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THE NATIONAL ARCHIVES OF THE UNITED STATES
LITTERA SCRIPTA MANET
1934

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

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
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DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
	CSC			CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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

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

NOTE: As of July 3, 1978, documents from the following agencies in the Department of Health, Education, and Welfare are no longer being assigned to the Tuesday/Friday schedule: Alcohol, Drug Abuse and Mental Health Administration (ADAMHA); Center for Disease Control (CDC); Health Resources Administration (HRA); Health Services Administration (HSA); National Institutes of Health (NIH); and Public Health Service (PHS).

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H.R. 3489 ..... Pub. L. 95-323
To amend section 216(b) of the Merchant Marine Act, 1936, to entitle the Delegates in Congress from the District of Columbia, Guam, and the Virgin Islands to make nominations for appointments to the Merchant Marine Academy, and for other purposes. (July 28, 1978; 92 Stat. 396) Price: $.50.

H.R. 4270 ..... Pub. L. 95-324
To designate the Federal building and United States courthouse in Hato Rey, Puerto Rico, the "Federico Degetau Federal Building". (July 28, 1978; 92 Stat. 397) Price: $.50.

H.J. Res. 613 ..... Pub. L. 95-325
To authorize and request the President to issue a proclamation designating the first Sunday of September after Labor Day in 1978 as "National Grandparents Day". (July 28, 1978; 92 Stat. 398) Price: $.50.

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FEDERAL REGISTER PAGES AND DATES—AUGUST

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Table of Effective Dates and Time Periods—August 1978

This table is for use in computing dates certain in connection with documents which are published in the FEDERAL REGISTER subject to advance notice requirements or which impose time limits on public response.

Federal Agencies using this table in calculating time requirements for submissions must allow sufficient extra time for FEDERAL REGISTER scheduling procedures.

In computing dates certain, the day after publication counts as one. All succeeding days are counted except that when a date certain falls on a weekend or holiday, it is moved forward to the next Federal business day. (See 1 CFR 18.17)

A new table will be published monthly in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
August 1	August 16	August 31	September 15	October 2	October 30
August 2	August 17	September 1	September 18	October 2	October 31
August 3	August 18	September 5	September 18	October 2	November 1
August 4	August 21	September 5	September 18	October 3	November 2
August 7	August 22	September 6	September 21	October 6	November 6
August 8	August 23	September 7	September 22	October 10	November 6
August 9	August 24	September 8	September 25	October 10	November 7
August 10	August 25	September 11	September 25	October 10	November 8
August 11	August 28	September 11	September 25	October 10	November 9
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August 15	August 30	September 14	September 29	October 16	November 13
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August 17	September 1	September 18	October 2	October 16	November 15
August 18	September 5	September 18	October 2	October 17	November 16
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August 23	September 7	September 22	October 10	October 23	November 21
August 24	September 8	September 25	October 10	October 23	November 22
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August 28	September 12	September 27	October 12	October 27	November 27
August 29	September 13	September 28	October 13	October 30	November 27
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AGENCY ABBREVIATIONS USED IN HIGHLIGHTS AND REMINDERS

(This List Will Be Published Monthly In First Issue Of Month.)

USDA—AGRICULTURE DEPARTMENT

AMS—Agricultural Marketing Service
ARS—Agricultural Research Service
ASCS—Agricultural Stabilization and Conservation Service
APHIS—Animal and Plant Health Inspection Service
CCC—Commodity Credit Corporation
CEA—Commodity Exchange Authority
CSRS—Cooperative State Research Service
EMS—Export Marketing Service
ERS—Economic Research Service
FmHA—Farmers Home Administration
FCIC—Federal Crop Insurance Corporation
FAS—Foreign Agricultural Service
FNS—Food and Nutrition Service
FSQS—Food Safety and Quality Service
FS—Forest Service
RDS—Rural Development Service
REA—Rural Electrification Administration
RTB—Rural Telephone Bank
SEA—Science and Education Administration
SCS—Soil Conservation Service

COMMERCE—COMMERCE DEPARTMENT

Census—Census Bureau
EDA—Economic Development Administration
FTZB—Foreign-Trade Zones Board
ITA—Industry and Trade Administration
MA—Maritime Administration
MBEO—Minority Business Enterprise Office
NBS—National Bureau of Standards
NFPCA—National Fire Prevention and Control Administration
NOAA—National Oceanic and Atmospheric Administration
NSA—National Shipping Authority
NTIA—National Telecommunications and Information Administration
NTIS—National Technical Information Service
PTO—Patent and Trademark Office
USTS—United States Travel Service

DOD—DEFENSE DEPARTMENT

AF—Air Force Department
Army—Army Department
DCPA—Defense Civil Preparedness Agency
DCAA—Defense Contract Audit Agency
DIA—Defense Intelligence Agency
DIS—Defense Investigative Service
DLA—Defense Logistics Agency
EC—Engineers Corps
Navy—Navy Department

DOE—ENERGY DEPARTMENT

BPA—Bonneville Power Administration

ERA—Economic Regulatory Administration
EIA—Energy Information Administration
ERO—Energy Research Office
ETO—Energy Technology Office
FERC—Federal Energy Regulatory Commission
OHADOE—Hearings and Appeals Office, Energy Department
SEPA—Southeastern Power Administration
SWPA—Southwestern Power Administration
WAPA—Western Area Power Administration

HEW—HEALTH, EDUCATION, AND WELFARE DEPARTMENT

ADAMHA—Alcohol, Drug Abuse, and Mental Health Administration
CDC—Center for Disease Control
ESNC—Educational Statistics National Center
FDA—Food and Drug Administration
HCFA—Health Care Financing Administration
HDSO—Human Development Services Office
HRA—Health Resources Administration
HSA—Health Services Administration
MSI—Museum Services Institute
NIH—National Institutes of Health
OE—Office of Education
PHS—Public Health Service
RSA—Rehabilitation Services Administration
SSA—Social Security Administration

HUD—HOUSING AND URBAN DEVELOPMENT DEPARTMENT

CARF—Consumer Affairs and Regulatory Functions, Office of Assistant Secretary
CPD—Community Planning and Development, Office of Assistant Secretary
FDAA—Federal Disaster Assistance Administration
FHEO—Fair Housing and Equal Opportunity, Office of Assistant Secretary
FHC—Federal Housing Commissioner, Office of Assistant Secretary for Housing
FIA—Federal Insurance Administration
GNMA—Government National Mortgage Association
ILSRO—Interstate Land Sales Registration Office
NCA—New Communities Administration
NCDC—New Community Development Corporation
NVACP—Neighborhoods Voluntary Associations and Consumer Protection, Office of Assistant Secretary

INTERIOR—INTERIOR DEPARTMENT

BIA—Bureau of Indian Affairs
BLM—Bureau of Land Management
FWS—Fish and Wildlife Service
GS—Geological Survey
HCRS—Heritage Conservation and Recreation Service
Mines—Mines Bureau
NPS—National Park Service
OHA—Office of Hearings and Appeals, Interior Department
RB—Reclamation Bureau
SMRE—Surface Mining Reclamation and Enforcement Office

JUSTICE—JUSTICE DEPARTMENT

DEA—Drug Enforcement Administration
INS—Immigration and Naturalization Service
LEAA—Law Enforcement Assistance Administration
NIC—National Institute of Corrections

LABOR—LABOR DEPARTMENT

BLS—Bureau of Labor Statistics
BRB—Benefits Review Board
ESA—Employment Standards Administration
ETA—Employment and Training Administration
FCCPO—Federal Contract Compliance Programs Office
LMSEO—Labor Management Standards Enforcement Office
MSHA—Mine Safety and Health Administration
OSHA—Occupational Safety and Health Administration
P&WBP—Pension and Welfare Benefit Programs
W&H—Wage and Hour Division

STATE—STATE DEPARTMENT

AID—Agency for International Development
FSGB—Foreign Service Grievance Board

DOT—TRANSPORTATION DEPARTMENT

CG—Coast Guard
FAA—Federal Aviation Administration
FHWA—Federal Highway Administration
FRA—Federal Railroad Administration
MTB—Materials Transportation Bureau
NHTSA—National Highway Traffic Safety Administration
OHMO—Office of Hazardous Materials Operations
OPSO—Office of Pipeline Safety Operations
SLS—Saint Lawrence Seaway Development Corporation
UMTA—Urban Mass Transportation Administration

TREASURY—TREASURY DEPARTMENT

ATF—Alcohol, Tobacco and Firearms Bureau
Customs—Customs Service
Comptroller—Comptroller of the Currency
ESO—Economic Stabilization Office (temporary)
FS—Fiscal Service
IRS—Internal Revenue Service
Mint—Mint Bureau
PDB—Public Debt Bureau
RSO—Revenue Sharing Office
SS—Secret Service

INDEPENDENT AGENCIES

ATBCB—Architectural and Transportation Barriers Compliance Board
CAB—Civil Aeronautics Board
CASB—Cost Accounting Standards Board
CEQ—Council on Environmental Quality
CFTC—Commodity Futures Trading Commission
CITA—Textile Agreements Implementation Committee
CPSC—Consumer Product Safety Commission
CRC—Civil Rights Commission
CSA—Community Services Administration
CSC—Civil Service Commission
CSC/FPRAC—Federal Prevailing Rate Advisory Committee
EEOC—Equal Employment Opportunity Commission
EXIMBANK—Export-Import Bank of the U.S.
EPA—Environmental Protection Agency
ESSA—Endangered Species Scientific Authority
FCA—Farm Credit Administration
FCC—Federal Communications Commission
FCSC—Foreign Claims Settlement Commission
FDIC—Federal Deposit Insurance Corporation
FEA—Federal Energy Administration
FEC—Federal Election Commission
FHLBB—Federal Home Loan Bank Board
FMC—Federal Maritime Commission
FPC—Federal Power Commission
FRS—Federal Reserve System
FTC—Federal Trade Commission
GSA—General Services Administration
GSA/ADTS—Automated Data and Telecommunications Service
GSA/FPA—Federal Preparedness Agency
GSA/OFR—Office of the Federal Register
GSA/FSS—Federal Supply Service
GSA/NARS—National Archives and Records Service
GSA/OFR—Office of the Federal Register
GSA/PBS—Public Buildings Service
ICA—International Communications Agency
ICC—Interstate Commerce Commission
ICP—Interim Compliance Panel (Coal Mine Health and Safety)
ITC—International Trade Commission
LSC—Legal Services Corporation
MB—Metric Board
MWSC—Minimum Wage Study Commission

NACEO—National Advisory Council on Economic Opportunity
NASA—National Aeronautics and Space Administration
NCUA—National Credit Union Administration
NFAH—National Foundation for the Arts and the Humanities
NLRB—National Labor Relations Board
NRC—Nuclear Regulatory Commission
NSF—National Science Foundation
NTSB—National Transportation Safety Board
OMB—Office of Management and Budget
OMB/FPPO—Federal Procurement Policy Office
OPIC—Overseas Private Investment Corporation
PADC—Pennsylvania Avenue Development Corporation
PRC—Postal Rate Commission
PS—Postal Service
RB—Renegotiation Board
RRB—Railroad Retirement Board
ROAP—Reorganization, Office of Assistant to President
SBA—Small Business Administration
SEC—Securities and Exchange Commission
TVA—Tennessee Valley Authority
USIA—United States Information Agency
VA—Veterans Administration
WRC—Water Resources Council

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

[1505-01]

Title 1—General Provisions

CHAPTER I—ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

CFR CHECKLIST

1977/1978 Issuances

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal regulations issued to date for 1977 and 1978. New units issued during the month are announced on the back cover of the daily FEDERAL REGISTER as they become available.

For a Checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription service to all revised volumes is $400 domestic, $100 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1978):

Title	*Price*
1	$2.75
2 [Reserved]	
3	4.25
5	5.00
7 Parts:	
700-749	4.25
750-899	2.40
945-980	3.50
1000-1059	4.75
1060-1119	4.75
1120-1199	4.00
8	3.50
16 Parts:	
0-149	5.00

CFR Unit (Rev. as of April 1, 1977):

17	$6.75
18 Parts:	
1-149	4.25
150-end	4.00
19	5.75
20 Parts:	
01-399	3.25
400-499	5.00
500-end	4.00
21 Parts:	
1-99	3.25
100-199	4.75
200-299	2.10
300-499	5.00
500-599	4.00
600-1299	3.50
1300-end	4.25
22	4.50
23	5.50
24 Parts:	
0-499	5.00
500-end	5.25
25	4.50
26 Parts:	
1 (§§ 1.0-1.169)	4.75
1 (§§ 1.170-1.300)	4.00
1 (§§ 1.301-1.400)	3.75
1 (§§ 1.401-1.500)	4.00
1 (§§ 1.501-1.640)	4.00
1 (§§ 1.641-1.850)	4.35
1 (§§ 1.851-1.1200)	5.25
1 (§§ 1.1201-end)	6.75
2-29	4.50
30-39	4.35
40-299	4.50
300-499	4.35
600-end	2.40
27	7.00

CFR Unit (Rev. as of July 1, 1977):

28	$4.25
29 Parts:	
0-499	5.75
500-1899	6.00
1900-1919	6.00
1920-end	4.50
30	6.00
31	5.75
32 Parts:	
1-39 (V. I) (Rev. 7/1/76)	4.75
(V. II) (Rev. 7/1/76)	7.50
(V. III) (Rev. 7/1/76)	5.25
40-399	6.25
400-589	5.00
590-699	4.00
700-799	8.25
800-999	5.75
1000-1399	2.75
1400-1599	4.25
1600-end	2.75
32A	3.75
33 Parts:	
1-199	7.00
200-end	5.30
34	1.70
35	4.00
36	4.50
37	3.00
38	6.00
39	3.50
40 Parts:	
0-49	4.25
50-59	5.75
60-99	5.00
100-399	4.75
400-end	5.75
41 Chapters:	
1-2	5.25
3-6	5.50
7	2.75
8	2.30
9 (Rev. 9/26/77)	5.00
10-17	4.25
19-100	4.50
101-end	5.75
CFR INDEX & finding aids	4.75

CFR Unit (Rev. as of Oct. 1, 1977):

42 Parts:	
1-399	$5.50
400-end	4.75
43 Parts:	
1-999	4.00
1000-end	6.00
44 [Reserved]	
45 Parts:	
1-99	4.25
100-149	5.50
150-199	4.75
200-499	3.50
500-end	6.00
46 Parts:	
1-29	3.00
30-40	3.25
41-69	4.50
70-89	3.25
90-109	3.00
110-139	3.00
140-165	4.75
166-199	3.75
200-end	6.00
47 Parts:	
0-19	5.75
20-69	5.25
70-79	*5.00
80-end	6.00
48 [Reserved]	
49 Parts:	
1-99	3.00
100-199	8.25
200-999	8.75
1000-1199	4.50
1200-1299	*8.00
1300-end	4.25
50	5.50

*Previously announced prices of $4.75 and $8.75 for these volumes, listed in the FEDERAL REGISTER of July 1, 1978, were in error.

[6325-01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Executive Office of the President, Department of Commerce; Department of Health, Education, and Welfare

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under schedule C certain positions at the Executive Office of the President; Department of Commerce, and the Department of Health, Education, and Welfare because they are confidential in nature.

EFFECTIVE DATES: Executive Office of the President, Department of Commerce—July 21, 1978; Department of Health, Education, and Welfare—July 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Sherwin, 202-632-4533.

Accordingly, 5 CFR 213.3303(k)(4) and 213.3316(h)(9) are added and 213.3314(r)(1) is amended as set out below:

§ 213.3303 Executive Office of the President.

* * * * *

(k) *Office of Science and Technology Policy.* * * *

(4) One senior policy analyst, Office of the Assistant Director for Natural Resources and Commercial Services.

* * * * *

§ 213.3314 Department of Commerce.

* * * * *

(r) *National Oceanic and Atmospheric Administration.*

(1) One private secretary, one executive assistant and one special assistant to the Administrator.

* * * * *

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(h) *Office of the Assistant Secretary for Health.* * * *

(9) One Director, Office of Health Maintenance Organizations.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-21053 Filed 7-31-78; 8:45 am]

[3410-05]

Title 7—Agriculture

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER D—PROVISIONS COMMON TO MORE THAN ONE PROGRAM

[Amdt. 1]

PART 792—NORMAL CROP ACREAGE AND SET-ASIDE ACREAGE

Miscellaneous Amendments

AGENCY: Agricultural Stabilization and Conservation Service, Department of Agriculture.

ACTION: Final rule.

SUMMARY: A new provision is added to the regulations at 7 CFR Part 792 in order to delegate authority to the Deputy Administrator, State and County Operations, ASCS, to authorize diversion payments for acreage which is diverted from production in order to assist in the adjustment of crop acreages for feed grains, rice, upland cotton, and wheat. The authority to provide for diversion payments is found in sections 101(h), 103(f), 105A, and 107A of the Agricultural Act of 1949, as amended by the Food and Agriculture Act of 1977.

EFFECTIVE DATE: July 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Ernest Stevens, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013, 202-447-7633.

SUPPLEMENTARY INFORMATION: This amendment is a rule of agency organization delegating authority to the Deputy Administrator, State and County Operations, and is not a significant regulation within the meaning of E.O. 12044. Therefore, this amendment is issued without compliance with the 60-day notice and comment provision of E.O. 12044 or with the provisions of 5 U.S.C. 553.

7 CFR Part 792 is amended by adding a new § 792.8 to read as follows:

§ 792.8 Diverted acreage.

Diversion payments under the feed grain, rice, upland cotton, and wheat programs may be authorized by the Deputy Administrator, State and County Operations, ASCS, for acreage diverted to assist in adjusting crop acreages. The designation, care, and use of diverted acreage shall be as provided for set-aside acreage in §§ 792.3, 792.4, and 792.5. The amount of diverted acreage approved for payment, the payment rates approved, and crop acreage limits will be stated in the individual program regulations.

Note.—An approved final impact analysis statement is available from Bruce R. Weber, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013, 202-447-7987.

(Secs. 101(h), 103(f), 105A, and 107A of the Agricultural Act of 1949, as added by Pub. L. 95-113 (91 Stat. 913 et seq.).)

Signed at Washington, D.C., on July 21, 1978

RAY FITZGERALD,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 78-21076 Filed 7-31-78; 8:45 am]

[3410-02]

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

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREG.

Handling Regulation

AGENCY: Agricultural Marketing Service USDA.

ACTION: Final rule.

SUMMARY: This amendment relaxes the size requirement for the Norgold variety to 2 inches minimum diameter or 4 ounces minimum weight and allows them to be shipped as size B if U.S. No. 1 or better grade.

EFFECTIVE DATE: July 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202-447-6393.

SUPPLEMENTARY INFORMATION: Marketing agreement No. 98 and order No. 945, both as amended (7 CFR 945), regulate the handling of potatoes grown in designated counties in Idaho and Malheur County, Oreg. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Idaho-Eastern Oregon Potato Committee, established under the order, is responsible for its local administration.

This amendment is based upon a unanimous recommendation made by the committee through a telephone vote taken July 19, 1978. Crop conditions have significantly changed since the committee made its initial recommendations on June 6. Production area potato vines are dying with no further growth expected. Thus individual potatoes will be smaller and the overall crop volume will be less than originally expected.

It is hereby found that the amendment which follows will tend to effectuate the declared policy of the act.

It is further found that it is impractical and contrary to the public interest to give preliminary notice, or to engage in public rulemaking procedure, and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) This amendment must become effective immedi-

ately if producers are to derive maximum benefits from it, (2) compliance with this amendment will not require any special preparation on the part of handlers, and (3) this amendment relieves restrictions on the handling of potatoes grown in the production area.

The amendment is as follows:

Section 945.337 (43 F.R. 31120) is amended by deleting paragraph (a)(2)(ii); deleting the words "except Norgolds" from paragraph (a)(2)(iv) and renumbering (iii) as (ii) and (iv) as (iii) to read as follows:

(a) *Minimum quality requirements.*
(1) * * *

(2) *Size.*—(i) *Round red varieties*—1⅞ inches minimum diameter.

(ii) *All other varieties*—2 inches minimum diameter or 4 ounces minimum weight.

(iii) *All varieties*—Size B if U.S. No. 1 or better grade.

(3) * * *

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

Effective date: Dated July 25, 1978, to become effective July 25, 1978.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-21134 Filed 8-31-78; 8:45 am]

[4410-10]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A U.S. CITIZEN OR AS A PREFERENCE IMMIGRANT

Filing of Visa Petitions and Applications for Adjustment of Status as Permanent Resident

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule sets forth amendments of the regulations of the Immigration and Naturalization Service. The amendments would permit the simultaneous filing of an immediate relative or preference visa petition and an application for adjustment of status in the Service district where the beneficiary resides, even though it is different from the residence of the petitioner or place of intended employment. Under current regulations the visa petition must be filed in the district where the petitioner resides or which has jurisdiction over the place of intended employment. Simultaneous filing of visa petitions and applications for adjustment is not allowed if different Service districts would be involved. These amendments are needed to remove that prohibition, and are intended to facilitate filing of visa petitions and applications for adjustment by aliens in the United States.

EFFECTIVE DATE: July 31, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: For the reasons stated in the above summary, 8 CFR 204.1(a) and 8 CFR 204.1(c)(1) are amended as set forth below.

§ 204.1 [Amended]

1. 8 CFR 204.1(a) is amended by revising the second sentence to read as follows:

(a) *Relative* * * * The petition shall be filed in the office of the Service having jurisdiction over the place where the petitioner is residing in the United States, except that when accompanied by an application for adjustment of status a petition may be filed and a decision thereon made in the Service office having jurisdiction over the place where the beneficiary is residing. * * *

* * * * *

2. 8 CFR 204.1(c)(1) is amended by revising the fifth sentence to read as follows:

* * * * *

(c) Petition under section 203(a) (3) or (6)—

(1) *General* * * * The petition shall be filed in the office of the Service, having jurisdiction over the place of intended employment, except that when accompanied by an application for adjustment of status, a petition may be filed and a decision thereon made in the Service office having jurisdiction over the place where the beneficiary is residing.

* * * * *

(Sec. 103, 201(b) and 204(a) (8 U.S.C. 1103, 1151(b), 1154(a)).)

These amendments are published pursuant to section 552 of title 5 of the United States Code (80 Stat. 383), as amended by Pub. L. 93-502 (88 Stat. 1561), and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b) and 8 CFR 2.1. Compliance with the provisions of section 553 of title 5 of the United States Code as to notice of proposed rulemaking and delayed effective date is unnecessary in this instance because the amendments contained in this order relate to Service procedure and relax restrictions on the requirements respecting the place and manner of filing petitions and applications.

Effective date: These amendments become effective on July 31, 1978.

Dated: July 26, 1978.

LEONEL J. CASTILLO,
Commissioner of Immigration and Naturalization.

[FR Doc. 78-21162 Filed 7-31-78; 8:45 am]

[3410-34]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—COOPERATIVE CONTROL AND ERADICATION OF LIVESTOCK AND POULTRY DISEASES

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Brucellosis Indemnity for Cattle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations governing the payment of indemnities for cattle destroyed because of brucellosis. This action is necessary to bring indemnities paid for such animals into closer correspondence with their fair market values. This action will encourage and insure closer cooperation between livestock owners and the brucellosis eradication program.

EFFECTIVE DATE: August 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. A. D. Robb, USDA, APHIS, VS, Federal Building, Room 805, Hyattsville, Md. 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION: On May 5, 1978, there was published in the FEDERAL REGISTER (43 FR 19402-19403) a notice of proposed rulemaking to amend the regulations governing the payment of indemnities for cattle destroyed because of brucellosis. The proposed regulations would: (1) Increase the indemnity for nonregistered dairy cattle from $50 to $150, (2) increase the indemnity for registered cattle from $100 to $250, and (3) estab-

lish an indemnity rate of $25 for female calves under 6 months of age which are nursed by brucellosis reactor cows at the time such reactors are condemned. A period of 60 days was allowed for submission of comments.

There were 19 written comments received in response to the proposal. Comments were received from national organizations, national breed associations, regional dairymen's associations, State dairymen's associations, State heads of related agencies, and six individuals. All 19 comments approved of the proposal and all 13 of the agencies and organizations commenting specifically approved of the proposed indemnity rates. Of the six individuals commenting, two approved the rates as proposed, two approved the rates, but felt that they should be much higher, and two approved the rates, but thought that the calf indemnity rate should be higher. The higher rates as suggested by some of the individuals commenting have not been adopted because they are not justified on the basis of the current industrywide disparity between the salvage value of cattle and their replacement or true market value. Most of the comments requested that the final rule be published and made effective as quickly as possible. Therefore, the regulations are hereby amended as proposed.

Accordingly, Part 51, Title 9, Code of Federal Regulations, is amended in the following respects:

§ 51.1 [Amended]

1. Section 51.1 is amended by adding new paragraphs (z) and (aa) to read as follows:

* * * * *

(z) *Dairy cattle.* A female bovine of a recognized dairy breed over 20 months of age, which has calved or is within 90 days of parturition and which is a member of a dairy herd used to produce milk for commercial use.

(aa) *Exposed female calf.* A female bovine less than 6 months of age which is nursed by a brucellosis reactor at the time such reactor is condemned.

2. Paragraph (a) of § 51.3 is revised to read as follows:

§ 51.3 Payment to owners for animals destroyed.

(a) *Cattle.*—(1) *Brucellosis reactor cattle.* The Deputy Administrator may authorize the payment of Federal indemnity by the Department to owners whose cattle are destroyed as brucellosis reactors. The indemnity shall not exceed $250 for any registered cattle or $50 for any nonregistered cattle, except that, for nonregistered dairy cattle the indemnity shall not exceed $150, and except that, in Alaska, Hawaii, Puerto Rico, and the Virgin Islands indemnity shall not exceed $250 for any registered cattle or $150 for any nonregistered cattle. Prior to payment of indemnity, proof of destruction shall be furnished to the veterinarian in charge.

(2) *Herd depopulations.* The Deputy Administrator may authorize the payment of Federal indemnity by the Department to any owner whose herd of cattle is destroyed because of brucellosis. The indemnity shall not exceed $250 for any registered cattle or $50 for any nonregistered cattle, except that, for nonregistered dairy cattle the indemnity shall not exceed $150, and except that, in Alaska, Hawaii, Puerto Rico, and the Virgin Islands indemnity shall not exceed $250 for any registered cattle or $150 for any nonregistered cattle. Indemnity payment shall only be made for brucellosis-exposed cattle or for cattle from a herd known to be affected, and only when the Deputy Administrator determines that the destruction of all cattle in the herd will contribute to the brucellosis eradication program. Prior to payment of indemnity, proof of destruction shall be furnished to the veterinarian in charge.

(3) *Exposed cattle.* Except as provided in subparagraph (4) of this paragraph, the Deputy Administrator may authorize the payment of Federal indemnity by the Department to any owner whose cattle are destroyed because of exposure to brucellosis. The indemnity shall not exceed $250 for any registered cattle or $50 for any nonregistered cattle, except that, for dairy cattle the indemnity shall not exceed $150, and except that, in Alaska, Hawaii, Puerto Rico, and the Virgin Islands indemnity shall not exceed $250 for any registered cattle or $150 for any nonregistered cattle. Indemnity payment shall be made only for brucellosis exposed cattle and only when the Deputy Administrator determines that the destruction of such cattle will contribute to the brucellosis eradication program. Prior to payment of indemnity, proof of destruction shall be furnished to the veterinarian in charge.

(4) *Exposed female calves.* The Deputy Administrator may authorize the payment of Federal indemnity to any owner whose exposed female calf or calves are destroyed because of brucellosis. The indemnity for such animals shall not exceed $25 per head. Indemnity payment shall be made only for exposed female calves and only when the Deputy Administrator determines that the destruction of such calves will contribute to the brucellosis eradication program. Prior to payment of indemnity, proof of destruction shall be furnished to the veterinarian in charge.

* * * * *

Because of the urgency involved in eradicating brucellosis and preventing the dissemination of this disease among the livestock in this country, it is essential that these provisions be placed into effect without delay. It is believed that the amendments will expedite the eradication of brucellosis and will protect gains made in the State/Federal cooperative brucellosis eradication program and will, therefore, benefit affected persons. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, good cause is found for making these amendments effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 25th day of July 1978.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring the preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

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

[FR Doc. 78-20961 Filed 7-31-78; 8:45 am]

[3410-37]

CHAPTER III—FOOD SAFETY AND QUALITY SERVICE, MEAT AND POULTRY PRODUCTS INSPECTION, DEPARTMENT OF AGRICULTURE

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS REINSPECTION AND PREPARATION OF PRODUCTS

Nitrates, Nitrites, and Ascorbates (or Isoascorbates) in Bacon—Correction of Effective Date

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Correction of effective date of final rule.

SUMMARY: The effective date of the final rule, titled "Nitrates, Nitrites, and Ascorbates (or Isoascorbates) in Bacon" published in the FEDERAL REGISTER on July 25, 1978 (43 FR 32136), was inadvertently specified as July 24, 1978. It was intended that the effective date be July 25, 1978, the date of publication. Accordingly, the effective date is corrected to read July 25, 1978.

EFFECTIVE DATE: August 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Irwin Fried, Acting Director, Product Labels and Standards Division, Food Safety and Quality Service, U.S. Department of Agriculture,

Room 202, Annex Building, Washington, D.C. 20250, 202-447-6042.

Done at Washington, D.C. on July 28, 1978.

JOSEPH A. POWERS,
Acting Administrator,
Food Safety and Quality Service.

[FR Doc. 78-21426 Filed 7-31-78; 8:45 am]

[3128-01]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION [1]

ADDITIONAL PRICE INCENTIVES FOR TERTIARY ENHANCED RECOVERY TECHNIQUES

Final Rule, Inquiry and Notice of Public Hearing

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule, notice of continuation of rulemaking, request for further comments, and public hearing concerning possible further incentive measures for certain tertiary enhanced recovery projects.

SUMMARY: Effective September 1, 1978, this final rule amends certain provisions of chapter II of title 10 of the Code of Federal Regulations, to implement rules and procedures providing for additional price incentives for the increased production of domestic crude oil through the application of tertiary enhanced recovery techniques. These amendments are being promulgated to implement the decisions set forth in a notice of decision issued by the Federal Energy Administration (FEA) on August 11, 1977 (42 FR 41572, August 17, 1977). In general, these amendments provide that incremental crude oil produced from a qualified and certified tertiary enhanced recovery project may be sold without regard to the ceiling price rules generally applicable to domestic crude oil. The amendments also establish procedures applicable to determinations concerning eligibility for such pricing treatment. Finally, these amendments establish certain rules pertaining to seller certification of crude oil receiving the incentive price and the entitlements treatment of such crude oil.

In addition, by this notice we are advising the public of the continuation of this rulemaking proceeding, for receipt of additional written comments and the presentation of oral statements at a public hearing, concerning the possibility of our adopting certain further incentive measures for tertiary enhanced recovery projects that may require greater or a different form of incentives than those provided in the final rule adopted today. Specifically, we request comments on a proposal to allow a limited category of tertiary projects requiring substantial initial investment and involving high risks to receive higher prices for some amounts of pretertiary or "current" production, to be "paid back" in the prices received for incremental production resulting from the project.

DATES: This final rule is effective September 1, 1978. Further comments on continued matters are due by October 2, 1978, 4:30 p.m.; requests to speak are due by September 8, 1978, 4:30 p.m.

HEARING DATES: *Washington hearing:* September 27 and 28, 1978.

ADDRESSES: All comments and requests to speak to: Public Hearing Management, Economic Regulatory Administration, 2000 M Street NW., Room 2313, Box TF, Washington, D.C. 20461.

HEARING LOCATION: Room 2105, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, 2000 M Street NW., Room 2222A, Washington, D.C. 20461, 202-254-5201.

Rue Dann (Media Relations), Economic Regulatory Administration, 2000 M Street NW., Room 6308E, Washington, D.C. 20461, 202-254-8690.

Edwin Mampe (Office of Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street NW., Room 2304, Washington, D.C. 20461, 202-254-7200.

Rendel Alldredge (Office of Fuels Regulation), Economic Regulatory Administration, 2000 M Street NW., Room 6212E, Washington, D.C. 20461, 202-254-7886.

Cliff G. Russell (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue NW., Room 5138, Washington, D.C. 20461, 202-566-9567.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND AND PURPOSE OF AMENDMENTS

II. AMENDMENTS ADOPTED

A. GENERAL PRICE RULE AND RELATED REQUIREMENTS

1. Incentive price.
2. Qualifying projects—a. In general; b. Existing projects.
3. Incremental crude oil entitled to the incentive price.
4. Certification requirements.
5. Base production control level adjustments; measurement of post-certification production.

B. PROCEDURAL RULES GOVERNING CERTIFICATION

1. General procedures.
2. Particular requirements.
3. Guidelines for applying for certification and for processing applications.

C. RELATED TECHNICAL AMENDMENTS

1. Crude oil seller certifications to first purchaser under 10 CFR 212.31.
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III. CONTINUATION OF RULEMAKING AND REQUEST FOR FURTHER COMMENTS

A. INCREASED PRICES FOR CERTAIN AMOUNTS OF PRETERTIARY OR "CURRENT" CRUDE OIL PRODUCTION FOR CERTAIN HIGH-RISK TERTIARY PROJECTS REQUIRING LARGE INITIAL EXPENDITURES

B. ADDITIONAL COMMENTS ON TECHNICAL MATTERS

IV. COMMENT PROCEDURES

A. WRITTEN COMMENTS

B. PUBLIC HEARINGS

Appendix: General guidelines on tertiary enhanced recovery project review.

I. BACKGROUND AND PURPOSE OF AMENDMENTS

On January 6, 1977, the FEA issued a notice of proposed rulemaking concerning the provision of additional price incentives for the increased production of domestic crude oil through the application of tertiary enhanced recovery techniques (42 FR 2646, January 12, 1977) (hereinafter referred to as the "January notice"). On August 11, 1977, after hearings and receipt of comments on its January notice, the FEA issued a notice of decision, setting forth the basic decisions reached concerning the nature of the tertiary enhanced recovery incentive program to be implemented, and the reasons therefor (42 FR 41572, August 17, 1977) (hereinafter referred to as the "August notice"). In the August notice, the FEA indicated that the decisions set forth therein would be implemented in final regulations to be adopted in the near future.

Effective October 1, 1977, all functions previously performed by the FEA were transferred to the Department of Energy (DOE) pursuant to the Department of Energy Organization Act (DOE Act, Pub. L. 95-91) and Executive Order No. 12009 (42 FR 46267, September 15, 1977). Section 705(b)(1) of the DOE Act provides in part that:

[1] EDITORIAL NOTE: Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Department of Energy.

The provisions of this act shall not affect any proceedings * * * pending at the time this act takes effect before any department, agency, commission, or component thereof, functions of which are transferred by this act; but such proceedings * * * to the extent that they relate to functions so transferred, shall be continued * * *

In addition, by DOE delegation order No. 0204-4, the Secretary of Energy delegated to the Administrator of the Economic Regulatory Administration (ERA) the authority to take such action, including the adoption of rules, as is necessary and appropriate to administer several functions, among which are the allocation and pricing of crude oil and refined petroleum products, pursuant to the provisions of the Emergency Petroleum Allocation Act of 1973 (EPAA, Pub. L. 93-159). Under the authority of the DOE Act and this delegation order, this proceeding has been continued by the ERA.

The basic purpose of the amendments adopted hereby is to incorporate into the regulations the decisions reflected in the August notice, together with certain related procedural and technical amendments necessary to permit the program to be implemented.

The full background of the tertiary enhanced recovery incentive program is set forth in the January and August notices. Therefore, it is not necessary to repeat that information here.

However, we wish to stress a fundamental point made in the August notice—that the program reflected in the amendments adopted today is experimental in nature, and does not necessarily represent a final judgment as to the type of program that will ultimately prove to be the best accommodation of the many competing considerations involved. Although the program reflected in these amendments represents our best efforts to accommodate the many factors involved, it is our intention to review the program in light of the experience gained in administering it, and based upon such experience to revise the program when and where considered necessary to cause it to operate more effectively and efficiently. In this connection, we hereby express our commitment to hold additional public hearings on this program not later than 21 months from the date hereof, and sooner if appropriate. However, as also indicated in the August notice, if any revisions in the basic scope of the current program are proposed and adopted, such revisions will not adversely affect any producer whose application is accepted for processing (as evidenced by formal notice) prior to the issuance of any such proposed amendments.

By this notice we are also announcing our intention to consider whether and under what circumstances a producer undertaking a qualified tertiary enhanced recovery project should be permitted to receive higher prices for some "current" production—i.e., production that occurs after investment in the tertiary project begins but before any incremental tertiary production response occurs—in order to permit adequate capital formation for tertiary projects involving particularly high risks and requiring large initial investments. Any such "up-front" higher prices would have to be offset by a reduction of an appropriate amount in the incentive prices that would otherwise be received on the incremental production resulting from the project. Therefore, we are continuing this rulemaking proceeding and requesting further comment with respect to this issue, as more fully discussed in section III of this notice. We wish to emphasize that, should any such additional provisions be adopted, the criteria adopted would be applied to projects for which certification has already been sought or granted as well as to any new project applications. Therefore, prospective project sponsors should not withhold their applications for certification; rather, they should include with any such application any data they believe justify the grant of higher prices for some pretertiary production on a payback basis.

II. Amendments Adopted

A. General price rule and related requirements

New § 212.78, adopted today, provides generally that first sales of "incremental crude oil" resulting from the implementation (or expansion) of a "qualified tertiary enhanced recovery project" are "not subject to the ceiling price limitations" which would otherwise be applicable to such crude oil under the general pricing provisions of subpart D of part 212 of the mandatory petroleum price regulations. 10 CFR 212.78(a)(1). Section 212.73(a), which is the basic provision establishing the ceiling price rule for domestic crude oil, has also been amended to reflect this as well as other exceptions to the lower tier ceiling price rule.

A "qualified tertiary enhanced recovery project" eligible for the incentive price is defined, as is the "incremental crude oil" from such a project which is entitled to the exempt price. 10 CFR 212.78(c). The definitions of these terms, as well as the express limitations of § 212.78(a)(2), make clear that the project must be certified as eligible for the incentive price, and that the amount of incremental crude oil must be determined pursuant to certification, before any crude oil may receive the incentive price under the general rule of § 212.78(a)(1). The "certifying authority" making final decisions concerning such certifications is the Administrator of the ERA or that officer to whom the Administrator may delegate such functions. 10 CFR 212.78(c).

More specifically:

1. *Incentive price.* For the reasons stated in the August notice, the ERA has determined to permit qualifying incremental tertiary production to receive a market-clearing price, without regard to the ceiling prices which would otherwise be applicable to such crude oil. In this sense, and to this extent only, the prices of such crude oil are "exempt" from ceiling price limitations. As explained in the August notice, tertiary crude oil production has not been exempted by statute from price controls, and the actual first sale price for such crude oil must be included in the statutory weighted average ("composite") domestic crude oil first sale price calculation required by section 8 of the EPAA, as amended.

2. *Qualifying projects*—a. *In general.* As indicated in the August notice, the substantive description of the kinds of tertiary enhanced recovery techniques which may be eligible for the incentive is substantially as proposed in the January notice, with certain minor changes to correct inadvertent omissions. See § 212.78(c). In addition, the definitional provisions now contain an express provision that a technique which is not specifically described, but which the certifying authority determines in any given case to be a tertiary recovery technique consisting of a specific variation of one or more of the listed techniques, may be eligible for the incentive. The purpose of this provision is to permit the certifying authority (i.e., the Administrator of the ERA or his delegatee) to determine that a particular technique which would not otherwise qualify for the incentive simply because it does not meet the strict letter of a definition nevertheless qualifies as a variation of one of the listed techniques.

However, a tertiary enhanced recovery project does not qualify for the incentive merely because it falls within the description of one or more of the defined techniques. Such a project is eligible to receive the incentive only if it is qualified, i.e., "is certified pursuant to (applicable certification procedures) as being uneconomic at the otherwise applicable ceiling prices." 10 CFR 212.78(c) (definition of "qualified tertiary enhanced recovery technique"). As explained in the August notice, all projects must receive this certification of economic eligibility, based upon review of the economics of the particular project, regardless of the technique being employed. Thus, economic qualification (and certification that the project is qualified for

the incentive on economic grounds) is integral to eligibility for pricing under the general rule of § 212.78(a)(1).

b. *Existing projects.* Projects which are initiate prior to the effective date of these regulations, or projects initiated prior to receipt of the certifications required under § 212.78, are not generally entitled to the incentive price. 10 CFR 212.78(b)(1). However, such projects may receive the incentive if the special showing required by § 212.78(b)(2) is made. Such showing requires: (i) An intention to discontinue the project in the absence of the incentive; (ii) that there has been a material change of circumstances since the initiation of the project; and (iii) that the project is certifiable under the general certification procedures of § 212.78(d).

In determining whether an existing project qualifies for certification on economic grounds, such a project "shall be examined prospectively, on the basis of the circumstances existing at the time such certification is sought." 10 CFR 212.78(b)(2)(iii). This means that the certifying authority will generally disregard unrecoverable investment and focus upon the costs of continuing the project. However, if the project does qualify under the restrictive criteria of § 212.78(b)(2), then the producer will receive the full incentive for the incremental crude oil produced from the project.

In connection with existing projects, the definition of "incremental crude oil" has been made more explicit to make clear that it consists of the difference between the amount of crude oil that will be produced as a result of continuation of the project (or of the particular high-cost phase of such project which may be in issue with respect to a particular project) and the amount of crude oil that would be produced from the property or project area from continued maximum feasible production after the point of intended discontinuance if the project (or high-cost phase thereof) were discontinued. For these purposes, maximum feasible production after the point of intended discontinuance of the project (or particular high-cost phase of the project) includes production from any identifiable existing nontertiary technique being employed along with the tertiary technique that would be technically feasible after such discontinuance, regardless of whether continuation of such other production technique would be economically feasible. As in the case of new projects, the ultimate objective is to determine whether the project requires the incentive on economic grounds, and to determine the amount of crude oil that would be lost if the particular incentive for tertiary enhanced recovery projects were not given. For both purposes, existing projects are to be examined prospectively, with a view to the incremental costs of continuing the project and the amount of crude oil to which such incremental costs are attributable. It is not the purpose of the program reflected in the regulations adopted today that the incentive should subsidize production which is not incrementally attributable to the initiation or continuation of a tertiary enhanced recovery project.

Thus, for example, the market price incentive will not necessarily be given to all crude oil production from a property or project area on which the existing tertiary project is being implemented, on the theory that if the incentive is not given all production from that property or project area will cease. Where identifiable nontertiary methods (or low-cost phases of tertiary methods) are being employed in addition to high-cost tertiary methods, the production attributable to such other production methods is not attributable to the incremental costs of continuing the high-cost tertiary method and therefore should not receive the incentive price. If the producer requires relief in order to continue these other forms of production, that relief should be obtained through the exceptions process and not as a result of the tertiary enhanced recovery incentive.

By calculating incremental crude oil in the above manner, existing projects will be treated on a basic parity with new projects. That is, the amount of crude oil incrementally attributable to continuation of the specific tertiary recovery project would receive the incentive price. Of course, if the incentive is given to the existing project, such a project will receive the benefit thereof sooner than a new project, because the incremental crude oil as defined above is likely to include some immediate or near-term post-certification production. It should be noted, however, that calculation of incremental crude oil for existing projects as described above is not the same as simply extending an imputed "nontertiary" decline curve which is "carved out" of the property's actual current decline curve. The latter method would not focus properly upon the ultimate objectives to be accomplished by application of the incentive, as discussed above. Rather, the incentive is given for that crude oil production that would be lost if the particular tertiary enhanced recovery project were not continued.

