:
Interexchange Channels
Intraexchange Channels
Channel Arrangements
Station Terminations
Central Office Equipment
Terminal Equipment*
recurring
non-recurring) for all above

3. Data Transmission Service
Line Conditioning
Interexchange Channels
Intraexchange Channels
Channel Arrangements
Station Terminations
Central Office Equipment
Terminal Equipment*
recurring
non-recurring) for all above

4. Facsimile Transmissions
Interexchange Channels
Intraexchange Channels
Channel Arrangements
Service Terminals*
recurring
non-recurring) for all above

5. Program Transmission - Audio
Occasional (Part-time Use)
Interexchange Channel
Station Connections
Local Channel
recurring
non-recurring) for all above

6. Program Transmission-Video
Part-time
Interexchange Channels
Station Connections
Local Channels
recurring
non-recurring) for all above

Full-time
Interexchange Channels
Station Connections
Local Channels
recurring
non-recurring) for all above

Local
Full time
Part time
recurring
non-recurring) for all above

7. Wideband
Interexchange Channels
Service Terminals*
Switching Arrangements
Terminal Equipment*
recurring
non-recurring) for all above

8. Entrance Facilities
9. Bulk Offerings (to be further broken down)
recurring
non-recurring) for these two (# 8 & 9)

10. Digital Dataphone Service

A. Channels Between Digital Cities
1. 2.4 kilobits per second (kbps)
a) Fixed Charges
b) Distance Sensitive Charges

2. 4.8 kbps
a) Fixed Charges
b) Distance Sensitive Charges

3. 9.6 kbps
a) Fixed Charges
b) Distance Sensitive Charges

4. 56 kbps
a) Fixed Charges
b) Distance Sensitive Charges

5. 1.544 Megabits Per Second
a) Fixed Charges
b) Distance Sensitive Charges

B. Data Access Lines Charges
1) Type 1
a) 2.4 kbps
i) non-recurring
ii) monthly

b) 4.8 kbps
i) non-recurring
ii) monthly

c) 9.6 kbps
i) non-recurring
ii) monthly

d) 56 kbps
i) non-recurring
ii) monthly

2) Type 2
a) 2.4 kbps
i) non-recurring
ii) monthly
fixed
distance sensitive

b) 4.8 kbps
i) non-recurring
ii) monthly
fixed
distance sensitive

c) 9.6 kbps
i) non-recurring
ii) monthly
fixed
distance sensitive

d) 56 kbps
i) non-recurring
ii) monthly
fixed
distance sensitive

3) Type 3
a) non-recurring
b) monthly
i) fixed
ii) distance sensitive

C. Data Service Unit Charges (by speeds)
1) non-recurring
2) monthly

D. Other Charges (includes maintenance of service, design charge, multi station arrangement, moves of equipment, etc.)*

E. Station Equipment Charges*
1) non-recurring
2) monthly

11. Other Common Carrier (facilities tariffs)

D. Other Toll Service Revenues

E. Uncollectables
1. MTS
Residential
Business
Other

2. WATS
Inwats
Outwats

3. Private Line Service (by service, as above)

II. International Revenues

A. Message Telecommunications Service
Residential
Business
Government
Public Telephone

B. WATS
Virgin Islands Hawaii
Puerto Rico Alaska

C. Private Line Overseas Channels and Equipment
Land haul segment
Station equipment*
recurring
non-recurring

Station connections*
recurring
non-recurring

Intra exchange channels
recurring
non-recurring

Inter exchange channels
recurring
non-recurring

Overseas segment
recurring
non-recurring

D. Other International Revenues*

E. International Uncollectables
MTS

Residential
Business
Government

WATS
Private Line

III. Intrastate Revenues

A. Local Service Revenues
1. Residence
a) Single Party
i) Service Charges
Monthly
Flat rate service
Metered Service
Flat rate charges
Usage charges (messages)
Non-Recurring
ii) Terminal Equipment Charges*[3/]
iii) Special Features
recurring
non-recurring

b) Multi Party
i) Service Charges
Monthly
Flat rate charges
Usage charges (messages)
Non-Recurring

[3/] See footnote above on terminal equipment charges.

ii) Terminal Equipment Charges*
Monthly
Non-Recurring
iii) Special Features
recurring
non-recurring

2. Business
(a) Service charges
i) Monthly MTS
Flat rate service
Metered service
Flat rate charges
Usage charges (messages)
Non-Recurring
(b) Terminal Equipment Charges *
i) Monthly
(sub accounted for all classes of terminal equipment in the plant accounts)
ii) Non-Recurring* (as above)
(c) Special Features
recurring
non-recurring

3. Government (same as business)

4. Public Telephone

5. Directory Assistance Charges

A. Residence originated
B. Business originated

6. Data Phone 50*
Monthly charges
Non-Recurring Charges

7. Picture phone*
Monthly charges
Non-Recurring Charges

8. Other (semi public telephones, service stations, etc.)*

B. Extended area service

recurring charges
residence
business
government
non-recurring charges
residence
business
government

C. Message Telecommunications Service
(same as interstate MTS)

D. Wide Area Telecommunications Service
(same as interstate WATS)

E. Private Line Services
(same as interstate PLS, with obvious deletions, such as television)

F. Uncollectables (further subaccounts by specific services as above)
Residential Subscriber (local service)
Business Subscriber (local service)
Other Subscriber (local service)
WATS Subscribers
Inwats
Outwats
Message Telecommunications Service
Residential
Business
Other
Private Line Services

III. Miscellaneous Revenues (operating and nonoperating)
Telegraph Commissions
Telegraph
Cable
Radio
Earth Station Revenues (by service)
Directory Associated Revenues
Special Listings
business
residence
government
Local white pages advertising
Local yellow pages advertising
Sales of directories
Lease of street address directories
NYPS advertising
NYPS selling company commissions
other directory revenues

Rent Revenues
Space in Buildings
operating
non-operating
Pole Line space for attachments
CATV
Elective Utility
other operating
other nonoperating
other rent revenues

Revenues from General Services and Licenses
by subsidiary or associated company

Revenues from Licenses to others (by project class)
Other Operating Revenues
Advertising reveneus - non-directory
Unclaimed refunds and overcharges for telephone services
Flat amounts charged other
Miscellaneous other operating revenues
Other non-operating revenues

Uncollectable Miscellaneous Revenues
operating
non-operating

PLANT IN SERVICE, DEPRECIATION (AMORTIZATION) RESERVE, DEPRECIATION (AMORTIZATION) EXPENSE [1/]

(Asterisk denotes further subaccounts will be needed - see the main text and other appendices).

I. Intangible Assets

A. Organization

B. Franchises
federal
state

C. Patent Rights*

II. Land (cost and undepreciable improvements)

A. Earth Stations
1. Domestic
2. International
3. Combined

B. Terrestrial Microwave Systems
1. Domestic
2. International
3. Combined

C. Swithching Equipment
1. Domestic
a. Toll
b. Local
c. Other
2. International
3. Combined

D. Right-of-way
1. Domestic
2. International
3. Combined

E. General Office
1. Domestic
2. International
3. Combined

F. Parking lots and roadways*
1. Roadways*
2. Parking lots

G. Common

H. Other*

III. Buildings

A. Earth Stations
1. Domestic
2. International
3. Combined

B. Terrestrial Microwave Systems
1. Domestic
2. International
3. Combined

[1/] Except for undepreciable land, each individual plant account will also require a depreciation (or amortization) reserve account and an individual depreciation (or amortization) expense account. In the interest of avoiding unnecessary duplication, these have not been separately stated in the present draft. These accounts will also exist in full detail as subaccounts of plant under construction and property held for future use, for all classes of plant for which PUC and PHFFU treatment are prescribed.

Each plant account will contain three values: material cost, direct installation labor, and indirect labor and other loadings. The total gross plant in the account will be the sum of these three values.

The accounts listed here, including "other" would be exclusive. New types of equipment would be recorded in new, temporary accounts, pending Commission determination of treatment. Establishment of each temporary account would involve establishment of a Primary Allocation Record as well.

The establishment of temporary revenue accounts for "new" or "changed" services would require, automatically, temporary plant accounts and Primary Allocation Records as well.

C. Switching Equipment
1. Domestic
a. Local
b. Toll
c. Other
2. International
3. Combined

D. General Office
1. Domestic
2. International
3. Combined

E. Microwave Towers and Antenna Support Structures

F. Common

G. Depreciable improvements on land*
1. Roadways*
2. Parking lots*

H. Other*

IV. Station Apparatus

A. Telephones
1. Push Button
2. Rotary Dial
3. Decorator Push Button
4. Decorator Rotary Dial

B. Key Telephone Systems*
1. Key Telephones Up to Six Buttons
a. Push Button
b. Rotary Dial
2. Key Telephones More Than Six Buttons
a. Push Button
b. Rotary Dial
3. Common Equipment

C. Private Branch Exchanges (PBX)*
1. Small
2. Medium
3. Large

D. Private Automatic Branch Exchanges (PABX)*
1. Small
2. Medium
3. Large

E. Centrex-Central Office (CO)*
1. Electromechanical
2. Electronic

F. Centrex-Customer Premises (CU)*
1. Electromechanical
2. Electronic

G. Automatic Call Distributor
1. Electromechanical
2. Electronic

H. Data Modems & Terminals*
1. Modems (Digital/Analog and Analog/Digital Subscriber Interface)
2. CRT Terminals
3. Teletype
4. Telegraph
5. Digital Subscriber Interface
6. Remote Computer Terminals

I. Answering Machines

J. Automatic Dialers

K. Conferencing Bridges

L. Speakerphones
1. Rotary Dial
2. Push Button

M. Conversation Recorders

N. Visual Telephones (Picturephones)

O. Miscellaneous Telephone Accessories*

P. Coin Telephones
1. Telephones
a. Operator Control
b. Automated Control
2. Booths

Q. Radio Telephones
1. Cellular-Domestic Public Land Mobile Radio Systems (DPLMRS)
2. Non Cllular-Domestic Public Land Mobile Radio Systems (DPLMRS)
3. Marine Mobile
4. Rural
5. Airborne
6. One-Way Signalling

V. Station Connections

A. Drop Wire*

B. House Cables
1. Single line - prewired
2. Single line - Non-prewired
3. Multiline - Extrasystem wiring
4. Multiline - Intrasystem wiring
5. Voice jacks*
6. Data jacks*

C. Radio Telephones
1. Cellular - Domestic Public Land Mobile Radio Systems (DPLMRS)
2. Non-cellular - (DPLMRS)
3. Marine Mobile
4. Rural
5. Air Borne
6. One way signalling (Paging)

D. Coin Telephones
1. Public
2. Semi-Public

E. Visual Telephones (Picturephones®)

VI. Local Loop-Outside Plant

A. Feeder Cable
1. Metallic Containing Shielded Pairs
a. Underground
b. Buried
c. Submarine
d. Aerial
2. Metallic Without Shielded Pairs
a. Underground
b. Buried
c. Submarine
d. Aerial
3. Fiber Optics
a. Underground
b. Buried
c. Submarine
d. Aerial

B. Distribution Wire and Cable
1. Metallic Shielded Pairs
a. Underground
b. Buried
c. Submarine
d. Aerial
2. Metallic Without Shielded Pairs
a. Underground
b. Buried
c. Submarine
d. Aerial Cable
e. Open Wire
3. Fiber Optics
a. Underground
b. Buried
c. Submarine
d. Aerial

Note: Includes Loading Coils, Pedestals, etc.

VII. Non-Radio Transmission Systems

A. Multipair-Other Than Subscriber Cable
1. Interlocal-Other Than Toll*
2. Toll-Interstate*
3. Toll-Other*
4. Common*

B. Coaxial Cable
1. Interlocal-Other Than Toll*
2. Toll-Interstate*
3. Toll-Other*
4. Common*

C. Waveguide
1. Interlocal-Other Than Toll*
2. Toll-Interstate*
3. Toll-Other*
4. Common*

D. Fiber Optics
1. Interlocal-Other Than Toll*
2. Toll-Interstate*
3. Toll-Other*
4. Common*

E. Repeaters for Multipair
1. Interlocal-Other Than Toll*
2. Toll-Interstate*
3. Toll-Other*
4. Common
a. affiliated supplier manufactured) for all above
b. other)

VIII. Microwave Radio Systems

A. 2 GHZ-Analog Transmitters and Receivers*
1. affiliated supplier manufactured
2. other

B. 4 GHZ-Analog Transmitters and Receivers*
1. 0-600 Equivalent Voice Grade Channel Capacity
a. affiliated supplier
b. other
2. 601-1200 Equivalent Voice Grade Channel Capacity*
a. affiliated supplier
b. other

3. 1201-2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
4. Over 2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other

C. 6 GHZ-Analog Transmitters and Receivers*
1. 0-600 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
2. 601-1200 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
3. 1201-2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
4. Over 2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other

D. 11 GHZ-Analog Transmitters and Receivers*
1. 0-600 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
2. 601-1200 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
3. 1201-2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
4. Over 2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other

E. Over 11 GHZ-Analog Transmitters and Receivers*
1. 0-600 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
2. 601-1200 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
3. 1201-2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
4. Over 2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other

F. 2 GHZ-Digital Transmitters and Receivers*
1. affiliated supplier manufactured
2. other

G. 4 GHZ-Digital Transmitters and Receivers*
1. 0-600 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
2. 601-1200 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
3. 1201-2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
4. Over 2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other

H. 6 GHZ-Digital Transmitters and Receivers*
1. 0-600 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
2. 601-1200 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
3. 1201-2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
4. Over 2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other

I. 11 GHZ-Digital Transmitters and Receivers*
1. 0-600 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
2. 601-1200 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
3. 1201-2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
4. Over 2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other

J. Over 11 GHZ-Digital Transmitters and Receivers*
1. 0-600 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
2. 601-1200 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other

3. 1201-2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other
4. Over 2400 Equivalent Voice Grade Channel Capacity*
   a. affiliated supplier manufactured
   b. other

K. FM Terminals and IF Patch Bays*
   a. manufactured by affiliated supplier
   b. other

L. Amplifiers*
   a. manufactured by affiliated supplier
   b. other

M. Antennas*
   a. maunfactured by affiliated supplier
   b. other

N. Control and Protection Apparatus
   1. Protective Switch
   2. Other

IX. Miscellaneous Radio Service Equipment

A. High Frequency (HF)

B. Medium & High Frequency Ship to Shore (Single Side Band)

C. Very High Frequency (VHF) Ship to Shore (FM)

D. Air-Ground Radio

E. Land Mobile Non-Cellular

F. Land Mobile Cellular*
   1. Transceivers and Amplifiers*
   2. Antennas*
   3. Boards and Operatory Position*
   4. Patch Equipment to Land Line Network*
   5. Special Switching Equipment*
   6. Traffic Measuring and Billing Equipment*

X. Satellite - Transmission Systems

A. Domestic Satellite Systems
   1. Satellite
      a. Transponders
      b. Other*
   2. Launching Costs
   3. Earth Station Equipment
      a. Antennas
      b. Amplifiers
      c. Transmitters and Recievers
      d. Tracking, Telemetry and Control
      e. Power Equipment Associated With Individual Bays
      f. Other*
   4. Customer Premise Earth Station
   5. Transportable Earth Stations
   6. Other*

B. International Satellite Systems
   1. Earth Stations
      a. Antennas
      b. Amplifiers
      c. Transmitters and Recievers
      d. Tracking, Telemetry and Control
      e. Power Equipment Associated With Individual Bays
      f. Other*
   2. Customer Premise Earth Stations
   3. Transportable Earth Stations

XI. Multiplexing Equipment

A. Analog Multiplexing Equipment
   1. Channel Banks*
      a. affiliated supplier manufactured
      b. other
   2. Other Channel Group Terminal Equipment
      a. affiliated supplier manufactured
      b. other
   3. Supergroup Terminal Equipment
      a. affiliated supplier manufactured
      b. other
   4. Mastergroup Terminal Equipment
      a. affiliated supplier manufactured
      b. other
   5. Channel Group Connecting Equipment
      a. affiliated supplier manufactured
      b. other
   6. Supergroup Connecting Equipment
      a. affiliated supplier manufactured
      b. other
   7. Mastergroup Connecting Equipment
      a. affiliated supplier manufactured
      b. other
   8. Testing Equipment
      a. affiliated supplier manufactured
      b. other

9. High Frequency Line Terminating Equipment*
   a. affiliated supplier manufactured
   b. other
10. High Frequency Line Connecting Equipment*
   a. affiliated supplier manufactured
   b. other
11. Other Multiplex
   a. N Carrier
   b. K Carrier
   c. O Carrier
   d. Other Carrier*
   affiliated supplier manufactured) for all above
   other manufacturer ,)
12. Group Distributing Frames
   a. affiliated supplier manufactured
   b. other
13. Supergroup Distributing Frames
   a. affiliated supplier manufactured
   b. other
14. Mastergroup Distributing Frames
   a. affiliated supplier manufactured
   b. other
15. Bays and Frame Work
   a. affiliated supplier manufactured
   b. other manufacturer

B. Digital Multiplexing Equipment
   1. Channel Banks
   2. Digroup Terminal Equipment (DS-1)
   3. Super Digroup Terminal Equipment (DS-2)
   4. Master Digroup Terminal Equipment (DSX-3)
   5. Digital Cross Connect Equipment
      a. DSX-0
      b. DSX-1
      c. DSX-2
   6. Testing Equipment
   7. Bays and Framework
   8. Digroup Distribution Frame
   9. Superdigroup Distribution Frame
   10. Masterdigroup Distribution Frame
   11. Other

C. Analog/Digital Converters
   1. Analog to Digital*
   2. Digital to Analog*
   affiliated supplier manufactured) for all above
   other)

D. Time Assignment Speech Interpolation (TASI)
   1. Domestic
   2. International
   affiliated supplier manufactured) for all above
   other)

XII. Switching Equipment

A. Local Switching Equipment
   1. Electromechanical Common Control (CC)*
   2. Electromechnical-non-CC*
   3. Electronic Analog Mode of Transmission*
   4. Electronic Digital Mode of Transmission*
   5. Peripheral Equipment and/or Special Equipment*

B. Interlocal and Tandem Switching Equipment
   1. Electromechnical*
   2. Electronic-Analog Mode Transmission*
   3. Electronic-Digital Mode Transmission*
   4. Peripheral Equipment and/or Special Equipment*

C. Toll Switching Equipment
   1. Electromechanical*
   2. Electronic- Analog Mode of Transmission*
   3. Electronic Digital Mode of Transmission*
   4. Peripheral Equipment and /or Special Equipment*

D. International Switching Equipment
   1. Electromechanical*
   2. Electronic-Analog Mode of Transmission*
   3. Electronic-Digital Mode of Transmission*
   4. Peripheral Equipment and/or Special Equipment*

E. Manual Boards
   1. Intercept*
   2. Toll Cordboards*
   3. Traffic Service Position System (TSPS)*
   4. Traffic Service Position (TSP)*
   5. Directory Inquiry/Information-Local*
   6. Directory Inquiry/Information-Toll*

F. Data Switching Equipment*

G. Private Line Tandem Switching Equipment

H. Line Concentrators
   1. Electromechnical*
   2. Electronic*
   3. Data*
   4. Common*

I. Generic Programs
   1. Basic POTS Service*
   2. Basic Features*
   3. Optional Features*
   4. Common*

Next level of subaccounts A-C & E
- a. equipment specific to WATS
- b. equipment specific to centrex
- c. equipment specific to specific calling features
- d. other equipment

Further level subaccounts for A-E
- a. equipment sensitive to number of subscribers
- b. equipment sensitive to outward attempts
- c. equipment sensitive to holding time (Erlangs or Bits)
- d. equipment sensitive to inward attempts
- e. non traffic sensitive equipment

Still further level subaccounts for all
- 1. affiliated manufacturer
- 2. other

XIII. Other Circuit Equipment

A. Analog Circuit Equipment

1. Local Loop
   - a. Voice Grade-Private Line
   - b. Voice Grade-Message Telephone Service (MTS) and WATS
   - c. Voice Grade-Unspecified
   - d. Telegraph
   - e. Wideband
   - f. Picturephone
   - g. Digital Data Service (DDS)
   - h. Digital Switched Data Service (DSDS)
   - i. Data Other*
   - j. T.V.
   - k. Broadcast Radio
   - l. Other*
     - 1. affiliated supplier manufactured) for all above
     - 2. other)

2. Interlocal -Other Than Toll
   - a. Voice Grade-Private Line
   - b. Voice Grade-MTS/WATS
   - c. Voice Grade-Unspecified
   - d. Telegraph
   - e. Wideband
   - f. Picturephone
   - g. Data (DDS)
   - h. Data (DSDS)
   - i. Data Other*
   - j. Other*
     - 1. affiliated supplier manufactured) for all above
     - 2. other)

3. Toll-Interstate
   - a. Voice Grade-Private Line
   - b. Voice Grade-MTS/WATS
   - c. Voice Grade-Unspecified
   - d. Telegraph
   - e. Wideband
   - f. Picturephone
   - g. Data (DDS)
   - h. Data (DSDS)
   - i. Data Other*
   - j. T.V.
   - k. Broadcast radio
   - l. Other*
     - 1. affiliated supplier manufacturer) for all above
     - 2. other)

4. Toll-Intrastate
   - a. Voice Grade-Private Line
   - b. Voice Grade-MTS/WATS
   - c. Voice Grade-Unspecified
   - d. Telegraph
   - e. Wideband
   - f. Picturephone
   - g. Data(DDS)
   - h. Data (DSDS)
   - i. Data Other*
   - j. Other*
     - 1. affiliated supplier manufacturer) for all above
     - 2. other)

5. Common
   - a. Voice Grade-Private Line
   - b. Voice Grade-MTS/WATS
   - c. Voice Grade-Unspecified
   - d. Telegraph
   - e. Wideband
   - f. Picturephone
   - g. Data (DDS)
   - h. Data (DSDS)
   - i. Data Other*
   - j. T.V.
   - k. Broadcast Radio
   - l. Other*
     - 1. affiliated supplier manufactured) for all above
     - 2. other)

6. Fungible
   a. Back to Back Circuit Equipment
   b. Other*
      1) affiliated supplier manufactured) for all above
      2) other)

B. Digital Circuit Equipment

1. Local Loop
   a. Voice Grade-Private Line
   b. Voice Grade-MTS/WATSA
   c. Voice Grade-Unspecified
   d. Telegraph
   e. Wideband
   f. Picturephone
   g. Data (DDS)
   h. Data (DSDS)
   i. Data Other*
   j. T.V.
   k. Broadcast Radio
   l. Other*
      1. affiliated supplier manufacturer) for all above
      2. other)

2. Interlocal-Other Than Toll
   a. Voice Grade Private Line
   b. Voice Grade-MTS/WATS
   c. Voice Grade-Unspecified
   d. Telegraph
   e. Wideband
   f. Picturephone
   g. Data Under Voice (DUV)
   h. Other*
      1. affiliated supplier manufacturer) for all above
      2. other)

3. Toll-Interstate
   a. Voice Grade Private Line
   b. Voice Grade-MTS/WATS
   c. Voice Grade-Unspecified
   d. Telegraph
   e. Wideband
   f. Picturephone
   g. Data Under Voice (DUV)
   h. T.V.
   i. Broadcast Radio
   j. Other*
      1. affiliated supplier manufacturer) for all above
      2. other)

4. Toll-Intrastate
   a. Voice Grade Private Line
   b. Voice Grade-MTS/WATS
   c. Voice Grade-Unspecified
   d. Telegraph
   e. Wideband
   f. Picturephone
   g. Data Under Voice (DUV)
   h. Other*
      1. affiliated supplier manufactured) for all above
      2. other)

5. Common
   a. Voice Grade Private Line
   b. Voice Grade-MTS/WATS
   c. Voice Grade-Unspecified
   d. Telegraph
   e. Wideband
   f. Picturephone
   g. Data (DUV)
   h. T.V.
   i. Broadcast Radio
   j. Other*
      1. affiliated supplier manufactured) for all above
      2. other)

6. Fungible
   a. Back To Back Circuit
   b. Other*
      1. affiliated supplier manufactured) for all above
      2. other)

XIV. Power Generating and Distributing Equipment

A. Microwave Location
   a. affiliated supplier manufactured) for all above
   b. other)

B. Cable Repeater Location
   a. affiliated supplier manufactured) for all above
   b. other)

C. Overseas Cable Landings
   a. affiliated supplier manufactured) for all above
   b. other)

D. Domestic Satellite Earth Station
   a. affiliated supplier manufactured) for all above
   b. other)

E. International Satellite Earth Station
   a. affiliated supplier manufactured) for all above
   b. other)

F. Wire Center Facilities
1. 48 Volt Supplies and Batteries
2. 130 Volt Supplies and Batteries
3. Control Equipment and Alarms
4. Emergency Power
5. Other Voltage Supplies and Batteries*
6. Power for Electronic Switches
a. affiliated supplier manufactured) for all above
b. other)

G. Other Discrete Facilities
1. 48 Volt Supplies and Batteries
2. 130 Volt Supplies and Batteries
3. Control Equipment and Alarms
4. Emergency Power
5. Other Voltage Supplies and Batteries*
6. Power for Electronic Switches
a. affiliated supplier manufactured) for all above
b. other)

XV. Wire Center Common Equipment

A. Common Channel Interoffice Signalling (CCIS)
1. Electromechanical
a. Circuit Terminal Equipment*
b. Signalling Equipment*
c. Other Equipment*
1. affiliated supplier manufactured) for all above
2. other)
2. Electronic
a. Circuit Terminal Equipment*
b. Signalling Equipment*
c. Other Equipment*
1. affiliated supplier manufactured) for all above
2. other)

B. Main Distribution Frame
1. affiliated supplier manufactured) for all above
2. other)

C. Test Equipment & Boards
1. Local*
2. Toll*
3. Common*
a. analog)
b. digital) for all above
c. combined)
1. affiliated supplier manufactured) for all above
2. other)

D. Service Observation Boards
1. Local*
2. Toll*
3. Common*
a. analog)
b. digital) for all above
c. combined)
1. affiliated supplier manufactured) for all above
2. other)

E. Traffic Measuring Equipment
1. Local*
2. Toll*
3. Common*
a. analog)
b. digital) for all above
c. combined)
1. affiliated supplier manufactured) for all above
2. other)

F. Message Accounting Equipment
1. Local Automatic Message Accounting (LAMA)*
2. Centralized Automatic Message Accounting (CAMA) (Without Automatic Numbering Information (ANI))*
3. Centralized Automatic Message Accounting (With Automatic Numbering Information)
4. Digital Automatic Message Accounting (DAMA)*
5. WATS Timers & Synchronizers*
a. affiliated supplier manufactured) for all above
b. other

G. Other (Note: Ladders, Lights, Alarms)*
a. affiliated supplier manufactured) for all above
b. other)

XVI. Furniture and Office Equipment
A. Computers & Data Processing Equipment
a. Centralized
1. general purpose
2. special purpose*
a. affiliated supplier manufactured) for all above
b. other)
b. Decentralized
1. general purpose
2. special purpose*
a. affiliated supplier manufactured) for all above
b. other)

B. Computer Terminals
1. affiliated supplier manufactured
2. other

C. Furniture and Office Equipment
1. affiliated supplier manufactured
2. other

D. Billing Equipment
   1. Local*
   2. Toll*
   3. Combined*
      a. affiliated supplier manufactured) for all above
      b. other)

E. Other*
      a. affiliated supplier manufactured) for all above
      b. other)

XVII. Vehicles and Other Work Equipment

A. Passenger Cars

B. Service Vehicles*

C. Heavy Trucks

D. Specialized Vehicles*

E. Aircraft

F. Tools & Workshop Equipment*

G. Other*

XVIII. CATV Cable & Equipment*
(To follow the CATV equipment accounts)

EXPENSE ACCOUNTS 1/

Maintenance Expense 2/

I. Maintenance in Response to Service Orders Customer Initiated Contact

assignment to equipment-follows plant accounts 4/	assignment to service-follows revenue accounts 3/
	Tabular Array 5/

1/ All expense accounts will consist of 2 elements: (a) direct expenditures, (b) indirect and cleared expenditures, including overheads.

2/ All maintenance expenditures will be booked by causative element (service order, complaint, etc.) and simultaneously by service and plant elements.

3/ Assignment to service, from the expense record, will be booked according to the service being provided. The information will be provided to the plant department by the commercial, marketing or business office, on the service order form, which is the basis of the Expense Record.

4/ Plant information will be entered on the Expense Record by the plant department based on plant items maintained on each service order. Capitalized expenditures will be booked to individual plant accounts on the expense record, and not by a gross subtraction with no causative attribution.

5/ The number of accounts in the cross classification or tabular array cannot be found by simply multiplying the rows and columns, since some combinations (such as private line transmission service, and switching plant) do not exist. The summations of these elements, whether by rows, columns or other arrangement will be reports and will be addressed at a later date.

II. Maintenance in Response to Service Orders-Company Initiated Contact [6/]

assignment to equipment-follows plant accounts	asssigment to service follows revenue accounts
	Tabular Array

6/ See footnotes 2 thru 5 above.

III. Maintenance in Response to Customer Complaints [7/]

assignment to equipment -follows plant accounts	assignment to service follows revenue accounts[8/]
	Tabular Array

7/ See footnotes 2 thru 5 above.

8/ Assignment to service will be on the basis of the customer's complaint and will be supplied to the plant department by the office receiving the complaint, and thereby initiating The Expense Record. In the event that multiple complaints are received, the expense allocation will be to the expense record generated by the first such complaint.

IV. Maintenance Expense Incurred in Connection with Company Initiated 9/ Non-routine 10/ Maintenance Programs 11/

assignment to equipment follows-Plant accounts	assignment to service-follows revenue accounts 12/
Tabular Array	

9/ For maintenance to be company initiated the company must have become aware of the need for it, through alarm systems or other means, before receipt of customer complaints.

10/ Non-routine and unscheduled maintenance in response to alarms on other observations of abnormal conditions, except not as a result of abnormal conditions observed as part of a regularly scheduled program of inspection which would ordinarily locate such abnormal conditions.

11/ See footnotes 2 thru 5 above.

12/ Conditions that affect only some services or groups of services, or that are first observed in connection with particular services will be so assigned. Other conditions will be assigned to plant only.

V. Maintenance Expense Incurred in Connection with Company Initiated 13/ Routine 14/ Maintenance Programs 15/

assignment to equipment follows plant accounts	assignment to service-follows revenue accounts 16/
Tabular Array	

13/ See footnote 9.

14/ See footnote 10. Regularly scheduled maintenance and repair programs, and special maintenance and repair programs (other than those in response to widespread customer complaint) will be booked.

15/ See footnotes 2 thru 5 above.

16/ See footnote 12.

VI. Assignment, Repair Service and Testing 17/

A. Local Loop
   1. Trunk and Circuit Assignment
      a. basic
      b. complex
   2. Analysis and Repair Service
   3. Testing

B. Interlocal-Other than Toll
   1. Trunk and Circuit Assignment
   2. Analysis and Repair Service
   3. Testing

C. Toll-Interstate
   1. Trunk and Circuit Assignment
   2. Analysis and Repair Service
   3. Testing

D. Toll-Other
   1. Trunk and Circuit Assignment
   2. Analysis and Repair
   3. Testing

E. International
   1. Trunk and Circuit Assignment
   2. Analysis and Repair
   3. Testing

F. Private and Special Service Circuit
   1. Assignment
   2. Analysis
   3. Testing - (by service)*

17/ Administration only. Direct costs will be billed directly to equipment and service maintenance accounts I. to V., by the Expense Record.

OTHER EXPENSE ACCOUNTS 18/

(* denotes further subaccounts will be needed)

I. Personnel Expenses

A. Employment
B. Development and Training
C. Labor and Management Relations
D. EEOC
E. Other

II. Employee Benefits Expense and Clearance 19/

A. Medical Care
B. Pensions
C. Death Benefits
D. Sickness and Accident Benefits
E. Retired Employee Benefits
F. Other

III. Public Relations and Advertising 20/

A. Community Relations

   1. Community Affairs/Contributions/Subscriptions/ Non-club Memberships 21/
   2. Club Membership 22/
   3. Other

B. Information

   1. Employee
   2. Customer
   3. Other

18/ See maintenance expense footnote 1/ above.

19/ These accounts will have as further subaccounts the department and other locations to which they are cleared. Only those expenditure that are not further cleared (such as retired employee expense) will be considered as expenses and so recorded; the rest will be considered clearance. Each subaccount will be designated, by name and coding as expense or clearance.

20/ Public Relations and advertising will not have, as further levels of subaccounts, allocations to individual services and rate elements. This will be done in the primary allocation record, using, expense records for each project kept in accordance with the goals of the project.

21/ Each of these will be a separate subaccount.

22/ Memberships in organizations that provide eating, drinking, sports, or other entertainment facilities will be separately designated as "club memberships."

C. Advertising

1. Corporate
   a. Newspapers and Periodicals
   b. Booklets, Pamphlets and Bill Inserts
   c. Displays, Exhibits, Posters and Placards
   d. Motion Pictures
   e. Radio
   f. Television

2. Informational
   a. Newspapers and Periodicals
   b. Booklets, Pamphlets and Bill Inserts
   c. Displays, Exhibits, Posters and Placards
   d. Motion Pictures
   e. Radio
   f. Television

3. Sales Promotion-Long Distance
   a. International
      (1) Newspapers and Periodicals
      (2) Booklets, Pamphlets and Bill Inserts
      (3) Displays, Exhibits, Posters and Placards
      (4) Motion Pictures
      (5) Radio
      (6) Television

   b. MTS
      (1) Interstate
         (a) Newspapers and Periodicals
         (b) Booklets, Pamphlets and Bill Inserts
         (c) Displays, Exhibits, Posters and Placards
         (d) Motion Pictures
         (e) Radio
         (f) Television

      (2) Intrastate
         (a) Newspapers and Periodicals
         (b) Booklets, Pamphlets and Bill Inserts
         (c) Displays, Exhibits, Posters and Placards
         (d) Motion Pictures
         (e) Radio
         (f) Television

   c. WATS
      (1) In WATS
         (a) Interstate
            i. Newspapers and Periodicals
            ii. Booklets, Pamphlets and Bill Inserts
            iii. Displays, Exhibits, Posters and Placards
            iv. Motion Pictures
            v. Radio
            vi. Television

         (b) Intrastate
            i. Newspapers and Periodicals
            ii. Booklets, Pamphlets and Bill Inserts
            iii. Displays, Exhibits, Posters and Placards
            iv. Motion Pictures
            v. Radio
            vi. Television

      (2) Out WATS
         (a) Interstate
            i. Newspapers and Periodicals
            ii. Booklets, Pamphlets and Bill Inserts
            iii. Displays, Exhibits, Posters and Placards
            iv. Motion Pictures
            v. Radio
            vi. Television

         (b) Intrastate
            i. Newspapers and Periodicals
            ii. Booklets, Pamphlets and Bill Inserts
            iii. Displays, Exhibits, Posters and Placards
            iv. Motion Pictures
            v. Radio
            vi. Television

   d. Private Line
      (1) Interstate
         (a) Newspapers and Periodicals
         (b) Booklets, Pamphlets and Bill Inserts
         (c) Displays, Exhibits, Posters and Placards
         (d) Motion Pictures
         (e) Radio
         (f) Television

      (2) Intrastate
         (a) Newspapers and Periodicals
         (b) Booklets, Pamphlets and Bill Inserts
         (c) Displays, Exhibits, Posters and Placards
         (d) Motion Pictures
         (e) Radio
         (f) Television

4. Sales Promotion Exchange Services
   a. Newspapers and Periodicals
   b. Booklets, Pamphlets and Bill Inserts
   c. Displays, Exhibits, Posters and Placards
   d. Motion Pictures
   e. Radio

f. Television

5. Sales Promotions - Terminal Equipment

a. Newspapers and Periodicals
b. Booklets, Pamphlets and Bill Inserts
c. Displays, Exhibits, Posters and Placards
d. Motion Pictures
e. Radio
f. Television

IV. Rate Development, Tariff Development and Service Costs 23/

A. Intrastate

1. Exchange Services
a. Development and Filing 23/
b. Service Cost Studies 23/
c. Tariff Administration 23/
d. Dockets and Other Formal Hearings
(1) Rate Cases 23/*
(2) Non-Rate Cases *

2. Interexchange Services
a. Development and Filing 23/
b. Service Cost Studies 23/
c. Tariff Administration 23/
d. Dockets and Other Formal Hearings
(1) Rate Cases 23/*
(2) Non-Rate Cases *

B. Interstate Services
1. Development and Filing 23/
2. Service Cost Studies 23/
3. Tariff Administration 23/
4. Dockets and Other Formal Hearings
a. Rate Cases 23/*
b. Non-Rate Cases *

V. Business, Regulatory and Government Relations

A. Corporate Planning and Modeling *
B. Business Relations
1. Connecting Company Relations
a. Telephone Companies (domestic) *
b. Other Common Carriers
(1) Radio Common Carriers
(2) Domestic Satellite
(3) International Record Carrier
(4) International Satellite Carrier
(5) Foreign Administations and Telephone
(6) Misc. Common Carrier
(7) Specialized Common Carrier
(a) intrastate
(b) interstate
(8) CATV
(9) Value Added Carriers
(a) intrastate
(b) interstate
(c) foreign

2. Other Businesses
a. Supplies
b. Customers
c. Station
d. Equipment Supplies
e. Other

C. Governmental Matters other than Rate and Tariff Matters

1. Federal
a. Regulatory Reports
b. Government Liaison/Legislative Matters *
c. Other *

2. State
a. Regulatory Reports
b. Government Liaison/Legislative Matters *
c. Other *

D. Antitrust Suits *
E. Defense Services

VI. Marketing and Sales Expense

A. Sales Development (further subaccounts by service follow the revenue accounts)
B. Market Management (further subaccounts by service follow the revenue accounts)
C. Market Research (further subaccounts by service follow the revenue accounts)
D. Products (further subaccounts by service follow the revenue accounts)

23/ These expenditures will have further sub-accounts by rate element.

VII. Corporate Secretary and Financial Matters

A. Corporate Secretary Matters
B. Financial Matters

1. Financial Planning and Analysis
2. Corporate Cash Management
   a. Banking Operations
   b. Investments
   c. Receipts and Disbursements 24/

      (1) Customer Related
      (2) Other * 25/
   d. Cashier Services
3. Pension Fund Management
4. Security Owner Relations
   a. Stockholders
   b. Bondholders
5. Collection of Bad Debts (by Service)

VIII. Accounting and Corporation Studies 26/

A. Depreciation Studies * 27/
B. Valuation Studies * 27/
C. Division of Revenues and Jurisdictional Separations
   1. Expense Studies 28/
   2. Investment Studies 27/
   3. Revenue Studies * 29/
   4. Network Usage Studies
   5. Toll Settlement Studies Intrastate
   6. Toll Settlement Studies Interstate
   7. Toll Settlement Studies Combined
   8. International Settlements Studies

D. General and Corporate Accounting *
   1. Account Classification 30/
   2. Reports Analysis 30/
   3. Budgetary 30/
   4. Taxes
   5. Functional Accounting 30/
   6. Other *

24/ By type of customer and receipt or disbursement.
25/ By type of transaction.
26/ Actual expenditures.
27/ By plant account.
28/ By expense account
29/ By service.
30/ By acount for settlements and division of revenues. Auditing will be descussed in a later order.

IX. Security Services
A. Centralized Ticket Investigation

1. Local
2. Toll

   a. Intrastate
   b. Interstate
   c. International

3. Private Line
   a. Intrastate
   b. Interstate

B. Coin Security
C. Physical Plant Security *
   1. Buildings (by type)
   2. Inter office transmission facilities (by type) *
   3. Toll transmission facilities (by type) *
   4. Local loop (by type) *
   5. Station Equipment (by type) *

D. General Security (by type) *

X. Business Office, Marketing and Sales Administration and Overhead 31/
A. Products (follow the station equipment revenue accounts)
B. Services (follow the other revenue accounts)

31/ Direct expenses and supervision will be assigned to other accounts using the Expense Record system. This account will contain only those expenses not attributable to a particular case or group of cases.

XI. Operator Services

A. Toll Operating Services
1. Cord Board
a. Operator's Costs (by service)
b. Clerical*
c. Supervisory & Assistance*
2. Traffic Service Positions
a. Operators' Costs (by service)
b. Clerical*
c. Supervisory & Assistance*
3. Traffic Service Positions Systems
a. Operators' Costs (by service)
b. Clerical*
c. Supervisory & Assistance
4. Centrelized Messsge Accounting Systems
a. Operators' Costs (by service)
b. Clerical*
c. Supervisory & Assistance*

B. Directory Assistance
1. Local Directory Assistance
a. Operators' Costs (by service)
b. Clerical*
c. Supervisory & Assistance*
2. Toll Directory Assistance
a. Operators' Costs (by service)
b. Clerical*
c. Supervisory & Assistance*
3. In WATS Directory Assistance
a. Operators' Costs*
b. Clerical*
c. Supervisory & Assistance*

C. Intercepting
1. Operators' Costs*
2. Clerical*
3. Supervisory & Assistance*

D. Customer Name and Address
1. Operator's Costs*
2. Clerical*
3. Supervisory and Assistance*

E. Attended Coin Stations
1. Operator Costs*
2. Clerical*
3. Supervisory & Assistance*

XII. Business Office Services 32/*

A. Business*
B. Residence
C. Coin
1. Public Telephone Commissions (by service)
2. Other Coin Telephone Collection Expense
3. Coin Telephone Selling Expense
D. Company Official Service

XIII. Directory Sales and Publishing Services

A. Local
1. White Pages
a. advertising sales expense
b. publishing expense
2. Yellow Pages
a. advertising sales expense
b. publishing expense

B. National
1. White Pages
a. advertising sales expense
b. publishing expense
2. Yellow Pages
a. Advertising sales expense
b. publishing expense

XIV. Insurance Expense
A. Property* (by plant account)
B. Motor Vehicle (by plant account)
C. Other* (by type)

XV. Accidents and Damages*
A. Property (by plant account)
B. Motor vehicle* (by plant account)
C. Other & (by type)

XVI. Operating Rent Expense
(will follow the plant accounts)

XVII. General Services and Licenses 33/

A. Personnel Expenses

32/ These accounts will contain only expenses not attributed to marketing, sales, or accounting by the expense records. Expense associated with customer contact will be found elsewhere.

33/ Most of these expenses will be recorded elsewhere, and this account is largely informational. All the below will show detail by individual projects. Each account will show direct expense, indirect expense, amount billed to others, amount billed to company by others, net amount not and recorded in other accounts.

B. Employee Benefits
C. Public Relations and Advertising
D. Rate Development/Tariff Development/Service Costs
E. Business/Regulatory/Government Relations
F. Marketing and Sales Expense
G. Corporate Secretary and Financial Matters
H. Data Processing
I. Accounting and Corporate Studies
J. Security Services
K. General Administrative Services
L. Business Services
M. Operator Services
N. Business Office Services
O. Directory Sales/Publishing Services
P. Engineering
Q. Other

XVIII. Telephone Franchise Requirements - Dr.

XIX. Telephone Franchise Requirement - Cr.

XX. Business Information Systems Expense (by system)

XXI. Membership Fees and Dues[34/]

A. Associations of Telephone Companies
B. Trade, Technical and Professional Associations

XXII. Research and Development Expenses[35/]
(further subaccounts will follow the revenue accounts)

XXIII. Administrative and Overhead Engineering Expense [36/]

A. Land & Buildings
1. Planning
2. Design Implementation
3. Real Estate
B. Central Office Facilities
1. Planning
2. Capacity Design
a. Public Switched Network
b. Private Line
3. Design Implementation
a. Public Switched Network
b. Private Line
c. Other
C. Interoffice Transmission Facilities
1. Planning
2. Capacity and Transmission Design
a. Traffic Measurement
b. Trunk Forecasting and Engineering
c. Facilities Engineering and Routing
3. Design Implementation-Outside Plant
D. Access Line Transmission Facilities
1. Planning
2. Design Implementation-Outside Plant
E. Toll Completion Transmission Facilities
1. Planning
2. Design Implementation-Outside Plant
F. Customer Facilities
1. Planning
a. Building Industry
b. Customer Systems
2. Capacity Design - Customer Switching Systems
3. Design Implementation - Customer Systems
G. General Engineering Services
1. Construction Budgeting
2. Inventory Management
a. Circuit Terminating Equipment
b. Multiplex Equipment
c. Transmission Equipment
d. Switching Equipment

XXIV. Data Processing Expense[37/]

A. Data Systems-Programming and Design
1. Customer Data Processing Services
2. Employee Data Processing Services
3. Corporate Accounting and General Data Processing
4. Operator Services
5. Engineering Services and Network Services

34/ Membership fees of employees are recorded elsewhere.

35/ Separate amounts in each subaccount will be recorded for direct expense, indirect expense, amounts billed others, amounts billed to others.

36/ This account includes only those amounts not charged to expense or capital by expense records or projects. It is not a clearing account, since these are normally unneeded in the system we propose.

37/ This account will show direct expense, indirect expense, and expense charged to other accounts. Most of the net amount in this account will be administration. Expenses will be changed directly to other accounts by the Expense Record; this is not a clearing account, although it records amounts cleared by the Expense Records.

6. Facilities Services
7. Sales and Marketing Services
8. Directory Services
9. Corporate Secretary and Financial Services
10. Business Office Services
11. Coin Services
12. Other Services*

B. Data Systems-Operations
1. Customer Data Processing
a. Centralized Message Data Services Operations
b. Accounts Operations
c. Message Operations
d. Service and Equipment Operations
e. Other*
2. Employee Data Processing
3. Corporate Accounting and General Data Processing
a. Investment and Cost
b. Division of Revenues and Independent Company Settlements
c. Other*
4. Centralized Mail Remittance
5. Other*

XXV. General Administrative and Supportive Services - Administration and Overhead[38]/

A. Conference, Travel, Audiovisual, Photography
B. Food and Lounge Service
C. Furniture and Office Interior Arrangements
D. Mail and Distribution
E. Office Supplies
F. Reprographics
G. Records Systems
H. Secretarial, Typing and Other Office Duties
I. Communications
J. Coordination/Consultation
K. Personnel Administration
L. Methods Practices and Procedures
M. Administrative Planning
N. Results
O. Service Evaluation
P. Administration of Support Services
Q. Education and Training

IV. Executive Administration[39]/

38/ Includes only amounts not charged elsewhere.

39/ Includes only amounts not charged elsewhere.

OTHER ACCOUNTS

Balance Sheet Accounts

I. Investments
A. Telephone plant under construction 40/
1. To be completed in 1 year or less
2. To be completed in more than 1 year
B. Property held for future use40/
1. To be used in 1 year or less
2. To be used in more than 1 year
C. Telephone plant acquisition adjustment40/
D. Telephone plant adjustment40/
E. Investment in affiliated companies
1. Common stock
2. Preferred stock
3. Long-term debt
F. Advances to Affiliated companies
G. Other investments
1. Stocks
2. Long-term debt
3. Investment advances
4. Cash depositis for more than 1 year
H. Miscellaneous physical property
I. Sinking funds
(listed separately for each obligation)
J. Company securities owned
1. Stock
A. Par Stock
i. Unpledged
a. Number of shares
b. Total book amount
ii. Pledged
a. Number of shares
b. Total book amount
B. Non-Par Stock
i. Unpledged
a. Number of shares
b. Book amount assigned
ii. Pledged
a. Number of shares
b. Book amount assigned
2. Long-Term Debt
A. Total face amount unpledged
B. Total face amount pledged

40/ These will have, as further subaccounts, all tangible plant accounts except as noted. See above, and also appendix E.

II. Current Assets
- A. Cash
- B. Special cash deposits
- C. Working funds
- D. Temporary cash investments
- E. Notes receivable from affiliated companies
- F. Other notes receivable
- G. Due from customers* (by service)
- H. Due from agents
- I. Accounts receivable from affiliated companies
- J. Other accounts receivable
- K. Interest and dividends receivable
- L. Materials and supplies
- M. Other current assets

III. Other Assets
- A. Subscriptions to capital stocks
- B. Funded debt subscribed

IV. Prepaid Accounts
- A. Rents*
- B. Taxes
- C. Insurance
- D. Directory Expenses
- E. Other*

V. Deferred Charges
- A. Discount on capital stock
- B. Capital stock expense
- C. Discount on long-term debt
- D. Provident funds
- E. Insurance and other funds(by plant accounts)*
- F. Extraordinary maintenance and retirements (by plant accounts)*
- G. Other*

VI. Stock
- A. Capital stock
- B. Stock lisbility for conversion
- C. Premium on capital stock
- D. Capital stock subscribed
- E. Installments paid on capital stock

VII. Long-Term Debt
- A. Funded debt
- B. Receivers' certificates
- C. Advances from affiliated companies
- D. Other

VIII. Current Lisbilities
- A. Notes payable to affiliated companies
- B. Other notes payable
- C. Accounts apyable to affiliated companies
- D. Other accounts payable
- E. Customers deposits
- F. Matured interest and dividends
- G. Matured long-term debt
- H. Advance billing and payments
- I. Other

IX. Accrued Liabilities Not Due
- A. Taxes
- B. Unmatured interest, dividends and rents

X. Deferred Credits and Reserves
- A. Premium on long-term debt
- B. Insurance reserve
- C. Amortization reserve
- D. Provident reserve
- E. Other deferred credits
- F. Accumulated deferred income taxes
  1. Accelerated tax depreciation-separately stated for each plant account
  2. Other tax timing differences - separately stated for each plant account
- G. Unamortized
- H. Other capital

XI. Retained Earnings
- A. Reserved (Listed separately for each reserve created)
- B. Unappropriated - Net
  1. Balance transferred from income accounts
  2. Miscellaneous credits to retained earnings
  3. Miscellaneous debits to retained earnings
  4. Dividends declared

Income Statement Accounts

I. Operating Income
- A. Rent from lease of operating property*
  1. to affiliated telephone companies (by plant account)
  2. to other telephone companies (by plant account)
  3. to telegraph carriers (by plant account)
  4. to specialized common carriers (by plant account)
  5. to value added carriers (by plant account)
  6. to others (by plant account)
- B. Rent for lease of operating property* (subaccounts as above)

II. Non-operating Income
- A. Divident
- B. Interest
- C. Income from sinking and other funds
- D. Income from miscellaneous physical property
- E. Income credits resulting from prior deferrals of Federal income taxes
  1. Accelerated Depreciation (by plant account)
  2. Other
- F. Miscellaneous income

Appendix E

Primary Allocation Records

Revenues and Traffic Items

I. Interstate Services

A. MTS and WATS Information to be Maintained: Number of messages, attempts and Erlangs or bits for each class of customer (business, residence or public, by origin of call), by rate step, mileage band and other tariff element. This information should be maintained monthly by wire center. The number of circuits also should be kept on a monthly basis by primary recordation location.