3. *Incremental crude oil entitled to the incentive price.* In order for crude oil produced from a qualified tertiary enhanced recovery project to receive the incentive price, it must be "incremental" to (i.e., in excess of) that which would have been produced from the property or project area in question in the absence of the project (or project expansion or continuation, as the case may be). "Incremental crude oil" is defined in § 212.78(c), for each of three cases: (a) A new project; (b) an expansion of an existing project; and (c) a continuation of an existing project which would otherwise be abandoned and which qualifies for the incentive under § 212.78(b)(2). The definition has been revised to make clear that, although the amount of incremental crude oil projected to be produced in any given period will be set forth in the certification, actual incremental crude oil entitled to the incentive price in any period is all that in excess of the "nonincremental" production baseline established for that period in the certification. In no event can there be incremental crude oil production entitled to the incentive price prior to the date established in the certification for the commencement of production response to the project.

4. *Certification requirements.* As set forth in the August notice, producers seeking the incentive price must first obtain certification: (a) Establishing that the project is eligible for the incentive as a "qualified tertiary enhanced recovery technique"; and (b) setting forth the amount of incremental and nonincremental crude oil estimated to be produced from the property or project area after initiation of the project. Section 212.78(a)(2) imposes this requirement, as do the relevant definitions of § 212.78)(c). In addition, § 212.78(d)(4) makes clear that a producer may charge a market-clearing price for crude oil only after receipt of, and strictly in accordance with, the required certifications.

The August notice indicated that a producer receiving a project certification would be required to obtain recertification, if in any 18-month period following initial certification the incremental or nonincremental production varied above certain specified thresholds. Upon further consideration, we have determined not to impose any such rigid requirement in the regulations proper, but rather to permit the certifying authority to determine whether to impose any such condition (and the quantitative limits of such conditions, if imposed) on a case-by-case basis in connection with the grant of particular certifications. Our reasons for this decision are as follows:

First, the primary reason that FEA decided to include reference to such a provision in the August notice was to take account of the long leadtimes that may be involved in new tertiary projects, and to assure that any substantial increase in production, not attributable to the tertiary project be-

cause it occurs prior to the production response from such project, is not automatically included as incremental production once the project production response begins. However, upon further consideration of the matter, we have concluded that a fixed and absolute recertification requirement at the levels specified in the August notice might inject an unnecessary and undesirable element of uncertainty into the incentives provided by this program and thus defeat its purpose to stimulate additional high-cost recovery efforts. The concern sought to be addressed could in most cases be dealt with by careful consideration of the application and of predictable increases in production not attributable to the project in establishing the nonincremental production in the certification. (Moreover, any postcertification actions such as "in-fill" drilling not disclosed as part of the project and having the effect of artificially increasing "incremental" production in any period could be treated as evidence of a lack of good faith on the part of the producer sufficient to warrant revocation or modification unless overcome by proof to the contrary.)

A second purpose of the recertification requirement was to provide the opportunity for the ERA to obtain general information as to the accuracy of predicted production responses and better knowledge concerning the reasons for variances in reservoir behavior under tertiary production modes. However, a more direct method of accomplishing this objective is simply to permit the certifying authority to require, in connection with the grant of a certification, that the producer report periodically on the progress of the project and the production from the project area.

Regardless of whether recertification is required, any certification is subject to revocation or modification if it is determined that the producer did not obtain the certification or implement the project in good faith, or that the certification was given on the basis of a material error or omission of fact of which the producer knew or should have known, or that the producer did not adhere to any additional conditions or limitations imposed by the certifying authority in connection with the grant of certification. 10 CFR 212.78(d)(5).

The grounds for revocation or modification reflected in § 212.78(d)(5) are substantially as set forth in the August notice. However, we have determined not to provide as a specific regulatory ground for revocation or modification the failure of the producer to implement the project at the precise times and to the full extent represented in the producer's application for certification. Rather, we have determined to permit the certifying authority to impose any conditions of this kind in connection with the grant of certification, where and to the extent the certifying authority determines it to be appropriate in the context of a given application. We must reserve to the certifying authority the power to impose a condition of this kind, with perhaps an appropriate flexibility factor permitting deviations up to specified limits, since the grant of certification and the timing of incremental production as established in the certification will to some degree be sensitive to the costs and timing of project implementation. Where such a condition is imposed and is breached (without prior approval from the certifying authority), such an event would permit the revocation or modification of the certification, if the certifying authority determined such action to be appropriate.

Thus, the regulations adopted today are oriented toward providing greater flexibility on the part of the certifying authority to prescribe appropriate conditions geared to the particulars of a given project while attempting to avoid general regulatory uncertainty for producers. We believe they strike a reasonable balance between the need to stimulate bona fide tertiary projects and the need to assure the rational and effective administration of the program.

5. *Base production control level adjustments; measurement of post-certification production.* The August notice recognized that the scope of a project may or may not coincide with the extent of the property on which such a project is being implemented. It set forth that, where the project does not coincide with the property, eligibility for the incentive and the amount of incremental and nonincremental production would be calculated on the basis of the "project area" (generally determined on an "affected well" basis). The reasons for this approach are set out in the August notice.

Regardless of whether the project coincides with the property, it may be necessary to effect certain "base production control level" ("BPCL") adjustments, because the certified nonincremental decline curve for the property or project area may not be identical with the property's applicable BPCL under §§ 212.72, 212.75, or 212.76. Of course, the nature of the adjustment must be different, depending upon whether the project does or does not coincide with the property. Also, if the project does not coincide with the property, it will be necessary to accomplish the separate measurement of actual production from the project area and from the remainder of the property.

Therefore, in § 212.78(f) we have prescribed BPCL adjustments applicable to each situation, and we have prescribed separate measurement of production where the project area does not coincide with the property.

Where the project involves an entire property, the property's BPCL will be adjusted, effective on the date of the initial incremental production response (as established in the certification), in such fashion that the amount of old crude oil from that property for any period thereafter reflects the same proportion to total nonincremental production in that period as the amount of old crude oil produced from the property during the 12-month period immediately preceding the month in which the initial tertiary production response begins bears to the total amount of crude oil produced from the property during such 12 month period. Thus, in effect, the adjusted BPCL will be the amount of old crude oil deemed to be included in the nonincremental production during any period, as calculated in the preceding manner. 10 CFR 212.78(f)(1). Because the amount of nonincremental production will presumably decrease over time, this formula would ordinarily result in automatic decreases in the BPCL. However, the ratio of old crude oil to total nonincremental production will be constant from period to period. Apart from this "automatic" adjustment, there will thereafter be no adjustments to the BPCL under any other provision of the regulations.

We believe that the foregoing method has the virtue of relative simplicity in calculating the BPCL.

Where the project does not involve the entire property, effective on the date of the initial incremental production response the entire property's BPCL is to be assigned to the unaffected portion of the property. Production to be credited against this BPCL will consist of: (a) Actual production from the unaffected portion; plus (b) "imputed" production equal to the amount of nonincremental production from the project area as established in the certification for the period concerned, or the amount of actual production from the project area (if less than the nonincremental amount certified for that period). Thus, the nonincremental production from the project area will be priced on the basis of whether it is (when added to actual production from the unaffected portion) above or below the entire property's existing BPCL. This BPCL may be adjusted from time to time in accordance with the provisions of present § 212.76. See generally § 212.78(f)(2).

It is to be noted that the foregoing method of calculating the BPCL and crediting production against such

BPCL for a property only a portion of which is affected by the project should serve as a check against unduly pessimistic nonincremental production estimates. Thus, although a low nonincremental decline curve may result in more incremental production for any period, it will also mean that a smaller proportion of other production from the property is eligible to receive "new" crude oil prices.

More generally, it should be observed that these BPCL rules are applicable "except as otherwise prescribed by the certifying authority" in connection with any grant of certification. 10 CFR 212.78(f). Thus, the certifying authority may prescribe a different method of BPCL calculation in any given case. The purpose of this provision is simply to recognize that any given application for certification may present unusual or anomalous circumstances, in which the general BPCL rules prescribed herein would permit the frustration or abuse of the purposes of the tertiary recovery incentive program. For example, a situation may be presented in which the amount of old crude oil produced from a unitized property, as calculated under § 212.75, reflects a depression of production below maximum feasible levels, as a result of which the general rule of § 212.78(f)(1) would tend to understate the amount of old crude oil included in the nonincremental production. As another example, the application of the general rule of § 212.78(f)(1) to a nonunitized property may in a given case result in a substantial distortion of the relative amounts of "old" and "new" crude oil that would actually be produced from the nonincremental production in future years if no BPCL adjustment were made. In such a case, the virtues of simplicity inherent in § 212.78(f)(1) might be overshadowed by the need to avoid distorted results, and the certifying authority might prescribe continued application of the general BPCL rules of §§ 212.72, 212.75, and 212.76 to the certified nonincremental production.

In general, it is the purpose of the ERA in administering these provisions to leave the producer in the same position with respect to the pricing of nonincremental production as such producer would have experienced in the absence of this particular incentive. Thus, any "current cumulative deficiency" affecting the calculation of amounts of old crude oil in the nonincremental production would generally not be eliminated; nor would the amount of stripper well crude oil or "imputed" new crude oil as determined under present § 212.75 generally be reduced, except where not reducing such amounts may result in an understatement of old crude oil as previously discussed or where any increases in amounts of new or stripper well crude oil are in fact attributable to the tertiary project. In short, it shall be the objective of the certifying authority, in prescribing any variations of the general BPCL rules set forth in § 212.78(f), to assure that the tertiary enhanced recovery incentive is given fully, but only, to the incremental tertiary crude oil production.

B. PROCEDURAL RULES GOVERNING CERTIFICATION

The procedures to be followed in seeking and obtaining certification consist of three types: (1) Those of a general nature; (2) those particular requirements which are intertwined with the substantive determinations and conditions applicable to these certifications; and (3) those set forth in guidelines which are not mandatory or binding upon ERA but which are intended to provide guidance concerning the submission and handling of applications. The first category is set forth in part 205 of the regulations, as amended hereby. The second category is reflected in § 212.78, as added hereby. The third category is reflected in guidelines which are published today as an appendix to new § 212.78.

1. *General procedures.* Section 212.78(d) prescribes the requirement that the producer obtain the necessary certifications. Section 212.78(d)(1) establishes that the general procedures of subpart G of part 205, chapter II of title 10 of the Code of Federal Regulations (§§ 205.90 et seq.) shall govern applications for certification, except as otherwise provided in § 212.78.

We have made necessary changes to subpart G of part 205 to reflect the procedures described hereinafter.

A signed application for certification is to be filed with the Administrator of the Economic Regulatory Administration, to the attention of the office responsible for the processing of such applications. 10 CFR 205.92(d). The general filing requirements for any petition or application filed under subpart G of part 205 are also applicable to applications for certification under § 212.78. See §§ 205.91, 205.93, and 205.94 (which are not amended hereby). Section 205.92(d) also provides that formal notice of acceptance of the application will be given to the applicant, if upon initial review the application is determined to be sufficiently complete and adequate to commence processing.

The review process will then commence, and will be conducted generally as set forth in the guidelines issued today. Such guidelines are discussed briefly in an ensuing section of this notice.

At the conclusion of the review process, the certifying authority will issue (and publish, except to the extent proprietary matters are contained in the order) a proposed decision and order, either granting or denying certification. The proposed decision and order will specify the amounts of incremental and nonincremental crude oil, and will also contain any conditions or other requirements to be observed by the applicant during the postcertification period (other than those specifically set out in the regulations themselves). A period for the filing of any objections to the proposed decision and order is provided. If no objections are filed within the prescribed time (30 calendar days), the certifying authority may consider the decision and order to be final and proceed to sign it, except in any case in which the certifying authority decides otherwise on his own motion. Procedures are also provided for the consideration of timely objections, and decisions in response thereto.

The above general procedures are provided in new § 205.98. As provided in § 205.90(b), § 205.98 applies specifically to applications for certification of tertiary projects, and as to such applications it supplants §§ 205.95 and 205.96, which generally provide the evaluation of and decisions concerning other types of petitions. Section 205.98(d) provides that an appeal of any final decision and order (as opposed to a proposed or modified proposed decision and order) of the certifying authority may be made to the DOE's Office of Hearings and Appeals in accordance with § 205.97. However, § 205.98(d) also precludes appeal by a person who did not object to the certifying authority's proposed decision and order, and it also precludes any party from raising grounds on appeal that were not raised as objections to the proposed decision and order.

2. *Particular requirements.* Section 212.78 expressly confers certain collateral powers upon the certifying authority, which are in a sense procedural but which directly relate to the implementation of the substance of § 212.78. Among the more important of these is that the certifying authority is given the express power, in the context of his decisions on particular applications, to further define the terms and requirements contained in § 212.78, to the extent that such power is exercised in a manner not patently inconsistent with the terms of § 212.78 itself. 10 CFR 212.78(d)(2).

Another such power is the authority to prescribe additional requirements and conditions, not inconsistent with the terms of § 212.78, in connection with a grant of certification. 10 CFR 212.78(d)(3). A failure to adhere to such requirements and conditions may

be grounds for revocation or modification of a certification, along with the other grounds discussed previously. See § 212.78(d)(5).

The certifying authority is given other similar powers, such as the power to alter the BPCL rules as discussed previously, and the grant of such powers is not to be construed as a limitation upon such of the certifying authority's powers as must necessarily be implied in order to accomplish the purposes of the program. Nevertheless, they are illustrative of the fact that other requirements may evolve from the certification process.

The purpose of these provisions is simply to recognize that § 212.78 is intended to create an organic and experimental program, only the outlines of which are capable of being set forth in the regulations proper at this time. They are intended to provide a reasonable flexibility in the implementation of the current program, and to provide an adequate vehicle for the accumulation of additional experience with tertiary enhanced recovery. These provisions are thus intended to permit or provide the basis for further detailed development of the program, while avoiding anomalies or abuses in applying the present program.

3. *Guidelines for applying for certification and processing applications.* Section 212.78(e) expressly provides that the ERA may from time to time publish, or otherwise make available to the public, additional instructions or guidelines concerning procedures and criteria to be followed in applying for certification and reviewing applications.

As indicated previously, we have developed and are publishing today, as an appendix to this notice, a preliminary set of guidelines for the assistance of applicants and cooperating agencies. Such guidelines will undoubtedly be subject to considerable revision with the accumulation of experience in implementing this program. Nevertheless, we believe that the provision of guidelines should assist in making the process more effective.

However, as expressly set forth in § 212.78(e), these and any future guidelines are not to be considered mandatory upon the ERA, nor to create any individual substantive or procedural rights against ERA or DOE. Thus, for example, no applicant or other person is considered to have a right to a State agency review of his application, or a right to a full-dress hearing on any State agency or ERA staff or other recommendations to the certifying authority, simply because the guidelines suggest that "internal processing" of applications will ordinarily follow a particular path.[2] Nor does the discussion of probable criteria to be applied necessarily mean that the ERA will always apply these criteria, and no others. It is the policy objective of the ERA to be as open as possible about these matters, consistent with the legitimate need to protect proprietary information and the integrity and efficiency of the deliberative process. However, it is not the intention of the ERA that it should be limited, by virtue of any guidelines, from proceeding in the manner best suited to the objectives to be attained, consistent with applicable regulations and due process.

As is evident from the guidelines, as well as from the inherent nature of the determinations required under the regulations themselves, the ERA will be required to apply a substantial degree of expertise in analyzing the applications for certification. It is the ERA's desire to bring to bear upon these analyses the best expertise available, although the ERA is unable at this time to predict the frequency and number of applications that it will receive in response to its program. In light of these considerations, the ERA may from time to time engage the individual services of the best available experts and consultants, on a temporary and intermittent basis, to work together with ERA staff members in reviewing and analyzing the applications.

As also indicated in the August notice, the existing expertise of appropriate State and Federal regulatory agencies will be utilized as fully as possible, consistent with the willingness and ability of the particular agency to assist ERA in making the necessary determinations. ERA will be making the final certification decisions, however. Although the relationship between ERA and other cooperating agencies is not being formalized in the regulations at the present time for reasons set forth in the August notice, the ERA has been working and will continue to work closely with such agencies in formulating procedures for obtaining their assistance in making the necessary determinations.

C. RELATED TECHNICAL AMENDMENTS

1. *Crude oil seller certifications to first purchaser under 10 CFR 212.131.* In keeping with the general requirement that producers and resellers of crude oil certify to their purchasers the composition (i.e., pricing tiers) of the crude oil sold to such purchasers, we are adopting amendments requiring seller certification of the amounts of "incremental tertiary crude oil" (i.e., "incremental crude oil" as determined under § 212.78) sold to such purchasers. 10 CFR 212.131(a) (2), (a)(3), and (b)(1). However, in view of the possible fluctuation of the BPCL under § 212.78(f), particularly for projects involving an entire property, the seller certification provisions as amended today do not permit a "one-time" seller certification for properties with respect to which the seller has certified any amount of crude oil as "incremental tertiary crude oil." 10 CFR 212.131(a)(2) and (a)(3).

In addition, § 212.131(a)(4) has been amended to make clear that the "one-time" certification procedure applicable to "exempt" crude oil is not applicable to incremental tertiary crude oil. As previously indicated, incremental tertiary crude oil is not exempt from price regulation in the same sense as stripper well crude oil or Naval Petroleum Reserves. Moreover, tertiary crude oil entitled to the incentive price is not based upon the property from which the crude oil is produced, but rather upon the amount of crude oil produced from a particular property (or project area) within a certain time period.

For the above reasons, we have provided that incremental tertiary crude oil shall be certified by the seller in each sale.

2. *Entitlements treatment for tertiary crude oil under 10 CFR 211.67.* We are also adopting today the necessary amendments to the entitlements regulations to provide for treatment of incremental tertiary crude oil on a parity with other "uncontrolled" domestic crude oil. 10 CFR 211.66(h)(5), 211.67 (b)(2), (g)(2), (i)(4), and (l).

These amendments are regarded as technical in nature, because incremental tertiary crude oil will presumably demand the world market price for crude oil of the same grade and quality, and should therefore be treated similarly for entitlements purposes. Most of the comments received in response to the January notice supported this approach. Those which did not cite the administrative difficulties of providing for an additional category of crude oil for entitlements purposes. However, as the January notice observed, the FEA had then already provided for inclusion of market-price domestic crude oil, such as stripper well crude oil, in the entitlements program, and similar provision for "tertiary" crude oil appeared to pose no new or different issues. Subsequent experience has indicated no substantial administrative difficulties in incorporating such crude oil into the entitlements program. Therefore, as a matter of conforming the treatment of incremental tertiary crude oil to that provided other domestically-produced crude oil having a market-clearing

[2] The certifying authority's determinations, proposed or final, are not considered to be formal adjudications or determinations on the record within the meaning of any provisions of DOE regulations that might otherwise require the establishment of fixed and formalized detailed procedures.

price, we are adopting the amendments described above.

III. Continuation of Rulemaking and Request for Further Comments

A. Increased prices for certain amounts of pretertiary or "current" crude oil production for certain high-risk tertiary projects requiring large initial expenditures

In the August notice FEA recognized the extreme difficulty of reconciling all of the competing considerations involved in determining the proper scope of the tertiary recovery incentive program. Among the most difficult of these issues was the question, raised in the January notice of proposed rulemaking and commented on extensively, of whether the incentive price should be limited to incremental tertiary production only, whether some amount of production occurring prior to the tertiary production response should receive higher prices in order to permit adequate capital formation and/or reduce the risks for projects requiring heavy "front-end" investment.

We have decided not to deviate from the decision announced in the August notice that incentive prices should be tied to incremental production resulting from the tertiary project, at least in this experimental stage of the program. However, we remain concerned about whether limiting the incentive price to incremental production at the time it is produced will provide adequate incentives for those projects that are very high-risk and that require very substantial investment or expenditures prior to any production response. Therefore, we have decided to reopen on a limited basis the decisions set forth in the August notice by proposing that, in the case of certain high-cost, high-risk projects, the producer would be allowed to "release" some current production to higher prices, provided this amount is "paid back" in the form of foregoing the incentive price for incremental production until the payback has been completed. We are continuing this rulemaking proceeding to obtain further writtern comments on this proposal, and we have also scheduled an additional public hearing for this purpose. The relevant dates and locations are set forth in the "Dates" and "Addresses" sections of this notice.

The general proposal and comments requested are discussed briefly below. However, we wish to emphasize that the pendency of this proceeding should not deter prospective applicants from applying for project certification in accordance with the regulations adopted today. If changes of the kind outlined in the proposal discussed below are adopted pursuant to this continued proceeding, they will be applied equally to all consenting applicants that qualify under the criteria ultimately adopted, regardless of whether the application has already been submitted or a certification has been granted by the time any such changes are adopted. In no event will any producer whose application for certification has been accepted be adversely affected or prejudiced by the submission of such application. Moreover, although the regulations adopted today provide higher prices only for incremental crude oil at the time it is produced, prospective applicants are invited to include with their application any data that they believe would justify allowing this incentive to be earned early on current production on a payback basis.

Specifically, we propose for further consideration the following program, to work in conjunction with the program reflected in the regulations adopted today.

An applicant for the incentive would be eligible to receive higher prices for some amounts of pretertiary or "current" crude oil production if: (i) The tertiary recovery technique being employed in the project is of a kind generally involving both heavy preproduction expenditures and a high degree of risk of nonproduction; and (ii) the applicant demonstrates that the particular project cannot be financed other than through the release of some current production to higher price levels. If the applicant qualifies under these criteria, then we would allow a release of some current crude oil production in an amount and up to a price sufficient to return some but not all of the expenditures in the current period. For example, we might allow in 1 month or quarterly period the release of a number of barrels of current crude oil production to a price sufficient to permit the recovery of some percentage (e.g., 50 percent) of the incremental tertiary expenditures made in that period or a prior period.

The amount of additional current crude oil dollars generated in this fashion would be tied to incremental expenditures for the tertiary project in a given period. They would also relate to and operate in conjunction with the basic market price incentive for incremental tertiary production in the following two ways. First, the amounts thus "advanced" to the producer through the release of current production would not exceed the value of the revenues the producer expects to receive by selling the incremental tertiary crude oil at market prices. Second, the amount of additional current revenues generated through this release mechanism would be required to be "paid back" from incremental production, if and when it occurs. That is, the prices of the incremental crude oil would be held below the market price—possibly at a level equal to the price ceiling to which such incremental crude oil would have been subject without the market price incentive—until such time as the dollars advanced through the release mechanism are paid back to the economy and the consumers. Thereafter, incremental production would be permitted to receive a market-clearing price. However, the certifying authority might in given cases and where warranted defer or spread out the payback period.

Thus, the program envisaged would not supplant the market price incentive for incremental crude oil, but it would operate to "advance" to qualifying projects a portion of the anticipated revenues from the basic incentive, to be "repaid" if and when incremental production occurs. Our purpose in giving further consideration to this additional facet of the basic incentive program is both to minimize the risks of those technologies that are relatively unproven and involve heavy preproduction expenditures and to permit the acquisition of capital necessary to undertake such projects. As we have stated, we remain concerned that a purely incremental approach may not adequately address the need for capital formation in all cases.

It should be noted that, in order to qualify for "front-end" money under the alternative under consideration, a project would have to meet two basic criteria. First, it would have to involve a technique that is generally considered to involve both heavy preproduction expenditures and a high risk. Thus, projects involving techniques that are either relatively common and lower risk or do not involve substantial preproduction expenditures would be categorically excluded. We have tentatively concluded that the techniques to be excluded on these grounds are: Steam drive injection, cyclic steam injection, alkaline or "caustic" flooding, carbon dioxide augmented waterflooding, immiscible carbon dioxide displacement, and polymer augmented waterflooding. The other tertiary enhanced recovery techniques defined in the regulations adopted today—miscible fluid displacement, micellar/emulsion flooding, and in situ combustion—would qualify in principle for "front money" treatment.

However, a second criterion is that a producer applying a technique that qualifies in principle for "front money" treatment would also have to show that in fact the project could not be financed but for the release of some current production. That is, the producer would have to show that he does not have and cannot obtain the capital

necessary for the project in the absence of the release mechanism. Thus, even though the technique may be high-risk and entail substantial early investment, if the producer (meaning the working interests collectively) has or can obtain sufficient capital to undertake the project, then the release mechanism would not be applied to that project. The purpose of this requirement is simply to limit "front money" benefits to those who could not otherwise generate capital, and to deny these particular benefits to those who have the capital but for various reasons may choose not to invest it in the particular tertiary project.

We request comments upon the practicability and desirability of extending the incentive in the manner described above. If, after consideration of further comments received in this continued proceeding and other information available to us, we determine to adopt some such additional incentive, we may adopt the above proposal or any variation thereof we determine to be appropriate. We consider that any variation of the above proposal, either extending or further limiting or conditioning the basic concept of providing current dollars to underwrite current investment in tertiary crude oil production, is within the scope of this continued proceeding. We also consider that it is within the scope of this proceeding to accomplish such adjustments to or curtailments of the basic incremental crude oil price incentives as may be appropriate in light of any "front money" incentives ultimately adopted. However, it is not our purpose at this time, in this continued rulemaking proceeding, to reopen the question of whether incentive prices should be provided for current production without any payback requirement. In no event will any applicant whose application is accepted for processing under the regulations adopted today receive less incentive than is provided for under the present regulations, if such applicant qualifies for the incentive under the present criteria.

Without limiting the scope of all relevant considerations, we particularly request comments upon the following matters:

1. The techniques listed above as categorically not qualifying for "front money" benefits are so listed because, in our judgment, they do not as a class generally involve both a high degree of unknowns (risk) and the requirement for heavy expenditures well in advance of a production response. Could there nevertheless be some individual projects that might employ these techniques and both be high-risk and involve substantial investment lead-times? If so, would administrative ease and certainty still justify excluding techniques by type, or should we adopt some economic rules of thumb applicable to all techniques?

2. Whatever the techniques that qualify in principle, under the proposal the producer must also show, in order to receive "front money", that he could not otherwise finance the project. Thus, a producer who has or can obtain the necessary capital would not receive this benefit, even if he chooses to utiiize that capital elsewhere because of the risks involved in the tertiary project. Should we nevertheless provide some "front money" in such cases, in order to reduce the risks to acceptable proportions and thus encourage investment in the tertiary project? Or would doing so unduly distort the producer's choice between the tertiary project and other productive uses of his capital and thus promote inefficiencies? Could we avoid this distortion by providing "front money" in an amount merely calculated to maintain neutrality between investments? Should it make a difference whether the alternative investments are in energy production or in nonenergy related fields?

3. Under the proposal, the amount of "front money" provided would not be equal to the total investment made, because to underwrite the entire investment with current released crude oil dollars would effectively remove all risk from the producer. Would a failure to underwrite all or the great bulk of the required expenditures prevent adequate capital formation by producers who are not otherwise in a position to generate capital internally? That is, would such producers be able to borrow the remainder of the required capital? In general, what percentage of the "front money" should we provide through the release mechanism? If we were to provide some "front money" for producers who have the capital but would otherwise commit it to other, nontertiary projects, or who can spread the risk among several tertiary projects, should the amount of such "front money" be less than for those who could not otherwise obtain the capital or who cannot spread the risks?

4. Under the proposal, after the "payback" from incremental tertiary production of the earlier released crude oil dollars the producer would be permitted to receive and retain a market-clearing price for the remainder of his incremental tertiary crude oil. Would such treatment be appropriate in those cases, if any, in which the provision of substantial amounts of "front money" reduced the risks to a "normal" level? Or, if any such cases were presented, should we provide the "front money" in lieu of, rather than in addition to, the market price incentive for incremental production?

If we determine to adopt some method of providing "front money," we will amend the regulations adopted today to reflect this policy. However, in keeping with the experimental nature of this program and the desire to maintain reasonable flexibility in its implementation, it is possible that any specific substantive criteria for applying the "front money" incentive will initially be reflected in nonregulatory decisional standards and guidelines rather than in the regulations proper.

B. ADDITIONAL COMMENTS ON TECHNICAL MATTERS

We have attempted to incorporate in the amendments adopted today the major technical changes that appear to be necessitated by implementation of the substantive incentive provisions adopted in these regulations. Thus, we have addressed the effect of the incentive upon BPCL provisions, entitlements provisions, and seller certification provisions. However, we recognize the possibility that the regulations adopted today may not address all of the related technical provisions, and also that these technical amendments may have unintended consequences. Therefore, we are requesting written comments concerning these technical matters, to be submitted to the location indicated in the "ADDRESSES" section of this notice.

We reserve the right to make such changes to the regulations, either prior to or after but effective as of the effective date of these regulations, as are necessary to accomplish the purposes of the regulations adopted hereby and to avoid any unintended collateral consequences resulting from these amendments.

IV. COMMENT PROCEDURES

A. WRITTEN COMMENTS

Interested persons are invited to participate in this continued proceeding by submitting data, views or arguments with respect to the issues set forth in section III of this notice. Your comments should be identified on the outside envelope and on documents submitted with the designation "Additional Price Incentives for Tertiary Enhanced Recovery Techniques," Box TF. You should submit 15 copies. All comments received will be available for public inspection in the DOE Reading Room 2107, Federal Building, 12th Street and Pennsylvania Avenue NW., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. We will consider all comments received by October 2, 1978, 4:30 p.m., and all relevant information before taking further action on the continued matters.

Any information or data considered by the person furnishing it to be confi-

dential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. PUBLIC HEARINGS

1. *Request procedure.* The times and places for the hearings are indicated in the "DATES" and "ADDRESSES" sections of this notice. If necessary to present all testimony, hearings will be continued at 9:30 a.m. of the next business day following the first day of the hearing.

Any person who has an interest in the subject matter of this continued proceeding, as set forth in section III of this notice, or who is a representative of a group or class of persons that has an interest in this proceeding, may make a written request for an opportunity to make oral presentation. Requests should be submitted by September 8, 1978, 4:30 p.m. In your request you should describe your interest; if appropriate, state why you are a proper representative of a group of class of persons that has such an interest; and give a concise summary of the proposed oral presentation and a phone number where we may contact you through the day before the hearing.

If we select you to be heard, we will tell you before 4:30 p.m., September 14, 1978. You must submit 100 copies of your statement to the address given above for requests to speak, for the location concerned, before 4:30 p.m., on September 22, 1978.

2. *Conduct of the hearings.* We reserve the right to select the persons to be heard at these hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

We will designate a DOE official to preside at the hearings, which will not be judicial or evidentiary-type in nature. Questions may be asked only by those conducting the hearings, and there will be no cross-examination of persons presenting statements. Any decision made by the DOE with reapect to the subject matter of the hearings will be based on all information available to the DOE. AT the conclusion of all initial oral statements, 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.

You may submit questions to be asked of any person making a statement at the hearings. Such questions must be submitted to the address indicated above for requests to speak before 4:30 p.m., September 19, 1978. If you wish to ask a question at the hearings, you may submit it, in writing, to the presiding officer. We will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

The presiding officer will announce any further procedural rules needed for the proper conduct of the hearing.

We will have transcripts of the hearings made and we will retain the entire record of the hearings, including the transcripts, and make them available for inspection at the Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

In the event that it becomes necessary for the DOE to cancel a hearing, we will make every effort to publish advance notice in the FEDERAL REGISTER of such cancellation. Moreover, we will notify all persons scheduled to testify at the hearings. However, it is not possible to give actual notice of cancellations or changes to persons not identified to DOE as participants. Accordingly, persons desiring to attend a hearing are advised to contact DOE on the last working day preceding the date of the hearing to confirm that it will be held as scheduled.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, parts 205, 211 and 212 of chapter II, title 10, Code of Federal Regulations are amended as set forth below, effective September 1, 1978.

Issued in Washington, D.C., July 26, 1978.

DAVID J. BARDIN,
Administrator, Ecomomic Regulatory Administration.

PART 205—ADMINISTRATIVE PROCEDURE AND SANCTIONS

1. Section 205.90 is amended, to read as follows:

§ 205.90 Purpose and scope.

(a) *In general.* This subpart establishes the procedures for the filing of such other applications, petitions, or requests as may be required or permitted from time to time under the provisions of this chapter, but (except to the extent otherwise provided in this subpart) does not supplant any procedures presently provided for in this part, including petitions to the Office of Hearings and Appeals filed in accordance with subpart R of this part. This subpart specifically provides for applications by motor gasoline retail sales outlets in accordance with the provisions of § 211.106 and petitions to use multiple allocation fractions in accordance with the provisions of § 211.10(b).

(b) *Petitions under § 212.78.* This subpart also establishes general procedures for applications for certification of tertiary enhanced recovery projects in accordance with the provisions of § 212.78. However, §§ 205.95 and 205.96 shall not be applicable to such applications. Such applications shall be governed exclusively by § 205.98, in lieu of §§ 205.95 and 205.96.

2. Section 205.92 is amended by revising paragraph (a) and adding a new paragraph (d), to read as follows:

§ 205.92 Where to file.

(a) All applications, petitions or requests not described in other subparts of this part shall be filed in accordance with any ERA regulations or forms and instructions that relate thereto. If no such regulations or forms and instructions have been issued by the ERA, all such applications, petitions or requests shall be filed with the ERA office specified in § 205.13, at the address provided in § 205.12.

* * * * *

(d) An application for certification of a tertiary enhanced recovery project in accordance with the provisions of § 212.78 shall be filed with the Administrator, Economic Regulatory Administration, Department of Energy, Attention: Manager, Tertiary Enhanced Recovery Program, Office of Fuels Regulation. If the application is determined to be sufficiently complete and adequate to commence processing, the ERA shall provide formal notice in writing to the applicant that such application has been accepted for processing.

3. A new § 205.98 is added, to read as follows:

§ 205.98 Decision and review concerning applications under § 212.78.

(a) Upon consideration of the application for certification and other relevant evidence received or obtained during the proceeding, the ERA, in the person of the certifying authority identified in § 212.78, shall issue a proposed decision and order. Such proposed decision and order shall contain the relevant findings and conclusions, and shall be served upon the applicant and published by notice in the FEDER-

AL REGISTER, except that any matters contained in such proposed decision and order which are exempt from disclosure under 5 U.S.C. 552(b)(4) shall be deleted from the published decision and order.

(b) Any interested person may file a written objection to such proposed decision and order: *Provided,* That such objection is received by the certifying authority within 30 calendar days from the date of publication in the FEDERAL REGISTER of the proposed decision and order. If no objection is received within that period, the certifying authority may consider such proposed decision and order to be final, and may sign such order, unless such certifying authority determines otherwise on his own motion. No certification under § 212.78 shall be considered final until the certifying authority signs a final decision and order to that effect and such final decision and order has either not been appealed within the time prescribed under § 205.97 or has been affirmed on appeal.

(c) Any objection shall be signed by the party submitting it, shall state the grounds upon which objection is made, and shall set forth any evidence substantiating such objection. The certifying authority shall consider any timely objection, and may in his discretion provide for formal or informal written submissions or oral presentations in connection therewith. Upon review of the matters submitted, the certifying authority may proceed to issue a final decision and order in the form proposed, issue a modified proposed or final decision and order, withhold further action upon the matter until other pertinent matters are resolved or clarified, or take such other action as is appropriate under the circumstances. The certifying authority shall notify the interested parties of the action taken and shall serve a copy of any final or modified proposed decision and order upon the party or parties.

(d) Appeal of a final decision and order issued under this section may be taken in accordance with the provisions of § 205.97: *Provided,* That no person who failed to make objection to a proposed decision and order as provided in this section may appeal a final decision and order issued in substantially the form proposed: *And provided further,* That a person making objection to a proposed decision and order may not raise any new grounds on appeal if the final decision and order is issued in substantially the form proposed.

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

4. Section 211.66 is amended by revising paragraph (h)(5) to read as follows:

§ 211.66 Reporting requirements.

* * * * *

(h) *Monthly report.* On or prior to the fifth day of each month, commencing with the month of August 1978, each refiner shall file with the ERA a report certifying the following information as to the second month prior to the month in which the report is filed:

* * * * *

(5) The weighted average costs for that refiner (including transportation costs to the refinery) of old oil, upper tier crude oil, ANS crude oil, stripper well crude oil (as defined in part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), other domestic crude oils the first sale of which is exempt from the provisions of part 212 of this chapter, and imported crude oil included in that refiner's crude oil receipts. For refiners required to file transfer pricing report forms under § 212.84 of this chapter, the weighted average cost of imported crude oil reported under this subparagraph should be derived from the landed costs set forth in such reports.

* * * * *

5. Section 211.67 is amended by revising paragraphs (b)(2), (g)(2), (i)(4), and (l) to read as follows:

§ 211.67 Allocation of domestic crude oil.

* * * * *

(b) *Required purchase of entitlements by refiners.* * * *

(2) To calculate the number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for purposes of the definition of national domestic crude oil supply ratio in § 211.62, paragraph (b)(1) of this section and paragraph (c) of this section, each barrel of old oil shall be equal to one barrel of deemed old oil and each barrel of upper tier crude oil shall consitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of part 212 of this chapter for that month, less the sum of 21 cents and such weighted average cost per barrel to refiners of upper tier crude oil, and the denominator of which is the entitlement price for that month.

* * * * *

(g) *Exchanges of crude oil.* * * *

(2) Subject to the provisions of paragraph (g)(3) of this section, volumes of domestic crude oil deemed to be retained by a refiner under the provisions of paragraph (g)(1) above shall be (i) included in that refiner's crude oil receipts at the time the crude oil acquired pursuant to the related exchange or purchase and sale transaction constitutes a crude oil receipt under § 211.62 of this subpart to that refiner, or (ii) certified as old oil, upper tier crude oil, ANS crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), or any other domestic crude oil the first sale of which is exempt from the provisions of part 212 of this chapter, as the case may be, under the provisions of § 212.131 of part 212 when the crude oil acquired pursuant to the related exchange or purchase and sale transaction is sold to another firm.

* * * * *

(i) *Issuance and transfer of entitlements.* * * *

(4) The price at which entitlements shall be sold and purchased shall be fixed by the ERA for each month and shall be the exact differential between the weighted average cost per barrel to refiners of old oil and such weighted average cost of imported crude oil, ANS crude oil, stripper well crude oil (as defined in part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of part 212 of this chapter, less 21 cents, such costs to be equivalent to the delivered costs to the refinery.

* * * * *

(l) *Certification by nonrefiners.* Within twenty-eight (28) days following each month, commencing with the month of January 1978, each firm other than a refiner that has delivered crude oil to a refiner for processing for the account of such firm pursuant to a processing agreement in that month shall certify to that refiner the respective volumes of and that firm's costs for old oil (separately identifying any California lower tier crude oil), upper tier crude oil (separately identifying any California upper tier crude oil), ANS crude oil, stripper well crude oil (as defined in part 212 of this chapter), incremental tertiary crude oil (as

determined pursuant to § 212.78), other domestic crude oils the first sale of which is exempt from part 212 of this chapter, and imported crude oil contained in the crude oil so delivered to that refiner.

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Section 212.73(a) is amended to read as follows:

§ 212.73 Lower tier ceiling price rule.

(a) *Rule.* Except as provided in § 212.74 with respect to new crude oil; except as provided in § 212.75 for certain crude oil produced from unitized properties; except as provided in § 212.78 for incremental crude oil produced from qualified tertiary enhanced recovery projects; and except as provided in subpart C of this part for exempt crude oil, no producer may charge a price higher than the lower tier ceiling price for any first sale of domestic crude oil.

* * * * *

7. A new § 212.78 is adopted, to read as follows:

§ 212.78 Incremental crude oil produced from qualified tertiary enhanced recovery projects.

(a) *Rule.* (1) Notwithstanding the provisions of § 212.73(a), and subject to the procedures and limitations hereinafter provided in this § 212.78, first sales of incremental crude oil resulting from the implementation or expansion of a qualified tertiary enhanced recovery project are not subject to the ceiling price limitations of this subpart.

(2) No domestic crude oil shall be eligible for pricing in accordance with paragraph (a)(1) of this section, unless the producer has obtained the required certifications pursuant to paragraph (d) of this section, and unless such crude oil is sold in accordance with the determinations and conditions of such certifications.

(b) *Applicability of rule to existing tertiary enhanced recovery projects.* (1) Except as provided in subparagraph (2) of this paragraph (b), only crude oil which is produced from a qualified tertiary enhanced recovery project initiated after the effective date of this section and after receipt of the required certifications, or crude oil produced from a qualified expansion, initiated after the effective date of this section and after receipt of the required certifications, of a previously existing tertiary enhanced recovery project, may qualify for pricing in accordance with paragraph (a) of this section. For purposes of this paragraph (b), a project or expansion is initiated at the time of the first expenditure or incurrence of a binding obligation for capital necessary for the project or expansion.

(2) Incremental crude oil produced from a tertiary enhanced recovery project, or expansion thereof, which was initiated prior to the effective date of this section or prior to receipt of the required certifications, may qualify for pricing in accordance with paragraph (a) of this section only if:

(i) The producer affirms that he intends to discontinue the project (or the particular high-cost phase of the project) in the absence of permission to price production therefrom in accordance with paragraph (a) of this section, because continuation of the project (or the particular high-cost phase) would be uneconomic at the otherwise applicable ceiling price;

(ii) There has been a material change of circumstances since the time that the project or expansion was initiated; and

(iii) The project is certified under the criteria and pursuant to the procedures provided in paragraph (d) of this section. For purposes of determining eligibility for certification, an existing project shall be examined prospectively, on the basis of the circumstances existing at the time such certification is sought.

(c) *Definitions.* For purposes of this section—

A "qualified tertiary enhanced recovery project" is a project for the enhanced recovery of crude oil, to the extent that such project involves the application of one or more of the following techniques and is certified pursuant to paragraph (d) of this section as being uneconomic at the otherwise applicable ceiling prices:

(1) Miscible fluid displacement, i.e., an oil displacement process in which gas or alcohol is injected into an oil reservoir, at pressure levels such that the injected gas or alcohol and reservoir oil are miscible. The process may include the concurrent, alternating, or subsequent injection of water. The injected gas may be natural gas, enriched natural gas, a liquefied petroleum gas slug driven by natural gas, carbon dioxide, nitrogen, or flue gas. Gas cycling, i.e., gas injection into gas condensate reservoirs, is not a miscible fluid displacement technique nor a tertiary enhanced recovery technique within the meaning of this section.

(2) Steam drive injection, i.e., the continuous injection of steam into one set of wells (injection wells) or other injection source to effect oil displacement toward and production from a second set of wells (production wells).

(3) Microemulsion, or micellar/emulsion, flooding, i.e., an augmented waterflooding technique in which a surfactant system is injected in order to enhance oil displacement toward producing wells. A surfactant system normally includes a surfactant, hydrocarbon, cosurfactant, an electrolyte and water, and polymers for mobility control.

(4) In situ combustion, i.e., combustion of oil in the reservoir, sustained by continuous air injection, to displace unburned oil toward producing wells.

(5) Polymer augmented waterflooding, i.e., augmented waterflooding in which organic polymers are injected with the water to improve areal and vertical sweep efficiency.

(6) Cyclic steam injection, i.e., the alternating injection of steam and production of oil with condensed steam from the same well or wells.

(7) Alkaline (or "caustic") flooding, i.e., an augmented waterflooding technique in which the water is made chemically basic as a result of the addition of alkali metals.

(8) Carbon dioxide augmented waterflooding, i.e., injection of carbonated water, or water and carbon dioxide, to increase waterflood efficiency.

(9) Immiscible carbon dioxide displacement, i.e., injection of carbon dioxide into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained.

(10) Specific variations of any of the above-listed general techniques, as determined in any particular case by the certifying authority.