B. Private Line Information to be Maintained: Number of individual customers by class; number of channels, arrangements, and so on for each private line service and tariff element. This information should be maintained monthly by primary recordation location.

II. Intrastate Services

A. Local and Extended Area Services Information to be Maintained: Number of messages, attempts and Erlangs or bits, plus other chargeable elements, by customer class, rate class, rate step and other tariff element. This information should be maintained monthly by wire center. The number of circuits also should be on a monthly basis by primary recordation locations.

B. MTS, WATS and Private Line Services Information to be Maintained: For these services the same types of information as required for the comparable interstate services should be maintained.

III. Miscellaneous Revenues

This information is also to be maintained monthly by primary recordation location. The items include the number of countable events, by service, for telegraph concessions, earth station revenues, directory associated revenues, and rent revenues. Also, to be recorded are revenues from general services and licenses to subsidiary or associated companies or other entities, maintained by service, facility and equipment oriented project class.

III. Taxes - Operating
- A. Federal income (by service)
- B. State income (by service)
- C. Local income (by service)
- D. Federal income taxes deferred
  1. accelerated tax depreciation (by plant account)
  2. other (by service)
- E. Other (stated separately)

IV. Miscellaneous deductions from income
- A. Miscellaneous income charges
- B. Federal Income taxes - non-operating
- C. State Income taxes - non-operating
- D. Local Income taxes - non-operating
- D. Other non-operating taxes

V. Fixed charges
- A. Interest on funded debt
- B. Other interest deductions
- C. Amortization of discount on long-term debt - Cr.
- D. Release of premium on Long Term Debt - Cr.
- E. Other fixed charges

VI. Extraordinary and delayed items
- A. Extraordinary income credits
- B. Extraordinary income charges
- C. Delayed income credits
- D. Delayed income charges
- E. Income tax effect of extraordinary and delayed items - Net

Plant and Other Property

I. Treatment of Property in General

A. Intangibles and Associated Amortization

Information is to be maintained monthly by primary recordation location. Value of patent rights is to be assigned to relevant services, facilities and equipment oriented project classes (see revenues). Both end of month data and accruals during the month are to be maintained.

B. Tangibles

Three classes of use information are to be kept in primary allocation records by primary recordation location. They are: Original (as projected at the time of acquisition), current projected (current updated causational allocation), and current actual. The same information is to be kept in the augmented continuing property record (CPR) by parcel or use unit.

Capacity information will be recorded as of the date of acquisition, the date of the allocation measure used, and the most recent month. The first of these will never change under normal circumstances. The second will change only by Commission order. The third will represent current potential use and will change with greater or lesser frequency depending upon the type of plant.

In-service use information will be recorded at the date of placement into service, the most recent allocation date, and the most recent month. Plant once in the Plant Under Construction (PUC) account will retain, when it becomes Telephone Plant In Service (PIS), the in-service use allocation it bore as PUC. The in-service use allocation data as approved by the Commission, and the current information, will be carried in the same way for all Plant in-Service. Plant in the Property Held for Future Use (PHFFU) account will have as "in-service" use the services for which it is intended to be used, and will retain this use classification permanently, once it becomes part of Plant in Service (PIS), as in-service use allocation on the in-service date.

The allocation of PUC, PHFFU and plant entering PIS directly, based on forecast or projected use, is discussed elsewhere. The rules for such forecasts or projections, including methods and standards, will be defined in Part 31 of the Commission's Rules and be the subject of an Order subsequent to this Notice.

All plant information will be recorded by primary recordation location. The primary allocation records and the plant accounts will be summations of the information contained in the augmented continuing property and plant location records for the retirement units at each primary recordation location. We are presently inclined toward the position that depreciation information need be recorded only for each primary recordation location, but not for the individual retirement units thereat, but we are aware that the views of some carriers on the service cost problem involve computing costs at the retirement unit level. If such an approach were necessary, it follows that depreciation reserves and expense would have to be similarly recorded.

Information on capitalized interest during construction would be retained in the augmented continuing property record, so that the accounts could be readily reconstructed for State or other purposes on alternative bases.

II. Land

Capacity Measure will be in terms of square meters. (cubic meters for equipment rooms). Potential buildable capacity should be recorded for each building type permitted by zoning (at purchase date and subsequent changes separately) and antenna height restrictions.

Use measures will be in terms of square meters by building type (cubic meters for equipment rooms). Parking lots and roadways will have current use recorded to employee parking, customer and visitor parking, and company vehicle parking, with further allocation to employee parking by department and company vehicle parking by type of vehicle.

III. Buildings

Capacity measure will be in terms of square meters by current type. Rooms useable for equipment (unusual ceiling heights or floor strengths, etc.) will be denoted as potentially useful for such purposes, even if such use is not projected. Building space having potential use for expansion but limited by such elements as wall and foundation strengths, building and zoning codes shall be recorded in square meters by potential types of use (or in cubic meters where equipment placement is a potential use.)

Use measures will be in terms of actual square (or cubic, as appropriate) meters devoted to each type of use. For equipment rooms, square and cubic meters shall be recorded by types of equipment with the allocation of the equipment noted. For maintenance, square and cubic meters shall be recorded by types of maintenance done (man-hours and dollar cost of maintenance done therein, as the maintenance is allocated). For general office space and "telephone stores", etc., the use would be recorded in square meters by department, with a further recording of man hours and expenditures by service for those departments.

IV. Station Apparatus

It is not contemplated that PUC accounts would be established for this class of plant. However, PHFFU might be necessary for some types of PBX or Centrex equipment, as well as some specialized equipment.

Capacity measure for Centrex and PBX equipment would be determined as discussed below for central office switches. Essentially, incoming trunks or lines, outgoing trunks or lines, extension lines and various traffic measures such as attempts, messages and Erlangs per hour would be recorded. Special service capabilities would also be recorded. Trunk, extension and other limitations would be recorded for each type of key telephone system.

In the case of data modems and customer multiplex equipment, capacity measures would be determined for each type by bit rate and number of channels of each type.

V. Stations Connections

Some of these accounts will ultimately be treated as expense accounts and subject to expense record allocation rather than the treatment used for plant. The matter is at issue elsewhere. It is not expected the PUC or PHFFU accounts will normally be established for station connections.

Capacity and use information will be recorded as for station equipment. Capacity measures will include potentially connectable station equipment (a matter of some significance in the case of pre-wired buildings.)

VI. Local Loops

Capacity Measures: Number of circuits and circuit kilometers, for each type of loop equipment and type of circuit (bandwidth, potential for conditioning, multiplexing or use with carrier systems of various types). Expansion feasible by utilization of plug-in units on existing bays would be considered current capacity. Where bays would have to be built, the expansion capacity would be recorded as "potential."

Use Measures: Number of circuits and circuit kilometers in use and held for various types of reserve. Number of defective circuits and circuit kilometers. The total of all circuits (circuit kilometers) in use plus reserves plus defectives would equal the current capacity, not counting potential expansions. Circuits used for revenue service would be counted by service rate element charged. Circuits in common use among several services would require that usage characteristics (attempts, messages, Erlangs, bits) be recorded by rate element as well.

The information above would be collected monthly for each class of local loop plant for the primary recordation location. We anticipate that for local loop and exchange cable this site would be the exchange or similar administrative area whose geographic limits would be defined by Commission order. In the case of toll transmission plant, the span would be used as the primary recordation location.

VII. Non-radio transmission systems: Capacity and use would be defined as described for local loop items. Plant used in common for distribution (local loop) plant and exchange plant would be in the appropriate common subaccount of non-radio transmission systems. The primary recordation location would normally be the exchange or span as discussed above.

VIII. Microwave radio systems: Existing capacity in circuits, circuit kilometers, bits, Erlangs and bit or Erlangs kilometers, would be measured for systems as installed. Where multiplex bays exploit the full capacity of the system (in channels or bits), the system design capacity would be the measure of the present capacity, with the immediately available capacity recorded as well. Overbuild potential that would require changes in transmitters, receivers and antennas would be considered system replacement and not recorded. Overbuilds that augment existing design capacity (for example Data Under Voice) would be recorded as potential (overbuild) capacity.

The data on circuits in use would be recorded as discussed above, for the primary recordation location, monthly.

Data on terminals, patch bays and control and protection apparatus would be recorded by span. For plant at the junction of two or more nodes, the appropriate concept would be the wire center or the "node."

IX. Miscellaneous radio service equipment: Capacity would be defined in terms of attempts, messages, Erlangs, and bits per hour. Usage would be recorded similarly by service for total use and for busy hour use. The primary recordation location would be a wire center or an analogous site. High frequency and certain other classes would have a relevant distance dimension.

X. Satellite transmission systems: Capacity of earth stations will be defined in terms of potential, with existing satellites as current capacity. Potential capacity with existing ground equipment (including full utilization of all bays) will be recorded as overbuild capacity. Potential at the location with expansion of ground equipment will

be designated as expandable capacity. Capacity will be measured in circuits or bits, with each earth station location being a primary recordation location.

Satellite current capacity will be design capacity. If plug-in units are used in some future generation of satellites, (installed by space shuttle) then a category of overbuild capacity will be needed and perhaps one of expandable capacity as well. Usage will be recorded as for other transmission systems.

The primary recordation location for satellite systems will be the link, from earth station to satellite.

XI. Multiplexing equipment: Within each type, capacity will be defined in terms of potential circuits or bits. Current capacity would include that capacity available if all plug-in units were installed. Overbuild capacity would include capacity derived from the addition of major units, but with retention of the basic type of equipment.

Usage would be recorded in terms of circuits and Erlangs or bits for revenue and nonrevenue use. For circuits in revenue use, usage would be recorded by service (rate element). The data would be recorded monthly at the primary recordation location, normally a wire center, earth station, or similar facility. Usage would be measured in total and also, separately, at the busy hour.

XII. Switching equipment

Capacity: There are many dimensions of capacity for switching equipment. We propose to measure outgoing and incoming attempts, messages and Erlangs or bits, as well as attempts, messages and Erlangs or bits that terminate within the switch, these being taken per unit of time for measuring capacity. There is a need for other measures of capacity such as potential number of local loops (equivalent main stations), outgoing trunks, and subscribers. In cases where equipment can be utilized in the provision of several services, including special services, capacity measures would be determined individually for each service and collectively for all.

The separate measurements of usage would be the incoming, outgoing and within-the-switch attempts, messages and Erlangs or bits, both on a busy hour and total basis. These items would be recorded by customer class and service (rate element). In the case of measured service, all these items would be recorded every month. For flat rate service, special studies could be used in those cases where the equipment makes continuous metering impossible.

The original capacity would be as installed, with overbuild capacity defined in terms of additional equipment that might be added. It is expected that ultimate capacity (original plus overbuild) would have many dimensions. The equipment that would add to each such dimension of capacity (equipment that might permit more incoming attempts per hour, for example) would be, as noted, in different subaccounts to the greatest extent possible. The capacity (and use) of each subaccount would, of course be recorded, as would the capacity of each retirement unit. However, we see no need at this time to measure individually the use of each retirement unit (except where there is only one). We are aware, however, that there are persons associated with the carriers who believe that the retirement unit is the appropriate basis upon which cost of service should be calculated. If this view proves correct, it will be necessary to collect usage data for individual retirement units.

The primary recordation location for switching equipment information would be the wire center, except in very unusual cases.

XIII. Other Circuit equipment

Capacity: Current, potential (with plug-in units) and overbuild (with minor reconstruction) capacity would be recorded for all these items, as discussed in connection with other transmission accounts.

Usage: These equipment items would be considered as part of the circuit upon which they were currently employed, and would take the usage information from that circuit, including original and current allocation, as well as current use. Most of the items in this class of plant are plug-in units

that are alternately used on various circuits and services, so that permanent, individual assignments are not possible. It is anticipated that the majority of such equipment will, therefore, be "common" or "fungible". It is also assumed that it is meaningless to assign a purpose to this equipment individually. However, these assumptions may be invalid. If so, it would be necessary to record initial and current usage for these equipments and establish individual CPR's and plant location records for each.

It might also be necessary to record retirements, salvage and re-use, as these items are removed from service, repaired, and reinstalled, probably on different circuits and different services. However, if individual cost data on these equipments (retirement units) were needed for cost of service purposes (as some elements among the carriers believe) then, too, the above records would have to be kept.

The primary recordation location would be the wire center or other node, or the span upon which these equipments are used. Data would be recorded monthly, largely by count, generally from plant location records and records of circuits in use, with periodic (annual) actual inventories.

XIV. Power Generating and Distributing Equipment

Capacity measures: Kilowatts of peak demand, measured for each class of draw, that is, for each type of equipment for which power is supplied.

Usage measures: Kilowatts of peak demand at the coincident peak for all power supplied at the location. Kilowatts of peak demand at the coincident peak for the power supply in question. Also, total kilowatt-hour usage for each type of equipment connected to the power supply. These usages will be measured for each item of equipment drawing power from the particular power supply under consideration and will be recorded in the primary allocation record for the power supply (as will capacity) for the initial installation and each add-on, projected use, the most recent Commission-approved allocation, and current use in the previous month.

XV. Wire Center Common Equipment

Capacity measures:

1. Common channel interoffice signalling: Attempts per hour, messages per hour, Erlangs or bits per hour. Number of channels. Number of routes. - all the preceeding both absolutely, and per kilometer

2. Main distribution frame: Number of local loops. Number of interoffice channels.

3. Test equipment and boards: Number of "crosspoints," number of circuits, number of "physical" lines, number of bits of memory, number of test reports per hour, number of test positions.

4. Service observation boards: Number of circuits. Number of observations per hour. Number of operator positions. All of these measures would be given for each service.

5. Traffic measuring equipment: Number of circuits. Number of subscribers. Number of crosspoints. Attempts per hour. Messages per hour. Erlangs or bits per hour. All of these measures would be given for each service.

6. Message accounting equipment: Number of subscribers, number of circuits, number of trunks. Number of attempts per hour, number of messages per hour, number of Erlangs or bits per hour. All of these measures would be given for each service.

7. Other equipment: Lights and alarms by square meters covered.

Usage measures:

The equipment in each class will be associated with other equipment in the wire center by inventory counts (See the discussion of circuit equipment). Service equipment (all categories other than "test boards" and "other") will have usage among all services served, measured monthly according to all the same dimensions as capacity is measured. This will be recorded in the primary allocation record three ways: initial allocation, most recent Commission approved allocation, usage in the most recent month.

Although this account is called "wire center common," the primary recordation location may in some instances be different from a wire center. For example, one would expect to find some of this equipment at remote repeater sites, earth stations, cable landings and other miscellaneous primary recordation locations. Much of this usage information would be recorded as part of the traffic data associated with the revenue accounts.

XVI. Furniture and office equipment

1. Computers and terminals

Capacity measures:

General purpose computers capable of handling telephone service switching or ancillary functions, whether for MTS-related or DDS-related services, or new services such as transaction telephone (if allowed), would have the following capacity measures: attempts, messages, and Erlangs or bits per hour plus number of subscribers, circuits and trunks, for each of the services and for all services combined.

All general purpose computers would have initial and ultimate capacity in operations per second (by type), core size (in bits) number of terminals (by type), amount of peripheral memory (in bits by type).

Special purpose computers would have capacity units determined for each type.

Usage measurements:

For most general purpose computers, usage would be determined on the basis of the projects on which they were utilized. Computer time would be billed to each project in the project's expense record, and the current allocation to services would follow. As for all plant, there would be three such allocations in the primary allocation record, the initial, the current Commission approved and the most recent period (current). In addition, utilization for each capacity dimension by service would be recorded.

The primary recordation location for general purpose computers would often be an exchange or other administrative area served by the computer. In some cases, it might be a total company. Services to and from other companies would have to be treated as purchases and sales of computer services.

2. Computer terminals, furniture and other office equipment

These items would be assigned to current use by services by periodic inventory counts, which would associate them initially with organizations. The assignment to services would then follow that of the organization in question. There would, of course, be the three allocations in the detailed property record. Furniture and other items in storage would be so recorded.

3. Billing equipment

Capacity measures: subscribers, attempts per month and messages per month, by services separately and by the total of all services combined.

Use measures: These would follow the services actually billed, by means of usage measures that follow the capacity measures. The threefold allocation of the primary allocation record would apply.

XVII. Vehicles and other work equipment

Allocation of these items would be made to organizations by inventory count, and within organizations according to the expense record. Possibly some direct assignments to services could be made.

XVIII. CATV cable and equipment would follow the CATV accounts and will not be addressed here at this time.

Primary Allocation Records-
Maintenance Expense

Most maintenance expense is directly assignable to service. All maintenance expense is directly assignable to plant, thereby providing a basis for allocation of those elements of maintenance which were not directly assigned. Even so, an allocation record for maintenance expense is necessary for proper allocation, and regulatory and managerial control of such expenditures.

The Primary Recordation Location for maintenance expense will be that of the associated plant upon which the operation is performed. Assignment, repair service and testing will normally relate to an administrative area, an exchange or some other broad Primary Recordation Location.

For each cell in the several expense arrays (see Appendix D), the number of "countable events" - occurrances of such expenditure - will be recorded, by summation of the Expense Records.

For each cell in the several arrays, the budgeted amounts for direct and indirect labor (including overheads) will be recorded. In some cases, budgets may apply to groups of cells; that is, combination of rate elements, rather than individual ones. Similarly, in some cases, assignment of maintenance expense, as by customer complaint or particularly for company initiated maintenance, may be made to groups of rate elements rather than individual rate elements. The coding systems in the Expense Record and Primary Allocation Record will have to allow for such situations.

The allocation of expenditures to service might follow actual use, use recorded in the Expense Record, or budgeted use, as recorded in the Primary Allocation Record. We make no determination at this time, except to note that the present assignments, by ratio to gross plant, were forced upon the Commission and the carriers by the existing U.S.O.A. and represent a determination as to what is possible, rather than what is desirable. For managerial and regulatory purposes, the relationship between budgeted and actual expenditure is an essential datum.

For each cell in the expense array, the Primary Allocation Record will also contain the number of man-hours expended. Further measures of effort, such as the various elementary or basic operations

that underly the various "work unit" systems used by the carriers to measure productivity will also be recorded in the Primary Allocation Record. (Work units themselves probably need not be so recorded, since they are purely arbitrary indices of no intrinsic significance, unless the carriers propose to continue using work units as measures of productivity for submission to the Commission, rather than the more direct measure of man-hours and dollars expended per elementary operation, which is contained in this proposed System of Accounts).

Assignment, repair service and testing are managerial or overhead services that initiate most of the Expense Records for the Maintenance Expense Accounts. For cost of service purposes, and even for cost of plant purposes, assignment, repair service and testing expense will have to be allocated. The Primary Allocation Record for these functions will contain, on a cell by cell basis following the tabular arrays, a summation of the number of "countable events" (maintenance operations in each cell) and expenditures, for all the maintenance operations initiated by each assignment, repair service, and testing office. Such information is a simple summation of the information in the Expense Records initiated by that office (or to which the office contributed as in the case of service orders). The Primary Allocation Record will also contain budget information for the assignment, repair service, and testing offices, as well as the number of man-hours, and elementary or basic operations performed therein.

The direct services performed by these organizations (taking complaints, making tests, assigning circuits, and the like) will be recorded on the expense record and charged directly to the other maintenance accounts.

Other Expense Accounts

I. Personnel Expenses
II. Employees Benefits

These accounts will be assigned to employees functions by department and location, by the Expense Record. They will therefore contain as subsidiary information the department names and locations to which they are cleared, and in whose expenditure they appear as overhead.

The Primary Allocation Record will include budgeted amounts for each subaccount, as well as the number of "countable events": man hours expended, cases (such as new hires, etc.) handled, and so forth.

III. Public Relations and Advertising

Assignments will be performed on a project by project basis, using a separate expense record for each project. The budgeted expenditure for each project, by subaccount (the subaccounts will include the further subaccounts by rate element that are used for allocation purposes but not for recording expense) will be recorded in the Primary Allocation Record. Actual expenditures, allocated to service the same way, will be recorded in the Primary Allocation Record.

Also in the Primary Allocation Record for each subaccount will be the number of "countable events" - number of advertisments, with corresponding inches or minutes, and number of responses by type, etc.

The goals of advertising will be recorded coincidently with the revenue accounts so that measurement of effectiveness, at least in a statistical sense, can be accomplished. However, the goals of advertising will not be allocated in the expense accounts beyond the relatively broad groupings prescribed, because of the essentially arbitiary nature of the allocation methods that must be used.

IV. Rate Development, Tariff Development, and Service Costs

Expenditures and budgeted amounts will be kept on a rate element basis, using the "case" as the basis for the Expense Record. Accumulation of costs, by case (which will include all expenditures by any department in support thereof) will facilitate amortization of rate case expenses in those states that require it.

The number of man hours, etc. of effort will be the countable events used for allocation. Service costs and other studies will be cases (Expense Records) to which other departments (such as plant, computer operations, etc.) will bill time directly, rather than by clearance.

For Formal Hearings, expenditures for witnesses and expenses of State Commissions (where billed to carriers) and other intervenors (where billed to the carriers) would be allocated to services - to rate element, if possible - as well.

V. Business, Regulatory and Government Relations

The Primary Allocation Record will include budgeted amounts and man-hour expenditures by whatever department performs work on the various "cases." Each "case" will constitute an Expense Record to which costs can be billed. Lobbying expenses will require special subaccounts for any effort to which more than some minimal amount of effort (perhaps $30,000 or 2000 man hours) is billed in any year. (Such accounts would be temporary, until the case terminates.) Anti-trust suits would be separately subaccounted, for each suit, with the subaccounts grouped by the principle services involved.

Expenses would be booked to these accounts by all departments, using the Expense Record. As with tariff and other similar expenses, any request for assistance by the department with primary responsibility would exculde a case number (Expense Record number) to which time and expenditure would be budgeted and booked.

VI. Marketing and Sales Expenses

Projects would be given Expense Record numbers as for advertising. Allocation of sales expense could change as the customer contact develops, if it appears that products (services) other than those initially planned will be sold.

The Primary Allocation Record will include budgeted expenditures (which can be compared with actual) and records of the number of customer contacts of various classes: company initiated as well as customer initiated.

The number of customer contacts and contact hours per case and for each service will be recorded in the Primary Allocation Records, taken from the Expense Record. Actual "sales" of services will be directly recorded in the Primary Allocation Record, both in dollar volumes (recurring and non-recurring) and in physical units. (Such information could theoretically be collected from the revenue accounts, if additional accounts, by source of sale, were kept, or if a Revenue Record system were established. In place of keeping those additional records, we propose to collect this information as part of the expense allocation procedure, since the information will often be used to assess the goals and effectiveness of the marketing and sales organizations).

VII. Corporate Secretary and Financial Matters

Primary Allocation Records will include budgeted expenditures and man-hours expended plus the number of countable events such as the number of receipts and disbursements of various types. Receipts from customers will be counted by principle service, customer and primary recordation location, thereby allowing allocation. Disbursements to customers will be similarly recorded.

VIII. Accounting and Corporate Studies

Depreciation and valuation studies will be recorded by plant account involved.

Only settlement studies will be recorded here. Actual disbursements (by service) will be recorded as negative elements in each revenue account, by primary recordation location.

Expenditures for particular docketed cases will be recorded elsewhere under the caption of government relations.

All Primary Allocation Records will include budgeted expenditures, and "countable events" such as man-hours.

IX. Security Services

Ticket and fraud investigations are now largely confined to toll services, but should become significant for local services as usage sensitive pricing expands.

The Primary Allocation Record will contain budgeted expenses by category. It will also contain man-hours expended on each type of case and the number of cases of each type opened and closed. It will also include estimated volumes of loss, in tickets and dollars, for each service.

Although centralized investigation does not normally occur at a wire center, toll ticket problems do, and revenues are collected there. Therefore, although the physical location for this function may be an administrative area or even an operating company, in the Accounts and Primary Allocation Records, all expenditures (actual and budgeted), and other statistical information will be recorded to the wire center at which the particular problem originated (was caused). In essence, then, we will use a decentralized Primary Recordation Location (the wire center) for this function, even if it is physically centralized.

Physical plant security expense will have as its Primary Recordation Location the place the service is performed, rather than where it is administered. It will therefore parallel the Land, Buildings, and Transmission Facilities Accounts.

General Security expense, for company offices, exhibitions, annual meetings, and other special situations will be separately recorded by type of expenditure, using an appropriate Primary Recordation Location.

X. Business Office, Marketing, Sales Administration and Overhead

This account will contain expenses for "indirect" supervision by higher levels of management, which are not directly assignable to services using the Expense Record system because the supervisors do not deal directly with individual cases or projects.

In this account, expenses will first be assigned to Primary Recordation Locations, and then further allocated. The expense of supervision will not necessarily be allocated as the expense of those supervised is assigned, since some routine functions may require much direct expense but little supervision.

The Primary Allocation Record for this account will include the amounts budgeted for each subaccount, for each organization some of whose expenses are included herein. The number of countable events (cases of various types) handled by subordinate organizations and also of these organizations. The Primary Recordation Locations used in this account will be such as to permit attribution of all expenses in the account to the supervision of particular subordinate organizations. The option is thereby created of allocating these expenses on the basis of the organization budget, the cases handled by these organizations, the cases handled by subordinate organizations, or the budget or actual expenses of the subordinate organizations. The cost of service manual will make the prescription, but all the data are necessary as regulatory or managerial tools.

XI. Operator Service

The Primary Allocation Record of these services will include the number of calls, attempts, and minutes of use for each service and rate element. The toll ticket or its equivalent will

serve as the basis of the Expense Record. Clerical time for other departments will be billed to those departments on the Expense Record. Clerical time for this department will be billed to the services in question using an Expense Record (a time slip).

Supervisory and assistance expenses will be assigned to individual cases, for the most part, by direct attribution on the toll ticket or other expense record. There will be some remainder that will be allocated on Expense Records for the other supervisory tasks.

Customer instruction (for PBX and Centrex) will be charged to Marketing or Sales (as appropriate) on the Expense Record.

XII. Business Office Services

Most functions of the Business Office are assigned to sales or marketing by the Expense Record. The remaining on principally coin and official telephone expense, will require the same sort of primary allocation record as issued for Sales Expense or Business Office Overhead, respectively.

XIII. Directory Sales and Publishing the Primary Allocation

The Primary Allocation Record will contain budgeted amounts. Advertising lineage, expenses and revenues for out of local calling area listings will be recorded. Expenses for directories shipped out of the local calling area will be recorded in the Primary Allocation Record, as well.

The Primary Recordation Location will normally be the exchange.

XIV. Insurance Expense
XV. Accidents and Damages

These will be subaccounted to the plant accounts, and kept, in the Primary Allocation Records, separately for each Primary Recordation Location at which plant exists.

XVI. Operating Rent Expense

The Primary Allocation Record will be the same as that of the plant accounts, except that initial and present rents will be entered.

XVII. General Services and Licenses

Most expenses will be charged to other accounts as overheads. However, the sensitivity of this account requires that this detail be kept, as well. Each project will be kept separately under each of the categories (essentially, this is a cross classification system like that used for maintenance).

The Primary Allocation record will be for those expenses not charged to other accounts, and will show budgeted and actual expenditures of money and man hours, by equipment class, company function, or service, as appropriate.

XVIII. Telephone Franchise Requirements - DR
XIX. Telephone Franchise Requirements - CR

The Primary Recordation Location will be the service area for which the franchise is valid.

XX. Business Information Systems Expense.

Each system will be recorded separately for allocation purposes in amounts "budgeted this period" "total budget," "expended to date." The allocation to service information in the Primary Allocation Record will basically parallelthat in the plant accounts - it will include original allocation, most recent commission approved allocation, and use in most recent period.

XXI. Memberships and Fees

These will be fees for corporate memberships. Individual memberships are recorded under contributions, as are corporate "memberships" in charitable organizations like the Red Cross or the "Y".

The Primary Allocation Record will include the department or departments requesting or using the membership, the basis for the request, and the member of such "uses" by department in appropriate categories.

XXII. Research and Development Expense

Primary Allocation Records are probably unneeded for this account.

XXIII. Engineering Administrative and Overhead Expense

This account includes only those items not charged to expense (principally maintenance, marketing and sales) by the Expense Records, and not charged to capital projects.

The primary allocation record system used will be similar to that used for Business office, sales and marketing administrative and Overhead Expenses.

XXIV. Data Processing Expense

This account includes only those items not charged to other accounts. However, as with license fees, the total amount is shown as well, for informational purposes.

The Primary Allocation Record system used will be similar to that for engineering administrative and overhead expense.

XXV. General Administration
XXVI. Executive Administration

Most of these expenses, particularly for General Administration will be billed elsewhere using Expense Records or as capital projects. The remaining accounts, shown in these accounts will be the most broadly administrative and supervisory elements.

The Primary Allocation Record will be similar to that for Engineering Administrative.

Other Accounts

These accounts are primarily summaries, financial or balancing items. As such, they will require no Primary Allocation Records in most cases.

Appendix F

Allocation Procedures for a Cost Accounting System

To accumulate expenditure information in such a way as to facilitate its assignment or allocation to each service category, a cost accounting system must be used. No such system now exists, and the development of cost accounting procedures is the most important aspect of the proposed USOA revision. Elements of both job order and standard cost systems do exist in some telecommunications operations, and we propose here a cost accumulation system that builds upon those elements, where possible and appropriate. Terms of art such as "job order", "work order", "project control" and the like have specific meanings to accountants, but the system we propose conforms to none of these special interpretations, although primarily a combination of standard cost and job order systems. We will call it a "Causational Service Cost" Accounting System.

In a Causational Service Cost Accounting System, every expenditure must be tied to a specific "document"1/ an "estimate", a "service order", a "case" or whatever, which we will call the Basic Expense Record for expensed outlays and which will be an input into one or more Basic Property Records for capitalized outlays. Essentially, the system will work as follows. For plant items (capitalized), all outlays would have to be based on an estimate. The specific estimates now used by telephone companies will require modification for Causationsl Service Cost Accounting purposes. The general estimating system that is used for small outlays will require major modifications to give it sufficient specificity. The changes needed are discussed below.

Certain features of the Basic Expense Record system can be described in general terms. An Expense Record is a project, service order, work order, or some other "document" that can be identified for each and every expenditure, whether for labor, materials, or whatever. The Expense Record will be directly assignable to each service, in most

1/ In most cases no physical document will exist. The Expense Record will simply be a case number for which allocation will be known, and to which charges can be billed.

cases, while also serving to accumulate expenses for the various accounts in those instances where direct assignments to services cannot be made. The details will be discussed below, but in essence, direct operating expenses, (those varying with output) will usually be directly assigned to service, while indirect operating expenses will usually have to be allocated to accounts.

The specific estimating system provides a useful basis for the allocation of large investments (capitalized outlays) in connection with the Basic Property Record. The justification for the estimate should include forecasts of demand and related facilities requirements by service, either for the individual project, or in the aggregate for all projects of a given class. Such estimates, developed for each service, would be carried forward and become part of the Basic Property Record (an augmented continuing property record). The precise manner of forecast for accounting purposes will be specified in the Commission's rules. A major modification of the existing estimating procedure would be the limitation of the scope of a single estimate. A project involving several types of plant, covered by widely divergent accounts, would have to be treated by several estimates. A single estimate would normally be limited to work done in a single primary account plus related work done in common accounts. However, more detailed rules would be developed.

General estimates, used to indicate the size of outlays for small projects (under $10,000 currently) would have to be modified. In addition to creating a separate general estimate for each primary plant account, and a service by service forecast as a basis for each such estimate, it will be necessary to establish a procedure for the charging of some work done pursuant to general estimates directly to service. In most cases this objective will be accomplished by letting the service order or work order generated in response to a customer complaint or request cause the work to be charged to a separate general estimate of service in order related work. (With specific (i.e., individual) estimates the problem does not exist, since each estimate carries its own forecast which may have been developed especially for the estimate or which may be of general application for projects of a specific type, so there is no problem with recording the work order or service allocation.)

Consider now the details of the Expense Record System. An Expense Record should be established for every type of expenditure. In many instances, existing service orders, work orders or similar records can serve as the basis of such a record. The basic principle to be observed is that whenever a direct expense is initiated, either at the option of the carrier, or in response to a customer request, a "file" should be generated, and immediately assigned to services. The principle of historical cost causation requires such immediate allocation or assignment of the expenditure and also requires that the allocation so made be fixed in terms of any particular expenditure, but can allow for the possibility that, in some limited circumstances, the nature of the allocation may change for those expenditures incurred after the initial allocation of the record. A few examples will be illustrative.

In the event a carrier has a marketing program that involves, for example, the sale of some group of services to members of a particular industry, a master record would be established. Advertising and marketing goals would be determined before the campaign, and such goals - the sale of various rate elements in some proportions - would serve as the initial cost allocation of expenditures for each individual case file (Expense Record) under the same master record (program). The existence of such clearly expressed goals will enable management to judge the program in terms of the organizational objectives, and for regulators to determine, by examination of the intended and realized effects of the program, whether the program's costs should be borne by the rate payer or stockholder, and if the rate payer, by which ones (which services). Marketing expenses, for each customer contact would be collected by an individual expense record, allocated as was the master one for the program. However, as each customer contact developed, it might eventually become apparent that some other service or group of services would be sold. Such determinations might be made several times before the customer makes a decision to buy or not to buy, and each time, the expenses collected in the Expense Record would be differently allocated for those incurred subsequent to the change, while those incurred prior to the chage would follow the earlier allocation. For the marketing manager, the incentive for accurate allocation would be the desire to avoid allocating excessive expenses to sales of services that are never consumated,

and also to avoid the questions that would be asked if the outcome of a program - the services actually sold - differed substantially from the plan.

As a marketing or commercial operation generates service orders, each such order would become part of the Expense Record, assigning maintenance, engineering and other expenses to the requested service, along with subsequent work by marketing or commercial operations, as well as the normal customer billing and similar operations.

Customer initiated maintenance operations in the form of moves and re-arrangements would generate an Expense Record by rate element starting in the commercial office. Customer complaints would also generate an Expense Record by rate element, but starting at the complaint desk or repair service.

Carrier initiated testing and repair would be handled much as in the previous example. Each testing program would have goals, although the goals might not be directly related to service in all cases. The operations called for in a testing program would be related to a particular service or services as is the facility being tested and the subsequent maintenance. A program to test all line link frames would be allocated to service as are the line link frames in an office, and would constitute a master expense record. The repair of a line link frame devoted to WATS band 2 would be an Expense Record allocated to that rate element.

Support operations, such as the personnel department and the computer center would generate Expense Records which might not be directly allocable to service, but which should be allocable to some other program, usually of an operating department generating directly assignable or allocable Expense Records. The Expense Record of a staff or support operation would therefore be coded to one or another master Expense Record representing a program of some other department.

There are a few types of administrative and general expenses that are not easily allocable, even to other departments. Those few would generate Expense Records for their own programs, the assignment of which, to service, would eventually be done on a reasonable basis. However, the object of the Expense Record System would be to minimize such allocations by maximizing the amount of expense that would be allocated to other Expense Records.

In some ways, the Expense Record system is similar to a system of clearing accounts, but the differences are more important. In most cost accounting systems, some costs are assigned first to clearing accounts and then, in some predetermined proportion, to actual booked accounts. In a Causational Service Cost Accounting System such arbitrary and judgemental procedures are replaced by the direct assignment of costs to programs which are, in turn, directly assignable or allocable to services. Therefore, our proposed Causational Service Cost Accounting System will eliminate the need for most clearing accounts, because the Expense Record accomplishes the cost assignment function more reliably and less arbitrarily.

Many costs, even in the revised chart of accounts proposed herein, are related to operations or to classes of plant, as well as to service. The Expense Record, as a multifaceted assignment and allocation mechanism, enhances the accuracy and reliability of such relationships. The Expense Record will identify the rate elements to which all expenses are to be assigned, the plant or other elements upon which the work was performed, and the organizational groups by which the work was done. The maintenance accounts exemplify the assignment of work costs to types of plant as well as service. The marketing and commercial accounts illustrate the assignment of cost to organizational or functional unit as well as service.

Using the Expense Record system, a Causational Service Cost Accounting System permits any cost to be traced to any of its causes. The primary cause is considered the service, but if services are the rows of the matrix into which the costs are arrayed, the columns may be types of plant or anything else. In convential accounting terms, such an array can lead to an enormous number of intersections, or cells, for each service and type of plant. Even so, with modern data processing methods, such an array-like structure resembles the matrices in which data is stored in the computer, and so is, if anything, simpler to handle and retrieve than old fashioned data structures. It is unfortunate that printing is, in McLuhan's terms, a linear process, so that the multifaceted structure we propose appears bulky and complex. The elegant simplicity of a matrix of accounts (as opposed to a list or table of accounts) is shown many times in the Mathtech report. The power of the matrix form of organization is so great that expenses can, if desired, be traced to the retirement unit upon which the work is performed, with no more information than is presently recorded in various uncorrelated documents. The difference between the Causational Service Cost Accounting System and the present accounting system is that the old fashioned linear structure of the present system imposes a single logical structure upon the data, and prevents alternative analyses, while the Causational Service Cost Accounting System's use of the Expense Record and array-like structure of accounts promotes the use of alternative analyses, by removing the constraining influence of a single linear structure.

In Appendix D, the accounts and subaccounts 2/ are listed in a conventional linear framework, rather than an array showing important interrelationships and alternative entries into the data. We pose as an item of inquiry the question of whether the traditional linear expression of the accounts does, in fact, provide sufficient clarity and understanding in a data base system intended to be used for regulatory purposes in conjunction with high speed digital computers.

2/ Except for maintenance expenses.

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Federal Register

MONDAY, JULY 31, 1978
PART IV



DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

GRAIN STANDARDS

Study Draft of Regulations

[3410-02]

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

[7 CFR Part 800]

GRAIN STANDARDS

Study Draft of Regulations

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: A study draft to update the regulations under the U.S. Grain Standards Act, as amended, is being prepared by the Service. This notice contains a summary of most of the substantive provisions in the study draft and informs interested persons that limited copies of the study draft are available upon request. Interested persons are invited to submit written comments on the provisions in the summary or the study draft.

DATE: Written comments on the study draft and the summary should be submitted by September 29, 1978.

ADDRESSES: Written comments should be sent in duplicate to the Hearing Clerk, USDA, Room 1077, South Agriculture Building, Washington, D.C. 20250, where they will be available for public inspection during normal business hours. For copies of the study draft, write to the Compliance Division, Room 2405 Auditors Building, 14th Street and Independence Avenue SW., Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Leslie E. Malone (Program Operations), FGIS, USDA, Room 1627, 1400 Independence Avenue SW., Washington, D.C. 20250, telephone 202-447-9166.

SUPPLEMENTAL INFORMATION: The U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*) was amended in 1976 (Pub. L. 94-582), and in 1977 (Pub. L. 95-113). The amendments generally provide for the following:

Provision and section of act

Establishment of the Federal Grain Inspection Service, 3A.
Mandatory inspection and weighing of export grain, 5.
Mandatory weighing of other grain at export elevators at export port locations, 5.
Supervision by the Service of all inspection and weighing activities 5.
Performance by the Service of inspection and weighing services at export ports and certain other locations, 7 and 7A.
Delegation of authority by the Service to certain States to perform inspection and weighing services at certain export port locations, 7 and 7A.
Designation by the Service of agencies to perform inspection and weighing services at inland locations, 7 and 7A.
Triennial termination of designations, 7.
Permissive weighing of bulk grain other than at export elevators at export port locations, 7A.
Criteria for determining whether an elevator is eligible to receive weighing services, 7A.
Testing of equipment used in performing inspection and weighing services under the act, 7B.
Contracting for monitoring activities in foreign ports on inspected or weighed grain, 8.
Licensing of individuals to perform inspection, weighing, and related services, 8.
Triennial termination of licenses, 8.
Establishment of standards for the recruiting, training, and supervision of official inpsection personnel, and work production standards for such personnel, 8.
Refusal of weighing services, 10.
Assessment of civil penalties for certain violations, 10
Prohibition of certain conflicts of interest by grain businesses, stockholders of grain businesses, and related entities, 11
Retention of records by certain elevators and merchandisers, 12.
Prohibition with respect to falsely stating the weight of grain, 13.
Prohibition with respect to preventing any interested person from observing the loading, weighing, sampling, or inspection of grain, 13.
Increase in criminal penalties for violations of the act, 14.
Authority to prescribe conditions for obtaining inspection or weighing services, 16.
Registration of certain persons who export grain or who handle, weigh, or transport grain, 17A.

The implementation of the amendments of the act is largely dependent on the promulgation of new or revised regulations, personnel standards, and informal rules of practice. a study draft of the regulations has been prepared by the Service. Incluced in the draft of the regulations are provisions contained in the current part 26 regulations (7 CFR Part 26).

The regulations are being prepared and renumbered as Part 800 of the Code of Federal Regulations (7 CFR Part 800). The identification of the subparts in part 800 follows:

Subpart A—Regulations under the U.S. Grain Standards Act (now 7 CFR, Part 26).

Subpart B—Official U.S. Standards for Grain (now 7 CFR, Part 26, Subpart B.)

(Subparts C and D are reserved for future use under the U.S. Grain Standards Act.)

Subpart E—Official Standards for the Recruiting, Training, and Supervising of Official Personnel and Work Production Standards for Such Personnel (new).

(Subparts F, G, and H are reserved for use under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et al.*).)

Subpart I—Rules of Practice Governing Informal Proceedings under the U.S. Grain Standards Act and the Agricultural Marketing Act of 1946 (now 7 CFR, Part 26, Subpart C).

Summaries of most of the substantive provisions in the study draft of subpart A are shown in this notice. Most items in the summary are followed by one or more references. The first reference shows where the provision is found in the study draft. The second reference (italicized), if any, shows where a similar provision presently is found in subpart A of part 26. (Subpart E is being drafted and will be published at a later date. References to subpart I are contained in subpart A of the draft summary. However, the subpart I is being drafted and will be published at a later date.) The study draft of subpart A and the summary of subpart A are divided into 21 units, as follows:

Unit and Title

I—Definitions.
II—Administration.
III—Official Inspection and Official Weighing Requirements.
IV—Recordkeeping and Access to Facilities.
V—Registration.
VI—Conditions for Obtaining and Withholding Official Service.
VII—Restrictions on Representations.
VIII—Deceptive Loading, Handling, Weighing, and Sampling.
IX—Fees.
X—Kinds of Official Services.
XI—Inspection Methods and Procedures.
XII—Weighing Provisions and Procedures.
XIII—Original Services.
XIV—Reinspection and Review of Weighing Services.
XV—Appeal Inspection Services.
XVI—Official Records and Forms (General).
XVII—Official Certificates.
XVIII—Licenses, Authorizations, and Approvals.
XIX—Duties and Conduct of Licensed, Authorized, and Approved Personnel.
XX—Delegations, Designations, Approvals, and Contractual Assignments.
XXI—Supervision, Monitoring, and Equipment Testing.

Informal meetings to explain the provisions in the study draft and the summary are being scheduled during the month of August 1978 in Chicago, Ill., Houston, Tex., Kansas City, Mo., New Orleans, La., Portland, Oreg., and Washington, D.C.

After the written comments are received and the informal meetings conducted, desirable changes will be incorporated into a proposed rulemaking for publication in the FEDERAL REGISTER.

Summaries of most of the substantive provisions in the study draft of subpart A follow:

DEFINITIONS

Unit I contains the definitions for terms that are frequently used in the regulations. Terms that are infrequently used in the regulations are generally defined in the unit where used.

Terms that are defined in the Act are generally not defined in the regulations. A list of the terms that are de-

fined in the Act is shown on page 2 of Subpart A. Some of the new or revised terms that are frequently used, or which may be of particular interest, are listed below. Please see § 800.1 of Subpart A for the complete text of the definitions.

1. *Approved personnel.* An individual who is an approved scale tester, approved weigher, or approved weighing technician. Approved personnel shall not be deemed to be official personnel. (800.1(b)(4))

2. *Approved scale tester.* An individual employed by an approved scale testing organization and approved by the Service to perform all or specified official equipment testing functions. (800.1(b)(5))

3. *Approved scale testing organization.* A State or local governmental agency, or person, approved by the Service to perform all or specified official equipment testing functions. (800.1(b)(6))

4. *Approved weigher.* An individual approved by the Service to perform all or specified Class X or Class Y weighing functions. (800.1(b)(7))

5. *Approved weighing facility.* An elevator approved by the Service for the performance of Class X or Class Y weighing functions. (800.1(b)(8))

6. *Approved weighing technician.* An individual approved by the Service to perform specified Class X or Class Y weighing functions. (800.1(b)(9))

7. *Assigned area of responsibility.* A geographical area assigned by the Service to a delegated or designated agency, or to a field office, for the conduct of all or specified inspection or Class X or Class Y weighing functions. (800.1(b)(10); 26.1(b)(12))

8. *Date.* The date on which an inspection function or a Class X or Class Y weighing function is completed. In dating a certificate, a date is deemed in all cases to end at midnight, local time. (800.1(b)(19); 26.1(b)(11))

9. *Official weigher.* Any official personnel who perform or supervise all or specified official Class X or Class Y weighing functions and certify the results. (800.1(b)(52))

10. *Official Class X weighing function.* A weighing operation that is performed or completely supervised by official personnel. (800.1(b)(53))

11. *Official Class Y weighing functions.* A weighing operation that is performed by approved weighers or approved weighing technicians under the partial or complete supervision of official personnel. (800.1(b)(54))

12. *Official weighing technician.* Any official personnel who perform or supervise specified Class X or Class Y weighing functions and certify the results. (800.1(b)(56))

13. *Official weight sample.* Sacks of grain obtained at random by official personnel from a lot of sacked grain for the purpose of computing the weight of the grain in the lot. (800.1(b)(57))

14. *Service.* The Federal Grain Inspection Service. (800.1(b)(66))

15. *Specified service point.* A location specified by an agency or a field office for the conduct of all or specified inspection functions or Class X or Class Y weighing functions and within which official personnel are located. (800.1(b)(68); 26.1(b)(13))

16. *Monitoring.* Reviewing activities performed under the Act for adherence to the Act, and the regulations, standards, and instructions issued thereunder, and preparing reports of findings. (800.1(b)(32))

17. *Supervision.* Directing the performance of official activities under the Act; training official and approved personnel in the performance of official activities; reviewing the performance of official activities for adherence to the Act and the regulations, standards, and instructions issued thereunder; and effecting needed remedial or commendatory action (800.1(b)(69))

II—Administration

Unit II contains provisions on (a) the objectives of the Act; (b) non-discrimination in employment and services; (c) filing petitions for administrative action; (d) filing complaints and reports of alleged violations; (e) the promulgation of regulations, standards, and rules of practice; (f) the use of the formal and the informal rules of practice; (g) the publication of regulations, standards, and rules of practice; (h) general waiver authority; and (i) where to obtain information about the Act, the regulations, and the national inspection and weighing system for grain. Summaries of 13 of the provisions follow. Please see § 800.2 through § 800.10 for the complete text.

1. No person subject to the Act shall be discriminated against because of race, color, religion, sex, age, or national origin. (800.3)

2. Any interested person may file a petition for the issuance, amendment, or revocation of a regulation, standard, procedure, or instruction. (800.4)

3. Any person may file a complaint involving the administration of the Act, or may file a report of an alleged violation of the Act. (This provision is not applicable to reinspection, review of weighing, or appeal inspection services.) (800.5; *26.127*)

4. Inquiries by foreign nationals involving the quality or quantity of export shipments should be filed in accordance with the regulations and instructions issued by the Foreign Agricultural Service. (800.5(a)(4))

5. The promulgation of the regulations (Subpart A) shall be effected as proposed rulemaking, and as final rulemaking. If the Administrator finds that proposed rulemaking is impracticable and unnecessary, the promulgation may be effected as final rulemaking. (800.6(a))

6. The promulgation of the grade standards (Subpart B) shall be effected as proposed rulemaking, and as final rulemaking. Proposals that are adopted will become effective not less than one calendar year after final rulemaking unless the Administrator determines that the public health, interest, or safety require and earlier effective date. (800.6(b); *26.125*)

7. The promulgation of the informal rules of practice (Subpart I) shall be effected as final rulemaking but interested persons may, at the discretion of the Service, be given an opportunity to comment in writing. (800.6(c))

8. Hearings prescribed by sections 7, 7A, 10, and 17A of the Act, and hearings requested by respondents under section 9 of the Act, shall be conducted pursuant to the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under Various Statutes. (800.7(a))

9. All other adjudicatory administrative actions under the regulations shall be conducted pursuant to the Rules of Practice Governing Informal Proceedings in Subpart I. (800.7(b)(1))

10. No hearings shall be provided for reinspection, review of weighing, and appeal inspection services, or for temporary actions expressly authorized by the Act to be taken without a hearing. (800.7(b)(3))

11. The wording of the Subparts A, B, and I shall be published in the Federal Register and in such other media as the Service deems appropriate. (800.8; *26.129*)

12. Subject to the objectives of the Act, the Administrator may, in specific classes of cases, waive for limited periods any provision of Subparts A, B, and I (a) in the event of an emergency or (b) to permit experimentation in testing new procedures, equipment, and grain handling techniques. (800.9; *26.3*)

13. Information about the Service, the Act, Subparts A, B, and I, the instructions, inspection and weighing functions, waivers and other exceptions, and related information may be obtained from the USDA, FGIS, Washington, D.C. 20250, or any regional or field office of the Service, or any delegated or designated agency. (800.10; *26.9(d)*)

III—Official Inspection and Official Weighing Requirements

Unit III contains provisions on (a) who is responsible for achieving compliance with the inpsection and weighing requirements of the Act; (b) determinations of an "export elevator" and

an "export port location"; (c) certification requirements for export grain; (d) certain inspection and weighing requirements for sacked grain; and (e) waivers of the inspection and weighing requirements of the Act. Summaries of 15 of the provisions follow. Please see § 800.15 through § 800.19 for the complete text.