"Certifying authority" means the Administrator, Economic Regulatory Administration, Department of Energy, or any officer of the Department of Energy to whom the Administrator has delegated such functions.

"Incremental crude oil" (resulting from the implementation of a qualified tertiary enhanced recovery project) means, in the case of a new project, the amount of crude oil which is or will be produced as a result of such a project and which is in excess of the amount of crude oil ("nonincremental crude oil") which could have been produced from the property or project area through continued maximum feasible production from methods of production employed on the property prior to the receipt of the certifications provided for in paragraph (d) of this section. As applied to expansion of existing tertiary enhanced recovery projects, the term means the amount of crude oil which is or will be produced as a result of the expanded project and which is in excess of the amount of crude oil ("nonincremental crude oil") which could have been produced from the property or project area through continued maximum feasible production from the methods of production employed on the property prior to the receipt of the certifications provided for in paragraph (d) of this section. As applied to an existing

project within the meaning of paragraph (b)(2) of this section, the term means the amount of crude oil which is or will be produced as a result of the continuation of the project or of the particular high-cost phase of the project and which is in excess of the amount of crude oil ("nonincremental crude oil") which could have been produced from the property or project area through continued maximum fessible production from methods of production (other than the tertiary method, or that phase of such method, that would be discontinued in the absence of the incentive) employed on the property prior to receipt of the certification provided for in paragraph (d) of this section. The actual amount of incremental crude oil in the case of any particular project shall be the amount produced from the property or project area during the period in question which is in excess of the amount of the nonincremental crude oil for that period as determined in the certification issued pursuant to paragraph (d) of this section: *Provided,* That no incremental production shall be deemed to occur prior to the date established in such certification for the commencement of incremental production.

(d) *Certification requirements and procedures.* A producer desiring to initiate a tertiary enhanced recovery project, or to expand an existing project, shall obtain final certification that the project (or expansion) is a qualified tertiary enhanced recovery project within the meaning of paragraph (c) of this section, including a determination that the project would not be economic at the otherwise applicable ceiling prices, prior to charging any price in excess of the ceiling price which would otherwise be applicable under any other provision of this subpart. In addition, such producer shall obtain final certification of the amount of incremental and nonincremental crude oil which will result from the implementation (or expansion) of such project, prior to charging any price in excess of the ceiling which would otherwise be applicable to such crude oil under any other provision of this subpart.

(1) *General procedures.* The producer shall submit a signed "Application for Certification of Tertiary Enhanced Recovery Project" to the certifying authority. The producer shall have the burden of establishing entitlement to certification, and shall submit all data, required by these regulations or guidelines issued pursuant thereto or reasonably demanded by the certifying authority, necessary to enable the certifying authority to determine whether it can make the necessary findings and certifications. Except as otherwise provided in this section, the general procedures of subpart G of part 205 of this chapter (§ 205.90 *et seq.*) shall apply to applications for certification submitted under this section.

(2) *Determinations to be made.* In determining whether and to what extent to certify a project, the certifying authority shall determine: (i) Whether the project qualifies as a qualified tertiary enhanced recovery project within the meaning of paragraph (c) of this section; and (ii) the amount of incremental and nonincremental crude oil (as defined in paragraph (c) of this section) which will result from such project. The amount of incremental and nonincremental crude oil shall be expressed in terms of both the total amount of incremental and nonincremental recovery over the life of the project (or such shorter period as the certifying authority determines to be appropriate) and as a series of time-phased (per month or quarter, or such other interval as the certifying authority determines to be appropriate) incremental and nonincremental production estimates, commencing with the time that the project is estimated to begin producing incremental crude oil. The certifying authority will not certify a project as a qualified tertiary enhanced recovery project unless it is determined that, under all the circumstances, the producer could not reasonably be expected to undertake (or expand or continue) the project in the absence of an ability to charge prices for the expected incremental crude oil in accordance with paragraph (a) of this section, because the project would not be economic under the otherwise applicable ceiling price. Except as otherwise provided in this section, the certifying authority may, in the course of making these determinations, further define the terms used in this section.

(3) *Conditions and limitations of certifications.* In addition to the conditions and limitations set forth elsewhere in this section, the certifying authority may, in its discretion and in connection with a grant of certification, prescribe such other conditions and limitations upon such certification as are consistent with the requirements of this section and are determined to be reasonably necessary, either to assure that the tertiary enhanced recovery incentive prices provided in this section are not being or will not be applied in a manner which would frustrate the purposes of this section, or to promote the effective administration of these provisions or of the tertiary enhanced recovery incentive program generally.

(4) *Producer pricing obligations.* A producer may charge the price permitted for incremental crude oil under paragraph (a) of this section only after receipt of and strictly in accordance with the terms of a final certification. In particular, the producer may not treat any crude oil as incremental crude oil until the date established in the certification for the commencement of incremental production and until the amount of crude oil produced during a particular period exceeds the amount of nonincremental crude oil established for that period in the certification.

(5) *Revocation or modification of certifications.* A final certification shall be subject to revocation or modification, at any time and either retroactively or prospectively or both, as and to the extent that the ERA determines to be appropriate:

(i) If the producer does not obtain certification in good faith or implement the project in good faith; or (ii) if certification was given on the basis of a material error or omission of fact of which the producer knew or should have known, or to which the producer contributed; or (iii) if the producer does not adhere to the requirements of this section or any additional conditions and limitations which the certifying authority may prescribe pursuant to subparagraph (3) of this paragraph (d) of this section.

(e) *Additional procedures and criteria.* The ERA may from time to time publish, or otherwise make available to producers and the public, additional instructions or guidelines setting forth procedures to be followed and criteria to be applied in obtaining or making the determinations provided for in paragraph (d) of this section; *Provided, however,* That such instructions or guidelines shall not be mandatory or binding upon the ERA or the certifying authority, and shall not create or enlarge any procedural or substantive rights against the ERA.

(f) *Base production control level adjustments; measurement of post-certification production.* Notwithstanding any other provision of this part, and except as otherwise prescribed by the certifying authority pursuant to paragraph (d)(3) of this section, a producer receiving certifiction shall adjust the base production control level for the property (including any unitized property for which a unit base production control level has been established) on which the tertiary enhanced recovery project is being implemented, and shall measure production from such property, as follows:

(1) *Projects involving an entire property.* Where the project is determined to involve or affect the entire property, upon commencement of the production of incremental crude oil (as determined in the certification) the property's base production control level shall be deemed to be the same proportion to the total amount of non-

incremental crude oil (as such nonincremental crude oil is determined in the certification for the period concerned) as the amount of old crude oil produced from such property in the 12-month period immediately preceding the month in which incremental crude oil production commences bears to total crude oil produced from that property during the same 12-month period. The property's base production control level shall not thereafter be adjusted except as provided in the preceding sentence, i.e., except as the nonincremental crude oil production from the property (as determined in the certification) may vary from period to period.

(2) *Projects involving a portion of a property.* Where the project is determined to involve or affect only a portion of a property (including a unitized property for which a unit base production control level has been established), upon commencement of the production of incremental crude oil (as determined in the certification) the unaffected portion of the property shall receive the entire property's base production control level existing at the time incremental crude oil production commences. The amount of crude oil production to be credited against such base production control level shall be the sum of (i) the separately measured actual production from the unaffected portion of the property, plus (ii) the amount of nonincremental production (as established in the certification) for the project area for the period concerned (or the actual production from the project area for that period, if less than said nonincremental production). The base production control level may thereafter be adjusted as provided in § 212.76. It shall be a condition of any certification applying to only a portion of a property that the producer shall undertake to measure actual production from the affected portion and the unaffected portion separately, by such means as the certifying authority may from time to time prescribe either at the time of certification or at any time thereafter.

8. Section 212.131 is amended by revising paragraphs (a)(2)(i), (a)(3)(i), (a)(4), and (b)(1) to read as follows:

§ 212.131 Certification of domestic crude oil sales.

(a) (1) *Stripper well properties.* * * *

(2) *Non-stripper well properties.* (i) With respect to each sale of crude oil from a property which has not qualified as a stripper well property, the producer shall certify in writing to the purchaser the number of barrels, if any, of—

(A) Lower tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(B) Upper tier ("new") crude oil (separately identifying any California upper tier crude oil, as defined in § 211.62 of part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), excluding any crude oil transported through the trans-Alaska pipeline;

(C) Crude oil transported through the trans-Alaska pipeline; and

(D) Incremental tertiary crude oil as determined pursuant to § 212.78.

With respect to any property (except a property with respect to which any amount of crude oil is or at any time has been certified by the producer as incremental tertiary crude oil) which has not qualified as a stripper well property, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(2)(i) may be complied with by a one-time certification to the purchaser of the property's monthly base production control level determined pursuant to § 212.72, whether based upon production and sale of crude oil in 1972 or upon production and sale of old crude oil in 1975, and, if applicable, either the property's adjusted base production control level determined pursuant to § 212.76 or the information necessary to compute such adjusted base production control level pursuant to § 212.76: *Provided, however,* That the producer shall certify to the purchaser the amounts and gravity of California lower tier crude oil and California upper tier crude oil in each sale.

* * * * *

(3) *Unitized properties.* (i) With respect to each sale of crude oil from a unitized property for which the producer has determined a unit base production control level, the producer shall certify in writing to the purchaser the number of barrels of—

(A) Lower tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(B) Upper tier ("new") crude oil, if any (separately identifying any California upper tier crude oil, as defined in § 211.62 of part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), including either "actual new crude oil" or "imputed new crude oil" determined pursuant to § 212.75(b), but excluding any crude oil transported through the trans-Alaska pipeline;

(C) Crude oil transported through the trans-Alaska pipeline, if any;

(D) Increment tertiary crude oil determined pursuant to § 212.78; and

(E) Imputed stripper well crude oil, if any, determined pursuant to § 212.75(b).

With respect to any unitized property (except such a property with respect to which any amount of crude oil is or at any time has been certified by the producer as incremental tertiary crude oil) for which the producer has determined a unit base production control level, and from which crude oil is only sold to one purchaser, the requirements of this paragraph (a)(3)(i) may be complied with by a one-time written certification to the purchaser of—

(A) The monthly unit base production control level, determined pursuant to § 212.75(b);

(B) The number of barrels of "imputed new crude oil," if any, determined pursuant to § 212.75(b), excluding any crude oil transported through the trans-Alaska pipeline;

(C) The number of barrels of crude oil transported through the trans-Alaska pipeline, if any; and

(D) The number of barrels of imputed stripper well crude oil, if any, determined pursuant to § 212.75(b): *Provided, however,* That the producer shall certify to the purchaser the amounts and gravity of California lower tier crude oil and California upper tier crude oil in each sale.

* * * * *

(4) *Other domestic crude oils the first sale of which is exempt from this part.* (i) With respect to each sale of crude oil exempt from the provisions of this part, other than crude oil produced from a stripper well property, the producer shall certify in writing once to each purchaser of crude oil produced and sold from that property that the first sale of crude oil produced and sold from that property is exempt from the provisions of this part.

(ii) For purposes of this paragraph (a)(4), domestic crude oil the first sale of which is exempt from the provisions of this part includes U.S.-owned petroleum sold by the Secretary of the Navy under the Naval Petroleum Reserves Production Act of 1976 (Pub. L. 94-258); but domestic crude oil the first sale of which is exempt from this part does not include incremental tertiary crude oil determined pursuant to § 212.78.

* * * * *

(b)(1) Each seller of domestic crude oil, other than a producer of domestic crude oil covered by paragraph (a) of this section, shall, with respect to each sale of domestic crude oil other than

an allocation sale pursuant to § 211.65 of part 211, or a sale in which no volumes of domestic crude oil are deemed to have been transferred pursuant to § 211.67(g) of part 211, certify in writing to the purchaser the respective volumes of and respective per barrel prices for the—

(i) Lower-tier ("old") crude oil (separately identifying any California lower tier crude oil, as defined in § 211.62 of part 211 of this chapter, and the gravity in degrees API of such California lower tier crude oil at the time of the sale);

(ii) Upper-tier ("new") crude oil (separately identifying any California upper tier crude oil, as defined in § 211.62 of part 211 of this chapter, and the gravity in degrees API of such California upper tier crude oil at the time of the sale), exclusive of any crude oil transported through the trans-Alaska pipeline;

(iii) Crude oil transported through the trans-Alaska pipeline;

(iv) Stripper well crude oil;

(v) Incremental tertiary crude oil; and

(vi) Other domestic crude oils the first sale of which is exempt from the provisions of this part—

included in the volume of domestic crude oil so sold. The certification shall also contain a statement that the price charged for the domestic crude oil is no greater than the maximum price permitted pursuant to this part.

General Guidelines on Tertiary Enhanced Recovery Project Review

I. Introduction

The purpose of these guidelines is to advise crude oil producers, cooperating State and Federal agencies, and the general public as to the procedures and criteria which the Economic Regulatory Administration (ERA) of the Department of Energy will generally apply in determining whether individual tertiary enhanced recovery projects qualify for incentive pricing under 10 CFR 212.78.

These guidelines are issued pursuant to, and subject to the limitations of, 10 CFR 212.78(e). They are not to be construed as mandatory upon the ERA, nor do they confer or enlarge any rights, procedural or substantive, against the ERA. They are intended to be informational in nature.

Nor should these guidelines be considered a full statement, either of the ERA's tertiary enhanced recovery program or of all of the procedures applicable to particular applications for the tertiary enhanced recovery incentive price. Applicants and other parties must consult and adhere to all applicable regulations, including (but not necessarily limited to) §§ 212.78 and 205.90 et seq. of Title 10 of the Code of Federal Regulations. For further information concerning the tertiary enhanced recovery program, see the notice of final rulemaking concerning "additional price incentives for tertiary enhanced recovery techniques," issued by ERA concurrently with the issuance of these guidelines (43 FR ——, ————, 1978), and the sources cited therein.

Finally, these guidelines are subject to revision from time to time, as experience acquired by the ERA in implementing and administering the tertiary enhanced recovery program may dictate. Although the ERA will attempt to publish any substantial revisions, the published guidelines may not always reflect any recent changes. Therefore, applicants should confirm that they have the most recent guidelines, and otherwise inform themselves as to current ERA procedures, by contacting the Manager, Tertiary Enhanced Recovery Program, Office of Fuels Regulation, Economic Regulatory Administration.

II. General

The Tertiary Enhanced Recovery Program (TERP) provides for the granting of a market-clearing price for incremental crude oil produced from a certified tertiary enhanced recovery project.

TERP projects will be certified by the ERA if, upon review of individual project applications for the incentive, it is found that the project:

1. Will apply bona fide "tertiary" techniques (including micellar/emulsion flooding, miscible fluid displacement, continuous or cyclic steam drive injection, in situ combustion, polymer augumented waterflooding, and other methods of recovery defined in the regulations (10 CFR 212.78)); and

2. Would not be economically feasible at the ceiling prices which would, in the absence of the incentive price, otherwise be applicable to the incremental crude oil production.

In general, for a new TERP project, incremental crude oil production is that amount of production from the property or project area above that which would have occurred had the TERP project not been undertaken. For an expansion of a previously existing TERP project, incremental crude oil production is generally that amount of production from the property or project area above that which would have been produced had the expansion not been undertaken. For a qualifying continuation of a previously existing project, incremental crude oil production is generally that amount of production from the property or project area above that which would have occurred had the particular tertiary recovery project been discontinued.

The burden is upon the applicant to demonstrate both the amount of incremental production attributable to the project and also that the project is a bona fide tertiary enhanced recovery technique qualifying for the incentive on economic grounds.

III. Project Application

Each TERP certification process begins with an application to the Economic Regulatory Administration, Department of Energy, by the project sponsor-operator. Although rigid adherence to a particular format is not required, the application generally must contain the information specified below. Moreover, processing of the application would be facilitated if such information is organized into the following five categories: (1) General project description; (2) technical characteristics; (3) forecasts of production; (4) work plan and financing schedule; and (5) economic feasibility analysis.

Some of the information contained in any given TERP project application may be regarded as proprietary information. In such case, the producer should observe the filing requirements of 10 CFR 205.9(f) as incorporated in 10 CFR 205.91(a). Broadly, this means that applicants should prepare and submit the application in two copies, one of which (the "confidential" copy) contains all information and the other of which (the "nonconfidential" copy) deletes the information claimed to be proprietary.

Specific Information Required [3]

(1) General project description:

[3] The itemization of data provided here may not be exhaustive of all the information which may be necessary in a given case. In general, the applicant should affirmatively provide all information reasonably relevant to the determinations to be made, whether or not specifically described herein. ERA also recognizes that certain information either may not be available or may not be necessary in a given case. Where the applicant believes that this is the case with respect to a particular application, he should affirmatively so state and set forth the reasons for his belief. Of course, ERA reserves the right not to accept an application for processing if it concludes that such information is necessary to permit proper analysis of the application.

Further, although the applicant should follow the format set forth herein, he is encouraged, in addition, to describe his position concerning the relevant determinations in narrative fashion, with cross-references to the data contained in the format where appropriate.

Applicants are advised to reflect acquaintance with technical literature on the subject of enhanced oil recovery methodology, technical discussions, case history reports, screening methods for type selection, and cost/price evaluations that have been published. The following listed organizations and agencies have published studies or surveys concerning this subject:

Society of Petroleum Engineers of AIME.
Interstate Oil Compact Commission.
National Petroleum Council.
Federal Energy Administration.
Energy Research and Development Administration.
Gulf University Research Consortium.
Office of Technology Assessment, Congress of the United States.

● Location: State, county, field, reservoir, and project bounds (affected wells).
● Acreage: Property and project area.
● Structure of working interests.
● Production history:
● History of primary, secondary, and prior tertiary recovery operations.
● Extent of current development.
● Status of wells: Producers, injectors, disposal wells, temporary abandonment;
● General geological formation:
● Reservoir characteristics: Thickness, percentage of oil saturation, average depth of production zone.
● Quantity and quality of oil in place.
● Environmental assessment:
● Incremental impact of incentive.
● Tertiary recovery method proposed: Method description, rationale of choice, planned starting date, and source of additive materials.
● Base production control level (BPCL):
● Specific regulatory provisions under which BPCL was established, and when—
(2) Technical characteristics:
● Identification: State, district, region, basin and county(ies). Field, I.D. reservoir I.D. and formation depth—subsurface and subsea.
● Geological characteristics:
Lithology—Sandstone (consolidated, silty, calcarious, shaly, or other materials, describe).
Carbonate (limestone, dolomite, granular, vuggy oolitic or other, describe).
Stratigraphy—Massive, stratified, lenticular, fractures and faulting, heterogeneity, continuity, and complexity.
● Maps: Location map, field or unit showing oil, water and gas contacts, location of TERP operation, which wells are producers, injectors or observers in the operation, typical well-log, cross-section map if significantly dipping or with lateral heterogeneity, isopach and permeability feet map if project area's heterogeneity is significant.
● Reservoir rocks and rock-fluid systems:

Thickness—gross and net feet, dip in degrees.
Temperature.
Porosity—weighted average and distribution.
Permeability—absolute horizontal weighted average and distribution.
Water saturation, residual—relative permability of oil at this saturation.
Oil saturation, residual —relative permeability of water at this saturation.
Sketch of relative permeability curve.
Pressure—reservoir and bubble-point.
Formation volume factor.
Saturation—oil, water, and gas; percent pore volume.
Oil in place—current and per acre foot of net pay.
Original oil in place.
Solution gas/oil ratio and producing gas/oil ratio.
Reservoir's gas gravity and viscosity.
Stock tank oil gravity and viscosity and reservoir oil viscosity.
Salinity of connate, produced and injected water.
Any special comments relating to the project reservoir that are appropriate.

● Development history: for each recovery mechanism—primary, secondary, and tertiary enhanced recovery.
Year started, well spacing, and pattern, acres per producing well, number of producing wells in project, number of injection wells in project.
Producing mechanism or type of enhanced recovery method, acres in operation, whether TERP is a pilot or full scale project.
● Reservoir history and production operations for each recovery mechanism:

Oil production—gross bbls and stock tank bbls/acre foot.
Oil production expected at end of primary, secondary, and tertiary phases.
Bottom-hole completions used on producers and injectors.
If work-overs or stimulation treatments regularly applied, cite and explain method and treatment.

(3) Forecasts of production:
● Description of forecasting method and basis for method.
● Graphic representation of BPCL and future levels of production.
● Forecasting of BPCL and other production without TERP (monthly or quarterly for the life of the project).
● Forecasting of future production with TERP (monthly or quarterly for the life of the project)—

Total of property area.
Total of project area (affected wells).
Ranges of potential variations.

● Assessment of technical uncertainties:

Probabilities concerning forecast values.
Anticipated process efficiency of proposed TERP method.
Quantity and costs of injection materials.
Timing of production responses.

● Description of technical risks:

Potential for methodology failure.
Margin of error of estimated values and assumptions.
Likelihood of irreversible damages to the reservoir.

(4) Work plan and financing schedule:
● Injection considerations: Injection patterns and area, preflush schedule, volume and concentration of materials, volumes and type of mobility buffer, if applicable, miscibility with reservoir fluids, driving fluid type and concentration, maximum pore volume, etc.
● Flooding procedures: Design of system, types and volumes of materials, method of injection, etc.
● Special considerations for thermal projects: Presoak requirement, cycle length, compression levels, steam requirement, fuel sources, water supply source, air pollution control, waste water disposal, burn area (if in situ combustion), etc.
● Time schedule of overall work performance and budgetary requirements (including cost-incurrence schedule).
● Time schedule of equipment installations and capital investment.
● Time schedule of injection operations and operating cost estimations.
● Time schedule of TERP production operations and operating cost estimations.
● Time schedule and engineering design for field treatment, separation, and volume recording of fluids production and costing requirements.
● Detailed analyses of administrative and other overhead costs, including (for purposes of general information) R. & D. costs.
● Time schedule and cost analyses for other special requirements—i.e., environmental impact assessment, water supply, waste disposal, air pollution control, etc.
● Compliance with State requirements and environmental regulations.
● Records which producer will keep and maintain concerning investment (timing and amount) and amounts and method of determining incremental production.
(5) Economic feasibility analysis:
● Itemized cost analysis and time schedule for the investment plan.
● Description of rationale and basis for computing the risks.
● Projected costs and revenues:
● Without the incentive price.
● Without the TERP project.
● With the TERP project.
● Best case, worst case, and most likely case concerning incremental production response.
● With the incentive price:
● Best case, worst case, and most likely case concerning incremental production response.
● Analysis of internal rate of return based on:
(a) Applicable ceiling prices.
(b) Market level price for incremental crude oil.
● Other economic uncertainties.

IV. Submission of Application

The application, including parts (1), (2), (3), (4), and (5), as described in the previous section, should carry a cover page with applicant's name and authorized signature and be submitted to the following address:

Administrator, Economic Regulatory Administration, Department of Energy, Washington, D.C. 20461, Attention: Manager, Tertiary Enhanced Recovery Program, Office of Fuels Regulation.

Upon receipt of the application, the Office of Fuels Regulation will determine the adequacy and completeness of the application and its conformity with specified information requirements. If the application is determined to be adequate and complete, the ERA will provide formal notice to the applicant that such application has been accepted for processing. The relevant cooperating State or Federal agency will be asked to review some or all of parts (1), (2), (3), and (4) of the application and to provide ERA with certain findings and recommendations pertinent to each particular case. Where there is no relevant cooperating agency with respect to the property in question, the ERA will perform these analyses in the first instance, or make other appropriate provision for accomplishing such analyses.

V. Review and Evaluation by State or Federal Regulatory Agency

The cooperating regulatory agency will be asked to review the materials contained in parts (1), (2), (3), and (4) of the application. This review process should be accomplished as quickly as is possible consistent with the need for meaningful review.

The main purposes of securing State or other Federal agency review are to obtain the agency's views or findings on such particular matters as:

(1) Comparison and validation of data, and the interpretation thereof, in the project application with those in agency records concerning reservoir characteristics, well and completion counts, production histories, oil in place, etc.

(2) Assuring that the proposed project has, can or will conform to State regulations on legal, environmental and production matters.

(3) Estimates of recoverable and unrecoverable reserves with and without TERP.

(4) Acceptability and appropriateness of the applicant's analytical, forecasting and technical risk calculating methodology.

(5) Adequacy or redundancy and appropriateness of timing for major equipment installations relative to production forecasts.

(6) Sufficiency, redundancy and operational efficiency of proposed injection methods (size, concentration, schedule, compression, sweeping efficiency, etc.)

(7) Potential side or residual effects of project on oil in place and on reservoir formation.

In these matters the cooperating agency may contact the applicant directly to obtain needed additional information or clarification, provided that the ERA, in the person of the Manager, Tertiary Enhanced Recovery Program, is advised of such contacts and of the response given. In general, the agency should feel free to contact the Manager at any time concerning any questions it may have. In addition, the ERA, through the Manager, may communicate comments and questions to such agency. In the absence of a compelling need not to disclose some or all of the substance of such communications, the Manager will undertake to advise the applicant and any other relevant party of such communications.

After the conclusion of its examination, the agency should forward its views on the above matters to the Economic Regulatory Administration, DOE, to the attention of the manager.

VI. Analysis and Evaulation by ERA

ERA's analysis and evaluation includes analysis of the cooperating agency's views and an evaluation of all parts of the application, including in particular an assessment of part (5) of the application to determine the soundness of the applicant's economic analysis and to determine the economic feasibility of the project and the need for the incentive price. Specifically, the following analyses may be included in the ERA's evaluation process, either singly or in combination:[4]

(1) Cost analysis of proposed project that includes:

(a) Field development costs.
- Drilling and completion.
- Workover and conversion.
- Recompletion.

(b) Equipment costs.
- Well, lease and field producing equipment.
- Environmental pollution control equipment.

(c) Injection material cost.

(d) Operating and maintenance costs.

(e) Overhead costs.[5]
- Operating overhead.
- Investment overhead.

(2) Cash flow analysis: On the basis of the applicant's investment plan and potential crude oil prices, total expenditures and total revenues, both with and without the incentive, would be calculated and the cash flow developed for each year through the project life.

(3) Real rate of return analysis: Though the rate of return analysis will not necessarily be used as the sole basis for a TERP price incentive determination, the real discounted cash flow rate of return would generally be employed as a reference for judging incentive needs. Annual net earnings would generally be calculated based on the anticipated revenue minus relevant costs.

(4) Risk and sensitivity analysis: In order to take into account the risk involved in a TERP project, the ERA will analyze the risks and incorporate such analysis in its determination concerning whether to grant the incentive. The risk calculation may be incorporated by adjusting costs of production or projected amounts of production, by adjusting the rate of return required in order for the project to be economic, or in any other fashion determined to be appropriate. Of course, the risk factors will be accounted for only once. The risk analysis will generally be based upon the technical, cost and production information contained in the application, as such information may be modified or adjusted as a result of the review process. In all cases the applicant has the burden of supporting his own risk analysis.

The basic data for the above analyses should be furnished by the applicant as described in section III(5). ERA will conduct an evaluation of the applicant's analyses and determine the reasonableness of the approach and assumptions the applicant has employed, and may also undertake an independent analysis.

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[4] The list of possible analyses sketched below does not mean that all or any one of these approaches will be followed in a given case, or that some other analysis not itemized herein will not be used. It is the intent of the certification process generally to permit an applicant to attempt to demonstrate that a particular analysis should be utilized, as most closely corresponding to the realities of his situation. ERA will apply that analysis which is most appropriate under the particular circumstances.

[5] Overhead costs may not be considered, unless and to the extent that it is shown that failure to consider such costs would substantially understate the costs incrementally attributable to enhanced recovery operations.

[3128-01]

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

Production and Sale of "Imputed Stripper Well Crude Oil" From Unitized Properties

AGENCY: Econonmic Regulatory Administation, DOE.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration ("ERA") of the Department of Energy ("DOE") hereby amends the Mandatory Petroleum Price Regulations with respect to determining volumes of "imputed stripper well crude oil" from unitized properties. This amendment provides that, with respect to unitized properties for which a unit base production control level is established on or after August 1, 1977, the volume of crude oil eligible to be sold each month at exempt prices as imputed stripper well crude oil is determined on the basis of the ratio (over the 12-month period immediately preceding the establishment of a unit base production control level) of the number of barrels of crude oil produced from all participating stripper well properties to the total number of barrels of crude oil produced and sold during that period from all participating properties, including stripper well properties, or on the basis of the average monthly production of stripper well crude oil from all participating properties during the 12-month period immediately preceding establishment of a unit base production control level for the unitized property, whichever volume is greater.

EFFECTIVE DATE: September 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Deanna Williams (DOE Reading Room), Department of Energy, 12th and Pennsylvania Avenue NW., Room 2107, Washington, D.C. 20461, 202-566-9161.

Ed Vilade (Media Relations), De-

partment of Energy, 12th and Pennsylvania Avenue NW., Room 3104, Washington, D.C. 20461, 202-566-9833.

Ed Mampe (Office of Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street NW., Room 2304, Washington, D.C. 20461, 202-254-7200.

Everard A. Marseglia, Jr. (Office of General Counsel), Department of Energy, 12th and Pennsylvania Avenue NW., Room 5134, Washington, D.C. 20461, 202-566-9565.

SUPPLEMENTARY INFORMATION:

I. Background.
II. The existing regulation.
III. Proposed amendments.
IV. Amendments adopted.

I. Background

On February 1, 1976, the Federal Energy Administration ("FEA") promulgated 10 CFR 212.75 (41 FR 4931, February 3, 1976). In general, § 212.75 provided that once a unitized property has been formed, and production patterns have been significantly altered, a "unit base production control level" ("unit BPCL") must be established and the unitized property must be treated thereafter as a single property for determining volumes of lower tier, upper tier, and "imputed stripper well" crude oil. To eliminate the disincentive to enter into a unitized property which might have faced producers of previously qualified stripper well properties, § 212.75 provided for a volume of "imputed stripper well crude oil" to be sold from the unitized property each month once a unit BPCL had been established. Specifically, the rule provided that where a previously qualified stripper well property was unitized with other, nonstripper well properties, as of the date that a unit BPCL was established a volume of crude oil equal to the average monthly volume of crude oil produced from all participating stripper well properties during the 12-month period immediately preceding the establishment of a unit BPCL could be sold each month as stripper well crude oil. Inasmuch as the stripper well property exemption was repealed by the Energy Policy and Conservation Act ("EPCA", Pub. L. 94-163), effective February 1, 1976, crude oil produced and sold from a stripper well property, including "imputed stripper well crude oil", was subject to the upper tier ceiling price rule (41 FR 4931, February 3, 1976).

On October 29, 1976, FEA adopted amendments to the price regualtions, effective September 1, 1976, to implement section 121 of the Energy Conservation and Production Act ("EPCA", Pub. L. 94-385), which provided an exemption from first sale price controls for crude oil produced and sold from a stripper well property. At the same time, FEA amended § 212.75 to provide that volumes of imputed stripper well crude oil could be sold from a unitized property each month at exempt prices (41 FR 48319, November 3, 1976).

Comments were received in connection with that rulemaking suggesting that the intent of the Congress in exempting stripper well property crude oil from first sale price restrictions and the policy of FEA not to discourage participation in unitized properties by producers of stripper well properties would be better served by an additional amendment to § 212.75 so as to provide that where production from a unitized property increased as a whole, a portion of the increased production should also qualify as imputed stripper well crude oil and be permitted to be sold at exempt prices. The comments suggested that this could be accomplished by revising § 212.75 so that a percentage of unit production (rather than a fixed amount) would qualify each month as imputed stripper well crude oil. Inasmuch as stripper well crude oil could be sold at exempt prices effective September 1, 1976, these comments indicated that producers of stripper well properties might again be discouraged from participating in unitized properties, because any increased production from the unitized property—even though attributable to previously-qualified stripper well properties—could qualify, at best, for treatment as upper tier crude oil, whereas if those producers elected not to participate in the unit, increased production from any nonparticipating stripper well property would qualify for exempt prices.

Accordingly, on January 19, 1977, FEA issued a notice of proposed rulemaking and public hearing (42 FR 4491, January 25, 1977) to consider a proposal to amend § 212.75 so as to compute volumes of imputed stripper well crude oil produced and sold from unitized properties on a percentage basis rather than upon the basis of absolute volumes. After consideration of the oral and written comments received in response to the January 19 notice, on July 7, 1977, FEA issued a further notice of proposed rulemaking and public hearing (42 FR 36476, July 15, 1977) proposing two alternative amendments to § 212.75 for consideration. Written and oral comments were received with respect to both alternatives.

Effective October 1, 1977, all functions previously performed by the FEA were transferred to the Department of Energy ("DOE") pursuant to the Department of Energy Organization Act ("DOE Act", Pub. L. 95-91) and Executive Order No. 12009 (42 FR 46267, September 15, 1977). Section 705(b)(1) of the DOE Act provides in part that:

> The provisions of this Act shall not affect any proceedings * * * pending at the time this Act takes effect before any department, agency, commission, or component thereof, functions of which are transferred by this Act; but such proceedings * * * to the extent that they relate to functions so transferred, shall be continued. * * *

In addition, by DOE delegation order No. 0204-4, the Secretary of Energy delegated to the Administrator of the Economic Regulatory Administration ("ERA") the authority to take such action, including the adoption of rules, as is necessary and appropriate to administer several functions, among which are the allocation and pricing of crude oil and refined petroleum products, pursuant to the provisions of the Emergency Petroleum Allocation Act of 1973 ("EPAA", Pub. L. 93-159). Under the authority of the DOE Act and this delegation order, this rulemaking proceeding has been continued by the ERA.

II. The Existing Regulation

Section 212.75 currently provides that, with respect to any unitized property which is comprised of one or more previously qualified stripper well properties and for which the producer has established a unit BPCL, the unit producer may sell each month a number of barrels of imputed stripper well crude oil produced and sold from the unitized property at prices which are exempt from the ceiling price rules of §§ 212.73 and 212.74. Imputed stripper well crude oil is defined as:

> a number of barrels of crude oil equal to the total number of barrels of crude oil produced during the 12-month period immediately preceding the establishment of a unit based production control level for the unitized property from all stripper well properties that constitute the unitized property, divided by 12 * * *.

Generally, this provision provides that for any unitized property for which a unit BPCL has been established, imputed stripper well crude oil is equal to a fixed number of barrels of crude oil, which volume remains constant once established, and does not vary in relationship to increases or decreases in production levels for the unitized property. Thus, once the volume of imputed stripper well crude oil has been fixed, as of the date that a unit BPCL is established, any increased production from the unitized property, including any that may be attributable to participating stripper well properties, may qualify as upper tier crude oil, but cannot be sold at exempt prices.

Accordingly, since none of the increased production resulting from uni-

tization would be allowed the exempt price, even though possibly attributable to participating stripper well properties, the regulation could operate as an impediment to producers of stripper well properties who would otherwise participate in a unitized property. For example, a qualified stripper well property strategically located in relation to the underlying reservoir may achieve increased production resulting from any enhanced recovery operation undertaken by the unit, regardless whether such property actually participates in the unitized property. If such producer elected not to participate in the unit, all of the increased production from the stripper well property would qualify for exempt prices because once a property has qualified as a stripper well property, it retains that status, even though production from the property may be increased to levels above the 10 barrel per well per day or less average which establishes a stripper well property after it is maintained for a consecutive 12-month period (40 FR 22123, May 21, 1975). Under the imputed stripper well rule as initially adopted, if the producer participated in the unitized property, any increased production, even if attributable to the stripper well property, would qualify at best for treatment as upper tier crude oil. Therefore, a producer of a previously qualified stripper well property might be encouraged not to participate in the unitized property where any expected increased production (otherwise eligible to be sold at exempt prices absent unitization) would yield greater revenues than the volumes of upper tier crude oil which would be attributed to the stripper well property under the unitization agreement.

The existing regulation also acts as a disincentive to the unitization of properties, all of which have qualified as stripper well properties, because increased production from such unitized properites would qualify only for upper tier prices, even though all participating properties had qualified as stripper well properties. Under the existing regulation, therefore, a unitized property consisting entirely of previously qualified stripper well properties is required to maintain overall unit production levels of 10 barrels per well per day or less for a consecutive 12-month period beginning after the establishment of a unit BPCL before the unitized property as a whole can qualify as a stripper well property.

III. Proposed Amendments

In the July 7 notice FEA set forth two alternative proposals intended to remove any disincentive which might be present in the existing regulatory provisions.

A. *The strict percentage alternative.* This alternative would provide that once a unit BPCL is established, the number of barrels of imputed stripper well crude oil eligible to be sold at exempt prices from the unitized property in a particular month would be based upon a strict percentage of all crude oil produced and sold from the unitized property in that month. This percentage would be equal to the ratio (over the 12-month period immediately preceding the establishment of a unit BPCL) of the number of barrels of crude oil produced from all participating stripper well properties to the total number of barrels of crude oil produced and sold during that period from all participating properties, including stripper well properties. Under this proposal, the monthly volume of imputed stripper well crude oil would increase or decrease in direct proportion to any monthly increase or decrease in production from the unitized property as a whole.

B. *The increased percentage alternative.* This alternative would provide that once a unit BPCL is established, the number of barrels of imputed stripper well crude oil eligible to be sold at exempt prices from the unitized property in a particular month would be based upon a percentage of all the crude oil produced and sold from the unitized property in that month, but would not be less than a specified minimum quantity, determined as under the existing regulation. Volumes of imputed stripper well crude oil would be the same as in the strict percentage alternative if production from the unitized property remained constant or increased. However, if production from the unitized property were to decline subsequent to the establishment of a unit BPCL, imputed stripper well crude oil volumes would not fall below an amount equal to the volume of the average monthly production of crude oil sold from all participating stripper well properties during the 12-month period immediately preceding the establishment of a unit BPCL.

IV. Amendments Adopted

Based upon all the comments received in this proceeding, we have determined that the increased percentage alternative should be adopted. The purpose of amending § 212.75 is to eliminate any disincentives to unitize for stripper well producers under the current regulations. Adoption of the strict percentage proposal would not assure this result. Under the strict percentage alternative, if production from a unitized property should fall below the unit BPCL, a lesser volume of crude oil would quality as imputed stripper well crude oil than under the current regulations. Moreover, if after unitization, production attributable to a participating stripper well property remained constant while production from other participating nonstripper well properties declined, the volume of crude oil which would qualify as imputed stripper well crude oil would nevertheless decline as well. In addition, with respect to a unitized property which is likely to achieve stripper well property status eventually, and where the implementation of enhanced recovery operations is projected to result in an initial decline in total production from the unitized property, the strict percentage alternative could encourage the postponement of enhanced recovery operations until such time as the unitized property is assured of qualification as a stripper well property. We have determined that this alternative could act as a disincentive to the early implementation of enhanced recovery operations (with a possible resulting decline in total recoverable domestic crude oil reserves), and that the increased percentage calculation is, therefore, a more appropriate alternative.

A. *Unit base production control level.* In order to simplify monthly calculations, the definition of "Unit base production control level" for unitized properties which determine imputed stripper well crude oil volumes on a percentage basis is amended to exclude volumes of crude oil produced from participating stripper well properties during the 12-month period preceding establishment of a unit BPCL. These volumes were originally included in the computation of the unit BPCL, so as to prevent such volumes from being treated as both new crude oil and as imputed stripper well crude oil once a unit BPCL had been established.

Under the amended rule, however, volumes of imputed stripper well crude oil may vary from month to month depending upon the total volume of crude oil produced and sold from the unitized property. Accordingly, the computation is simplified so that with respect to crude oil volumes produced and sold in excess of the unit BPCL in each month, a portion will represent imputed stripper well crude oil and a portion will represent new crude oil. Corresponding technical adjustments are made with respect to the definitions of "new crude oil" and "old crude oil."

The following is an example of the computation of imputed stripper well crude oil volumes with respect to a unitized property for which production has increased subsequent to the establishment of a unit BPCL: Assume that during the 12-month period immediately preceding the establishment of a unit BPCL, one property (a strip-

per well property) produced 5,000 barrels of crude oil. Three other nonstripper well properties produced and sold 35,000 barrels of old crude oil during that period which included 365 days. For a month containing 30 days, the unit BPCL would be calculated as follows:

$$\text{Unit BPCL} = \left(\frac{35{,}000 \text{ barrels}}{365 \text{ days}}\right) \times 30 \text{ days}$$

$$= 2876.7 \text{ barrels}$$

The percentage used to determine imputed stripper well crude oil would be calculated as follows:

$$\text{Percentage} = \frac{5{,}000 \text{ barrels}}{40{,}000 \text{ barrels}}.$$

$$= 12.5\%$$

Accordingly, if subsequent to the establishment of a unit BPCL the unitized property produced and sold 3,500 barrels of crude oil in a month containing 30 days, volumes of new, old, and imputed stripper well crude oil would be calculated as follows:

Imputed stripper well=(.125) (3,500 barrels) crude oil=437.5 barrels.
New crude oil=(3,500 barrels)−(2,876.7 barrels)−(437.5 barrels)=185.8 barrels.
Old crude oil=(3,500 barrels)−(437.5 barrels)−(185.8 barrels)=2,876.7 barrels=unit BPCL.

On the other hand, under the rule adopted today, the minimum volume of imputed stripper oil for the property, regardless of the total level of production, would be determined as follows:

Minimum imputed stripper well crude oil

$$= \frac{5{,}000 \text{ barrels} \times 30 \text{ days}}{365 \text{ days}}$$

$$= 411 \text{ barrels}$$

B. *Effective date.* FEA stated in the July 7 notice that whichever of the alternatives were adopted, the final regulations would be implemented on a prospective basis. In this regard, two alternative prospective applications were proposed: (1) application of the new amendments to all unitized properties (regardless when a unit BPCL had been established) as of the date final regulations are effective, or (2) application of the new amendments only to those unitized properties for which a unit BPCL is established on or after August 1, 1977.

Inasmuch as the purpose of the new amendments is to remove any disincentive for producers of stripper well properties to enter unitization agreements, we have determined that only unitized properties for which a unit BPCL was established on or after August 1, 1977 (the first day of the month following issuance of the further notice of proposed rulemaking) may utilize the percentage method for calculating imputed stripper well crude oil. Those stripper well property owners currently participating in unitized properties appear to have been provided with adequate incentives under the regulations existing at the time such unitized properties were formed. Accordingly, with respect to unitized properties for which a unit BPCL was established before August 1, 1977, volumes of imputed stripper well crude oil will be determined each month pursuant to the regulations in effect at the time the unit BPCL was established. (Effective September 1, 1978, minor technical amendments have been made to these regulations.) With respect to those unitized properties for which a unit BPCL was established on or after August 1, 1977, volumes of imputed stripper well crude oil will be determined pursuant to the new amendments.

We do not intend these amendments to encourage the manipulation of stripper well and nonstripper well properties into less than bona fide unitized properties for the purpose of avoiding the ceiling price rules: for example, where a stripper well property is "unitized" with an undeveloped property for the sole purpose of qualifying all future production as exempt crude oil. In this regard, it should be noted that the provisions of § 212.75 are applicable in the amended definition of "Unitized property" to "bona fide unitization agreement[s] approved by the applicable governmental authority (or ERA)" (emphasis added), and we will monitor, through audits and compliance actions if necessary, the nature of unitization agreements to ensure that the provisions of § 212.75 with respect to imputed stripper well crude oil are not used as a device to circumvent the ceiling price rules.

Finally, certain procedural objections were raised in comments received in this preceeding. Inasmuch as these same objections were raised, fully considered, and discussed by the FEA in connection with the ECPA stripper well property rule issued October 29, 1976 (41 FR 48319, November 3, 1976), we have concluded that they require no additional discussion in this notice.