1. The exporter of record is responsible for achieving compliance with the inspection, weighing, and certification provisions for export grain. (800.15(a); *26.110*(b))

2. The person who operates an export elevator at an export port location is responsible for achieving compliance with the Class X weighing provisions for inbound and outbound grain at the elevator. (800.15(b))

3. The person who effects the later of two actions; i.e., (a) placing a grade designation, or an official mark, on a container; or (b) placing grain in the container is responsible for achieving compliance with the inspection and weighing provisions for grain in a marked container. (800.15(c); *26.111 26.114*)

4. The person who represents that (a) grain has been inspected or weighed under the Act, or that (b) grain that has been inspected or weighed under the Act and is of a particular quality or quantity, is responsible for achieving compliance with the inspection and weighing provisions for grain for which representations have been made. (800.15(d); *26.111 26.114*)

5. An "export elevator" is any elevator (a) that loads bulk or sacked grain aboard a carrier in which the grain is shipped from the U.S., or that loads export grain aboard a carrier for shipment to an export port location for loading aboard a carrier in which the grain is shipped from the U.S.; (b) that makes application to and is listed by the Service as an "export elevator"; and (c) in the case of bulk grain, is an approved weighing facility. (800.16(a))

6. An "export port location" is any coastal or border location that (a) contains at least one "export elevator" that is not exempted from the Class X weighing requirements of section 5(a)(2) of the Act, and (b) is listed by the Service as an "export port location." (800.16(b))

7. Export inspection or weight certificates for bulk export grain will be issued only for grain loaded by an elevator that is listed as an "export elevator." (800.17(a))

8. Only a valid unsuperseded export inspection or weight certificate will be deemed evidence of compliance with the inspection and weight requirements for export grain. (800.17(b);*26.110*(*F*) *26.115*)

9. An export certificate shall be deemed to have been "promptly furnished" if it is forwarded by the applicant to the consignee within 3 business days after the certificate is issued. (800.17(c); *26.110*(*f*))

10. Sacked export grain must be (a) sampled with an approved mechanical sampler at the time the grain is sacked, (b) checkweighed, and (c) checkloaded aboard the export carrier. If the sacking of the grain is performed at the time of loading, "export" certificates shall be issued; otherwise, an "out" inspection certificate shall be issued at the time of sacking, and "export" inspection and weighing certificates shall be issued at the time of loading aboard the export carrier. (800.18; *26.110*(*d*))

11. Sacked seed grain is not subject to the inspection and weighing requirements for export grain if the seed grain is (a) invoiced as seed; (b) labeled as to kind, variety, purity, germination, and net weight; (c) identified as "seed for seeding purposes" on the Shipper's Export Declaration; and (d) copies of the sales, export, and shipping documents are made available, upon request by the Service, for review or copying. (800.19(a))

12. Grain that is shipped from a foreign country to a foreign country through the U.S. in bond is not subject to the inspection and weighing requirements for export grain. (800.19(b))

13. The inspection requirements for export grain shall be waived by the Service on a case-by-case basis upon request by the shipper if (a) the contract shows that the grain is to be shipped without official inspection; (b) copies of the contract, and notice of the loading, are furnished to the Service at least 24 hours prior to the start of loading; (c) the Shipper's Export Declaration shows the statement "This grain was not officially inspected for grade"; and (d) copies of the sales, export, and shipping documents are made available, upon request by the Service, for review or copying. (800.19(c))

14. The inspection and weighing requirements for export grain may be waived by the Service on a case-by-case basis if (a) official personnel are not or will not be available within a 72-hour period for the performance of requested services; (b) the export and sales documents clearly show that the grain was not officially inspected, or weighed, as appropriate; and (c) copies of the sales, export, and shipping documents are made available, upon request by the Service, for review or copying. (800.19(d))

15. The Class X weighing requirements for inbound and for nonexport outbound grain at an export elevator at an export port location may be waived by the Service on a case-by-case basis if (a) the export elevator loaded less than 1,000 metric tons of export grain the preceding calendar year, or loads less than 1,000 metric tons of export grain during the current calendar year; or (b) the elevator will not load export grain for a period of time specified by the operator; and (c) records will be maintained by the elevator in accordance with the Act and regulations; and (d) the waiver will not impair the objectives of the Act. A waiver under this provision shall terminate whenever the export elevator loads 1,000 metric tons or more of export grain in a calendar year. (800.19(e))

IV—Recordkeeping and Access to Facilities

Unit IV contains provisions on (a) the recordkeeping requirements for elevators and merchdisers; and (b) on providing access to elevator facilities. Summaries of 18 of the provisions follow. Please see § 800.25 and § 800.26 for the complete text of the provisions, and for definitions of terms used in the summaries.

1. Each export elevator that is located at an export port location and loads 1,000 metric tons or more of export grain during a given calendar year shall keep a complete and accurate record of (a) the receipts and the shipments of grain, and "related commodities and other products," by the elevator; (b) the storage, inventory, and handling of grain, and "related commodities and other products"; and (c) the supporting documents. (800.25(b))

2. Each elevator that (a) ships cargo grain, or receives or ships grain via railroad; and (b) obtains as an applicant any inspection or weighing service under the Act, other than a submitted sample inspection, stowage examination, or sampling service, shall keep a complete and accurate record of (i) the receipts and shipments of grain by the elevator, and (ii) the supporting documents. (800.25(c))

3. Each merchandiser who obtains as an applicant any inspection or weighing service under the Act, other than a submitted sample inspection, stowage examination, or sampling service, shall keep a complete and accurate record of (a) the purchases and sales of grain, and (b) the supporting documents. (800.25(d))

4. Records shall be kept in such manner as will facilitate (a) the routine use of the records in the operation of the elevators and the merchandising activities of the merchandisers; (b) the review and audit of the records by the Service to determine compliance with the Act, the regulations, and the instructions; (c) in the case of elevators, a reconciliation of receipts, shipments, and stocks on hand; and (d) a comparison of the records with similar records maintained by

other elevators or other merchandisers. (800.25(e))

5. The manner of keeping records shall be optional with an elevator or a merchandiser. However, if it is found by the Service that records are being kept in a manner that is not consistent with provision (4) above, the Administrator may issue instructions to the elevator or merchandiser outling a manner for keeping the records. (800.25(e))

6. If an elevator or a merchandiser is a signatory to a Uniform Grain Storage Agreement with the Commodity Credit Corporation (CCC), USDA, required records shall be kept (a) a minimum of 6 years after the date of the transaction or activity; or (b) such shorter period, provided that it is not less than 3 years after the date of the transaction or activity, as may be authorized by the CCC pursuant to the agreement. Otherwise the minimum retention period shall be 3 years after the date of the transaction or activity. (800.25(f))

7. Owners and operators of elevators, and merchandisers, who are required to keep records shall permit authorized representatives of the USDA to have access to and to copy during customary business hours any records that are required to be kept. (800.25(g))

8. The complete record of receipts of grain shall show the quality and quantity of each kind and class of grain received, the date of receipt, the identification of the carrier, the name and address of the shipper, and the name and address of the owner at the time of delivery. (800.25(h)(1))

9. The complete record of receipts of "related commodities and other products" shall show the quality and quantity received, the date of receipt, the identification of the carrier, the name and address of the shipper, and the name and address of the owner at the time of delivery. (800.25(h)(1))

10. The complete record of shipments of grain shall show the quality and quantity of each kind and class of grain shipped, the date of shipment, the identification of the carrier, the name and address of the person to whom shipped, and the name and address of the owner at the time of shipment. (800.25(h)(2))

11. The complete record of shipments of "related commodities and other products" shall show the quality and quantity shipped, the date of shipment, the identification of the carrier, the name and address of the person to whom shipped, and the name and address of the owner at the time of shipment. (800.25(h)(2))

12. The complete record of storage and inventory shall show (a) the quality, quantity, and location of each kind and class of grain in the elevator at the close of each day that the elevator is operational; (b) the quality, quantity, and location of each kind of "related commodities and other products" in the elevator at the close of each day that the elevator is operational; and (c) the elevator's total storage obligations for each kind and class of grain and each kind of "related commodities and other products" at the close of each day that the elevator is operational. (800.25(i)(1))

13. The complete record of handling shall show (a) for each preparation of grain, the quality and quantity of each kind and class of grain, and of each kind of "related commodities and other products" before and after preparation, the date of preparation, all quantity adjustments made in connection with the preparation, and the location of the grain and "related commodities and other products" after preparation; (b) the loading orders or other instructions issued for loading out grain and "related commodities and other products"; (c) the mixing and blending worksheets used in planning and effecting the delivery of grain and "related commodities and other products"; (d) the sounding worksheets used in determining the quantity of grain and "related commodities and other products" used from, or remaining in, each bin or storage area after delivery; (f) the elevator markoff or chargeoff worksheets used in maintaining storage and inventory records; and (g) such other closely related records as may be prescribed by the Service. (800.25(i)(2))

14. The complete record of purchases shall include or show the quality and quantity of each kind of grain purchased, the name and address of the seller, the date of purchase and the identification of the carrier. (800.25(j)(1))

15. The complete record of sales shall include or show the quality and quantity of each kind and class of grain sold, the date of sale, the name and address of the buyer, and the identification of the carrier. (800.25(j)(2))

16. Export elevators at export port locations shall maintain a complete record of each complaint involving the quality or quantity of grain transferred into or out of the elevator.

17. The complete record of supporting documents shall include the original of inbound documents, the original or true copies of internal and other intraoffice and interoffice work papers, true copies of outbound documents, and automated processing programs and records. (800.25(l))

18. Any elevator that ships or receives grain in interstate or foreign commerce shall permit authorized representatives of the Department to have access to any and all areas and facilities of the elevator whenever the elevator is operational. (800.26)

V—Registration

Unit V contains provisions on (a) who must, and who may, register under section 17A of the Act; (b) when and how to register; (c) the payment of registration fees; (d) applications for certificates of registration; and (e) the issuance, possession, suspension, cancellation, termination, refusal or renewal, revocation, and surrender of certificates of registration. Summaries of 16 of the provisions follow. Please see §800.30 through §800.42 for the complete text of the provisions and for definition of terms.

1. Each person who regularly engages in the business of buying grain for sale in foreign commerce, or the business of handling, weighing, or transporting grain for sale in foreign commerce must register. (800.31(a))

2. Any person who engages in the business of buying grain for sale in foreign commerce, or the business of handling, weighing, or transporting grain for sale in foreign commerce, may register. (800.31(b))

3. A person who has a conflict of interest involving a delegated or designated agency or official personnel, is not eligible to register. (800.31(c))

4. A person who is required or desires to register should file an application for a certificate of registration not less than 30 calendar days before the person engages in 17A foreign commerce grain business. (800.32)

5. A person who is required or desires to obtain a certificate of registration, or a renewal of a certificate of registration, shall file an application with the Service on a form prescribed for the purpose. Each application shall show the information prescribed by section 17A of the Act, and by the application form, including information on the buying of grain for sale in interstate commerce, or the handling, weighing, or transporting of grain for sale in interstate commerce. (800.33)

6. The fee prescribed by the regulations shall be submitted with each application. If an application is denied or dismissed, the fee shall be refunded. No fee shall be refunded if a certificate of registration is suspended, cancelled, or revoked. (800.34)

7. If it is determined by the Service that an application is not in compliance with the regulations, the applicant shall be provided an opportunity to submit an amended application. If an amended application is not submitted within a reasonable time, as determined by the Service, the application may be dismissed. (800.35(b))

8. If it is determined that an applicant is not eligible or will not be eligible during a period covered by a certif-

icate of registration, the application shall be denied. (800.35(c))

9. Notice of a change in the information submitted on an application shall be submitted to the Service by the holder of a certificate within 30 days of the discovery of such information. (800.37)

10. Each certificate of registration shall terminate not less than annually after the issuance date shown on the certificate. A termination date shall be shown on each certificate. (800.38(a))

11. A certificate of registration that is renewed shall show (a) the same certificate number as the preceeding certificate, (b) the date of renewal, and (c) the word "renewed." (800.38(d))

12. Upon request of a holder of a certificate of registration, a certificate of registration may be voluntarily canceled by the Service. (800.39)

13. A certificate of registration shall be summarily canceled by the Service upon a finding that a holder of the certificate (a) if an individual, has died or is imprisoned for a period in excess of one year, or (b) if a partnership, has been dissolved, or (c) if a corporation, has had its charter suspended, canceled, or otherwise terminated, or (d) if an association or other business entity, has been dissolved or is no longer operational. (800.40)

14. A certificate of registration is subject to a refusal to renew or a suspension or a revocation for (a) causes prescribed in sections 17A (c) and (d) of the Act, or (b) if the holder of the certificate has committed forcible assault against official personnel, or committed any other act tending to intimidate or interfere with the performance of official duties by official personnel. (800.41)

15. In refusing to renew or in suspending or revoking a certificate of registration, the holder of the certificate shall be afforded an opportunity for an informal conference in accordance with the Rules of Practice Governing Informal Proceedings, and if a post-conference procedure is requested by the holder, a hearing in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under various Statutes. (800.41(a))

16. Each certificate of registration that is terminated, canceled, suspended or revoked shall be promptly surrendered to the Service by the holder of the certificate. Any certificate not surrendered in accordance with this provision may be summarily canceled by the Service. (800.42)

VI—Conditions for Obtaining and Withholding Services

Unit VI contains provisions on (a) the availability of official services; (b) requirements for obtaining official services; (c) withdrawal and dismissal of requests for official services; (d) conditional withholding and refusal of official services. Summaries of 32 of the provisions follow. Please see § 800.45 through § 800.51 for the complete text of the provisions.

1. Original inspection services on bulk or sacked grain being exported from the U.S. will generally be available upon request at any export elevator. (800.45(a)(1))

2. Original inspection service on U.S. grain being exported through Canadian ports will generally be available upon request at any elevator that is (a) located at a port location in Canada; and (b) is equipped with approved diverter-type mechanical samplers. (800.45(a)(2))

3. Class X weighing services on bulk grain being exported from the United States will generally be available upon request at any export elevator. (800.45(b)(1))

4. Class X weighing (checkweighing and checkloading) services on sacked grain being exported from the U.S. will generally be available upon request at any specified service point or any point conveniently reached therefrom. (800.45(b)(2))

5. Class X weighing services on U.S. bulk grain being exported through Canadian ports will generally be available upon request at any approved weighing facility at a port location in Canada. (800.45(b)(3))

6. Original inspection services on other than export grain in the U.S. will generally be available upon request at any specified service point or any point conveniently reached therefrom. (800.45(c)(1))

7. Class X or Class Y weighing services on bulk grain other than export bulk grain will generally be available upon request at any approved weighing facility in the U.S. (800.45(c)(2))

8. Class X or Class Y weighing (checkweighing and checkloading) services on sacked grain, other than export grain, will generally be available at any specified service point or any point conveniently reached therefrom. (800.45(c)(3))

9. Reinspection, review of weighing, field appeal inspection, and Board appeal inspection services will generally be available upon request at specified service points or points conveniently reached therefrom. (800.45(d))

10. A request to an agency or the Service for inspection or weighing services shall be deemed to be a request under the Act and the regulations unless the request clearly states otherwise. (800.45(e))

11. If a request for inspection or weighing services is filed by an agent of an applicant, the agency or field office receiving the request may require written proof of the authority of the agent. (800.45(f))

12. In requesting inspection or weighing services under the Act, an applicant shall be deemed to have agreed to:

(a) Make the grain fully accessible;

(b) Provide adequate space for the performance of the requested services;

(c) Provide prompt notice of changes in the facilities or the operation of an elevator that could materially affect the quality, condition, or quantity of grain that is to be inspected or weighed under the Act;

(d) Provide approved loading or unloading arrangements and conditions;

(e) Submit the request in a timely manner if the services are to be performed other than during a regular business day;

(f) Permit any interested person to observe the sampling, inspection, handling, weighing, loading, or unloading of the grain;

(g) Promptly pay bills for inspection or weighing services;

(h) Promptly submit written confirmation for requested services, upon request by an agency or a field office;

(i) Keep records in accordance with § 800.25; and

(j) Permit access by USDA employees to any elevator area or facility. (800.46(a) and (800.46(b); *26.9(e)*

13. Class X or Class Y weighing services for bulk grain will be available only at approved weighing facilities. (800.46(c)(1))

14. Class X weighing services on outbound grain will be available only if the carrier in which the grain is to be loaded is suitable for the loading, storing, or transportation of grain. (800.46(c)(2))

15. Inspection or Class X weighing services on bulk export grain will be available only at an "export elevator." (800.46(c)(3))

16. Operators of elevators shall provide electronic surveillance equipment upon request by the Service. (800.46(c)(5))

17. Applicants for services must show on applications for reinspection, review of weighing, field appeal inspection and Board appeal inspection services, the name and address of each respondent of record. (800.46(c)(7); *26.146(b)*)

18. Applicants for services must, upon request by an agency or a field office, promptly surrender superceded certificates that are in the applicant's possession. (800.46(c)(8))

19. Requests for services may be withdrawn by an applicant at any time prior to the release by official personnel of some or all of the results of the requested inspection or weighing service. (800.47(a); *26.10(b)*)

20. A request for services shall be dismissed if (a) the request is for prohibited services; (b) the request is obviously frivolous; (c) the agency or field

office lacks jurisdiction to handle the request; (d) sufficient evidence is not available to make an accurate and true deterination; or (e) the performance of the requested service is clearly not practicable. (800.48(a); *26.10(c)*)

21. Before a request for service is dismissed, the applicant shall be afforded an opportunity to achieve compliance with the requirements of the regulations. (800.48(b); *26.10(d)*)

22. An informal complaint seeking a review of a dismissal may be filed by an applicant in accordance with the Rules of Practice Governing Informal Proceedings in Subpart I of this Part. (800.48(b); *26.118(b)*)

23. Inspection and weighing services shall be conditionally withheld if the applicant fails to meet any of the requirements prescribed in provision 14 above. (800.49(a); *26.11(c)*)

24. When requested services are conditionally withheld, the applicant shall be informed of the reason for the withholding and shall be afforded an opportunity to achieve compliance with the applicable requirements. (800.49(b); *26.11(c)*)

25. An informal complaint seeking a review of a withholding of services may be filed by an applicant in accordance with the Rules of Practice Governing Informal Proceedings in Subpart I of this Part. (800.49(b); *26.118(b)*)

26. Expenses, if any, incurred by an agency of the Service, with respect to a conditional withholding shall be paid by the applicant. (800.49(c); *26.11(c)*)

27. Any of all services under the Act may be refused either temporarily or otherwise by the service (a) for the causes prescribed in section 10 of the Act or (b) if the applicant has committed acts tending to intimidate or interfere with performance of official personnel. (800.50(a); *26.118(c)*)

28. When such action is deemed to be warranted, the Service may temporarily refuse to provide or may temporarily refuse to authorize the performance of services under the Act without first affording an applicant an opportunity for a hearing. (800.50(b)(1); *26.118(c)*)

29. Within 7 business days following the issuance of a notice of temporary refusal, the Service shall afford the applicant an opprotunity for a hearing. (800.50(b)(3))

30. If the Service refuses to provide or refuses to authorize the performance of requested services, the applicant shall be afforded an opportunity for a hearing in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes. (800.50(c); *26.118(c)*)

31. If, as a result of a hearing, it is determined that there is a basis for refusal of service, the order refusing service may be made applicable to all operations of an applicant or may be restricted to a particular location of a particular type of service. (800.50(c); *26.118(c)*)

32. Whenever official services are required or desired, no person entitled to such services shall be denied or deprived of the right thereto by reason of any rule, regulation, or by any contract or agreement, etc. (800.51; *26.117*)

VII—Restrictions on Representations

Unit VII contains provisions on restrictions with respect to (a) descriptions of grain by grade; (b) official forms; and (c) official marks. Summaries of 12 of the provisions follow. Please see § 800.55 through § 800.57 for the complete text of the provisions and for a definition of the term "representation."

1. In describing grain, a description that denotes a general or a specific level of quality is deemed to be a description by grade. The terms "graded," "first quality," "quality," "screened," "cleaned," "recleaned," "triple recleaned," and "racehorse," shall be deemed to denote a general or a specific level of quality. (800.55(a); *26.113(b)*)

2. The following terms are determined to resemble an official grade designation: "U.S.," the numerals 1 through 5, the term "Sample Grade," the name of a subclass or a special grade shown in the Official Standards for Grain. A proprietary brand name or trade mark that consists of or contains one or more of the terms shown in this provision shall be deemed to resemble an official grade designation. (800.55(b); *26.113(c)*)

3. The term "official form" shall be deemed to include licenses, authorizations, approvals, inspection and weighing certificates, pan tickets, inspection logs, weight logs, weigh sheets, shipping bin weight loading logs, equipment testing reports, equipment approval tags and labels, equipment noncompliance tags and labels, certificates of registration, and such other forms as may be issued by the Service. (800.56)

4. The terms "official certificate," "official grade," "officially sampled," "officially inspected," "official inspection," "U.S. inspected," "official weighing," "officially weighed," "official weight," "Class X weight," "Class Y weight," "official supervision of weighing," "loaded under continuous official inspection or weighing," and "officially tested" are deemed to be official marks. (800.57(a); *26.114(b)*)

5. The showing of an official grade designation with or without factor information, or the showing of the term "official grain standards" shall not, in the absence of additional information, be deemed a representation that grain has been officially inspected. (800.57(b)(1); *26.114(b)*)

6. The showing of the term "Official Certificate" shall be deemed to be a representation that the certificate was issued under the Act. (800.57(b)(2))

7. The showing of the terms "official grade," "officially sampled," and "U.S. inspected" shall be deemed to be a representation that grain has been sampled or inspected under the Act. (800.57(b)(3))

8. The showing of the terms "officially inspected" and "official inspection" shall be deemed to be a representation that grain has been inspected under the Act. (800.57(b)(3); *26.114(b)*)

9. The showing of the terms "Loaded Under Continuous Official Inspection," of "Loaded Under Continuous Official Weighing" shall be deemed to be a representation that the bulk grain in a ship or in a combined lot was loaded in a continuous operation and was officially sampled, inspected, and Class X weighed throughout the loading. (800.57 (b)(4), (b)(6); *26.114(a)*)

10. The showing of the terms "Class X Weight," "Class Y Weight," "Official Supervision of Weighing," and "Officially Supervised Weight" shall be deemed to be a representation that grain has been weighed under the Act. (800.57(b)(5))

11. The showing of the terms "officially weighed," and "official weight" shall be deemed to be a representation that grain has been weighed under the Act. (800.57(b)(5))

12. The showing of the term "officially tested" shall be determined to be a representation that inspection or weighing equipment has been tested under the Act. (800.57(b)(7))

VIII—Deceptive Loading, Handling, Weighing, Sampling

Unit VIII contains provisions on, and examples of, deceptive loading, handling, weighing, and sampling; other deceptive activities; and adequate notice. Summaries of 28 of the provisions follow. Please see § 800.60 through § 800.66 for the complete text of the provisions and for definitions of terms.

1. Any action or practice that causes or tends to cause the issuance by official personnel of a false or incorrect certificate or other official form is deemed to be deceptive and, in the absence of adequate notice, is a violation of sections 3(u) and 13(a)(3) of the Act. (800.60)

2. In loading grain that will be sampled with a probe, it is deceptive to bias the sampling by (a) placing economically inferior grain on the bottom of a flat-bottomed container, (b) plac-

ing or loading economically inferior grain adjacent to the walls of a container, or (c) placing economically superior grain on top of the remainder of the grain in a flat-bottomed container, or (d) placing economically superior grain on the bottom of a V-shaped container, or (e) otherwise placing economically inferior grain or economically superior grain in a container in such a manner that a representative sample of the grain would not be obtained when sampled by a probe in an approved manner. (800.61(a); *26.116(b)(1)*)

3. In loading grain that is sampled before the grain is loaded, or that will be sampled with a probe after the grain is loaded, it is deceptive to place the grain in a container that will bias the accuracy of the sampling, including a container that (a) contains fertilizer or other non-grain material; (b) is infested with live insects that are injurious to stored grain; or (c) contains grain that is different in kind, quality, or condition than the grain that is being loaded; or (d) has a clearly objectionable non-grain odor; or (e) will otherwise contaminate the grain or have an adverse impact on the quality or condition of the grain. (800.61(b); *26.116(b)(2)*)

4. In loading grain that has been weighed under the Act, it is deceptive to place the grain in a container that will bias the accuracy of the weighing, including a container that (a) leaks grain at the time of loading; (b) is in such a condition that it could reasonable be expected to leak grain before arrival at destination; or (c) will otherwise adversely affect the quantity of the grain (800.61(c))

5. In loading grain that has been inspected or weighed under the Act, it is deceptive to bias the accuracy of the inspection or weighing by (a) diverting part or all of the grain away from the container in which the grain is to be loaded; (b) substituting uninspected or unweighed grain for inspected or weighed grain; or (c) otherwise failing to deliver all of the inspected and weighed grain to the carrier. (800.61(d))

6. In presenting or offering grain for inspection under the Act, it is deceptive to bias the accuracy of the inspection by (a) adding an insecticide or other material that masks the true odor, quality, or condition of the grain; or (b) otherwise masking the true odor, quality, or condition of grain. (800.62(a); *26.116(c)(2)*)

7. In unloading inbound grain that is to be inspected or weighed under the Act, it is deceptive to bias the accuracy of the inspection or weighing by (a) failing to remove all of the grain from the carrier; (b) diverting part or all of the grain so it is not sampled or weighed by the official or approved personnel; (c) substituting other grain for the inbound grain; or (d) otherwise failing to deliver all of the inbound grain to the official or approved personnel for inspection or weighing. (800.62(b))

8. After outbound grain has been inspected or weighed under the Act, it is deceptive to bias the accuracy of the inspection or weighing by (a) removing grain or other material from the grain; (b) adding grain or other material to the grain; or (c) otherwise altering in any manner the quality or quantity of the grain by removing or adding grain or other material, unless the removal or addition is completely monitored by official personnel. (800.62(c))

9. In presenting or offering grain for inspection or weighing under the Act, it is deceptive to bias the accuracy of the inspection or the weighing by (a) presenting or offering a portion of a binlot or other lot and representing that it is the entire lot; (b) presenting or offering grain from one bin or lot and representing that it is from another bin or lot; or (c) otherwise misrepresenting the identification or the quantity of the grain. (800.62(d); *26.116(c)(1)*)

1. It is deceptive to bias the accuracy of a weighing under the Act by (a) substituting an unofficial weighing device for an official device; or (b) altering the operation of an official weighing device; or (c) manipulating an official weighing device; or (d) otherwise manipulating an official weighing device to bias the accuracy of a weighing. (800.63(a))

11. It is deceptive to bias the accuracy of a weighing by (a) falsely decreasing the tare weight of a carrier; (b) falsely increasing the gross weight of a carrier or the grain in a carrier; or (c) otherwise falsely increasing the net weight of grain. (800.63(b))

12. It is deceptive to bias the accuracy of a weighing by misrepresenting the quantity of grain in a container by using a container (a) with a false floor, or false walls, or false partitions; or (b) that otherwise misrepresents the quantity of grain in the container. (800.63(c))

13. It is deceptive to bias the accuracy of a weighing by (a) falsely representing that a weighing device, a weight ticket, or a sample is an official weighing device, an official weight ticket, or an official weight sample; or (b) otherwise falsely representing that a weighing device, ticket, or sample has been been approved, issued, or obtained under the Act. (800.63(d))

14. It is deceptive to bias the accuracy of a weighing of trucklot grain by repeatedly presenting a load that exceeds the normal capacity of the scale on which the load is being weighed. (800.63(e))

15. It is deceptive to bias the representativeness of an official weight sample by (a) substituting an unofficial weight sample for an official weight sample; or (b) otherwise representing that an unofficial weight sample is an official weight sample. (800.63(f))

16. It is deceptive to bias the representativeness of an official weight sample by (a) falsely adding grain or other material to an official weight sample; or (b) falsely removing grain or other material from an official weight sample; or (c) otherwise manipulating an official weight sample. (800.63(g))

17. It is deceptive for official or approved personnel to bias the accuracy of a weighing by (a) performing weighing functions other than in accordance with instructions issued by the Service; (b) failing to protect official weight records and official weight samples from manipulation or substitution; or (c) failing to maintain the integrity of weight samples after they have been obtained; or (d) otherwise failing to protect the integrity of an official weight sample, or an official weight record. (800.63(h))

18. It is deceptive to bias the representativeness of an official sample by (a) manipulating the rate of flow of grain being sampled by an official sampling device or by an official sampler; or (b) manipulating the manner in which the grain is presented to an official sampling device or to an official sampler; or (c) shunting grain around an official sampling device or around an official sampler; or (d) otherwise manipulating the flow of grain to bias the representativeness of an official sample. (800.64(a); *26.116(c)(1)*)

19. It is deceptive to bias the accuracy of a sampling or an inspection by (a) substituting an unofficial sampling device for an official sampling device; or (b) altering the operation of an official sampling device; or (c) manipulating an official sampling device, or misleading official sampling personnel; or (d) otherwise manipulating official sampling devices to bias or destroy the accuracy of a sampling or an inspection. (800.64(b))

20. It is deceptive to bias the representativeness of an official sample by (a) adding or removing grain or other material from the sample; or (b) drying, cleaning, or otherwise processing the grain in the sample; or (c) treating the grain in the sample to mask the true odor, quality, or condition of the grain; or (d) otherwise altering or destroying the representativeness of the sample. (800.64(c); *26.116(d)(1)*)

21. It is deceptive to bias the accuracy of an inspection by (a) representing that an unofficial sample is an official sample; or (b) substituting an unoffi-

cial sample for an official sample; or (c) otherwise misrepresenting that an unofficial sample is an official sample. (800.64(d); *26.116(d)(2)*)

22. It is deceptive for official personnel or warehouse samplers to bias the accuracy of an inspection by (a) performing official sampling functions other than in accordance with instructions issued by the Service; or (b) failing to protect official sampling devices and official sample from manipulations, substitution, or careless handling; or (c) otherwise failing to obtain representative samples, or to protect the integrity and representativeness of official samples, submitted samples, official sampling devices, or related official reports. (800.63(e))

23. It is deceptive for an applicant for inspection of a submitted sample to bias the accuracy of an inspection by (a) showing a false identification for a submitted sample; or (b) within a 1-year period, using one identification for two or more submitted samples; or (c) substituting a similarly marked sample to two or more agencies; or (d) otherwise falsifying the information about a submitted sample or a submitted sample inspection. (800.64(f))

24. In presenting or offering a container for a stowage examination, it is deceptive to bias the accuracy of the examination by (a) misrepresenting the identification of the stowage area; or (b) presenting a container that has been treated with a material that masks but does not destroy an objectionable odor in the storage area; or (c) otherwise miseading official personnel in the performance of their stowage examination duties. (800.65(a))

25. In presenting sampling, inspection, and weighing equipment for testing under section 7B of the Act, it is deceptive to bias the accuracy of the testing by (a) substituting unofficial equipment for official equipment; or (b) misrepresenting that equipment has been approved; or (c) otherwise misleading official or approved personnel in the performance of equipment testing functions. (800.65(b))

26. It is deceptive for official or approved personnel to bias the accuracy of a stowage examination, equipment testing, laboratorty function, or other inspection or weighing function by (a) performing the function other than in accordance with instructions issued by the Service; or (b) failing to protect official test samples and official test results from manipulation; or (c) otherwise perform official functions in an unapproved manner. (800.65(c))

27. In giving notice in accordance with provision 28 below, it is deceptive to bias the accuracy of an inspection or weighing, by (a) falsely reporting a deceptive loading, handling, sampling, weighing, or related activity; or (b) otherwise misleading official or approved personnel in the performance of their official duties. (800.65(d))

28. Notice of deceptive loading, handling, weighing, sampling, or related activities will not be deemed adequate unless (a) the notice is given to the involved agency, field office, or approved scale-testing organization, as applicable, prior to the performance of official inspection, sampling, stowage examination, Class X or Class Y weighing, official equipment testing, or official laboratory functions, as appropriate; and (b) if the notice is oral, it is confirmed in writing within 2 business days. (800.66(a); *26.116(e)*)

IX—Fees

Unit IX contains provisions on fees assessed by agencies or the Service. Summaries of 17 of the provisions follow. Please see §800.70 through §800.73 for the completed text of the provisions and for definitions of terms.

1. Fees assessed by an agency shall be reasonable and nondiscriminatory. (800.70(a)(1); *26.70(a)*)

2. In the case of a governmental agency, the fees shall not be used for any purpose other than to finance (a) the cost of performing official services; or (b) the cost of other related agricultural programs administered by the agency. (800.70(a)(2))

3. Fees that were in effect on the effective date of this section shall be deemed to be approved by the Service, but this waiver does not bar a later disapproval. (800.70(b)(2))

4. Fees shall be considered reasonable if they (a) cover the estimated total cost of performing the services, (b) are reasonably consistent with fees of adjacent agencies, (c) are assessed on the basis of the fair average cost of performing like services (e.g., all IN inspection service at all locations), or the fair average cost of performing the same services (e.g., all trucklot inspection service at all locations), or an apportionment of the estimated total cost that is considered fair and reasonable by the agency and the Service (e.g., a fair averaging of the low volume costs with the high volume costs), and (d) the fees and charges are published at least 30 days before the effective date. (800.70(c))

5. Fees shall be considered nondiscriminatory if they are assessed and collected from all applicants in a fair and impartial manner without regard to location or membership in any organization. (800.70(d))

6. Each agency shall establish a schedule of its fees in a format approved by the Service and shall include a fee for each kind of official service or other service. (800.70(e); *26.70(b)*)

7. An application for approval of a fee shall be submitted to the Service not less than 90 days in advance of the effective date of the fee. Failure to submit an application within the prescribed time may be grounds for postponement or rejection of the request. (800.70(f)(1))

8. Each application shall show (a) the present fee; (b) the proposed fee, together with data showing how it was established; and (c) the effective date. (800.70(f)(2))

9. If the application and the financial data support the fee, the application will be marked "approved" and returned to the agency. (800.70(g)(1))

10. If it is determined that the application or the data do not support the fee, approval of the application will be withheld pending receipt of further data. If the needed data are not submitted within a reasonable period, the application shall be denied. (800.70(g)(2))

11. The assessment or collection of fees that have not been approved by the Service or have not been published in the prescribed manner shall be determined to be a violation of the regulations. (800.70(h))

12. The fees assessed by the Service include (a) the cost of per diem during travel and the cost of transportation, (b) callback payments to Service employees, and (c) postage and other delivery costs. The fees for official inspection services and nonregular workday weighing services in the U.S., and for nonregular workday inspection and weighing services in Canada, also include the cost of overtime. (800.72(a); *26.72(a)*)

13. Fees for standby shall be assessed in all cases except services performed under a service contract. (800.72(b); *26.72(b)*)

14. Standby shall be computed whenever a Service representative (a) has been requested by an applicant to perform a service at a specified time and location, (b) is on duty and is ready to perform the requested service, and (c) is unable to perform the requested service because of a delay by the applicant. (800.73(b); *26.73(b)*)

15. Bills for fees assessed by the Service will be issued at 4-week intervals. Payment shall be made within 30 calendar days after the due date shown on the bill. (800.73(e); *26.73(e)*)

16. If required by the Service, fees shall be paid in advance. (800.73(f); *26.73(f)*)

17. Except for standby, no fee shall be assessed if it is found there was a material error in the inspection or weighing from which a reinspection, review of weighing, or appeal inspection is taken. A "material error" shall be an error in the results of an official inspection function that exceeds the official tolerance. Any error in the results of a Class X or Class Y weighing

function shall be determined to be a "material error." (800.73(i); *26.73(j)*)

X—Kinds of Official Services

Unit X contains provisions on (a) the kinds of inspection and weighing services that are available, (b) prohibited services, and (c) restricted services. Summaries of 17 of the provisions follow. Please see § 800.75 through § 800.78 for the complete text.

1. The following kinds of inspection services are available under the Act: (a) Official sample-lot inspection, (b) warehouse sample-lot inspection, (c) submitted sample inspection, (d) official sampling service, and (e) stowage examination service. (800.76)

2. An official sample-lot inspection service consists of official personnel (a) sampling identified lots of grain; (b) inspecting the grain in the sample for official grade and grading factors, or official factors, or for official criteria; and (c) issuing one or more certificates. (800.76(b); *26.6(b)*)

3. A warehouse sample-lot inspection service consists of (a) the sampling with an approved diverter-type mechanical sampler of an identified lot of grain by a warehouse sampler; (b) the submitting of the sample by or for the applicant to official personnel; (c) the inspection of the grain in the sample by official personnel for official grade and grading factors, or for official factors, or for official criteria; and (d) the issuance by official personnel of one or more certificates. (800.76(c); *26.6(d)*)

4. A submitted sample inspection service consists of (a) the submitting of an identified sample of grain by or for an applicant to any one agency, or any one field office; (b) the inspection of the grain in the sample by official personnel for official grade and grading factors, or for official factors, or for official criteria; and (c) the issuance by official personnel of one or more certificates. (800.76(d); *26.6(e)*)

5. An official sampling service consists of official personnel (a) sampling an identified lot of grain, (b) dividing the sample into two or more representative portions and sealing the portions, (c) issuing an official certificate, and (d) forwarding the portions of the sample and a copy of the certificate in accordance with the request of the applicant. (800.76(e); *26.6(h)*)

6. An official stowage examination service consists of official personnel (a) visually determining whether an identified container is suitable to receive or store grain insofar as the suitability may affect the quality or condition of the grain, and (b) issuing of an official certificate. (800.76(f)(1); *26.6(i)*)

7. An official stowage examination and approval of the stowage space are required for (a) export grain, and (b) other lots of outbound grain that are officially sampled or inspected at the time of loading. (800.76(f)(2); *26.6(i)(2)*)

8. The following kinds of weighing services are available under the Act: (a) Class X weighing, (b) Class Y weighing, (c) checkweighing, (d) checkloading, and (e) stowage examination service. (800.77)

9. An official Class X weighing service consists of official personnel (a) physically performing or completely supervising the loading or unloading of an identified lot of bulk grain, (b) physically weighing or completely supervising the weighing of the grain, and (c) issuing an official weight certificate. If the loading, unloading, or weighing is not physically performed by official personnel, it must be performed by approved personnel under the complete supervision of official personnel. (800.77(b)(1))

10. An official Class Y weighing service consists of (a) the physical performance by approved personnel of the loading or unloading of an identified lot of grain; (b) the physical weighing by approved weighers of the grain; (c) the recording and forwarding by approved weighers of the weight information to official personnel; (d) the complete supervision by official personnel of some or all, as specified by the Service, of the loading or unloading, the weighing, and the recording and forwarding of the weight information by approved personel; and (e) the issuance by official personnel of a weight certificate for each identified lot. (800.77(c))

11. A checkweighing service for sacked grain consists of official personnel (a) physically obtaining or completely supervising the obtaining of an official weight sample; (b) physically weighing or completely supervising the weighing of an official weight sample; (c) determining the estimated total gross, tare, and net weights or the estimated average gross or net weight per filled sack, in accordance with the regulations and the request by the applicant; and (e) issuing an official certificate. (800.77(d); *26.6(g)(1)*)

12. A checkloading service for sacked grain consists of official personnel (a) performing a stowage examination service in accordance with paragraph 13 below, (b) performing a checkweighing service in accordance with paragraph 11 above, (c) counting or computing the number of filled sacks of grain as they are loaded aboard an identified carrier, (d) affixing or completely supervising the affixing of door seals to the railroad car or other carrier, and (e) issuing an official certificate. (800.77(e); *26.6(g)(2)*)

13. A stowage examination service for fitness to carry grain consists of official personnel (a) visually determining whether an identified carrier is suitable for carrying grain insofar as the quantity of the grain may be affected, and (b) issuing an official certificate. (800.77(f)(1); *26.6(i)*)

14. A stowage examination may be obtained as a separate kind of official weighing service or it may be obtained in conjunction with one or more other kinds of official weighing service. An official stowage examination and approval of the stowage space are required for an official Class X weighing service on (a) export grain, and (b) other lots of outbound grain that are officially sampled, inspected, or Class X weighed at the time of loading. (800.77(f)(2))

15. The inspection or weighing of grain on the basis of (a) unofficial standards, (b) unofficial procedures, (c) unofficial factors, and (d) unofficial criteria are prohibited by the Act and cannot be performed by or obtained from agencies or field offices. (800.78(a); *26.5(b)*)

16. If an inspection or weighing service is requested on a sample or a lot of grain that does not clearly consist of 50 percent or more of whole kernels, the sample or lot shall be examined to determine whether the sample or lot consists of 50 percent or more of whole kernels. For each examination, an official inspection certificate shall be issued. If the sample or lot does not consist of at least 50 percent of whole kernels, the certificate shall show (a) the statement "Not Standardized Grain"; and (b) the results of the examination. The results of such examinations shall be subject to reinspection and appeal inspection services. (800.78(b)(1); *26.5(b)*)

17. The inspection or weighing of grain screenings may be available from field offices and agencies in accordance with instructions issued by the Service. (800.78(b)(2))

XI—Inspection Methods and Procedures

Unit XI contains provisions on (a) the objectives of inspection services; (b) the methods and order of performing inspection services; (c) sampling requirements; (d) inspection of grain in land carriers and barges in single lots; (e) inspection of grain in combined lots; (f) inspection of shiplot grain; (g) new inspections; (h) when identity of grain is deemed lost. Summaries of 58 of the provisions follow. Please see § 800.80 through § 800.89 for the complete text of the provisions and for definitions of terms.

1. The objective of official inspection services is to provide, upon request, impartial and accurate quality information about grain and grain containers in a timely and efficient manner so that grain may be marketed in an orderly and timely manner and trading in grain may be facilitated. (800.80)

2. All inspection services performed under the Act shall be performed in accordance with the methods and procedures prescribed in the regulations, and in the instructions issued by the Service. (800.81(a)(1); *26.12(a)(1)*)

3. Determinations that are based on a sampling of the grain in a lot shall be based on a proportionate or random sampling of the grain in the entire lot, (except in the case of "heavily loaded" and "part" lots), and an accurate analysis of the grain in the samples. (800.81(a)(2); *26.12(b)(1)*)

4. Determinations that are based on an examination of a carrier, or a stowage area in a carrier, shall be based on a thorough examination of the carrier or stowage area. (800.81(a)(3); *26.6(i)*)

5. Determinations that are based on the analysis of the grain in a submitted sample shall be based on an accurate analysis. If a submitted sample is too small for an accurate analysis, the inspection request shall be dismissed or a partial inspection shall be performed in accordance with instructions issued by the Service. (800.81(a)(4); *26.12(e)(3)*)

6. Determinations in a reinspection, field appeal, or Board appeal inspection service shall be based on an independent redetermination of the grade, the factor, the criteria, or other information consistent with the scope of the original inspection service. The results of the previous determinations shall not be used in making and recording the initial redetermination, but shall be considered in verifying the accuracy of the redetermination, and shall be used in applying prescribed statistical tolerances. (800.81(a)(5); *26.12(a)(2)*)

7. Inspection services shall be performed insofar as consistent with good management in the order which the request for services is received. When necessry, precedence shall be given to requests for inspection services required by section 5 of the Act. (800.81(b); *26.12(e)*)

8. No official personnel shall perform or participate in performing an inspection service on grain, or on a grain container, in which they have a direct or indirect financial interest (800.81(d); *26.12(f)*)

9. An inspection certificate shall be issued for each inspection service performed under the Act. (800.81(e); *26.58(a)*)

10. To be considered an "official sample" for lot inspection purposes, a sample must be (a) physically obtained from the grain in the lot; (b) obtained by a licensed or authorized person; (c) representative of the grain in the lot; (d) protected from manipulation, substitution, and improper or careless handling; and (e) obtained within prescribed geographical boundaries. (800.82(a)(1); *26.12(a)*)

11. To be considered "an official sample" for appeal inspection purposes, a sample, other than a file sample, must be obtained by (a) an authorized employee of the Service; or (b) a licensee, other than an employee of an agency, operating under a contract with the Service. (800.82(a)(2))

12. Samples for inspections required by section 5 of the Act may not be obtained by a warehouse sampler or any person other than official personnel. (800.82(a)(3))

13. No sample shall be deemed representative of a lot of grain unless the sample (a) is of the size prescribed in instructions issued by the Service; (b) has been obtained and submitted in accordance with procedures prescribed in instructions issued by the Service; (c) is otherwise representative of the grain in the lot. (800.82(b); *26.8(b)*)

14. Agencies, field offices and official personnel shall protect official samples from manipulation, substitution, and improper or careless handling which might deprive the samples of their representativeness. (800.82(c); *26.8(g)*)

15. No agency or field office shall perform an original or a reinspection service on an official sample, or on a warehouseman's sample, unless the grain from which the sample was obtained was physically located within the area of responsibility assigned to the agency or the field office. The Administrator may grant an exception to this rule. (800.82(d); *26.12(c)*)

16. In sampling grain in lots, any grain that is obtained in excess of the quantity (a) specified in the instructions issued by the Service (b) needed for the file samples prescribed by the regulations; and (c) needed for samples requested by interested persons, shall be returned to the lot from which the excess grain was obtained, or to the owner of the lot, or his designated agent. (800.82(e)(1); *26.19(a)*)

17. Inspection samples shall, after they have served their intended purposes, be disposed of as follows: (a) Samples which contain toxic substances shall be kept out of food and feed channels; (b) samples obtained by agencies may be returned at the request of the applicant at his expense or may be otherwise disposed of by the agency; a complete record of the disposition shall be maintained; (c) samples obtained by the Service shall become the property of the Service and may be disposed of in accordance with instructions issued by the Service. (800.82(e)(2); *26.19(b)*)

18. Each original inspection service to determine the quality or condition of a lot of grain shall be made on the basis of one or more samples obtained from the grain in the lot. In an official sample-lot inspection service, the sample must be obtained and submitted by official personnel. In a warehouseman's sample-lot inspection service, the sample must be obtained and submitted by a warehouse sampler. (800.83(a)(1); *26.6(b)(1) and (d)(1)*)

19. Each reinspection and field appeal inspection service for grade, factor, or criteria shall be made on the basis of the most representative samples available or that can be obtained at the time of inspection service. A sample obtained with a probe shall generally be considered the most timely and the most representative with respect to heating, musty, sour, insect infestation, or other condition and odor factors. A sample obtained with an approved diverter-type mechanical sampler, or with a pelican sampler, shall generally be considered the most representative in all other quality factors. The determination as to which samples shall be deemed most representative shall be made by the official personnel performing the reinspection or the field appeal inspection service. (800.83(b)(1); *26.8(e)*)

20. Upon request of the applicant new samples shall be obtained and examined as a part of a reinspection or a field appeal inspection service if (a) it is practicable to obtain new samples, and (b) new samples would generally be deemed more representative of the grain. (800.83(b)(1))

21. File samples that are retained by agencies and field offices in accordance with the instructions issued by the Service may be deemed representative subject to the following conditions: (a) The samples must have remained at all times in the control of the agency or the field office, or in the custody of the Service; (b) the official personnel who performed the inspection service in question and the official personnel who are to perform the reinspection, field appeal, or Board appeal inspection service must believe that samples were representative at the time of the inspection in question, (800.83(d)(1); *26.8(f)(1)*)

22. When a reinspection, field appeal, or Board appeal inspection service is based in whole, or in part, on a file sample, the certificate shall show the statement "Results based on official file sample." (800.83(d)(2); *26.8(f)(2)*)

23. Except as may be approved by the Administrator on a case-by-case basis in an emergency, each lot inspection for grade, factor, or criteria on an "IN" (or en route) cargo shipment of bulk grain shall be based on samples obtained (a) as the grain is being unloaded from the carrier; (b) immediately after the initial elevation and as near as physically practicable to the initial elevation; and (c) by means of diverter-type mechanical samplers approved by and operated in accordance

with instructions issued by the Service. (800.84(a)(1); *26.8(d)*)

24. Each lot inspection on an "IN" movement of grain, other than a bulk cargo shipment, shall be based on samples obtained while the grain is at rest in the container, or during unloading, or after unloading and immediately after the initial elevation. (800.84(a)(2); *26.8(d)*)

25. Except as may be approved by the Administrator on a case-by-case basis in an emergency, each lot inspection for grade, factor, or criteria on an export shipment or an "OUT" cargo shipment of bulk grain shall be based on samples obtained (a) as the grain is being loaded aboard the final carrier; (b) after final elevation of the grain prior to loading and as near as physically practicable to the final loading spout; and (c) by means of diverter-type mechanical samplers approved by and operated in accordance with instructions issued by the Service. (800.84(b)(1); *26.110(d)*)

26. Each lot inspection on an "OUT" movement of grain, other than export and cargo shipments, shall be based on official samples obtained (a) as the grain is being loaded aboard a carrier; or (b) while the grain is at rest in the carrier. (800.84(c))

27. Each lot inspection on a "LOCAL" movement of grain shall be based on official samples obtained while the grain is at rest in the container, or during unloading, or while the grain is being transferred. (800.84(d))

28. Provisions 23 and 25 above will require the installation or relocation by certain elevators of diverter-type mechanical samplers. Although provision is made for granting exceptions to the requirements on an emergency basis, each elevator that desires official inspection services should review its operations and, as needed, install or relocate diverter-type mechanical samplers as soon as practicable. Where installation or relocation is required, the final date for submitting plans to the Service for installation and relocation of the samplers shall be July 1, 1979; and the final date for completing the installation or relocation shall be July 1, 1980. (800.84(e))

29. If the grain in a container is found to be uniform in condition, the grain shall be sampled, inspected, and certificated as one lot. If the grain is found to be not uniform in condition, the grain in each portion shall be sampled, inspected, and graded separately, but shown on one certificate. (800.85(b)(1), 800.85(b)(2); *26.13(b)(1)*, *26.13(b)(2)*)

30. If any portion of the grain in a lot is found to be "weevily," the entire lot shall be graded "weevily." (800.85(b)(3); *26.13(b)(2)*)

31. One official certificate shall be issued for the inspection of the grain in each truck, trailer, railroad car, barge or similar size carrier or container. (800.85(c); *26.13(e)*)

32. Bulk grain offered for inspection at rest in a container, but in such a condition or of such depth that the bottom of the container is not reached with each probe, shall be sampled as thoroughly as possible with a probe approved by the Service; and the certificate of inspection shall show the following completed statement: "Top ——— feet sampled. Bottom not sampled." (800.85(e); *26.(f)*)

33. If bulk or sacked grain is (a) offered for inspection at rest in a container and is loaded in such a manner that it is possible to secure only a door probe, shallow probe, door-sack probe or surface-sack probe sample; or (b) the grain is not trimmed or does not otherwise have a reasonably level surface, the container shall be considered "heavily loaded." If the grain is an IN or LOCAL movement, a partial inspection shall be made. If the grain is an OUT movement, the request shall be dismissed. (800.85(f); *26.13(g)(1)*)

34. When a partial inspection is made, a "partial inspection—heavily loaded" certificate shall be issued. (800.85(f)(2); *26.13(g)(2)*)

35. A request for a reinspection or a field appeal inspection service on grain in a container that is certificated as "partial inspection—heavily loaded" shall be dismissed unless the grain is found to be fully accessible for sampling. (800.85(f)(3); *26.13(g)(3)*)

36. If a portion of the grain in a container is removed, the grain that is removed, and the grain remaining in the container shall be considered separate lots. If an inspection service is requested on either portion, a "part-lot" inspection certificate shall be issued. (800.85(g); *26.13(h)*)

37. Applications for the inspection of grain in combined lots shall (a) be filed in advance of the loading or unloading; (b) show the estimated quantity that is to be certificated as one lot; (c) show the contract grade for the grain; and (d) identify each carrier in which the grain is loaded, or is being loaded, or from which the grain is being unloaded. (800.86(c)(1); *26.15(c)*)

38. Grain that is to be inspected as a combined lot during loading, or unloading, or at rest (a) must be sampled in one location in one reasonable continuous operation; and (b) a representative sample or samples must be obtained from the grain in each carrier unless otherwise specified in instructions issued by the Service. (800.86(d)(1); *26.15(c)*)

39. The factor and criteria information shown on certificates for grain in a combined lot shall, except for "weevily" grain and grain that is not uniform in quality, be based on the weighted averages of the analysis of the grain in the sublots. (800.86(e); *26.15(e)*)

40. If the grain in a combined lot is offered for inspection as it is being loaded, and the grain, or a portion of the grain, is found to grade "weevily," the applicant shall be promptly notified and may exercise such options as specified in instructions issued by the Service.

41. The grain in each combined lot shall be sampled in a continuous manner and the samples shall be examined for uniformity of quality and condition. If the grain in the samples is found to be uniform in quality and condition, and the grain is loaded aboard or is unloaded from the carrier in a reasonably continuous operation, the grain in the lot shall be inspected and certificated as one lot. (The provision with respect to reasonably continuous loading or unloading is not applicable to grain which is inspected at rest.) (800.86(g); *26.15(c)(4)*)

42. If the grain in a combined lot is found to be not uniform in quality, or if the grain is not loaded or unloaded in a reasonably continuous operation, the grain in each portion, and the grain which is loaded or unloaded at different times shall be inspected and certificated as separate lots. (800.86(h), 800.86(i); *26.15(e)(i)*)

43. Each certification for a combined lot inspection service shall show the identification for the "combined lot" or, at the request of the applicant, the identification of each carrier in the combined lot. If the identification of each carrier is not shown, the statement "carrier identification available on official inspection log" shall be shown on the inspection certificate. The identification of the carriers may be shown on the reverse side of the inspection certificate provided the statement "See reverse side" is shown on the face of the certificate. (800.86(i)(4); *26.15(e)*)

44. Applications for the recertification of grain in lots that have been inspected and certificated as individual lots shall (a) be filed within 2 business days after the latest inspection date of the individual lots; and (b) show the information specified in provision 37 above. The certificate for a recertification service shall show (a) the date of the inspection of the grain in the individual lots; (b) a serial number other than the serial number of the inspection certificates that are to be superseded; (c) the approximate quantity of grain in the combined lot; and (d) a completed statement showing the identity of the superseded certificates as follows "This Combined Lot Certificate supersedes certificate numbers ———, dated ———." If the superseded certificates are not in the custody of

the applicable agency or field office, the combined lot certificate shall show the statement "The superseded certificates identified herein have not been surrendered." (800.86(i)(5); *26.15(d)*)

45. After a combined lot inspection certificate has been issued, there shall be no further combining and no dividing of the certificate at a later date. (800.86(j); *26.15(h)*)

46. A reinspection service or an appeal inspection service may be obtained on a combined lot inspection service. (800.86(l); *26.15(j)*)

47. Applications for the inspection of shiplot grain that is to be inspected as a single lot shall (a) be filed in advance of the loading or unloading of any of the grain; (b) show the contract grade for the grain; and (c) show the identity of the carrier and the stowage area in which the grain is to be loaded, or from which the grain is to be unloaded, or in which the grain is at rest. (800.87(c))

48. Shiplot grain must be accessible for sampling and be sampled in one inspection location in one reasonably continuous operation. A representative sample or samples must be obtained from the grain in each portion that is submitted for inspection as a lot unless otherwise specified in instructions issued by the Service. (800.87(d); *26.14(c)*)

49. The factor, and criteria, information shown on certificates for shiplot grain shall be based on the weighted averages of the analysis of the sublots in the single lots, in accordance with instructions issued by the Service. (800.87(e); *26.14(k)*)

50. If grain in a shiplot is found to grade "weevily," the applicant shall have the option of (a) completing the loading and treating the grain in the lot, or the portion of the lot, in accordance with instruction issued by the Service; or (b) unloading the grain in the lot, or other affected portions of the lot; or (c) treating that portion of the lot which graded "weevily," subject to examination by official personnel in accordance with instructions issued by the Service; or (d) unloading the grain without treatment with an insecticide, in which event all the grain in the lot and all other grain in common stowage areas coming into physical contact with the affected grain shall be certificated as "weevily." (800.87(f)(1); *26.14(g)*)

51. If the grain is treated with an insecticide and the treatment is performed (a) in accordance with instructions issued by the Service; and (b) under the supervision of official personnel, the inspection of the lot shall continue in the same manner as though the "weevily" condition did not exist. (800.87(f)(2);

52. If the grain in the shiplot is found to be uniform in quality, and the grain is loaded aboard or is unloaded from the carrier in a reasonably continuous operation, the grain shall be inspected and certificated as one lot. (The reasonably continuous operation provision shall not be applicable to grain that is inspected at rest.) (800.87(g); *26.14(c)*)

53. If the grain in a shiplot is found to be not uniform in quality, or if the grain is not loaded or unloaded in a reasonably continuous operation, the grain in each portion, and the grain which is loaded or unloaded at different times, shall be inspected and certificated as separate lots. (800.87(h); *26.14(d)*)

54. If the grain in a shiplot is offered for inspection as it is loaded without separation aboard a ship, and is loaded in a stowage area with other grain or another commodity, the inspection certificate for the grain in each lot in the stowage area shall show the kind, the grade, if known, and the location of the other grain, or the kind and the location of the other commodity in the adjacent lots. If a separation is laid between the adjacent lots, the inspection certificate shall show the kind of material used in the separation and the location of the separation in relation to each lot. This provision shall not be applicable to the first lot in a stowage area unless a second lot has been loaded, in whole or in part, in the stowage area prior to the issuance of the certificate for the first lot. (800.87(i)(2); *26.14(h)*)

55. If an original, reinspection, field appeal, or Board appeal inspection service has been performed on an identified lot of grain or container in an agency's or field office's assigned area of responsibility, and thereafter the identity of the grain or container is deemed lost, a new original inspection may be requested. (800.88(a); *26.16(a)*)

56. If the identity of the grain or the container is not deemed lost, no new original inspection may be performed on the same identified lot of grain or container in the same location within 5 business days after the last inspection without securing, in advance, the approval of the appropriate field office supervisor. (See 56 for definition of when identity is deemed lost.) (800.88(b); *26.16(b)*)

57. In performing reinspection and appeal inspection services, the identity of a given lot of grain shall be considered lost if after the original inspection (a) a portion of the grain is unloaded, transferred, or otherwise removed from the container; (b) a portion of grain or other material, including an insecticide or fumigant is added to the grain; or (c) the stowage area is cleaned, treated, fumigated, or fitted; (d) the identification of the containers is changed. At the option of the official personnel, the identity of a given lot in a closed container may be deemed lost if the container is not sealed or if the seal record is incomplete. The provision of clause (b) shall not be applicable to grain treated with an insecticide in accordance with provision 50 above. (800.89(a); *26.17(a)*)

58. The identity of a submitted sample shall be deemed lost (a) when the identifying mark for the sample is lost or destroyed; or (b) when the sample has not been retained and protected by official personnel in the manner prescribed in instructions issued by the Service. (800.89(b); *26.17(b)*)

XII—Weighing Provisions and Procedures

Unit XII contains provisions on (a) the objective of weighing services; (b) the methods and order of performing official weighing functions; (c) weighing procedures; (d) weighing of bulk grain in land carriers and barges in single lots; (e) weighing of grain in combined lots; (f) weighing of shiplot grain in single lots; (g) checkweighing sacked grain; and (h) restricted weighing activities. Summaries of 39 of the provisions follow. Please see § 800.95 through § 800.105 for the complete text and for definitions of terms.

1. The objective in performing official weighing services under the Act is to provide, upon request, impartial and accurate weight information about grain, and impartial and accurate quality information about grain carriers in a timely and efficient manner so that grain may be marketed in an orderly and timely manner and trading in grain may be facilitated.(800.95(a))

2. All weighing services performed under the Act shall be performed with equipment approved by the Service and in accordance with procedures prescribed in the regulations and in the instructions issued by the Service. (800.96(a)(1))

3. Determinations in a "review of weighing" service shall be based on an independent review of the weighing information and procedures. No tolerance shall be used in performing a review of weighing service. Any difference in results shall be deemed to be a material error and shall require the issuance of a corrected certificate of weight.(800.96(a)(4))

4.Weighing services under the Act shall be performed insofar as is consistent with good management in the order in which the request for the services is received. Precedence shall be given when necessary to requests for weighing required by sections 5 of the Act. (800.96(b))

5. No official personnel shall perform or participate in performing a weighing service on grain, or a stowage examination of a grain carrier in

which they have a direct or indirect financial interest. (800.96(d))

6. When feasible, the weight of a grain spill shall be determined by retrieving and weighing the grain. Otherwise, the weight shall be determined by (a) using standard estimating formulas for grain volumes, or (b) such other methods that may be prescribed in instructions issued by the Service. (800.97(b)(1))

7. If a spill occurs in the loading of outbound grain that has been weighed under the Act, and the spilled grain has retained its quality and is retrieved and loaded on board the carrier, or the spilled grain is replaced, the weight certificate shall show the weight of the grain that was physically loaded on board. Upon request of the applicant, a certificate may be issued to show the weight of the additional grain that was used to replace a spill. (800.97(b)(2))

8. If a spill occurs in the loading of outbound grain that has been weighed under the Act and the spilled grain is not retrieved, or is not replaced, the weight certificate shall show the weight of the grain that was physically loaded on board, excluding the estimated amount of the grain that was spilled. Upon request of the applicant, an additional certificate may be issued showing the estimated amount of grain that was spilled. (800.97(b)(3))

9. If a spill or other avoidable loss occurs in the unloading of inbound grain that is to be weighed under the Act, and the spilled grain is not completely retrieved and weighed as a part of the inbound lot, the weight certificate for the lot shall show the combined weight of (a) the grain that was physically unloaded; and (b) the estimated amount of grain that was spilled and was not retrieved. (800.97(b)(4)(i))

10. The identity of a lot of inbound grain shall be deemed lost if the grain becomes mixed with other grain, related commodities, or other products, except for grain from another carrier. When such loss of identity occurs, no amount shall be shown in the "Net Weight" portion of the weight certificate for that lot. (800.97(b)(4)(ii))

11. If, after unloading an inbound carrier, quantities of grain remain on the floor, the weight of the grain that was in the carrier, including the estimated amount of grain that remained, shall be shown on the weight certificate. (800.97(c))

12. If the grain in an inbound carrier or barge is offered for inspection and weighing as one lot, and is found to be uniform in condition, the grain may be weighed and certificated as one lot. (800.98(b)(1))

13. If the grain in an inbound carrier or barge is offered for inspection and weighing as one lot, and is found to be not uniform in condition, and the grain in each portion is unloaded as a separate portion, the grain in each portion shall be weighed as a separate lot; but the separate lots shall be certificated on one weight certificate. If the grain in each portion is not unloaded as a separation portion, the grain that is unloaded shall be weighed and certificated as one lot. (800.98(b)(2))

14. Except for grain in combined lots and grain in bulkhead lots, one weight certificate shall be issued for the weighing of the grain in each carrier. (800.98(c))

15. If the grain in a carrier is offered for weighing service as two or more lots, and the lots are separated by bulkheads or other partitions, the grain in each lot shall be weighed and certificated as a separate lot. (800.98(d))

16. If a portion of a lot of inbound grain is unloaded, and a portion is left at the carrier, the grain that is removed shall be weighed and certificated as "part-lot." (800.98(e)(1))

17. Applications for the weighing of grain in combined lots shall (a) be filed in advance of the loading or unloading of any of the grain, (b) show the estimated quantity of grain that is to be weighed as one lot, and (c) identify each carrier in which the grain is being loaded or unloaded. (800.99(c))

18. If the grain in a combined lot is inspected by official personnel and found to be uniform in quality, the grain in the combined lot may be weighed and certificated as one lot, at the request of the applicant. (800.99(e))

19. If the grain in a combined lot is inspected by official personnel and found not to be uniform in quality, the grain nevertheless may, at the request of the applicant, be certificated as one lot. (800.99(f))

20. If an inbound or outbound movement of sacked grain is offered for weighing and is not fully accessible, the request for weighing service shall be dismissed. (800.99(g)(1))

21. Each certificate for a combined lot weighing service shall show the identification of the "Combined Lot" or, at the request of the applicant, the identification of each carrier in the combined lot. The identification and any seal information for the carriers may be shown on the reverse side of the weight certificate, provided the statement "See reverse side" is shown on the face of the certificate in the space provided for remarks. (800.99(g)(4))

22. Applications for the recertification of grain in lots that have been weighed and certificated as individual lots shall be filed within two business days after the last date of weighing of the individual lots. The weight certificate for the lots that are being recertificated shall show (a) the date of weighing the grain in the component lots; (b) a serial number, other than the serial numbers of the weight certificates that are to be superseded; (c) a statement showing the weight of the grain in the combined lot; and (d) a completed statement showing the identification of the superseded certificates as follows, "This Combined-Lot certificate supersedes certificate nos. dated ." (800.99(g)(5))

23. After a combined-lot weight certificate has been issued, there shall be no further combining and no dividing of the certificate at a later date. (800.99(h))

24. A review of weighing service may be obtained on grain in a combined lot. (800.99(j))

25. Applications for the weighing of shiplot grain shall (a) be filed in advance of the loading or unloading of any of the grain; (b) show the estimated quantity of grain that is to be weighed as one lot; and (c) identify the carrier and the stowage area in which the grain is being loaded, or from which the grain is being unloaded. (800.100(c))

26. The weighing certificate for shiplot grain shall show (a) if true, a statement that the grain has been loaded aboard with other grain; (b) the weight; (c) the stowage or other identification of the grain; (d) such information as may be required by the regulations and the instructions issued or approved in specific cases by the Service. (800.100(e)(1))

27. If bulk grain is offered for weighing as it is being loaded aboard a ship, and is loaded in a stowage area with other grain or other bulk commodities, the weight certificate for each lot of grain in the stowage area shall show the relative location of the lot. If a separation is laid between the grain and the adjacent lots, the weight certificate shall show the kind of material used in the separation and the location of the separation in relation to each lot. If a separation is not laid between the grain and the adjacent lots, the weight certificate shall show that the grain was loaded on board with other grain or another commodity without separation. The requirements of this provision shall not be applicable to the first lot in a stowage area unless a second lot has been loaded in the stowage area prior to the issuance of the weight certificate for the first lot. (800.100(e)(2))

28. If a part of an inbound lot of grain is unloaded, and a part is left in the carrier, the grain that is unloaded shall be weighed and certificated in accordance with provision 13 above. (800.100(e)(4))

29. In checkweighing sacked grain, a weight sample must be (a) selected

from the sacked grain in the lot by official personnel; (b) representative of the grain in the lot; (c) protected from manipulation, substitution and improper handling; and (d) be obtained within prescribed geographic boundaries as shown in provision 31. (800.101(a)(1))

30. No weight sample shall be deemed representative of a lot of sacked grain unless the sample (a) is of the size prescribed in instructions issued by the Service; (b) has been obtained and weighed in accordance with procedures prescribed by the Service; and (c) is otherwise representative of the sacked grain in the lot. (800.101(b))

31. No agency or field office shall checkweigh any lot of sacked grain unless at the time of obtaining the official weight sample the sacked grain was physically located within the area assigned to the agency or field office. Upon request, and a showing of need, the Administrator may grant an exception to this provision on a case-by-case basis. (800.101(d))

32. Each checkweighing on an IN movement of grain shall be based on an official weight sample obtained while the grain is at rest in the carrier, or during unloading in accordance with procedures prescribed by the Service. (800.103(a))

33. Each checkweighing of sacked export grain shall be based on an official weight sample obtained from the grain (1) as it is being loaded aboard the final carrier; (2) as the grain is being sacked; or (3) while the grain is at rest in a warehouse or holding facility in accordance with instructions issued by the Service. (800.103(b))

34. Each checkweighing of an OUT movement (other than export) of sacked grain shall be based on an official weight sample obtained (a) from the grain as it is being loaded aboard the carrier; (b) while the grain is at rest in the carrier; or (c) while the grain is at rest in a warehouse or holding facility in accordance with the instructions issued by the Service. (800.103(c))

35. Grain weighing equipment and related grain handling systems shall not be operated except in accordance with instructions supplied by the manufacturer of the equipment and the instructions issued by the Service. (800.104(a))

36. Modifications or changes in approved grain weighing equipment and in related grain handling systems shall not be made without notifying the appropriate agency or field office in advance of the modification. (800.104(b))

37. Except as shown in this provision, outbound grain that has been weighed under the Act shall be routed directly from the scale to the carrier and shall not be cleaned, dried, or otherwise processed, while the grain is enroute to the carrier, to remove or add material. Inbound grain that is to be weighed under the Act shall be routed directly from the carrier to the scale and shall not be cleaned, dried, or otherwise processed, while the grain is enroute to the scale, to remove or add material. An insecticide may be added to outbound grain after the grain has been weighed, and may be added to inbound grain before the grain has been weighed, provided the addition of the insecticide is monitored by official personnel and is noted by such personnel on the appropriate weight certificate. The routine removal of airborne dust during the handling of grain shall not be deemed to be removal of material. (800.104(c))

38. A motor vehicle scale shall not be used for weighing any lot smaller than 1,000 pounds gross. (800.104(d))

39. A motor vehicle scale shall not be used for weighing a vehicle that is not entirely borne by the scale load receiving device. If a vehicle is attached to another vehicle, both vehicles must be entirely borne by the load receiving device at the time of weighing. (800.104(e))

XIII—Original Services

Unit XIII contains provisions on obtaining and performing original services including (a) who may request; (b) how to request; (c) dismissal of requests; (d) who shall perform; (e) issuance and distribution of certificates; and (f) service on grain in set-back carriers. Summaries of 18 of the provisions follow. Please see § 800.115 through § 800.120 for the complete text of the provisions.

1. Original inspection services and Class X and Class Y weighing services may be requested by any interested person who desires the service. (800.115(a); *26.25(a)*)

2. A request for original inspection service may be made for (a) one or more identified lots or submitted samples; or (b) a definite or indefinite number of lots, or submitted samples, to be shipped from or to a specified location; or (c) all lots shipped from or to a specified location or from or to a specified person. (800.115(b)(1); *26.25(b)*)

3. A request for a Class X weighing service may be made for (a) one or more identified lots; or (b) a definite or indefinite number of lots to be shipped from or to a specified location; or (c) all lots shipped from or to a specified location or from or to a specified person. (800.115(b)(2))

4. A request for a Class Y weighing service may be made for a period of 6 months or longer for (a) all lots shipped from or to a specified location; or (b) all lots shipped from or to a specified location in a specified type of carrier. (800.115(b)(3))

5. If a contract-type arrangement (sometimes referred to as "Guaranteed Station") is offered by an agency or the Service, an applicant may enter into the contract-type arrangement for a specified period, whereby (a) the applicant agrees to pay a specified amount as shown in an approved fee schedule; and (b) the agency or the Service, as appropriate, agrees to perform original inspection or Class X or Class Y weighing services as requested by the applicant. (800.115(c); *26.25(c)*)

6. A request for original inspection service shall be filed with the inspection agency or the authorized field office that is assigned the area where the grain will be sampled. (800.116(a); *26.26(a)*)

7. A request for an original weighing service shall be filed with the weighing agency or the authorized field office that is assigned the area where the grain will be weighed. (800.116(a))

8. If a request for inspection or weighing services is made orally, it shall, upon request by the agency or the field office, be confirmed in writing. (800.116(a); *26.26(b)*)

9. A request for extensive inspection or weighing services should be filed as far in advance of the effective date of the request as possible to permit the agency or field office to plan and effect its staffing needs. (800.116(d); *26.26(b)*)

10. For grain that is to be inspected or Class X weighed during loading, unloading, or handling, the request must be filed sufficiently in advance of the loading, unloading, or handling to enable official personnel to be present. (800.116(d); *26.26(d)*)

11. A request for an original inspection or weighing service shall be dismissed for the reasons specified in Unit VI, "CONDITIONS FOR OBTAINING AND WITHHOLDING SERVICES." (800.117(a); *26.27(b)*)

12. A request for an original inspection or weighing service may be dismissed if the service cannot be performed in whole or in part within 2 business days after the grain is presented for inspection and weighing. (800.117(a); *26.27(b)*)

13. Original inspection service in the United States shall be performed by the inspection agency or the field office, as appropriate, that is assignd the area in which the grain will be sampled. (800.118(a); *26.28(a)*)

14. Class X or Class Y weighing service in the United States shall be performed by the agency or the field office, as appropriate, that is assigned the area in which the grain will be weighed. (800.118(a))

15. Original inspection and weighing service, with respect to U.S. grain being exported through Canadian

ports, shall be performed by the field office that is assigned the area where the grain will be sampled or weighed. (800.118(b); *26.28(b)*)

16. For each original inspection service and each Class X or Class Y weighing service, an official certificate shall be issued. The certificate for an original inspection service shall show the term "original inspection." (800.119; *26.29(a)*)

17. The original and a minimum of one copy of each certificate shall be issued to the applicant or to the applicant's order, and one copy shall be filed with the agency or the field office that issued the certificate. (800.119; *26.29(b)*)

18. If, on a given day, an original inspection or Class X or Class Y weighing service is performed on grain loaded into a carrier, and the carrier is "setback" to the loading elevator, and an original "out" inspection or weighing service is performed the same day on the grain in the reloaded carrier, the official personnel performing the later inspection or weighing service shall void or otherwise supersede the official certificates for the earlier inspection or weighing services. (800.120; *26.31*)

XIV—Reinspection and Review of Weighing Services

Unit XIV contains provisions on reinspection services and review of weighing services including (a) who may request services; (b) how to request services; (c) when a request shall be dismissed; (d) who shall perform services; (e) procedure for issuing certificates; and (g) reporting results of review of weighing services. Summaries of 24 of the provisions follows. Please see § 800.125 through § 800.131 for the complete text of the provisions.

1. A reinspection service, or a review of weighing service, may be requested by any interested person who desires the service. If duplicate requests are filed by two or more interested parties, the first party to file shall be deemed to be the applicant of record. (800.125(a); *26.35(a)*)

2. The kind and scope of a reinspection service shall be limited to the kind and scope of the original inspection service. However, a reinspection service for official grade and other criteria shall include a review of all official factors that (a) may determine the grade; (b) all official factors that are shown on the certificate for the original inspection service; (c) all official factors that are required to be shown on a certificate of grade. If a request for a reinspection service specifies a different kind or different scope of the inspection service than the original service, the request shall be dismissed, or may, with the concurrence of the applicant, be filed as a request for a new original inspection service. (800.125(b); *26.38(c)*)

3. No reinspection service may be obtained on a reinspection service, or on an original inspection service on which an appeal inspection service has been performed. (800.125(c); *26.35(b)*)

4. No review of weighing service may be obtained on a review of weighing service. (800.125(c))

5. Only one resinspection service, or one review of weighing service, may be obtained on a given original inspection service or a given Class X or Class Y weighing service, as applicable. (800.125(c); *26.35(b)*)

6. A request for a reinspection service, or a review of weighing service, shall be filed with the agency or with the field office that performed the original service. (800.126(a); *26.36(a)*)

7. If a request is made orally, it shall, at the request of the agency or the field office, as appropriate, be confirmed in writing. A written confirmation shall show the names and addresses of the respondents, if any, and be accompanied by the original inspection certificate, or the original weighing certificate, as appropriate. If there are no known respondents, the word "none" shall be shown. (800.126(b); *26.36(b)*)

8. A request for a reinspection service shall be filed (a) after the results of the original inspection service on the grain or (for stowage examinations) the container have been released; (b) before the grain or container has left the original service point where the grain or container was located when the original service was performed; (c) as promptly as possible, but no later than the close of business on the second business day following the date of the original service; and (d) before the identity of the grain or container has been lost. If a representative file sample is available, the agency or field office, as applicable, that performs the reinspection service may, upon request by the applicant and the respondent, if any, waive the requirements of clauses (b), (c), and (d). The requirements of clause (c) also may be waived by the agency, or the field office, as applicable, upon satisfactory showing of fraud, or that because of distance or other good cause, the time allowed for filing was not adequate. (800.126(d)(1); *26.36(d)*)

9. A request for a review of weighing service shall be filed *as promptly as possible but not later than 1 year* after the date of the Class X or Class Y weighing service. (800.126(d)(2))

10. A request for a reinspection service shall be dismissed by an agency, or a field office, as applicable, if (a) the request is filed before the results of the original inspection service have been released; (b) the kind and scope of the requested reinspection service is different than the kind and scope of the original inspection service; (c) the condition of the grain has undergone a material change since the original inspection service; (d) a representative file sample is not available; (e) the applicant for the reinspection service requests that a new sample be obtained for the reinspection service, and a new and representative sample cannot be obtained; (f) a field appeal inspection service has been requested or performed on the original inspection; and (g) for any of the reasons specified in Unit VI, "CONDITIONS FOR OBTAINING AND WITHHOLDING SERVICES." (800.127(a)(1); *26.37(b)*)

11. A request for a reinspection service may be dismissed if the reinspection service cannot be performed, in whole or in part, within 5 business days of the date of the original inspection service. (800.127(a)(1); *26.37(b)*)

12. A request for a review of weighing service shall be dismissed if (a) the request is filed before the results of the Class X or Class Y weighing service have been released; (b) the request is filed more than 1 year after the date of the Class X or Class Y weighing services; (c) for any of the reasons specified in Unit VI, "CONDITIONS FOR OBTAINING AND WITHHOLDING SERVICES." (800.127(a)(2))

13. A reinspection service, or a review of weighing service, shall be performed by the agency, or the field office, that performed the original inspection service, or the Class X or Class Y weighing service, as applicable. (800.128; *26.38*)

14. Statistical tolerances for expected variations between inspection services shall be applied to the results of a reinspection service in determining whether the results were or were not materially in error. (800.129(a)(1); *26.38(d)*)

15. Any error found as a result of a review of weighing service shall be deemed to be a material error. (800.129(a)(2))

16. No official personnel shall perform or participate in performing, or issue a certificate, for a reinspection service involving the correctness of an original inspection service performed or certificated by them. This restriction may be waived by a Regional Office if there is only one licensed, or one authorized person available at the time and place the reinspection service is performed. (800.129(b); *26.38(f)*)

17. For each reinspection service, a reinspection certificate shall be issued. The original and a minimum of one copy shall be issued to the applicant or to the applicant's order, one copy shall be forwarded to each respondent or the respondent's order, and one copy shall be filed with the agency or

the field office that issued the certificate. (800.130(a); *26.39(a)*)

18. If the results of a reinspection service indicate that none of the corresponding results of the original inspection service is materially in error, the results of the original inspection service and the results of the reinspection service shall be averaged and the resulting averages shall be shown on the reinspection certificate. (800.130(b)(1); *26.39(b)(1)*)

19. If the results of a reinspection service indicate that all the results of the original inspection service are materially in error, only the results of the reinspection service shall be shown on the reinspection certificate. (800.130(b)(2); *26.39(b)(2)*)

20. If the results of the reinspection service indicate that some of the results of the original inspection service were not materially in error, and that some of the results were materially in error, the results which were not materially in error shall be shown in accordance with provision 18 above, and the results that were materially in error shall be shown in accordance with provision 19 above. (800.130(b)(3); *26.39(b)(3)*)

21. Each reinspection certificate shall clearly show (a) the term "reinspection," and (b) the following statement in completed form: "This Certificate Supersedes Certificate No.———, Dated———." As of the date of issuance of the reinspection certificate, the superseded original inspection service certificate shall be considered null and void and shall not, thereafter, be used to represent any grain. (800.130(c)(1), 800.130(d); *26.39(c)*)

22. If, at the time of issuing a reinspection certificate, the superseded certificate is not in the custody of the agency or the field office, as applicable, the following statement shall be shown on the reinspection certificate: "The superseded certificate has not been surrendered." (800.130(c)(2); *26.39(c)*)

23. If the results of a review of weighing service indicate that the results of the Class X or Class Y weighing services were correct, the applicant shall be notified that the results of the Class X or Class Y weighing service were found to be correct. (800.131(a))

24. If the results of a review of weighing service indicate that the results of the Class X or Class Y weighing service were incorrect, a corrected certificate shall be issued. (800.131(b))

XV—Appeal Inspection Services

Unit XV contains provisions on field appeal and Board appeal inspection services including (a) who may request, (b) how to request, (c) when a request shall be dismissed, (d) who shall perform, (e) procedure, and (f) issuance of certificates. Summaries of 26 of the provisions follow. Please see §§ 800.135 through 800.140 for the complete text of the provisions.

1. A field appeal inspection service or a Board appeal inspection service may be requested by any interested person who desires the service. (800.135(a); *26.45(a) and (26.50)*)

2. The kind and scope of an appeal inspection service shall be limited to the kind and scope of the original, reinspection, or field appeal inspection service, as applicable. However, an appeal inspection service for grade shall include a review of (a) all official factors that may determine the grade; (b) all official factors that are shown on the certificate for the original, reinspection, or field appeal inspection service, as applicable; and (c) all official factors that are required to be shown on a certificate of grade. If a request for an appeal inspection service specifies a different kind or different scope of inspection service than the original, reinspection, or field appeal inspection, as applicable, the request shall be dismissed. (800.135(b); *26.48(c) and (26.50(c)*)

3. A Board appeal inspection service shall be based on a review of file samples. A Board appeal inspection service is not available on a stowage examination service. (800.135(b)(2))

4. A field appeal inspection service may be requested by one or more interested persons, but only one field appeal inspection service may be obtained on an original or a reinspection service. (800.135(c)(1); *26.45(b)*)

5. A Board appeal inspection service may be requested by one or more interested persons but only one Board appeal inspection service may be obtained on a field appeal inspection service (800.135(c)(2); *26.45(b)*)

6. If duplicate requests for an appeal inspection service are filed by two or more parties, the first party to file shall be deemed to be the applicant. (800.135(c)(3))

7. No appeal inspection service may be performed on an original inspection service, or on a reinspection, if the certificate for the original service or the reinspection service has been superseded by another certificate. (800.135(c)(4); *26.45(b)*)

8. A request for a field appeal inspection service shall be filed with the field office in the circuit in which the original inspection service, or the reinspection service, as applicable, was performed. (800.136(a); *26.46(a)*)

9. A request for a Board appeal inspection service shall be filed with the Board of Appeals and Review or with the field office that performed the field appeal inspection service. (800.136(a)); *26.50(c)*)

10. A request for an appeal inspection service shall (a) be in writing; (b) show the names and mailing addresses of the respondents, or if there are no respondents, the word "none;" and (c) be accompanied by the original, reinspection, or field appeal inspection certificate. (800.136(b); *26.46(b)*)

11. A request for an appeal inspection service shall be filed (a) after the results of the original, reinspection, or field appeal inspection service have been released; (b) before the grain or container has left the specified service point where the grain or container was located when the original, reinspection, or field appeal inspection service was performed on the grain or container; (c) as promptly as possible, but not later than the close of business on the second business day following the date of the original, reinspection, or field appeal inspection service; and (d) before the identity of the grain or container has been lost. If a representative file sample is available, the field office or the Board of Appeals and Review, as applicable, may, upon request by the applicant and the respondent, if any, waive the requirement of clauses (b), (c), and (d) of this provision. (800.136(d); *26.46(d)*)

12. The requirement in clause (c) of provision 11 above may also be waived by a field office or the Board of Appeals and Review, as applicable, upon a satisfactory showing of fraud or that on account of distance or other good cause the time allowed for filing was not sufficient. (800.136(d); *26.46(d)*)

13. A request for an appeal inspection shall be dismissed if (a) the request is filed before the results of the original inspection, reinspection, or field appeal inspection service have been released; (b) the kind and scope of the requested appeal inspection service is different than the kind and scope of the original, reinspection, or field appeal inspection service; (c) the condition of the grain has undergone a material change since the original, reinspection, or field appeal inspection service; (d) a representative file sample of the grain is not available and a new representative sample cannot be obtained; (e) the applicant for a field appeal inspection service requests that a new sample be obtained as a part of the field appeal inspection service and a new represenatative sample cannot be obtained; or (f) for any of the reasons specified in Unit VI "CONDITIONS FOR OBTAINING AND WITHHOLDING SERVICES." (800.137(a); *26.47(b)*)

14. A request for an appeal inspection service may be dismissed if the service cannot be performed, in whole or in part, within 5 business days of the date of the original, reinspection, or field appeal inspection service. (800.137(a); *26.47(b)*)

15. A field appeal inspection service shall be performed by the field office

in the circuit in which the original inspection service or reinspection service was performed. (800.138(a); *26.48(a) and 26.48(b)*)

16. A Board appeal inspection service shall be performed by the Board of Appeals and Review. (800.138(b); *26.50(d)*)

17. In determining whether the results of the original, reinspection, or field appeal inspection service were or were not materially in error, statistical tolerances for expected variances between inspection services shall be applied to the results of the appeal inspection service. (800.139(a); *26.48(d)*)

18. No official personnel shall perform, or participate in performing, or issue a certificate for an appeal inspection service involving the correctness of an original, reinspection, or a field appeal inspection service performed or certificated by them. This restriction may be waived by the Service if there is only one authorized person available at the time and place the appeal inspection service is to be performed. (800.139(b); *26.48(f)*)

19. For each appeal inspection service, an appeal inspection certificate shall be issued. The original and a minimum of three copies shall be issued to the applicant or to the respondent's order; one copy shall be delivered to the agency that performed the original or reinspection service and one copy shall be filed with the field office that issued the certificate or with the Board of Appeals and Review, as applicable. (800.140; *26.49(a)*)

20. If the results of an appeal inspection service indicate that none of the corresponding results of the inspection in question are materially in error, the results of the inspection in question and the results of the appeal inspection service shall be averaged, and the resulting averages shall be shown on the appeal inspection certificate. (800.140(b)(1); 26.49(b)(1))

21. If the results of an appeal inspection service indicate that all the results of the original, reinspection, or field appeal inspection service are materially in error, only the results of the appeal inspection service shall be shown on the appeal inspection certificate. (800.140(b)(2); *26.49(b)(2)*)

22. If the results of an appeal inspection service indicate that some of the results of the original, reinspection, or field appeal inspection service were not materially in error and that some of the results were materially in error, the results that were not materially in error shall be shown in accordance with provision 20 above, and the results that were materially in error shall be shown in accordance with provision 21 above. (800.140(b)(3); *26.49(b)(3)*)

23. Each appeal inspection certificate shall clearly show (a) the term "Field Appeal" or "Board Appeal" as appropriate; and (b) the following statement in completed form "This certificate supersedes Certificate No. ———, dated ———." (800.140(c)(1); *26.49(c)(1)*)

24. If, at the time of issuing an appeal inspection certificate, the superseded original, reinspection, or field appeal inspection service certificate is not in the custody of the field office or the Board of Appeals and Review, as applicable, the following statement shall be shown on the appeal inspection certificate "The superseded certificate has not been surrendered." (800.140(c)(2); *26.49(c)(2)*)

25. As of the date of issuance of a Field Appeal, or Board Appeal inspection certificate, as applicable, the superseded original, reinspection, or field appeal inspection certificate shall be considered null and void and shall not thereafter be used to represent any grain. (800.140(d))

26. A Board Appeal inspection certificate shall be the final appeal certificate for an inspection service under the Act. (800.140(e); *26.50(d)*)

XVI—Official Records and Forms (General)

Unit XVI contains provisions on (a) the recordkeeping requirements for agencies, field offices, approved scale testing organizations, licensees, authorized employees, and contractors; (b) retention periods; (c) availability of records; and (d) specific records that are required to be kept. Summaries of 44 of the provisions follow. Please see § 800.145 through § 800.155 for the complete text of the provisions.

1. Each agency shall keep a complete record of (a) the Act, the regulations, the standards, and the instructions issued to the agency by the Service; (b) the delegation or designation of authority issued to the agency by the Service; (c) the organization, staffing, and budget of the agency; (d) the licenses issued to the employees of the agency and to the warehouse samplers in the area of responsibility assigned to the agency; (e) a listing of approved weighers and weighing technicians in the area of responsibility assigned to the agency; (f) the agency's schedules of fees; (g) the space and equipment used by the agency; and (h) each inspection, weighing, equipment testing and supervision function performed by the agency. (800.145(a); *26.55(c)(2)*)

2. Each field office shall keep a complete record of (a) the Act, the regulations, the standards, and the instructions issued to the field office by the Service; (b) the current fee schedule issued by the Service; (c) the position description or other authorization issued to each employee assigned to the field office; (d) a copy of the licenses issued to licensees in the field office circuit; (e) a listing of the approved weighers and weighing technicians in the field office circuit; and (f) each inspection, weighing, equipment testing, and supervision of monitoring function performed by the field office. (800.145(b); *26.55(c)(2)*)

3. Each contractor shall keep a complete record of (a) the Act, the regulations, the standards, and the instructions issued to the contractor by the Service; (b) the contract with the Service; (c) the licenses issued to the contractor or to the contractor's employees by the Service; and (d) each inspection, weighing, and equipment testing function performed by the contractor or by the contractor's employees. (800.145(c))

4. Each approved scale testing organization shall keep a complete record of (a) the Act, the regulations, the standards, and the instructions issued to the organization by the Service; (b) the authority issued to the organization by the Service to operate as an approved scale testing organization; (c) the approved scale testers employed by the organization; and (d) each scale testing function performed by the organization on equipment used in the weighing of grain under the Act. (800.145(d))

5. Each licensee shall keep (a) a complete record of the Act, the regulations, instructions, and such other information as may be required; and (b) the license issued to the individual by the Service. (800.145(e))

6. Each authorized employee assigned to a field office shall keep those records specified by the Service. (800.145(f))

7. The records specified in provisions 1 through 6 above shall be prepared and kept in such a manner as will facilitate (a) the daily use of the records in the administration and enforcement of the Act and in the performance of services under the Act; and (b) the review and audit of records to determine compliance with the Act, the regulations, the standards, and the instructions under the Act. (800.145(g); *26.55(b)*)

8. Records with respect to the Act, the regulations, the standards, instructions, delegations, and designations shall be retained until superseded or revoked, which ever is earlier. (8900.146(a); *26.55(a)*)

9. Records with respect to organization, staffing, budget, and fee schedules shall be retained 5 years after the applicable year, or 5 years after being superseded, which ever is earlier. (800.146(a); *26.55(a)*)

10. Records on licensees, approvals, and authorizations shall be retained for the tenure of the employee. Records on space and technical equipment

shall be retained 5 years after the space is vacated or the equipment was last used. (800.146) (a)(4) and (a)(6))

11. Records on inspection, weighing, equipment testing, and supervision functions shall be retained 5 years after the inspection, weighing, equipment testing or supervision function was completed. (800.146(a)(7); *26.55(a)*)

12. File samples shall be retained a minimum of 3 business days or longer, as follows:

(i) *Trucks:*	
In	3
Out	5
(ii) *Railcars:*	
In	5
Out	10
(iii) *Barges* (river):	
In	5
Out	25
(iv) *Ships and Barges* (lake or ocean):	
In	5
Out (domestic)	25
Export (sublot samples)	60
(v) Bins and tanks	3
(vi) Submitted samples	3

(800.146(a)(8); *26.57(f)*)

13. In specific instances, the Administrator may require an agency, field office, contractor, or approved scale testing organization to retain (a) file samples for not more than 90 days; (b) other records for a period of not more than 3 years in addition to the 5-year retention period. (800.146(b)(1); *26.55(a)*)

14. Records, including file samples, may be kept for longer periods than the prescribed retention period at the option of the agency, field office, contractor, or approved scale testing organization. (800.146(b)(2); *26.57(f)*)

15. Each agency, field office, contractor, approved scale testing organization, licensee, authorized employee of the Service, and approved equipment tester shall permit authorized representatives of the Comptroller General, the Secretary, or the Administrator to have access to and to copy, without charge, during customary business hours, any records that are required to be maintained. (800.147(a); *26.55(d)(2)*)

16. The following records shall be available upon request by any person, for inspection and copying during customary business hours (a) copies of the Act, the regulations, the standards, and the instructions issued by the Service; (b) the delegation, designation, contract, and approval records; (c) organization and staffing records; (d) licenses, authorizations, and approvals; and (e) schedules of fees. (800.147(b)(1); *26.55(d)(2)*)

17. Records of the Service are available for inspection and copying in accordance with the regulations of the Secretary of Agriculture as prescribed in the Code of Federal Regulations (7 CFR 1.1-1.16), and Appendix A thereto and the Freedom of Information Act (5 U.S.C. 552(a)(3)). (800.147(b)(2); *26.55(d)(1)*)

18. Available records of agencies, contractors, and approved scale testing organizations and available records of their licensed or approved employees, may be inspected and copied at the agency's contractor's, or organization's principal place of business during regular work hours. (800.147(c)(1); *26.55(c)*)

19. Available records of the Service, including records of field offices and authorized employees assigned to the field offices, may be inspected and copied in the field office, regional office, or headquarters office of the Service during regular working hours, Monday through Friday, except holidays. (800.147(c)(2); *26.55(d)(1)*)

20. The complete record of the Act shall consist of the wording of the Act with amendments, if any. (800.148(a))

21. The complete record of the regulations shall consist of a copy of the wording of (a) the regulations set forth in Subpart A of this Part; (b) the Rules of Practice Governing Informal Proceedings as set forth in Subpart I of this Part; and (c) amendments issued thereto. (800.148(b))

22. The complete records of the standards shall consist of a copy of the wording of the Official Standards for Grain as set forth in Subparts of this Part and the amendments, if any. (800.148(c))

23. The complete record of the instructions shall consist of a copy of (a) each current notice, instruction, or handbook issued by the Service; and (b) a current checklist issued by the Service showing the current notices, instructions, and handbooks issued by the Service. (800.148(d))

24. The complete record of staffing shall show the name of each current employee, the employee's principal duty, and the employee's principal duty station. The record shall also show the training that the employee has received in accordance with section 8(g) of the Act. (800.150(b); *26.55(c)(2)*)

25. The complete record of the budget shall show for the current year, the actual income and the actual expenses. Complete accounts for the receipts for inspection, weighing, equipment testing, and related services, the sale of grain samples, and the disbursements from such receipts, and such other records as may be needed, shall be available for use in establishing of revising fees for inspection, weighing, and equipment testing services under the Act. (800.150(c))

26. The complete record on fee schedules shall include (a) a copy of the current fee schedule; (b) in the case of agencies, data showing how the fees in the schedule were developed; and (c) superseded fee schedules as shown in provision 9 above. (800.152); *26.55(c)(3)*)

27. The complete record on space shall show (a) a description of the space that is occupied or used in each location; (b) the name and address of the owner of the space; and (c) the financial arrangements for the space. (800.153(a))

28. The complete record on equipment shall show (a) the description of each piece of equipment used in performing inspection or weighing functions under the Act; (b) the location of the equipment; (c) the name and address of the owner of the equipment; (d) the schedules for testing the equipment under section 7B of the Act; and (e) a record of the testing and the results of the testing. (800.153(b))

29. Detailed work records shall be prepared for all inspection, weighing, equipment testing, and supervision monitoring functions performed under the Act. The records shall (a) be on standard forms prescribed by or approved in specific cases by the Service; (b) show the information and data that are needed for preparing the corresponding official certificate or official report. (800.154(a)(1); *26.56(b)*)

30. Work records shall be used by official personnel (a) as a basis for issuing official certificates or official forms; (b) in approving or not approving the use of inspection and weighing equipment; (c) in performing monitoring, supervision, and regulatory activites; (d) in answering inquiries from interested persons; (e) in processing trade and other complaints; and (f) billing and accounting. (800.154(a)(2); *26.55(c)*)

31. The following standard forms are required and will be furnished by the Service at no cost to each agency: (a) Official Export Grain Inspection and Weight Certificates; (b) Official Export Grain Inspection Certificates; (c) Official Export Grain Weight Certificates; (d) official inspection logs; (e) official weight loading logs; (f) official scale test reports; and (g) official volume of work report. All other forms used by an agency in the performance of official functions, including certificate forms, shall be furnished by the agency. (800.154(a)(3); *26.56(b) and 26.56(e)*)

32. The record for each official inspection service involving the sampling of grain shall include one or more pan tickets as prescribed by the Service. (800.154(b)(1); *26.56(d)*)

33. In addition to the pan ticket, the record for official inspection services on grain in a combined lot and on shiplot grain shall include an official inspection log as prescribed by the Service. If the inspection is performed by an agency, two copies of the log shall be promptly sent to the appropriate field office. (800.154(b)(2); *26.56(e)*)

34. If a detailed test cannot be completely recorded on a pan ticket or an inspection log, the information shall be recorded on such other form as may be prescribed by the Service. If the space on a pan ticket or an inspection log does not permit showing the full name for an official factor or an official criteria, approved abbreviations may be used. (800.154(b)(3); *26.56(b)*)

35. If an official inspection is based, in whole or in part, on an examination of the grain in a sample, the official record shall include one or more file samples as prescribed by the Service. Each file sample shall be of such size as will permit a reinspection, field appeal inspection, field monitoring inspection, Board appeal inspection or Board monitoring inspection and shall consist of a worked portion and an unworked portion. (800.154(b)(4); *26.57(a) and 26.57(c)*)

36. Each file sample shall be retained in such a manner as will maintain the representativeness of the sample until it is discarded. High moisture samples and other problem samples shall be retained in accordance with instructions issued by the Service. (800.154(b)(4); *26.57(d)*)

37. Agencies and field offices shall establish and maintain a uniform file samples system in accordance with instructions issued by the Service. (800.154(b)(4); *26.57(e)*)

38. Upon request by the Service, a file sample retained by an agency shall be furnished to the Service for an appeal inspection or a monitoring inspection. If a sample is forwarded by an agency to the Service, no portion of the sample need be retained by the agency that forwarded the sample. The cost of locating the sample shall be borne by the forwarding agency. (800.154(b)(4); *26.57(g)*)

39. The record for each weighing service performed under the Act shall, in addition to the official certificate, include a scale ticket, and a scale tape or other weight record as prescribed in instructions issued by the Service. For grain in a combined lot or shiplot, the record shall also include official weighing logs as prescribed by the Service. (800.154(c))

40. A record of each official equipment testing function shall include an official equipment testing report prescribed by the Service. Upon completion of an official equipment test, one or more copies of the completed testing report may, upon request of the owner of the equipment, be issued to the owner or to the owner's order. The testing report shall show (a) the date the test was made; (b) the name of the organization that performed the test; (c) the names of the approved or official personnel who performed the test; (d) the names of the Service personnel, if any, who monitored the performance of the test; (e) the results of the test; (f) the names of the interested persons who were informed of the results of the test; and (g) the number or other identification of the approval tag or label, or the noncompliance tag or label that was affixed to the equipment. (800.154(d))

41. Each agency and field office shall prepare a periodic report showing the kind and the volume of inspection and weighing services performed by the agency or the field office, as applicable. (800.155(a); *26.100(i)*)

42. Each agency and field office shall maintain a complete record of (a) the requests for inspection or weighing services that are withdrawn by applicants; (b) the requests for inspection or weighing services that are dismissed by the agency or field office; and (c) the requests for inspection or weighing services that are conditionally withheld by the agency or field office. The record shall be maintained in accordance with instructions issued by the Service. (800.155(b))

43. Each agency and field office shall maintain a complete record of (a) the certificates that are received by the agency or field office; (b) the special design certificates, if any, that are printed for use by the agency or field office; and (c) the certificates that are issued by the agency or field office. The record shall show the serial numbers of the certificates that are received or printed, as applicable, and the serial numbers of the certificates that are on hand, and shall include a copy of each certificate that is issued, voided, or otherwise used. (800.155(c); *26.58(e)*)

44. Each warehouse sampler shall maintain the records prescribed in provision 5 above and such other records and reports pertaining to the sampler's functions as may be specified by the Service. (800.155(d); *26.57(b)*)

XVII—Official Certificates

Unit XVII contains provisions on the (a) issuance and distribution of official certificates; (b) general requirements for official certificates; (c) special requirements for certificates of grade; (d) requirements for divided-lot, duplicate, and corrected certificates; and (e) rules on reproducing certificates. Summaries of 63 of the provisions follow. Please see § 800.160 through § 800.166 for the complete text of the provisions.