In consideration of the foregoing, part 212 of chapter II, title 10 of the Code of Federal Regulations is amended as set forth below, effective September 1, 1978.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267.)

Issued in Washington, D.C., July 26, 1978.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

1. Section 212.54(b) is amended to read as follows:

§ 212.54 Stripper well crude oil.

* * * * *

(b) Prices charged in the first sale of imputed stripper well crude oil, as defined in § 212.75 of this part, produced and sold from any unitized property are exempt from the provisions of this part.

2. Section 212.75 is amended in the caption and in paragraph (b) by revising the definitions of "New crude oil," "Old crude oil," "Unit base production control level," and "Unitized property," and by adding a definition of "Imputed stripper well crude oil" after the definition of "Current unit cumulative deficiency" and before the amended definition of "New crude oil," and by revising paragraphs (c), (d), (e), and (f), and by adding a new paragraph (g), to read as follows:

§ 212.75 Crude oil produced and sold from unitized properties.

* * * * *

(b) *Definitions.* For purposes of this section—

* * * * *

"Imputed stripper well crude oil" means, (i) with respect to a unitized property for which a unit base production control level was established prior to August 1, 1977, in a particular month, a number of barrels of crude oil equal to the total number of barrels of crude oil (excluding condensate recovered in non-associated production) produced during the 12-month period immediately preceding the establishment of a unit base production control level for the unitized property from all stripper well properties (qualified as such as of the establishment of a unit base production control level for the unitized property) that constitute the unitized property, divided by the number of days in that 12-month period, and multiplied by the number of days in that particular month; (ii) with respect to a unitized property for which a unit base production control level was established on or after August 1, 1977, in a particular month, either (A) a number of barrels of crude oil equal to the total number of barrels of crude oil produced and sold in that particular month from all properties that constitute the unitized

property, multiplied by the total number of barrels of crude oil (excluding condensate recovered in non-associated production) produced during the 12-month period immediately preceding the establishment of a unit base production control level for the unitized property from all stripper well properties (qualified as such as of the establishment of a unit base production control level) that constitute the unitized property, divided by the sum of (1) the total number of barrels of crude oil produced and sold during the 12-month period immediately preceding the establishment of a unit base production control level for the unitized property from all non-stripper well properties that constitute the unitized property, plus (2) the total number of barrels of crude oil produced during that period from all stripper well properties that constitute the unitized property, or (B) a number of barrels of crude oil equal to the total number of barrels of crude oil (excluding condensate recovered in nonassociated production) produced during the 12-month period preceding the establishment of a unit base production control level for the unitized property from all stripper well properties (qualified as such as of the establishment of a unit base production control level for the unitized property) that constitute the unitized property, divided by the number of days in that 12-month period, and multiplied by the number of days in that particular month, whichever is greater.

"New crude oil" means, in a particular month, (i) with respect to a unitized property for which a unit base production control level was established prior to August 1, 1977, either (A) actual new crude oil, which is the total number of barrels of crude oil produced and sold in that month from all properties that constitute the unitized property, less (1) the unit base production control level, and less (2) the current cumulative deficiency; or (B) imputed new crude oil, which is a number of barrels of crude oil equal to the total number of barrels of new crude oil produced and sold during the 12-month period immediately preceding the establishment of a unit base production control level for the unitized property, from all properties that constitute the unitized property, divided by the number of days in that 12-month period, and multiplied by the number of days in the particular month; whichever number is greater; (ii) with respect to a unitized property for which a unit base production control level was established on or after August 1, 1977, either (A) actual new crude oil, which is the total number of barrels of crude oil produced and sold in a specific month from all properties that constitute the unitized property, less (1) the unit base production control level and less (2) the total number of barrels of imputed stripper well crude oil, if any, for the particular month, and less (3) the current unit cumulative deficiency; or (B) imputed new crude oil, which is a number of barrels of crude oil equal to the total number of barrels of new crude oil produced and sold during the 12-month period immediately preceding the establishment of a unit base production control level for the unitized property, from all properties that constitute the unitized property, divided by the number of days in the 12-month period immediately preceding the establishment of a unit base production control level, multiplied by the number of days in the particular month; whichever number is greater.

"Old crude oil" means, in a particular month, the total number of barrels of crude oil produced and sold in that month from all properties that constitute the unitized property, less the total number of barrels of new crude oil produced and sold from the unitized property in that month, and less the total number of barrels of imputed stripper well crude oil produced and sold from the unitized property in that month.

* * * * *

"Unit base production control level" means, in a particular month, (i) with respect to a unitized property for which the volume of imputed stripper well production is determined pursuant to the provisions of subparagraph (i), or subparagraph (ii)(B) of the definition of "imputed stripper well crude oil," (A) the total number of barrels of old crude oil, as defined in § 212.72, produced and sold during the 12-month period immediately preceding the establishment of a unit base production control level for the unitized property from all properties that constitute the unitized property, divided by the number of days in that 12-month period, and multiplied by the number of days in the particular month; plus (B) the total number of barrels of crude oil produced during that 12-month period from all stripper well properties that constitute the unitized property, divided by the number of days in that 12-month period, and multiplied by the number of days in the particular month; (ii) with respect to a unitized property for which the volume of imputed stripper well crude oil is determined pursuant to the provisions of subparagraph (ii)(A) of the definition of "imputed stripper well crude oil," the total number of barrels of old crude oil, as defined in § 212.72, produced and sold during the 12-month period immediately preceding the establishment of a unit base production control level for the unitized property from all properties that constitute the unitized property, divided by the number of days in that 12-month period, and multiplied by the number of days in the particular month.

"Unitized property" means the right to produce crude oil that arises from a bona fide unitization agreement approved by the applicable governmental regulatory authority (or ERA).

(c) Notwithstanding the provisions of paragraph (a) of this section, a producer shall not be required to establish a unit base production control level for a particular unitized property, provided that the producer has (pursuant to the provisions of 10 CFR Part 205, subpart G) certified to ERA its intention to determine volumes of lower tier, upper tier, and stripper well property crude oil separately for all properties that constitute the unitized property, and provided further that the unitized property has not sustained a significant alteration in producing patterns.

(d) Except as provided in paragraphs (e) and (f) below with respect to new crude oil and imputed stripper well crude oil, no producer of crude oil from a unitized property may charge a price higher than the lower tier ceiling price (as determined pursuant to §§ 212.73 and 212.77 of this part) for the first sale of domestic crude oil produced and sold from the unitized property.

(e) Notwithstanding the provisions of paragraph (d) above, a producer of crude oil from a unitized property may, in any month, charge a price not to exceed the upper tier ceiling price (as determined pursuant to §§ 212.74 and 212.77 of this part) in first sales of new crude oil produced and sold from the unitized property.

(f) Notwithstanding the provisions of paragraphs (d) and (e) above, the prices charged in any month by a producer of crude oil from a unitized property in first sales of imputed stripper well crude oil are exempt.

(g) The provisions of this section shall apply to each first sale of crude oil from a unitized property.

[FR Doc. 78-21264 Filed 7-27-78; 4:11 pm]

[3510-25]

Title 15—Commerce and Foreign Trade

CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 379—TECHNICAL DATA

PART 399—COMMODITY CONTROL LIST AND RELATED MATTERS

Controls on Exports of Petroleum Equipment to the U.S.S.R., Estonia, Latvia, and Lithuania

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: Under current regulations, most commodities utilized in the exploration or production of petroleum or natural gas are under validated license control for export to Southern Rhodesia, Cuba, North Korea, Vietnam, and Cambodia. This rule extends validated license control for these types of commodities to the U.S.S.R., Estonia, Latvia, and Lithuania.

Most types of technical data that are not generally available to the public presently may be exported under General License GTDR to all destinations except Southern Rhodesia, Cuba, North Korea, Vietnam, Cambodia, the U.S.S.R., East European Communist countries, Laos, and the People's Republic of China. For certain types of technical data, use of the General License GTDR is conditioned on the exporter receiving written assurance from the importer that neither the data nor the direct product thereof is intended to be shipped, directly or indirectly, to those destinations. This rule imposes on the export of technical data related to the exploration or production of petroleum or natural gas the condition that the General License GTDR not be used unless the exporter has received written assurance from the importer that neither the technical data nor the direct product thereof is intended to be shipped, directly or indirectly, to the U.S.S.R., Estonia, Latvia, and Lithuania. The purpose of this rule is to provide for the prior review of proposed exports to the U.S.S.R., Estonia, Latvia, and Lithuania of petroleum and natural gas exploration and production commodities and related technical data to assure that their export would be consistent with the foreign policy objectives of the United States. Additional control measures relating to these commodities and technical data are being considered by the Department. Further revisions of the regulations, therefore, may be issued in the near future.

EFFECTIVE DATE: August 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-4196.

Accordingly, the Export Administration regulations (15 CFR Parts 379 et seq.) are revised as follows:

1. Section 379.4(f)(1) is amended as follows:

a. Paragraph (f)(1)(iii) is redesignated as paragraph (f)(1)(i).

b. The introductory text of paragraph (f)(1) is revised to read as set forth below.

c. The word "and" is removed from the end of paragraph (f)(1)(i)(*n*).

d. The period at the end of paragraph (f)(1)(i)(*o*) is replaced by a semicolon and the word "and" is added before the semicolon.

e. A new paragraph (f)(1)(i)(*p*) is added to read as set forth below.

§ 379.4 General license GTDR: Technical data under restriction

* * * * *

(f) *Written assurance requirements.* (1) Requirement of written assurance for certain data, services, and materials. No export of technical data of the kind described in § 379.4(f)(1)(i) (a) through (o) below, may be made under the provisions of this General License GTDR until the exporter has received written assurance from the importer that neither the technical data nor the direct product[1] thereof is intended to be shipped, either directly or indirectly, to Country Group Q, W,[2] Y, or Z, except as provided in § 379.4(f)(1)(ii) below. No export of technical data of the kind described in § 379.4(f)(1)(i)(*p*) below may be made under the provisions of this General License GTDR until the exporter has received written assurance from the importer that neither the technical data nor the direct product[1] thereof is intended to be shipped, directly or indirectly, to the U.S.S.R., Estonia, Latvia or Lithuania, except as provided in § 379.4(f)(1)(ii) below. The required assurance may be in the form of a letter or other written communication from the importer evidencing such intention, or a licensing agreement that restricts disclosure of the technical data to use only in a country other than Country Group Q, W, Y, or Z, and prohibits shipment of the direct product[1] thereof by the licensee to Country Group Q, W, Y, or Z, or, for data of the kind described in § 379.4(f)(1)(i)(p), to the U.S.S.R., Estonia, Latvia or Lithuania. An assurance included in a licensing agreement will be acceptable for all exports made during the life of the agreement. If such assurance is not received, this general license is not applicable and a validated export license is required. An application for such validated license shall include an explanatory statement setting forth the reasons why such assurance cannot be obtained. In addition, this general license is not applicable to any export of technical data of the kind described in § 379.4(f)(1)(i) (a) through (o) below if, at the time of export of the technical data from the United States, the exporter knows or has reason to believe that the direct product to be manufactured abroad by use of the technical data is intended to be exported or reexported, directly or indirectly, to Country Group Q, W, Y, or Z, or, for data of the kind described in § 379.4(f)(1)(i)(p), to the U.S.S.R., Estonia, Latvia or Lithuania.

(i) Technical data relating to the following commodities:

* * * * *

(*p*) Machinery, equipment, instruments, and other commodities utilized for the exploration or production of petroleum or natural gas.

* * * * *

2. The Commodity Control List, incorporated by reference at 15 CFR 399.1, is amended by adding the following entries:

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[1] The term "direct product," as used in this sentence and in this context only, is defined to mean the immediate product (including processes and services) produced directly by use of the technical data, except that petroleum or chemical products other than molecular sieves or catalysts are not included in this definition. The coverage of the term does not extend to the results of the use of such "direct product." An example of the direct product of technical data is reforming process equipment designed and constructed by use of the technical data exported, but the aromatics produced by the reforming process equipment are not immediate or direct products of these technical data. However, if the technical data are a formula for producing aromatics, the aromatics, although they are immediate products of the data, are not included in this definition of direct product, since they are petroleum products. Conversely, if the technical data are a formula for producing either molecular sieves or catalysts, the foreign-produced molecular sieves and catalysts are included in the definition of direct product.

[2] Effective April 26, 1971, Country Group W no longer includes Romania. For purposes of assurances executed prior to that date, however, all references to Country Group W continue to apply to Romania as well as to Poland, and all conditions and responsibilities undertaken with respect to Romania remain unchanged.

Export Control Commodity Number and Commodity Description	Unit	Processing Code	Validated License Required	G.L.V. $ Value Limits T	V	Q
6098F Other machinery and equipment (including tools, fixtures and jigs) specially designed or modified for the manufacture of equipment utilized in the exploration for, or production of, petroleum or natural gas; and specially designed parts and accessories therefor, as follows:	...	MG	SZ and the USSR 1/	-	-	-
Dowel hole drilling machines, Cone bit drilling machines, Cone bit milling machines, Bit-arm milling machines, Pipe perforating machines, Liner mills, Casing mills, Cone buster mills, Collar mills, Packer mills, and Machinery and equipment, n.e.s., specially designed or modified for the manufacture of equipment utilized in the exploration for, or production of, petroleum or natural gas.						
6191 F Equipment utilized for the exploration or production of petroleum or natural gas; and specially designed parts and accessories therefor. (See §399.2, Interpretation 30 for illustrative list of commodities included in this entry.)	...	MG	SZ and the USSR 1/	-	-	-
6390F Other machinery and equipment (including tools, fixtures, and jigs) specially designed or modified for the manufacture of equipment utilized in the exploration for, or production of, petroleum or natural gas; and specially designed parts and accessories therefor, as follows: Pipe coating equipment, Pipe laying equipment, Pipe wrapping equipment, and Machinery and equipment, n.e.s., specially designed or modified for the manufacture of equipment utilized in the exporation for, or production of, petroleum or natural gas.	...	MG	SZ and the USSR 1/	-	-	-
6391 F Equipment utilized for the exploration or production of petroleum or natural gas; and specially designed parts and accessories therefor. (See §399.2, Interpretation 30 for illustrative list of commodities included in this entry.)	...	MG	SZ and the USSR 1/	-	-	-
6598F Geophysical and mineral prospecting instruments; and other instruments and equipment specially designed or modified for the examination or testing of equipment utilized in the exploration for, or production of, petroleum or natural gas; and specially designed parts and accessories therefor. (See §399.2, Interpretation 30 for illustrative list of commodities included in this entry.)	...	MG	SZ and the USSR 1/	-	-	-
6779 F Drilling fluids, muds, lost circulation materials and polymers and other detergents utilized for enhanced recovery of petroleum or natural gas.	...	MG	SZ and the USSR 1/	-	-	-

1/ Including Estonia, Latvia, and Lithuania.

3. Commodity Interpretations 24 and 29, incorporated by reference at 15 CFR 399.2, are amended by adding a footnote to the following entries to indicate that a validated license is required for export to the U.S.S.R., Estonia, Latvia, and Lithuania.

INTERPRETATION 24

Flocculating agents, n.e.s.
Ethylene oxide polymers, water soluble.
Pipe and tubing made of, or lined and covered with fluorocarbon polymers or copolymers, n.e.s.
Products, n.e.s. made of fluorocarbon polymers or copolymers.
Oilfield demulsifying agents.

INTERPRETATION 29

Oil well drilling equipment.
Oil field wire line and downhole equipment.

4. The Commodity Interpretations, incorporated by reference at 15 CFR 399.2, are amended by adding the following:

INTERPRETATION 30 PETROLEUM AND NATURAL GAS EXPLORATION AND PRODUCTION EQUIPMENT

The following is an illustrative list of petroleum and natural gas exploration equipment subject to validated license control for export to the U.S.S.R., Estonia, Latvia, and Lithuania. This list is illustrative only. It does not include all commodities which are covered by CCL entry Nos. 6191, 6391 and 6598.

(1) All equipment related to off-shore floating or bottom-supported drilling and producing structures, including all gathering equipment.

(2) Production and pipeline equipment designed for use in Arctic regions and the Polar Seas.

(3) Rotary type well drilling rigs and derricks.

(4) Parts, accessories, and equipment for well drilling machines, including, but not limited to, drill bits, box and pin tool joints, drill pipe, drill collars, rotary tables, and blow-out preventors.

(5) Petroleum gas-lift equipment.

(6) Oil well and oil field pumps, including, but not limited to, high performance types of submersible or conventional pumping units.

(7) Pipeline valves for oil and gas pipelines and high pressure steel hoses, pipes, and connections.

(8) Wire line and down-hole equipment and accessories (including, but not limited to, collars, stablizers, mandrels, packers, multi-completion equipment, gun perforators, and telementry equipment).

(9) Optical, electrical or electronic geophysical and mineral prospecting instruments, including magnetic, gravity, sesmic, bore-hole logging and high-resolution remote sensing equipment.

SAVING CLAUSE

Shipments of commodities or technical data removed from general license as a result of changes set forth in this rule which were on dock for lading, on lighter, laden aboard and exporting carrier, or in transit to a port of export pursuant to actual orders for export prior to 12:01 a.m., August 1, 1978, may be exported under the previous general license provisions up to and including August 15, 1978. Any such shipment not laden aboard the exporting carrier on or before August 15, 1978 requires an individual validated license for export.

(Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).)

Dated: July 21, 1978.

STANLEY J. MARCUSS,
Deputy Assistant Secretary for Trade Regulations.

[FR Doc. 78-20702 Filed 7-24-78; 2:26 pm]

[6355-01]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

First Aid Directions for Inducing Vomiting by Saline Emesis are Inappropriate

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission issues a statement of policy under the Federal Hazardous Substances Act concerning first aid directions for labels of hazardous substances for which the necessary or appropriate first aid treatment includes inducing vomiting. The Commission states: (1) That it considers the use of a salt solution to induce vomiting (saline emesis) to be an unacceptable and frequently ineffective means of inducing vomiting, (2) that saline emesis is no longer recommended by the Commission as an appropriate first aid direction, and (3) that, in cases where saline emesis has been recommended in the past, unless a particular contraindication exists in connection with any particular hazardous substance, the Commission considers ipecac syrup to be the most appropriate emetic.

This policy is being issued in order to publicize that the Commission has changed its policy concerning saline emesis as a first aid treatment and to encourage the use of ipecac syrup when emesis is an appropriate first aid treatment.

DATES: The effective date is October 30, 1978 as to products packaged or imported after that date.

ADDRESSES: Persons who wish to obtain informal labeling guidance from the Commission may contact Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; 301-492-6400.

FOR FURTHER INFORMATION CONTACT:

Charles M. Jacobson, Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C., phone 301-492-6400.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 2(p) of the Federal Hazardous Substances Act (15 U.S.C. 1261(p)) provides, in part, that hazardous substances (as defined by the act) that fail to bear a label which states an instruction, when necessary or appropriate, for first aid treatment are "misbranded." Among other prohibited acts relating to misbranded hazardous substances is the introduction or delivery for introduction of such substances into interstate commerce (section 4 of the act, 15 U.S.C. 1263).

In many cases where hazardous substances are ingested, the recommended first aid treatment includes inducing vomiting. In the past, a number of first aid instructions for inducing vomiting have contained a statement that this should be accomplished by having the victim drink a solution of salt (sodium chloride) in warm water. At one time, this direction was considered medically acceptable. However, on September 5, 1975, Allen J. Davidson and C. F. Bryson of the State of California Department of Health wrote to the Chairman of the Consumer Product Safety Commission about comments and information that they had received suggesting that a salt solution is no longer generally recognized as a safe and effective emetic. As a result, the Commission undertook a search of the medical literature pertaining to this subject. The Division of Poison Control (National Clearinghouse for Poison Control Centers) of the Bureau of Drugs in the Food and Drug Administration was also contacted.

The Commission also received a petition (HP 76-17) dated June 10, 1976, from Herbert S. Denenberg of Wynnewood, Pa. The petition recites the danger of saline emesis and states there "are obviously much more effective first-aid techniques."

The information that the Commission has obtained from physicians, consumers, poison control centers, literature searches, and petition HP 76-

17 convinced the Commission that medical experience since 1966 has shown that the instruction to use saline for emesis is no longer desirable. This is because the use of salt to induce vomiting can cause hypernatremia (salt poisoning) with potentially toxic effects, particularly in children 5 years old and less, the age group most often involved in accidental poisonings. There are reports in the medical literature of deaths of both children and adults associated with the use of sodium chloride to produce vomiting. Accordingly, the Commission granted petition No. HP 76-17 (42 FR 31773; June 23, 1977).

The current medical opinion is that ipecac syrup, U.S.P., is the preferred emetic for home use. Ipecac syrup may be purchased in 1 oz. quantities without a prescription. It should not be confused with "fluid extract of ipecac," a much more toxic emetic that is available only by prescription. The generally accepted direction for the use of ipecac syrup as an emetic for persons over 1 year of age is to administer 1 tablespoonful (½ oz.) of ipecac syrup plus at least 1 cup of water. The dose may be repeated one time only if no vomiting occurs within 20 minutes.

In view of the availability of safer and more effective emetics such as ipecac syrup, the Commission believes that a direction to perform saline emesis is not an appropriate first aid direction.

In the past, however, the Commission has issued or approved directions to perform saline emesis in the event of ingestion of the following products:

(a) Methyl alcohol (methanol).

(b) Methyl alcohol-base radiator antifreeze.

(c) Ethylene dichloride.

(d) Silver nitrate.

(e) Sodium cyanide (presently a banned hazardous substance under 16 CFR 1500.17(a)(5)).

(f) Jequirity beans.

The direction for saline emesis in connection with methyl alcohol-base radiator antifreeze was contained in an example of an acceptable first aid direction that was set forth in 16 CFR 1500.131(b). Section 1500.131 was revoked by the Commission on June 23, 1977 (42 FR 31773).

Directions for saline emesis in connection with the ingestion of methanol and jequirity beans are contained in the Hazardous Substances Labeling Guide published by the Commission. A correction sheet for this manual will be issued to correct these directions. However, the Commission is not aware of all the persons who may be in possession of the Hazardous Substances Labeling Guide.

The Commission has also given informal advice concerning saline emesis to persons whose identity and/or current addresses cannot be ascertained.

The Proposed Policy

For the reasons given above, the Commission decided that it is desirable to codify a statement of its present policy concerning first aid directions for inducing vomiting in cases where the use of saline has been recommended in the past. Accordingly, a statement of this policy was proposed as 16 CFR 1500.134 in order to: (1) Publicize the undesirability of saline emesis, (2) notify the affected manufacturers, distributors, retailers, and importers, and persons who may have been previously advised to the contrary by the Commission, and (3) encourage the use of ipecac syrup when emesis is required as part of first aid treatment (42 FR 31808, June 23, 1977).

The portion of the proposed policy relating to the content of instructions to be used in the future (in the cases where directions for saline emesis have been given in the past) was stated as follows:

> * * * the Commission no longer recommends a direction to perform saline emesis as a first aid direction for inducing vomiting.
>
> (c) The Commission believes that first aid directions on labels for products for which directions for saline emesis have been given in the past should include an indication that Ipecac Syrup, U.S.P., is an appropriate emetic, unless a particular contraindication exists in connection with any particular hazardous substance. The Commission is not requiring that any particular wording be used in this regard, and the Commission does not intend to prohibit the use of additional directions for other appropriate ways to induce vomiting.

The proposed effective date for the policy was 90 days after publication of the final policy in the Federal Register.

In the Federal Register notice proposing this statement of policy, in addition to soliciting comment on the proposal, the Commission also asked for comments suggesting appropriate wording for first aid instructions for inducing vomiting as well as comments on the substance of the policy proposed in § 1500.134. This was to aid the Commission in formulating labeling advice for those persons who might request it.

Response to the Proposal

The Commission received comments from 18 firms and individuals in response to its Federal Register notice proposing the statement of policy for inducing vomiting in cases where directions for saline emesis have been given in the past.

The responses that were received by the Commission show that there is no consensus among the interested parties on the most desirable specific label wording, even among those parties that can be considered to be authorities on medical or first aid treatment. In view of the lack of agreement on specific wording, the Commission has decided that it is desirable to seek the advice and opinions of a group that contains experts in all aspects of hazardous substance labeling. The mechanism that the Commission has chosen for the purpose of contacting such a group is the Interagency Regulatory Liaison Group (IRLG). The IRLG consists of representatives from a number of Federal agencies and exists to enable these agencies to coordinate their activities and to draw upon each other's resources. Through this group, the Commission can consult with experts in other government agencies and with persons who are consultants to these agencies or are members of advisory committees associated with the agencies.

However, it should be kept in mind that the primary responsibility for deciding what first aid direction is most appropriate for a product rests with the manufacturer and other persons concerned with the marketing of the product. Even after consultation with the IRLG, the Commission does not presently anticipate mandating the use of any specific wording generally applicable to instructions for inducing vomiting. Although the staff of the Commission is available to advise interested parties on the wording of appropriate instructions, the enforcement efforts of the Commission will be limited to those instances where erroneous directions are being given or where the directions do not contain essential information.

The content of the comments that were received is summarized below.

Availability of ipecac. A number of comments concerned the availability of ipecac. Four comments pointed out that many households do not have ipecac. Three of these comments stated that first aid directions should include directions for the use of an emetic agent that is commonly found in households. One commenter stated that he did not know where to get ipecac, and another noted that ipecac is not always available. One commenter feared that valuable time would be spent in an attempt to obtain ipecac when a better course would be to immediately call a doctor or take the victim to a hospital. One comment expressed the fear that parents would become unduly anxious in the event a child ingests a hazardous substance and no ipecac is available. The comment suggests that the instruction should state: "If swallowed, induce vomiting. Call a physician immediately."

Several comments stated that directions for alternative means for inducing vomiting should be given in addition to the mention of ipecac. Alternatives such as mechanical stimulation (sticking a finger or spoon down the throat) and the use of salty water were suggested. These particular alternatives are discussed separately below.

The Commission is aware that ipecac syrup is not currently kept in many households. The Commission's policy is not intended to discourage the giving of instructions for other means of inducing vomiting or for other courses of action such as immediately obtaining medical advice. Since ipecac is the safest and most effective emetic available for use in the home, the Commission believes that its use should be encouraged and that this will encourage consumers to obtain ipecac and keep it available for use in emergencies. However, as discussed above, the comments that were received on the proposal show that there is no consensus among the parties interested in first aid directions on the specific language that should be used when the appropriate first aid treatment includes inducing vomiting. The proposal would have required that the directions indicate that ipecac is an appropriate emetic (where that is the case). However, in view of the lack of agreement on whether this would be the best language for such an instruction, the Commission has decided not to mandate a mention of ipecac at this time. Whether such an action should be taken in the future is a subject that can be considered by the IRLG group referred to above. For these reasons, the final policy has deleted the requirement of the proposal that the directions specifically mention that ipecac is a suitable emetic. The final policy states that the Commission believes that ipecac is the most appropriate emetic available for home use, but the manufacturer is free to give directions for only obtaining medical attention or for another means to induce vomiting (except saline emesis).

Use of salt. Five commenters (including the American Medical Association, the American National Red Cross, and the Manufacturing Chemists Association) specifically supported the elimination of the use of a salt solution to induce vomiting. Another stated that he had no objection to this aspect of the proposal. Most of the other commenters (including the American Academy of Pediatrics) implied support of this position by limiting their comments to other aspects of the proposal. However, a number of commenters disagreed, primarily for the reason that salt may be available when ipecac is not. One commenter questioned the danger associated with the use of a salt solution and cites a "lack of evidence through actual clinical findings."

After considering these comments, however, the Commission still believes that directions for saline emesis are inappropriate, especially where repeated dosages are advised. As discussed above, the Commission has concluded that the weight of clinical evidence and the current medical opinion is that there is a substantial risk associated with saline emesis as a first aid treatment. In the event that ipecac is not available, mechanical stimulation is unsucessful, and medical advice cannot be immediately obtained, it is possible that in some cases the risk of salt poisoning is less than the risk of allowing the ingested substance to remain in the stomach. However, the label of a hazardous substance is not the place for a treatise on the pros and cons of the relative merits of alternative first aid treatments. The Commission believes that if the label states that the use of a salt solution is acceptable, even if it is clearly mentioned as the least desirable alternative, that consumers will be deterred from obtaining ipecac and that saline emesis will be used under inappropriate circumstances. Accordingly, the Commission still believes that first aid directions for saline emesis are inappropriate.

Ipecac may be dangerous. Two comments refer to the fact that the use of ipecac is not without its own risks. Although it is true that certain nonlethal but undesirable side effects have been reported in connection with the use of ipecac, the Commission believes that the use of salt is even more dangerous. The Commission points out that ipecac is widely recognized as the safest and most effective emetic available for home use. In addition, the Commission's policy does not preclude advising the victim to first obtain immediate medical advice or to attempt to induce vomiting by mechanical stimulation or other means except salt.

Ipecac too slow. One comment states that the usual instruction for the use of ipecac states "repeat dosage one time only if no vomiting occurs within 20 minutes" and that, when methanol has been swallowed, serious damage can occur in that time. The comment states that this time could be better utilized by transporting the person to a hospital or calling a doctor.

In the case of methanol, it is true that the body may absorb some methanol before ipecac will induce vomiting in some persons. However, the Commission considers ipecac to be the most desirable means for inducing vomiting in case of the ingestion of methanol because of its superior efficiency in emptying the stomach. The information available to the Commission indicates that the vomiting caused by ipecac will eliminate a higher percentage of the stomach's contents than even gastric lavage (stomach pumping). The ability of ipecac to ultimately eliminate more of the methanol must be balanced against the possibility that methanol may be absorbed before the ipecac can cause vomiting.

The Commission agrees that it is more prudent to seek immediate medical attention than to merely wait to see if the ipecac will be effective. However, directions for both first aid treatment and for obtaining medical treatment would increase the length of the label directions. It is possible that the comprehensive review of labeling policy which the Commission intends to conduct through the IRLG will result in a change in the Commission's policy so as to require a statement such as that suggested by this comment. In the meantime, the present policy of the Commission does not preclude such a statement.

Mechanical stimulation. A number of comments stated that directions for inducing vomiting by mechanical stimulation (such as by rubbing a finger or spoon handle against the back of the throat) should be given, either because the method is more available than ipecac or because it is potentially faster. It should be noted that the Commission's policy does not preclude the inclusion of directions for mechanical stimulation. However, as discussed above, the Commission notes that ipecac should be more effective than mechanical stimulation in emptying the contents of the stomach.

Contraindications. The proposed policy stated that the first aid direction should indicate that ipecac is an appropriate emetic "unless a particular contraindication exists in connection with any particular hazardous substances." One comment suggests that this statement leaves doubt as to when ipecac should be used and that the Commission should furnish labeling guidelines to help those responsible for labeling consumer products. The statement in the policy concerning contraindications was included to insure that ipecac would not be recommended in those cases where a victim might be unconscious, where vomiting might not be indicated by the nature of the substance ingested, where its action would be too slow, or where ipecac might react adversely with the particular hazardous substance ingested. The manufacturer of the hazardous substance would be in the best position to make this determination. However, the Commission's staff will give advice in relation to any particular hazardous substance if requested. It is not feasible for the staff to review the vast number of substances for

which vomiting might be an appropriate first aid treatment in order to formulate comprehensive guidelines. Also, as mentioned above, the final policy does not require a specific mention of ipecac.

Another commenter stated that the instructions should state any contraindications to the use of ipecac that may exist. (This type of contraindication would necessarily relate to individuals who should not take ipecac for some reason rather than to whether ipecac is compatible with the particular substance ingested.)

It is true that some persons may be especially sensitive to the possible adverse side effects of ipecac. The Commission's policy does not preclude the giving of such an explanation. However, an adequate explanation of this might exceed the length that is suitable for label directions.

Petroleum distillates and pesticides. Two commenters pointed out that materials that contain petroleum distillates or that are corrosive should be labeled "Do not induce vomiting." This is because of the danger that chemical pneumonia would occur if the petroleum distillate is aspirated during vomiting or because further tissue damage would be caused by vomiting the corrosive substance. One of these commenters also pointed out that even if a substance contains petroleum distillates, it may also contain other substances for which vomiting is the treatment of choice and whose toxicity outweighs the possibility of harm from vomiting the petroleum distillates. Therefore, the commenter states that instructions for vomiting should be included on these products.

The Commission agrees with these comments. However, they are outside the scope of the proposed policy, which only applies to substances for which vomiting is an appropriate first aid treatment and not to whether or not it is appropriate. Issues such as this are among those that will be addressed by the Interagency Regulatory Liaison Group, as discussed above.

Another comment suggests that the proposed policy should be applied to other substances, such as crankcase oil. However, since crankcase oil is a petroleum distillate, vomiting may not be an appropriate first aid treatment for the reasons given above. It should be noted, however, that the aspiration hazard of petroleum distillates is related to low viscosity products. Crankcase oil is normally of sufficient viscosity to preclude an aspiration hazard. In any event, this comment is beyond the scope of the proposal.

Effective date. It was proposed that the Commission's policy become effective 90 days after the final policy was issued in the FEDERAL REGISTER. Two commenters suggested that manufacturers should be given 1 year to use up their present stocks of lithographed labels.

The Commission agrees that certain firms, especially small ones, may require as long as 1 year to use up existing supplies of lithographed cans. However, the only labels that might be inappropriate under the policy that is being issued are those that currently advise saline emesis. The Commission believes that there are relatively few of these labels presently in use. In addition, this issue was brought to the public's attention by the Commission over a year ago when it revoked 16 CFR 1500.131 (an example of an instruction containing directions for saline emesis) and also issued the proposal upon which the present policy is based. Accordingly, the Commission is making the policy effective as to products packaged or imported after ——, 1978, which is 90 days after the final policy was published in the FEDERAL REGISTER.

MISCELLANEOUS

a. The American Academy of Pediatrics submitted a comment that suggested specific language for the first aid direction which included dosage information for the use of ipecac. For the reasons given above, the Commission is not requiring specific language for such directions at this time. The Commission also notes that the dosages recommended by AAP differ somewhat from the dosage currently stated on bottles of ipecac. Ipecac labels are under the authority of the Food and Drug Administration and not the Commission. Moreover, the Commission's policy does not address whether the label of the hazardous substance should include detailed instructions for the administration of ipecac.

b. One commenter points out that the U.S. Environmental Protection Agency (EPA) has issued a statement regarding label directions for vomiting which include a direction for mechanical stimulation and which does not mention ipecac. The final policy issued by the Commission does not preclude the use of EPA's suggested label directions in an appropriate instance.

c. One comment states that the example of an acceptable first aid direction for methyl alcohol-base radiator antifreeze (§ 1500.131), which was revoked by the Commission because of the reference to saline emesis, was widely used for other products that contained methyl alcohol. Accordingly, the commenter urges that the final statement of policy contain a specific labeling recommendation to provide guidance to the industry.

As mentioned above, however, the Commission believes that due to the differing views on the best form of such an instruction, the manufacturer is in the best position to determine the form of the instruction that is most appropriate for his or her product. Of course, the Commission's staff will provide advice concerning suitable instructions if requested. The wording of the policy has been amended to point out more specifically that it does not require any particular wording.

d. Three comments suggested that the directions should state that a doctor or Poison Control Center should be called before inducing vomiting or administering ipecac. Directions to this effect are not inconsistent with the Commission's policy.

e. Three comments suggested that the directions should state that water or milk should be taken to dilute the hazardous substance. The Commission's policy would not prevent the giving of this type of instruction.

f. One comment stated that since the dosage of ipecac is affected by age and body size, the directions should include the appropriate dosages, instructions for administration, and any contraindications. The Commission's policy does not prevent the inclusion of such information. However, the labels of bottles of ipecac already include dosage and use information.

CONCLUSION

Therefore, pursuant to provisions of the Federal hazardous Substances Act (secs. 2 (f)(1)(A), (p)(1), 3(b), 10(a), 74 Stat. 372, 374, 378, as amended 80 Stat. 1803, 84 Stat. 1673; 15 U.S.C. 1261 (f)(1)(A), (p)(1), 1262(b), 1269(a)), and under authority vested in the Commission by the Consumer Product Safety Act (§ 30(a), 86 Stat. 1231, 15 U.S.C. 2079(a)), the Commission hereby amends title 16 of the Code of Federal Regulations by adding to chapter II, subchapter C. Part 1500, a new § 1500.134, reading as follows: § 1500.134 Policy on first aid labeling for saline emesis.

(a) This section states the Consumer Product Safety Commission's policy concerning first aid instructions for the use of a salt solution to induce vomiting (saline emesis) in the event of ingestion of hazardous substances.

(b) In many cases where hazardous substances are ingested, the recommended first aid instructions for inducing vomiting have contained a statement that this should be accomplished by drinking a solution of salt (sodium chloride) in warm water. At one time, this direction was considered medically acceptable. However, the Commission has obtained information showing that the instruction to perform saline emesis is no longer appropriate. This is because the use of salt to induce vomiting can cause severe hypernatremia (salt poisoning) with

potentially toxic effects, particularly in children 5 years old or younger, the age group most often involved in accidental poisonings. In view of the availability of safer and more effective emetics such as ipecac syrup, the Commission no longer recommends a direction to perform saline emesis as a first aid direction for inducing vomiting.

(c) The Commission believes that, for products for which directions for saline emesis have been given in the past, ipecac syrup, U.S.P., is the most appropriate emetic, unless a particular contraindication exists in connection with any particular hazardous substance.

(d) The Commission wishes to emphasize that this policy does not require that any specific first aid instruction or wording be used. Where appropriate, the label may include directions (1) that the victim immediately contact a doctor or poision control center and/or (2) that vomiting be induced using methods other than salt. It is, of course, the manufacturer's responsibility to insure that the label provides enough information in addition to first aid instructions to fulfill all other labeling required by statute or regulation.

(Secs. 2 (f)(1)(A), (p)(1), 3(b), 10(a), 74 Stat. 372, 374, 378, as amended 80 Stat. 1303, 84 Stat. 1673 (15 U.S.C. 1261 (f)(1)(A), (p)(1), 1262(b), 1269(a)); sec. 30(a), 86 Stat. 1231 (15 U.S.C. 2079(a)).)

Effective date: This statement of policy becomes effective October 30, 1978 as to products packaged or imported after that date.

Dated: July 26, 1978.

SHELDON D. BUTTS,
Assistant Secretary, Consumer Product Safety Commission.

[FR Doc. 78-21148 Filed 7-31-78; 8:45 am]

[4110-07]

Title 20—Employees Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Reg. No. 4]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950)

Determining Amount Payable on Basis of Pre-1951 Wages; Subsequent Actuarial Reduction of Benefit Increases

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: These amendments to the regulations are published to reflect two changes to the Social Security Act made by the Social Security Amendments of 1977. These changes are to be applied to benefits after December 1977. One change provides a simplified method for figuring the monthly benefit of a worker who became age 21 after 1936 but before 1951 when the pre-1951 wages would result in a higher benefit.

Another change requires that when a person who first qualified for benefits at less than the full rate because of entitlement before age 65, later qualifies for a benefit increase, the same percentage of reduction must be applied to the increase as was used in figuring the original benefit.

EFFECTIVE DATE: August 1, 1978. However, following publication in the FEDERAL REGISTER of the Final Regulations, interested parties may submit data, comments or suggestions no later than August 31, 1978.

ADDRESSES: Comments must be submitted in writing to the Acting Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203. Copies of all comments received in response to the published document will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, Room 5131, North Building, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Mr. Morris Sackel, 4G9 West High Rise Building, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-6973.

SUPPLEMENTARY INFORMATION:

SIMPLIFIED METHOD FOR FIGURING BENEFITS WHEN WAGES BEFORE 1951 ARE USED

Section 201(d) of the Social Security Amendments of 1977 (Pub. L. 95-216, enacted December 20, 1977) introduced an additional method for figuring benefits of a person who became age 21 after 1936, but before 1951, when it is to the worker's advantage. The amendments do not change the 1967 simplifed method for a person who became age 21 before 1937. When neither the 1967 nor the 1977 method can be used, the 1965 Amendment provisions may be considered.

Under both the 1967 and 1977 simplified methods, the worker's primary insurance amount is figured by using the total wages before 1951, without a further breakdown of wages for each year. The 1977 method differs from the 1967 method by providing a special formula to determine how the total wages are to be credited for each year. So-called "increment years," that is, years of $1,650 in wages, will now be counted. These years are figured by dividing $1,650 into the total wages before 1951. Any amount left over will be dropped. These increment years may range from 4 to 14 in number and will each add one percent to the primary insurance benefit.

Under the 1977 method, years after 1950 are also used as they are credited for each year (up to the maximum for that year) in figuring the benefit amount. However, the base years (§ 404.203(e)) before 1951 are determined under a special formula which establishes the number of base years and the amounts to be used for each of those years. Under this formula, for a worker who (a) became age 21 before 1950, the total wages before 1951 will be divided by the number of years after age 20 and before 1951, or (b) for a worker who became age 21 after 1949, the total wages before 1951 will be divided by the number of years after 1949 and before 1951 (a divisor of one). This figure will, for each year, be assumed to be the wages credited to each year used in the divisor. If the figure is over $3,000 for each year, only $3,000 will be assumed to be the wages for each year. The remainder of the total wages before 1951 will be credited, up to $42,000 ($3,000 × 14 years), as provided in the formula.

PAYMENT OF REDUCED BENEFITS IN CERTAIN CASES

Section 331 of the 1977 Amendments provides that the original percentage of reduction will be used for any later increase in the benefit amount. Prior to the amendment, the primary insurance amount of a person who elected to receive reduced monthly benefits because of entitlement before age 65 was reduced only at the time the benefit was figured before age 65. There was no reduction when any increase in benefits became effective at age 65 or later.

The method for reducing the benefit amount depends upon the first month the person became entitled to a benefit. If entitled before January 1978, either the money amount of reduction in effect in December 1977, or the month before the month in which a primary insurance amount increases, whichever is later, is increased by the percentage increase which applies to the increased primary insurance amount. If entitled after December 1977, any later increases are reduced by the original percentage used in reducing the benefit.

Under the automatic cost-of-living benefit increase provisions, a person who receives benefits reduced for age generally receives a benefit increase in the reduced benefit which is slightly larger than the percentage increase in the cost-of-living. This happens because the percentage increase is applied to the primary insurance amount, rather than to the actual benefit amount. Under the amendment to the act, all persons receiving benefits at the time of an increase will receive the same percentage increase in their actual benefit amounts. As a practical matter, all such changes in amount are processed by computer.

The regulations are published without a Notice of Proposed Rulemaking since they are effective for benefits after December 1977. The Social Security Administration for good cause finds that advance notice is unnecessary (5 U.S.C. 553(b)(B)) since the regulation does no more than reflect statutory requirements.

The final regulations are issued under the authority contained in sections 205, 215, and 1102 of the Social Security Act, 49 Stat. 624, 64 Stat. 506, 49 Stat. 647, as amended; (42 U.S.C. 405, 415, 1302); secs. 201(d) and 331 of Pub. L. 95-216.

(Catalog of Federal Domestic Assistance Programs No. 13.802-13.806.)

NOTE.—The Social Security 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, and OMB Circular A-107.

Dated: May 24, 1978.

FRANCIS D. DEGEORGE,
Acting Commissioner of Social Security.

Approved: July 22, 1978.

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

Part 404 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.205 is amended by deleting "and" from the clause at the end of the first sentence, changing the period at the end of the sentence to a semicolon, and by adding a new clause to read as follows:

§ 404.205 General.

* * * and the Amendments of 1977 (Pub. L. 95-216). * * *

2. Section 404.214 is added to read as follows:

§ 404.214 1977 simplified old-start method.