1. Except as shown in provision 2 below, an official certificate shall be issued on a form issued by the Service to show the results of (a) each kind, (b) each scope, (c) each level of inspection service, and an official weight certificate on a form approved by the Service shall be issued to show the results of each kind of Class X or Class Y weighing service performed under the Act. (800.160(a); *26.58(a)*)

2. Upon request by an applicant, a combination export inspection and weight certificate may be issued for an original official sample-lot inspection service, of any scope, and an official Class X weighing service for a given lot of export cargo grain provided the inspection and weighing services are performed by one agency or one authorized field office, at one location, and at one time. If a reinspection, or a field appeal inspection service, is requested with respect to any of the inspection results shown on a combination export certificate for cargo grain, (a) the combination certificate shall be surrendered to the issuing agency or field office, as applicable; (b) a new export inspection certificate shall be issued for each scope of the official sample-lot inspection service in accordance with provision 1 above; (c) a new export weight certificate shall be issued for the official Class X weighing service; and (d) each of the new export certificates shall show the statement: "This certificate supersedes, in part, export certificate No. ——, dated ——." If the superseded combination certificate is not in the custody of the agency or the field office, as applicable, the following statement shall be shown on the new export certificates: "The superseded export certificate has not been surrendered." As of the date of issuance of the new export certificates, the superseded combination export certificate shall be considered null and void and shall not thereafter be used to represent any grain. (800.160(b))

3. When an official certificate is issued by an agency, an original and one copy of each certificate shall be delivered or mailed to the applicant of record, or to the applicant's order and one copy shall be retained by the agency. One copy of each reinspection certificate shall also be delivered or mailed to each respondent of record or to the respondent's order. (800.160(c)(1); *26.58(b)(1)*)

4. When a certificate is issued by a field office, an original and three copies of each certificate shall be delivered or mailed to the applicant of record or to the applicant's order, and one copy shall be retained by the field office. One copy of each reinspection, or appeal inspection certificate shall also be delivered or mailed to each respondent, or to the respondent's order. (800.160(c)(1))

5. In the case of inbound trucklot grain, the official Class X or Class Y weight certificate, as applicable, shall be delivered or mailed to the applicant or to the applicant's order. The applicant shall deliver a copy of the weight certificate to the driver of the truck or

mail the copy to the person who owned the grain at the time of delivery. (800.160(c)(2))

6. Upon request, additional copies of an official certificate shall be furnished to an applicant, a respondent, or other interested person. Fees for extra copies may be established by an agency. Fees for extra copies furnished by the Service shall be in accordance with the published fee schedule. (800.160(c)(3); *26.59(b)(2)*)

7. The original of each certificate, and the copies for the respondents, if any, shall, except as shown in this provision, be issued on the date the inspection service or the weighing service, as applicable, was performed. If a combination export inspection and weight certificate is issued for cargo grain, the original and the copies of the certificate shall be issued on the date the inspection and weighing services were completed. If the results of an inspection or weighing service have been reported or released to an applicant on or before the prescribed date, the certificate and the copies may be issued not later than the close of business of the next business day. Upon request by an agency or a field office, the requirements to this provision may be waived by the Service on a case-by-case basis. In the case of export cargo grain, the distribution of the original and the copies of an export certificate shall be withheld if a request for a divided-lot certificate is received by the issuing agency, field office, or Board of Appeals and Review before the issuance of the export certificate. (800.160(d); *26.58(c)*)

8. Certificates for inspection or weighing services performed under the Act may, except as shown in this provision, be issued by official personnel who are licensed or authorized to perform and to certify the results of the service reported on the certificate. Only a licensed or an authorized inspector may issue an official certificate which shows an official grade determination. Only a licensed or an authorized weigher may issue an official certificate which shows an official Class X or Class Y weight. In no case shall a person issue an official certificate unless the person is duly licensed or duly authorized to issue the certificate. (800.160(e); *26.58(e)*)

9. The licensed or authorized person who is in the best position to know whether an inspection service or a weighing service has been performed in an approved manner and whether the final determinations are accurate and true, should issue a certificate for the service. If an inspection service or a weighing service is performed by two or more licensed, or two or more authorized persons, the certificate should be issued by the licensed or authorized person who made the final inspection or the final weighing determination. Nothing in this provision shall preclude a supervisory inspector, supervisory weigher, chief inspector, chief weighmaster, or field office supervisor from issuing an official certificate if the person is duly licensed or duly authorized to issue the certificate and has determined that the facts stated in the certificate are true. (800.160(f); *26.58(f)*)

10. The name, or the signature, of the person who issues an official certificate shall, except as specified in this provision, be shown on the original of each certificate. The name shall be shown on each copy. Both the name and the signature of the person who issues an export certificate shall be shown on the original of the certificate. Upon request of an applicant, both the name and the signature of the person who issues a certificate, other than an export certificate, shall be shown on the original of the certificate. If the original of a certificate is signed, either the name or fasimile of the signature shall be shown on each copy of the certificate. (800.160(g); *26.58(g)*)

11. The name, the signature, or both, of a licensed or authorized person may, subject to provision 10 above, be affixed to official certificates by a duly authorized agent if (a) the agent is employed by the agency that employs the licensed inspector, or is employed by the Service in the case of an authorized person; (b) the agent has been designated by a field office as an authorized agent for the affixing of names and signatures; (c) a power of attorney authorizing the affixing of a name and signature has been issued to each such agent by each licensed or each authorized person whose name or signature, or both, are affixed by the agent; and (d) each certificate prepared by an agent is prepared from an official work record which has been personally signed by the licensed or authorized person whose name or signature is shown on the certificate. When a name, or signature, or both, of a licensed or authorized person is affixed to an official certificate by an authorized agent, the initials of the given names and surname of the authorized agent shall be shown on the certificate. (800.160(h); *26.58(h)*)

12. Upon request of an applicant, all or any part of the contents of an official certificate may be telecopied, telegraphed, or telephoned to the applicant, or to the applicant's order, at the applicant's expense. Upon request of a respondent, or other interested person, all or any part of the contents of an official certificate may be telecopied, telegraphed, or telephoned to the respondent or to the respondent's order, or to the other interested person at the respondent's or other person's expense, as applicable. (800.160(i); *26.58(i)*)

13. No official certificate shall be issued after the corresponding request for an inspection or weighing service has been withdrawn by the applicant or dismissed by an agency, field office, or Board of Appeals and Review. (800.160(j); *26.58(j)*)

14. Except for special design weight certificates, official certificates shall (a) be on standard printed forms prescribed by the Service; (b) be typewritten or hand written in ink and be clearly legible; (c) show the results of inspection or weighing services in a uniform, accurate, and concise manner; (d) show the information required by the regulations; and (e) show only such other information and statements of fact as are prescribed in instructions issued by the Service or approved in specific cases by the Service. (800.160(a); *26.59(a)*)

15. Each original and each copy of an official certificate shall show an appropriate explanatory caption as follows; (a) Official Export Grain Inspecton and Weight Certificate; (b) Official Export Grain Inspection Certificate; (c) Official Grain Weight Certificate; (d) Supervision of Grain Weight Certificate; (e) Official Grain Inspection Certificate; (f) Official Certificate-Warehouseman's Sample-lot Inspection; (g) Official Certificate-Submitted Sample Inspection; (h) Official Sample Certificate; and (i) Official Stowage Examination Certificate. (800.161(b)(1); *26.59(b)(1)*)

16. Each certificate shall show the name of the issuing agency, field office, or Board of Appeals and Review. If the certificate is issued by a delegated agency, field office, or Board of Appeals and Review, the certificate shall also show the name "Federal Grain Inspection Service." (800.161(b)(2); *26.59(b)(2)*)

17. Each certificate shall show the level of service represented by the certificate in terms original inspection, reinspection, field appeal inspection, Board appeal inspection, Class X weighing, or Class Y weighing service. (800.161(b)(3); *26.59(b)(4) and 26.59(b)(9)*)

18. Each original and each copy of a certificate shall show whether it is an original or a copy. (800.161(b)(4); *26.59(b)(3)*)

19. Each certificate shall show an identification number together with a lettered prefix assigned by the Service to each designated agency, delegated agency, or the Service. The prefix and the number shall, except on divided-lot, duplicate, and corrected certificates, be preprinted on the certificate. The requirement with respect to the lettered prefix may be waived by the Service for special design weight certificates. (800.161(b)(5); *26.59(b)(5)*)

20. Each certificate shall show the name of the city, town, port, or other location, and the State where the certificate is prepared and issued. (800.161(b)(6); *26.59(b)(6)*)

21. Each certificate shall show the date the inspection or weighing service was performed. (800.161(b)(7); *26.59(b)(7)*)

22. Each certificate, other than a certificate for a Submitted Sample inspection, shall show whether the certificate represents an IN, OUT, or LOCAL movement. Grain stored in bins, tanks, or similar containers shall be considered to be a LOCAL movement. (800.161(b)(8); *26.59(b)(8)*)

23. Each certificate shall show a statement that the certificate is issued under the authority of the United States Grain Standards Act. The wording of the statement shall conform with the wording prescribed by the regulations. (800.161(b)(9); *26.59(b)(10)*)

24. Each certificate shall show the location of the grain at the time it was sampled or weighed, or the location of the carrier at the time it was examined. The location shall be shown in terms of (a) a railroad yard, pier, elevator, or other specific place, and (b) the name of the city and State, if the name is different than the name shown in accordance with provision 19 above. (800.161(b)(10); *26.59(b)(11)*)

25. Each certificate, except certificates for export grain, submitted sample inspections, stowage examinations, or weight certificates, shall show the date or dates the grain was sampled and the method of sampling. (800.161(b)(11); *26.59(b)(12)*)

26. Upon request of an applicant, a certificate shall show (a) for hopper cars, whether bottom seals are intact or missing, or (b) for all other containers, the identification of any seals. (800.161(b)(12); *26.59(b)(13)*)

27. Each certificate that shows the results of an official sample-lot inspecton service, or an official Class X or Class Y weighing service, shall show the identification of the grain in terms of (a) the license number or other identification of the truck or trailer, and when necessary to identify an individual truck, or trailer, the approximate time of sampling or weighing, or the scale ticket number; (b) the railroad car initials and number; (c) the name or other designation of the ship, barge, or other carrier, and the name or other designation of the hold or place of stowage; or (d) the name or other designation of an elevator and bin or compartment. A certificate for a Submitted Sample inspection shall show the applicant's mark, number, or other identification or such identification as the official personnel may deem necessary. An applicant's mark number, or identification which is known by official personnel to be false or misleading, or which appears to represent the identification of a carrier or container, shall not be shown on a certificate as the identification of a submitted sample. (800.161(b)(13); *26.59(b)(14)*)

28. Each lot inspection certificate shall show the approximate quantity in the lot, stated in terms of truckload, trailerload, carload, part-truckload, part-trailerload, part-carload, bargeload, part-bargeload, or by official weight. (800.161(b)(14); *26.59(b)(15)*)

29. Each certificate shall show the results of the inspection or weighing service in accordance with the kind, scope, and level of service requested by the applicant. If a grade is not shown on an inspection certificate, the word "Grade" shall be deleted or otherwise not shown on the certificate. (800.161(b)(15) and 800.161(b)(16); *26.59(b)(16) and 26.59(b)(17)*)

30. Each certificate shall show the word "Remarks" together with space for statements required or approved by the Service. (800.161(b)(17); *26.59(b)(18)*)

31. Certificates shall show the special statements required for (a) shiplot grain; (b) combined lots; (c) land carriers and barges; (d) superseding statements; (e) file sample inspections; (f) warehouseman's sample-lot inspections; (g) submitted sample inspections; (h) stowage examinations; (i) sampling services; (j) not standardized grain; (k) divided-lots; (l) duplicate certificates; (m) corrected certificates. (800.161(b)(18) through (30); *26.59(b)(25)*)

32. Each certificate shall show the name, or the signature, or the name and the signature of the licensed or authorized person who issued the certificate. (800.161(b)(31); *26.59(b)(19)*)

33. Each certificate shall show a statement prescribed by the regulations with respect to the authority and the purpose of the certificate. (800.161(b)(32); *26.59(b)(21)*)

34. Each certificate shall contain a warning statement prescribed by the regulations. (800.161(b)(34); *26.59(b)(23)*)

35. Except as shown in this provision, the statements and information required by provisions 15 through 34 above, and the information permitted by provisions 38 and 39 below, shall be shown on the face of the certificate. The following information may be shown on the back of a certificate other than a certificate for export grain: (a) the abbreviations and the meaning of the abbreviations for official factors or official criteria; (b) the statement "Partial inspection—heavily loaded;" (c) the identification of the carriers in a combined lot, together with the identification of the seals, if any. (800.161(c); *26.59(c)*)

36. Except as shown in this provision, official certificates for similar kinds and levels of inspection and weighing services shall be uniform in size, shape, color, and format as specified in instructions issued by the Service. All original certificates and all copies shall be on white paper, except (a) certificate for warehouseman's sample-lot inspection service shall be on yellow paper; (b) certificates for submitted sample inspection services shall be on pink paper; and (c) certificates for Class Y weighing services shall be on yellow paper. Upon request of an applicant and with the approval of the Service, weight certificates that are specially designed may be used at an approved weighing facility, on other than export grain. The certificates must conform with instructions issued by the Service. (800.161(d); *26.59(e)(1)*)

37. Official factor identifications and official criteria identifications, if printed on inspection certificates, shall be shown in block form. No abbreviations for factors or criteria may be shown on certificates for export grain. When space on certificates, other than certificates for export grain, does not permit showing the full identification for an official factor or an official criteria, an abbreviation approved by the Service may be used if (a) the abbreviation and the meaning of the abbreviation are shown on the back of the certificate, and (b) the statement "See reverse side for abbreviations" is shown on the face of the certificate. (800.161(e); *26.59(f)*)

38. Statements requested by an applicant but not required by the regulations or by instructions issued by the Service may be shown on a certificate if the statements (a) have been approved in instructions by the Service or (b) are approved in specific cases by the Administrator. (800.161(f)(1); *26.59(b)(25)*)

39. Other information requested by an applicant may be shown on a certificate if the information (a) is known to be true to the person issuing the certificate or (b) is a type of information approved by the Service as useful in the merchandising of U.S. grain and is not inconsistent with the Act, regulations, or instructions issued by the Service. (800.161(f)(2); *26.64(a)*)

40. The permissive statements and information prescribed in provisions 38 and 39 above may be shown on designated agency or Service letterhead stationary in lieu of an official certificate if (a) space does not permit showing the statements or information on an official certificate, or when letterhead stationary is found by the issuing agency or field office to be more suitable than a certificate; (b) the identification of the corresponding certificate is referenced on the letterhead sta-

tionary; (c) the letterhead statements or information are issued and distributed in accordance with instructions issued by the Service; and (d) the letterhead statement is attached to the original and all copies of the corresponding certificate. If letterhead statements are issued by delegated agencies for export grain, or for export grain carriers, the statements shall be issued on Service letterhead stationary. (800.161(g); *26.64(c)*)

41. Each official certificate that shows an official grade determination shall show (a) the grade in accordance with the official grade standards for grain; (b) the test weight of the grain; (c) the moisture content of the grain; (d) the information for any official factors for which an official determination is made during the course of the grade determination; (e) if the grain is graded other than number 1, the certificate shall show the information for each of the official factors that determined the grade, including the factors commercially objectionable foreign odor, distinctly low quality, heating, musty, or sour, as applicable; and (f) all official factor information requested by the applicant. (800.162(a); *26.60(a)*)

42. Each certificate of grade that represents a cargo shipment of a given kind of grain shall show the information for each of the official factors for the grain that are shown in table form in the official standards for grain. (800.162(b); *26.60(a)(4)*)

43. After January 1, 1980, each certificate that represents a shiplot of export corn that (1) is loaded through a mechanical trimmer; or (2) is spouted against a metal bulkhead, framework, or ladder; or (3) is otherwise loaded in such a manner as to change or adversely affect the quality or condition of the corn as specified in instructions issued by the Service, shall show the following statement in the space provided for remarks: "The procedures used in loading this corn may have adversely affected the quality or condition of the corn." (800.162(c))

44. A certificate of grade may contain any other official factor information that the person issuing the certificate deems necessary to correctly describe the grain. (800.162(d); *26.60(a)(8)*)

45. An applicant for an official inspection or official Class X weighing service on export shiplot grain may, upon request, exchange a shiplot inspection or weight certificate, or a combination shiplot inspection and weight certificate for two or more divided-lot certificates. (800.163(a))

46. A request for divided-lot certificates must be filed (a) by the applicant who filed the request for the official inspection or weighing service on the shiplot; (b) at the time the inspection or weighing service was performed or within 5 business days after the date of the last outstanding certificate for the official inspection or the official Class X weighing service, except that, upon a showing of good cause, the time requirement may be waived; and (c) before the identity has been lost. (800.163(b); *26.61(b)*)

47. To be eligible for divided-lot inspection certificates, the grain in a shiplot must (a) have been offered for inspection as one lot; (b) found to be uniform in quality; (c) certificated as one lot; and (d) not have been comingled in a stowage area with other grain of different kind or quality or another commodity. (800.163(c)(1); *26.61(a)*)

48. To be eligible for divided-lot weight certificates, the grain in a shiplot must (a) have been offered for weighing as one lot and have been certificated as one lot and (b) if inspected, be found uniform in quality and be certificated as one lot. (800.163(c)(2))

49. No divided-lot inspection or Class X weight certificates shall show, individually or in the aggregate, a quantity of grain different from the quantity shown on the applicable superseded inspection or weight certificate. (800.163(c)(3); *26.61(g)*)

50. The shiplot certificate that is to be superseded by a divided-lot certificate must (a) be in the custody of the Service or the agency that has been requested to issue the divided-lot certificate; (b) be marked "Void—surrendered for divided-lot certificates;" and (c) show the identification of the divided-lot certificates. (800.163(c)(4); *26.61(d)*)

51. The same information and statements that were shown on the export lot certificate, including special statements and information, shall be shown on each divided-lot certificate, except (a) the original and all copies of the divided-lot certificate shall show that the grain was inspected or weighed, as applicable, as an undivided lot, and that no part of the lot was officially inspected or weighed as a separate unit; (b) the divided-lot certificate shall show the same serial number as shown on the superseded certificate, except each divided-lot certificate shall show a serially numbered suffix. No divided-lot certificate shall be issued which shows a statement or information that is not authorized or permitted by the regulations. (800.163(d); *26.61(f)*)

52. Divided-lot certificates shall (1) be issued as promptly as possible after the request for the certificate is received, but no later than the close of business on the following business day. Upon request by an agency or a field office, the requirements of this provision may be waived by the Service on a case-by-case basis. (800.163(e))

53. No divided-lot certificate shall be issued for the grain in any shipment other than a shiplot. (800.163(f)(1); *26.61(g)(1)*)

54. After a divided-lot certificate has been issued, there shall be no combining or further dividing of the divided-lot certificate at a later date except as may be approved in specific cases by the Service. (800.163(f)(3); *26.61(g)(2)*)

55. If an official certificate has been lost or destroyed, and has not been superseded, a duplicate certificate may, upon request by the applicant for the service covered by the certificate, be issued by the agency or the field office that issued the lost or destroyed certificate. A request for a duplicate certificate must be filed with the agency or the field office that performed the inspection or weighing service. (800.164(a); *26.62(a)*)

56. In issuing a duplicate certificate, the same information and statements that were shown on the lost or destroyed certificate, including special statements or information, if any, shall be shown on the duplicate certificate except (a) the original and the copies of the certificate shall show that it is a duplicate and (b) the original and all copies shall show that the certificate is issued in lieu of a lost or destroyed certificate. An original and one copy of the duplicate certificate shall be issued to the same respondents that received copies of the certificate that was lost or destroyed. (800.164(b); *26.62(b)*)

57. No correction, erasure, addition, or other change shall be made on an official certificate by any individual other than official personnel or authorized agents of such personnel. (800.165(b); *26.63(b)(1)*)

58. No correction, erasure, addition, or other change shall be made or shown on an export certificate. If errors are found in such a certificate before issuance, the original certificate shall be marked void and no copies shall be issued. (800.165(c)(1); *26.63(b)(2)*)

59. If errors are found prior to issuance of a certificate other than an export certificate, the errors may be corrected by issuing another certificate, or by making corrections on the incorrect certificate, provided (a) the changes are neat and legible; (b) the changes are initialed by the individual who corrects the certificate; (c) the changes and the initials are shown on the original and all copies of the incorrected certificate. (800.165(c)(2); *26.63(c)*)

60. Subject to the restrictions in this provision, if errors are found in a certificate after the issuance of the certificate, the errors shall be corrected by obtaining the incorrect certificate, if

possible and replacing it with a corrected certificate. If the incorrect certificate cannot be obtained, the correct certificate shall be superseded by a corrected certificate. The replacement, or the superseded corrected certificate, shall show the same information and statements that were shown on the incorrect certificate except (a) the correct statement or information shall be shown instead of the incorrect of omitted statement or information; (b) the original and copies of the corrected certificate shall show that they are a corrected certificate; and (c) a new serial number shall be shown. (800.165(d); *26.63(d)*)

61. No corrected certificate shall be issued (a) for a certificate that has been superseded by another certificate or (b) in any manner other than is prescribed in this provision. (800.165(e); *26.63(d)(5)*)

62. As of the date of issuance of a superseding corrected certificate, the superseded certificate shall be considered null and void, and shall not thereafter be used to represent any grain. (800.165(f))

63. Holders of official certificates may make photocopies or similarly reproduced copies of certificates. (800.166; *26.58(d)*)

XVIII—LICENSES, AUTHORIZATIONS, AND APPROVALS (FOR INDIVIDUALS ONLY)

Unit XVIII contains provisions on (a) when a license, authorization, or approval is required; (b) who is eligible to apply; (c) how to apply; (d) examinations; (e) issuance and posession of licenses, authorizations, and approvals; and (f) suspension, cancellation, termination, revocation, refusal of renewal, and surrender of licenses and approvals. Summaries of 34 of the provisions follow. Please see §§ 800.170 through 800.180 for the complete text of the provisions and for definitions of terms.

1. Except as shown in provision (2) below, any individual who (a) represents that he or she is licensed, authorized, or approved to perform any inspection, weighing, or scale testing service under the Act, or (b) performs any inspection, weighing, or scale-testing service under the Act must be licensed, authorized, or approved by the Service. (800.170(a)(1); *26.75(a)*)

2. A prospective applicant for a sampler's, laboratory technician's or weighing technician's license may, for a period of time not to exceed 30 calendar days, help perform official functions for which the applicant desires to be licensed. The prospective individual applicant must work under the direct physical supervision of an individual who is licensed to perform the functions that are being performed by the prospective applicant; and the supervising individual shall (a) be fully responsible for the functions performed by the prospective applicant, and (b) shall initial any work form prepared by the prospective applicant. (800.170(a)(2); *26.75(a)*)

3. Except as shown in this provision, no fee or charge shall be assessed for the licensing, authorization, or approval of an individual. An agency may assess a fee for helping the Service examine an applicant for a warehouse sampler's license. (800.170(a)(3) and 800.170(a)(4))

4. A license, authorization, or approval is not required for (a) the opening or closing or a carrier, or the transporting or filing of official samples, or similar laboring functions; (b) the typing or filing of official certificates or other official forms, or similar clerical functions; or (c) the testing of official inspection equipment. (800.170(b); *26.75(b)*)

5. Except as shown in this provision, no person may be licensed, authorized, or approved to perform functions under the Act who (a) has a conflict of interest specified in section 11 of the Act or (b) has a conflict of interest prohibited by Unit XIX, *"Licensed, Authorized, and Approved Personnel."* The employment restrictions of Section 11 shall not be deemed to preclude the licensing of warehouse samplers or the issuance of authority to approved scale testers who otherwise do not have a conflict of interest. An employee of an agency that has a conflict of interest that is excepted by the Administrator under section 11(b)(5) of the Act may be licensed if the employee has no conflict of interest other than the agency's conflict of interest. (800.171(a) and 800.171(b); *26.76(a)*)

6. To obtain a license to perform specified official functions under the Act (other than appeal and warehouse-sampling functions) an individual must (a) be employed by an agency, or by a contractor, to perform the functions, and (b) otherwise be found competent by the Service. (800.171(c)(1); *26.76(b)*)

7. To obtain an approval to operate as a scale tester under the Act, an applicant must (a) be employed by an approved scale testing organization to perform scale-testing functions, and (b) otherwise be found competent by the Service. (800.171(c)(3))

8. To obtain an approval to operate as weigher or a weighing technician under the Act, an applicant must (a) be employed by, at, or in an approved weighing facility to perform specified weighing functions; and (b) be certified by his or her employer as having a reputation for honesty and integrity. (800.171(c)(4))

9. To obtain a warehouse sampler's license, an applicant must (a) be employed by an elevator or warehouse to perform sampling functions, and (b) otherwise be found competent by the Service. (800.171(c)(5); *26.79(c)(2)*)

10. To be found competent, an individual must (a) meet recruiting and training requirements set by the Service, (b) have qualifying education and experience, and (c) have available for use the necessary equipment and facilities. Upon a showing of good cause, the recruiting requirements may be waived by the Service. (800.171(c)(6); *26.76(b)*)

11. The competency of an applicant for a sampler's, laboratory technician's, or weighing technician's license, shall be determined by (a) the chief inspector or the chief weighmaster, as applicable, of the employing agency, or in the case of a warehouse sampler, the agency that is assigned the area in which the employing elevator is located; and (b) the appropriate field office supervisor. (800.171(d)(1); *26.76(d)(1)*)

12. The competency of an applicant for (a) an inspector's license; or (b) a warehouse sampler's license; or (c) authority to operate as an approved scale tester, approved weigher, or approved weighing technician shall be determined by the Service. (800.171(d)(2); *26.76(d)(1)*)

13. The determination of the competency of an applicant for a license shall include an evaluation of the results of examinations or reexaminations prescribed by the Service. (800.171(d)(4); *26.78*)

14. Applications for licenses or approvals shall be made to the Service on forms prescribed and furnished by the Service. Applications for approvals may be made by an approved scale-testing organization, or an approved weighing facility, as applicable, and may pertain to one or more employees of the organization or facility (800.172(a); *26.77(a)*)

15. Each application shall be reviewed to determine whether the applicant and the application are in compliance with the regulations and with sections 8, 9, and 11 of the Act. If it is determined that an application is not in compliance, the applicant shall be provided an opportunity to submit the needed information. If it is determined that an applicant is not in compliance, the applicant shall be provided an opportunity to achieve compliance. (800.172(d); *26.77(d)*)

16. If an applicant cannot achieve compliance within a reasonable period of time, the application shall be dismissed. If the application involves a renewal of a license, or a renewal of an approval for a scale tester, the dismissal shall be performed in accordance with provision 33 below. (800.172(e)(4); *26.77(c)*)

17. Applicants for a license and official inspection or weighing individuals who are licensed or authorized to perform functions under the Act shall,

whenever deemed warranted by the Service, submit to examinations or reexaminations to determine their competence to perform official inspection or weighing functions. In the case of an employee of an agency, the determination shall be made in consultation with the appropriate chief inspector or chief weighmaster, as applicable. (800.173(a); *26.78(a)*)

18. Examinations and reexaminations shall be conducted by official personnel designated by the Service, and shall be held at a reasonable time and place and in a reasonable manner in accordance with instructions issued by the Service. (800.173(b); *26.78(b)*)

19. Examinations or reexaminations may include color-vision tests, on-site or other performance tests, or oral or written tests.(800.173(c); *26.78(c)*)

20. An induvidual may be deemed not competent to perform inspection functions under the Act if the individual (a) has a serious color-vision deficiency; (b) cannot meet the physical requirements of some or all of the inspection functions; (c) cannot readily distinguish between the different kinds and classes of grain, or the different conditions in grain; (d) does not have a technical ability to operate inspection equipment; (e) does not have a working knowledge of the applicable provisions of the Act, the regulations, the Official Grade Standards for Grain, and the instructions for inspecting grain under the Act; or (f) cannot determine work related mathematical computations; or (g) cannot prepare legible records in the English language. (800.173(d)(1); *26.78(d)*)

21. An individual may be deemed not competent to perform weighing functions under the Act if the individual (a) does not meet the requirements of clauses (b), (f), and (g) of provision 20 above; or (b) does not have a technical ability to operate weighing equipment; or (c) does not have a working knowledge of the applicable provisions of the Act, the regulations, and the instructions for the weighing of grain under the Act. (800.173(d)(2))

22. Licenses and approvals shall be on forms prescribed for the purpose and furnished by the Service. Authorizations shall be in the form of approved position descriptions issued by the Service. (800.174(a); *26.79(a)*)

23. The following kinds of licenses, approvals, and authorizations will be issued under the regulations: (a) stowage examiner, (b) sampler, (c) laboratory technician, (d) inspector, (e) weighing technician, (f) weigher, and (g) scale tester. An eligible individual may be licensed, approved, or authorized to perform one or more functions; but only one license, approval, or authorization will be issued per individual. (800.174(b); *26.79(b)*)

24. No person other than a licensed or authorized inspector may issue an official certificate that shows an official grade. (800.174(c)(5); *26.79(c)(3)*)

25. No person other than a licensed or authorized weigher may issue an official weight certificate under the Act. (800.174(c)(7))

26. Each license shall be retained by the holder of the license in such a manner that the license can be promptly examined upon request by official personnel. (800.174(g); *26.79(g)*)

27. Each license, and eah authority to operate as an approved scale tester, shall terminate in accordance with the termination date shown on the license or approval. The termination date for a license shall be no less than 3 years nor more than 4 years after the issuance date for the initial license, thereafter every 3 years. Authority to operate as an approved scale tester shall terminate annually in accordance with the termination date of the approval issued to the scale tester's employer. (800.175(a) and 800.175(b)(2); *26.80(a)*)

28. Authority to operate as an approved weighing technician, or an approved weigher, shall have no termination date. (800.175(b)(3))

29. Licenses and approvals may, upon request of the holder of a license or approval, be voluntarily canceled, or voluntarily suspended for a specified period of time not to exceed 1 year. A voluntary suspension shall not affect the expiration date of a license or approval. (800.176(b); *26.81(a)*)

30. A License issued to an individual who is employed by an agency, or employed under the terms of a contract with the Service, shall be summarily suspended when the individual ceases to be employed by the agency, or employed under the terms of the contract, as applicable. If the individual is reemployed in a similar capacity within 1 year, and the license has not expired or been canceled in the interim, upon request of the licensee, the license will be reinstated. (800.177; *26.82*)

31. Licenses or approvals may be summarily revoked by the Service upon a finding that the licensee, or approved individual has (a) died; or (b) been convicted of any offense prohibited by the Act or prescribed by Title 18 of the U.S. Code; or (c) is imprisoned for a period in excess of 1 year; or (d) in the case of an approved individual, has ceased to be employed by the employing organization; or (e) the approval of the employing organization has been revoked by the Service; or (f) no official functions have been performed under the license or the approval for a period of 1 year. (800.178; *26.88*)

32. Whenever the Service has reason to believe there is cause for temporary action and such action is deemed to be in the best interest of the inspection and weighing system, a license or an approval may be temporarily suspended; or the renewal of a license, or the renewal of an approval may be temporarily refused, without first affording the licensee or the approved individual an opportunity for a hearing. Within 30 business days following the issuance of a notice of temporary action, the Service shall (a) afford the respondent an opportunity for a hearing, or (b) terminate the temporary action with a suitable written notice or warning, or (c) terminate the temporary action without prejudice to the respondent. (800.179(a); *26.89(b)*)

33. In refusing to renew a license or an approval, in suspending or revoking a license or an approval, and in refusing to return a license that was suspended for a period that has expired, the respondent shall be afforded an opportunity for (a) informal conference in accordance with the Rules of Procedure Governing Informal Proceedings in Subpart I or this Part; or (b) at the request of the respondent, a formal proceeding in accordance with the provisions of 5 U.S.C. 554, 556, and 557, and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes. (800.179(b); *26.89(b)*)

34. Each license or approval that is terminated, cancelled, suspended, or revoked shall be promptly surrendered to the appropriate field office by the respondent or the respondent's employer. In the case of the death of a licensee or an approved individual, the license or approval shall be returned by the heirs of the deceased or by the administrator or executor of the estate. Any license or approval not surrendered may be summarily cancelled by the Service. (800.180(a) and 800.180(c); *26.84(a)*)

XIX—Duties and Conduct of Licensed, Authorized, and Approved Personnel

Unit XIX contains provisions on (a) duties of official personnel, approved personnel, and warehouse samplers; (b) standards of conduct; (c) conflicts of interest; (d) prohibited actions; and (e) corrective action. Summaries of 26 of the provisions follow. Please see § 800.185 through § 800.189 for the complete text and for definitions of terms.

1. Official personnel, approved personnel, and warehouse samplers shall be responsible for performing the duties specified in the Act, the regulations, and the applicable instructions issued to them by the Service. (800.185(a); *26.85(a)*)

2. Official personnel shall perform requested official inspection and official Class X and Class Y weighing

functions (a) without discrimination, (b) as soon as practicable, (c) upon reasonable terms, and (d) in accordance with methods and procedures prescribed in the instructions issued by the Service. (800.185(b); *26.85(b)*)

3. Upon request of the Service, official personnel shall (a) when feasible, affix security seals to doors, hatch covers, and similar openings on carriers that contain grain that has been inspected or weighed under the Act, or (b) upon request by applicants, show on certificates and other official forms the identity of seals that have been affixed or broken by official personnel. (800.185(c))

4. Except as shown in this provision, official personnel, approved personnel, and warehouse samplers shall (a) operate within the scope of functions specified in their licenses, authorizations, or approvals; (b) operate only within the area of responsibility, if any, assigned to their employer; and (c) operate at the specified service point or other location, if any, to which assigned by their employer. Official services may be performed in a differnt area or at a different location only with the consent of the Service. (800.185(d); *26.85(c)*)

5. Official personnel, approved personnel, and warehouse samplers performing functions under the Act shall have available for their use and shall familiarize themselves with the applicable provisions of the Act; the regulations; the Official Grain Standards; the official methods and procedures for the inspection of grain, the weighing of grain, and the testing of equipment; and the instructions issued to them by the Service. (800.185(e); *26.85(d)*)

6. Official personnel, approved personnel, and warehouse samplers shall permit any person who has a financial interest in grain that is being inspected or weighed under the Act, or in equipment that is being tested under the Act, to observe the performance of any or all official inspection, official Class X or Class Y weighing, or official equipment testing functions performed by them. Appropriate observation areas may be identified by the Service for the observing of each function. The areas shall be safe, shall afford a clear or unobstructed view of the performance of the functions, but shall not permit a close over-the-shoulder type of observation by the interested person. (800.185(f))

7. Licensees and warehouse samplers shall promptly inform the appropriate field office of any change in the scope of their duties, or their employment, or any suspension of their inspection or weighing functions that would impair the performance of the functions. (800.185(g); *26.85(e)*)

8. Official personnel shall promptly report to their immediate supervisor, and approved personnel and warehouse samplers shall promptly report to the appropriate field office (a) information coming to their knowledge which shows or tends to show a violation of the Act, the regulations, or the instructions issued by the Service; and (b) information of any instructions that have been issued to them by official personnel that are contrary to or inconsistent with the Act, the regulations, or the instructions issued by the Service. (800.185(b); *26.85(f)*)

9. Official personnel, approved personnel, and warehouse samplers shall, to the extent consistent with their assigned duties, assist in training other employees who desire to become licensed or approved. Upon request of the Service, selected licensees may assist in examining applicants for licenses for competence. (800.185(i); *26.85(g)*)

10. Official personnel, approved personnel, and warehouse samplers shall execute diligently all instructions issued to them by the Service and shall inform the Service in full detail regarding (a) inspection, weighing, and testing equipment used by them; (b) inspection, weighing, or equipment-testing services performed by them; and (c) compensation received for such services. (800.185(j); *26.85(i)*)

11. Official personnel, approved personnel, and warehouse samplers shall maintain high standards of honesty, integrity, and impartiality to assure proper performance of their duties and responsibilities and to maintain the confidence of the grain industry and the public in the services performed by them. (800.186(a); *26.85(a)*)

12. Licensees, other than warehouse samplers, employed by agencies shall be subject to the conflict-of-interest provisions of section 11 of the Act and the standards of conduct prescribed by provisions 14 through 17, and 23 through 25, below. (800.186(b); *26.85(c)*)

13. Authorized employees of the Department of Agriculture are subject to the conflict-of-interest provisions of section 11 of the Act, and the standards of conduct prescribed by provisions 14 through 17, and 23 through 25, below; and Title 7, Part O, Subtitle A, of the Code of Federal Regulations covering Federal employee responsibilities and conduct. (800.186(c); *26.86(b)*)

14. Official personnel, approved personnel, and warehouse samplers are specifically prohibited from (a) performing functions under the Act unless they are duly licensed, authorized, or approved by the Service to perform the functions; (b) engaging in criminal, dishonest, or notoriously disgraceful conduct; (c) reporting for duty in an intoxicated or drugged condition, or consuming intoxicating beverages or incapacitating drugs while on duty; (d) smoking in prohibited areas in elevators; (e) making unwarranted accusations against other official personnel, approved personnel, warehouse samplers, or employees of the Department of Agriculture; (f) refusing to give testimony or respond to questions in connection with official inquiries or investigations; (g) soliciting contributions from other official personnel, approved personnel, or warehouse samplers or, or making a donation for a gift to, an employee of the Service; (h) taking any action which might result in or create the appearance of losing the individual's complete independence or impartiality, or adversely affecting the confidence of the public in the integrity of the services performed under the Act by the individuals. Approved personnel shall not be deemed to be in violation of this provision solely because of their employment. (800.186(d); *26.86(d)*)

15. Official personnel shall not perform or be engaged in any outside (nonofficial) work or activity if (a) the efficiency of the personnel may be impaired by the work; (b) the work consists of or includes, in whole or in part, the performance of nonofficial functions similar to the official functions performed under the Act, or if the work may otherwise be construed by the public to be the official acts of official personnel; (c) the work would result in a conflict of interest under section 11 of the Act, or a conflict of interest between the nonofficial duties and the official duties; or (e) the work may otherwise tend to bring criticism to the Department or the Service. (800.186(e); *26.86(e)*)

16. It is the policy of the Department that it shall deal fairly with all farm organizations and deal with each upon the same basis. It is not permissible for official personnel to (a) participate in activities concerned with establishing any general or specialized farm organization; (b) act as an organizer for any general or specialized farm organization or hold any office therein; (c) act as financial or business agent for any general or specialized farm organization; (d) participate in any way in any membership campaign to recruit members for any general or specialized farm organization; (e) accept the use of free office space or contributions for salary or traveling expense from any general or specialized farm organizations; (f) advocate that any particular general or specialized farm organization is better adapted for representing the interests of farmers than any other organization; or (g) advocate or recommend that the responsibilities of any agency of the Department of Agriculture or any Federal, State, or

local agency should be carried out through any particular general or specialized farm organization. The restrictions in this provision do not preclude membership in a general or specialized farm organization or prohibit official personnel from participating in the organization or operation of local groups that conduct Federal, State, or local government-authorized programs. (800.186(f); *26.86(f)*)

17. The term "gratuities" shall be deemed to include any favor, entertainment, gift, tip, loan, payment for unauthorized or fictitious work, unusual discount, or anything of monetary value. It shall not be deemed to include (a) the occasional exchange of a cup of coffee or similar social courtesies of similar nominal value in a business or work relationship, if the exchange is wholly free of any embarrassing or improper implications; (b) the acceptance of unsolicited advertising material of nominal value of the material is wholly free of any embarrassing or improper implications; (c) the acceptance of membership shares, nonvoting stock, or dividends from a local cooperative or other local business entity, provided the cooperative or business entity is not subject to the recordkeeping provisions of the Act; and (d) the exchange of the usual courtesies in an obvious family or personal relationship when the circumstances make it clear that the exchange is the result of the family or personal relationship rather than a business or work relationship. (800.187(a); *26.87(a)(b)(3)*)

18. In addition to the conflicts of interest prohibited by section 11 of the Act, the activities specified in this provision also shall be deemed to involve a conflict of interest if engaged in by official personnel or approved persons subject to section 11 of the Act. No such personnel shall (a) perform, or participate in performing an inspection or weighing service on grain in which they have a direct or indirect financial interest; (b) be engaged in or have any interest in any grain business, or any related activity, as defined in Unit XX, "DELEGATIONS, DESIGNATIONS, AND APPROVALS (FOR ORGANIZATIONS) AND CONTRACTUAL ARRANGEMENTS (FOR INDIVIDUALS OR ORGANIZATIONS)"; (c) seek or hold any appointive or elective office in a grain industry group; (d) accept any fee or other thing of monetary value in addition to the published fee or charge for services performed under the Act; (e) participate, directly or otherwise, in any transaction involving the purchase or sale of stock or bonds, grain or grain-related commodities, or other property for speculative or income purposes if such action might interfere or tend to interfere with the proper and impartial performance of official functions; or (f) coerce any person to provide special or undue benefits to official personnel, approved personnel, or warehouse samplers. (800.187(c); *26.87(b)*)

19. Official personnel, approved personnel, and warehouse samplers shall report such information regarding their employment or other business or financial interest as may be required by the Service. (800.187(d); *26.87(c)*)

20. Official personnel, approved personnel, and warehouse samplers shall at all times avoid acquiring any financial interest or engaging in any activity that would result in a violation of provision 18 above, or section 11 of the Act, and shall not permit their spouses, minor children, or blood relatives who reside in their immediate households to acquire any such interest or engage in any such activity. (800.187(e); *26.87(d)*)

21. Upon being informed that certain employment or other interest represents a conflict of interest and that remedial action is required, (a) an applicant for a license, an approval, or an authorization; (b) official personnel; and (c) approved personnel shall take immediate action to end the conflict of interest and inform the Service of the action taken. An individual who believes that remedial action will cause undue personal hardship may request an exception by forwarding to the Service, either directly or through the appropriate field office, a written statement setting forth the facts and the reason or reasons for requesting an exception. (800.187(f); *26.87(e)*)

22. If a final determination is made by the Service that a conflict of interest does exist, failure to terminate the conflict of interest shall subject an individual to administrative action. (800.187(f)(3); *26.87(e)(3)*)

23. No chief inspector, chief weighmaster, field office supervisor, or other supervisory official personnel shall issue to other official personnel, approved personnel, or warehouse samplers under their supervision any instructions inconsistent with the Act, the regulations, or the instructions issued by the Service. (800.188(b); *26.88(b)*)

24. No official personnel shall certify or otherwise state in writing (a) the year of production of any grain, (b) the place where grain was grown, or (c) the variety of grain. (800.188(c); *26.88(c)*)

25. In issuing certificates under the Act, no official personnel shall apply any administrative, statistical, or other tolerance to their official determinations other than tolerances prescribed in the regulations and in instructions issued by the Service. (800.188(e); *26.88(e)*)

26. Official personnel, approved personnel, and warehouse samplers who commit an offense prohibited by section 13 of the Act are subject to criminal prosecution in accordance with section 14 of the Act. In addition, such personnel are subject to administrative action including (a) temporary suspension of a license or approval pending final determination, (b) the suspension of a license or approval for a prescribed period, or (c) the revocation of a license or approval. Employees of the Service are subject to administrative actions, including changes in assigned duties and other disciplinary action, in accordance with the law. (800.189; *26.89*)

XX—DELEGATIONS, DESIGNATIONS, AND APPROVALS (FOR ORGANIZATIONS) AND CONTRACTUAL ARRANGEMENTS (FOR INDIVIDUALS OR ORGANIZATIONS)

Unit XX contains provisions on (a) restrictions on performance of official functions by agencies; (b) who may apply for a delegation, designation, approval, or contract; (c) rules on conflicts of interest; (d) when, where, and how to apply; (e) review of applications; (f) issuance and possession of delegations, designations, approvals, and contracts; (g) cancellation, suspension, revocation, termination, and refusal of renewal of delegations, designations, and approvals; (h) inspection and weighing arrangements during suspension; (i) assignment of areas of responsibility; (j) specifying service points; (k) duties and responsibilities of agencies, field offices, and approved weighing facilities. Summaries of 70 of the provisions follow. Please see § 800.195 through § 800.208 for the complete text of the provisions.

1. Only the Service or certain State agencies delegated authority by the Service may perform inspection, reinspection, Class X or Class Y weighing, or review of weighing functions at export port locations. (800.195(a)(1))

2. If inspection functions are performed by the Service at export port locations, only the Service may perform Class X or Class Y weighing functions at that location. (800.195(a)(2))

3. If inspection functions are performed by a State at an export port location, only the State, or the Service, may perform Class X or Class Y weighing functions at that location. (800.195(a)(3))

4. If inspection functions are performed at a given inland location by a designated inspection agency, the Class X or Class Y weighing functions at that location, if any, may be performed only by the designated inspection agency if the agency is found qualified by the Service and is available to perform the Class X or Class Y weighing functions. If the designated

inspection agency is found not qualified or is not available, the Class X or Class Y weighing functions may be performed by an inspection or weighing agency that is found qualified by the Service and is available, or the Class X or Class Y weighing functions may be performed by the Service. (800.195(b)(1))

5. If inspection functions are performed by an agency at an export elevator at an inland location, the Service may perform Class X or Class Y weighing functions at that elevator or may designate another qualified applicant to do so. (800.195(b)(2))

6. Only one agency, or the Service, may be operative at one time at a given location for the performance of original inspection functions. Subject to provision 5 above, only one agency or the Service, or one agency and the Service, may be operative at one time at a given inland location for the performance of Class X or Class Y weighing functions. (800.195(c); *26.59(b)*)

7. Original inspection functions may be performed by the Service at inland locations only on an interim basis. (800.195(d)(2))

8. The following States have been issued a delegation of authority to perform official original inspection, official inspection, and official Class X and Class Y weighing functions at export port locations within each respective State, as provided in sections 7 and 7A of the Act: Alabama, California, Florida, Minnesota, Mississippi, South Carolina, Virginia, Washington, and Wisconsin. (800.196(a))

9. Subject to the conflict of interest provision of the Act and the regulations, any State or local governmental agency or any person may file an application with the Service for (a) a designation, (b) a renewal of a designation, (c) the suspension or cancellation of a designation, or (d) the amendment of a designation to operate as an official agency for the performance of inspection and reinspection functions and Class X and Class Y weighing functions at locations other than export port locations. (800.196(b))

10. Any scale testing organization may file an application with the Service for (a) approval to operate as a scale testing organization under the Act and (b) a renewal of an approval. (800.196(c)(1))

11. Any State or local governmental agency or person who operates an elevator in the United States, or any province or local governmental agency or person who operates an elevator in Canada that handles U.S. export grain transshipped through Canadian ports may apply to the Service for authority to operate as an approved weighing facility. (800.196(c)(2))

12. Subject to the conflict of interest provisions of the Act and the regulations, any State or local governmental agency, or any person, may file an application with the Service for a contract to perform specified (a) official sampling, laboratory testing, Class X or Class Y weighing, and similar technical functions under the Act and (b) monitoring activities in foreign ports, including Canadian ports, with respect to export grain that has beem inspected and weighed under the Act. (800.1961(d)(1); *26.90(b)*)

13. The Administrator may enter into a cooperative arrangement with the Canada Department of Agriculture, or other Canadian governmental agencies, for the performance by employees of the Canada Department of Agriculture, or other Canadian governmental agencies, of specified sampling, laboratory testing, Class X or Class Y weighing, and similar technical functions, other than appeal functions, on U.S. grain being transshipped through Canadian ports. (800.196(d)(2))

14. Except as shown in provision 16 below, no State or local government agency or person who has a conflict of interest specified in section 11 of the Act shall be eligible to enter into a contract with the Service for the performance of specified functions under the Act. (800.196d(3)(i); *26.90(b)*)

15. Agencies or employees of agencies shall not be deemed eligible to enter into a contract with the Service to obtain samples for or to perform other technical functions involved in field appeal or Board appeal inspection services. This provision shall not preclude agencies from forwarding file samples to the Service. (800.196(d)(3)(ii))

16. Only employees of an elevator that has one or more diverter-type mechanical samplers approved by the Service shall be deemed eligible to enter into a contract with the Service to obtain samples for warehouseman's sample-lot inspection service. (800.196(d)(3)(iii); *26.90(b)*)

17. Only the operator of a bona fide testing laboratory shall be deemed eligible to enter into a contract with the Service for the testing of grain for official factors or official criteria. (800.196(d)(3)(iv))

18. Agencies and approved organizations, and employees of agencies and approved organizations, and other persons who regularly provide services to persons who export grain from the United States shall be deemed eligible to enter into a contract with the Service for the performance of monitoring services on export grain in foreign ports if the agencies, organizations, and employees are under the direct supervision of employees of the Service during the monitoring activities. (800.196(d)(3)(v))

19. The following interests and relationships generally are deemed to be prohibited conflicts of interest and, except as shown in provision 20 below and subject to any determination made by the Administrator under section 11(b)(5) of the Act, if present will result in an agency being considered not eligible for a delegation or a designation, and a contractor being considered not eligible to enter into a contract with the Service: (a) No agency shall be employed by or have any stock or other financial interests in any grain business, or give or accept any gratuity to or from any grain business, or any member, director, officer, or employee of a grain business or otherwise have any conflict of interest specified in the regulations; (b) no grain business shall operate, have any stock or other financial interest in an agency, or give or accept any gratuity to or from any agency, contractor, or field office, or any member, director, officer, or employee of an agency, contractor, or field office; (c) no member, director, officer, or employee of an agency or contractor shall be employed by or have any stock or other financial interest in a grain business, or give or accept any gratuity to or from any grain business, or any member, director, officer, or employee of any grain business; and (d) no member, director, officer, or employee of a grain business shall operate, or have any stock or other financial interest in, an agency or contractor, or give or accept any gratuity to or from any agency or contractor, or to or from any member, director, officer, or employee of an agency or contractor. (800.196(e)(3); *26.96(d)*)

20. The interests and relationships shown in this provision are deemed to be exempt conflicts of interest: (a) By an agency, contractors, and field Offices: using laboratory or office space owned or controlled by a grain business, when the use of the sapce is considered essential by the Service for the performance of onsite inspection and weighing services requested by an applicant; using inspection, weighing, transportation, or office equipment that is owned or controlled by a grain business, when the use of the equipment is considered essential by the Service for the performance of onsite inspection or weighing services requested by an applicant; (b) by grain businesses: furnishing or providing laboratory, office space, or related facilities to, or for use by, an agency, contractor, or field office for the performance of onsite inspection or weighing services requested by an applicant, or for the performance of supervision or monitoring activities by an agency, contractor, or field office; furnishing or providing inspection, weighing, transportation, or office

equipment to, or for use by, an agency, contractor, or field office for the performance of onsite inspection or weighing services requested by an applicant, or for the performance of supervision or monitoring activities. (800.196(e)(4))

21. Applications from delegated State agencies for authority to perform official functions under the Act at new export port locations should be filed with the Service not less than 90 days before the agency contemplates performing official functions at the location. (800.197(a))

22. Applications for (a) authority to operate as a designated agency, (b) a renewal of a designation, or (c) a change in designation should be filed with the Service not less than 90 days before the effective date of the requested action. (800.197(b); *26.97(b)*)

23. Applications for (a) authority to operate as an approved scale testing organization, (b) a renewal of an approval, or (c) the suspension or cancellation of an approval should be filed with the Service not less than 90 days before the effective date of the requested action. (800.197(c)(1))

24. Applications for authority to operate as an approved weighing facility should be filed with the Service as far in advance of the effective date of the request as possible to permit the Service to determine whether the application and the applicant are in compliance with the provision of section 7A(f) of the Act and the provisions of this Unit. (800.197(c)(2))

25. Applications for (a) a contract to perform specified functions, (b) a renewal of a contract, and (c) a change in the contract should be filed with the Service not less than 90 days before the effective date of the requested action. (800.197(d); *26.90(c)*)

26. Agencies or other persons who desire to file an application for an action involving a delegation, designation, approval, or contractual arrangement, should submit a completed application to the Service on a form prescribed for the purpose and furnished by the Service. Each application shall include the information required by the form and by this provision. Applications also shall show whether the applicant or any of its members, directors, officers, or employees, or any substantial stockholder, has any interest in a grain business, and whether any grain business has any interest in the applicant. (800.198(a); *26.97(a)*)

27. An application to operate as a delegated State agency at a new export port location, or for a change in delegation, shall show whether the State is willing to provide inspection and Class X and Class Y weighing services at all export port locations in the State and the export port locations where the State desires to perform the functions. The application also shall state that if the delegation in granted, the State will (a) comply in full with the provisions of the Act and the regulations and instructions under the Act; (b) permit representatives of the Department to audit any or all of the applicant's operations; (c) will not knowingly employ or retain in its employ any individual who has been or is hereafter convicted of any violation of the Act or any other offense prohibited by Federal law involving the handling, weighing, or inspection of grain; and (d) will immediately suspend any such individual upon return of an indictment or the filing of a criminal information against the individual alleging any such offense; (e) specify to supervisory inspectors and weighers that their performance of all duties related to official inspection or Class X or Class Y weighing functions are subject to the supervision of the Service; (f) submit to the Service such reports as may be requested with respect to the management, staffing, budget, and operations of the Agency; and (g) authorize their managers and supervisory inspectors and weighers to attend such meetings as may be held from time to time by the Service for the managers and supervisory inspectors and weighers. (800.198(b))

28. An application for authority to operate as a designated agency shall show (a) whether the applicant is a governmental organization, business organization, or an individual; (b) if it is a business organization, detailed information about its organization and staffing; (c) the inspection or Class X or Class Y weighing functions the applicant desires to perform; (d) the area and locations where the applicant desires to perform the functions; and (e) the schedule of fees the applicant proposes to assess. The application also shall state that if the designation is granted, the applicant will (a) comply in full with the provisions of the Act and the regulations and instructions under the Act; (b) permit representatives of the Department to audit any or all of the applicant's operations; (c) not knowingly employ or retain in its employ any individual who has been or is hereafter convicted of any violation of the Act or any other offense prohibited by Federal law involving the handling, weighing, or inspection of grain; and (d) immediately suspend any such individual upon the return of an indictment or the filing of a criminal information against the individual alleging any such offense. An application may show the reason or reasons the applicant considers himself or herself to be better qualified than other applicants to perform the functions it proposes to perform. (800.198(c); *26.97(a)*)

29. NOTE: The provisions of this paragraph (d) shall not be applicable with respect to State or local governmental scale testing organizations that were operative on September 29, 1977.

An application for authority to operate as an approved scale testing organization shall show (a) whether the applicant is a governmental organization, business organization, or an individual; (b) if it is a business organization;

(c) Whether the applicant currently is providing scale testing services at any location and, if so, where; (d) the scale testing functions the applicant desires to perform, and the area and locations where the applicant desires to perform the functions; (e) the period of time the applicant desires to perform the functions; and (f) the name of each employee who would be performing official scale testing functions and a statement that each of the employees is competent and has a reputation for honesty and integrity. The applications also shall state that if the request for approval is granted, the applicant will (a) comply in full with the provisions of the Act and the regulations and instructions under the Act; (b) permit representatives of the Department to audit any or all of the applicant's scale testing operations; and (c) in employing individuals to perform or supervise the performance of scale testing functions under the Act will not knowingly employ or retain in its employ any individual who has been or is hereafter convicted of any violation of the Act or any other offense prohibited by Federal law involving the handling, weighing, or inspection of grain, and will immediately suspend any such individual upon the return of an indictment or the filing of a criminal information against the individual alleging any such offense. Each application to operate as an approved scale testing organization, or for a renewal of an approval, shall be accompanied by the fee specified in the regulations. (800.198(d))

30. An application for authority to operate as an approved weighing facility shall show (a) the name and address of the owner of the facility, (b) the name and address of the operator of thr facility; (c) the name of each individual who is employed by, at, or in the facility as a weigher or a weighing technician, and a statement that each of the individuals is competent and has a reputation for honesty and integrity; (d) a blueprint or similar drawing of the facility showing the location of the loading, unloading, and grain-handling systems; the scale systems used in the weighing of grain; and the bins and other storage arrangements in the facility; and (e) the indentification of each scale in the facility that is

to be used for the weighing of grain under the Act. If the facility is an export elevator at an export port location, a statement that if the authority is granted, the applicant will (f) maintain accurate and complete records of all related commodities and other products transferred into or out of, or stored in, the facility; (g) make such records available to the Service for review and copying; and (h) notify the Service whenever grain and related commodities and other products are transferred into or out of the facility.

If the applicant for authority to operate as an approved weighing facility has an automated data-processing system for the handling or weighing of grain, the application shall show (a) the identification and description of the hardware and the software; (b) a description of the method for recording changes or modifications in the system; (c) a description of the procedures for testing the system, for safeguarding the system from the loss, misrepresentation, or manipulation of data; and (d) the instructions for operating the system. (800.198(e)).

31. An application for a contract to perform specified appeal inspection services, warehouseman's sample-lot inspection services, laboratory services, equipment-testing services, monitoring services, or other technical services shall (a) specify the services that the applicant desires to perform; (b) specify the period of time the applicant desires to perform the services; and (c) state that if the contract is granted, charges for official functions performed for the Service by the applicant will be billed only to the Service. (800.198(f); *26.90(c)*)

32. Each application for a delegation, designation, approval, or contractual arrangement shall be reviewed to determine whether the application and the applicant are in compliance with the Act and the regulations, and whether the requested action is consistent with the objectives of the Act and the need for official services. The review of an application for authority to operate as an approved weighing facility shall include an onsite evaluation of the performance and accuracy of each scale that will be used for weighing grain under the Act, and the performance of the grain loading, unloading, and related grain-handling equipment and grain-handling systems. If it is determined that (a) the application and the applicant are in compliance; (b) the fees, if any, prescribed by the regulations have been paid; and (c) the requested action is consistent with the objectives of the Act and the need for official services, the application may be granted. (800.199(a); *26.97(c)*)

33. If it is determined that an application is not in compliance with the regulations, and the noncompliance precludes a satisfactory review by the Service, the applicant shall be provided an opportunity to submit the need information. If the needed information is not or cannot be submitted by the applicant in a reasonable time, the application may be dismissed. (800.199(b); *26.98*)

34. If it is determined that an applicant is not in compliance with the provisions of the Act and the regulations at the time of submitting the application, or will not be in compliance during the applicable period that would be covered by the requested delegation, designation, approval, or contractual arrangement, or that the requested action is not consistent with the objectives of the Act and the need for official services, the application shall be denied in accordance with provisions 47 through 54. (800.199(c); *26.98*)

35. All delegations, changes in delegations, designations, changes in designations, approvals of scale testing organizations, and approval of weighing facilities shall be issued by the Service. All contracts shall be issued by the Department. (800.200(a); *26.98*)

36. Each delegation, designation, and approval, and each contract for the performance of specified technical functions is issued on the condition that the State or local government agency, or person that is granted that delegation, designation, approval, or contract comply with the applicable provisions of the Act and the regulations and instructions under the Act. (300.200(b))

37. A delegation of authority issued by the Service to a State shall have no termination date, but shall terminate whenever any of the following events occur: (a) there are no export port locations in the State for a period of 3 consecutive years; (b) the State requests that the delegation of authority be canceled; (c) upon notice by the Service that the delegation of authority is being revoked by the Service with or without prejudice to the State. (800.201(a))

38. Designations of agencies shall terminate not less than triennially (3 calendar years) after the effective date of the designation. Notices of the termination shall be issued by the Service to designated agencies at least 60 days in advance of the termination date. Failure to receive a notice from the Service shall not exempt a designated agency of the responsibility of having its designation renewed on or before the expiration date. (800.201(b))

39. NOTE: This provision shall not be applicable with respect to State or local governmental scale testing organizations that were operating on September 29, 1977. Approvals of scale testing organizations shall terminate annually in accordance with the termination date on the approval. Notices of terminations shall be issued by the Service to the organization at least 30 days in advance of the termination date. (800.201(c)(1))

40. Approvals of grain weighing facilities shall have no termination date but shall terminate whenever any of the following events occur: (a) the facility ceases to operate as a grain storage, handling, or weighing facility; (b) the facility requests that the approval be canceled; or (c) weighing services at the facility are refused for a specified period of time in accordance with the provisions of section 10 of the Act. (800.201(c)(2))

41. Contracts with the Service shall terminate annually unless otherwise provided in the contract. (800.201(d); *26.94(e)*)

42. A delegation, designation, or approval may, upon request of the State, local government, or person that is granted the authority be canceled, or in the case of a designation or an approval, may be suspended for a specified period of time. In the case of the suspension, the specified period cannot exceed the expiration date, if any, of the designation or approval. A suspension of a designation or an approval, whether voluntarily or for cause, shall not affect the expiration date of the designation or approval.

43. A contract may, upon the request of the State or local government agency, or a person that entered into the contract with the Service, be canceled by the Department in accordance with the terms of the contract. (800.202(b); *26.94(e)*)

44. A designation to operate as an official agency, or authority to operate as a designated agency, or an approved scale testing organization, or as an approved weighing facility may be summarily suspended by the Service without a hearing if the agency, or scale testing organization, or weighing facility, as applicable, temporarily ceases to operate as an inspection or weighing agency, or scale testing organization, or grain storage, handling, or weighing facility. Upon request by the agency, scale testing organization, or weighing facility, a designation or approval that has been summarily suspended may be reinstated by the Service upon the finding that (a) the request by the applicable agency, organization, or facility, was made prior to the expiration date of the designation or approval; (b) the agency, organization, or facility, as applicable, is again operating or capable of operating as an inspection or weighing agency, an approved scale testing organization, or approved weighing facility; (c) the agency, organization, or facility, is otherwise eligible to be granted a designation or approval, as appropriate;

and (d) the reinstatement is consistent with the objectives of the Act and the need for official services. (800.203(a)(1); *26.101(b)*)

45. A designation of an agency or the authority to operate as an approved scale testing organization, or as an approved weighing facility, may be summarily canceled by the Service without a hearing upon finding that the agency, organization, or facility (a) if an individual has died or is imprisoned for a period in excess of 3 years; or (b) if a partnership has been dissolved; or (c) if a corporation has had its charter suspended, canceled, or otherwise terminated; or (d) if an association or other business entity has been dissolved or is no longer operational as an association or a business entity. (800.203(b))

46. A delegation to a State to perform official inspection, or Class X or Class Y weighing functions at export port locations is subject to revocation for cause if the Administrator determines that the State or any of its employees has violated any provision of the Act or the regulations, standards, and instructions under the Act, or has been convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the U.S. Code. (800.204(a))

47. The Administrator may revoke a delegation to a State without a hearing, or, in his discretion, at the request of the State, may afford the State an opportunity for (a) an informal conference in accordance with the rules of practice in Subpart I of this part; or (b) a hearing in accordance with the provisions of 5 U.S.C. 554, 556, 557, and the Rules or Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes. (800.204(b))

48. A designation issued to an official agency is subject to a refusal to renew or a suspension, or a revocation, either temporarily or otherwise, by the Service (a) for causes prescribed in section 7(g)(3) of the Act; or (b) if the agency or any of its employees are or have been convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the U.S. Code. (800.205(a)(1); *26.101(b)*)

49. An approval issued to a scale testing organization, or to a weighing facility, is subject to suspension or revocation and refusal to renew by the Service (a) for failure to comply with any provision of the Act, or the regulations, standards, or instructions issued under the Act; or (b) if the scale testing organization or weighing facility, or any of its employees, are convicted of any violation involving the handling, weighing, or inspection of grain under Title 18 of the U.S. Code. (800.205(a)(2))

50. Whenever the Service has reason to believe there is cause for a temporary suspension or refusal under provision 49, and deems such action to be in the best interest of the inspection and weighing system, a designation may be temporarily suspended, or the renewal of a designation or an approval may be temporarily refused without first affording the agency, the organization, or the facility, as applicable, an opportunity for hearing. (800.205(b)(1); 26.101(b))

51. Notice of a temporary suspension or refusal shall be given to the agency, organization, or facility, and to the applicants for official services performed by the agency, organization, or facility. The temporary suspension or refusal shall be effective upon receipt of the notice. (800.205(b)(2); 26.101(b))

52. Within 30 business days following the issuance of a notice of temporary suspension or refusal, the service shall (a) afford the respondent an opportunity for a hearing or an informal conference in accordance with provision 54 below, or (b) terminate the temporary suspension or refusal with a suitable written notice or warning, or (c) terminate the temporary action without prejudice to the respondent. (800.205(b)(3))

53. Subject to provisions 50 through 52 above, in refusing for a cause to renew a designation, or in suspending or revoking for cause a designation, and in refusing for cause to return a designation that was suspended for a period that has expired, the responsent shall be afforded an opportunity (a) for a hearing in accordance with the provisions of 5 U.S.C. 554, 556, 557, and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes; or (b) at the request of the respondent, an informal conference in accordance with the Rules of Practice Governing Informal Proceedings in Subpart I of this Part. (800.205(c)(1);*26.101(b)*)

54. Except as shown in provisions 50 through 52 above, (a) in refusing for cause to renew an approval; or (b) in suspending or revoking for cause an approval; and (c) in refusing for cause to return an approval that was suspended for a period that has expired, the respondent shall be afforded an opportunity for an informal conference in accordance with the Rules of Practice Governing Informal Proceedings in Subpart I of this Part. (800.205(c)(2))

55. If a delegation of authority to a State is canceled or revoked, inspection and weighing services at the export port location in the State will, upon request by an applicant, be provided by the Service. (800.206(a))

56. If a designation of an agency is suspended, canceled, or revoked, the Service shall, upon a finding of demonstrated need, arrange for a replacement agency. If time or other circumstances do not permit locating a replacement agency and effecting needed arrangements, including the publishing of the proposed change in designation in a timely manner, a designation of an interim agency may be made by the Service and published in the FEDERAL REGISTER. Interested persons may submit comments on the interim designation. If a designation of an interim inspection agency is not deemed warranted, official inspection service may, upon request by an applicant, be provided by the Service on an interim basis. If a designation of an interim weighing agency is not deemed warranted, Class X or Class Y weighing services may, upon request of an applicant, be provided by the Service on an interim or a permanent basis, as deemed warranted by the Service. Notice of the apparent need and plans for a replacement agency shall be published in the FEDERAL REGISTER, and interested persons shall be given an opportunity to present their views. (800.206(b); 26.101(c))

57. Each delegated State agency, designated inspection agency, designated weighing agency, and field office shall be assigned an area of responsibility by the Service. Each area shall be identified by geographical or other boundaries. In the case of a State or local governmental agency, the area shall not exceed the jurisdictional boundaries of the State or local government, as applicable. (800.207(a); *26.99(a)(1)*)

58. At an export port location, the area of responsibility shall generally be whichever is greater of (a) the switching limits established and published by the railroads for the export port location; or (b) an area within a radius of 25 miles of the approximate center of the export port location. (800.207(b)(1))

59. At a location other than an export port location, the area of responsibility shall generally be the area requested by the agency, except that the area may not include (a) any portion of an assigned area of responsibility involving an export port location; or (b) except as shown in provision 5 above, any portion of an area of responsibility assigned to another agency or to another authorized field office that is performing the same function or functions. (800.207(b)(2))

60. In each assigned area of responsibility, the agency or person to whom the area is assigned shall be responsible for providing, upon request of an applicant for service at any and all locations in the area, original inspection and reinspection services, and Class X and Class Y weighing and review of weighing services, as specified in the

delegation or designation. (800.207(c); *26.100*(c))

61. Except with the approval of the Service, no agency may perform official functions at any location outside its assigned area of responsibility. (800.207(d)(1); 26.99(a)(2))

62. Except as may be approved by the Administrator, no agency shall perform original inspection or reinspection functions on any official sample, or on any warehouseman's sample, unless at the time the sample was obtained, the grain from which the sample was obtained was physically located within the area of responsibility assigned to the agency. There are no jurisdictional restrictions on the original inspection of reinspection or submitted samples. (800.207(d)(3))

63. In an assigned area of responsibility, each export port location in the area shall be deemed to be a specified service point. (800.207(e)(1))

64. In an assigned area of responsibility other than export port locations, each place where a designated agency, or a field office, as applicable, is located shall be deemed to be a specified service point. Additional specified service points may be approved by the Service on a temporary, seasonal, or permanent basis upon request by an agency. (800.207(e)(2))

65. Each agency and each field office, as applicable, shall be responsible for the stationing of official personnel at specified service points in accordance with the terms of the designation issued by the Service. (800.207(e)(3))

66. Applications by agencies for (a) the assignment to the areas of responsibility; (b) specifying service points; (c) amending or changing an assigned area of responsibility; (d) amending or changing specified service points shall be submitted to the Service and shall be accompanied by the applicable fee, if any. After such consultation with interested persons as deemed warranted and a finding of need to meet the objective of the Act, the Service may initiate action to assign areas or specify service points or amend or change assigned areas or specified service points. (800.207(f)(1); *26.99*(b))

67. Each assignment of an area of responsibility and each specification of a service point shall terminate in accordance with the termination of the related designation. (800.207(f)(3))

68. Each assignment of an area of responsibility, and each specification of a service point may be suspended, canceled, or revoked, and is subject to a refusal to renew in accordance with the regulations. (800.207(f)(4); *26.99*(b))

69. Each agency, field office, or approved weighing facility shall be responsible for the performance and the supervision of each of the duties assigned by regulation to its official or approved personnel. In addition, each agency, field office, or facility shall, except as shown in this provision, be responsible for the performance and the supervision of (a) complying with the applicable conditions of the delegation, designation, or approval; (b) upon request by the Service, adopting and effectuating an affirmative action plan to achieve compliance with the Civil Rights Act of 1964; (c) obtaining and maintaining such facilities and equipment, including safety equipment, as the Service determines are needed for the performance of functions under the Act; (d) monitoring the activities of its personnel to determine whether the employees are performing official functions in an approved manner and are not performing prohibited functions; (e) effecting corrective action, as needed, of its personnel to assure the proper performance of functions under the Act, the maintenance of approved standards of conduct, and the avoidance of prohibited actions; (f) the testing of diverter-type mechanical samplers that are used for official sampling purposes in the area of responsibility assigned to the agency; (g) upon request of the Service, testing or assist in testing other equipment that is used by the agency for official purposes; (h) assisting its personnel in obtaining needed licenses or approvals for the performance of official actions; (i) providing requested official functions within its area of responsibility; (j) permitting any person who has a financial interest in grain to observe the performance of any or all official functions with respect to the grain; (k) promptly notifying the Service of any change in the scope of the official functions performed by the agency or any supervision of official functions that would impair the performance of official services at any location; (l) establishing and collecting fees only in accordance with its fee schedule; (m) keeping records as required by the Act and the regulations, including separate and complete accounts of all receipts for inspection and weighing services and all disbursements from such receipts; (n) preparing and submitting to the Service periodic reports showing the kind and volume of inspection or weighing services performed by the agency; and (o) maintaining an approved certificate control system. Clauses (b), (f), (g), and (n) are not applicable to approved scale testing organizations or approved weighing facilities. (800.208; *26.100*)

70. Each approved weighing facility shall be responsible for (a) permitting only official personnel, or approved personnel, to operate, maintain, or repair equipment used in the weighing of grain under the Act; (b) permitting only official personnel, or approved personnel, to perform or monitor grain loading, unloading, or handling operations that are an integral part of the weighing of grain under the Act; (c) keeping the Service informed of changes in the employment or duties of approved weighers and approved weighing technicians employed by or working at the facility; (d) designating one or more supervisory employees to have direct responsiblity for the activities of the approved weighers and approved weighing technicians employed by or working at the facility; (e) submitting to the Service detailed information regarding any proposed installation or modification of a scale system for use in weighing grain under the Act; (f) maintaining a scale log book for each scale used in weighing grain under the Act; (g) operating and maintaining scales and scale systems in accordance with instructions issued by the manufacturers and by the Service; (h) discontinuing the use of scales or scale systems that are worn or broken or otherwise performing in an abnormal manner; (i) assisting approved scale testers in the testing of scales installed in the facility; and (j) maintaining a complete record of the Act, the regulations, the instructions, and the standards or procedures issued to the facility by the Service, and a complete record of the names of the approved weighers and the approved weighing technicians employed by, at, or in the facility. (800.208(r))

XXI—Supervision, Monitoring, and Equipment Testing

Unit XXI contains provisions on (a) the objectives in supervising, monitoring, and equipment testing; (b) activitiers that shall be supervised; (c) activities that shall be monitored; (d) equipment that shall be tested; (e) review of rejection or disapproval equipment; and (h) conditional approval on use of equipment. Summaries of 20 of these provisions follow. Please see §§ 800.215 through 800.220 for the complete text of the provisions and for definitions of terms.

1. The objective in supervision is to achieve and maintain an acceptable level of performance for activities performed under the Act. (800.215(a))

2. The objective in monitoring is to help achieve the objectives of supervision. (800.215(b))

3. The objective in equipment testing is to determine whether equipment used in performing official functions under the Act is operating in an approved manner. (800.215(c))

4. The objective in testing prototype equipment is to determine whether the proposed equipment will improve the performance of official functions under the Act. (800.215(d))

5. Administrative activities subject to supervision include, but are not limited to (a) providing staffing, equipment, and facilities for the performance of authorized services; (b) dismissal of requests for services and the withholding of requested services; (c) the maintenance of official records; (d) the assessment and collection of fees; (e) the rotation of official personnel; (f) implementing instructions for the recruiting of official personnel, the training and supervising of official personnel and approved personnel, and the implementation of work performance and work production standards; and (g) the performance of supervision and monitoring activities. (800.216(b); *26.100(f); 26.126(a)*)

6. Equipment testing activities subject to supervision include, but are not limited to the implementation of instructions for (a) equipment performance requirements, (b) the operation of equipment used under the Act and the performance of equipment testing activities; (c) the performance by official personnel of inspection equipment-testing ativities; and (d) the performance by official personnel and approved personnel of weighing equipment-testing activities. (The instructions are available in accordance with § 800.10). (800.216(c)(1))

7. Inspection activities subject to supervision include, but are not limited to (a) the implementation of the Official U.S. Standards for Grain (Subpart B of this Part), official criteria, and instructions for the performance of inspection activities; and (b) the performance by official personnel of stowage examination, sampling, laboratory testing, grading, and certification activities. (800.216(c)(2); *26.100(f); 26.126(a)*)

8. Weighing activities subject to supervision include, but are not limited to (a) the implementation of uniform weighing procedures, and instructions for the performance of weighing activities; and (b) the performance by official personnel of stowage examination, sampling (sacked grain), weighing, and certification activities and by approved personnel of weighing. (800.216(c)(3))

9. Prototype equipment-testing activities subject to supervision shall include, but are not limited to (a) the implementation of instructions for the testing by official personnel of prototype equipment; (b) the testing by official personnel of prototype equipment; and (c) the approval, or denial of approval, of prototype equipment for use under the Act. (800.216(c)(4))

10. Regulatory activities subject to supervision include, but are not limited to (a) the implementation of regulations and instructions for the performance of regulatory activities; (b) implementation of informal rules of practice; (c) licensing and approval of personnel; (d) approval of scale-testing organizations and weighing facilities; (e) reporting and resolving of prohibited conflicts of interest; (f) granting of waivers under section 5(a)(1), 5(a)(2), and 11(b)(5) of the Act; and (g) investigating, reporting, and initiating procedures for apparent violations of the Act or other statutes involving the handling, inspection, or weighing of grain. (800.216(d); *26.100(f); 26.126(a)*)

11. Each of the administrative, technical, and regulatory activities identified in § 800.216 shall be monitored. In addition, the elevator and merchandising activities identified in items 12 through 15 below shall also be monitored. (800.217(a); *26.100(f); 26.126(a)*)

12. Grain merchandising activities that are subject to and shall be monitered for compliance with the Act shall include, but are not limited to (a) failing to promptly forward an export certificate; (b) describing grain by other than official grades; (c) falsely describing export grain; (d) falsely making or using official certificates, forms, or marks; (e) making false quality or quantity representations about grain; and (f) selling export grain without being registered. (800.217(b))

13. Grain handling activities that are subject to monitoring for compliance with the Act include, but are not limited to (a) shipping export grain without inspection or weighing; (b) transferring grain into or out of an export elevator at an export port location without official Class X weighing; (c) violating any Federal law with respect to the handling, weighing, or inspection of grain; (d) deceptive loading, handling, weighing, or sampling of grain; and (e) exporting grain without a certificate of registration. (800.217(c))

14. The elevator and merchandising recordkeeping activities that are subject to monitoring for compliance with the Act include those that are identified in section 12(d) of the Act and § 800.25 of the regulations. (800.217(d))

15. Other activities that are subject to monitoring for compliance with the Act include, but are not limited to (a) conflicts of interest with delegated or designated agencies or their employees; (b) providing access to elevator facilities and records; (c) improperly influencing or interfering with official personnel; (d) falsely representing that a person is official personnel; (e) using false means in filing an application for services under the Act; and (f) preventing interested persons from observing the loading, weighing, or sampling of grain. (800.217(e))

16. Each unit of equipment used in the sampling, testing, or grading of grain under the Act, or in monitoring the inspection of grain under the Act, shall be examined to determine whether the equipment is functioning in an approved manner. In addition, each unit of equipment for which performance requirements have been established in the instructions shall be tested for accuracy. For the purpose of this item, mechanical diverter-type samplers used in warehousemen's samples shall be deemed to be inspection equipment used under the Act. (800.218(b))

17. Each unit of equipment used in the weighing of grain under the Act, or in monitoring the weighing of grain under the Act, each related grain-handling system, and each related computer system, if any, shall be examined to determine whether the equipment, the grain-handling system, and the related computer system, if any, are functioning in an approved manner. In addition, each unit of equipment for which performance requirements have been established in the instructions shall be tested for accuracy. (800.218(c))

18. Upon request of a financially interested party, and with the concurrence of the Administrator, prototype grain inspection or weighing equipment may be tested by the Service for possible use under the Act. Upon a finding of need, the Service may test prototype grain inspection or weighing equipment for possible use under the Act. (800.218(d))

19. Any person desiring to complain of an alleged unlawful, arbitrary, capricious, or unwarranted rejection or disapproval of equipment by official personnel, or other alleged discrepancy or abuse by official or approved personnel in the testing of equipment under the Act, may file with the Service an informal complaint in accordance with the regulations and the rules of practice of the Part. (800.219)

20. Equipment that is in use under the Act on the effective date of this provision shall be deemed to have been adopted and approved by the Service for use under the Act. This conditional approval shall not bar a later rejection or disapproval of the equipment by the Service upon a determination that the equipment (a) should be rejected for use under the Act, or (b) is not functioning in an approved manner, or (c) is not producing results that are accurate within prescribed tolerances, or (d) is not producing results that are otherwise consistent with the objectives of the Act. (800.220)

Dated: July 26, 1978.

L. E. BARTELT,
Administrator.

[FR Doc. 78-21031 Filed 7-28-78; 8:45 am]

federal register

MONDAY, JULY 31, 1978
PART V



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institute of Education

■

EXPERIMENTAL PROGRAM FOR OPPORTUNITIES IN ADVANCED STUDY AND RESEARCH IN EDUCATION

Final Rule for Awarding Federal Funds

[4110-39]

Title 45—Public Welfare

CHAPTER XIV—NATIONAL INSTITUTE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 1430—EXPERIMENTAL PROGRAM FOR OPPORTUNITIES IN ADVANCED STUDY AND RESEARCH IN EDUCATION

Final Rule for Awarding Federal Funds

AGENCY: National Institute of Education (NIE), Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: This rule governs a discretionary program of experimental grants to improve opportunities for individuals to obtain high quality expertise and experience in educational research, emphasizing such opportunities for minority persons and women. It states eligibility requirements, funding criteria, and other rules for the administration of the program which includes both institutional grants and special projects. It affects eligible institutions by defining the types of projects to be funded and the competitive procedures and standards for securing the best projects.

EFFECTIVE DATE: This regulation will become effective 45 days after it is transmitted to Congress unless Congress disapproves the regulation or takes certain adjournments. If you want to know the effective date of this regulation, call or write the National Institute of Education contact person.

FOR FURTHER INFORMATION CONTACT:

Richard Werksman, Regulations Officer, Office of Administration and Management, National Institute of Education, Room 639-B, Mail Stop 33, 1200 19th Street NW., Washington, D.C. 20208, 202-254-7924.

SUPPLEMENTAL INFORMATION: Under the authority of section 405 of the General Education Provisions Act, as amended (20 U.S.C. 1221e), a notice of proposed rulemaking which set forth proposed procedural and substantive requirements and criteria governing the submission and review of applications for funds under the experimental program for opportunities in advanced study and research in education was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8234). Interested persons were invited to submit written comments concerning the proposed rule. Five persons submitted comments. Listed below are the comments received and the response to each.

A. BACKGROUND

This program emphasizes the development of advanced levels of expertise in the field of educational research and related work. The primary target populations for this program are minority persons and women who already have acquired expertise or experience that is pertinent to educational research, but who are underutilized or not regularly employed in doing such work. The program is expected to be of interest, for example, to minority persons and women who are: (1) In professional positions where other responsibilities have prevented the development of research ideas, (2) in research positions that do not permit full use of their expertise and capabilities, or (3) outside the regular workforce that is involved with education and educational research. While needs also exist at earlier levels of training and professional development, there are substantial numbers of highly qualified persons already at advanced levels whose capabilities are not well utilized. The priority of this program is to improve utilization of those existing capabilities. The regulation also allows for support of activities for experienced professionals at the predoctoral level and for other full-time predoctoral study where a specific justification is provided.

B. DISCUSSION OF COMMENTS

Four commenters expressed concern about the emphasis of the program upon post-doctoral and experienced professional levels rather than upon predoctoral and earlier levels (§ 1430.7(a)). Programs at the predoctoral level for experienced professionals, as defined in § 1430.3(c), and programs at the post-doctoral level are of equal priority for both institutional grants and special projects. Development of advanced levels of expertise is considered a priority for institutional grant projects funded through the program because other sources of public and private funding provide opportunities for study at baccalaureate and other predoctoral levels. Few opportunities for study at advanced and post-doctoral levels are available under other sources, especially in fields that are closely related to research on educational problems. There is no change in the regulation.

One commenter expressed concern that "* * * care was not taken to include women-controlled and minority-controlled institutions as grantees" (§ 1430.4(a)). The commenter proposed that special consideration be given for women-controlled and minority-controlled institutions as deliverers of the services to be awarded through this program. Although not separately indicated in the regulation, applications are encouraged from women-controlled and minority-controlled institutions, firms, or organizations that possess the necessary capabilities. These applicants will not receive special or separate consideration as a group, but it is an intent of this program, to the extent practicable, to support projects representing different types of institutions, agencies, and organizations that are engaged in educational research, including, for example, those which are minority controlled or women controlled. The regulation indicates at § 1430.10(b)(4)(i) that demonstrated commitment of the applicant to equal educational opportunity and equal employment opportunity is a criterion for evaluating proposals for funding. There is no change in the regulation.

Another commenter inquired, "How can the non-discrimination requirement (§ 1430.11) be met in a project which is directed specifically at minority persons and women?" Discrimination on the basis of race or sex is specifically and categorically prohibited. This program is not exempt from any Federal statutes or regulations that prohibit discrimination, including those that prohibit discrimination against any person on grounds of race, color, sex, national origin, age or handicap. The program covered by this regulation is targeted upon finding ways to meet needs and remove barriers to participation of specified groups, but individuals from other groups will not be excluded from involvement in the program on grounds of race or sex. A major objective of the program covered by this regulation is to develop, within the governing framework of civil rights statutes and regulations, additional means of increasing participation of women and minorities in educational research. There is no change in the regulation.

A commenter suggested that the proposed regulation would be clearer if the title indicated that the program provides opportunities for training. The term "training" was not chosen to describe this program because of the limited connotation generally associated with the term. Participants will learn through a variety of modes, including research and self-directed study, interaction with colleagues, internships and seminars. It is felt that "advanced study and research" provides a better general description than the term "training," even though the latter term may be appropriate for some individual activities that are supported. There is no change in the regulation.

C. CHANGE IN THE REGULATION

The only change adopted in the regulation is the addition of language in

§ 1430.5(b) clarifying how funds will be allocated between institutional grants and special projects. It is anticipated that funds made available for this program will be allocated about equally between the two types of projects, but the Director reserves the right to allocate the funds in accordance with the number and quality of proposals that are received.

D. DRAFTING INFORMATION

The principal author of this regulation is John C. Egermeier, Dissemination and Resources Group. Individuals from both the educational and research communities also participated extensively in developing the substance of the regulation.

APPLICATION INFORMATION

The publication of this final rule is not an invitation to submit applications. A notice of closing date of June 29, 1978, for fiscal year 1978 applications was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8238). Application instructions and program information are provided by the Program Staff, Experimental Program for Opportunities in Advanced Study and Research in Education, National Institute of Education, 1200 19th Street NW., Washington, D.C. 20208, telephone 202-254-5929.

(Catalog of Federal Domestic Assistance No. 13.950, Educational Research and Development.)

Dated: May 22, 1978.

PATRICIA ALBJERG GRAHAM,
Director, National Institute of Education.

Approved: July 22, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

Title 45 of the Code of Federal Regulations is amended by adding to subchapter B of chapter XIV, a new part 1430, reading as follows:

Sec.
1430.1 Scope.
1430.2 Purpose.
1430.3 Definitions.
1430.4 Eligible applicants.
1430.5 Eligible projects.
1430.6 General requirements.
1430.7 Additional requirements for institutional grants.
1430.8 Additional requirements for special projects.
1430.9 Application requirements.
1430.10 Evaluation criteria.
1430.11 Nondiscrimination.
1430.12 Allowable costs.
1430.13 Duration of program assistance.

AUTHORITY: Sec. 405, General Education Provisions Act, as amended (20 U.S.C. 1221e).

§ 1430.1 Scope.

(a) This part establishes procedural and substantive requirements and criteria for applications and awards under the experimental program for opportunities in advanced study and research in education.

(b) Applications submitted and assistance provided under this part will be subject to applicable general provisions for NIE grants (45 CFR Parts 1400-1424) relating to fiscal, administrative, and other matters, except to the extent that such provisions are inconsistent with, or expressly made inapplicable by, provisions in this part.

§ 1430.2 Purpose.

(a) Awards under this part support projects to:

(1) Demonstrate exemplary ways of providing opportunities for advanced study and experience relevant to employment and advancement in the field of educational research, emphasizing opportunities for women and minority persons; and

(2) Develop more effective ways of providing these opportunities through research and experimentation.

(b) A purpose under this grant program is to increase the quality, relevance, and credibility of work performed in the field of educational research by increasing the number of highly qualified women and minority persons who work in this field.

§ 1430.3 Definitions.

As used in this part:

(a) "Educational research" means the entire range of research-related activities, including basic and applied research, planning, surveys, evaluations, investigations, experiments, developments, or demonstrations in the field of education.

(b) "Minority persons" means individuals who are black, Hispanic, American Indian, or Asian/Pacific Islander.

(c) "Experienced professional" means a person with 1 year or more of graduate education that is relevant to educational research and 1 or more years of related professional work experience.

§ 1430.4 Eligible applicants.

(a) A college, university, State department of education, local educational agency, other public or private agency, organization, or group, or any combination of these, is an eligible applicant.

(b) Applications from for-profit organizations must be submitted in accordance with criteria specified in this part and in Department of Health, Education, and Welfare (HEW) procurement regulations, subpart 3-4.52 (41 CFR Part 3-4), and, if successful, are awarded contracts rather than grants.

§ 1430.5 Eligible projects.

(a) Two types of projects are eligible for funding under this part:

(1) Institutional grants; and

(2) Special projects.

(b) It is anticipated that funds made available for this program will be allocated about equally between the two types of projects, but the Director reserves the right to allocate the funds in accordance with the number and quality of proposals that are received.

§ 1430.6 General requirements.

Each project must:

(a) Develop and demonstrate effective ways to overcome barriers to employment and advancement of minority persons or women in educational research;

(b) Provide information and advanced study opportunities needed especially by women and minority persons who are preparing for employment in educational research or who are seeking ways to improve utilization of their educational research capabilities;

(c) Provide arrangements for obtaining advice on the application of concepts and methods from relevant scholarly fields and disciplines to strengthen educational research or other proposed activities;

(d) Provide mentors and role models who can provide advice about gaining access to essential communication channels in educational research;

(e) Insure participation of minority group members and women in planning and continuing advice of the project;

(f) Provide a detailed report and assessment of work carried out by the project;

(g) Provide for cooperation of the grantee with a contractor to be designated by NIE to evaluate projects funded under this part; and

(h) Prepare and disseminate information about:

(1) The nature and progress of the project;

(2) The results of the project; and

(3) Recommendations and instructions for adopting the project design in whole or in part in other locations.

§ 1430.7 Additional requirements for institutional grants.

Each project supported by an institutional grant must:

(a) Support opportunities for individuals at postdoctoral or experienced professional levels to conceive and conduct educational research that reflects concerns and perspectives of women and minority persons (assistance for full-time predoctoral graduate study may be supported where

clearly justified by special needs of a target population but is not a priority); and

(b) Develop and implement a set of policies and practices that strengthen and enhance the involvement, professional growth, and opportunities for advancement of minority persons and women within one or more units of the grantee.

§ 1430.8 Additional requirements for special projects.

Each project supported by a special project grant must:

(a) Provide information and short-term advanced study opportunities, including, but not limited to, workshops, seminars, short courses, or brief residential programs, that emphasize specific needs of minority persons and women who are preparing for, entering, or advancing within careers related to educational research;

(b) Develop and demonstrate replicable, short-term activities that address one or more of the following objectives:

(1) *Increase the inclusion of women and minority persons in informal communications and sponsorship networks.* Projects in this area must provide information about, or access to, groups or individuals who informally share knowledge of training and employment opportunities, funding sources, and substantive research developments.

(2) *Assist midcareer entry and reentry into educational research.* Projects in this area must provide methods to: (i) Create interest in educational research on the part of established researchers in other fields whose insight and disciplinary background could contribute to educational research, or (ii) enhance career opportunities for persons with appropriate academic credentials and experience who are not currently engaged in research.

(3) *Clarify and gain acceptance for nontraditional research areas or approaches.* Projects in this area must provide methods for defining and assessing priorities, and gaining acceptance of research on topics associated with the needs and status of minority persons and women.

(4) *Provide for development of specific skills needed in educational research and related work.* Projects in this area must provide specific skills to enhance opportunities for employment and advancement, emphasizing opportunities for minorities and women. Among these skills are quantitative skills and skills in the synthesis and transformation of knowledge into forms that are readily usable by educational policymakers and practitioners.

(5) *Increase the publication and dissemination of results of significant educational research performed by minority persons and women.* Projects in this area must provide information or training about completion of substantial reports, achieving publication, and assisting investigators in framing subsequent lines of inquiry or development.

§ 1430.9 Application requirements.

(a) An applicant must submit an application in the form and in such detail as the Director shall require.

(b) Each application must show how the project will meet the requirements in:

(1) Section 1430.6, and

(2) Section 1430.7 or § 1430.8, as appropriate.

§ 1430.10 Evaluation criteria.

The Director takes into account the following considerations when evaluating applications:

(a) The extent to which the funding helps to provide, as far as practicable, a wide distribution of opportunities for advanced study and research on educational problems in a variety of institutions throughout the United States, and

(b) The extent to which the proposed project ranks high on the criteria set forth below, with maximum weights for each criterion as shown:

(1) Significance of the proposed project for increasing participation and impact of women and minorities in educational research (30 percent), including potential contributions in:

(i) Assisting individuals;

(ii) Assisting the grantee and other institutions;

(iii) Developing knowledge, information, or models needed to advance the objectives of this program.

(2) Quality of design and planning for the proposed project (20 percent), including such considerations as:

(i) Adequacy and appropriateness of proposed design and methods in relation to objectives;

(ii) Likelihood that the project can be carried out successfully; and

(iii) The extent to which the applicant exhibits thorough knowledge of pertinent previous and concurrent work and relates the proposed project to it.

(3) Qualifications of project director and other key personnel (15 percent), as evidenced by:

(i) Background and successful previous experience directly relevant to requirements of the proposed project;

(ii) Quality and relevance of analysis and discussion in the application; and

(iii) Relevant academic preparation.

(4) Commitment of applicant to objectives of the program (20 percent), as evidenced by:

(i) Demonstrated commitment to equal educational opportunity and equal employment opportunity;

(ii) Specific plans for utilizing results of the proposed effort within the applicant institution;

(iii) Significant participation of relevant leadership personnel within the institution in developing and implementing the project; and

(iv) Commitment to maintain or increase existing efforts relevant to the objectives of the proposed project.

(5) Adequacy of facilities in relation to the requirements of the proposed project (5 percent).

(6) Reasonableness of the budget for the work to be done and the anticipated results (10 percent).

(c) Evaluation criteria set out in § 1403.10(b) of this chapter do not apply to this program.

§ 1430.11 Nondiscrimination.

(a) Attention is called to the requirements of title VI of the Civil Rights Act of 1964 (73 Stat. 252, 42 U.S.C. 2000d et seq.) which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing title VI, which is applicable to grants made under this part, has been issued by the Secretary with the approval of the President (45 CFR Part 80).

(b) Attention is also called to the requirements of title IX of the Education Amendments of 1972 and in particular to section 901 of such act which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance (see 45 CFR part 86).

§ 1430.12 Allowable costs.

(a) Research activities conducted under this part by institutions of higher education are subject to cost principles set forth in part I of appendix D to part 74 of this title (see § 1405.32(a)).

(b) (1) Training activities conducted under this part by institutions of higher education are subject to the cost principles set forth in part II of appendix D to part 74 of this title (see § 1405.32(b)).

(2) An overhead rate may not exceed 8 percent of total direct costs of the training activities.

(c) Cost principles for awards under this program to institutions other than institutions of higher education are set forth in §§ 1405.30–1405.35.

(d) Support is provided on the basis of approved budgets for each period of 12 months, or less, and may include:

(1) Institutional costs of conducting proposed activities, including staff salaries, supplies, and other instructional costs;

(2) Other direct costs of research and related work conducted within an institutional grant project;

(3) Stipends for participants in institutional grant projects, as follows:

(i) Assistance under this program for participants who are other than full-time predoctoral graduate students may be requested at rates up to regular salary equivalents;

(ii) Assistance under this program for participants who are full-time predoctoral graduate students will be paid in accordance with prevailing rates for comparable programs. Any deviations from those limits must be obtained prior to the award.

(4) Stipends for participants in special projects, as follows:

(i) Assistance may be requested at a rate of up to $30 for each full day of participation, but not to exceed $150 a week.

(ii) For partial days involving less than 5 hours of attendance, the payment for this attendance may not exceed the rate of $6 per hour, subject to the weekly limit of $150.

(iii) Any deviations from those limits must be obtained prior to award.

(5) Tuition costs, fee, and other necessary costs, including child care.

(e) Cost sharing is a requirement in all grant awards as set out in part 1407.

§ 1430.13 Duration of program assistance.

(a) Grant awards made under this part may be up to 3 years in duration.

(b) An application for assistance for a period longer than 12 months must be accompanied by:

(1) An explanation of the need for multiyear support;

(2) An overview of the objectives and activities proposed for each year; and

(3) Budget estimates to attain these objectives in any subsequent year.

(c) If the Director finds that the application demonstrates that multiyear support is needed to carry out the proposed program, she may, in the initial notification of grant award, indicate an intention to assist the program on an appropriate multiyear basis through continuation grants.

(d) Continuation grants are subject to availability of funds and, consequently, are made only in response to an application in each subsequent fiscal year and upon a determination by the Director that:

(1) The grantee has complied with the grant terms and conditions, the act, and the regulation; and

(2) The program has met its original goals to date; or will do so as the result of constructive changes proposed by the ongoing evaluation.

[FR Doc. 78-21075 Filed 7-28-78; 8:45 am]

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MONDAY, JULY 31, 1978
PART VI



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

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MILK IN THE EASTERN OHIO–WESTERN PENNSYLVANIA MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

[3410-02]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR PART 1036]

[Docket No. AO-179-A43]

MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This final rule decision proposes several changes in the present order provisions based on industry proposals considered at a public hearing held October 12-14, 1977. A referendum will be conducted to determine whether producers favor issuance of the proposed amended order. The major proposed amendments would change the method of paying producers and cooperative associations, lower the pool supply plant shipping requirements, and provide handlers more flexibility in moving milk directly from farms to manufacturing plants. The proposed amendments are necessary to reflect marketing conditions and to insure orderly marketing in the area.

FOR FURTHER INFORMATION CONTACT:

Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of hearing, issued September 20, 1977, published September 26, 1977 (42 FR 48886).

Notice of extension of time for filing briefs, issues November 25, 1977, published November 30, 1977 (42 FR 60927).

Recommended decision, issued March 31, 1978, published April 6, 1978 (43 FR 14478).

Notice of extension of time for filing exceptions to the recommended decision, issued April 24, 1978, published April 27, 1978 (43 FR 17963).

Notice of extension of time for filing exceptions to the recommended decision, issued May 11, 1978, published May 16, 1978 (43 FR 21004).

PRELIMINARY STATEMENT

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area. 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 Cleveland, Ohio, on October 12-14, 1977, pursuant to notice thereof issued on September 20, 1977 (42 FR 48886).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on March 31, 1978, filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "3. *Diversion of producer milk*", a new paragraph is added immediately prior to the second from last paragraph.

2. Under the heading "4. *Payments to producers*":

a. Paragraph 9 is revised and a new paragraph is added immediately thereafter.

b. Three new paragraphs are added after paragraph 11.

c. Paragraphs 20 and 24 are revised.

d. A new paragraph is added after paragraph 34.

e. Paragraphs 35, 36, and 37 are deleted.

f. Two new paragraphs are added after paragraph 39.

g. Eleven new paragraphs are added after paragraph 42.