(a) *General.* The Social Security Amendments of 1977 added a simplified old-start computation method for an individual who became age 21 after 1936. The 1967 simplified old-start method is retained for an individual who became age 21 before 1937. When neither of these methods is applicable, an old-start computation under the 1965 amendment provision may be possible. The 1977 old-start method must be considered when conditions for its use are met. It is not an alternate to the 1965 or 1967 methods.

(b) *Requirements for use of the 1977 simplified old-start method.* (1) The 1977 simplified old-start method is applicable to monthly benefits payable for months after Decemeber 1977 when the individual:

(i) Has at least one quarter of coverage before 1951; and

(ii) (a) Became age 22 after 1950 and has less than 6 quarters of coverage after 1950, or (b) became age 21 after 1936 and before 1950; and

(iii) Had no period of disability which began before 1951 unless the period of disability is entirely disregarded; and

(iv) Became age 62, died, or became disabled after 1977.

(2) If these requirements are not met, see §§ 404.213 and 404.215.

(c) *Base year earnings under the 1977 simplified old-start method.* (1) Earnings for years after 1950 are used in the computation as they are credited (up to the maximum for each year). However, base years before 1951 are determined by a special formula. The formula is applied to the total earnings before 1951 to determine the number of base years before 1951 with earnings and the amount of earnings to be used for each of those years. Increment years are counted—no less than 4 and no more than 14 total.

(i) For an individual who became age 21 before 1950, the total wages before 1951 are divided by the number of years after the year age 20 is reached and before 1951.

(ii) For an individual who became age 21 after 1949, the total wages before 1951 is divided by the number of years after 1949 and before 1951 (a divisor of 1).

(2) The amount obtained (the quotient) for each year is deemed (or assumed) to be the individual's wages credited to each year used in the divisor. If the amount is over $3,000 for each year only $3,000 is assumed to be wages for each of those years. The balance of the total wages before 1951 is credited as follows:

(i) If less than $3,000, credit to the year the individual became age 20 in paragraph (b)(1)(i) of this section, or 1949 in paragraph (b)(1)(ii) of this section;

(ii) If $3,000 or more, credit in blocks of $3,000 each year, starting with the year in paragraph (b)(2)(i) of this section, as the case may be, and to each year in reverse order before that year; any remainder less than $3,000 is credited to the year before the earliest year to which a full $3,000 is credited;

(iii) No more than $42,000 ($3,000 × 14 years) can be used as total wages after 1936 and before 1951.

(d) *Determining increment years under the 1977 simplified old-start method.* Under this method, increment years must be counted. To determine the number of increment years, divide the total wages before 1951 by $1,650. Drop any fraction. The number of years may not be less than 4 nor more than 14.

(e) *Determining the primary insurance amount under the 1977 simplified old-start method.* Once the base years and the number of increment years are determined under the requirements in paragraphs (c) and (d) of this section, the current primary insurance amount is computed as it is done under the old-start method (other than the 1967 simplified old-start), that is determining the primary insurance benefit and converting to a primary insurance amount. See §§ 404.207 and 404.209. The primary insurance benefit is obtained by adding 40 percent of the first $50 of the individual's average monthly wage as computed under this section to 10 percent of the next $200, and adding to the resulting total 1 percent of the total for each increment year.

3. Section 404.413 is amended by designating the first paragraph as (a) and by adding paragraphs (b) and (c) to read as follows:

§ 404.413 Reduction in benefits for age following an increase in primary insurance amounts.

(a) *General.* * * *

(b) *Subsequent reduction of increases in reduced benefit after 1977 applies as of original entitlement.* When an individual's benefits have been reduced for age and the benefit is increased after 1977 due to a rise in the primary insurance amount, the amount of the increase to which the individual is entitled is proportionately reduced as provided in paragraph (c) of this section. When an individual is entitled to more than one benefit which is reduced for age, the rules for reducing the benefit increases apply to each reduced benefit.

(c) *How reduction is computed—*

(1) *Entitlement to reduced benefits after 1977.* If an individual becomes entitled after 1977 to a benefit reduced for age, and the primary insurance amount on which the reduced benefit is based is increased, the amount of the increase payable to the individual is reduced by the same percentage as used to reduce the benefit in the month of initial entitlement. Where the reduced benefit of an individual has been adjusted at age 65 (age

62 and 65 for widows) any increase to which the individual becomes entitled thereafter is reduced by the adjusted percentage.

(2) *Entitlement to reduced benefits before 1978.* An individual who became entitled to a benefit reduced for age before 1978, and whose benefit may be increased as a result of an increase in the primary insurance amount after 1977, shall have the amount of the benefit to which he or she is entitled increased by the same percentage as the increase in the primary insurance amount.

[FR Doc. 78-21257 Filed 7-31-78; 8:45 am]

[4110-03]

Title 21—Food and Drugs

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

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

[Docket No. 77F-0262]

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

Anhydrous Ammonia

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The food additive regulations are amended to provide for the direct mixing of anhydrous ammonia with corn plant material. United States Steel Agri-Chemicals Division filed a petition for such use.

DATES: Effective August 1, 1978; objections by August 31, 1978.

ADDRESS: Written objections to the Administrative Proceedings Staff/Hearing Clerk's Office (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

William D. Price, Bureau of Veterinary Medicine (HFV-123), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs announced, in a notice published in the FEDERAL REGISTER September 30, 1977 (42 FR 52490), that a petition (MF-3673) had been filed by United States Steel Agri-Chemicals Division, United States Steel Corp., P.O. Box 1685, Atlanta, Ga. 30301, proposing to amend § 573.180 Anhydrous ammonia (21 CFR 573.180) to provide for the direct mixing of cold liquid ammonia with freshly chopped corn plant material before ensiling as a source of nonprotein nitrogen in cattle feed.

The Commissioner of Food and Drugs, having evaluated data in the petition and other relevant material, concludes that the food additive regulations should be amended as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 573 is amended by revising § 573.180 to read as follows:

§ 573.180 Anhydrous ammonia.

The food additive anhydrous ammonia may be safely used in accordance with the following conditions:

(a) The food additive is used as a component of an aqueous premix which includes ammonia, molasses, and minerals so that the premix contains not less than 16 percent nor more than 17 percent ammonia and not less than 83 percent crude protein.

(1) The premix is used or intended for use for mixing with corn plant material before ensiling, as a source of nonprotein nitrogen and minerals.

(2) To ensure safe use, the label and labeling of the premix shall bear, in addition to the other information required by the act, the following:

(i) The name of the additive.

(ii) A statement of the quantity of ammonia contained therein.

(iii) The maximum percentage of equivalent crude protein from nonprotein nitrogen.

(iv) An expiration date that is not more than 10 weeks following the date of its manufacture.

(v) A statement that silage treated with the additive is to be fed to cattle only.

(vi) A statement that additional protein should not be fed to lactating dairy cows producing less than 32 pounds of milk per day, or beef cattle consuming less than 1 percent of body weight daily in shelled corn.

(vii) A warning statement to read as follows: "Warning—Use only as directed; additional trace mineral supplementation should not be fed with treated silage."

(b) The food additive is used as a source of nonprotein nitrogen.

(1) The additive must be thoroughly blended with corn plant material before being ensiled.

(i) The maximum application rate of the anhydrous ammonia does not exceed 0.35 percent of the corn plant material.

(ii) The dry matter content of the corn plant material is not less than 30 percent and not more than 35 percent.

(iii) The additive is applied so that not less than 75 percent and not more than 85 percent of the additive is liquid at ambient pressure.

(2) Silage treated with this additive is to be fed to cattle only.

(3) To insure safe use, anhydrous ammonia intended for purposes defined within this paragraph shall be accompanied by labeling which shall bear, in addition to other information required by the act, the following:

(i) The name of the additive.

(ii) Directions for use consistent with the requirements of this regulation.

Any person who will be adversely affected by the foregoing regulation may at any time on or before August 31, 1978, submit to the Administrative Proceedings Staff/Hearing Clerk's Office (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Administrative Proceedings Staff/Hearing Clerk's Office docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This regulation shall become effective August 1, 1978.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)).)

Dated: July 25, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner, Regulatory Affairs.

[FR Doc. 78-21165 Filed 7-31-78; 8:45 am]

[4110-03]

[Docket No. 76F-0096]

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

Fermented Ammoniated Condensed Whey

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The food additive regulations are amended to provide for use of fermented ammoniated condensed whey in cattle feed as a source of protein and nonprotein nitrogen. Calor Agricultural Research filed a petition for such use.

DATES: Effective August 1, 1978; objections by August 31, 1978.

ADDRESS: Written objections to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

William D. Price, Bureau of Veterinary Medicine (HFV-123), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: In a notice published in the FEDERAL REGISTER of April 21, 1976 (41 FR 16679), the Commissioner of Food and Drugs announced that a food additive petition (FAP MF-3655) had been filed by Calor Agriculture Research, 2367 Science Parkway, Okemos, Mich. 48864, proposing issuance of a food additive regulation to provide for the safe use of fermented ammoniated condensed whey as a source of protein and nonprotein nitrogen for ruminant animals.

The Commissioner has evaluated data in the petition and other relevant material and concludes that the food additive regulations should be amended as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Commissioner (21 CFR 5.1), part 573 is amended by adding new § 573.450 to read as follows:

§ 573.450 Fermented ammoniated condensed whey.

(a) *Identity.* The product is produced by the *Lactobacillus bulgaricus* fermentation of whey with the addition of ammonia.

(b) *Specifications.* The product contains 35 to 55 percent crude protein and not more than 42 percent equivalent crude protein from nonprotein nitrogen sources.

(c) *Uses.* The product is used as a source of protein and nonprotein nitrogen for cattle.

(d) *Limitations.* Store in a closed vented tank equipped for agitation. Agitate 5 minutes before using. Do not store at temperatures above 110° F (43° C). Mix with grain, roughage, or grain and roughage prior to feeding. The maximum level of use of fermented ammoniated condensed whey and equivalent crude protein from all other added forms of nonprotein nitrogen shall not exceed 30 percent of the dietary crude protein.

(e) *Labeling.* The label shall bear, in addition to other information required by the act:

(1) The name of the additive.

(2) The maximum percentage of equivalent crude protein from nonprotein nitrogen.

(3) Adequate directions for use in accordance with the provisions in paragraph (d) of this section.

Any person who will be adversely affected by the foregoing regulation may at any time on or before August 31, 1978, submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This regulation shall become effective August 1, 1978.

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)).)

Dated: July 25, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner, Regulatory Affairs.

[FR Doc. 78-21166 Filed 7-31 78; 8:45 am]

[4510-30]

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

PART 89—SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Adoption of Poverty Criteria

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is amending its Senior Community Service Employment Program (SCSEP) economic eligibility criteria. These amendments are designed to reinstate the poverty level income eligibility criteria formerly applicable.

EFFECTIVE DATE: August 1, 1978.

ADDRESS: Send comments to: Lamond Godwin, Administrator, Office of National Programs, U.S. Department of Labor, 601 "D" Street NW., Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT:

Margaret Fishman, Office of National Programs, U.S. Department of Labor, 601 "D" Street NW., Washington, D.C. 20213, telephone 202-376-6232.

SUPPLEMENTARY INFORMATION: On June 30, 1978, the Department of Labor at 43 FR 28468 revised the SCSEP eligibility criterion to 125 percentum of the poverty level. This was higher than the prior poverty-level criterion previously adopted by the Department of Labor in implementing the "low income" standard of the existing law and the present amendments are designed to reinstate the income eligibility criterion formerly applicable.

This revision of the Department's regulations falls within the exception to the rulemaking provisions of the Administrative Procedure Act for regulations which involve "a matter relating to * * * public property, loans, grants, benefits, or contracts".

(5 U.S.C. 553(a)(2).)

Accordingly, 29 CFR, Subtitle A, is amended as follows:

§ 89.19 [Amended]

1. At the end of paragraph (b)(3)(i), the words "125 percentum of" are deleted.

2. Paragraph (b)(3)(ii)(B) is amended by deleting the comma and the words "125 percentum of" immediately following the figure "$500."

Signed at Washington, D.C., this 26th day of July 1978.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-21391 Filed 7-31-78; 8:45 am]

[3810-71]

Title 32—National Defense

CHAPTER VI—DEPARTMENT OF THE NAVY

SUBCHAPTER B—NAVIGATION

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

Additional Certifications and Exemptions Issued by the Secretary of the Navy for Certain Vessels of the Navy

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) to reflect that the Secretary of the Navy: (1) Has determined and certified that certain Navy minesweepers, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval minesweepers, and (2) has exempted various ships and classes of ships from full compliance with certain provisions of the 72 COLREGS in accordance with, and for the periods allowed by, 72 COLREGS Rule 38. The intended effect of this rule is to warn mariners in waters where the 72 COLREGS apply.

EFFECTIVE DATE: July 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Lt. Comdr. M. D. Seiders, JAGC, USN, Admiralty Division, Office of the Judge Advocate General, Navy Department, Washington, D.C. 20370, telephone No. 202-694-5188.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in Executive Order 11964 and 33 U.S.C. § 1605, the Department of the Navy amends 32 CFR part 706. This amendment to part 706 provides notice that the Secretary of the Navy has certified that the minesweeper boats (MSB) 15, 16, 25, 28, 29, 41, 51, and 52 are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS rule 23(a)(i) and annex I, section 2(f), in that their forward masthead lights are not positioned above the minesweeping lights required to be exhibited by rule 27(f). Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special function of these vessels. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

This amendment further provides notice that the Secretary of the Navy has exempted, in accordance with rule 38 of the 72 COLREGS, the following vessels and classes of vessels, from full compliance with the 72 COLREGS, where an exemption is allowed by, and for the periods specified in, rule 38:

MSB class, U.S.S. *Truxtun* (CGN-35), CGN-36 class, CGN-38 class, DD-710 class, DD-825 class, DD-931 class, DD-933 class, DD-945 class, DD-948 class, DD-963 class, DDG-2 class, DDG-31 class, AOE-1 class, AOR-1 class, AD-14 class, AD-37 class, U.S.S. *Point Loma* (Agds-2), U.S.S. *Plainview* (AGEH—1), U.S.S. *La Salle* (AGF-3), U.S.S. *Glover* (AGFF-1), AR-5 class, AS-11 class, U.S.S. *Proteus* (AS-19), AS-31 class, AS-33 class, AS-36 class and AS-39 class.

The Secretary of the Navy has found that these vessels and classes of vessels had their keels laid prior to July 15, 1977, and that they comply with the requirements of the International Regulations for Preventing Collisions at Sea, 1960.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner different from that prescribed herein will adversely affect the vessels' capabilities to perform their military functions. Accordingly, 32 CFR part 706 is amended as follows:

§ 706.2 [Amended]

1. In note 5 of table 4 of § 706.2, in the first sentence, the phrase "on MSO type ships" is changed to "On mine warfare type ships."

2. Note 5 of table 4 of § 706.2 is further amended by listing the following additional vessels as follows:

Vessel	MSO No.	Relationship of forward masthead light to all minesweeping lights	Relationship of after masthead light to lower minesweeping lights	Relationship of after masthead light to upper minesweeping light
• • •	•	•	•	•
U.S.S. *Affray*	511			
MSB	15	below		
MSB	16	do		
MSB	25	do		
MSB	28	do		
MSB	29	do		
MSB	41	do		
MSB	51	do		
MSB	52	do		

§ 706.3 [Amended]

3. The sixth Table One of § 706.3 is amended as follows to indicate additional exemptions granted by the Secretary of the Navy:

Vessel or class	* * *	* * *	* * *	* * *	* * *	Repositioning of sidelights in §§ 2(g) and 3(b), annex I, 9 years; rule (f)	* * *
* * *							
U.S.S. *Truxtun* (CGN-35)						X	
CGN-36 class						X	
CGN-38 class						X	
DD-710 class						X	
DD-931 class						X	
DD-933 class						X	
DD-945 class						X	
DD-963 class						X	
DDG-2 class						X	
DDG-31 class						X	
* * *							

4. The ninth Table One of § 706.3 is amended as follows to indicate exemptions granted by the Secretary of the Navy:

Vessel or class	* * *	* * *	* * *	* * *	* * *	Repositioning of sidelights in §§ 2(g) and 3(b), annex I, 9 years; rule 38(f)	* * *
* * *							
AOE-1 class						X	
AOR-1 class						X	
AD-14 class						X	
* * *							
AD-37 class						X	
* * *							
U.S.S. *Point Loma* (AGDS-2)						X	
U.S.S. *Plainview* (AGEH-1)						X	
U.S.S. *La Salle* (AGF-3)						X	
U.S.S. *Glover* (AGFF-1)						X	

5. The tenth Table One of § 706.3 is amended as follows to indicate exemptions granted by the Secretary of the Navy:

Vessel or class	Lights with ranges in rule 22, 4 years; rule 38(a)	Lights with color specs in § 7, annex I, 4 years; rule 38(b)	Repositioning of masthead lights, vessels less than 150 meters, in § 3(a), annex I, permanent; rule 38(d)(i)	Repositioning of masthead lights, vessels greater than 150 meters, in § 3(a), annex I, 9 years; rule 38(d)(ii)	Repositioning of masthead lights, in § 2(b), annex I, 9 years; rule 38(e)	Repositioning of sidelights in § 2(g) and 3(b), annex I, 9 years; rule 38(f)	Sound signal appliances in annex III, 9 years; rule 38(g)
* * *							
AR-5 class						X	
* * *							
AS-11 class						X	
U.S.S. *Proteus* (AS-19)						X	
AS-31 class						X	
AS-33 class						X	
AS-36 class				X		X	
* * *							
U.S.S. *Norton Sound* (AVM-1)							
AS-39 class	X	X					X

6. The eleventh Table One of § 706.3 is amended as follows to indicate exemptions granted by the Secretary of the Navy:

Vessel or class	Lights with ranges in rule 22, 4 years; rule 38(a)	Lights with color specs in § 7, annex I, 4 years; rule 38(b)	Repositioning of masthead lights, vessels less than 150 meters, in § 3(a), annex I, permanent; rule 38(d)(i)	Repositioning of masthead lights, vessels greater than 150 meters, in § 3(a), annex I, 9 years; rule 38(d)(ii)	Repositioning of masthead lights, in § 2(b), annex I, 9 years; rule 38(e)	Repositioning of sidelights in § 2(g) and 3(b), annex I, 9 years; rule 38(f)	Sound signal appliances in annex III, 9 years; rule 38(g)
•	•	•	•	•	•	•	•
DD-825 class						X	
DD-948 class						X	
•	•	•	•	•	•	•	•
MSB class	X	X				X	X

Effective date: The effective date of this amendment will be July 18, 1978.

W. GRAHAM CLAYTOR, Jr.,
Secretary of the Navy.

[FR Doc. 78-21068 Filed 7-31-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER H—OCEAN DUMPING

[FRL 917-3]

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

Final Designation of Site

AGENCY: Enviromental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today establishes a temporary ocean dumping site off Kwajalein Atoll, Marshall Islands, for the ocean dumping of motor vehicles, construction equipment, material handling equipment, household appliances, air conditioners, refrigeration units, miscellaneous technical and electronic equipment, weapons system test equipment resulting from the operation of the Kwajalein Missile Range, and World War II ammunition washed ashore or uncovered on land.

DATES: This site designation shall become effective at the time an ocean dumping permit is issued for its use.

FOR FURTHER INFORMATION CONTACT:

Mr. T. A. Wastler, Chief, Marine Protection Branch (WH-548), EPA, Washington, D.C. 20460, 202-245-3051.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq., (hereafter "the Act") gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in this part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461.).

Section 228.4(b) of the ocean dumping regulations and criteria states that the Administrator may designate specific locations for temporary use for disposal of small amounts of materials under a special permit without disposal site designation studies when such materials satisfy the criteria and the Administrator determines that the quantities to be disposed of will not result in significant impact on the environment.

EPA Region IX has received an application from the United States Army, Ballistic Missile Defense Systems Command, Box 1500, Huntsville, Ala. 35807, for a special permit to transport and dump material into ocean waters pursuant to the Act. The Army proposes to dump waste materials resulting from the operation of the Kwajalein Missile Range. The waste material consists of (a) motor vehicles (vans, cars, trucks, etc.), heavy construction equipment (bulldozers, compactors, welding machines, etc.), material handling equipment (forklifts, cranes, etc.), household appliances (washers, dryers, stoves, etc.), air conditioners, refrigeration units, miscellaneous technical and electronic equipment (oscilloscopes, voltmeters, ammeters, etc.), weapons system test equipment (antennas, equipment racks, electronic equipment); and (b) ammunition (World War II) either washed ashore or uncovered on land. None of the material contains oil, gasoline, refrigerants, floatable matter, polychlorinated biphenyls (PCBs), or other toxic materials. There is currently no other available EPA ocean dumping site in the area.

The United States Army Engineer Division, Pacific Ocean, Corps of Engineers, prepared an Environmental Assessment in April 1976 on the ocean dumping of solid wastes at the Kwajalein Missile Range. This assessment stated the following in conjunction with the proposed ocean dumping of waste materials:

1. The proposed method of disposal consists of towing a barge to the proposed site and pushing the material off the barge by mechanical means. The proposed site was selected over others because it had been utilized in the early 1960's or earlier for disposal of metal debris and equipment.

2. The proposed site would be initially used 90 days after receipt of an EPA ocean dumping permit, and every 4 months thereafter. The initial dump would total approximately 1,075 tons of metal items, and an estimated 1,000 tons per year would be dumped thereafter.

3. Kwajalein Island is located on the southern tip of Kwajalein Atoll and is 1.2 square miles in area. The material proposed to be dumped is located on this Island. Because of the small size of the island, land area is a valuable commodity. Stockpiling metal items on land prevents the use of land for other purposes.

4 Surface water drift at the vicinity of the proposed site is predominantly offshore to the west away from the island.

EPA Region IX has made a determination, based upon scientific and other data, that the material proposed for dumping is in compliance with the criteria and the dumping will not result in significant impact on the marine environment.

On Wednesday, February 8, 1978, EPA published a proposed designation as an EPA-approved ocean dumping site, a site 2.1 miles west of Kwajalein Atoll south pass, Marshall Islands Trust Territories of the Pacific Islands (43 FR 5391). The proposed site has a 1,000-yard radius with a center point of 08° 46′ north latitude and 167° 36′ east longitude. The depth at the proposed site is 1,655 fathoms (9,930 feet).

A number of comments were received on the proposed site designation suggesting that EPA consider the availability of alternatives to ocean dumping in making its final site designation determination. The availability of alternatives to ocean dumping is more appropriately considered in the permit application review process as part of the evaluation required by §§ 227.15 and 227.16 of the criteria. Accordingly, these comments have been referred to EPA Region IX for their consideration in determining whether a permit should be issued for dumping at the Kwajalein Atoll site.

One commenter suggested that a specific requirement specifying screening and cleaning procedures be included in the site designation. Since this is more appropriately a permit condition, it also was referred to the Region for inclusion in any permit that might issue.

Management authority for this site will be delegated to the Regional Administrator of Region IX, EPA.

The proposed site designation is hereby promulgated without change, as set forth below.

(33 U.S.C. 1412, 1418.)

Dated: July 25, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, paragraph (b) of § 228.12 is amended by adding subparagraph (3), an ocean dumping site, as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(3) Kwajalein Ocean dumping site—Region IX. Location—Latitude and Longitude—08° 47′ north latitude, 167° 36′ east longitude.

Size—1,000 yard radius.

Depth—1,655 fathoms (9,930 feet).

Primary use—waste materials resulting from the operation of the Kwajalein Missile Range.

Period of use—Three years after issuance of an ocean dumping permit for use of this site.

[FR Doc. 78-21157 Filed 7-31-78; 8:45 am]

[4110-12]

Title 41—Public Contracts and Property Management

CHAPTER 3—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 3-1—GENERAL

Subpart 3-1.7—Small Business Concerns

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: The Office of the Secretary is amending its regulations on contracts with the Small Business Administration, to provide guidance in regard to the procurement of technical requirements. The purpose of the amendment is to establish standardized policy and procedures which specify how the Department conducts source selection and debriefing activities in its minority business program.

EFFECTIVE DATE: October 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Willie E. Boyd, Department of Health, Education, and Welfare, Room 513D, 200 Independence Avenue SW., Washington, D.C. 20201, 202-245-7565.

SUPPLEMENTARY INFORMATION: On January 6, 1977, the Department of Health, Education, and Welfare published a proposed rule (42 FR 1273) to revise 41 CFR Subpart 3-1.7, § 3-1.713, Contracts with the Small Business Administration. Comments were received from two organizations, and both, while agreeing in principle with the proposal, made several suggestions which the Department has incorporated.

The provisions of this amendment are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

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

Date: July 14, 1978.

E. T. RHODES,
Deputy Assistant Secretary for Grants and Procurement.

Section 3-1.713 is deleted in its entirety and the following substituted:

Subpart 3-1.7—Small Business Concerns

§ 3-1.713 Contracts with the Small Business Administration.

§ 3-1.713-50 Procurement of technical requirements.

(a) *Source selection.* (1) The section 8(a) program is a business development program, and the policy expressed in § 1-3.101(d) does not apply. Additionally, the Small Business Administration (SBA) has ultimate responsibility for nomination of an 8(a) subcontractor for a proposed 8(a) requirement and may elect to deviate from usual source nomination procedures.

(2) Except in the case where SBA selects a firm for an 8(a) award, or as provided in subparagraph (3) below, limited technical competition shall be conducted for requirements for consulting services, computer science and related services, research, development, test, evaluation, demonstration, and technical and professional services, where technical aspects, methodology, or approach are of primary importance rather than price. At the request of the program director, the procuring activity may, in consultation with the SBA, require that written technical proposals be submitted by the firms participating in the limited technical competition.

(3) There may be circumstances where one 8(a) firm has exclusive or predominant capability among 8(a) firms by reason of experience, specialized facilities, or technical competence to perform the work within the time required. In such circumstances, after coordinating with the Minority Business Coordinator (MBC), the initiating program office may recommend, for approval by the contracting officer, that only that 8(a) firm be considered for nomination to SBA. This recommendation shall be in writing, setting forth full and complete justification for the nomination. The justification shall be submitted to the appropriate contracting officer, through the minority business coordinator, for concurrence. In addition, the justification shall be included in the offering letter to SBA.

(4) Where limited technical competition is required or is determined to be appropriate, the sources (i.e., firms) which are to be included will be decided by the procuring activity in consultation with SBA. Consultation will be initiated by nomination of sources rec-

ommended by program officials and MBC's and, if SBA elects, by SBA.

(5) Each 8(a) firm or group of firms nominated for a specific 8(a) requirement shall have been approved by SBA for that particular requirement prior to any discussion with the firm(s) about the requirement.

(6) It is conceivable that limited technical competition will assist in the development of 8(a) firms. However, procuring activities should recognize that the policy expressed in § 1-3.101 does not apply to the process of identifying potential contractors to be nominated to SBA under the 8(a) program, and that to involve a large number of 8(a) firms in a limited technical competition may have an adverse impact on the limited financial resources of these firms. Usually three to five sources should be nominated, depending on the intended contract, and subject to SBA's approval.

(b) *Debriefing.* A debriefing, when requested in writing, shall be provided by the cognizant contracting officer to an 8(a) firm that has been unsuccessful in an 8(a) limited technical competition.

[FR Doc. 78-21269 Filed 7-31-78; 8:45 am]

[6820-24]

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER E—SUPPLY AND PROCUREMENT

[FPMR Temp. Reg. E-21, Supp. 3]

APPENDIX—TEMPORARY REGULATIONS

Revised Policy on Reporting Discrepancies in Shipments

AGENCY: Federal Supply Service, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This supplement establishes an expiration date for FPMR Temporary Regulation E-21—Revised policy on reporting discrepancies in shipments. The policy and instructions in FPMR Temporary Regulation E-21 will be incorporated into the GSA Handbook, discrepancies or deficiencies in GSA or DOD shipments, material, or billings (FPMR 101-26.8), on or before December 31, 1978.

DATES: Effective date: August 1, 1978. Expiration date: December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

John I. Tait, 703-557-1914, Director, Regulations and Management Control Division.

(Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).)

In 41 CFR Chapter 101, the following temporary regulation is listed in the appendix at the end of subchapter E.

FEDERAL PROPERTY MANAGEMENT REGULATIONS TEMPORARY REGULATION E-21 SUPPLEMENT

TO: Heads of Federal agencies.

SUBJECT: Revised policy on reporting discrepancies in shipments.

1. Purpose. This supplement establishes an expiration date for FPMR Temporary Regulation E-21.

2. Effective date. This regulation is effective August 1, 1978.

3. Expiration date. This regulation expires December 31, 1978.

4. Background. FPMR Temporary Regulation E-21, dated January 24, 1972, provided revised policy and instructions on reporting discrepancies or deficiencies in shipments from, or directed by, GSA or the Department of Defense (DOD). The policy and instructions in FPMR Temporary Regulation E-21 will be incorporated into the GSA Handbook, discrepancies or deficiencies in GSA or DOD shipments, material, or billings (FPMR 101-26.8), on or before December 31, 1978. Therefore, FPMR Temporary Regulation E-21 will be canceled at that time.

5. Explanation of change. The expiration date for FPMR Temporary Regulation E-21, as provided for in paragraph 3 of supplement 2 thereto, is hereby established as December 31, 1978.

ROBERT T. GRIFFIN,
Acting Administrator of General Services.

JULY 14, 1978.

[FR Doc. 78-21169 Filed 7-31-78; 8:45 am]

[4110-87]

Title 42—Public Health Service

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

SUBCHAPTER C—MEDICAL CARE AND EXAMINATIONS

PART 37—SPECIFICATIONS FOR MEDICAL EXAMINATIONS OF UNDERGROUND COAL MINES

Subpart—Chest Roentgenographic Examinations

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

ACTION: Final rule.

SUMMARY: These rules revise and update specifications governing the chest roentgenograms (X-rays) required to be given to underground coal miners by section 203 of the Federal Mine Safety and Health Act of 1977. The program was formerly conducted under section 203 of the Federal Coal Mine Health and Safety Act of 1969.

DATES: Effective Date August 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Harlan Amandus, Chief, Examinations Processing Branch or Mrs. Phyllis Popovich, Chief, Receiving Center Section, Examinations Processing Branch, Division of Respiratory Disease Studies, NIOSH, 944 Chestnut Ridge Road, Morgantown, W. Va. 26505, phone: 304-599-7306 or FTS 923-7306.

SUPPLEMENTARY INFORMATION: On December 27, 1977, a notice of proposed rulemaking was published in the FEDERAL REGISTER (42 FR 64643) to revise the subpart of part 37, Title 42, Code of Federal Regulations, entitled "Chest Roentgenographic Examinations." The proposal set forth the specifications for giving, reading, classifying, and submitting to NIOSH chest roentgenograms (X-rays) required for underground coal miners by section 203 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 843).

Interested persons were invited to comment on the proposed specifications. Comments were received from the United Mine Workers of America (UMWA), the Bituminous Coal Operators' Association (BCOA), the Association of Bituminous Contractors (ABC), the American College of Radiology (ACR), this Department's Bureau of Radiological Health in the Food and Drug Administration, the Department of Labor's Mine Safety and Health Adminstration (MSHA) (formerly the Mining Enforcement and Safety Administration (MESA)), coal mine operators, coal mine construction companies, physicians, hospitals, clinics and other interested parties.

DISCUSSION OF COMMENTS

The ABC and several construction contractors argued that the intent of the Federal Coal Mine Health and Safety Act of 1969 was to apply only to underground coal miners and not to construction workers who work at the surface of underground mines. As noted in the preamble to the proposed regulations, part 37 was revised to apply to those contractors who construct underground coal mines and to

certain employees of the contractors to reflect the decision in "Bituminous Coal Operators' Association Inc. v. Secretary of the Interior, 547 F.2d 240 (4th Cir. 1977)". Moreover, since the proposal, the Federal Mine Safety and Health Act of 1977 was enacted and expressly defines operators to include construction contractors who work at an underground coal mine. Therefore, construction companies must comply with the regulations and afford their employees the opportunity for chest X-rays. NIOSH recognizes that there are special problems in applying these regulations to coal mine construction employees and contractors, and seeks to clarify the procedures of part 37 as applied to the construction industry:

1. *Scope.* The regulations do not attempt to distinguish between underground coal miners and coal mine construction workers who work underground. Regardless of duration of exposure to coal dust, all employees who work underground come within the definition of "miner" and must be afforded the examinations as specified in § 37.3. Similarly, the language of § 37.2(g), excluding certain "surface workers" from the definition of "miner", applies equally to all surface workers, including construction workers, who do not have direct contact with underground coal mining or with coal processing operations. Under the definition, any person who works exclusively at the surface of an underground coal mine prior to any coal mining operation would not be a miner.

2. *Examination Plans.* Coal mine construction contractors who have no employees who come within the definition of "miner" in § 37.2(g) would, of course, not be expected to submit plans for chest X-ray examinations under § 37.4. For those contractors who are required to provide the X-ray examinations, the regulations provide that all plans for the provision of examinations shall be posted on a bulletin board at the mine site. In the event the contractor does not have a bulletin board at the mine site, the construction contractor must otherwise notify its employees of the examination arrangement; and, upon request, show NIOSH written evidence that its employees have been so notified. Finally, NIOSH understands that in the course of its business a mine construction contractor may be involved in a substantial number of construction sites at which local workers are hired. Thus, for each contractor submitting a plan to NIOSH, it will be necessary to submit a separate plan for each mine or mine site where the contractor's miners are working. A new plan, which consists of filing a one page form (indicating the facility, physician, and dates for the examinations), must be submitted upon the contractor's moving to a new site where its workers will be subject to this subpart.

The ARC and several others recommend that the definition of ILO U/C classification (§ 37.2(f)) include future revisions of the classification. The ACR, together with NIOSH, plans to conduct an international meeting of experts to review and, if necessary, recommend changes to the classification. When and if the classification is revised, NIOSH will move to adopt it.

Several contractors, coal operators, and the UMWA suggested that the definitions in § 37.2(a), (h), and (1) be revised to reflect the definition of these terms in the new Act. The definition of "Act" and "operator" are revised accordingly. Throughout the text, the term "MESA" is changed to "MSHA" which is now part of the Department of Labor.

NIOSH has adopted the UMWA suggestion that, to insure medical confidentiality, the provisions of § 37.3(c) should include the prohibition that the notice to the coal mine operator concerning a miner's third mandatory examination (which is only sent if the miner provides written consent) shall not state the medical reason for the examination nor that the examination is the third of the series. Section 37.3(c) has also been revised to make clear that if the operator is not notified of the examination and the X-ray examination is available under the operator's plan, availability of the examination shall constitute the operator's compliance with the requirement to provide a third mandatory examination even if the miner refuses to take the examination.

Coal mine operators, coal mine construction contractors, and the BCOA objected to the requirement as burdensome that coal mine operators notify contractors that they must submit a plan to NIOSH for the examination of the contractor's workers (§ 37.4(a)). Based on the comments, this requirement is deleted. Information concerning the status of contractors at coal mines will be obtained from MSHA. MSHA has agreed to periodically notify NIOSH when contractors develop a mine site for a coal mine or begin work at a coal mine. NIOSH will then notify the contractor to either submit a plan or amend its plan as necessary to provide examinations for its workers.

The Bureau of Radiological Health recommended that in § 37.42(c)(1), the term "qualified consultant" be changed to "qualified expert" which is defined in the NCRP Report No. 33, "Medical X-ray by Gamma Ray Protection for Energies Up to 10 MeV—Equipment Design and Use" (issued February 1, 1968). This suggestion is incorporated.

The UMWA requested that NIOSH notify the miner to see his or her physician when findings other than pneumoconiosis are found on the miner's X-ray. Since this has been NIOSH's policy since the beginning of the examinations program in 1970, language is inserted in § 37.53(a) to clarify this procedure.

Coal operators, X-ray facilities, and physicians argued that the proposed 10-day limit in which to submit examinations is too short (§ 37.60(a)). Facilities in remote areas stated that they would have difficulty in having the films interpreted and submitted to NIOSH within 10 days. The time requirement is changed to 14 days.

Section 37.70(b) of the proposal provided a procedure for an operator to seek review of an X-ray interpretation regarding a miner that the operator has been directed by MSHA to transfer to a less dusty area. The language of § 37.70(b) is revised to clarify that it will be applied prospectively, i.e., the operator may seek review only of a miner's most recent examination made subsequent to the effective date of the regulations. The review procedure provided in § 37.70(b) will not apply to transfer options afforded to miners based on examinations in previous rounds.

The Bureau of Radiological Health commented that each X-ray facility should establish a formal quality assurance program to insure consistent quality radiographs. The Institute supports the Bureau's recommended quality assurance program (43 FR 18207) for diagnostic radiology facilities and has added this requirement to its regulations in § 37.41(h)(9). In regard to examinations of pregnant miners (§ 37.41(n)), the Bureau commented that a well collimated radiograph does not subject the fetus to an increased risk and that the mother should not be denied the benefit of an X-ray. The Bureau also commented that in a well collimated radiograph gonadal shielding is not necessary and should not be part of the chest roentgenogram specifications. The Institute thus decided to delete § 37.41(n) of the proposed regulations.

The Bureau also recommended specifications for beam limiting devices (§ 37.41(g)) and that applicable Federal Regulations for the protection against radiation emitted by X-ray equipment (§ 37.43) be amended to include Report No. 48 of the National Council on Radiation Protection and Measurements. NIOSH agrees with those recommendations and has revised the relevant sections in accordance with them.

On January 26, 1978, the President approved the Radiation and Protection Guidance for Diagnostic X-rays (43 FR 4377). The Bureau of Radiolo-

gical Health (BRH), the American College of Radiology's (ACR) Task Force on Pneumoconiosis, and NIOSH have reviewed the specifications in § 37.41 and acknowledge that, when chest roentgenograms are made in accordance with these specifications, the entrance skin exposure to some miners may exceed the 30 milliroentgen exposure guide approved by the President for nonspecialty chest PA X-ray projections. The BRH, ACR, and NIOSH believe that the specifications for the performance of chest roentgenograms in § 37.41 are designed to insure both acceptable quality and consistency of roentgenographic images in order to detect coalworkers' pneumoconiosis at the lowest exposure necessary and reflect sound medical practices. These technical factors are specific for the purpose of this X-ray examinations program (coalworkers' pneumoconiosis) and are not appropriate for all radiography

The subpart of part 37 of title 42, Code of Federal Regulations, entitled 'Chest Roentgenographic Examinations' is revised 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 economic impact statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Dated: June 8, 1978.

JAMES F. DICKSON,
Acting Assistant Secretary for Health.

Approved: July 25, 1978.

HALE CHAMPION,
Acting Secretary.

Subpart—Chest Roentgenographic Examinations

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AUTHORITY: Sec. 203, 83 Stat. 763; 30 U.S.C. 843.

Subpart—Chest Roentgenographic Examinations

§ 37.1 Scope.

The provisions of this subpart set forth the specifications for giving, interpreting, classifying, and submitting chest roentgenograms required by section 203 of the act to be given to underground coal miners and new miners.

§ 37.2 Definitions.

Any term defined in the Federal Mine Safety and Health Act of 1977 and not defined below shall have the meaning given it in the act. As used in this subpart:

(a) "Act" means the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801, et seq.).

(b) "ALOSH" means the Appalachian Laboratory for Occupational Safety and Health, Box 4258, Morgantown, W. Va. 26505. Although the Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, has programmatic responsibility for the chest roentgenographic examination program, the Institute's facility in Morgantown—ALOSH—is used throughout this subpart in referring to the administration of the program.

(c) "Chest roentgenogram" means a single posteroanterior roentgenographic projection or radiograph of the chest at full inspiration recorded on roentgenographic film.

(d) "Convenient time and place" with respect to the conduct of any examination under this subpart means that the examination must be given at a reasonable hour in the locality in which the miner resides or a location that is equally accessible to the miner. For example, examinations at the mine during, immediately preceding, or immediately following work and a "no appointment" examination at a medical facility in a community easily accessible to the residences of a majority of the miners working at the mine, shall be considered of equivalent convenience for purposes of this paragraph.

(e) "Institute" and "NIOSH" mean the National Institute for Occupational Safety and Health Center for Disease Control, Public Health Service, Department of Health, Education, and Welfare.

(f) "ILO-U/C 1971 International Classification of Radiographs of Pneumoconioses" or "ILO-U/C Classification" means the classification of the pneumoconioses devised in 1971 by an international committee of the International Labour Office and described in "Medical Radiography and Photography," volume 48, No. 3, December 1972.

(g) "Miner" means any individual including any coal mine construction worker who is working in or at any underground coal mine, but does not include any surface worker who does not have direct contact with underground coal mining or with coal processing operations.

(h) "Operator" means any owner, lessee, or other person who operates, controls, or supervises an underground coal mine or any independent contractor performing services or construction at such mine.

(i) "Panel of 'B' Readers" means the U.S. Public Health Service Consultant Panel of "B" Readers, c/o ALOSH, P.O. Box 4258, Morgantown, W. Va. 26505.

(j) "Preemployment physical examination" means any medical examination which includes a chest roentgenographic examination given in accordance with the specifications of this subpart to a person not previously employed by the same operator or at the same mine for which that person is being considered for employment.

(k) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health Education, and Welfare to whom the authority involved may be delegated.

(l) "MSHA" means the Mine Safety and Health Administration, Department of Labor.

§ 37.3 Chest roentgenograms required for miners.

(a) *Voluntary examinations.* Every operator shall provide to each miner who is employed in or at any of its underground coal mines and who was employed in underground coal mining prior to December 30, 1969, or who has completed the required examinations under § 37.3(b) an opportunity for a chest roentgenogram in accordance with this subpart:

(1) Following (insert the effective date of these regulations) ALOSH will notify the operator of each underground coal mine of a period within

which the operator may provide examinations to each miner employed at its coal mine. The period shall begin no sooner than the effective date of these regulations and end no later than a date specified by ALOSH separately for each coal mine. The termination date of the period will be approximately 5 years from the date of the first examination which was made on a miner employed by the operator in its coal mine under the former regulations of this subpart adopted July 27, 1973. Within the period specified by ALOSH for each mine, the operator may select a 6-month period within which to provide examinations in accordance with a plan approved under § 37.5.

EXAMPLE: ALOSH finds that between July 27, 1973, and March 31, 1975, the first roentgenogram for a miner who was employed at mine Y and who was employed in underground coal mining prior to December 30, 1969, was made on January 1, 1974. ALOSH will notify the operator of mine Y that the operator may select and designate on its plan a 6-month period within which to offer its examinations to its miners employed at mine Y. The 6-month period shall be scheduled between (insert the effective date of these regulations) and January 1, 1979 (5 years after January 1, 1974).

(2) For all future voluntary examinations, ALOSH will notify the operator of each underground coal mine when sufficient time has elapsed since the end of the previous 6-month period of examinations. ALOSH will specify to the operator of each mine a period within which the operator may provide examinations to its miners employed at its coal mine. The period shall begin no sooner than 3½ years and end no later than 4½ years subsequent to the ending date of the previous 6-month period specified for a coal mine either by the operator on an approved plan or by ALOSH if the operator did not submit an approved plan. Within the period specified by ALOSH for each mine, the operator may select a 6-month period within which to provide examinations in accordance with a plan approved under § 37.5.

EXAMPLE: ALOSH finds that examinations were previously provided to miners employed at mine Y in a 6-month period from July 1, 1979, to December 31, 1979. ALOSH notifies the operator at least 3 months before July 1, 1983 (3½ years after December 31, 1979) that the operator may select and designate on its plan the next 6-month period within which to offer examinations to its miners employed at mine Y. The 6-month period shall be scheduled between July 1, 1983, and July 1, 1984 (between 3½ and 4½ years after December 31, 1979).