3. Under the heading "4. *Payments to producers*", and further, under the subheading *"Payments for milk from cooperative association plants and cooperative bulk tank handlers"*:

a. Paragraph 4 is revised.

b. The last three paragraphs are deleted and three new paragraphs are substituted therefor.

4. Under the heading "5. *Administrative provisions,*" and further, under the subheadings:

a. "(a.) *Administrative assessment*"—A new paragraph is added at the end of the discussion; and

b. "(b.) *Late payment charges*"—Two new paragraphs are added at the end of the discussion.

The material issues on the record of the hearing relate to:

1. Expansion of the marketing area.
2. Pooling standards for a supply plant.
3. Diversion of producer milk.
4. Payments to producers and cooperative associations.
5. Administrative provisions.
(a) Administrative provisions.
(b) Late-payment charges.
(c) Miscellaneous payment provisions.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Expansion of the marketing area.* The Eastern Ohio-Western Pennsylvania marketing area should be expanded to include the remaining unregulated areas of Ashland, Lorain, and Medina Counties in Ohio.

The addition of this unregulated territory to the marketing area was proposed by four proprietary handlers regulated under order 36 and one such handler regulated under the neighboring Ohio Valley order No. 33. However, their proposal to include also Erie and Huron Counties and certain townships in Ottawa and Sandusky Counties in Ohio (hereinafter referred to as the four-county area) is denied.

The entire area proposed by handlers to be added to the order 36 marketing area, if adopted, would extend the boundary of the present order 36 marketing area westward to include all the unregulated territory, except for four townships in Ottawa County and three townships in Sandusky County that now separates the northwest boundary of the order 36 marketing area from the order 33 marketing area. The proposed new territory in Erie and Ottawa Counties, and Brownhelm Township in Lorain County, are bounded on the north by Lake Erie. According to the 1970 Census of Population the population of the proposed area was about 236,000, less than 3 percent of the population of the order 36 marketing area. The principal cities in the proposed expanded area are Sandusky, Fremont, and Norwalk.

Essentially, the thrust of proponents' proposal was to being under Federal regulation a distributing plant at Sandusky. Proponents claimed that full regulation of this plant is necessary to assure competitive equity with presently regulated handlers in overlapping fluid milk sales areas. They contended that this distributor has a competitive advantage relative to regulated handlers since the cost of his class I milk is not the order class I price but instead is approximately the average of the order 33 and order 36 uniform prices to producers.

A witness for proponent handlers testified about his marketing experience in the proposed area at the time that he was the manager of another unregulated fluid milk distributing plant located in Sandusky. This plant's fluid operations ceased shortly after it was purchased in April 1977 by an Akron, Ohio, handler (one of the proponents) since the plant's fluid milk operations were transferred to the Akron Pool plant facilities. The witness alleged that in its unregulated status the plant operation had a raw

milk product cost advantage over regulated handlers in overlapping areas of distribution. He reasoned that since this operation was then supplied in large part from the same diary farmer cooperative association that is supplying the present unregulated plant in Sandusky, the latter plant must be paying the same prices for milk and thus enjoying the same buying advantage.

A representative of the present Sandusky distributor opposed the proposed area extension only as it applies to the territory in Erie, Huron, Ottawa, and Sandusky Counties. The Sandusky distributor's fluid milk sales are confined to these four counties and his competition with regulated handlers is only within such area. A cooperative association, the principal supplier of the Sandusky distributor, on behalf of its 18 members, and 2 nonmembers also opposed the area expansion into the four-county area. Opponents took no position with respect to extending the marketing area into the Ashland, Lorain, and Medina County areas.

Witnesses for the opposition contended that disorderly marketing conditions do not exist in the four-county area proposed to be added. Regulated handlers, the witness for the Sandusky distributor claimed, have maintained their proportion of sales in the four-county area. An opponents' witness cited prior hearings at which the regulation of the four-county area was considered. It was his contention that the basis of the Department's denial of area extension in such proceedings was equally applicable to the current proceeding since marketing conditions have not changed in the intervening time.

As indicated, all territory in the remaining unregulated areas of Ashland, Lorain, and Medina Counties should be included in the marketing area. There was no opposition to the inclusion of this territory in the marketing area. A substantial portion of these three counties is now a part of the defined order 36 marketing area. This area is not densely populated, with a population of about 38,000 according to the 1970 Census of Population. Oberlin is the largest populated center in the area (8,800 in 1970).

All class I sales made in this unregulated territory are by handlers subject to classified pricing under an order. Although class I sales are being made in some of this area by order 33 handlers, the record evidence indicates that the total unregulated territory in these three counties is essentially an integral part of the sales area of order 36 handlers.

It is reasonable in this circumstance to "block in" the marketing area by including the unregulated portions of Ashland, Lorain, and Medina Counties since all fluid milk sales in the area are by regulated handlers. Providing for such a contiguous marketing area will remove the necessity of handlers maintaining separate records of out-of-area sales for these particular areas. Such records are necessary in determining if the plant has met the minimum in-area route disposition requirement of the order.

For pricing purposes, the marketing area is divided into four zones. All of Ashland County that is encompassed in the present marketing area is now included in zone 1. The conditions supporting this arrangement are equally applicable to the additional area of Ashland County proposed to be regulated, and thus, it is appropriate to include this area in zone 1. The areas of Lorain and Medina Counties proposed to be regulated are adjacent to those parts of the marketing area included in zone 2. Accordingly, it is reasonable to include these areas in zone 2.

The addition of this territory and the prices applicable thereto will have no substantial impact upon handlers presently regulated by an order. There are currently no handlers located in this territory that would be brought under full or partial regulation by such change. Should a new milk plant begin operations in this added territory, the price relationships herein established will be in alinement with other regulated plants on the market with which they may compete in the procurement and sale of fluid milk and milk products.

On the basis of this record, marketing conditions do not warrant the inclusion in the marketing area of the proposed territory in the four Ohio counties of Erie, Huron, Ottawa, and Sandusky.

As indicated previously, the purpose of proponent handlers' proposal was to bring under regulation an unregulated distributing plant at Sandusky whose fluid distribution is confined to the four-county area. The Sandusky operation is relatively small. In 1976, for example, the plant received 9.7 million pounds of milk from dairy farmers. This volume represented less than 0.3 percent of the total volume of producer milk pooled in 1976 under the order.

None of the four counties is heavily populated. In 1970, the total population of the four-county area was 198,000, with Sandusky (33,000), in Erie County, being the only city of any appreciable size. Because of its proximity to Lake Erie, the Sandusky area is a resort area. This results in some increase in demand during the summer tourist season of June, July, and August. Nevertheless, it is reasonable to conclude that this four-county area does not represent a major sales area for regulated handlers.

At the time of the hearing, fluid milk was distributed in the four-county area by five eastern Ohio-western Pennsylvania regulated handlers, five Ohio Valley regulated handlers, one southern Michigan regulated handler and by the Sandusky unregulated handler. However, there is little indication from the record of the extent of distribution or the sales pattern in the area by handlers who are regulated by the respective orders. The number of regulated handlers distributing in the four-county area, alone, is not indicative that they have the majority of sales in the area.

Testimony and exhibits introduced at the hearing indicate that the Sandusky milk dealer receives his supply of milk from about 20 dairy farmers. Of these, 18 belong to a cooperative association that delivers milk only to this dealer. The dealer also relies to some extent on producer milk pooled under the order to supplement his fluid needs in August and September to meet the additional demands of school openings. The spokesman for the Sandusky milk dealer testified that the prices paid for these supplemental supplies are the applicable order 36 class I prices plus any prevailing over-order charges.

A witness for the cooperative association testified that his members receive a blended price from the Sandusky dealer that is based on an average of the applicable order 33 and order 36 uniform producer prices plus any prevailing over-order payments. The Sandusky plant has a relatively high class I utilization of milk. If fully regulated under the Eastern Ohio-Western Pennsylvania order, the applicable class I price at the Sandusky plant would be the zone 3 class I price less a 9-cent location adjustment. For the years 1975 and 1976, the prices reported to be paid to dairy farmers at the Sandusky plant averaged 21 cents and 57 cents respectively, less than the order's zone 3 class I prices, adjusted for location of the Sandusky plant.

It cannot be concluded from the record evidence, however, that this lower cost for class I milk at the Sandusky plant has had any substantial adverse effect on regulated handlers competing for class I sales in the four-county area. There is no indication, for example, that regulated handlers are experiencing disorderliness in the resale market, such as in terms of the unregulated distributor expanding his sales at the expense of regulated handlers, or selling milk to consumers at significantly lower retail prices. The record evidence does not show that the unregulated distributor does, in fact, have competitive advantage in the procurement and sale of milk in

the four-county area to a degree that warrants his full regulation.

The fact that one of the proponent handlers has recently purchased the entire operations of an unregulated plant in Sandusky and in turn, transferred such plant's fluid milk operations to its regulated plant at Akron, Ohio, is not a compelling consideration in deciding the marketing area issue. The witness for proponents claimed that if the remaining unregulated Sandusky plant does not become fully regulated by virtue of their area expansion proposal, the Akron handler may be forced to resume fluid milk operations at its Sandusky plant solely for the purpose of meeting the competition of the other Sandusky unregulated plant. The likelihood of this happening, of course, is speculative. Presumably, the Akron regulated handler was fully aware of the competitive situation existing in the four-county area at the time that he purchased and changed the operations of the Sandusky unregulated plant.

In view of the foregoing considerations, there appears to be no compelling evidence of market disorder of a magnitude requiring the regulation of the proposed territory. The proposal to extend the marketing area to include the four-county area, therefore, is denied.

2. *Pooling standards for a supply plant.* The minimum percentage of total receipts of approved milk from dairy farmers that a supply plant must move, either by transfer or diversion, to pool distributing plants to qualify as a pool plant should be reduced to 40 percent for the months of September, October, and November and 30 percent for all other months.

Under the present terms of the order, a supply plant qualifies for pooling if at least 50 percent of its receipt of milk from dairy farmers is moved to pool distributing plants during each of the months of September, October, and November and 40 percent in all other months. A supply plant that is a pool plant in each month of September through February is accorded automatic pooling status in the subsequent months of March through August unless nonpool plant status is requested.

The change in shipping percentages for a supply plant that is adopted in this decision was proposed by the principal cooperative in the market. Proponent cooperative operates two of the seven pool supply plants that currently serve the market. Two of the other supply plants are operated by another cooperative association, and three are operated by proprietary handlers.

Proponent cooperative association indicated that its proposal to reduce a pool supply plant's shipping requirement was prompted by problems the cooperative encountered during the 1976-77 and the 1977-78 qualifying periods in making the required shipments to pool distributing plants. The witness for the proponent cooperative testified that in order to maintain pool status for both of the cooperative's supply plants it was forced to make unnecessary and uneconomic movements of milk. He indicated that prior to 1976 the present shipping requirements appeared to be appropriate under marketing conditions existing at that time.

Basically, proponent testified that its present pooling problem stems from two recent developments that have occurred in the market which were not prevalent when the present shipping requirements for pooling supply plants were established, namely, (1) changes in the relationship of producer milk supplies to class I sales, and (2) changes in the daily demand for supply plant milk as a result of adjustments in distributing plant operations. Proponent contended that shipping requirements for pooling a supply plant "should not be so high that milk regularly associated with the market can remain in the pool only if uneconomical movements of milk are made for the purpose of qualifying the supply plants."

It is essential that the order contain minimum shipping requirements that reflect the fluid milk needs of the market. In this connection, the minimum shipping requirements should assure that a supply plant associated with the market will make milk available to distributing plants at the times and in the quantities needed. However, a supply plant regularly serving the market should not be forced to make uneconomic shipments of milk to qualify such plant when the milk is not needed.

Total producer milk pooled in the Eastern Ohio-Western Pennsylvania market increased from 3,331 million pounds in 1975 to 3,494 million pounds in 1976, an increase of 5 percent. Beginning in November 1975, total producer milk on the market increased each month over the same month of the previous year through August 1977, the latest month for which data were available at the time of the hearing. Indications are that this trend in producer receipts will continue.

Conversely, total class I disposition by pool plants in the market has declined. In 1976, such disposition was one percent below 1975. For the first eight months of 1977, total class I disposition at pool plants was 1.9 percent below the same 1976 period. Also, for the September-February 1976-77 period total class I disposition was 1.9 percent below the September-February 1975-76 period. These are the 6 months in which a supply plant has to qualify in order to continue in automatic pool status for the following 6 months.

Distributing plants in this market generally tailor their receipts to their class I disposition. With a lower level of class I disposition distributing plants have needed a lesser volume of milk from supply plants. Since distributing plants in the market now usually operate only 4 or 5 days per week, with heavy bottling on just certain days, the volume of supply plant milk needed daily varies widely during the week. The proponent's spokesman indicated that on a peak bottling day during the week practically all its supply plant milk is needed at distributing plants to fulfill their requirements. However, on other days of the week, especially on weekends and holidays, very little, if any, supply plant milk is needed at distributing plants. Supply plants, therefore, generally, must handle larger reserve supplies during the week then would be the case if the demand by distributors were more constant.

These developments coupled with the increasing quantity of producer milk on the market are significant factors that have adversely affected the ability of some pool supply plants to meet the present shipping requirements. These are factors that have had an adverse effect on the ability of the proponent cooperative to continue to pool its two supply plants without making unnecessary and uneconomical movements of milk to the market.

Shipping requirements for a supply plant must be changed as conditions in the market change. Under the present conditions existing in this market, it would not be in the interest of orderly marketing to continue the present pooling standards for supply plants since they do not accommodate the continued pool status for some supply plants and producers who have been and continue to be regular suppliers of the fluid milk needs of pool distributing plants.

In view of current supply-demand conditions and in recognition of the additional reserve milk supplies that some supply plants must handle in supplying the current fluid needs of distributing plants in this market, a reduction of 10 percentage points (from 50 to 40 percent for the months of September-November and from 40 to 30 percent for all other months) appears reasonable and appropriate. This lower shipping standard should be adequate to assure that milk associated with supply plants will continue to be available to distributing plants when needed. Additionally, it should reduce to a minimum uneconomic movements of milk which otherwise

might be made solely to maintain pool status for a supply plant.

Two proprietary handlers who operate distributing plants in the Pittsburgh segment of the marketing area testified in opposition to the proposal on the basis that it would provide the proponent cooperative with greater control over the market's producer milk supplies with consequences adverse to their interests. Essentially, the proprietary handlers' concern centered on the potential adverse effect that reducing shipping requirements for a supply plant would have on the proponent cooperative's over-order pricing policy. Opponents contended that since under the proposal less milk would have to be moved to distributing plants to qualify a supply plant for pooling, this would encourage the proponent cooperative to charge higher over-order prices for milk. This, they asserted, would have the ultimate effect of reducing a proprietary handler's ability to maintain a milk supply from nonmember producers because the cooperative would be in a position to pay a higher price to its producer members.

Although they did not testify at the hearing on the supply plant pooling proposal, a trade association of handlers located in western Pennsylvania and an individual handler, in their post-hearing briefs, essentially reiterated opponents' position.

The record does not provide any foundation for the claim that a reduction in shipping requirements would result in higher over-order charges by cooperatives and procurement problems for proprietary handlers. As indicated, producer receipts have increased and class I demand has declined. Under these circumstances, the limited reduction in shipping standards adopted herein is not likely to provide cooperatives with any significantly greater flexibility than now in the sale of their milk. If the shipping requirements were lowered substantially, cooperatives could possibly exercise somewhat greater bargaining power than presently. This is not to say, however, that any addition over-order prices obtainable would necessarily be excessive relative to the services being provided by cooperatives. In any case, the change in pooling standards is relatively limited and should not have any major impact on the procurement situation for proprietyary handlers.

A cooperative association that did not testify at the hearing, in its post-hearing brief, opposed the proposal on the basis that its effect would be to facilitate the pooling of additional milk on the market with the consequences of reducing producer returns. Similar to other opponents, it also claimed that liberalizing the pool supply plant provisions would enhance proponent cooperative's ability to attract additional members.

As indicated, the change in pooling standards adopted herein is relatively limited in terms of the current marketing situation. The opportunity to pool additional milk supplies because of the change thus should be minimal.

3. *Diversion of producer milk*—The provisions relating to the diverson of milk from pool plants to nonpool plants should be revised as follows:

(a) The limits on the quantities of milk that may be diverted to nonpool plants during certain months should be based either on a percentage of total producer deliveries to pool plants or on the number of days' production of an individual producer that is actually delivered to a pool plant.

(b) Eliminate August as a month in which the limit on diversions to nonpool plants applies.

The order now limits a producer's production that may be diverted from pool plants to nonpool plants during the months of August through March to not more than his production that is physically received at pool plants. Determining diversion limitations on this basis should be continued but with the alternative of basing them on a percentage of total producer receipts, as adopted herein.

The adopted alternative diversion limitations should apply to both a cooperative association and a proprietary handler. In this connection, milk diverted by a cooperative from pool plants to nonpool plants during each of the months of September-March would be limited to a quantity not exceeding 40 percent of the total producer milk that the cooperative causes to be delivered to all pool plants during the month. Similarly, a proprietary operator of a pool plant would be permitted to divert to nonpool plants up to 40 percent of the total producer milk physically received at his plant. However, this should be exclusive of milk received from producers whose milk a cooperative is diverting on a percentage basis.

The modification of the exisitng diversion provisions was proposed by a cooperative association with member-producers on the market. The purpose of the proposal, as indicated by proponent, is to permit a diverting handler a choice in achieving economies in diverting reserve milk supplies to nonpool plants. The proponent contends that its proposal "would provide for increased efficiency and improved economies in the marketing of milk by eliminating unnecessary handling, pumping and hauling of milk." Proponent testified that basing diversion limitations only on the number of delivery days of each producer has caused the cooperative to move more milk to pool plants than is needed solely to maintain producer status for some of its members. It was pointed out that this causes the cooperative association to incur additional hauling costs in disposing of reserve milk supplies during the months in which diversion limitations apply. in proponent's view, the proposal would not encourage the pooling of greater quantities of producer milk under the order than what is permitted now. There was no opposition to the proposal expressed either at the hearing or in post-hearing briefs.

Diversion provisions are intended to facilitate the orderly and efficient disposition of milk not needed at pool plants for fluid purposes. When milk is not needed at pool plants, such as on weekends, holidays and during periods of seasonally high production, the direct movement of milk from a producer's farm to a nonpool plant for manufacturing avoids the unnecessary expense of handling incurred if the milk must be moved first to the pool plant where normally received and then transferred to the nonpool plant. In this connection, it is usually more practicable and efficient to divert any necessary amounts from those farms that are nearest to a nonpool plant to which milk may be diverted.

Under the present diversion provisions, which limit the amount of an individual producer's milk that may be diverted during the diversion limitation months, handlers cannot always divert milk of producers in the most efficient manner. This is because on some days distant milk must be delivered to a pool plant in order to qualify for pooling, while at the same time nearby milk is diverted to a more distant manufacturing plant. Allowing proprietary handlers and cooperatives the option of basing diversion limitations on a percentage basis of total producer receipts will permit handlers to select the most economical and flexible basis for determining their allowable diversions during the month.

In terms of the total market, the percentage diversion limit herein adopted will not increase the amount of milk which may be diverted during the months in which diversion limitations apply. In fact, a greater quantity of milk can be diverted under the present method (which is herein retained) of basing diversion limitations on individual producer's milk deliveries.

The spokesman for one of the cooperatives in the market testified that the association was not opposed to the proposed change if the order provides a reasonable safeguard assuring that an individual producer's milk diverted on a percentage basis is actually associated with the market as evidenced by deliveries to pool plants. In this connection, the proponent cooperative, in

its post-hearing brief, recommended that a producer be required to make one delivery to a pool plant during each month except August, as a condition for qualifying any of his milk in the same month for diversion. In its brief, another cooperative association with member-producers on the market suggested that for the milk of a producer to be eligible for diversion on a percentage diversion limitation basis "that the milk be received at a pool plant on at least one day during the first month of pooling and also that it be received at a pool plant on one day during the first month of the limited diversion period (September) on an annual basis thereafter."

Only that milk from dairy farmers genuinely associated with the market, as evidenced by their deliveries to pool plants, should be eligible for diversion to nonpool plants when producer milk is diverted on a percentage basis. A requirement of substantial deliveries of milk of an individual producer is establishing his association with the market, however, would be a deterrent to the efficient handling of that milk in excess of a handler's immediate fluid milk needs. Accordingly, the order should require that milk of a dairy farmer be physically received at a pool plant before any of his milk is eligible to be diverted as producer milk. Additionally, the order should provide that a producer be required to deliver to pool plants at least once in each month of September-November to qualify his deliveries for diversion during such months. Under current marketing conditions, these requirements are sufficient to establish a producer's continuing association with the market and still permit the necessary flexibility in diverting milk not needed for fluid use.

The principal cooperative in the market excepted to this recommended delivery requirement. The exceptor contended that without a substantial delivery requirement there is the possibility of unneeded milk becoming associated with the market to the detriment of producers who regularly supply the market with its fluid needs. The cooperative urged the adoption of a substantial delivery requirement to deter this result. For the reasons already stated, the adoption of a substantial delivery requirement for a producer to establish diversion eligibility rights would be contrary to the purpose of determining diversion limitations on a percentage basis.

As already indicated, the months during which a handler may divert producer milk without limit to nonpool plants should be extended from the period April–July to include August. This change was proposed by the cooperative association which recommended the alternative percentage basis method in computing diversion limitations. Proponent cooperative testified August is now a month of comparatively low class I utilization because producer deliveries are relatively high in relation to class I sales. Thus, the cooperative maintained that the same unlimited diversion provileges should be extended to this month as now apply for other months of seasonally low class I utilization. There was no opposition to this proposal.

For the years 1975, 1976, and 1977, the class I utilization of producer milk in August was 62 percent, 56 percent, and 57 percent, respectively. These percentages for August are only slightly higher than for the seasonally high milk production months of April–July when diversions are presently not limited. In fact, class I utilization in August 1975 and 1976 was lower than in April 1975 and 1976 (an unlimited diversion month). Consequently, there are substantial quantities of reserve milk on the market in August that must be moved to manufacturing plants. In such circumstance, continuance of diversion limitations for August could adversely affect the economic handling of milk in excess of fluid requirements. Accordingly, the order should be amended to provide for unlimited diversion of producer milk during the months of April through August.

4. *Payments to producers.* The order should provide that handlers pay all order obligations for milk to the market administrator who, in turn, would distribute such money, in terms of the uniform price, to producers, cooperative associations and handlers who elect to pay their nonmember producers.

Under the present payment plan, producers and cooperative associations are paid by the handlers receiving their milk. It is necessary under this arrangement, however, that part of the money due producers from handlers with higher than market-average class I utilization be used in paying producers supplying other handlers with less than market-average class I utilization. This exchange of money between handlers is accomplished through a "producer-settlement fund" operated by the market administrator. Handlers with higher than market-average class I utilization pay any excess of the value of their producer milk over its value at the uniform price into this fund. Other handlers receive from the fund payments that are included in the uniform price they pay to their producers.

Three cooperative associations representing a substantial number of producers supplying the fluid milk market proposed that the market administrator collect from handlers all order payments due producers. Under the cooperatives' proposal, each handler would make partial payments to the market administrator by the third day prior to the end of the month for milk received during the first 15 days of the month. The payment rate would be the class III price for the preceding month. The remainder of the handler's obligation for milk received during the month would be paid to the market administrator by the 16th day of the following month.

The cooperatives' proposal provides for the same payment dates to producers and cooperatives as now established under the order. Following the receipt of the partial payments by handlers, the market administrator would pay producers such monies by the last day of the month. The market administrator would make final payments to producers by the 18th day after the day of the month. In those cases where a cooperative is collecting the payments for milk of its members, the proposal would require partial and final payments by the market administrator one day prior to the date payments are due individual producers.

This payment schedule under the cooperatives' proposal is based on the filing of handler reports of receipts and utilization by the 8th day of the month and the announcement of the uniform price by the 13th day.

Under the cooperatives' proposal, recognition would be given to the desire of handlers to pay producers (basically nonmembers) supplying them with milk. As proposed, any handler not delinquent with respect to any of his reporting or payment obligations who wished to pay his own producers would pay his full obligation to the market administrator. Upon receipt of the proper payment, the market administrator then would transfer funds to the handler so that he could pay his producers.

Proponents urged the adoption of their proposed payment arrangement on the basis that this would provide handlers with a stronger incentive for making prompt payment of their order obligations. Proponents pointed out that payments by handlers to a considerable extent have not been on time and in some cases, they allege, handlers have paid their nonmember producers before paying cooperatives.

Proponents also contend that late payments by certain handlers result in an inequitable situation for those handlers making timely payments. This, they state, is because the delinquent payers are using money due producers to overcome cash flow problems while the prompt payers who may have similar problems must borrow money or use their own capital. A witness for one of the proponent cooperatives pointed out that the cooperative's experience in doing business under the

neighboring Ohio Valley order, which has a similar payment arrangement, has been substantially better from a standpoint of timely handler payments of order obligations than its experience under order 36. It is the position of proponents, therefore, that producers on the order 36 market will be paid on a more timely basis if all their monies are channeled through the market administrator in lieu of the present payment system whereby handlers pay producers directly.

A number of handlers in the market opposed the proposed payment plan. At the hearing, witnesses for the handlers cited the alleged adverse impact that would be placed on their cash flow by having to make full payment for their order obligations 2 days earlier. Other objections were that the proposed payment arrangements (1) Would use the market administrator as a collection agent, a task which they claimed proponent cooperatives should be doing; (2) might not be authorized by the Act; (3) would add to the costs of administering the order, which they claimed could result in higher administrative assessments upon handlers; (4) would interfere with normal handler-producer relationships; and (5) would impose an additional administrative burden upon handlers with doubtful benefits accruing to producers.

Considerable opposition to the proposed payment plan was also expressed by handlers, as well as several producers, in their exceptions to the recommended decision. The points that were raised are discussed later in the decision.

The record evidence indicates that the incidence of late payments by pool handlers to cooperative associations is a serious problem in this market. Data submitted into evidence by the market administrator's office demonstrated the severity of the problem. For example, during the 19-month period of January 1976 through July 1977, the number of total payments made by pool handlers to cooperative associations was 2,110. For this period, only 1,151 payments or 55 percent were received by cooperatives by the 21st of the month, the 5th day after such payments should have been mailed. Under the present order, pool handlers' monthly final obligations to cooperatives are due by the 16th day (postmarked, if mailed) of the following month. On a monthly basis, the percentage of payments received by cooperatives by the 21st ranged from 46 percent to 61 percent.

In terms of money owed to cooperatives, the payment delinquency experienced for this period was little better. For the same 19-month period of January 1976 through July 1977, the total amounts due cooperatives from pool handlers for milk sales amounted to 231.4 million dollars of which 83.6 million dollars, or about 36 percent, were not received by the cooperatives until 6 or more days after the date when such payments are due under the order.

In his exceptions, a handler questioned the importance placed on these data on the basis that they were compiled from unaudited reports furnished by cooperatives to the market administrator. There is no basis to conclude from the record evidence that the data cited do not accurately portray the seriousness of the problem of late payments to cooperative associations in this market.

Several handlers in their exceptions contended that much of the late payment problem is due to cooperative associations billing handlers late. The record evidence, however, does not support this position. Notwithstanding, handlers either have, or can avail themselves of, the necessary information in sufficient time to make payments to cooperatives by the due dates prescribed by the order.

Unlike the payment delinquency being experienced by cooperative associations, the record evidence indicates that nonmember producers are generally being paid on time. There was also evidence that handlers who received both nonmember and member milk paid nonmembers on time but delayed payments to cooperatives. Such payment practices are discriminatory and inequitable since the order for payment purposes treats individual producers and cooperatives alike. Whether a handler receives milk from either individual producers or cooperative associations or both, he is obligated to make proper payments for such milk in accordance with the terms of the order.

If the order is to serve its intended purpose of promoting orderly marketing, it is essential that handlers pay both producers and cooperative associations on time. Under the customary arrangements of producers being paid twice a month, handlers have the use of producer milk for considerable periods of time before any payments for such milk are due. Producers should not be expected to wait beyond the scheduled times for their milk payments. Delayed payments not only foster uncertainty and discontent amoung producers but also place them in a difficult position with respect to meeting their own financial obligations on a timely basis.

From the standpoint of handlers, also, it is necessary that all order obligations be paid on time. Otherwise, handlers who are in compliance would be at a competitive disadvantage with delinquent handlers who are using monies due producers as a free source of funds for operating purposes.

For these reasons, the order should be structured, as proposed, to encourage prompt payments by handlers. There are several aspects of the payment method adopted herein that will provide producers with greater assurance that they will be paid for their milk deliveries on a timely basis.

Under a plan whereby all payments by handlers are made to the market administrator who in turn pays producers, the fact of payment to producers is a matter of the market administrator's immediate knowledge. When handlers pay producers directly, a failure to make full payment to producers by the dates specified in the order usually does not become known to the market administrator at the time of noncompliance. Some time may elapse before normal audit procedures reveal any payment irregularities.

Also, the payment plan adopted herein, similar to payment plans in effect in several other orders, tends to be self-policing. Payment would not be made by the market administrator to producers delivering milk to a handler who fails to pay his obligation to the market administrator. Thus, such producers would be immediately aware of when the handler receiving their milk fails to pay his pool obligation. Presently, a handler may pay his producers the blend price and at the same time fail to pay an amount due the producer-settlement fund. In the absence of any knowledge of the handler's financial difficulties, the producer presumably would continue to ship milk to the handler. Only when the handler's financial problems become so great as to result in nonpayment to his producers would the producers realize the possible need for seeking a different outlet for their milk. Under the adopted payment procedure, the producers would be aware of the handler's financial difficulty in the first month of nonpayment. They then would be able to consider on a more timely basis the possible need for making other arrangements for the sale of their milk before their loss as a result of nonpayment seriously jeopardizes their financial status.

In addition, the adopted payment procedure should reduce current pressures on cooperative associations to grant credit to handlers who may be delinquent in payment for milk received from member producers. The tendency for extension of credit by cooperatives should be minimized when handlers are required to make payments for producer milk directly to the market administrator rather than to the cooperative.

Recognition is given under this payment arrangement to the desire of handlers to pay the producers supply-

ing them with milk. Such payments should be permitted with respect to those producers for whom a cooperative is not collecting payments. For all practical purposes, this generally would include only those producers who are not members of a cooperative association.

As provided herein, the handler would be required to pay his full obligation for milk to the market administrator in the same manner as other handlers who are not paying producers directly. This would be so in the case of both the partial and final payments. Upon receipt of the proper payment, the market administrator then would transfer sufficient money to the handler so that he could pay his producers.

A handler who expressed the desire to continue his close relationship with his producers and pay them himself contended at the hearing that there was no need to transfer first to the market administrator the money that he pays his producers. Several handlers expressed a similar concern in their exceptions.

A basic purpose of changing to the payment method adopted herein is the encouragement of timely payments by handlers. To effectively implement this concept, it is desirable that the handlers purchasing milk from nonmembers as well as those obtaining milk from a cooperative pay their order obligations to the market administrator by the dates prescribed herein. Through this means, the market administrator will be immediately aware in the case of all handlers of a handler's inability to meet his order obligation.

Any handler who the market administrator determines is delinquent with respect to any payment obligation under the order should not be eligible to receive money from the market administrator for payment to producers. Any transfer of money by the market administrator to a handler in this circumstance would remove much of the incentive for a handler to consistently comply with the order's payment requirements. So that there might be a reasonable demonstration of compliance with the order, a delinquent handler should not be eligible to pay his producers until he has met the prescribed payment obligations for 3 consecutive months.

In addition to the payment requirement, proponent cooperatives proposed that a handler who is also delinquent in meeting the reporting requirements under the order be ineligible to receive money from the market administrator for payment to producers. Although it is essential that handlers comply with all reporting requirements of the order, it was not established that the adoption of this additional requirement is a necessary condition to assure that payments to producers are made when due by a handler who elects to pay his producers directly. Any problems of reporting compliance should be dealt with through some other means.

Handlers at the hearing and in their post-hearing briefs and exceptions opposed the proposed 3-month requirement. They pointed out that late payments to producers do occur occasionally because of human error. It was their contention that the 3-month requirement classified such human errors the same as a deliberate late payment or nonpayment by a handler and penalizes the handler to the same degree in either case.

It is quite possible that a late payment to producers by a handler may occur unintentionally. There is no practical way from an enforcement standpoint, however, to distinguish between intentional and unintentional late payments. Even if there were such a way, the 3-month requirement appears to be reasonable under the marketing circumstances indicated on the record. As stated earlier, the purpose of the adopted producer payment method is to provide producers with greater assurance that they will be paid for their milk deliveries on a timely basis. It must be recognized that under this new payment method, permitting a handler to pay his nonmember producers is to a certain extent no change from the present payment method used in the market. If the order is to allow handlers the option of paying nonmembers, it is necessary that there be some incentive to pay their producers on a timely basis. In the absence of this incentive, such as losing their eligibility to pay producers for a 3-month period, handlers may tend to become lax in their payment procedure.

Under the adopted payment procedure, it is imperative that the payments received by the market administrator from handlers represent sound money. This is necessary, of course, under the present payment arrangement. However, because the new procedure will result in substantially greater amounts of money being transferred in and out of the producer-settlement fund, receipt of a bad check of a substantial sum could render such fund insolvent.

With the payment schedule adopted herein, the market administrator will need to make payments to cooperatives and certain handlers the day after the payments are due to him from all handler. Such payments will have to be made with the belief that the checks received from handlers and deposited in the producer-settlement fund are, in fact, good. time will not permit the clearance of such checks through the banks prior to the withdrawal of money from the producer-settlement fund. The need for the market administrator to receive only sound money is thus obvious.

The attached order does not prescribe the specific means by which handlers shall make payment to the market administrator. The need for such specificity should be based on actual experience in the market. As long as handlers make full payment by the prescribed payment dates and their checks are good, there is no problem. However, if the market administrator, because of prior experience or for other reasons, does not have reasonable assurance that payments tendered would represent sound money, it is necessary that he have the administrative discretion to prescribe the means of acceptable payment.

Under the terms of the order, the market administrator has the authority to make rules and regulations to effectuate the terms and provisions of the order. Should there be an urgent need for greater specificity with respect to the procedures for making payments, this may be accommodated through the promugation of appropriate administrative rules with the approval of the Director of the Dairy Division and in consultation with the local industry.

A schedule of payment and reporting dates as suggested by the proponents should apply under the adopted payment plan. Essentially, the payment dates are unchanged from the dates now specified in the order. However, the dates for reporting receipts from producers and from a cooperative association(s) have been advanced to implement the payment plan. As provided herein, handlers would continue to be required to make partial payment for milk received during the first 15 days of the month from producers and for milk received from a cooperative association in its capacity as a bulk tank handler. Handlers would be required to report such receipts to the market administrator by the 22d day of the month. Payment for such milk by the handlers would have to be received by the market administrator on the 3d day prior to the end of the month. On the last day of the month, the market administrator would distribute these payments to producers who do not receive their payments through a cooperative association or from a proprietary handler who has requested the option of paying his own producers. In the case of producers receiving their payments from a cooperative or a proprietary handler, the market administrator would make payments to such parties a day earlier so that payments to the individual

producers could be made at the same time as for other producers.

The rate of the partial payment would be the class III price for the preceding month. This rate is now used under the order in making partial payments to producers and producers supported its continued use.

Final accounting for milk from producers and cooperative bulk tank handlers would be completed in the following month. Handlers would be required to submit to the market administrator a report of the monthly receipts from individual producers and a report of all receipts and utilization by the 8th day after the end of the month. The uniform price would be announced by the 13th day. Final payment to the market administrator by handlers at the classified use value for all milk received during the month would have to be received by the market administrator by the 16th day after the end of the month. Payments due producers would be distributed by the market administrator on the 18th day to individual producers who do not receive their payments through a cooperative association or a proprietary handler. Cooperative associations collecting for members and proprietary handlers who elect to pay their own producers would be paid by the market administrator by the 17th day after the end of the month so that they could pay their producers on the 18th also.

A group of handlers located principally in the Pittsburgh metropolitan area, through their trade association, proposed that the final payment date to producers be pushed back from the 18th to the 25th of the month. The spokesman for the group stated that normally they are unable to collect payments from their customers until the 25th to 30th day after the end of the month in which the packaged milk is sold. Consequently, he said, handlers should not be forced to pay producers for milk before they receive payment from their customers.

Producers should not be required to wait until the 25th day after the end of the month for final settlement for their milk. As it is producers must wait for such payments until the 18th day after the end of the month because of the time required to complete all of the reporting, pricing and payment procedures. Handlers will have had the milk for a considerable period of time and any further delay in the settlement for such milk is unreasonable. The cost of any short term loans that a handler may need to meet order obligations must be considered as a necessary business expense to be borne by the handler. Accordingly, the proposal should not be adopted.

Exceptions filed by this group and two other handlers on this particular change in payment dates were a reiteration of the position taken by the trade association at the hearing. No significant basis was provided in these exceptions, however, to warrant a change in the conclusion on this matter.

As noted earlier, the attached order does not prescribe the means by which a handler must make payment to the market, administrator. Unless some specificity in this regard is found necessary later, handlers should be given the flexibility of using whatever payment means they wish. The only requirement would be that a handler's payments must be received by the market administrator by the prescribed dates. Such dates would be the 3d day prior to the end of the month for the partial payment and the 16th day after the end of the month for the final payment. Payments not received by these dates would be considered late and subject to the charge on overdue accounts. Under this arrangement each handler, of course, will have to determine what means of payment will result in timely payments for him.

Recognition should be given to the occasional conflicts between scheduled payment dates and weekends. It is desirable that producers be paid as soon as possible. For this reason, the payment schedule adopted herein purposely leaves little time between the dates when handlers must make payments to the market administrator and when payments must then be made to producers by the market administrator and handlers. However, should a payment date fall on a Saturday, Sunday or national holiday, when offices normally are not open for business, the "tight" payment schedule could not be adhered to in all cases. Accordingly, if the date by which payments must be received by the market administrator, or made by him to producers, cooperatives or handlers falls on such a day, payments should not be due until the next day on which the market administrator's office is open for public business. Further, the order should provide that when the partial or final payments are so delayed, the corresponding payments by the market administrator to handlers, cooperatives and producers, as well as the subsequent payment by handlers to producers, may be delayed by the same number of days.

In opposing the proposed payment plan, a proprietary handler pointed out in his exceptions that this deferral of scheduled payment dates would delay payments to producers on occasion. This, he claimed, would undermine the overall objective of the proposed plan.

Any such delay that might result in payments to producers and cooperative associations would be relatively limited. It cannot be viewed as an overriding consideration in deciding whether or not such a payment plan should be implemented.

This schedule of reporting and payment dates will result in producers receiving their final payment for milk as soon as possible after the end of the month. The partial and final payment dates remain unchanged from those presently specified in the order. It is noted that under the schedule adopted herein there could be occasions when there is a relatively short period between the time when the market administrator receives and processes a handler's report and notfies the handler of his obligations to the producer-settlement fund and the date by which the handler must pay the market administrator. It is contemplated that the market administrator may need to notify handlers immediately by telephone of handlers' order obligations, with written confirmation to be supplied later. Similarly, the adopted schedule contemplates that payments by the market administrator to proprietary handlers who are paying producers and to cooperatives collecting payments for members will be available by the next day for payments to individual producers. To assure this, it may be necessary for the market administrator to arrange for an interbank transfer of funds so that producer payments can be made on a timely basis.

In making their partial and final payments to the market administrator, handlers would be permitted to subtract deductions authorized by producers. Such deductions for each producer in the case of partial payments should not exceed the value (at the Class III price) of the milk received from the producer during the 15-day period. With respect to deductions made from final producer payments, the total deductions for the month shall not exceed the value of milk received from the producer during the month.

A producer's authorization for a handler to deduct monies for payment to an assignee does not relieve the handler of his obligation to make full payment for milk received from producers by the date prescribed in the order. Thus, it is expected that the amounts deducted by handlers will be paid to assignees by the time handler payments are due the market administrator. This is necessary to insure that all handlers are paying the minimum class prices for their producer milk by the dates required in the order.

Recognition should be given under the adopted payment plan to the situation where some handlers may choose to make payments to their individual producers more frequently or earlier than required by the order. The recommended decision failed to

recognize such payments in that a handler would have been required to pay the market administrator the amounts already paid to producers. Such payments should be recognized, however, only in the case of payments to an individual producer for whom a cooperative association is not authorized to collect payments for milk. If payments to cooperatives were recognized in this situation, arrangements could be made between the parties involved whereby a cooperative might delay cashing the handler's check, which would frustrate the purpose of the payment plan.

Much of the testimony in opposition to the proposed payment plan focused on the effect it would have on handlers in maintaining a cash flow to meet their total payment obligations to the market administrator. This point was reiterated extensively in post-hearing briefs and exceptions. Opponents reasoned that handlers' operating costs would be increased under the plan because they would need to borrow money, because in some cases they would not have obtained complete payments from their customers by the time total obligations for producer milk are due the market administrator.

It is possible that some handlers could incur additional costs in maintaining an adequate cash flow to meet the changed payment requirements under the proposed plan. This would not be due to any increase in their order obligations but rather to a change in the time when they must have sufficient money available to pay for milk for which they had already become obligated by virtue of having received it. Although handlers know at the time of receipt that they are obligated for the milk, handlers customarily do not pay for the milk any sooner than required by the order. For reasons already noted, there is a considerable lag between the receipt of the milk and the date by which final payment for milk is required. Handlers have tended to adjust their cash flow to this lag even though they knew from the time of receipt that they were obligated for the milk. It is recognized that with a shortening of this time lag some handlers may have to adjust their cash flow. The fact that it may result in additional costs cannot be an overriding consideration in deciding this issue when one takes into account the considerable time lag that would still exist between the receipt of milk and the final payment for it.

Opponents at the hearing and in post-hearing briefs and exceptions suggested that in lieu of the proposed payment plan more enforcement actions should be instituted to assure that producers are paid on time. They argued that the Act already provides adequate legal remedy to resolve the late-payment and that greater reliance should be place on the legal remedies already at the market administrator's disposal.

Enforcement though the courts is a cumbersome administrative route and the practicableness of such action is questionable in the case of handlers who are only several days late. Nevertheless, even with the adopted order changes persistent late payers would continue to be subject to legal enforcement action as authorized under the Act, and such actions would continue to be instituted as circumstances warrant.

A national trade association of milk dealers, a Pennsylvania-based farm organization and a pool handler contended in their exceptions that the adopted payment plan would have the effect of placing an undue burden on handlers who are already complying with the present payment requirements. Exceptors believe that the recommended decision failed to recognize other options that could be taken to improve compliance with the payment provisions of the order and that would be less burdensome and costly to those handlers who are now in compliance. To this end, exceptors urged that the record evidence in the current proceeding be reviewed in this light and that less burdensome payment procedures be developed than were adopted in the recommended decision. The exceptors stated that if the hearing record does not permit adequate consideration of other options, then the Department should reopen the hearing to obtain additional testimony on other options or else close this proceeding with no order changes and hold a new hearing.

It is recognized, as previously noted, that all handlers, including those who are in compliance with the present payment requirements, would be required under the adopted payment plan to make payments for their milk purchases several days earlier than now. This could affect the cash flow position of all handlers, as exceptors point out. Nevertheless, under the adopted payment plan handlers would continue to have had the use of milk of producers from 2 to 6 weeks before final payments are due. In view of this, the argument that the payment plan would impose an undue burden on handlers is not persuasive in deciding whether or not the plan should be adopted.

Contrary to exceptors' contentions, there were no optional methods proposed at the hearing as possible solutions to the late-payment problem, although the opportunity was available to interested parties. The testimony presented was limited to support for, or opposition to, the specific payment plan that was proposed by cooperatives. It must be noted, however, that the lack of any specific consideration of other options at the hearing does not leave us with a less than satisfactory option. In view of the problems to be resolved and the hearing evidence bearing on this issue, it is concluded that the payment plan considered at the hearing is a viable option and should be adopted.

The request by the exceptors for a reopening of the hearing to consider other options for achieving better handler compliance with the order's payment provisions is denied. This would unduly delay taking corrective action regarding handler payments that the record clearly indicates is warranted. Moreover, the exceptions do not demonstrate that the several other options suggested by handlers are so superior to the plan adopted herein that there should be a further hearing before any final action is taken on this issue. A request for a subsequent hearing on the payment issue may be filled by interested parties, of course, at any time, and appropriate consideration would be given to such a petition.

Several handlers in their exceptions argued that the operation of the payment plan adopted herein will increase the cost of administering the order. There is no basis for this contention and it is not expected that administrative costs would be higher.

In their exceptions, several handlers contended that the proposed payment plan would provide too much governmental assistance to cooperative associations. Exceptors claimed that the proposed payment arrangment transfers to the Department certain responsibilities that the cooperatives should be assuming themselves. Also, a cooperative association in its exceptions expressed concern that the adopted payment arrangement might "be a temptation to producers to fall back on the market administrator as a more reliable source of their milk check that their cooperative."

The contention of exceptors is without merit. The payment plan adopted herein is in the interest of orderly marketing since it can be expected to provide cooperatives with improved conditions under which they market their milk, which comports with the intent and purpose of the Act.

Payments for milk from cooperative association plants and cooperative bulk tank handlers. As an integral part of their overall payment plan, proponent cooperatives proposed that pool plant operators receiving bulk fluid milk products from a cooperative's pool plant or milk from a cooperative bulk tank handler who operates a pool plant be required to pay for such milk in the same manner as it proposed for

milk received directly from producers. This proposal should be adopted.

The order now requires that a pool plant operator shall make payment to a cooperative association on or before the 15th day following the end of the month at the class use value for fluid milk products received either by transfer or diversion from a pool plant operated by a cooperative. This payment arrangement also applies to any milk received by a pool plant operator from a cooperative bulk tank operator if such cooperative association operates a pool plant.

Some of the milk marketed by proponent cooperatives is moved to distributing plants directly from the farm. However, to a large extent, milk is moved to such plants, either on a regular basis or a supplemental basis, from the proponent cooperatives' supply plants either by transfer or diversion. Irrespective of the supply arrangements used, the producers involved are supplying milk for the fluid market and should be assured of receiving payment for their milk. Such assurance is essential to the orderly marketing of milk. Moreover, such a payment requirement is consistent with the Act, which provides that no cooperative association may sell milk to any handler at less than the prescribed order class prices.

Accordingly, handlers receiving bulk fluid milk products from the pool plant of a cooperative or milk from a cooperative bulk tank handler that operates a pool plant should be required to make partial and final payments to the market administrator by the same dates as specified for handlers receiving milk directly from producers. the partial payment, which would apply to receipts during the first 15 days of the month, should be at the class III price for the preceding month. If the handler so elects, such price may be adjusted by the butterfat differential for the preceding month. The final payment should be based on the classified use value of all bulk milk products received during the month from such cooperative. Upon receipt of the money, the market administrator would then pay any of such funds due the cooperative.

In its exceptions, a cooperative objected to the requirement in the recommended decision that the partial payment rate (class III price for the preceding month) for receipts of bulk fluid milk products from a cooperative-operated pool plant or from a cooperative bulk tank handler that operates a pool plant be adjusted for butterfat content by the previous month's butterfat differential. The cooperative indicated that adjusting the price for butterfat content with respect to partial payments is impractical in the case of farm bulk tank milk since the test of the milk is not known until after the end of the month. Also, the cooperative noted that it has been the custom in the market to bill handlers for milk transfers at the class III price without adjustment for butterfat content. The exceptor did concede, however, that if any significant volumes of skim milk were involved in interplant transfers, the adjustment at test may be desirable.

In view of this situation, a handler should be permitted in making partial payments for bulk fluid milk products received from a cooperative pool plant or a cooperative bulk tank handler to pay at the rate of the previous month's class III price either with or without adjustment for butterfat content.

The recommended decision provided that the class I price to be used in computing a handler's obligation for milk transferred from a cooperative's pool plant to the handler's plant should be the higher of the class I prices applicable at the plants of the handler and the cooperative. Upon further review of what pricing should apply in this type of transaction, it is concluded that the handler's obligation to be paid to the cooperative (through the market administrator) should be based on the class I price applicable at the handler's plant. The Act states that a cooperative that is reblending the proceeds from the sale of its members' milk may not sell milk to any handler at less than the applicable class prices. Thus, the act would require in this case that the minimum price to be paid the handler be the order class I price applicable at the handler's plant location.

5. *Administrative provisions.—(a) Administrative assessment.* The order should be revised to provide that each handler operating a pool plant shall pay the administrative assessment on milk received at his plant from a cooperative association in its capacity as a handler on farm bulk tank milk and by transfer or diversion in bulk from a pool plant operated by a cooperative association. A cooperative association should pay the administrative assessment only on its receipts of producer milk that are not moved to another handler's plant. Presently, a cooperative pays an administrative assessment on all of its receipts of producer milk.

Cooperatives proposed this change in conjunction with their proposed payment plan whereby all handlers receiving milk from producers and cooperative associations would pay their total classified use value for such milk to the market administrator who, in turn, would pay producers and cooperative associations. Proponents claimed that this change would facilitate the administration of their proposed payment plan. Proponents' witness stated that the proposed change would eliminate the need for a cooperative association to bill handlers the cost of the administrative assessment that is paid by the cooperative on plant milk and farm bulk tank milk that the cooperative moves to pool plants.

Several proprietary handlers objected to the proposed change. They stated it would impose an additional expense on proprietary handlers and would relieve coooperatives of their share of the expense of the order administration. It was further argued that the act does not authorize a cooperative association to be excluded from being responsible for the administrative assessment on any such milk for which it is the handler.

The act provides that the cost of administering an order shall be borne by handlers and that the Secretary shall esablish each handler's pro rata share of this cost. To implement this, the order should provide that the administrative cost be apportioned among those handlers primarily engaged in the processing of milk. This is because much of the time and money expended in administering the order is for the verification of receipts and utilization of such handlers.