(3) Within either the next or future period(s) specified by ALOSH to the operator for each of its coal mines, the operator of the coal mine may select a different 6-month period for each of its mines within which to offer examinations. In the event the operator does not submit an approved plan, ALOSH will specify a 6-month period to the operator within which miners shall have the opportunity for examinations.

(b) *Mandatory examinations.* Every operator shall provide to each miner who begins working in or at a coal mine for the first time after December 30, 1969:

(1) An initial chest roentgenogram as soon as possible, but in no event later than 6 months after commencement of employment. A preemployment physical examination which was made within the 6 months prior to the date on which the miner started to work will be considered as fulfilling this requirement. An initial chest roentgenogram given to a miner according to former regulations for this subpart prior to (Insert the effective date of these regulations) will also be considered as fulfilling this requirement.

(2) A second chest roentgenogram, in accordance with this subpart, 3 years following the initial examination if the miner is still engaged in underground coal mining. A second roentgenogram given to a miner according to former regulations under this subpart prior to (Insert the effective date of these regulations) will be considered as fulfilling this requirement.

(3) A third chest roentgenogram 2 years following the second chest roentgenogram if the miner is still engaged in underground coal mining and if the second roentgenogram shows evidence of category 1, category 2, category 3 simple pheumoconiosis, or complicated pheumoconiosis (ILO-U/C classification).

(c) ALOSH will notify the miner when he or she is due to receive the second or third mandatory examination under (b) of this section. Similarly, ALOSH will notify the coal mine operator when the miner is to be given a second examination. The operator will be notified concerning a miner's third examination only with the miner's written consent, and the notice to the operator shall not state the medical reason for the examination nor that it is the third examination in the series. If the miner is notified by ALOSH that the third mandatory examination is due and the operator is not so notified, availability of the roentgenographic examination under the operator's plan shall constitute the operator's compliance with the requirement to provide a third mandatory examination even if the miner refuses to take the examination.

(d) The opportunity for chest roentgenograms to be available by an operator for purposes of this subpart shall be provided in accordance with a plan which has been submitted and approved in accordance with this subpart.

(e) Any examinations conducted by the Secretary in the National Study of Coal Workers' Pneumoconiosis after January 1, 1977, but before (Insert effective date of these regulations) shall satisfy the requirements of this section with respect to the specific examination given (see § 37.6(d)).

§ 37.4 Plans for chest roentgenographic examinations.

(a) Every plan for chest roentgenographic examinations of miners shall be submitted on forms prescribed by the Secretary to ALOSH within 120 calendar days after (insert the effective date of these regulations). In the case of a person who after August 1, 1978, becomes an operator of a mine for which no plan has been approved, that person shall submit a plan within 60 days after such event occurs. A separate plan shall be submitted by the operator and by each construction contractor for each underground coal mine which has a MSHA identification number. The plan shall include:

(1) The name, address, and telephone number of the operator(s) submitting the plan;

(2) The name, MSHA identification number for respirable dust measurements, and address of the mine included in the plan;

(3) The proposed beginning and ending date of the 6-month period for voluntary examinations (see § 37.3(a)) and the estimated number of miners to be given or offered examinations during the 6-month period under the plan;

(4) The name and location of the approved X-ray facility or facilities, and the approximate date(s) and time(s) of day during which the roentgenograms will be given to miners to enable a determination of whether the examinations will be conducted at a convenient time and place;

(5) If a mobile facility is proposed, the plan shall provide that each miner be given adequate notice of the opportunity to have the examination and that no miner shall have to wait for an examination more than 1 hour before or after his or her work shift. In addition, the plan shall include:

(i) The number of change houses at the mine.

(ii) One or more alternate nonmobile approved facilities for the reexamination of miners and for the mandatory examination of miners when necessary (see § 37.3(b)), or an assurance that the mobile facility will return to the location(s) specified in the plan as frequently as necessary to provide for examinations in accordance with these regulations.

(iii) The name and location of each change house at which examinations

will be given. For mines with more than one change house, the examinations shall be given at each change house or at a change house located at a convenient place for each miner.

(6) The name and address of the "A" or "B" reader who will interpret and classify the chest roentgenograms.

(7) Assurances that: (i) The operator will not solicit a physician's roentgenographic or other findings concerning any miner employed by the operator, (ii) instructions have been given to the person(s) giving the examinations that duplicate roentgenograms or copies of roentgenograms will not be made and that (except as may be necessary for the purpose of this subpart) the physician's roentgenographic and other findings, as well as the occupational history information obtained from a miner unless obtained prior to employment in a preemployment examination, and disclosed prior to employment, will not be disclosed in a manner which will permit identification of the employee with the information about him, and (iii) the roentgenographic examinations will be made at no charge to the miner.

(b) Operators may provide for alternate facilities and "A" or "B" readers in plans submitted for approval.

(c) The change of operators of any mine operating under a plan approved pursuant to § 37.5 shall not affect the plan of the operator which has transferred responsibility for the mine. Every plan shall be subject to revision in accordance with paragraph (d) of this section.

(d) The operator shall advise ALOSH of any change in its plan. Each change in an approved plan is subject to the same review and approval as the originally approved plan.

(e) The operator shall promptly display in a visible location on the bulletin board at the mine its proposed plan or proposed change in plan when it is submitted to ALOSH. The proposed plan or change in plan shall remain posted in a visible location on the bulletin board until ALOSH either grants or denies approval of it at which time the approved plan or denial of approval shall be permanently posted. In the case of an operator who is a construction contractor and who does not have a bulletin board, the construction contractor must otherwise notify its employees of the examination arrangements. Upon request, the contractor must show ALOSH written evidence that its employees have been notified.

(f) Upon notification from ALOSH that sufficient time has elapsed since the previous period of examinations, the operator will resubmit its plan for each of its coal mines to ALOSH for approval for the next period of examinations (see § 37.3(a)(2)). The plan shall include the proposed beginning and ending dates of the next period of examinations and all information required by paragraph (a) of this section.

§ 37.5 Approval of plans.

(a) Approval of plans granted prior to (insert effective date of these regulations) is no longer effective.

(b) If, after review of any plan submitted pursuant to this subpart, the Secretary determines that the action to be taken under the plan by the operator meets the specifications of this subpart and will effectively achieve its purpose, the Secretary will approve the plan and notify the operator(s) submitting the plan of the approval. Approval may be conditioned upon such terms as the Secretary deems necessary to carry out the purpose of section 203 of the act.

(c) Where the Secretary has reason to believe that he will deny approval of a plan he will, prior to the denial, give reasonable notice in writing to the operator(s) of an opportunity to amend the plan. The notice shall specify the ground upon which approval is proposed to be denied.

(d) If a plan is denied approval, the Secretary shall advise the operator(s) in writing of the reasons for the denial.

§ 37.6 Chest roentgenographic examinations conducted by the Secretary.

(a) The Secretary will give chest roentgenograms or make arrangements with an appropriate person, agency, or institution to give the chest roentgenograms and with "A" or "B" readers to interpret the roentgenograms required under this subpart in the locality where the miner resides, at the mine, or at a medical facility easily accessible to a mining community or mining communities, under the following circumstances:

(1) Where, in the judgment of the Secretary, due to the lack of adequate medical or other necessary facilities or personnel at the mine or in the locality where the miner resides, the required roentgenographic examination cannot be given.

(2) Where the operator has not submitted an approvable plan.

(3) Where, after commencement of an operator's program pursuant to an approved plan and after notice to the operator of his failure to follow the approved plan and, after allowing 15 calendar days to bring the program into compliance, the Secretary determines and notifies the operator in writing that the operator's program still fails to comply with the approved plan.

(b) The operator of the mine shall reimburse the Secretary or other person, agency, or institution as the Secretary may direct, for the cost of conducting each examination made in accordance with this section.

(c) All examinations given or arranged by the Secretary will comply with the time requirements of § 37.3. Whenever the Secretary gives or arranges for the examinations of miners at a time, a written notice of the arrangements will be sent to the operator who shall post the notice on the mine bulletin board.

(d) Operators of mines selected by ALOSH to participate in the National Study of Coal Workers' Pneumoconiosis (an epidemiological study of respiratory diseases in coal miners) and who agree to cooperate will have all their miners afforded the opportunity to have a chest roentgenogram required hereunder at no cost to the operator. For future examinations and for mandatory examinations each participating operator shall submit an approvable plan.

§ 37.7 Transfer of affected miner to less dusty area.

(a) Any miner who, in the judgment of the Secretary based upon the interpretation of one or more chest roentgenograms, shows category 2 (2/1, 2/2, 2/3) or category 3 (3/2, 3/3, 3/4) simple pneumoconiosis, or complicated pneumoconiosis, or the development of category 1 (1/0, 1/1, 1/2) simple pneumoconiosis in less than 10 years since first entering the coal mining industry (ILO-U/C classification) shall be afforded the option by the operator of transferring from his position to another position in an area of the mine where the concentration of respirable dust in the mine atmosphere is not more than 1.0 mg/m^3 of air, or, if such level is not attainable in such mine, to a position in the mine where the concentration or respirable dust is the lowest attainable below 2.0 mg/m^3 of air.

(b) Any transfer under this section shall be in accordance with the procedures specified in Part 90 of Title 30, Code of Federal Regulations.

§ 37.8 Roentgenographic examination at miner's expense.

Any miner who wishes to obtain an examination at his or her own expense at an approved facility and to have submitted to NIOSH for him or her a complete examination may do so, provided that the examination is made no sooner than 6 months after the most recent examination of the miner submitted to ALOSH. ALOSH will provide an interpretation and report of the examinations made at the miner's expense in the same manner as if it were submitted under an operator's plan. Any change in the miner's transfer rights under the act which may result

from this examination will be subject to the terms of § 37.7.

§ 37.20 Miner identification document.

As part of the roentgenographic examination, a miner identification document which includes an occupational history questionnaire shall be completed for each miner at the facility where the roentgenogram is made at the same time the chest roentgenogram required by this subpart is given.

SPECIFICATIONS FOR PERFORMING CHEST ROENTGENOGRAPHIC EXAMINATIONS

§ 37.40 General provisions.

(a) The chest roentgenographic examination shall be given at a convenient time and place.

(b) The chest roentgenographic examination consists of the chest roentgenogram, and a complete Roentgenographic Interpretation Form (Form CDC/NIOSH (M) 2.8), and miner identification document.

(c) A roentgenographic examination shall be made in a facility approved in accordance with § 37.42 by or under the supervision of a physician who regularly makes chest roentgenograms and who has demonstrated ability to make chest roentgenograms of a quality to best ascertain the presence of pneumoconiosis.

§ 37.41 Chest roentgenogram specifications.

(a) Every chest roentgenogram shall be a single posteroanterior projection at full inspiration on a 14- by 17-inch film. The film and cassette shall be capable of being positioned both vertically and horizontally so that the chest roentgenogram will include both apices and costophrenic angles. If a miner is too large to permit the above requirements, then the projection shall include both apices with minimum loss of the costophrenic angle.

(b) Miners shall be disrobed from the waist up at the time the roentgenogram is given. The facility shall provide a dressing area and for those miners who wish to use one, the facility shall provide a clean gown. Facilities shall be heated to a comfortable temperature.

(c) Roentgenograms shall be made only with a diagnostic X-ray machine having a rotating anode tube with a maximum of a 2 mm. source (focal spot).

(d) Except as provided in paragraph (e) of this section, roentgenograms shall be made with units having generators which comply with the following: (1) The generators of existing roentgenographic units acquired by the examining facility prior to July 27, 1973, shall have a minimum rating of 200 mA at 100 kVp.; (2) generators of units acquired subsequent to that date shall have a minimum rating of 300 mA at 125 kVp.

NOTE.—A generator with a rating of 150 kVp. is recommended.

(e) Roentgenograms made with battery-powered mobile or portable equipment shall be made with units having a minimum rating of 100 mA at 110 kVp. at 500 Hz, or of 200 mA at 110 kVp. at 60 Hz.

(f) Capacitor discharge and field emission units may be used if the model of such units is approved by ALOSH for quality, performance, and safety. ALOSH will consider such units for approval when listed by a facility seeking approval under § 37.42 of this subpart.

(g) Roentgenograms shall be given only with equipment having a beam-limiting device which does not cause large unexposed boundaries. The beam limiting device shall provide rectangular collimation and shall be of the type described in part F of the suggested State regulations for the control of radiation or (for beam limiting devices manufactured after August 1, 1974) of the type specified in 21 CFR 1020.31. The use of such a device shall be discernible from an examination of the roentgenogram.

(h) to insure high quality chest roentgenograms:

(1) The maximum exposure time shall not exceed $\frac{1}{20}$ of a second except that with single phase units with a rating less than 300 mA at 125 kVp. and subjects with chests over 28 cm. posteroanterior, the exposure may be increased to not more than $\frac{1}{10}$ of a second;

(2) The source or focal spot to film distance shall be at least 6 feet;

(3) Medium-speed film and medium speed intensifying screens shall be used;

(4) Film-screen contact shall be maintained and verified at 6 month or shorter intervals;

(5) Intensifying screens shall be inspected at least once a month and cleaned when necessary by the method recommended by the manufacturer;

(6) All intensifying screens in a cassette shall be of the same type and made by the same manufacturer;

(7) When using over 90 kV., a suitable grid or other means of reducing scattered radiation shall be used;

(8) The geometry of the radiographic system shall insure that the central axis (ray) of the primary beam is perpendicular to the plane of the film surface and impinges on the center of the film;

(9) A formal quality assurance program shall be established at each facility.

(i) Radiographic processing:

(1) Either automatic or manual film processing is acceptable. A constant time-temperature technique shall be meticulously employed for manual processing.

(2) If mineral or other impurities in the processing water introduce difficulty in obtaining a high-quality roentgenogram, a suitable filter or purification system shall be used.

(j) Before the miner is advised that the examination is concluded, the roentgenogram shall be processed and inspected and accepted for quality by the physician, or if the physician is not available, acceptance may be made by the radiologic technologist. In a case of a substandard roentgenogram, another shall be immediately made. All substandard roentgenograms shall be clearly marked as rejected and promptly sent to ALOSH for disposal.

(k) An electric power supply shall be used which complies with the voltage, current, and regulation specified by the manufacturer of the machine.

(l) A densitometric test object may be required on each roentgenogram for an objective evaluation of film quality at the discretion of ALOSH.

(m) Each roentgenogram made hereunder shall be permanently and legibly marked with the name and address or ALOSH approval number of the facility at which it is made, the social security number of the miner, and the date of the roentgenogram. No other identifying markings shall be recorded on the roentgenogram.

§ 37.42 Approval of roentgenographic facilities.

(a) Approval of roentgenographic facilities given prior to January 1, 1976, shall terminate upon (Insert effective date of these regulations) unless each of the following conditions have been met:

(1) The facility must verify that it still meets the requirements set forth in the regulations for the second round of roentgenographic examinations (38 FR 20076) and it has not changed equipment since it was approved by NIOSH.

(2) From July 27, 1973, to January 1, 1976, the facility submitted to ALOSH at least 50 roentgenograms which were interpreted by one or more "B" readers not employed by the facility who found no more than 5 percent of all the roentgenograms unreadable.

(b) Other facilities will be eligible to participate in this program when they demonstrate their ability to make high quality diagnostic chest roentgenograms by submitting to ALOSH six or more sample chest roentgenograms made and processed at the applicant facility and which are of acceptable quality to the Panel of "B" readers. Applicants shall also submit a roentgenogram of a plastic step-wedge object (available on loan from ALOSH) which was made and pro-

cessed at the same time with the same technique as the roentgenograms submitted and processed at the facility for which approval is sought. At least one chest roentgenogram and one test object roentgenogram shall have been made with each unit to be used hereunder. All roentgenograms shall have been made within 15 calendar days prior to submission and shall be marked to identify the facility where each roentgenogram was made, the X-ray machine used, and the date each was made. The chest roentgenograms will be returned and may be the same roentgenograms submitted pursuant to § 37.51.

NOTE.—The plastic step-wedge object is described in an article by E. Dale Trout and John P. Kelley appearing in "The American Journal of Roentgenology, Radium Therapy and Nuclear Medicine," Vol. 117, No. 4, April 1973.

(c) Each roentgenographic facility submitting chest roentgenograms for approval under this section shall complete and include an X-ray facility document describing each X-ray unit to be used to make chest roentgenograms under the act. The form shall include: (1) The date of the last radiation safety inspection by an appropriate licensing agency or, if no such agency exists, by a qualified expert as defined in NCRP Report No. 33 (see § 37.43); (2) the deficiencies found; (3) a statement that all the deficiencies have been corrected; and (4) the date of acquisition of the X-ray unit. To be acceptable, the radiation safety inspection shall have been made within 1 year preceding the date of application.

(d) Roentgenograms submitted with applications for approval under this section will be evaluated by the panel of "B" Readers or by a qualified radiological physicist or consultant. Applicants will be advised of any reasons for denial of approval.

(e) ALOSH or its representatives may make a physical inspection of the applicant's facility and any approved roentgenographic facility at any reasonable time to determine if the requirements of this subpart are being met.

(f) ALOSH may require a facility periodically to resubmit roentgenograms of a plastic step-wedge object, sample roentgenograms, or a Roentgenographic Facility Document for quality control purposes. Approvals granted hereunder may be suspended or withdrawn by notice in writing when in the opinion of ALOSH the quality of roentgenograms or information submitted under this section warrants such action. A copy of a notice withdrawing approval will be sent to each operator who has listed the facility as its facility for giving chest roentgenograms and shall be displayed on the mine bulletin board adjacent to the operator's approved plan. The approved plan will be reevaluated by ALOSH in light of this change.

§ 37.43 Protection against radiation emitted by roentgenographic equipment.

Except as otherwise specified in section 37.41, roentgenographic equipment, its use and the facilities (including mobile facilities) in which such equipment is used, shall conform to applicable State and Federal regulations (See 21 CFR Part 1000). Where no applicable regulations exist, roentgenographic equipment, its use and the facilities (including mobile facilities) in which such equipment is used shall conform to the recommendations of the National Council on Radiation Protection and Measurements in NCRP Report No. 33 "Medical X-ray and Gamma-Ray Protection for Energies up to 10 MeV—Equipment Design and Use" (issued February 1, 1968), in NCRP Report No. 48, "Medical Radiation Protection for Medical and Allied Health Personnel" (issued August 1, 1976), and in NCRP Report No. 49, "Structural Shielding Design and Evaluation for Medical Use of X-rays and Gamma Rays of up to 10 MeV" (issued September 15, 1976). These documents are hereby incorporated by reference and made a part of this subpart. These documents are available for examination at ALOSH, 944 Chestnut Ridge Road, Morgantown, W. Va. 26505, and at the National Institute for Occupational Safety and Health, 5600 Fishers Lane, Rockville, Md. 20857. Copies of NCRP Reports Nos. 33, 48, and 49 may be purchased for $3, $4.50, and $3.50 each, respectively, from NCRP Publications, P.O. Box 30175, Washington, D.C. 20014.

SPECIFICATIONS FOR INTERPRETATION, CLASSIFICATION, AND SUBMISSION OF CHEST ROENTGENOGRAMS

§ 37.50 Interpreting and classifying chest roentgenograms.

(a) Chest roentgenograms shall be interpreted and classified in accordance with the ILO-U/C classification system and recorded on a Roentgenographic Interpretation Form (Form CDC/NIOSH (M) 2.8).

(b) Roentgenograms shall be interpreted and classified only by a physician who regularly reads chest roentgenograms and who has demonstrated proficiency in the use of the ILO-U/C classification system in accordance with § 37.51.

(c) All interpreters, whenever interpreting chest roentgenograms made under the act, shall have immediately available for reference a complete set of the ILO-U/C International Classification of Radiographs for Pneumoconioses, 1971.

NOTE.—This set is available from the International Labour Office, Occupational Safety and Health Branch, CH 1211, Geneva 22, Switzerland.

(d) In all view boxes used for making interpretations:

(1) Fluorescent lamps shall be simultaneously replaced with new lamps at 6-month intervals;

(2) All the fluorescent lamps in a panel of boxes shall have identical manufacturer's ratings as to intensity and color;

(3) The glass, internal reflective surfaces, and the lamps shall be kept clean;

(4) The unit shall be so situated as to minimize front surface glare.

§ 37.51 Proficiency in the use of the ILO-U/C classification.

(a) First or "A" readers:

(1) Approval as an "A" reader shall continue if established prior to (insert) effective date of these regulations).

(2) Proficiency in the use of the ILO-U/C classification system shall be demonstrated by those physicians who desire to be "A" readers by either:

(i) Submitting to ALOSH from the physician's files six sample chest roentgenograms which are considered properly classified by the Panel of "B" readers. The six roentgenograms shall consist of two without pneumoconiosis, two with simple pneumoconiosis, and two with complicated pneumoconiosis. The films will be returned to the physician. The interpretations shall be on the Roentgenographic Interpretation Form (Form CDC/NIOSH (M) 2.8) (These may be the same roentgenograms submitted pursuant to § 37.42), or;

(ii) Satisfactory completion, since June 15, 1970, of a course approved by ALOSH on the ILO-U/C classification system or the UICC/Cincinnati classification system. As used in this subparagraph "UICC/Cincinnati classification" means the classification of the pneumoconioses devised in 1968 by a Working Committee of the International Union Against Cancer.

(b) Final or "B" readers:

(1) Approval as a "B" reader established prior to October 1, 1976, shall hereby be terminated.

(2) Proficiency in evaluating chest roentgenograms for roentgenographic quality and in the use of the ILO-U/C classification for interpreting chest roentgenograms for pneumoconiosis and other diseases shall be demonstrated by those physicians who desire to be "B" readers by taking and passing a specially designed proficiency examination given on behalf of or by ALOSH at a time and place specified by ALOSH. Each physician must bring a complete set of the ILO-U/C standard reference radiographs when taking the examination. Physicians who qual-

ify under this provision need not be qualified under paragraph (a) of this section.

(c) Physicians who wish to participate in the program shall make application on an Interpreting Physician Certification Document (Form CDC/NIOSH (M) 2.12).

§ 37.52 Method of obtaining definitive interpretations.

(a) All chest roentgenograms which are first interpreted by an "A" or "B" reader will be submitted by ALOSH to a "B" reader qualified as described in § 37.51. If there is agreement between the two interpreters as defined in paragraph (b) of this section the result shall be considered final and reported to MSHA for transmittal to the miner. When in the opinion of ALOSH substantial agreement is lacking, ALOSH shall obtain additional interpretations from the Panel of "B" readers. If interpretations are obtained from two or more "B" readers, and if two or more are in agreement then the highest major category shall be reported.

(b) Two interpreters shall be considered to be in agreement when they both find either stage A, B, or C complicated pneumoconiosis, or their findings with regard to simple pneumoconiosis are both in the same major category, or are within one minor (ILO-U/C 12-point scale) category of each other. The higher of the two interpretations shall be reported.

§ 37.53 Notification of abnormal roentgenographic findings.

(a) Findings of, or findings suggesting, enlarged heart, tuberculosis, lung cancer, or any other significant abnormal findings other than pneumoconiosis shall be communicated by the first physician to interpret and classify the roentgenogram to the designated physician of the miner indicated on the miner's identifcation document. A copy of the communication shall be submitted to ALOSH. ALOSH will notify the miner to contact his or her physician when any physician who interprets and classifies the miner's roentgenogram reports significant abnormal findings other than pneumoconiosis.

(b) In addition, when ALOSH has more than one roentgenogram of a miner in its files and the most recent examination was interpreted to show enlarged heart, tuberculosis, cancer, complicated pneumoconiosis, and any other significant abnormal findings, ALOSH will submit all of the miner's roentgenograms in its files with their respective interprtations to a "B" reader. The "B" reader will report any significant changes or progression of disease or other comments to ALOSH and ALOSH shall submit a copy of the report to the miner's designated physician.

(c) All final findings regarding pneumoconiosis will be sent to the miner by MSHA in accordance with section 203 of the act (see 30 CFR Part 90). Positive findings with regard to pneumoconiosis will be reported to the miner's designated physician by ALOSH.

(d) ALOSH will make every reasonable effort to process the findings described in paragraph (c) of this section within 60 days of receipt of the information described in § 37.60 in a complete and acceptable form. The information forwarded to MSHA will be in a form intended to facilitate prompt dispatch of the findings to the miner. The results of an examination made of a miner will not be processed by ALOSH if the examination was made within 6 months of the date of a previous acceptable examination.

§ 37.60 Submitting required chest roentgenograms and miner identification documents.

(a) Each chest roentgenogram required to be made under this subpart, together with the completed roentgenographic interpretation form and the completed miner identification document, shall be sumitted together for each miner to ALOSH within 14 calendar days after the roentgenographic examination is given and become the property of ALOSH.

(b) If ALOSH deems any part submitted under paragraph (a) of this section inadequate, it will notify the operator of the deficiency. The operator shall promptly make appropriate arrangements for the necessary reexamination.

(c) Failure to comply with paragraph (a) or (b) of this section shall be cause to revoke approval of a plan or any other approval as may be appropriate. An approval which has been revoked may be reinstated at the discretion of ALOSH after it receives satisfactory assurances and evidence that all deficiencies have been corrected and that effective controls have been instituted to prevent a recurrence.

(d) Chest roentgenograms and other required documents shall be submitted only for miners. Results of preemployment physical examinations of persons who are not hired shall not be submitted.

(e) If a miner refuses to participate in all phases of the examination prescribed in this subpart, no report need be made. If a miner refuses to participate in any phase of the examination prescribed in this subpart, all the forms shall be submitted with his or her name and social security account number on each. If any of the forms cannot be completed because of the miner's refusal, it shall be marked "Miner Refuses," and shall be submitted. No submission shall be made, however, without a completed miner identification document containing the miner's name, address, social security number and place of employment.

REVIEW AND AVAILABILITY OF RECORDS

§ 37.70 Review of interpretations.

(a) Any miner who believes the interpretation for pneumoconiosis reported to him or her by MSHA is in error may file a written request with ALOSH that his or her roentgenogram be reevaluated. If the interpretation was based on agreement between an "A" reader and a "B" reader, ALOSH will obtain one or more additional interpretations by "B" readers as necessary to obtain agreement in accord with § 37.52(b), and MSHA shall report the results to the miner together with any rights which may accrue to the miner in accordance with § 37.7. If the reported interpretation was based on agreement between two (or more) "B" readers, the reading will be accepted as conclusive and the miner shall be so informed by MSHA.

(b) Any operator who is directed by MSHA to transfer a miner to a less dusty atmosphere based on the most recent examination made subsequent to August 1, 1978, may file a written request with ALOSH to review its findings. The standards set forth in paragraph (a) of this section apply and the operator and miner will be notified by MSHA whether the miner is entitled to the option to transfer.

§ 37.80 Availability of records.

(a) Medical information and roentgenograms on miners will be released by ALOSH only with the written consent from the miner, or if the miner is deceased, written consent from the miner's widow, next of kin, or legal representative.

(b) To the extent authorized, roentgenograms will be made available for examination only at ALOSH.

NOTE.—The incorporation by reference provision in this document was approved by the Director of the Federal Register on June 1, 1973, and July 6, 1978, and the reference material is on file in the Federal Register Library.

[FR Doc. 78-21226 Filed 7-31-78; 8:45 am]

[4310-10]

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY

PART 29—TRANS-ALASKA PIPELINE LIABILITY FUND

Provisions for Investment of Money Accumulated by the Fund

AGENCY: Department of the Interior.

ACTION: Final rule.

SUMMARY: This is a revision to Trans-Alaska Pipeline Liability Fund regulations, and provide for the investment of money accumulated by the Fund in a wider range of investments.

DATE: This revision is effective August 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Larry E. Meierotto, Deputy Assistant Secretary, Policy, Budget and Administration, Room 5100, Department of the Interior, Washington, D.C. 20240, telephone 202-343-6181.

SUPPLEMENTARY INFORMATION: Trans-Alaska Pipeline Liability Fund (TAPLF) regulations were published in the FEDERAL REGISTER on June 23, 1977 (42 FR 31789).

Paragraph 29.11(a)(2) of the regulations, which provides for the investment of money accumulated by the Fund, restricts investments to fixed income securities or obligations having a reliability rating by Standard and Poors, Moody, or Fitch of "AA," or an equivalent rating.

Paragraph 29.11(a)(2) of the regulation is revised to permit the investment of money accumulated by the Fund in fixed income securities or obligations having a rating by Standard and Poors, or Moody, of "A" or better, providing the portfolio has an overall rating of "AA."

A new paragraph, 29.11(a)(3), is also added to permit the investment of money, accumulated by the Fund, in time certificates of deposit and commercial paper provided that the commercial paper has a rating of either A1 or P1 or both.

The primary author of this document is Larry E. Meierotto, Deputy Assistant Secretary-Policy, Budget and Administration and Secretary to the Board of Trustees (TAPLF), telephone 202-343-6181.

Since this rule relieves a restriction, it is determined that the rulemaking procedure is not in the public interest, and this revision will become effective on August 1, 1978.

Signed at Washington, D.C., this 24th day of July 1978.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior and Secretary to the Board of Trustees.

Accordingly, 43 CFR, Subtitle A, § 29.11 is revised to read as follows:

§ 29.11 Investment.

(a) * * *

(1) * * *

(2) Fixed income securities or obligations issued by a corporation or issued or guaranteed by a State or local government or any political subdivision, agency or instrumentality thereof, provided such obligations having a rating by Standard and Poors, or Moody, of "A" or better, or an equivalent rating, or provided further that the security or obligation is of the same priority as another security or obligation of the same issuer which has been rated "A" or better, and provided that the portfolio has an overall rating of "AA". *Provided, however,* That no securities or obligations of the permittees or their affiliates or of any investment advisor or custodian to the Fund, or their affiliates may be purchased or held by the Fund.

(3) Time certificates of deposit and commercial paper provided that the commercial paper has a rating of either A1 or P1 or both.

(b) * * *

(Sec. 204(c), Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653, sec. 311(p)(1) and 311(p)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(p) (1), (2).)

[FR Doc. 78-21260 Filed 7-31-78; 8:45 am]

[6730-01]

Title 46—Shipping

CHAPTER IV—FEDERAL MARITIME COMMISSION

SUBCHAPTER A—GENERAL PROVISIONS

[General Order 16, Amdt. 24]

PART 502—RULES OF PRACTICE AND PROCEDURE

Time for Filing Exceptions and Appeals and Review by the Commission

AGENCY: Federal Maritime Commission.

ACTION: Final rules.

SUMMARY: The rules of practice and procedure are amended to increase the time periods allowed for filing of exceptions to initial decisions and appeals of orders of dismissal. Time for review by the Commission in the absence of exception or appeal is also increased. Request of an individual Commissioner will trigger review of unappealed decisions or orders. These changes are needed to eliminate routine requests for extensions of time and to improve internal Commission procedures. The effect will be to save time, effort, and paperwork in conduct of agency proceedings.

EFFECTIVE DATE: August 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, 1100 L Street NW., Washington, D.C. 20573, 202-523-5725.

SUPPLEMENTARY INFORMATION: At present, the Commission's rules of practice and procedure (46 CFR 502.227) provide that exceptions to a initial decision or appeal of dismissal must be filed within 15 days of service thereof. In the absence of exceptions or appeal, the Commission must determined whether to review within 30 days. Informal docket procedures are similar, but with different time frames.

It has been the practice to bring all such decisions or orders before the Commission for a determinaton whether to review. It has become clear that many decisions, particularly in proceedings involving informal complaints and special docket applications, need not be reviewed by the Commission. Accordingly, it is wasteful to formally schedule such matters as agenda items for a determination whether or not to review. Only those unappealed decisions which are viewed as erroneous as a matter of law or policy need be reviewed by the Commission.

Additionally, the time limitations of the current rules create problems within the context of the Government in the Sunshine Act. At present, because of the notice requirements of the act, the issuance of an initial decision triggers internal procedures for scheduling such an item on a Commission agenda even before the time for filing exceptions has expired. If exceptions are filed, consideration of the item must be delayed and time, effort and paperwork have been wasted. In the case of decisions of settlement officers (where no exceptions are permitted), the Sunshine Act notice requirements force consideration by the notation process. This has caused a very significant rise in the number of notation items considered by the Commission. This could lead to the criticism that the Commission is conducting much of its business "out of the sunshine."

Finally, in a proceeding where exceptions or appeals are to be filed, there is almost invariably a request for extension of time for filing. Very often, this request is supported by an

argument that the decision was not received until much of the time for filing exceptions had already passed. Given the state of the mails, it is difficult to deny such extensions. Increase of such time periods should eliminate most requests for enlargement of time and simplify internal Commission procedures.

In light of the foregoing, the Commission has determined to amend its rules of practice to provide that:

(1) Exceptions to initial decisions and orders of dismissal of administrative law judges shall be filed within 22 days of the date of service thereof; replies shall be filed 22 days thereafter. Requests for extension of these periods would be granted only in exceptional cases.

(2) The time within which the Commission may review decisions or order of dismissal of administrative law judges in the absence of exceptions or appeals and decision of Settlement Officers is extended to 45 days.

(3) The Commission shall not, on its own initiative, review the decisions or orders of dismissal of administrative law judges or settlement officers unless such review is requested by an individual Commissioner. Any request for review would be transmitted to the Secretary within 30 days after date of service.

Therefore, pursuant to section 43 of the Shipping Act, 1916 (46 U.S.C. 841a) and 5 U.S.C. 553, part 502 of title 46 CFR is amended as follows:

1. Section 502.227 is revised to read as follows:

§ 502.227 Exceptions to decisions or orders of dismissal of administrative law judges; replies thereto; and review of decisions or orders of dismissal by Commission.

(a) Within 22 days after date of service of the initial decision, unless a shorter period is fixed under § 502.103, any party may file a memorandum excepting to any conclusions, findings, or statements contained in such decision, and a brief in support of such memorandum. Such exceptions and brief shall constitute one document, shall indicate with particularity alleged errors, shall indicate page of the transcript and exhibit number when referring to the record, and shall be served on all parties pursuant to subpart H of this part. Any adverse party may file and serve a reply to such exceptions within 22 days after the date of service thereof, which shall contain appropriate transcript and exhibit references. Whenever the officer who presided at the reception of the evidence, or other qualified officer, makes an initial decision, such decision shall become the decision of the Commission 45 days after date of service thereof (and the Secretary shall so notify the parties), unless within such 45 day period, or greater time as enlarged by the Commission for good cause shown, request for review is made in exceptions filed, or notice of review is served upon the parties. Upon the filing of exceptions to, or review of, an initial decision, such decision shall become inoperative until the Commission determines the matter. Where exceptions are filed to, or the Commission reviews, an initial decision, the Commission, except as it may limit the issues upon notice or by rule, will have all the powers which it would have in making the initial decision. Whenever the Commission shall determine to review an initial decision on its own initiative, notice of such intention shall be served upon the parties within 45 days after date of service of the initial decision.

(b) If an administrative law judge has granted a motion for dismissal of the proceeding in whole or in part, any party desiring to appeal must file such appeal no later than 22 days after service of the ruling on the motion in question. The denial of a petition to intervene or withdrawal of a grant of intervention shall be deemed to be a dismissal within the meaning of this paragraph.

(c) Whenever an administrative law judge orders dismissal of a proceeding in whole or in part, such order, in the absence of appeal, shall become the order of the Commission 45 days after date of service of such order (and the Secretary shall so notify the parties), unless within such 45-day period the Commission decides to review such order on its own motion, in which case notice of such intention shall be served upon the parties.

(d) The Commission shall not, on its own initiative, review any initial decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within 30 days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review.

§ 502.228 [Amended]

2. Section 502.228 is amended by adding the following new sentence between the first and second sentence:

* * * "Requests for extentions of these periods will be granted only under exceptional circumstances duly demonstrated in the request."

§ 502.304 [Amended]

3. The reference in the second sentence of § 502.304(g) to "15" days is amended to read "45", and three new sentences are added reading as follows:

* * * "The Commission shall not, on its own initiative, review any decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within 30 days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review."

§ 502.318 [Amended]

4. In § 502.318 Decisions the references to "5" and "15" days are amended to "22" and "45" respectively. Three new sentences are added at the end of the section reading as follows:

* * * "The Commission shall not, on its own initiative, review any initial decision or order of dismissal unless such review is requested by an individual Commissioner. Any such request must be transmitted to the Secretary within 30 days after date of service of the decision or order. Such request shall be sufficient to bring the matter before the Commission for review."

Effective date: Notice, opportunity to comment on these amendments and delayed effective date are not necessary because the amendments either relax restrictions or involve internal agency procedural matters. The amendments shall be effective on August 1, 1978, and will apply to initial decisions, settlement officer decisions, and orders of dismissal served after that date.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-21299 Filed 7-31-78; 8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21116; Docket No. 21117; FCC 78-445]

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

PART 97—AMATEUR RADIO SERVICE

Prohibiting the Marketing of External Radio Frequency Power Amplifiers Capable of Operation on Any Frequency From 24 to 35 MHz; and Requiring Type Acceptance of Equipment Marketed For Use in the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Reconsideration of final rules.

SUMMARY: This item addresses the petitions for stay and petitions for reconsideration received in response to the action taken in dockets 21116 and 21117 which banned the manufacture and marketing of external amplifiers capable of operation below 144 MHz unless the amplifiers were type accepted. Amplifiers operating in the frequency range of 24 to 35 MHz were also banned.

EFFECTIVE DATE: August 1, 1978.

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

FOR FURTHER INFORMATION CONTACT:

John A. Reed, Office of Chief Engineer, 202-632-7093.

SUPPLEMENTARY INFORMATION:

Adopted: June 28, 1978.

Released: July 28, 1978.

By the Commission: Commissioner Quello absent; Commissioner White dissenting.

In the matter of amendment of part 2 of the Commission's rules to prohibit the marketing of external radio frequency power amplifiers capable of operation on any frequency from 24 to 35 MHz; and amendment of parts 2 and 97 of the Commission's rules to require type acceptance of equipment marketed for use in the Amateur Radio Service (43 FR 12683).

1. A report and order in the above captioned matters was released on March 20, 1978 (43 FR 12682). Since the release of this document, a number of petitions for stay and petitions for reconsideration have been received. Petitions for stay were submitted by the R. L. Drake Co. (filed April 26, 1978) and Ehrhorn Technological Operations, Inc. (ETO, filed April 28, 1978). Petitions for reconsideration were filed by the R. L. Drake Co. (April 26, 1978), the Heath Co. (April 19, 1978), the American Radio Relay League, Inc. (ARRL, filed April 21, 1978), the Dentron Radio Co. (April 26, 1978), Mr. Ronald Gelsnes (April 24, 1978), and Ehrhorn Technological Operations, Inc. (April 28, 1978.[1]

2. Docket 21116 prohibited the manufacture and marketing, effective April 28, 1978, of any external radio frequency power amplifier or amplifier kit capable of operation on any frequency from 24.00 to 35.00 MHz. Docket 21117 prohibited the manufacture and marketing, effective April 28, 1978, of any external radio frequency power amplifier or amplifier kit capable of operation below 144 MHz unless the amplifier has been type accepted by the Commission.

3. The petitions for stay were filed only in connection with docket 21116 with the exception of the petition from ETO which requested a stay or waiver for both dockets. These requests were filed to stay the effective date of the regulations promulgated in these dockets until the Commission has reached a decision concerning the disposition of the petitions for reconsideration. As this Commission is taking immediate action on the petitions for reconsideration, no stay of the order in these dockets is, or need be, granted.

4. In their petition for stay in docket 21116, the Heath Co. additionally requested an extension of 90 days in order to obtain a waiver from the Commission. While the type of waiver is not specified, the Commission would like to point out that waivers of the marketing cut-off date have already been issued for all of the current Heath Co. amplifiers (models SB-200, SB-220, and SB-230) produced prior to April 28, 1978. This was performed in accordance with the instructions contained in the instant order for this docket. In that regard, no extension of time is necessary in order for the Heath Co. to apply for and obtain these waivers. If instead, the Heath Co. is requesting this extension in order to obtain a waiver of the 24 to 35 MHz amplifier ban, as promulgated in that docket, this Commission would like to make clear that no waivers of this requirement will be issued to any manufacturer, except as detailed in the report and order. That report and order specifically invited the manufacturers of industrial, scientific and medical (ISM) amplifiers to apply for a waiver of the manufacturing and marketing restrictions contained in § 2.815 of our regulations. An additional request was also received from a manufacturer of a carrier current broadcast amplifier which was felt to warrant inclusion. However, to the extent of amplifiers manufactured for the Amateur Radio Service, the Maritime Radio Service, the Land Mobile Radio Service, or any other radio service requiring prior equipment approval by the Commission before the advent of marketing, no such waivers will be granted for any manufacturer. Any waiver of this frequency ban must be equally available to all manufacturers of such equipment and will not be granted to any one manufacturer of a specific type of amplifier without also allowing this same privilege to all other manufacturers of that type of equipment.

5. The petition from ETO, similar to that from the Heath Co., also requested a waiver or a delay of 60 days in the implementation of the rules promulgated in both docket 21116 and docket 21117. The comments made above for the Heath petition for docket 21116 apply equally in this case and their petition is denied concerning that docket. As justification, ETO stated that a denial of this extension would result in the shut-down of ETO's production for several weeks pending significant redesign of the equipment and approval for type acceptance. While no information was submitted to support this claim, which is reason enough for denial, the Commission would also like to make clear that, except in extremely rare circumstances, no waivers will be granted for any of the technical specifications detailed under the type acceptance requirements in docket 21117. Any request for waiver under these requirements would only be considered for transmitters. Before issuing such a waiver, the Commission would take a close look at the past marketing practices of the manufacturer, his production of QRP transmitters to complement the use of such amplifiers, and his willingness to restrict the sale of the amplifiers produced under such a waiver only to licensed amateur radio operators. This latter proposal may require the showing of an amateur license at the point of sale with reports submitted to the Commission on the disposition of these amplifiers. The request from ETO for a waiver of the type acceptance requirements is, therefore, denied.

6. The petitions for reconsideration in these dockets unanimously support a deletion of the action taken in docket 21116 with the petition from the ARRL, supported by the petition from the R. L. Drake Co., requesting a minor change in docket 21117. In addition, the petition from ETO also requests reconsideration of docket 21117. In regard to the ARRL petition, it was brought to our attention that while the Commission prohibited the manufacture and marketing of any external amplifier capable of operation below 144 MHz unless a grant of type acceptance had been issued for that amplifier, no guideline was offered concerning what the Commission meant by "capable of operation." To assist in this matter, the ARRL proposed a change to our regulations which is being adopted. This change is shown in the attached appendix. The effect of such a change is to allow 2 meter (144-148 MHz) amplifiers some gain below 144 MHz without having to

[1] While the petition from Ehrhorn Technological Operations, Inc., was filed late (the last day for filing such petitions was April 26, 1978), this petition was accepted as a late filing because of this company's active involvement in the manufacture of amateur equipment. Additional petitions were received from the American Radio Council (May 9, 1978) with comments on this petition filed by the R. L. Drake Co. and from Mr. Charles E. Mink and Mr. Robert W. Mink (June 6, 1978). These petitions and comment were received too late to incorporate in this order yet were considered in this proceeding.

come under our type acceptance program as it was not the intention of this Commission to include this equipment under our type acceptance program in the first place. However, it should be noted that no gain from these amplifiers will be permitted below 120 MHz unless a grant of type acceptance has been issued. In addition, the amplifier may not be capable of being easily modified to provide amplification below 120 MHz.

7. As mentioned above, the petition from ETO requested a reconsideration of the actions taken in docket 21117 and further offered a number of changes to the input power and gain requirements for these amplifiers. As justification for such changes, ETO stated that the current design of amateur equipment employing grounded-grid triode tubes requires an input driving signal of only 20 to 40 watts of mean power and will produce between 13 and 16 decibels of gain. The Commission is not persuaded by this argument since all of the manufacturers who applied for a waiver of the marketing cut-off date, as invited in the two dockets, were granted such a waiver. None of these amplifiers failed to meet the specified input power requirements for the gain limitations. It is therefore quite possible to design an external amplifier capable of operating within these specifications unless some attempt is made to have the amplifier operate above the maximum legal power authorized for use in the Amateur Radio Service (one kilowatt of dc input power).

8. ETO further requests that the Commission either (1) delete the gain and drive power requirements for grounded-grid triode amplifiers; (2) set the maximum permissible gain at 16 decibels and minimum drive requirement at 20 watts mean power; or (3) accept resistive input attenuation so long as the amplifier meets the 16 dB/20 watt requirements with such attenuation removed. None of these requirements are consistent with the Commission's intent in these regulations, that is, to prevent their ability to operate in the Citizens Band Radio Service using a CB transmitter many of which are capable of 20 watts of output. As it has already been demonstrated to the Commission that our input power and gain requirements can be met, considering the marketing waivers which have already been issued, these requests are denied.

9. Concerning the petitions for reconsideration for docket 21116, as when any number of petitions are filed against a rulemaking action, various reasons are presented to substantiate the adoption of the petitions. In this case, the results are the same, but there are two predominant arguments which seem to be fairly consistent throughout most of the petitions. The first of these is a strong reliance on the dissenting statement issued by Commissioner White. This argument, and all other similar statements contained in these petitions, can be immediately dismissed as this is simply information which has already been brought to the Commission's attention and considered before the adoption of these regulations.

10. The second major argument presented in these petitions was in the form of a request to the Commission to state what the ban does to prevent the manufacture and marketing of external amplifiers designed for illegal operation in the Citizens Band Radio Service that is not already controlled through the type acceptance requirements promulgated in docket 21117. This matter is not discussed fully in the original report and order, yet is of importance when considering the financial impact of Commission action in dockets 21116 and 21117 on the amplifier manufacturers.

11. The frequency ban in docket 21116 is a clear and definite signal from the Commission to manufacturers of the offensive equipment that the Commission is determined to act in the public interest to eliminate the source of a problem of enormous dimensions and impact on the American consumer. The extent and nature of television and other home electronic entertainment equipment interference caused by the illegal operation of these amplifiers is well documented.[2] Previous attempts by the Commission to deal with this problem and at the same time provide for nonrestrictive amateur operations by rule making adopted in late 1974 proved unsuccessful.[3] The exemption contained in the rule adopted at that time allowed the continued manufacture of Amateur amplifier equipment on the offensive band and proved to be a loophole which allowed circumvention of the intent of the Commission. The new ban rule in effect approximately 2 months has proven to be effective. Its enforceability has been demonstrated. The determination of the occurrence of a violation of the ban rule can be made quickly and positively by the FCC field staff at the time the suspected violation is observed. The type acceptance program would allow the continued marketing of amplifiers capable of operating in the 24 to 35 MHz frequency band, although with some constraints, such as a minimum drive power requirement. The ban is an unequivocal prohibition of the manufacture and marketing of offensive equipment. It effectively removes from the marketplace equipment capable of being used illegally by the Citizens Band radio users. Type acceptance will assure compliance with technical standards pertaining to amplifiers designed to operate below 144 MHz on frequencies other than the prohibited ban of 24-35 MHz. Both actions are required to assure progress toward the goal of electromagnetic compatability in an RF environment of increasing complexity and congestion.

12. The claim of severe economic hardship imposed on legitimate Amateur amplifier manufacturers has not been documented by factual information. The Commission has been liberal in granting waivers of the marketing restrictions. The change in equipment design required by the ban rule is of the nature of deleting an equipment function. As concerns the claims of economic injury, all of the domestic amplifier manufacturers and suppliers will be placed in the same category, subject to the same expenses. No domestic manufacturer or supplier will, therefore, have any competitive advantage over another in this regard. Such a claim cannot then be applied as a reason for the dismissal of this requirement. On the other hand, economic hardship for the pseudo-Amateur equipment manufacturer is severe and those manufacturers have had to look for other product lines to replace the loss of sales of the offensive interference producing amplifiers. In view of this, the Commission believes it necessary to keep the 24 to 35 MHz frequency ban promulgated in docket 21116 and, as such, is denying all petitions for reconsideration for this docket.

13. In view of the foregoing, we find in the public interest that the petitions for reconsideration in docket 21117 are granted in part as shown above and in the attached appendix with all other petitions denied. The authority for this action is contained in section 4(i), 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended. Accordingly, *it is ordered*, That sections 2.815(c), 97.75(a)(1), and 97.76(a)(1) of the Commission's rules and regulations are amended as shown in the attached appendix. As these amendments simply clarify the existing regulations, the proscriptions contained in 5 U.S.C. 553 are not applicable. Therefore, these changes to the regulations shall become effective on August 1, 1978.

It is further ordered, That all other petitions received in docket 21116 and docket 21117 are denied.

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[2] See FOB Report titled "The Extent and Nature of Television Reception Difficulties Associated with CB Radio Transmissions," Published July 1977 and available from the Downtown Copy Center, 1730 K Street NW., Washington, D.C. 20006, telephone number area code 202-452-1422.

[3] See docket No. 20118.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082, Sec. 302, 82 Stat., 290; 47 U.S.C. 154, 302, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

APPENDIX

A. Part 2 is amended as follows:

Section 2.815 is amended by deleting paragraph (c) and by adding a new paragraph (c) to read as follows:

§ 2.815 External radio frequency power amplifiers.

* * * * *

(c) After April 27, 1978, and until April 28, 1981, no person shall manufacture, sell or lease, offer for sale or lease (including advertising for sale or lease) or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any external radio frequency power amplifier or amplifier kit capable of operation on any frequency or frequencies below 144 MHz unless the amplifier has received a grant of type acceptance in accordance with subpart J of this part and subpart C of part 97 or other relevant parts of this chapter. No more than 10 external radio frequency power amplifiers or amplifier kits may be constructed for evaluation purposes in preparation for the submission of an application for a grant of type acceptance. NOTE.—For the purposes of this part, an amplifier will be deemed incapable of operation below 144 MHz if—

(1) The mean output power decreases, as frequency decreases from 144 MHz, to a point where 0 decibels or less gain is exhibited at 120 MHz and below; and

(2) The amplifier is not capable of being easily modified to provide amplification below 120 MHz.

* * * * *

B. Part 97 is amended as follows:

1. Section 97.75 is amended by deleting subparagraph (1) of paragraph (a) and by adding a new subparagraph (1) to paragraph (a) to read as follows:

§ 97.75 Use of external radio frequency (RF) power amplifiers.

(a) Until April 28, 1981, any external radio frequency (RF) powers amplifier used or attached at any amateur radio station shall be type accepted in accordance with Subpart J or Part 2 of the FCC's Rules for operation in the Amateur Radio Service, unless one or more of the following conditions are met:

(1) The amplifier is not capable of operation on any frequency or frequencies below 144 MHz (the amplifier shall be considered incapable of operation below 144 MHz if the mean output power decreases, as frequency decreases from 144 MHz, to a point where 0 decibels or less gain is exhibited at 120 MHz and below an the amplifier is not capable of being easily modified to provide amplification below 120 MHz);

2. Section 97.76 is amended by deleting subparagraph (1) of paragraph (a) and by adding a new subparagraph (1) to paragraph (a) to read as follows:

§ 97.76 Requirements for type acceptance of external radio frequency (RF) power amplifiers and external radio frequency power amplifier kits.

(a) Until April 28, 1981, any external radio frequency (RF) power amplifier or external RF power amplifier kit marketed (as defined in § 2.815), manufactured, imported or modified for use in the Amateur Radio Service shall be type accepted for use in the Amateur Radio Service in accordance with subpart J or part 2 of the FCC's rules. This requirement does not apply if one or more of the following conditions are met:

(1) The amplifier is not capable of operation on any frequency or frequencies below 144 MHz (the amplifier shall be considered incapable of operation below 144 MHz if the mean output power decreases, as frequency decreases, from 144 MHz, to a point where 0 decibels or less gain is exhibited at 120 MHz and below and the amplifier is not capable of being easily modified to provide amplification below 120 MHz).

* * * * *

[FR Doc. 78-21145 Filed 7-31-78; 8:45 am]

[4910-22]

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

PART 25—RELOCATION ASSISTANCE AND LAND ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Appendix A—Schedule of Moving Expense Allowances; Individuals and Families

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, displaced individuals or families may elect to be paid for moving expenses on the basis of a moving expense schedule. This rule updates the schedule to reflect changes in the moving expense schedules for Alabama, New York, North Carolina, and Oregon.

EFFECTIVE DATE: July 1, 1978.

FOR FURTHER INFORMATION CONTACT:

John Murnane, Relocation Assistance Division, Office of Right-of-Way, 202-426-0156; or Reid Alsop, Office of the Chief Counsel, 202-426-0800, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours Monday through Friday from 7:45 a.m. to 4:15 p.m., e.s.t.

SUPPLEMENTARY INFORMATION:

Section 202(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Pub. L. 91-646, 84 Stat. 1894, provides that a displaced individual or family may elect to be paid for moving expenses on the basis of a moving expense schedule. To insure statewide uniformity among all agencies operating under the act, General Services Administration Regulations, 41 CFR part 101-6, provide in § 101-6.105-1 that the schedule shall be maintained by the respective State highway departments, and approved and disseminated by the Federal Highway Administration.

The regulations of the Office of the Secretary, 49 CFR 25.153, implementing the Uniform Act, direct the Federal Highway Administration to establish and maintain the moving expense schedule in appendix A to part 25 of title 49 and to update it semiannually. The purpose of this amendment is to revise the current schedule, which was published on March 16, 1978, (43 FR 10913) to reflect changes in the moving expense schedules of the following States:

Table I—Personality—Alabama, New York, North Carolina, and Oregon.

Table II—Mobile Homes—Alabama, New York, and North Carolina.

Issued on: July 21, 1978.

H. A. LINDBERG,
Associate Administrator for Engineering and Traffic Operations.

Appendix A

Title 49--Transportation
Table I--Personalty

State	Occupant provides furniture: Number of rooms of furniture										Occupant does not provide furniture	
	1	2	3	4	5	6	7	8	9	10	First room	Each additional room
Alabama[1]	70	110	150	190	230	270	300				(See end of table)	
Alaska	75	150	200	250	275	300					15	15
Arizona	50	100	150	200	250	300					25	15
Arkansas	70	110	150	190	230	270	300				40	20
California	75	100	150	200	250	300					25	15
Colorado	120	180	240	300							30	20
Connecticut	50	90	140	170	230	260	300				15	15
Delaware	60	100	140	180	220	260	300				25	15
District of Columbia	100	135	170	210	250	290	300				35	15
Florida	60	90	120	150	180	210	240	270	300		20	10
Georgia	55	95	130	170	200	260	300				30	10
Guam	48	85	120	168	205	240	300				10	10
Hawaii	65	100	135	175	215	255	295	300			45	30
Idaho	60	100	140	180	220	260	300				20	10
Illinois	50	100	150	200	250	300					25	15
Indiana	50	90	125	160	195	230	265	300			25	15
Iowa	75	140	195	240	275	300					30	12
Kansas	60	120	180	240	300						30	10
Kentucky	50	90	130	170	210	250	290	300			20	15
Louisiana	50	85	120	155	190	225	260	300			40	15
Maine	50	90	125	150	175	200	225	250	275	300	15	10
Maryland	80	110	145	185	230	275	300				20	10
Massachusetts	60	130	150	190	225	250	275	300			25	15
Michigan	65	130	180	240	300						50	10
Minnesota	75	125	175	225	250	275	300				30	15
Mississippi	75	100	160	210	260	300					40	20
Missouri	50	100	150	200	250	300					25	10
Montana	55	85	115	145	175	200	225	250	275	300	25	15
Nebraska	50	100	150	200	250	300					30	10
Nevada	50	100	150	200	250	300					25	15
New Hampshire	50	100	125	150	175	200	225	250	275	300	25	15
New Jersey	80	140	195	245	300						25	15
New Mexico[2]	105	155	205	255	300						(See end of table)	
New York	80	130	175	215	250	275	300				25	15
North Carolina	60	100	140	180	220	260	300				30	20
North Dakota	60	100	125	150	175	200	225	250	275	300	25	10
Ohio	50	100	150	200	250	300					30	10
Oklahoma	50	85	120	155	190	225	260	300			40	15
Oregon	60	120	180	240	300						20	20
Pennsylvania	60	105	150	195	240	285	300				20	20
Puerto Rico	75	105	135	165	195	225	250	275	300		25	25
Rhode Island	50	90	125	150	175	200	225	250	275	300	25	10
South Carolina	95	125	165	205	235	250	270	300			15	10
South Dakota	75	130	175	210	240	290	300				40	10
Tennessee	75	100	150	200	250	300					25	15
Texas	50	85	120	150	185	220	260	300			30	15
Utah	75	100	130	155	180	210	240	270	300		25	15
Vermont	50	90	125	150	175	200	225	250	275	300	25	10
Virginia	60	80	120	160	200	240	280	300			30	10
Virgin Islands	105	150	195	240	275	300					35	35
Washington[3]	70	120	150	180	210	240	270	300			20	10
West Virginia[4]	60	100	140	180	220	260	300				25	10
Wisconsin	50	90	130	170	210	240	270	300			25	15
Wyoming	50	85	120	150	185	225	265	300			30	15

[1] Furnished units including sleeping rooms. Occupant does not own furniture.

First Room	2 Rooms	3 Rooms	4 Rooms	5 Rooms	Each Additional Room
$25	$40	$60	$75	$95	$15

[2] Furnished units including sleeping rooms. Occupant does not own furniture.

First Room	2 Rooms	3 Rooms	4 Rooms	5 Rooms	6 Rooms	7 Rooms	8 Rooms	9 Rooms	10 Rooms
$45	$86	$107	$128	$149	$170	$191	$212	$233	$254

to a maximum of $300

[3] For mobile homes (whether or not occupant provides furniture):

First room	Each additional room
$50	$25

[4] Where occupant does not provide furniture, allowance for 2 rooms is $40.

Table II--Mobile Homes

State	Miles (Kilometres) More than	Miles (Kilometres) But not more than	Area--Square Feet (Square Metres) More than	Area--Square Feet (Square Metres) But not more than	Width--Feet (Metres) More than	Width--Feet (Metres) But not more than	Allowance Dollars
Alabama			0 (0)	200 (18.6)			140
			200 (18.6)	400 (37.2)			190
			400 (37.2)	600 (55.8)			240
			600 (55.8)	800 (74.4)			280
			800 (74.4)				300
Alaska	All trailers						300
Arizona			0 (0)	300 (27.9)			150
			300 (27.9)	400 (37.2)			200
			400 (37.2)	500 (46.5)			250
			500 (46.5)				300
Arkansas					0 (0)	12 (3.7)	200
					12 (3.7)	14 (4.3)	250
					14 (4.3)		300
California[1]					0 (0)	8 (2.4)	(see 1-end
					8 (2.4)		of table)
Colorado[2]							(see 2-end of table)
Connecticut[3]					0 (0)	8.5 (2.6)	100
					8.5 (2.6)	10.5 (3.2)	150
					10.5 (3.2)	12.5 (3.8)	200
					12.5 (3.8)		250
Delaware			0 (0)	400 (37.2)			100
			400 (37.2)	600 (55.8)			150
			600 (55.8)	800 (74.4)			200
			800 (74.4)	1,000 (93)			250
			1,000 (93)				300
Florida			0 (0)	200 (18.6)			100
			200 (18.6)	400 (37.2)			150
			400 (37.2)	600 (55.8)			200
			600 (55.8)	850 (79.1)			250
			850 (79.1)				300
Georgia			0 (0)	400 (37.2)			95
			400 (37.2)	500 (46.5)			125
			500 (46.5)	600 (55.8)			185
			600 (55.8)	850 (79.1)			245
			850 (79.1)				300
Guam			0 (0)	300 (27.9)			130
			300 (27.9)	400 (37.2)			180
			400 (37.2)	500 (46.5)			210
			500 (46.5)	600 (55.8)			240
			600 (55.8)	700 (65.1)			270
			700 (65.1)				300
Hawaii			0 (0)	300 (27.9)			130
			300 (27.9)	400 (37.2)			180
			400 (37.2)	500 (46.5)			210
			500 (46.5)	600 (55.8)			240
			600 (55.8)	700 (65.1)			270
			700 (65.1)				300
Idaho			0 (0)	200 (18.6)			100
			200 (18.6)	400 (37.2)			150
			400 (37.2)	600 (55.8)			200
			600 (55.8)	800 (74.4)			250
			800 (74.4)				300
Illinois	0 (0)	24 (38.6)			0 (0)	8.5 (2.6)	100
					8.5 (2.6)	10.5 (3.2)	150
					10.5 (3.2)	12.5 (3.8)	200
					12.5 (3.8)		250
	24 (38.6)	50 (80.5)			0 (0)	8.5 (2.6)	150
					8.5 (2.6)	10.5 (3.2)	200
					10.5 (3.2)	12.5 (3.8)	250
					12.5 (3.8)		300

See footnotes at end of table.

Table II--Mobile Homes

State	Miles (Kilometres) More than	Miles (Kilometres) But not more than	Area--Square Feet (Square Metres) More than	Area--Square Feet (Square Metres) But not more than	Width--Feet (Metres) More than	Width--Feet (Metres) But not more than	Allowance Dollars
Indiana					0 (0)	8.5 (2.6)	150
					8.5 (2.6)	10.5 (3.2)	185
					10.5 (3.2)	12.5 (3.8)	250
					12.5 (3.8)		300
Iowa	0 (0)	25 (40.2)			0 (0)	8 (2.4)	130
					8 (2.4)	10 (3)	150
					10 (3)	12 (3.7	180
					12 (3.7)		230
	25 (40.2)	50 (80.5)			0 (0)	8 (2.4)	140
					8 (2.4)	10 (3)	170
					10 (3)	12 (3.7)	200
					12 (3.7)		300
Kansas			0 (0)	200 (18.6)			80
			200 (18.6)	400 (37.2)			160
			400 (37.2)	600 (55.8)			240
			600 (55.8)				300
Kentucky[4]					0 (0)	8 (2.4)	240
					8 (2.4)	10 (3)	285
					10 (3)	12 (3.7)	300
Louisiana					0 (0)	10 (3)	150
					10 (3)	12 (3.7)	175
					12 (3.7)	14 (4.3)	225
					14 (4.3)		275
Maine					0 (0)	8 (2.4)	150
					8 (2.4)	10 (3)	200
					10 (3)	12 (3.7)	250
					12 (3.7)		300
Maryland			0 (0)	200 (18.6)			110
			200 (18.6)	400 (37.2)			140
			400 (37.2)	600 (55.8)			165
			600 (55.8)	800 (74.4)			195
			800 (74.4)	1,000 (93)			220
			1,000 (93)	1,200 (111.6)			250
			1,200 (111.6)				300
Massachusetts			0 (0)	200 (18.6)			80
			200 (18.6)	400 (37.2)			140
			400 (37.2)	600 (55.8)			200
			600 (55.8)				300
Michigan					0 (0)	8 (2.4)	145
					8 (2.4)	10 (3)	230
					10 (3)	12 (3.7)	280
					12 (3.7)		300
Minnesota[4]	0 (0)	10 (16)			0 (0)	10 (3)	125
					10 (3)	12 (3.7)	135
					12 (3.7)	14 (4.3)	150
					14 (4.3)		175
	10 (16)	25 (40.2)			0 (0)	10 (3)	130
					10 (3)	12 (3.7)	140
					12 (3.7)	14 (4.3)	155
					14 (4.3)		185
	25 (40.2)	50 (80.5)			0 (0)	10 (3)	140
					10 (3)	12 (3.7)	150
					12 (3.7)	14 (4.3)	175
					14 (4.3)		200

See footnotes at end of table.

Table II--Mobile Homes

State	Miles (Kilometres) More than	But not more than	Area--Square Feet (Square Metres) More than	But not more than	Width--Feet (Metres) More than	But not more than	Allowance Dollars
Mississippi	0 (0)	300 (27.9)					150
	300 (27.9)	400 (37.2)					200
	400 (37.2)	500 (46.5)					250
	500 (46.5)						300
Missouri	0 (0)	200 (18.6)					100
	200 (18.6)	400 (37.2)					150
	400 (37.2)	600 (55.8)					200
	600 (55.8)	800 (74.4)					250
	800 (74.4)						300
Montana[4]					0 (0)	10 (3)	135
					10 (3)	12 (3.7)	150
					12 (3.7)	14 (4.3)	175
					14 (4.3)		225
Nebraska	0 (0)	400 (37.2)					100
	400 (37.2)	600 (55.8)					150
	600 (55.8)	800 (74.4)					200
	800 (74.4)	1,000 (93)					250
	1,000 (93)						300
Nevada	0 (0)	400 (37.2)					150
	400 (37.2)	500 (46.5)					200
	500 (46.5)	600 (55.8)					250
	600 (55.8)						300
New Hampshire	All Mobile Homes						300
New Jersey	0 (0)	200 (18.6)					100
	200 (18.6)	400 (37.2)					150
	400 (37.2)	600 (55.8					200
	600 (55.8)	800 (74.4)					250
	800 (74.4)						300
New Mexico[4,5]	0 (0)	20 (32.2)			0 (0)	8.5 (2.6)	141
					8.5 (2.6)	10.5 (3.2)	181
					10.5 (3.2)	12.5 (3.8)	191
					12.5 (3.8)		231
	20 (32.2)	50 (80.5)			0 (0)	8.5 (2.6)	161
					8.5 (2.6)	10.5 (3.2)	191
					10.5 (3.2)	12.5 (3.7)	206
					12.5 (3.7)		246
New York	0 (0)	300 (27.9)					150
	300 (27.9)	500 (46.5)					200
	500 (46.5)	700 (65.1)					250
	700 (65.1)						300
North Carolina[4,6]					0 (0)	10 (3)	150
					10 (3)	12 (3.7)	200
					12 (3.7)		300
North Dakota	0 (0)	200 (18.6)					100
	200 (18.6)	400 (37.2)					150
	400 (37.2)	600 (55.8)					200
	600 (55.8)	800 (74.4)					250
	800 (74.4)						300

See footnotes at end of table.

Table II--Mobile Homes

State	Miles (Kilometres) More than	Miles (Kilometres) But not more than	Area--Square Feet (Square Metres) More than	Area--Square Feet (Square Metres) But not more than	Width--Feet (Metres) More than	Width--Feet (Metres) But not more than	Allowance Dollars
Ohio[4]	0 (0)	10 (16)	0 (0)	320 (29.8)			130
			320 (29.8)	500 (46.5)			150
			500 (46.5)	840 (78.1)			170
			840 (78.1)	1,120 (104.2)			205
			1,120 (104.2)				250
	10 (16)	25 (40.2)	0 (0)	320 (29.8)			135
			320 (29.8)	500 (46.5)			155
			500 (46.5)	840 (78.1)			190
			840 (78.1)	1,120 (104.2)			220
			1,120 (104.2)				275
	25 (40.2)	50 (80.5)	0 (0)	320 (29.8)			145
			320 (29.8)	500 (46.5)			165
			500 (46.5)	840 (78.1)			200
			840 (78.1)	1,120 (104.2)			250
			1,120 (104.2)				300
Oklahoma					0 (0)	10 (3)	150
					10 (3)	12 (3.7)	175
					12 (3.7)	14 (4.3)	225
					14 (4.3)		275
Oregon			0 (0)	200 (18.6)			100
			200 (18.6)	600 (55.8)			200
			600 (55.8)				300
Pennsylvania			0 (0)	300 (27.9)			130
			300 (27.9)	500 (46.5)			225
			500 (46.5)	800 (74.4)			275
			800 (74.4)				300
Rhode Island					0 (0)	8 (2.4)	225
					8 (2.4)	10 (3)	250
					10 (3)	12 (3.7)	275
					12 (3.7)		300
South Carolina[4]					0 (0)	10 (3)	140
					10 (3)	12 (3.7)	150
South Dakota					0 (0)	10 (3)	230
					10 (3)	12 (3.7)	270
					12 (3.7)		300
Tennessee[4]					0 (0)	10 (3)	100
					10 (3)		150
Texas					0 (0)	8.5 (2.6)	165
					8.5 (2.6)	10.5 (3.2)	210
					10.5 (3.2)	12.5 (3.8)	255
					12.5 (3.8)	14.5 (4.4)	300
Utah[4]	0 (0)	10 (16)			0 (0)	8 (2.4)	140
					8 (2.4)	10 (3)	145
					10 (3)	12 (3.7)	165
					12 (3.7)		200
	10 (0)	25 (40.2)			0 (0)	8 (2.4)	145
					8 (2.4)	10 (3)	155
					10 (3)	12 (3.7)	175
					12 (3.7)		225

See footnotes at end of table.

Table II--Mobile Homes

State	Miles (Kilometres) More than	But not more than	Area--Square Feet (Square Metres) More than	But not more than	Width--Feet (Metres) More than	But not more than	Allowance Dollars
Utah--Continued	25 (40.2)	50 (80.5)	.....		0 (0)	8 (2.4)	150
			.....		8 (2.4)	10 (3)	160
			.....		10 (3)	12 (3.7)	190
			.....		12 (3.7)	.....	250
Vermont[7]			.....		0 (0)	8 (2.4)	155
			.....		8 (2.4)	10 (3)	185
			.....		10 (3)	12 (3.7)	215
			.....		12 (3.7)	.....	250
Virginia			0 (0)	200 (18.6)	.....		150
			200 (18.6)	400 (37.2)	.....		200
			400 (37.2)	600 (55.8)	.....		250
			600 (55.8)	800 (74.4)	.....		300
Washington[8]			0 (0)	200 (18.6)	.....		100
			200 (18.6)	400 (37.2)	.....		150
			400 (37.2)	600 (55.8)	.....		200
			600 (55.8)	800 (74.4)	.....		250
			800 (74.4)	.....	.....		300
West Virginia			0 (0)	300 (27.9)	.....		100
			300 (27.9)	450 (41.9)	.....		150
			450 (41.9)	550 (51.2)	.....		225
			550 (51.2)	.....	.....		300
Wisconsin			.....		0 (0)	8 (2.4)	150
			.....		8 (2.4)	10 (3)	200
			.....		10 (3)	12 (3.7)	250
			.....		12 (3.7)	.....	300
Wyoming[4]			.....		0 (0)	8.5 (2.6)	135
			.....		8.5 (2.6)	10.5 (3.2)	165
			.....		10.5 (3.2)	12.5 (3.8)	185
			.....		12.5 (3.8)	.....	220

[1]Width to 8' (2.4 m) Length 40' (12.2 m).....$200
Length 40' (12.2 m).....$300
Width over 8' (2.4 m) Length 40' (12.2 m).....$300
Length 40'+ (12.2 m).....$300

[2]Under 8' (2.4 m) x 40' (12.2 m) - Unskirted $150
Over 8' (2.4 m) x 40' (12.2 m) - $300

[3]Plus $50 for expandable trailer.

[4]$300 for double trailer.

[5]Escort fee included.

[6]Personalty Only

Width	Under 10 feet (3 m)	10 feet (3 m)	12 feet (3.7 m) and over	Doubles
	$50	$60	$80	$150

[7]$50 for extras.

[8]Personalty Only
First room.....$50
Each additional room.....$25

[FR Doc. 78-21243 Filed 7-31-78; 8:45 am]

proposed rules

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

[6325-01]

CIVIL SERVICE COMMISSION

[5 CFR Part 713]

EQUAL OPPORTUNITY

Remedial Action

AGENCY: Civil Service Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Civil Service Commission proposes to amend its equal opportunity regulations to provide that retroactive relief must be afforded a complainant when there is a finding of discrimination, unless the record contains clear and convincing evidence that the complainant would not have been hired or promoted in the absence of discrimination. The purpose of this proposal is to clarify the instances in which a complainant is entitled to retroactive remedial relief.

DATE: Comments must be received on or before October 2, 1978.

ADDRESS: Submit comments to: Joyce L. Evans, Acting Deputy General Counsel, Office of the General Counsel, U.S. Civil Service Commission, Room 5H30, 1900 E Street NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

Lydia Parnes, Trial Attorney, Office of the General Counsel, U.S. Civil Service Commission, Room 6H31, 1900 E Street NW., Washington, D.C. 20415, 202-632-4600.

SUPPLEMENTARY INFORMATION: Section 713.271 of 5 CFR sets forth Commission regulations governing remedial relief. This so called "but for" rule provides that an applicant or employee is entitled to retroactive remedial relief when there is a finding of discrimination and the record clearly shows that but for the discrimination, the employee or applicant would have been hired, promoted, or employed at a higher grade. This rule is inconsistent with recent court decisions which permit the denial of retroactive relief after a finding of discrimination only if there is clear and convincing evidence that the complainant would not have been hired, promoted, or employed at a higher grade, even absent discrimination. The Commission intends through these regulatory changes to bring its administrative process into conformity with the clear intent of the courts. Therefore, the Commission has decided that—upon a finding of discrimination in an individual complaint—the complainant will always be entitled to retroactive relief unless there is present in the record clear and convincing evidence that, even without discrimination, the complainant would not have received the employment benefit in question.

Accordingly, it is proposed to amend 5 CFR Part 713, as set forth below:

§ 713.271 [Amended]

1. Section 713.271—it is proposed to amend subsection (a)(1) by striking the first sentence and inserting in lieu thereof the following:

(a) *Remedial action involving an applicant.* (1) When an agency, or the Commission, finds that an applicant for employment has been discriminated against, the agency shall offer the applicant employment of the type and grade denied him or her, unless the record contains clear and convincing evidence that the applicant would not have been hired even absent discrimination. * * *

2. Section 713.271—it is proposed to amend subsection (a)(2) by striking the first sentence and inserting in lieu thereof the following:

(a) * * *

(2) When an agency, or the Commission finds that discrimination existed at the time the applicant was considered for employment but also finds clear and convincing evidence that the applicant would not have been hired even absent discrimination, the agency nevertheless shall consider the individual for any existing vacancy of the type and grade for which he or she was considered initially and is qualified before considering other candidates. * * *

3. Section 713.271—it is proposed to amend subsection (b)(1) by striking the first sentence and inserting in lieu thereof the following:

(b) * * *

(1) Retroactive promotion, with backpay computed in the same manner prescribed by § 550.804 of this chapter, unless the record contains clear and convincing evidence that the employee would not have been promoted or employed at a higher grade, even absent discrimination. The backpay liability may not accrue from a date earlier than 2 years prior to the date the discrimination complaint was filed, but, in any event, not to exceed the date the employee would have been promoted. * * *

4. Section 713.271—it is proposed to amend subsection (b)(2) by striking the first sentence and inserting in lieu thereof the following:

(b) * * *

(2) Consideration for promotion to a position for which the employee is qualified before consideration is given to other candidates, if the record contains clear and convincing evidence that, although discrimination existed at the time selection for promotion was made, the employee would not have been promoted even absent discrimination. * * *

(42 U.S.C. 2000e—16(b).)

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-21416 Filed 7-31-78; 8:45 am]

[3410-02]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 927]

HANDLING OF BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIRGEAU VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

Proposed Extension of Effective Period for Minimum Quality Regulation

AGENCY: Agriculture Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would continue through November 1, 1978, certain quality requirements applicable to fresh shipments of Beurre D'Anjou pears which are shipped from designated areas of Oregon and Washington. This would take into consideration the marketing situation facing the pear industry in Oregon and Washington, and is designed to assure that, shipments of Beurre D'Anjou pears will be of suitable quality in the interest of consumers and producers.

DATES: Comments must be received on or before September 8, 1978. Proposed effective dates: August 1, 1978, through November 1, 1978.

ADDRESS: Send comments to: Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments should be submitted, and they will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Pear regulation 17 (§ 927.317; 43 FR 3119) sets forth certain minimum quality requirements on the handling of Beurre D'Anjou variety of winter pears. This regulation is effective through September 30, 1978. This proposal would continue these requirements through November 1, 1978.

The proposed regulation was recommended by the Control Committee under § 927.50 of the marketing agreement and order No. 927, both as amended (7 CFR part 927), regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in Oregon, Washington, and California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The proposal is to amend § 927.317 (43 FR 3119) to read as follows:

§ 927.317 Pear regulation 17.

(a) During the period August 1, through November 1, 1978, no handler shall ship any Beurre D'Anjou variety of pears, grown in the following districts, unless such pears are handled in accordance with paragraph (1) of this section:

(1) Beurre D'Anjou pears shipped from the Medford, Hood River-White Salmon-Underwood, Wenatchee, and Yakima Districts shall have an appropriate certification by the Federal-State Inspection Service, issued prior to shipment showing that the core temperature of such pears has been lowered to 35° F. or less and any such pears for domestic shipment shall have an average pressure test of 14 pounds or less.

Dated: July 26, 1978.

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

[FR Doc. 78-21151 Filed 7-31-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 241, 242, 249, 291]

[Docket 33093; EDR-359]

PROPOSED RULES FOR ALL-CARGO AIR CARRIERS AND DOMESTIC CARGO TRANSPORTATION BY SECTION 401 AND SECTION 418 AIR CARRIERS

JULY 25, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites public comment on proposed rules to govern all-cargo air carrier applications and certificates, and the provision of domestic air cargo services by the all-cargo air carriers and the existing certificated route carriers. These proposed rules would substantially lessen the extent of the Board's regulation of domestic cargo transportation. They implement a new law, Pub. L. 95-163, enacted in November of 1977, that created the new class of all-cargo air carriers.

DATES: Comments by: September 11, 1978. Reply comments by: October 2, 1978.

Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable.

Requests to be put on the service list: By August 21, 1978, docket section prepares the service list and sends it to each person listed, who then serves his comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to docket 33093, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Stephen Babcock, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: Pub. L. 95-163, which was enacted on November 9, 1977, eliminated the principal part of the Board's jurisdiction over domestic air freight rates,[1] authorized existing all-cargo air carriers to obtain a new kind of certificate (a "section 418 certificate"),[2] and, commencing on November 9 of this year, directed the Board to issue section 418 certificates, authorizing the direct air carriage of freight and mail within the United States, Puerto Rico, and the U.S. Virgin Islands, to all qualified U.S. citizen applicants.[3] Under the new law, the Board must certificate all applicants, unless it finds, within 180 days after the filing of an application, that the applicant is not fit, willing, or able to operate as an all-cargo air carrier, or to comply with the Board's regulations. Additionally, the Board's traditional power over entry and exit in particular markets was specifically withdrawn by the language of subsection 418(b)(3), which provides that "any certificate issued by the Board under this section may contain such reasonable conditions and limitations as the Board deems necessary, except that such terms and conditions shall not restrict the points which may be served, or the rates which may be charged, by the holder of such certificate."

The Congress clearly intended Pub. L. 95-163 to substantially deregulate the domestic air cargo industry. By positive statutory language, Congress completely revoked the core elements of the Board's regulatory powers over domestic air freight: its ability to control entry and exit, and its ability to set or control rates by analyzing the relationship between those rates and carrier costs. To complete the task of deregulating air freight, however, Congress delegated to the Board considerable discretion. Pub. L. 95-163 says that section 418 carriers "shall, with respect to any all-cargo air service provided in accordance with (an all-cargo air service) certificate, be exempt from the requirements of section 401(a) of this act, and any other section of this act *which the Board by rule determines appropriate*, and any rule, regulation, or procedure issued pursuant to any such section." (Emphasis supplied.)[4]

We are undertaking this rulemaking proceeding to implement Congress' intent. We propose to remove many of the economic regulatory restraints now affecting the domestic air cargo industry. At the outset, however, we note that the accomplishment of this purpose will require the use of our preexisting exemption power contained in subsection 416(b) of the act, 49 U.S.C. section 1386(b). That provi-

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[1] Congress revoked the Board's authority under section 1002 of the act, 49 U.S.C. section 1482, to determine the "justness" or "reasonableness" of rates. The Congress also withdrew the Board's authority to suspend rates on any grounds.

[2] 49 U.S.C. section 1388.

[3] Air transportation within Alaska and Hawaii was excepted, however, from the changes in the Board's rate powers and from the authority of the new section 418 carriers.

[4] New subsection 418(c), 49 U.S.C. section 3188(c).

sion permits us to exempt air carriers, individually or by class, from various provisions of the act if we find that enforcement of a provision will be an "undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operations of such air carrier or class of air carriers and is not in the public interest."

The problem that demands the use of our power under subsection 416(b) is this. Entry deregulation, and our expansive exemption powers under new section 418 of the act, apply by their terms only to the transportation of freight and mail in freighter aircraft operated under section 418, while the bulk of the Nation's air freight now moves in operations conducted under section 401 of the act, much of it in planes engaged in carrying passengers as well as freight. Section 401 carriers are eligible to obtain section 418 certificates and many have done so. Moreover, Pub. L. 95-163 deregulates cargo rates irrespective of what certificate authority the freight is flown under. Section 401 and section 418 carriers do compete for the same cargo business and most freight can be carried as quickly and safely by an all-cargo carrier under section 418 as by a combination carrier under section 401. Thus, it is clear that we must establish only one set of rules for all segments of the air freight industry, to the maximum extent possible. If, to the contrary, we were to adopt new, more liberal, rules only for section 418 operations, the section 401 carriers would be competitively disadvantaged, thus constraining the achievement of an efficient air freight industry.[5]

The section 401 all-cargo carriers might be able to resolve this dilemma simply by conducting their operations under the color of their section 418 certificates, leaving questions of adequacy of service, if any arose, to be resolved on a case-by-case basis. The air freight services offered in combination aircraft, however, cannot be converted into section 418 operations by any corporate or regulatory machinations, since section 418 operations cannot encompass passenger transportation. Thus, if we were to effectuate Congress' intent only with respect to all-cargo operations, or (even more narrowly) only with respect to those all-cargo services that could not be operated under section 401, the remaining section 401 air freight system would be severely disadvantaged, and idle or underutilized capacity could result. The undue competitive disadvantage to particular section 401 carriers that would result by reason of this unusual statutory situation is, we tentatively find, an "unusual circumstance" as that term is used in subsection 416(b). *Pam Am World Air & National Air Agreements*, 27 CAB 611, 615-16 (1958). Moreover, the waste of belly capacity on combination aircraft, and the underutilization of section 401 freighter capacity, that would result from our continuing to enforce all of the provisions of the act, with respect to domestic section 401 operations only, suggests in itself that the use of our exemption powers under both subsections 416(b) and 418(c) is sound as a matter of both law and policy here.

The result of our use of powers under both subsections is the creation of the term "domestic cargo transportation," which refers to the direct transportation, by air, within the geographical confines of the United States plus Puerto Rico and the U.S. Virgin Islands, of property and mail, whether carried in freighters or in combination aircraft. The only property and mail not included within the coverage of proposed part 291 would be that carried by air taxi operators that do not also hold section 418 certificates. Our decision to use this framework is tentative, and we solicit the views of the public on the merits of this idea.

The scope of this proceeding, we should also point out, is not intended to be limited to the particular proposed rules set forth, but also includes the elimination of all regulatory restraints, whether or not here proposed, that may be desirable: in sum, we intend to place in issue the entirety of the regulatory framework governing domestic air freight and mail services, and will carefully consider all suggestions on this general subject that we receive, whether or not we have advanced a particular proposal on point.

The succeeding portions of this preamble will discuss, on a subpart by subpart basis, our reasons for the tentative decisions that each of these proposed rules reflect.

Analysis of Proposed Rules

PART 241

The proposed revisions to part 241 are intended to simplify our reporting requirements to the maximum extent possible. This goal is made difficult, however, by the fact that we continue to be responsible for regulating the reasonableness of the section 401 carriers' rates for passenger transportation and for cargo moving in interstate air transportation within Alaska and Hawaii, in oversea air transportation other than to and between Puerto Rico and the U.S. Virgin Islands, and in foreign air transportation. Because of this, we see no way to avoid continuing to require the segregation, on an account-by-account basis, of revenues and expenses for all items contained in the present part 241, by all carriers that will still carry traffic subject to our "reasonableness" jurisdiction.

For those section 418 carriers that provide domestic cargo transportation but do not hold section 401 certificates, we are proposing to require the filing of only the three schedules which are set forth as appendices to proposed part 291, and which will be briefly discussed in the section of this preamble dealing with that proposed part.

We are also proposing to revise sections 19 and 25 of part 241 to add a new schedule T-8, Report of Section 418 Operations, for segregating amounts and statistics relating to all-cargo operations, and to provide that service segment reports need not be filed for all-cargo flights conducted under section 418. (Note the presumption, established by proposed section 291.20, that any flight that can be operated under section 418 will be presumed to be so operated, rather than under a carrier's section 401 authority.)

PART 242

We propose to abolish the entire part, which now prescribes special reports for scheduled all-cargo services. Although the reports now include traffic moving outside the geographical scope of domestic cargo transportation, the great majority of the data now reported relate to domestic cargo transportation, and we tentatively conclude that the burden on the carriers of having to continue to prepare these reports, for the scheduled all-cargo operations remaining within our "reasonableness" jurisdiction, outweighs the regulatory benefit that we can reasonably expect to derive from continuing to receive them.

PART 249

The proposed amendment to our record retention requirements extends their applicability to section 418 carriers. We have proposed this extension because we tentatively conclude that, especially in view of the minimal reporting requirements to be applied to the section 418 carriers, record retention requirements will assist the Board's staff in investigating any future rate or other problem in the operations of the section 418 carriers, to determine compliance with our rules, or to decide whether additional regulation or remedial legislation may be warranted. Althouth the comprehensiveness of these requirements may intimidate the new entrants on a first reading, we believe that almost all of

[5] This problem has been called to our attention, among other ways, by a letter to the Board's General Counsel from Counsel to the Flying Tiger Line Inc. That letter, together with the General Counsel's response and FTL's acknowledgment, will be placed in the docket file for this case.

these records would be retained in any event by prudent businessmen, even in the absence of our regulations. If there are particular records or classes of records that commenters believe need not be retained, we are prepared to consider any suggested exceptions, consistently with the goal of insuring that records necessary to evaluate the carriers' performance, in general or in particular instances, remain available. In order to minimize the burden of compliance with part 249 on section 418 carriers that also operate smaller aircraft, we have also provided (in proposed § 291.23) that records pertaining to transportation provided on smaller planes need not be retained.

PART 291

Subpart A

As indicated earlier, we have tentatively concluded that we should attempt to establish a uniform set of rules for as much of the domestic air freight industry as possible. Thus our definition of "domestic cargo transportation" includes carriage by combination aircraft as well as by freighters, and also includes those intra-Alaskan and intra-Hawaiian operations over which we still have our full rate jurisdiction. The definitions of "all-cargo air carrier" and "all-cargo air service," on the other hand, do exclude intra-Alaskan and intra-Hawaiian operations, in response to the specific statutory limitation in new subsection 418(b)(3) of the act.

Subpart B

Our proposed rules for the form, content, and processing of applications for section 418 certificates need little detailed discussion. Congress has set a short time limit (180 days) on our grant or denial of an application for a section 418 certificate. And, while the law has retained the requirement that carriers must be fit, willing and able, it has reversed the usual burden of proof in that we must grant the license applied for unless we find that the applicant is not fit, willing, and able. The proposed rules reflect our tentative views on how best to balance Congress manifest desire for quick action against its equally clearly expressed directive that unfit applicants not be licensed. Perhaps the most important feature of the proposal is the provision, at the end of proposed § 291.10, that the 180-day period will not begin to run until the application is complete in all respects. This provision is, we tentatively conclude, the key to our being able to satisfy Congress dual objectives.