Under the present order, proprietary handlers pay an administrative assessment on milk received directly from producers and from a cooperative association not operating a pool plant that is acting as a bulk tank handler. for milk that such handlers receive from a cooperative's pool plant or from a plant-operating cooperative acting in its capacity as a bulk tank handler, the administrative assessment is now paid by the cooperative. It is reasonable in these latter cases, however, that the handlers processing the milk, rather than the cooprative, be the handler obligated under the order for the administrative assessment. The cooperative's role as a "handler" is merely that of moving the milk from farms to the processing plants, whether it be directly or through the cooprative's plant. Defining the cooperative as a "handler" under the order in these circumstances facilitates the administration of the order in terms of the initial accountability for the milk. However, the verification activities under the order are related basically to those operations where the milk is actually processed.

Applying the administrative assessment in the revised manner also would be in keeping with the intent of the act that prices be uniform among handlers. it is a general practice for cooperatives to pass on to handlers the administrative assessments associated with the milk which they sell to handlers. Nevertheless, competitive pressures could develop that might encourage a cooperative to sell milk only at

the class price with no recovery of the related administrative assessment. In this case, the handler purchasing such milk could be acquiring his milk at a lesser price than his competitors, thereby resulting in nonuniformity of prices. This situation also could be disruptive to the normal supply arrangements in the market in that there would be an incentive for handlers to seek out the cheaper milk supplies.

A handler, in his exceptions, claimed that applying the administrative assessment in the revised manner proposed in the recommended decision "violates section 610(b)(2)(i) of the act, which is expressly not limited to processors." It is true in the broad sense that a cooperative association in its capacity as a handler could be responsible for the administrative assessment on the milk it handled. However, for the reasons previously stated, the handler's exceptions provide no basis for taking a different position on this matter.

(b) *Late payment charges.* A late payment charge should continue to apply on all overdue handler obligations to the market administrator. However, such charge should be applied beginning the first day following the date that a payment is due rather than the third day after the due date. Proponents of the proposed payment plan supported this change.

The order now applies a charge of 1 percent per month on a handler's obligations to the market administrator that are overdue. Presently, the late payment charge begins on the third day after the due date of such obligation and is applied again on the same day of each succeeding month until such obligation is fully paid. A handler's obligations to which the late payment charges apply include those due the producer-settlement fund, the administrative expense fund, and the marketing service fund, all of which are maintained by the market administrator.

The payment schedule under the plan adopted herein provides for a sequence of dates that must be met by a handler which will enable the market administrator to make payments to producers, cooperatives and certain handlers on schedule. To this end, the plan provides that a handler's payment must be received by the market administrator on the date prescribed. Failure on the part of a handler to meet such payment dates would force the market administrator to withhold funds from producers and/or a cooperative until such handler submits payment for his order obligations.

The late payment charge and the date that the charges applies are designed to provide handlers an incentive to make their payments to the market administrator on time.

Because of the extent of the late payment problem that has persisted in the market and to conform with the overall objective of the payment plan adopted herein, it is necessary that the late payment charge apply on the first day that such payment is overdue. Delaying the application of the charge, which is the case under the present order, would only serve to reduce the effectiveness of the late payment charge and the purpose of the adopted payment plan.

The application of the late payment charge on the day following the date when payment is due may require some adjustment in the billing procedures of the market administrator to handlers. In this connection, the market administrator may need to advance the time when a handler is billed his monthly final obligations so that the handler in turn will have sufficient time to make payment by the prescribed due date. This adjustment, however, can be accomplished within the framework of the existing order and thus requires no amendatory action.

In their exceptions to the recommended decision, a number of handlers argued that there was no justification in the record for a late payment charge. They also noted that such charges, when collected by the market administrator, are now placed in the producer-settlement fund for distribution to all producers in the market rather than being distributed just to the producers who shipped milk to the delinquent handler. Another handler argued that the Department has no statutory authority to impose a penalty, such as a late payment charge, other than that specified in section 610(c) of the act. The handler claimed that under this authority such a charge could not exceed $100.

Whether or not the order may provide or should provide for a late payment charge was not an issue that was dealt with at the hearing of this proceeding. The order now provides for a late payment charge on all overdue order obligations. There was no proposal in the hearing notice or request at the hearing to remove this provision or to change the rate of the charge. Thus, the exceptions relating to these points are not relevant in this proceeding. Consideration of any aspects of the late payment charge at the hearing was limited to whether or not there should continue to be a 2-day "grace" period before the charge is applied to overdue accounts.

(c) *Miscellaneous payment procedure.* The order should specify that when a past due obligation for milk purchases is paid by the handler to the market administrator, the market administrator shall complete such payments first to those producers and/or cooperatives who have the oldest outstanding payments due them. This payment procedure was included in proponent cooperatives' proposed payment plan.

The record establishes that there have been instances where late paying handlers who have received part of their milk supplies from a cooperative association have paid their other suppliers (principally nonmember producers) before paying the cooperative. There also have been instances where a handler has discontinued purchasing milk from a cooperative without paying his past due obligations to such cooperative. In such case, the handler switched to a new source of supply and paid for the milk from this source without paying his past due obligations to the former supplier.

The order does not require a handler to purchase milk from any particular producers or group of producers. However, it does require total payment of order obligations on any milk received at a handler's pool plant from a producer or group of producers in accordance with terms specified in the producer payment provisions. In this connection, the order should specify the procedure that the market administrator shall follow in disbursing past due obligations collected from a handler to the producers and/or cooperatives involved.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

In their brief, opponents of expanding the marketing area to include a portion or all of the Ohio counties of Erie, Huron, Ottawa, and Sandusky renewed their objection to the admission into evidence of an exhibit identified at the hearing as exhibit 12. The administrative law judge's ruling on this matter has been reviewed in terms of the arguments presented. This ruling, for the reasons stated by the administrative law judge on the record, is hereby affirmed.

Counsel for a trade association of handlers located in western Pennsylvania made a motion at the hearing that the payment plan proposal (proposal No. 1 as set forth in the hearing notice, 42 FR 48886) not be considered. An attorney for the operator of a reg-

ulated distributing plant supported the motion. In support of the motion, it was indicated that the act does not provide for such a payment plan and such a plan is not necessary to effect prompt payments to producers and/or cooperative associations. Additionally, it was indicated that proper enforcement action against handlers who are paying late is all that is necessary to effectuate the payment provisions of the present order. The administrative law judge denied the motion. This matter was reiterated in their post-hearing briefs.

Requiring handlers to channel all payments for milk purchases from producers and cooperative associations through the market administrator may be adopted pursuant to the authority set forth in section 608c(7)(D) of the act. This subsection specifies that an order may contain various terms that are incidental to, and not inconsistent with, the terms explicitly authorized by the act if the incidental terms are found necessary to effectuate the other provisions of the order. The payment plan adopted herein is considered essential to the effectuation of the payment provisions of the order.

It is true, as argued at the hearing and in post-hearing briefs, that the act does contain provisions in section 608c(14) pertaining to certain penalties applicable to handlers not complying with the terms and provisions of the order. In short, these provisions specify that a handler shall be fined a monetary amount upon being convicted of violating a provision of an order. However, these provisions do not preclude the use of the payment plan adopted herein under section 608c(7)(D).

General Findings

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) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro-rata share of such expense, 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1036.85 of the aforesaid tentative marketing agreement and the order as proposed to be amended.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received 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 any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

In their exceptions, the national trade association of milk dealers, a cooperative association and several proprietary handlers contended that the act does not authorize the producer payment plan as herein adopted. For the reasons already indicated under "Rulings on Proposed Findings and Conclusions" the exceptions are hereby overruled.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a marketing agreement regulating the handling of milk, and an order amending the order regulating the handling of milk in the eastern Ohio-western Pennsylvania marketing area which have been decided upon as the detailed and appropriate means of effectuating the forgoing conclusions.

It is hereby ordered, That this entire decision, except the attached 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 attached order which is published with this decision.

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300 et seq.), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the eastern Ohio-western Pennsylvania marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be May 1978.

The agent of the Secretary to conduct such referendum is hereby designated to be Cleo C. Taylor.

An approved final impact analysis is available from the Agricultural Marketing Service.

Signed at Washington, D.C., on July 25, 1978.

Jerry C. Hill,
Deputy Assistant Secretary.

Order[1] Amending the Order, Regulating the Handling of Milk in the Eastern Ohio-Western Pennsylvania Marketing Area

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 set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing

[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.

agreement and to the order regulating the handling of milk in the eastern Ohio-western Pennsylvania marketing area. 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 and procedure (7 CFR Part 900).

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

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

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

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

(4) All milk and milk producers handled by handlers, as defined in the eastern Ohio-western Pennsylvania order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1036.85.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the eastern Ohio-western Pennsylvania marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on March 31, 1978 (43 FR 14478) and published in the FEDERAL REGISTER on April 6, 1978, shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein subject to the following modifications:

1. In § 1036.71:

a. In paragraph (a), a new subparagraph (1) is added and subparagraphs (1) and (2) are redesignated as (2) and (3), respectively.

b. In paragraph (b), a new subparagraph (2) is added and subparagraphs (2), (3), and (4) are redesignated as (3), (4), and (5), respectively.

c. In paragraph (c), subparagraphs (1) and (2) are revised.

2. In § 1036.73, paragraph (b)(2) is revised.

1. In § 1036.2, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 1036.2 Eastern Ohio-western Pennsylvania marketing area.

* * * * *

(a) "Zone 1" includes:

(1) In Ohio:

(i) The following counties in their entirety:

Ashland, Ashtabula, Carroll, Geauga, Harrison, Holmes, Monroe, Portage, Tuscarawas, and Wayne.

(ii) In Guernsey County: The townships of Londonderry, Millwood, and Oxford.

(iii) In Stark County: Sugar Creek Township.

(iv) In Trumbull County: the townships of Bazetta, Bloomfield, Bristol, Champion, Farmington, Fowler, Greene, Gustavus, Hartford, Johnston, Kinsman, Mecca, Mesopotamia, Southington, and Vernon.

* * * * *

(b) "Zone 2" includes:

(1) In Ohio:

(i) The following counties in their entirety:

Belmont, Columbiana, Jefferson, Lorain, Mahoning, Medina, and Summit.

(ii) Stark County (except Sugar Creek Township).

(iii) In Trumbull County: The townships of Braceville, Brookfield, Howland, Hubbard, Liberty, Lordstown, Newton, Warren, Weathersfield, and Vienna.

* * * * *

2. In § 1036.7, paragraph (b) is revised to read as follows:

§ 1036.7 Pool plant.

* * * * *

(b) A supply plant from which not less than 40 percent during the months of September, October, and November and not less than 30 percent in all other months, of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received at such plant from dairy farmers (including milk diverted from the plant as producer milk pursuant to § 1036.13 but excluding milk received as diverted milk) and handlers defined in § 1036.9(c) is transferred or diverted to and physically received in the form of fluid milk products, except filled milk, at pool plants qualified under paragraph (a) of this section or disposed of as route disposition in the marketing area.

* * * * *

3. Section 1036.13 is revised to read as follows:

§ 1036.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer which is:

(a) With respect to a handler defined in § 1036.9(a):

(1) Received at the handler's pool plant directly from the producer, excluding receipts of milk diverted from another pool plant;

(2) Received at the handler's pool plant from a handler defined in § 1036.9(c) that does not operate a pool plant;

(3) Diverted pursuant to paragraphs (e), (f), and (g) of this section for the handler's account from his pool plant to a nonpool plant that is not a producer-handler plant; or

(4) Diverted for the handler's account from his pool plant to another pool plant, subject to the conditions set forth in paragraph (h) of this section;

(b) With respect to a handler defined in § 1036.9(b), diverted pursuant to paragraphs (e), (f), and (g) of this section for the handler's account from a pool plant of another handler to a nonpool plant that is not a producer-handler plant;

(c) With respect to a handler defined in § 1036.9(c) that does not operate a pool plant, received by the handler from the producer's farm in excess of the producer's milk that is received by a pool plant operator pursuant to paragraph (a)(2) of this section; and

(d) With respect to a handler defined in § 1036.9(c) that also operates a pool plant, received by the handler from the producer's farm.

(e) During April through August and subject to the conditions of paragraph (g) of this section, the operator of a pool plant or a cooperative association may divert the milk of a producer without limit.

(f) During September through March and subject to the conditions of paragraph (g) of this section:

(1) The operator of a pool plant that is not a cooperative association may

divert any producer milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (f)(2) of this section in accordance with one of the following alternatives:

(i) The milk of an individual producer may be diverted for not more days of production of his producer milk than is physically received at pool plants; or

(ii) The plant operator may divert an aggregate quantity of milk of producers not exceeding 40 percent of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator.

(2) A cooperative association may divert the milk of a producer during the month in accordance with one of the following alternatives:

(i) The milk of an individual producer may be diverted for not more days of production of his producer milk than is physically received at pool plants; or

(ii) The cooperative association may divert an aggregate quantity of milk not exceeding 40 percent of the producer milk that the cooperative association causes to be delivered during the month to pool plants.

(g) The following conditions shall apply with respect to milk diverted pursuant to paragraphs (a)(3) and (b) of this section:

(1) Milk of a producer shall not be eligible for diversion unless the milk of such producer was physically received at least once as producer milk at a pool plant and the dairy farmer has continuously retained producer status under the order since that time;

(2) During each month of September through November at least 1 day's production of milk of a producer must be received at a pool plant for the milk of such producer to be eligible for diversion that month pursuant to paragraph (f)(1)(ii) and (2)(ii) of this section;

(3) Such milk shall be deemed to have been received by the diverting handler at the location of the nonpool plant to which diverted;

(4) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be deemed to have been received at such pool plant and shall not be producer milk;

(5) If milk is diverted in excess of the limit by a handler who elects to divert on the basis of days of production, only that milk of the individual producer which was diverted to a nonpool plant for not more days of production than is physically received at a pool plant shall be considered as producer milk;

(6) If milk is diverted in excess of the percentage limit by a handler who elects to divert on an aggregate basis, eligibility as producer milk shall be forfeited on a quantity of milk equal to such excess;

(7) In cases of excess diversions, the diverting handler shall specify the dairy farmers' deliveries that are ineligible as producer milk. If the handler fails to do so, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(8) Milk diverted to an other order plant shall be producer milk only if a class II or class III classification is designated for such milk pursuant to the provisions of the other order issued pursuant to the act and such milk is not subject to the pricing and pooling provisions of such order.

(h) Milk diverted from a pool plant to another pool plant shall be deemed to have been received by the diverting handler at the location of the pool plant to which diverted.

4. Section 1036.31 is revised to read as follows:

§ 1036.31 Payroll reports.

(a) On or before the 18th day after the end of each month, each handler who elects pursuant to § 1036.73(d) to pay producers shall report to the market administrator the following information with respect to the handler's partial and final payments for producer milk received during such month:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer;

(5) The net amount of payment to the producer; and

(6) The dates such payments were made.

(b) On or before the 20th day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1036.76(a) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated the following information for such month;

(1) The name of each dairy farmer;

(2) The total pounds of milk received from each dairy farmer;

(3) The average butterfat content of such milk;

(4) The amount and nature of any deductions, as authorized by the dairy farmer, from the payment for such milk; and

(5) The rate of payment per hundredweight and the net amount paid each dairy farmer.

5. Section 1036.32 is revised to read as follows:

§ 1036.32 Other reports.

(a) On or before the 22nd day of each month each handler described in § 1036.9(a), except a cooperative association which operates a pool plant or a handler who elects to pay producers pursuant to § 1036.73(d), shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

(1) The identity of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer;

(3) The amount and nature of any deductions, as authorized by the producer, to be made from the partial payment for such milk;

(4) The total pounds of milk received from a handler described in § 1036.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(b) On or before the 22nd day of each month each handler defined in § 1036.9 (a), (b) and (c) except a handler who is required to file reports pursuant to paragraph (a) of this section shall report to the market administrator the following information with respect to its receipts of milk during the first 15 days of the month:

(1) The total pounds of producer milk;

(2) The total deductions as authorized by the producers to be made from the partial payment for such milk;

(3) The total pounds of milk received from a handler described in § 1036.9(c); and

(4) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(c) On or before the 8th day after the end of each month, each handler described in § 1036.9(a), except a cooperative association which operates a pool plant or a handler who elects to pay producers pursuant to § 1036.73(d), shall report to the market administrator the following information with respect to its receipts of milk during such month:

(1) The identity of each producer from whom milk was received;

(2) The total pounds of producer milk received from such producer and its average butterfat content;

(3) The amount and nature of any deductions, as authorized by the producer, to be made from the final payment for such milk;

(4) The total pounds of skim milk and butterfat received from a handler described in § 1036.9(c); and

(5) The pounds of skim milk and butterfat in bulk fluid milk products received from a pool plant operated by a cooperative association.

(d) On or before the second day prior to the reporting dates specified in paragraphs (a) and (c) of this section, each cooperative association that operates a pool plant from which bulk fluid milk products were transferred or diverted to pool plants of other handlers within the time periods described in paragraphs (a) and (c) of this section shall report to each such pool plant operator and the market administrator the name and location of the transferor-plant and the total pounds and butterfat content of the bulk fluid milk products transferred or diverted from the plant.

(e) In addition to the reports required pursuant to paragraphs (a) through (d) of this section and §§ 1036.30 and 1036.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(f) Each producer-handler shall report to the market administrator at such time and in such manner as the market administrator may prescribe.

(g) Each handler who operates an other order plant shall report total receipts and utilization or disposition of skim milk and butterfat at the plant at such time and in such manner as the market administrator may require and shall allow verification of such reports by the market administrator.

(6) In § 1036.70, paragraph (a) is revised to read as follows:

§ 1036.70 Producer-settlement fund.

(a) The market administrator shall establish and maintain a separate fund known as the "Producer-settlement fund", into which he shall deposit the payments made by handlers pursuant to §§ 1036.71, 1036.76, 1036.77 and 1036.78 and from which he shall make all payments pursuant to §§ 1036.73 and 1036.77.

* * * * *

7. Section 1036.71 text and heading are revised to read as follows:

§ 1036.71 Payments to the market administrator.

(a) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the third day prior to the end of each month an amount determined by multiplying the handler's receipts of producer milk during the first 15 days of such month by the class III price for the preceding month, less:

(1) Any payments made by the handler on or before such date to individual producers (whose payments are not authorized to be collected by a cooperative association) for milk received during the 15-day period;

(2) Proper deductions authorized by producers from whom the handler received milk, except that the amount deducted for each producer shall not exceed the value (at the class III price) of the milk received from the producer during the 15-day period; and

(3) With respect to a cooperative association in its capacity as a handler pursuant to § 1036.9 (a) or (c), any payments made to the market administrator pursuant to paragraph (c)(1) of this section.

(b) Subject to paragraph (d) of this section, each handler shall pay to the market administrator on or before the 16th day after the end of each month an amount equal to such handler's value of milk for such month determined pursuant to § 1036.60(a), as adjusted by the butterfat differential specified in § 1036.74, and pursuant to § 1036.60 (b) through (e), less:

(1) Payments made by the handler pursuant to paragraph (a) of this section for such month;

(2) Payments, other than those specified in § 1036.73(d), that were made by the handler on or before such date to individual producers (whose payments are not authorized to be collected by a cooperative association) for producer milk received during the month;

(3) Proper deductions for the month that were authorized by producers from whom the handler received milk, except that the amount deducted for each producer shall not exceed the value of milk received from the producer during the month;

(4) The value at the weighted average price applicable at the location of the plants from which received plus 5 cents with respect to other source milk for which a value is computed pursuant to § 1036.60(e); and

(5) With respect to a cooperative association in its capacity as a handler pursuant to § 1036.9 (a) or (c), any payments made to the market administrator pursuant to paragraph (c)(2) of this section.

(c) Subject to paragraph (d) of this section, each handler operating a pool plant who receives bulk fluid milk products by transfer or diversion from a pool plant operated by a cooperative association, or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1036.9(c) that also operates a pool plant, shall pay the following amount for such milk to the market administrator, who in turn shall pay to the cooperative association any net amount due it:

(1) On or before the third day prior to the end of each month, an amount determined by multiplying such receipts during the first 15 days of the month by the class III price for the preceding month. If the handler so elects, such price may be adjusted by the butterfat differential specified in § 1036.74 for the preceding month; and

(2) On or before the 16th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1036.42 by the applicable class price, as adjusted by the butterfat differential specified in § 1036.74, less any payment made by the handler pursuant to paragraph (c)(1) of this section for such month. For the purpose of such computation, the applicable class I price shall be the class I price applicable at the transferee-plant.

(d) The following conditions shall apply with respect to the payments prescribed in paragraphs (a), (b) and (c) of this section:

(1) Payments to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator; and

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or on any day that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(e) On or before the 25th day after the end of the month, each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to class I at such plant. If there is such disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (e)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the class I price under this part that is applicable at the location of the other

order plant (but not to be less than the class III price) and the class III price.

8. Section 1036.72 is revoked and the section designation "1036.72" is reserved.

9. Section 1036.73 is revised to read as follows:

§ 1036.73 Payments to producers and to cooperative associations.

(a) Subject to paragraphs (c) through (f) of this section, the market administrator shall pay each producer on or before the last day of each month for milk for which payment pursuant to § 1036.71 (a) and (c)(1) has been received by the market administrator. Such payment shall be at a rate per hundredweight equal to the class III price for the preceding month less the amounts specified in § 1036.71(a).

(b) Subject to paragraphs (c) through (f) of this section, the market administrator shall pay each producer on or before the 18th day after the end of each month for milk for which payments pursuant to § 1036.71 (b) and (c)(2) have been received by the market administrator. Such payment shall be the uniform price computed pursuant to § 1036.61 for the month, subject to the following adjustments:

(1) Any applicable adjustments pursuant to §§ 1036.74 and 1036.75;

(2) Less the payments described in § 1036.71(b)(2) and paragraph (a) of this section;

(3) Less deductions for marketing services pursuant to § 1036.86:

(4) Less the authorized deductions specified in § 1036.71(b)(2); and

(5) Any adjustments for errors in calculating payments to an individual producer for the past months.

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator, on or before the day prior to the dates specified in such paragraphs, shall pay to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market administrator by the cooperative association as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a) and (b) of this section.

(d) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator, on or before the day prior to the dates specified in such paragraphs, shall pay to each handler who so requests for milk received by the handler from producers for whom a cooperative association is not collecting payments pursuant to paragraph (c) of this section an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a) and (b) of this section. The handler then shall pay the individual producers the amounts due them by the respective dates specified in paragraphs (a) and (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months. In making payments to producers pursuant to this paragraph, the handler shall furnish each producer the following information:

(1) The identity of the handler and the producer and the month to which the payment applies;

(2) The total pounds and, with respect to final payments, the average butterfat content of the milk for which payment is being made;

(3) The minimum rate of payment required by the order and the rate of payment used if such rate is other than the applicable minimum rate;

(4) The amount and nature of any deductions from the amount otherwise due the producer; and

(5) The net amount of payment to the producer.

(e) The following conditions shall apply with respect to the payments prescribed in paragraphs (a) through (d) of this section:

(1) If the date by which such payments are to be made falls on a Saturday or Sunday or on any day that is a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business; and

(2) If the application of § 1036.71(d)(2) or paragraph (e)(1) of this section resutls in a delay in the partial or final payments by handlers to the market administrator or by the market administrator to handlers, the corresponding partial or final payments prescribed in paragraphs (a) through (d) of this section may be delayed by the same number of days.

(f) If the market administrator does not receive the full payment required of a handler pursuant to § 1036.71, he shall reduce uniformly per hundredweight the payments due producers and/or cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payments pursuant to this section following the date on which the remaining payment is received from such handler. The market administrator shall first complete the payment to producers and/or cooperative associations who have the oldest outstanding payments due them.

10. Section 1036.77 is revised to read as follows:

§ 1036.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due the market administrator from such handler, due such handler from the market administrator, or due any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be make on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice. The market administrator shall offset any monies due a handler against monies due from such handler.

11. Section 1036.78 is revised to read as follows:

§ 1036.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1036.71, 1036.76, 1036.77, and 1036.85 shall be increased 1 percent beginning on the first day after the due date of such obligation and on the same day of each succeeding month until such obligation is paid.

12. Section 1036.85 is revised to read as follows:

§ 1036.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 16th day after the end of the month 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk handled during the month as follows:

(a) Each handler with respect to his receipts of producer milk (including such handler's own-farm production and milk recieved from a cooperative association pursuant to § 1036.9(c)), fluid milk products transferred or diverted in bulk from a pool plant operated by a cooperative association and other source milk allocated to class I pursuant to § 1036.44(a) (7) and (12) and the corresponding steps of § 1036.44(b), except such other source milk on which no handler obligation applies pursuant to § 1036.60(e); and

(b) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area in excess of the skim milk and butterfat subtracted pursuant to § 1036.76(b)(2).

13. Section 1036.86 is revised to read as follows:

§ 1036.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, the market administrator, in making payments to producers pursuant to § 1036.73, shall deduct 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk of such producer (except a handler's own-farm production) for whom the marketing services set forth in this paragraph are not being performed by a cooperative association as determined by the Secretary. The monies shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. The services shall be performed by the market administrator or an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, the market administrator shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 17th day after the end of each month shall pay such deductions to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which a deduction was computed for each such producer.

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MONDAY, JULY 31, 1978
PART VII



ENVIRONMENTAL PROTECTION AGENCY

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RESOURCE RECOVERY PROJECT DEVELOPMENT GRANTS UNDER THE PRESIDENT'S URBAN POLICY

Notice of Meeting and Request for Comments

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 936-8]

RESOURCE RECOVERY PROJECT DEVELOPMENT GRANTS UNDER THE PRESIDENT'S URBAN POLICY

Meeting; Request for Comments

Summary: The President's Urban Policy issued on March 27, 1978, directs the U.S. Environmental Protection Agency (EPA) to carry out a program of financial assistance to urban areas for solid waste resource recovery project planning and feasibility analysis. The legislative authority for this program currently exists under Pub. L. 94-580, the Resource Conservation and Recovery Act of 1976. The purpose of this notice is to describe the program and the proposed procedures for obtaining funding under it. This notice is solely to solicit the public's views prior to publication of final procedures. No proposals or applications should be submitted to EPA based on this notice.

This program is authorized under section 4008(a)(2) of the Resource Conservation and Recovery Act of 1976. A $15 million fiscal year 1979 appropriation request to fund this program was submitted to the Congress as a part of the President's Urban Message on March 27, 1978. Final congressional action on that request is still pending. EPA is publishing the draft solicitation at this time so that implementation can be expedited if and when the Congress acts favorably on the President's request. Issuance of a final solicitation announcement for this program by EPA is contingent upon favorable action by the Congress on the requested budget.

Public Meeting: A public meeting on these proposed procedures will be held on August 18, 1978, to provide an opportunity for public comment. The meeting will be held at:

General Services Administration Building, Main Auditorium, 18th and F Streets NW., Washington, D.C. 20415; 9 a.m. to 5 p.m.; registration: 8:30 a.m.

Written Comments: Written comments received by August 25, 1978, will be considered in developing the final procedures. Comments should be submitted to the following address:

U.S. Environmental Protection Agency, Office of Solid Waste, Resource Recovery Division (WH-563), 401 M Street SW., Washington, D.C. 20460; Attn: Docket No. 4008-A2.

For further information, contact Mr. Stephen A. Lingle at the above address; telephone 202-755-9140.

DRAFT PROGRAM ANNOUNCEMENT FOR RESOURCE RECOVERY PROJECT DEVELOPMENT GRANTS UNDER THE PRESIDENT'S URBAN POLICY

A. BACKGROUND—PROGRAM RATIONALE

Solid waste disposal is a serious and growing problem for urban areas, commonly ranking as one of their most pressing concerns. Existing landfills are reaching capacity in many cities, and new environmentally acceptable landfills are often difficult to site. Thus, many cities are eager to move to resource recovery to reduce their land disposal needs.

At the same time, the resource potential of the waste stream can provide a supplemental source of energy and materials to help satisfy municipal, industrial, or commercial needs.

Furthermore, these new commercial activities can assist in reducing unemployment, economic, and environmental problems faced by many of the Nation's urban areas by providing jobs, increased tax bases, and new industrial opportunities. Source separation programs offer the added benefit of involving large numbers of citizens directly in a regular and tangible effort to improve their environment.

Progress in implementing resource recovery across the Nation is being made, but at a pace which hardly keeps pace with growth in waste generation. A major barrier to more rapid implementation is the fact that the procedures involved in implementing resource recovery are unique and complex. These procedures involve a series of technical, marketing, financial, legal, and organizational factors which must be brought together in a comprehensive, well-structured project planning and development process. Problems in many of these areas are often referred to as "institutional" constraints. Thus, despite the pressures of the solid waste problem, cities often fail to accomplish the preparatory steps for the implementation of resource recovery.

Examples of key tasks which, when not properly addressed, have delayed or prevented implementation of resource recovery facilities include: Obtaining a 20-year commitment for supply of waste to a plant; considering source separation as a part of the system in early planning; obtaining support of all interested parties, including the public; modifying laws or ordinances to permit signing of long-term contracts for waste supply or sale of products; insuring that negotiated procurements are permitted under State and local laws; obtaining the most economically advantageous financing; developing a well-structured request for proposals which will stimulate attractive, comparable bids; and negotiating appropriate risk sharing arrangements for facility construction and operation. Similarly, implementation of source separation programs is impeded by lack of staff and expertise to develop markets, obtain public support, and design a cost effective system.

The financial assistance program described in this document directly addresses these institutional factors. It is designed to help cities move effectively through the project planning and development process by providing financial assistance to address tasks such as those above. Funds under this program may be used to hire capable in-house project managers as well as a broad range of consulting services.

The Resource Conservation and Recovery Panels provided under section 2003 of RCRA may be used selectively at the discretion of EPA to assist grantees in areas such as developing detailed workscopes or consultant task descriptions. However, any such assistance will not reduce the amount of assistance available for jurisdictions not receiving awards under this program. EPA will further support the program by providing to grantees certain guidance and information that may be helpful to their efforts.

The Urban Waste grant program is based on the premise that effective project planning and development will result in timely and successful implementation of facilites and/or source separation approaches without Federal funding of design, land, equipment of construction. Though the capital costs of larger resource recovery plants are significant, experience has shown that debt financing is available from the private sector for well-conceived projects. These are projects having long-term waste supply and market commitments and utilizing technologies proven in commercial operation or backed by performance quarantees. For such projects, debt payment can be secured by the project revenues—tipping fees and product sales—without impacting the credit or borrowing power of the city. Private equity can also be a part of plant financing. Sponsors of projects involving new and unproven technologies may wish to seek Federal Assistance, such as that provided in the Department of Energy demonstration program described below.

B. RELATIONSHIP WITH OTHER FEDERAL PROGRAMS

This assistance program will be coordinated with U.S. Department of Energy (DOE) programs in resource recovery from solid waste. DOE is authorized under Pub. L. 95-238 to support through loan guarantees, grants, contracts, cooperative agreements and price supports, the construction, start-up, operation, and related expenses of

demonstration facilities for recovery of energy from wastes. It is DOE's intent to support construction only by accepting risk through loan guarantees, cooperative agreements and price supports. However, funds have not been appropriated to conduct loan guarantees.

Those communities interested in considering new and innovative technologies which may be eligible for support as demonstrations can carry out the planning and development for those projects under the EPA Urban Waste program described in this notice. Technologies which DOE is potentially interested in demonstrating include thermal gasification or liquification of solid waste, new reactors for combustion systems, biological conversion systems, and innovative equipment of process designs for mechanical separation, including densification of solid fuels.

Applicants wishing to consider possible demonstration projects in their planning activities should so indicate in the proposal submitted to EPA under this Urban Policy program. Additional information on the DOE demonstration program will be provided in the final publication of this announcement.

C. PROGRAM DEFINITION AND OBJECTIVE

On the basis of competitive solicitation, funding will be made available to selected urban areas for activities to determine the feasibility of resource recovery approaches and for the follow-on project development steps necessary to implement such approaches. Funding for engineering design, construction, or acquisition of land and equipment is not eligible.

There are three primary objectives of this program: To accelerate national progress in resource recovery implementation; to provide environmentally sound alternatives to solid waste disposal; and to assist economically distressed urban areas pursuant to the President's Urban Policy.

In view of these objectives, a prime consideration in selection of cities for funding will be to choose those judged to have a high probability for successful implementation given sufficient project development funding. The selection criteria for the program reflect this decision. Cities which appear to have high potential for resource recovery but which do not find resource recovery implementation to be their best courses of action will be able to make this determination early in the planning process, thereby avoiding additional and unnecessary costs.

It is the implementation (rather than the planning) of facilities which may be expected to impact the problems of economically troubled urban areas. Thus, communities must first score highly under the criteria for potential success before they may be considered for the grants described in this announcement. Within this constraint, however, comparatively distressed areas will be given priority over candidates with less severe economic problems.

D. PROJECTED FUNDING LEVELS.

The President has indicated that he will consider in the development of future budget requests an additional $15 million for the program in each of the fiscal years 1980 and 1981.

E. COST SHARING

Consistent with regulations already promulgated for grant programs under RCRA (40 FR, Vol. 42, October 20, 1977), the Federal share of project costs under this program will not exceed 75 percent of total project costs.

As a guide in determining eligible project costs, applicants should be aware that no more than one-third of their matching share may be represented by in-kind contributions. EPA's general grant regulations (40 CFR 30.135-15) define in-kind contribution as "the value of a noncash contribution provided by (a) the grantee, (b) other public agencies and institutions, (c) private organizations and individuals, and (d) EPA. An in-kind contribution may consist of charges for real property and equipment and the value of goods and services directly benefiting and specifically identifiable to the grant program."

This cost sharing participation by the local government is desirable because the implementation process is complex and often frustrating. EPA considers a financial stake in the project by the implementing jurisdiction to be a useful added inducement to its resolving problems and continuing to progress toward implementation.

F. ELIGIBLE ORGANIZATIONS

As defined in section 4008(a)(2) of RCRA, the following governmental units are eligible to apply for assistance under this program: States, counties, municipalities, and intermunicipal agencies, and State and local public solid waste management authorities. However, eligibility will be further limited by the requirements of section 4006 of RCRA.

Section 4006(b) of RCRA establishes the requirements that "* * * the State, together with appropriate elected officials of general purpose units of local government, shall jointly (a) identify an agency to develop the State plan and identify one or more agencies to implement such plan, and (b) identify which solid waste functions will, under such State plan, be planned for and carried out by regional or local and State authorities.

Consistent with the requirements of the Act, EPA will award grants to only those applicants jointly identified by the State and appropriate locally elected officials for plan implementation responsibilities in resource recovery. Accordingly, local and regional jurisdictions competing for an award in an area shall submit with their grant application a written agreement, understanding, or other evidence which certifies that resource recovery implementation responsibility has been jointly assigned to such jurisdictions in conformance with the guidelines established under section 4002(a) of the Act (40 CFR Part 655—"Identification of Regions and Agencies for Solid Waste Management").

Within these definitions, it is EPA's intent to consider as eligible for funding urban communities and jurisdictions of all sizes. The criteria described in a later section will be used to establish priorities for funding. It is anticipated that application of the criteria will result in the major portion of the funding being allocated to areas of at least 50,000 population. This is the lower population limit used to define an "urbanized area" by the Census Bureau. Furthermore, urban areas with severe economic problems and which also show high implementation potential will receive first consideration.

Section 4008(a)(2)(B) establishes additional requirements for grantees under this authority:

> An applicant for financial assistance under this paragraph must agree to comply with respect to the project or program assisted with the applicable requirements of Section 4005 and Subtitle C of this Act and apply applicable solid waste management practices, methods, and levels of control consistent with any guidelines published pursuant to Section 1008 of this Act. Assistance under this paragraph shall be available only for programs certified by the State to be consistent with any applicable State or areawide solid waste management plan or program.

G. PROGRAMS AND ACTIVITIES ELIGIBLE FOR SUPPORT

Planning and project development of energy and materials recovery plants and source separation programs are eligible for funding under this program. Eligibility is limited to projects which involve solid waste primarily from residential and commercial sources. Also, development of projects which involve co-disposal of municipal solid waste and sewage sludge will be eligible. Projects directed toward development of land disposal and hazardous waste management facilities are not eligible.

EPA envisions the planning and development of resource recovery pro-

jects as an evolutionary and phased effort. Thus, eligible activities have been defined in phases. Any or all phases may be funded initially, depending on the progress of the individual community. Thus, EPA funding may begin with the second or third phase defined if the applicant has already successfully completed those tasks defined in earlier phases. The selection criteria give preference to applicants who have made prior progress. After initial funding, award of funds for follow-on phases will depend on successful completion of preceding phases.

Communities applying for funding will be required to define their proposed project in terms of the elements of the phases described below. An applicant's project phasing will not have to match these defined phases exactly. The defined phases are intended to serve as a guide to the types of activities and outputs which are acceptable, not as a definitive project outline. However, the proposed phasing will be subject to EPA approval during the development of the final detailed workscope. Also, the individual elements listed in the various phases will have to be included or their elimination explained. The elements listed should not be considered exhaustive, and additional elements may be eligible.

It is EPA's intent to provide more detailed guidance and examples for some or all of the outputs during development of the detailed project workscope.

Activities are listed below in two parts. The first part deals with implementation of resource recovery plants; the second part deals with implementation of source separation programs.

PART I—ELIGIBLE ACTIVITIES AND OUTPUTS FOR RESOURCE RECOVERY PLANT IMPLEMENTATION

a. *Phase I—Feasibility Analysis.* This phase includes evaluation of the feasibility of resource conservation and recovery and the preliminary definition of one or more feasible alternatives. The purpose of this phase is to develop a basis for a go/no go decision on implementation and the beginning of a strategy for implementation.

PHASE I ACTIVITIES

- Survey the waste stream (quantity and composition).
- Review alternative technologies.
- Survey markets and develop preliminary commitments.
- Review compatibility with any existing or potential waste reduction programs.
- Analyze source separation as a part of the overall recovery approach.
- Identify alternative plant sites.
- Develop general conceptual design of alternative system/market combinations.
- Estimate project costs and benefits.
- Assign full-time project manager.
- Formulate an advisory committee.
- Begin public participation and education.
- Ensure State agency support and involvement.

PHASE I OUTPUTS

- Estimates of waste generation and composition based on weight measurements.
- Analysis of waste collection responsibilities and controls.
- Identification of specific markets available, including estimated price and quantity ranges and specifications.
- Explanation of technologies considered and tentatively selected as alternatives to satisfy these markets.
- Description of potential site(s).
- Economic analysis of source separation techniques as a complement to a large-scale system.
- Economic analysis of proposed alternative(s): capital and operating costs, net tipping fees, etc.
- Comparison of costs with land disposal alternatives.
- Statement of preliminary go/no go decision by political leader, with rationale for decision.
- Clear statement of project objectives if decision is go.

b. *Phase II—Procurement Planning.* This phase would take the Phase I outputs and develop all essential elements leading to solicitation for system proposals or construction bids.

PHASE II ACTIVITIES

- Establish a project management team.
- Review qualifications of system vendors or designers.
- Analyze risk posture and management options.
- Select procurement option (A.& E., turnkey, full-service).
- Determine system performance requirements.
- Review and select a financing alternative.
- Finalize site selection.
- Carry out steps to secure waste supply.
- Obtain market commitments (letters of intent).
- Review procurement and contracting laws and other legal matters impacting the project.
- Define permit and regulatory requirements.
- Advisory committee activities.
- Continue public participation and education.
- Ensure continued State agency support and involvement, including required legislation.

PHASE II OUTPUTS

- Description of procurement approach.
- Description of financing plan.
- Selected site.
- Description of how waste supply will be assured.
- Firm letters of intent for purchase of products.
- Description of legal authorities and actions to remove constraints.
- Description of permit and regulatory requirements, and means of obtaining required permits.
- Advisory committee project analysis.
- Summary of public participation activities.

c. *Phase III—Procurement.* This phase involves those steps required to solicit for system proposals or bids, review and select a successful bidder, and negotiate and sign final contracts.

PHASE III ACTIVITIES

- Prepare appropriate RFP's or select A. & E. for design (depending on procurement strategy).
- Evaluate bids or proposals.
- Determine negotiation strategy.
- Negotiate with preferred bidder (depending on procurement strategy).
- Secure required permits.
- Finalize contracts for systems, markets, and waste supply.
- Secure financing.
- Continue public participation and education.
- Advisory committee activities.
- Ensure continued State agency support and involvement.

PHASE III OUTPUTS

- Well-conceived RFP.
- Selected bidder.
- Contracts for system procurement, product sales, or waste supply.
- Secured/approved permits.
- Marketable financing package.

PART II—ELIGIBLE ACTIVITIES AND OUTPUTS FOR DEVELOPMENT OF SOURCE SEPARATION PROGRAMS

a. *Phase I (Feasibility).* This phase includes determination of the feasibility of resource conservation and recovery through source separation techniques. Eligible activities will result in a basis for a go/no go decision on implementation. Activities would include:

- Survey markets.
- Survey waste stream.
- Analyze costs.
- Assign full-time project manager.
- Formulate an advisory committee.
- Public participation activities.
- Identify alternative source separation strategies.
- Determine need for amended or new ordinances or legislation necessary to operate the program.
- Determine the need for and feasibility of interlocal agreements.
- Insure State agency support and involvement.

PHASE I OUTPUTS

- Feasibility analysis including: Market survey results; cost analyses; analyses of alternative source separation strategies; and public education requirements.
- Recommendations for ordinances or legislation.
- Recommendations for procurement of services and/or equipment.
- Recommendations for interlocal agreements.
- Recommendations for marketing arrangements and contracts.

b. *Phase II (Implementation).* This phase would be fundable after the political decision to implement a source

separation program was reached. Implementation activities would include:

- Establish structure of collection, processing and storage system.
- Develop and issue bid specifications for procurement of collection, processing and storage equipment and/or services.
- Develop and issue bid specifications for sale of materials.
- Evaluate bids for sale of materials and procurement of services and equipment.
- Draft and enact appropriate ordinances and legislation.
- Develop a comprehensive public education campaign.
- Conduct advisory committee activities.
- Ensure continued State agency support and involvement.

PHASE II OUTPUTS

- Contracts for supply of services and equipment.
- Market contracts for recovered products.
- Enacted ordinances and/or legislation.
- A comprehensive public education campaign.
- Implementation of the collection, processing and storage system.

H. SOLICITATION PROCEDURE

Urban centers will be selected for award under this program through a national competition described in this solicitation announcement. The next section describes the type of proposals which should be submitted by those communities requesting financial assistance. A subsequent section describes the criteria which will be used for selection.

Applicants will have 75 days from the date of publication of the final solicitation announcement to complete and submit proposals in the format described below. The proposals should be submitted to the appropriate EPA regional office and a copy should be submitted to the appropriate State solid waste office. A list of State solid waste and EPA regional offices is provided at the end of this document.

Review and selection will involve State, EPA regional offices, and EPA headquarters. States will review proposals, certify consistency with State plans, and suggest funding priorities. EPA regional offices will review and rank the proposals for their respective regions. EPA headquarters, with assistance from Department of Energy staff, will review the proposals and make final selections among the regions. EPA anticipates that final selections will be made within roughly 90 days after receipt of proposals.

Following this selection, EPA will work closely with each selected applicant to develop a detailed scope of work and schedule of outputs. EPA will also assist the selected applicants with preparation of the detailed workscopes. Following EPA approval of the workscope and processing of the application, the grant award will be made.

EPA anticipates that workscope development and grant application processing and award will require approximately 60 to 90 days.

One solicitation is planned each fiscal year. If responses to the annual solicitation do not provide sufficient numbers of proposals which score highly on the selection criteria, then one or more additional solicitations will be made during that year.

I. FORMAT FOR PROPOSAL SUBMISSION

Communities which wish to apply for funding under this program should develop a proposal in accordance with the procedures outlined in this section. *This proposal will be the primary basis for selection of communities to receive grants.* Following an initial screening of the proposals, EPA may contact or visit a city for additional information to arrive at final selections.

It is recommended that the narrative proposal length not exceed 15 pages of single-spaced type, exclusive of supporting letters or other material. The subjects addressed in the proposal should be as specified below. The order in which they are covered should correspond to the order listed here. The elements of this format correspond closely to the selection criteria described in the next section. The specific points listed to be covered under each element should be viewed as minimums intended to orient the proposals along common, comparable lines.

Title Page:

Proposal to the U.S. Environmental Protection Agency

Resource Recovery Project Development Grants under the President's Urban Policy

(Name of entity submitting the proposal)

(Date)

a. *Current solid waste management practices.* Should include a brief description of current solid waste management practices for the jurisdictions included in the proposed project. The following specific information should be provided at a minimum:

- Population that would be served by the project.
- Percent of residential solid waste collected by: (1) A public collection service; (2) municipally-contracted private haulers; (3) private haulers hired directly by citizens; (4) other (explain).
- If commercial/industrial waste to be included in the proposed recovery system, who is responsible for its collection? Quantities involved?
- On the average, how many tons of solid waste are landfilled or incinerated per day? Is this figure measured weight based on use of scales?
- Indicate what percentage of current landfill or incineration capacity is: (1) Municipally operated; (2) privately operated; (3) county operated; (4) other (explain). Also indicate number of sites in each category.
- How is the cost of residential solid waste collection and disposal paid for in each affected jurisdiction: (1) Service charge to citizens; (2) allocation from general fund; (3) other (explain)?

b. *Disposal needs.* This section should address at a minimum:

- Total remaining lifetime in years of existing disposal sites (specific by site).
- Has land been acquired for future sites? Where? Issues?
- Describe any known violation of applicable landfill standards at existing sites.
- Compare projected waste generation with remaining capacity and probable new land disposal sites through 1988.
- Describe current and projected costs of land disposal.

NOTE.—A specific format will be provided for this purpose in the solicitation package.

c. *Resource recovery as a solid waste management solution.* Describe the specific needs for which resource recovery is being proposed as a solution in the jurisdictions covered by the proposal. Include those items (e.g., costs, no land disposal alternative, desire to recover, need for new energy source, etc.) that are primary motivators. Also, describe the extent to which this proposed project is reflected in existing local or regional plans.

d. *Description of the proposed project.* This section should briefly describe the project proposed, using the definition of phases in this announcement as a guide. The estimated cost and timing of each of the project elements proposed should also be included in as much detail as the applicant is able to provide. It should be understood that this section is not intended to be a detailed workscope presentation. A detailed workscope will be developed with EPA assistance after selections are made. However, this section should clearly define project goals and provide a good basic description of the project. Personnel proposed to work on the project should be included, as should the intended means of meeting the grantee matching requirement.

e. *Institutinal factors.* Should include at a minimum:

- *Explanation of the proposed mechanism for securing waste supply.* Describe any existing or planned interlocal agreements, contracts with public or private haulers, waste control ordinances or other means of obtaining a secure flow of waste for a facility.

NOTE.—For source separation projects, describe the proposed means of obtaining public participation.

- *Describe the proposed implementing entity* and the extent to which that entity has been recognized and supported by proposed project participants. Discuss the anticipated management and financial roles of each participant.

- *Backing of highest level officials.* Include letters of support with the proposal; describe public statements, resolutions and the like which have been made regarding the proposed resource recovery project. Any actions which involve obtaining or preparing to obtain financing should be described.
- *Local/regional cooperation.* Include any regional agreements affecting jurisdictions proposed to be included in the project. Statements of support for and commitment to the project should be included from each jurisdiction involved. Should describe whether the project is included in approved local or regional plans.
- *Public and industry support.* Should include any support for the proposed project being offered by public and private sectors. Should include the expected commitment (if known) of each firm that will be involved with the project.
- *State support.* Must include statement of certification by the State for consistency with any existing State solid waste management plans. Should describe other financial, administrative, or technical support to be provided by the State.

f. *Potential for relieving urban economic distress.* Should include at a minimum: trends in unemployment, per capita income, and population. Should describe how the proposed project will relieve problems related to economic distress, urban quality of life, etc.

g. *Prior progress (if applicable).* Should include: completed feasibility studies, market surveys, or other progress toward implementation. Should focus on the extent to which this prior work supports the proposed project and points to its success.

h. *Other factors.* This section should describe other factors which the applicant feels would bear on its ability to implement resource recovery successfully given funding through this program.

J. *Criteria for Award.* The criteria below will be used to select the first year's grantees, and may be revised as experience dictates. They have been designed to reflect the potential of a given urban area for successful resource recovery implementation, given financial and technical assistance in project planning and development, as well as the extent of the applicant's urban economic problems. A brief discussion of the criteria follows.

1. Potential and need for resource recovery to reduce land disposal requirements, 40 percent of total points.

- Availability of future land disposal sites.
- Projected waste generation versus land availability.
- Immediacy of need for land disposal alternatives.
- Current and projected costs of land disposal, including transportation costs.

2. Project success factors, 35 percent of total points.

- Mechanism for securing waste supply.
- Existence of a strong implementing authority recognized by all project participants.
- Backing of highest level officials.
- Local/regional cooperation.
- Public and industry support.
- State support.
- Clear goals and objectives.
- Firm market commitment.

3. Potential for supporting the Urban Policy objectives, 15 percent of total points.

A major objective of this initiative is to leverage private investment and jobs in economically "distressed" urban areas. The following factors shall be considered and compared against national averages as indicators of shrinking urban employment and revenue bases.

- Rate of growth in employment.
- Rate of growth in per capita income.
- Rate of growth in population.

4. Amount of prior progress toward resource recovery, 10 percent of total points.

Examples of eligible progress include, but are not limitd to:

- Completed feasibility study.
- Appointed resource recovery project director.
- Strong market or waste supply commitment.

In essence, any of the project elements listed in the description of eligible activities can be credited under this criteria.

Dated: July 25, 1978.

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management.

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