The proposed procedures for processing section 418 certificate applications (§ 291.12) contemplate a cooperative effort on our part and the part of the FAA, and we are especially interested in receiving suggestions—from the FAA or others—on any additions or amendments to these proposals that may assist in coordinating the action of the two agencies in handling these applications.

We have tentatively set the application fee for section 418 certificates at $250. We believe that this amount is a conservative estimate of the costs to the government involved in processing an uncontested application.

The certificate conditions proposed in § 291.13 are, like the application form and procedures, for the most part self-explanatory. The requirement that section 418 carriers be (and remain) U.S. citizens (§ 291.13(a)) is statutory, and the definition referred to in the proposed rule is the one that has always, since the passage of the Civil Aeronautics Act of 1938, been applied to all air carriers.

The requirement that section 418 certificates shall cease to be effective if a carrier's insurance coverage lapses is, on the other hand, our own creation; and its inclusion in these proposed rules reflects our tentative conclusion that the availability of insurance proceeds, to protect shippers and the general public, is very important. It should be noted that the proposal to require cargo liability insurance refers only to insurance that would pay shippers' claims in the event of carrier insolvency or other default: the proposal does not attempt to determine the level of the carriers' liability, given our new lack of authority to determine the "reasonableness" of carrier rates and rules. (This subject will also be discussed in the section of this preamble entitled "subpart C.")

The last sentence of proposed paragraph (c) of § 291.13 states, in effect, that the Board will not attempt to regulate "charter" services one way, "contract" services in another, and "scheduled" services in still a third fashion.[6] Our reasons for this departure from our past practice are these: The dichotomy of commercial aviation services into "scheduled" versus "charter," incorporated into the 1938 act, reflected the historical accident that aviation operators in the 1930's generally operated in one of only two ways. Some of them had established routes, subsidized for the carriage of air mail, in which case their operations were conducted on a regular, scheduled basis. Those operators without air mail contracts, on the other hand, usually were forced to let their equipment sit idle until a paying customer appeared to charter it. The act thus reflected the fact that aviation operations were either "scheduled" or "charter." Today, however, many "charter" operations are indeed operated regularly, and many large shipments that might formerly have moved on charters now move on "scheduled" services at high weight-break rates, multi-container rates, and so on.

Because of this, continuing this essentially illogical and artificial distinction between so-called charters and scheduled services in domestic cargo transportation no longer serves any public purpose. The economic force behind the continuing vitality of the distinction, in the years following World War II, has been the desire to partially protect the scheduled carrier from competition, and the new free-entry regime established by Pub. L. 95-163 statutorily eliminates this goal as an element of policy in domestic cargo transportation.

Thus the proposed regulations authorize the section 418 carriers to offer whatever kinds of services they desire, within the geographic scope of their authority.

Free entry also eliminates, we tentatively conclude, the need to carefully scrutinize continuing contracts between air carriers and large forwarders or other shippers.[7] The motive for our past reluctance to approve these arrangements was the fear that, since the supply of air freight services was artificially restricted by the need for a certificate of public convenience and necessity, the dedication of a carrier's equipment and other resources to a particular shipper might result in other shippers, especially smaller ones, being discriminated against, in violation of section 404 of the act. It seems probable, however, that this will not occur once entry into the air freight industry is freed from economic regulatory constraints, and we therefore see no reason to fear that market forces will not satisfy the legitimate demands of all shippers. We also are proposing to require that all contracts, rate sheets, etc., must be filed with the Board (this proposal will be discussed in this preamble under the heading "subpart E"). If our assumption proves to be unduly optimistic, the reports that we will receive will alert us to the need to take corrective action promptly, and we will do so.

Subpart C

The general rule set forth in proposed § 291.20 reflects our decision to use our exemption powers under subsection 416(b) of the act, as well as the power given to us by subsection 418(c), to create one set of rules under which

[6] The adoption of this rule will thus eliminate the need for special case-by-case consideration of "non-tariff" services.

[7] See, e.g., the contracts between carriers and forwarders discussed in Opinion and Order 77-7-25, in the *Air Freight Forwarders-Charters Investigation*, docket 23287.

nearly all domestic air freight services will be operated. Specific exceptions to this general rule have been proposed, of course, to reflect the differing kinds of "non-418" operations that various of the carriers now provide. But it is, as we stated at the outset of this preamble, important to attempt to create common ground rules for all domestic cargo operations, both to maximize potential efficiency, and to avoid saddling any class of carrier with a competitive disadvantage in the provision of domestic cargo services.

This approach means that air taxi operators, if they wish to hold a section 418 certificate, will have to conduct all of their domestic cargo operations under these rules, including services for which small aircraft (either combination or freighter) are utilized. We are aware of the need to avoid burdening these smaller firms with unnecessary paperwork. We believe, however, that the rules proposed here are sufficiently liberal that these operators' needs will be satisfied: The only new burdens of any significance at all will be the record retention requirements and the requirement to report the prices charged to shippers, and these burdens will not be substantial. The price reporting requirement is the more burdensome of the two, but it would not be substantially decreased even if we were to exempt small aircraft from its effectiveness, since the section 418 carriers also operating small equipment would usually have to report those same rates because of their large aircraft operations.[8]

The last sentence of proposed § 291.20 attempts to resolve the question of what authority a particular flight is operated under, if it could be operated under either section 418 authority or under a carrier's existing 401 authority. This question is probably largely only of academic interest, since it is unlikely that inadequacy of service, in the sense in which that term is used in subsection 404(a) of the act, could exist in a market open to section 418 operations: That is, if a section 401 all-cargo carrier reduced its operations in such a market, and no section 418 carrier appeared to fill the gap, the obvious explanation would be that demand was not sufficient to warrant more service.

Section 291.21 proposes to require carriers to obtain and maintain cargo liability insurance to protect shippers in the event that shipments are lost, damaged or destroyed and the carrier is unable or unwilling to pay the actual or declared value of the shipment. We are aware that we have not imposed cargo liability insurance requirements on most domestic cargo carriers in the past, but these rules will govern new entrants, as well as successful and well-established firms, and we are for obvious reasons more concerned about potential insolvency on the part of these new entrants. From the information submitted by the "grandfather" section 418 carriers it appears that most of them now carry such insurance, so we do not believe that this requirement will prove burdensome for them.

The level of coverage that we have proposed is tentative only, and we welcome suggestions as to the proper amount necessary to protect shippers without unduly burdening carriers.

Section 291.22, which was discussed earlier in connection with the section 418 carriers' certificate conditions, we tentatively conclude to be necessary to protect persons who may be injured, or property (other than cargo) that may be destroyed, by aircraft, vehicles, etc., operated by domestic cargo carriers. This proposed section, unlike the cargo liability insurance proposal, provides for two sets of limits: The lower limits established by 14 CFR part 298 for aircraft small enough to be operated under that part, and the higher limits set forth in 291.22 for larger aircraft. The "persons" we are concerned with include cargo attendants as well as third persons who may be injured by aircraft or other accidents; and, as in the case of the proposed cargo liability limits, we especially solicit suggestions on the proper minimum level of coverage.

This proposed requirement is not intended to affect equipment other than all-cargo aircraft, since other aircraft engaged in domestic cargo transportation services are governed by other Board regulations.

The proposed application of our record retention requirements (section 221.23, proposing to require compliance with 14 CFR part 249) was discussed in a preceding section of this preamble under the heading "Part 249."

Proposed section 291.24 is intended to have the effect of eliminating schedule filing, airport notice filing, and other similar requirements for domestic cargo transportation, and the last sentence is intended to make it clear that the effective division between what is now "domestic," as opposed to operations in overseas and foreign air transportation that remain subject to the existing regulatory structure, shall be the flight, and not the nature of the shipments carried. If, for example, a carrier operates a Chicago-Seattle-Tokyo flight, then, under this proposal, airport notices, schedules, etc., will still be required for both Chicago and Seattle, and a schedule would have to be filed for the Chicago-Seattle leg. This division is admittedly arguable, and we encourage suggestions from the public on any better ways to relieve domestic cargo transportation from as many of the existing regulatory strictures as is possible, without dismantling the present regulatory framework for other transportation performed by the domestic cargo carriers.

Subpart D

Our tentative decision to establish one set of ground rules for all domestic cargo transportation involves restructuring the manner in which exemptions have historically been issued, in that we would now apply them in part to a "service," instead of always applying them to an entity—the carrier operating that service. Since the carrier may hold more than one type of operating authority, it makes no sense to exempt a "section 418 carrier" from a provision of the act, when the carrier may remain subject, by virtue of its section 401 authority, to that same provision.

The first of these proposed exemptions, from section 403 of the act, reflects this approach. Under this proposal, carriers would not file tariffs in connection with domestic cargo transportation, except for intra-Hawaiian and intra-Alaskan transportation,[9] but would continue to be required to file tariffs for other property transportation and for all passenger transportation.

Turning to the merits of this proposal, we are aware that the Conference Report on Pub. L. 95-163 contains the statement that:

> New section 418 permits the Board to exempt holders of certificates for all-cargo service from any section of the act. While this section is intended to give the Board substantial discretion, the managers do not contemplate that the Board will exempt carriers from the requirement of filing tariffs. Tariffs provide valuable notice of rates to users of air transportation. Tariffs will be necessary for the Board to effectively carry out its duties to determine whether rates for the transportation of property are discriminatory, preferential, prejudicial, or predatory." [10]

Although the statute clearly confers the power to exempt carriers from the tariff filing requirements, we would not ordinarily consider the instant

[8] The commuter carriers are already required to report their prices, of course (14 CFR 298.60), and this proposal thus would not increase the burdens on that sub-class of air taxis at all.

[9] The Board's reasonableness and suspension powers were not revoked by Pub. L. 95-163 for interstate operations in these two States (see new subsections 1002(g) and 1002(k) added by 18 of Pub. L. 95-163, 49 U.S.C. 1482(g) and (1)), and we conclude from this that Congress intended that operations within these two States should continue to be subject to the pre-existing tariff rules.

[10] Conference Report to accompany H.R. 6010, House Report No. 95-733, October 27, 1977, at pp. 14-15.

proposal in the face of this indication of the views of the conferees, those members of the Congress most involved with this legislation. We are of the tentative view, however, that tariff filing is inconsistent with the overall scheme of the legislation which was intended to deregulate entry and pricing of air freight. More specifically, the exemption that we are proposing is not inconsistent with the reasons given by the conferees for their conclusion that tariffs might be advisable. Since there are less restrictive ways to achieve the goals of the conferees, we believe that the proposed exemption strikes a good balance between the overall scheme of the new law, our obligation to exercise our statutory power in the manner best suited to preserve the statutory scheme, and the particular concerns of the conferees.

First, the conferees stated that they contemplated tariff filing in order to provide "notice of rates to users of air transportation." It is our tentative belief, however, that there are compelling commercial reasons for the carriers to continue to inform shippers of the prices they charge, irrespective of tariff filing requirements. Indeed, the dissemination of price information is usually accomplished in a manner other than by review of the copies of the carriers' tariffs that are on file with the Board; and our experience with air taxis, who have been exempt from tariff filing requirements for many years, demonstrates that the shipping public receives adequate price information, despite the absence of tariffs. Carriers will continue to publish statements of their rates, and to make their rate sheets available to the shipping public. Indeed, abolishing the tariff-filing requirement will, in and of itself, require no change at all in the carriers' current practices: They can continue to construct and disseminate their "tariffs" [11] in the same form as they now do. The point is that they will not be required to construct or distribute them in any particular way, nor to file them in our office in Washington, and they can devise whatever system best suits their (and their shippers') needs.

It is extremely unlikely that carriers will keep their prices "secret." In fact, a carrier's ability to successfully market its services to the public depends in part on its success in informing potential customers what its charges will be and what services it offers: Large shippers will undoubtedly continue to want their own copies of the carrier's current rate sheets, and infrequent shippers should continue (as they do now) to use the telephone to find out what the carrier's charges will be for a particular shipment. Thus we think that the only effect of terminating the tariff-filing requirement, on the value of notice to shippers, will be to slightly increase it, since each carrier will be free to design its rate sheets in more easily useable ways, and will no longer be forced to use the format prescribed by our regulations. In a deregulated environment, where carriers will be competing for business, marketing and the dissemination of information becomes an important way to secure business; and government-imposed tariff requirements do little to supplement, and might even impede, that natural tendency.

The second reason for the conferees' view that tariffs should be retained is that they were thought to be necessary to police the Board's remaining rate powers. Since the board as a matter of law cannot suspend domestic property transportation rates, however, the Board could not prevent a carrier from putting a particular rate into effect, and there is thus no need to retain the advanced tariff filing requirement on this ground. Additionally, the reporting that we are requiring (proposed section 291.40) will give us the same quality and quantity of information that we now receive from tariffs, and we thus do not believe that the task of investigating and correcting violations of the carrier's duties to avoid unjust discrimination, undue preference or prejudice, or predatory pricing, will materially affected by the shift from an advance tariff-filing system to a price reporting system. Moreover, as a practical matter, most investigations of discriminatory rates begin not as a result of our monitoring of the carriers' tariffs, but in response to complaints from disadvantaged shippers, or competing carriers, who have learned of the rates they wish to complain against by word-of-mouth, not by reviewing our tariff files. In short, the goal of the conferees—that we be able to maintain an effective enforcement posture over illegal rates—is not compromised by our proposal.

In one sense, exempting the carriers from the tariff-filing requirement, but requiring the reporting of charges, may seem to be "much ado about nothing." We do believe, however, that positive benefits will result. The first of these is that there is persuasive, although theoretical, evidence that a system of advance notice of prices, with sellers and buyers being compelled to abide by those prices, results in prices that are higher than they otherwise would be.[12] Wholly apart from experiments that bear this out, one can easily see that if a charging for a definite period, he will be less inclined to lower his own price below that level, even though he might be able to operate successfully at a slightly lower price.

Secondly, a filed tariff is different in one very important respect from any other system of determining charges: The prices and conditions contained in the tariff become a part of the contract of carriage, whether or not the shipper knows of them or reasonably should have known of them. Since the board no longer has the power to compel the carriers to establish reasonable charges and rules, we do not believe that the carriers should, simply by filing a tariff with us, be able to use the tariffs to avoid liabilities or obligations that would be enforceable in court in an ordinary contract or bailment situation. Although we have said in another context that tariffs as a legal matter should not supplant common law principles when we have no authority over the content of those tariffs, abolishing tariffs altogether should remove any doubt on this score.

While we have, for the foregoing reasons, proposed to eliminate tariffs altogether, we have considered a number of other possibilities. These include retaining the present system but reducing the filing period to ten days or to one day, retaining the present system for rules tariffs but switching to a reporting system for rates, and retaining the present system but permitting decreases in charges on short notice. We will carefully consider any other suggestions on other possible systems that commenters bring to our attention.

It should be noted that the exemption from regulation by the Interstate Commerce Commission of air carrier pick-up and delivery operations by motor vehicle is now determined, for the section 401 carriers, by their tariffs.[13] Since the Commission's regulations require that the movement be defined in a tariff only if the carrier is "subject to economic regulation under the Federal Aviation Act," however,[14]

[11] The word "tariffs" is generally used here to mean an officially required and officially filed statement of rates and rules, and the term "rate sheet" is used to mean a similar statement of charges, but one of the carrier's own design—one not required to be constructed under rules determined by, and filed with, a public regulatory authority. We do not, of course, care what a carrier may choose to call its rate sheets, and many may wish to continue to call them tariffs simply because shippers are used to that term.

[12] A copy of a report on one experiment substantiating this theory—"Implications of Rate Filing for Domestic Dry Bulk Transportation on Inland Waters," James T. Hong and Charles R. Plott, Cal. Inst. of Tech. (1977)—will be placed in this docket.

[13] See 14 CFR parts 221 and 222.

[14] See 49 CFR § 1047.40. This language has been interpreted in the past as permitting pickup and delivery operations by air taxis, even though they have no tariffs, on the theory that "subject to regulation" means "not exempted."

we do not believe that this proposal will adversely affect presently-established pick-up and delivery operations. We solicit the views of the affected carriers and shippers, as well as those of the Commission itself, on this question.

In considering our proposed exemption from section 403 of the act, we have taken cognizance of the public comments received in response to our proposal in EDR-350, dated March 30, 1978, in docket 32318, to abolish the tariff requirement for air freight forwarders. Not only carriers, but shippers' traffic departments as well, unanimously oppose it. We hope in this proceeding to hear from those who actually bear the cost of domestic cargo transportation—individual shippers, and individual consignees who bear transportation charges included in delivered prices—to see whether they, too, believe that the present system's benefits outweigh its disadvantages.[15]

The proposed exemption from section 404(a) of the act would (except for Alaska and Hawaii) relieve the carriers from the requirement to establish reasonable rates and the requirement to carry "upon reasonable request."

As we indicated in our interim rules for section 418 operations, we exempted the carriers from the duty to establish reasonable rates because we believed that the Congress, in abolishing our power to set reasonable rates, intended rates to be determined by market forces.[16] We were concerned that, absent positive exemption on our part, carriers might be faced with suits seeking to judicially enforce that duty. This proposal reflects that same notion and, of course, extends its application to all domestic cargo transportation (except in Alaska and Hawaii).

Our proposed exemption from the duty to carry on reasonable request is not based on our own inability to enforce the duty, but rather our tentative view that this "duty," too, should be a matter of normal commercial decision-making rather than a thing determined under the law. The marketplace appears to function quite well in determining such matters as what kinds of foods are stocked by supermarkets and grocery stores, and what kinds of medicines are stocked by druggists, and we see no reason why a free-entry system will not work as well with domestic air freight.

The exemption from most of subsection 404(a) of the act that we are here proposing does not, of course, extend to subsection 404(b), and we propose to continue our present authority to correct rates that are discriminatory, preferential, or prejudicial.[17] Decisions based on the subsection 404(a) "duty to carry," however, such as our recent holding that carriers must continue to carry perishables and live animals in their expedited small package services (Order 78-4-100, Domestic Air Freight Rate Investigation, Docket 22859, at pp. 8-9) would no longer govern domestic property transportation under the exemption proposed here. Commenters that oppose this proposal, in this particular respect or others, will assist us in determining what final rule to adopt if they will explain why any particular kind of traffic—or traffic to or from a particular place—should have to be required to be carried. That is, why the revenue it produces for the carrier is not itself a sufficient incentive.

The proposed exemption from the schedule-filing requirement contained in subsection 405(b) reflects our tentative conclusion that we no longer need to receive schedules for all-cargo flights within the geographical scope of domestic cargo transportation, since we cannot regulate the points to be served, by express direction of subsection 418(b)(2) of the act, 49 U.S.C. section 1388(b)(2), added by Pub. L. 95-163.[18] This limited exemption will not affect the current regulatory framework governing relationships between the carriers and the Postal Service; nor will it affect the schedule-filing requirement for combination flights.

Subsections 407(b) and 407(c) of the act require the reporting of stockholdings in air carriers, and of aviation or surface carrier holdings by their officers and directors. It is our tentative conclusion (discussed in the succeeding paragraph of this preamble) that we should not require carriers providing domestic cargo transportation services to obtain prior approval of each and every acquisition or other transaction of the kinds falling within section 408 of the act. If we adopt that view in these rules, then it follows that we need not concern ourselves with subsection 407(b) and 407(c) reporting. We are aware that our exemption powers under both subsections 416(b) and 418(c) extend to "carriers," and that we have no explicit power to exempt the "trustees," "shareholders," "officers" and "directors" referred to in subsections 407(b) and 407(c). Since there is no regulatory purpose to be served in receiving these reports, we think it is certainly within our power, partially derived from subsection 204(a) of the Act, and partially inherent in the regulatory scheme established by the Act as a whole, to extend our power to those who are the carriers' owners and agents, at least to this limited extent.[19]

The proposed exemption from subsection 408(a) of the act is intended to relieve carriers from the necessity of obtaining prior Board approval for transactions involving domestic cargo transportation, thus subjecting them to the operation of the antitrust laws, in the same fashion that they apply to businesses in the United States in general. The concept "domestic cargo transportation assets or securities" is intended to include only assets (such as facilities and equipment) to be used in domestic cargo transportation, and ownership of a corporation or other firm providing only domestic cargo transportation. Thus, for example, either a section 401 or a section 418 carrier would be exempted in the case of its acquisition of freighter aircraft from another carrier, if the planes were to be used in domestic cargo transportation. The acquisition of combination aircraft, of a section 401 certificate authorizing foreign air transportation, or of a carrier holding such a certificate, however, would not be exempted, whether or not the acquiring carrier held a section 401 certificate. Other examples of the kinds of assets or securities falling into the exempted category would be the stock in a company owning warehouses and other ground facilities to be used primarily in the provision of domestic cargo transportation, or stock in a carrier holding only section 418 authority.

All transactions of this kind will, of course, be subject to the antitrust laws, and the proposed rules contain a section (§ 291.35) which states this, and includes a reference to the pre-acquisition notification requirements of the Clayton Act[20] to alert or remind carriers of its applicability.

We believe that we can and should also exempt all subsection 408(a)(5) acquisitions of section 418 carriers, leaving these transactions, as well, to the normal operation of the antitrust

[15] Commenters may also wish to address the question whether our decision to exempt—or not to exempt—forwarders from the tariff filing requirement should influence our decision here, in view of the fact that direct and indirect carriers compete for traffic.

[16] ER-1037, adopted December 23, 1977, at p. 3.

[17] The duty to investigation and correct rates that are "predatory" was added to subsection 1002(d) of the act, U.S.C. section 1482(d), and we intend to enforce this new standard as well with respect to domestic cargo rates.

[18] We have considered whether to include possible changes in our mail rate and service rules and practices in this proceeding, but have concluded that those questions could be more effectively dealt with in a separate case.

[19] In other words, we propose to denominate this action as an "exemption" only for the purpose of rulemaking simplicity. We would, if we adopt this proposal, rely on all our powers in the Act to take "final agency action" in the Administrative Procedure Act sense.

[20] 15 U.S.C. Section 18a.

laws. Proposed § 291.32 will thus exempt acquisitions of section 418 carriers by persons controlling air carriers, other common carriers, persons engaged in any other phase of aeronautics, or any other persons.

Our view (on which we specifically solicit comment) is that the term "noncertificated" does include section 48 carriers, even though they are literally certificate holders. This view is based on the fact that, in 1969, when subsection 408(a)(5) was amended [21] to extend its coverage to "any other person" and to provide for an exemption for "noncertificated" carriers (i.e., air freight forwarders and tour operators), the operations of the members of this class were characterized by freedom of entry and exit, both with respect to the kinds of services offered and the markets served. Congress' obvious belief, in providing for exemptions in the freer segment of the industry, but retaining the requirement for prior approval in the entry-controlled and often noncompetitive segment of the industry, was that greater surveillance was needed in the case of carriers holding exclusive franchises to provide essential public services than in the case of carriers whose competitors would be able to move into markets or areas quickly if the acquired carrier was mis-managed and thereby became unable to continue to operate. Since section 418 certificates will, after November 9th of this year, be freely available, and since they may contain no route restrictions, we believe that treating section 418 carriers as "noncertificated," in applying subsection 408(a)(5), is more consistent with Congress' intent than would be their placement within the class of section 401 carriers. We are aware that for most purposes we have treated the word "certificated" to include carriers certificated under section 418 as well as those certificated under section 401. We intent to continue to do so. The word "noncertificated," as it is used in subsection 408(a)(5), however, appears to have a special purpose, and we believe that we are therefore justified in interpreting it differently in this context, consistently with that purpose.

We have considered alternative methods of dealing with antitrust matters (such as giving blanket approval by rule to smaller mergers and acquisitions but maintaining the present system of prior approval for larger ones, or requiring prior notification to the Board in a system similar to the pre-acquisition notification requirements of the Clayton Act), but have tentatively concluded that, because of the characteristics of the domestic cargo transportation industry established by Pub. L. 95-163—free entry, no route control, and little rate control—the total removal of Board control over acquisitions, and the consequent subjection of these transactions to the full force of the antitrust laws, is the appropriate course. We solicit suggestions, especially from the Federal agencies with jurisdiction over the antitrust laws—The Department of Justice and the Federal Trade Commission, as to the merits of this approach, and other alternatives, as well as any reasons why the present scheme should be left in place.

Our treatment of section 409, dealing with interlocking directorates, and of section 412, dealing with working agreements between air carriers, is intended to parallel our treatment of section 408 transactions in including only the "free entry" segments of the industry and excluding officers and directors of section 401 carriers, and agreements not wholly related to domestic cargo transportation.[22]

We are well aware that we will have to develop a body of principles to deal with borderline cases in all three of these areas, but we tentatively conclude that it is better to attempt to develop the new concepts "domestic cargo transportation assets and securities," "domestic cargo transportation relationships," and "domestic cargo transportation agreements," rather than drawing the bounds of the exemption more discretely but more narrowly.

The remaining sections of proposed Subpart D need little comment. The approval of section 409 relationships contained in proposed § 291.33 is necessary because of past interpretations that our exemption power under subsectin 416(b) does not extend to "persons." The remaining two proposed sections, § 291.34, Duration of exemptions, and § 291.35, No relief from antitrust laws, are both adopted from similar statements in 14 CFR parts 296 and 298, except that the reference to the pre-acquisition notification requirements of the Clayton Act, which has been discussed previously, is newly added because it has not previously been applicable to section 408 transactions.

Subpart E

Proposed § 291.40, Reporting of prices and rules governing carriage, imposes the reporting requirements that we have tentatively concluded should replace tariffs, for the reasons given under the heading "Subpart D," earlier in this preamble. We would anticipate that, in almost all cases, carriers would not have to construct a document solely for the purpose of making this report, but would merely send to the Board a copy of the rate sheets that their own station personnel use to determine charges, or that they distribute to regular shippers for the same purpose. Likewise, if a special charter or other shipping arrangement is concluded, the carrier could simply send the Board a copy of the contract. Under this proposed rule, a document would have to be created solely for the purpose of reporting only if the charter or shipment terms were agreed to orally, and, in addition, did not conform to an already-reported formula. This situation, we believe, will rarely occur. The exception for transportation performed "in accordance with an effective tariff on file with the Board" is intended to take care of intra-Alaskan and intra-Hawaiian traffic, and any instances in which a carrier performs transportation under a through tariff establishing charges for foreign air transportation, or other transportation outside the geographical scope of domestic cargo transportation. While we are purposely not proposing to establish any format for these reports, we will not hesitate to do so if the reports we receive prove to be insufficiently clear or accurate to allow us to monitor pricing practices in the domestic cargo industry. Also, failure to file or the filing of false information is a violation of the Act and will subject the violator to civil or criminal penalties.

The financial and traffic reporting requirements contained in schedules 291 A, B, and C, referred to in proposed § 291.42, are designed to be quite simple, and we tentatively conclude that their production will not burden the section 418 carriers. We regret, as we indicated earlier in this preamble, that we cannot devise some way of freeing the section 401 carriers from having to comply with 14 CFR part 241. So long as we continue to regulate their rates and services in the presently-established manner, however, we can see no way to avoid requiring them to continue to comply with our existing rules, and also to segregate some amounts and statistics attributable to domestic cargo operations.

The air taxis also holding section 418 certificates will file all their reports for domestic cargo transportation in accordance with Schedules 291 A, B, and C, and will continue to

[21] Pub. L. 91-62, Section 1(2); 83 Stat. 103.

[22] Prorate agreements concerning domestic cargo transportation, whether between carriers also holding section 401 certificates or not, fall within the general class of agreements that would be exempted from the filing requirement under this proposal. On June 21, 1978, by order 78-7-101, we denied Trans World Airlines' request in docket 32164, to institute a separate rulemaking proceeding to consider whether these agreements should, or should not, be exempted from the filing requirement. In doing so, we stated that we would consider the general question of parity in filing section 412 agreements in this case. If there are any special reasons why competitive equality is especially important in the case of prorate agreements, we would hope that commenters will bring these to our attention.

comply with the air taxi reporting requirements for their other operations. Since neither these proposed rules nor the existing reporting rules contained in 14 CFR part 298 are very burdensome, however, we perceive no particular compliance difficulties. Air taxis will not, of course, be expected to also comply with the reporting requirements contained in existing section 298.60, (this section also requires the filing of statements of rates and fares) with respect to domestic cargo transportation subject to proposed § 291.40, nor will they have to report their all-cargo operations within the geographic scope of domestic cargo transportation under § 298.61, Reports of scheduled operations by commuter air carriers.[23] Thus they will be relieved from the requirement of filing freight O & D data, and all-cargo schedules with the Board, if this proposal is adopted.

Subpart F

Proposed § 291.50, *Enforcement*, is copied from a similar provision found at 14 CFR 298.80. Possible suspension of operating authority was added to the list of potential penalties for the sake of completeness.

ENVIRONMENTAL AND ENERGY CONSIDERATIONS

We tentatively conclude that the National Environmental Policy Act, 42 U.S.C. 4321 et seq., (NEPA) and the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq., (EPCA) are inapplicable to this rulemaking to the extent that it establishes rules for the issuance of section 418 certificates, since we believe that the grant of a section 418 application constitutes neither a major federal action under NEPA nor a major regulatory action under EPCA. Fundamentally, both NEPA and EPCA are intended to introduce the consideration of environmental and energy consequences into the decisionmaking process in cases where the Board has power to take such consequences into account in deciding whether to grant or deny an application or to adopt some other alternative. However, in this instance, the Congress has not given us the power to deny an application unless we find the applicant not fit, willing or able, and Congress has specifically withheld the power to condition a certificate with respect to the points to be served and the rates charged. In addition, it is obvious that conditions limiting, for example, the type of equipment or frequencies, would be inconsistent with the congressional intent to deregulate the all-cargo industry. Given such limitations on the Board's authority, we see no public interest that could be served in reading NEPA or EPCA to impose a duty upon the Board under those statutes.

In view of these considerations, the Board will not make environmental or energy findings in processing applications under this regulation.

In addition to authorizing new entrants pursuant to Congress' directive, this rulemaking proposes changes in our rules governing the operations of the established carriers. We believe that the proposed changes will have some beneficial effects on these existing carriers, in terms of operating efficiencies, although these effects will not be significant. For the most part, however, the carriers will continue to operate as they have in the past.[24] Thus we tentatively conclude that neither environmental impact nor energy conservation and efficiency statements are required in connection with this second aspect of this rulemaking as well, and that this regulation does not constitute a major federal action in the NEPA sense, nor a major regulatory action within EPCA.

There remains the question of whether the public interest requires that new entrants should nevertheless be required to file environmental and energy information, with their applications, in the interest of disclosing the potential consequences of their operations. Overall, we believe that the benefits of such a requirement are outweighed by the detriments. As we have noted, the provision of the information would serve no immediate regulatory purpose. It would also be burdensome to the applicants, most of which will be relatively small enterprises when compared to the established combination carriers. The information would be almost entirely speculative at this time insofar as new services are concerned, since no specific new operations need be proposed—or undertaken—by the applicants. If need be, the actual environmental energy consequences of the Congress' deregulation of all-cargo transportation can be assessed in the future in light of actual experience under the new policy. Consequently, we have tentatively decided that environmental and energy evaluations need not be filed with applications for all-cargo certificates under this rule.

REPORTING BURDEN

Carriers perceiving an undue burden resulting from the reporting requirements in these proposed rules should comment on this burden. Comments should identify the specific reporting requirement and report schedule involved, and should include an analysis of the estimated costs that would be incurred in complying with the proposal, as well as the make-up of the costs. These estimates should distinguish between one-time and on-going costs.

Accordingly, the Board proposes to amend part 241, to revoke part 242, and to revise part 291 of its Economic Regulations (14 CFR parts 241, 242, and 291), as follows:

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR CERTIFICATED AIR CARRIERS

1. Amend section 03, "Definitions for Purposes of This System of Accounts and Reports," by adding a definition of section 418 cargo operations, so that section 03 reads in pertinent part as follows:

Section 03 Definitions for purposes of this system of accounts and reports.

* * * * *

Seat-miles available, revenue * * *

Section 418 operations—The carriage by aircraft of property as a common carrier of compensation or hire, or mail, or both, in commerce between a place in any State of the United States, or the District of Columbia, or Puerto Rico, or the U.S. Virgin Islands, and a place in any other of those entities, or between places in the same State or other entity through the air-space over any place outside thereof, or between places within the District of Columbia, Puerto Rico or the U.S. Virgin Islands, but excluding service between any pair of points both of which are in Alaska or Hawaii. This includes commerce moving partly by aircraft and partly by other forms of transportation, as well as commerce moving wholly by aircraft.

Segment service * * *

* * * * *

2. Amend Section 21, "Introduction to System of Reports," by revising paragraph (g) to read as follows:

Section 21 Introduction to system of reports.

* * * * *

(g) Four separate air carrier entities shall be established for route air carriers for the purpose of submitting the reports hereinafter prescribed. They are as follows: (1) Domestic operations; (2) operations via the Atlantic Ocean; (3) operations via the Pacific Ocean; and (4) operations within the Latin American areas. With respect to the first classification, the domestic entity shall embrace all operations

[23] If we adopt this idea, we will issue conforming amendments to 14 CFR part 289, as final rules, simultaneously with our final rule in this docket.

[24] Although some 70 section 418 certificates have already been granted to "grandfather" carriers, only a few of these carriers have added equipment or added service to new cities under their section 418 authority.

within the 50 States of the United States and the District of Columbia, and shall also include Canadian transborder operations. Carriers need not establish a Latin American entity for reporting purposes if the only operations being conducted in that entity are Section 418 cargo operations. The reports to be submitted by each entity shall be comparable to those required of a distinct legal entity whether the reporting entity constitutes such an entity, a semi-autonomous physically separated operating division of the air carrier, or an entity established for reporting purposes only.

* * * * *

3. Amend section 22, "General Reporting Instructions," by revising paragraph (a), the List of Schedules in the CAB Form 41 Report, to read in pertinent part as follows:

Section 22 General reporting instructions.

(a) * * *

LIST OF SCHEDULES IN CAB FORM 41 REPORT

Schedule No.	Schedule title	Filing frequency	Applicability by carrier group		
			I	II	III
* *	* *	* *	*		*
T-7	Statistical market report	Monthly			(2—)
T-8	Report of sec. 418 operations	Semiannually	(8—)	(8—)	(8—)
T-41	Charter and special services revenue aircraft-miles flown; calculation of limitation of charter trips.	(b—)		(2—)	(2—)
* *	* *	* *	*		*

Due Dates of Schedules in CAB Form 41 REPORT.

Due dates [1]	Schedule No.
Jan. 20	P-12, P-12(a)
* *	* * * * * * *
Jan. 30	* * *
Feb. 10—— [2]	A, B-1——[5], B-3, B-4, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, B-14, P-1.1, P-1.2, P-2, P-2(a), P-3, P-3.1, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, P-9.2, P-10, P-11(a), P-11(b), T-8.
* *	* * * * * * *
Aug. 10	A, A-1, B-1——[5], B-3, B-4, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, B-14, P-1.1, P-1.2, P-2, P-2(a), P-3, P-3.1, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, P-9.2, P-11(a), P-11(b), T-8.
* *	* * * * * * *

[1] In accordance with the provisions of secs. 235.4 and 235.5 of pt. 235 of this subch.
[b] For the first 9 mo and for the 12 mo of each calendar year.
[2] Applicable only to route air carriers.
[3] Applicable only to supplemental air carriers.
[4] Applicable to all air carriers except local service air carriers.
[5] Applicable only to local service air carriers.
[6] Applicable only to subsidized air carriers.
[7] Applicable only to trunk air carriers.
[8] Applicable only to carriers holding certificates issued under sec. 418 of the act.

(NOTE: Proposed schedule T-8 is attached as appendix A.)

4. Amend sec. 25, "Traffic and Capacity Elements," by adding a new schedule T-8 and accompanying reporting instructions to read as follows:

Section 25 Traffic and capacity elements.

* * * * *

Schedule T-7—Statistical Market Report

(a) * * *
(b) * * *
(c) * * *

Schedule T-8—Report of Section 418 Operations

(a) This schedule shall be filed semi-annually by all air carriers holding sec. 401 certificates that conduct all-cargo operations under certificates issued for sec. 418 cargo operations.

(b) Data reported on this schedule shall be based on the system operations of the air carrier with the data being segregated between operations conducted under sec. 401 and all-cargo operations conducted under sec. 418.

(c) "Total Operating Revenue" shall be segregated between transport and transport-related revenues.

(d) Transport revenues shall be subdivided between those generated by scheduled service operations and those generated by non scheduled service operations. Scheduled service revenues shall be further subdivided as follows:
(1) Property;
(2) Mail; and
(3) Other,

(e) "Revenue Ton-Miles" shall be segregated between those flown in scheduled service and those flown in nonscheduled service. Scheduled service ton-miles shall be subdivided between property transported and mail transported.

(f) "Nonrevenue Ton-Miles" and "Revenue Tons Enplaned" applicable to the revenue flights operated during the reporting period shall be reported on this schedule.

(g) "Available Ton-Miles" shall be segregated between scheduled service and nonscheduled service.

(h) "Aircraft Miles Flown," "Aircraft Departures Performed," and "Aircraft Hours (Airborne)" shall be segregated between the aircraft capacity operated in revenue service and nonrevenue service.

5. Amend section 19-3, *accessibility and transmittal of data*, by adding a new sentence, immediately after the present first sentence, to read as follows:

Section 19-3 Accessibility and transmittal of data.

* * * * *

Individual flight stage data for section 418 all-cargo operations shall not be transmitted to the Board, but shall be included in the schedules prescribed in section 25 of this part.

* * * * *

PART 242—REPORTING RESULTS OF SCHEDULED ALL-CARGO SERVICES [RESERVED]

6. Revoke and reserve part 242, reporting results of scheduled all-cargo services.

PART 249—PRESERVATION OF AIR CARRIER ACCOUNTS, RECORDS AND MEMORANDA

7. Amend § 249.1, *applicability*, by revising paragraph (a) to read as follows:

§ 249.1 Applicability.

* * * (a) air carriers that hold certificates issued under sections 401 or 418 of the Act, * * *

8. Revise part 291 of the economic regulations to read as follows:

PART 291—DOMESTIC CARGO TRANSPORTATION

Subpart A—General

Sec.
291.1 Applicability.
291.2 Definitions.

Subpart B—All-Cargo Air Service Certificates

291.10 General.
291.11 Form and content of applications.
291.12 Procedure on receipt of applications.
291.13 Certificate conditions.

Subpart C—General Rules for Domestic Cargo Transportation

291.20 Applicability.
291.21 Cargo liability insurance.
291.22 Public liability insurance.
291.23 Record retention.
291.24 Waiver of Board Economic Regulations.

Subpart D—Exemptions for Domestic Cargo Transportation

291.30 General.
291.31 Exemptions from the Act.
291.32 Exemption of certain acquisitions.
291.33 Approval of certain relationships.
291.34 Duration of exemptions.
291.35 No relief from antitrust laws.

Subpart E—Reporting Rules

291.40 Reporting of prices and rules governing carriage.
291.41 Financial and statistical reporting—general.
291.42 Section 418 financial and statistical reporting.

Subpart F—Enforcement

291.50 Enforcement.

AUTHORITY: Secs. 204, 416 and 418 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743 and 758, 91 Stat. 1284; 49 U.S.C. 1324, 1386, and 1388.

Subpart A—General

§ 291.1 Applicability.

This part contains rules for domestic cargo transportation (as defined in § 291.2) by air carriers certificated under section 401 or 418 of the Act. It also contains instructions for obtaining a certificate under section 418 of the Act.

§ 291.2 Definitions.

"Act" means the Federal Aviation Act of 1958, as amended, 49 U.S.C. 1301 et seq.

"All-cargo air carrier" or "Section 418 carrier" means an air carrier holding an all-cargo air service certificate, issued under section 418 of the Act, to provide domestic cargo transportation, but excluding service between any pair of points both of which are in Alaska or in Hawaii.

"All-cargo air service" means domestic cargo transportation, but excluding service between any pair of points both of which are in Alaska or in Hawaii, performed by any air carrier holding a certificate issued under section 418 of the Act.

"Domestic cargo transportation" means the carriage by aircraft of property as a common carrier for compensation or hire, or mail, or both, in commerce between a place in any State of the United States, or the District of Columbia, or Puerto Rico, or the U.S. Virgin Islands, and a place in any other of those entities, or between places in the same State or other entity through the airspace over any place outside thereof, or between places within the District of Columbia, Puerto Rico or the U.S. Virgin Islands. This includes commerce moving partly by aircraft and partly by other forms of transportation, as well as commerce moving wholly by aircraft.

"FAA" means the Federal Aviation Administration, U.S. Department of Transportation.

"Section 401 carrier" means an air carrier certificated under section 401 of the Act.

Subpart B—All-Cargo Air Service Certificates

§ 291.10 General.

Within 180 days after the filing of an application complying with this subpart, the Board will issue a certificate to perform all-cargo air service, under section 418 of the Act, to any U.S. citizen that has submitted an application complying with this subpart, unless the Board finds that the applicant is not fit, willing, and able to provide such service or to comply with the Act or the orders and regulations of the Board. The 180-day period will not begin to run until the Board has received an application that is complete in all respects.

§ 291.11 Form and content of applications.

(a) General. An original and six copies, typed on 8½ x 11 inch paper, shall be filed with the Docket Section, Office of the Secretary, Civil Aeronautics Board, Washington, D.C. 20428. The application may be mailed to the above address, or delivered to room 714, 1825 Connecticut Avenue NW., Washington, D.C. The application shall be conspiciously titled "Section 418 Application," and shall be accompanied by a check or money order payable to the Civil Aeronautics Board, in the amount of $250. The original of the application shall be manually signed and dated by the applicant, or by an authorized officer, partner, trustee, etc., of the applicant, and the application shall contain all of the following information:

(b) Identification of the applicant. (1) Name, mailing address, and telephone number of the applicant.

(2) Type of organization of the applicant, and State under whose law applicant is organized, if a corporation, partnership, trust, etc.

(3) A statement that the applicant is a citizen of the United States as defined in section 101(14) of the act.

NOTE.—Section 101(14) of the Act provides that a "citizen of the United States" means "(a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions."

(4) If any officers, directors, partners, trustees, shareholders, or other persons who have the power to influence the management of the applicant are not U.S. citizens, state the name and citizenship of each such person, and describe each such person's interest in the applicant.

(c) Applicant's past and present operations. (1) State the names of all directord, partners, trustees, officers, and principal management personnel of the applicant, and indicate the positions held by each.

(2) State the total number of applicant's employees.

(3) Provide a brief, narrative, chronological history of the ownership and operations of the applicant and its predecessors. Identify any Civil Aeronautics Board, State, or foreign authority under which the applicant has conducted or is conducting air operations.

(4) Submit a report on passenger and cargo operations, if any, performed by the applicant and its predecessors over the past 3 years, totaled by yearend, showing:

(i) Aircraft hours flown;

(ii) Aircraft miles flown; and

(iii) Revenue-ton miles flown.

(5) List the types of aircraft used in the above operations, the top 10 markets served, and the type of service performed. Provide a list of aircraft owned or leased by the applicant, indicating type of aircraft, seating capacity and cargo capacity, and whether owned or leased.

(6) Describe applicant's equipment (exclusive of aircraft) and ground facilities owned or leased, including applicant's main base of operations.

(7) Supply for the most recent 12-month period and, on a calendar or fiscal year basis, for the 2 preceding years (audited if possible), separating out for transport, transport-related and nontransport activities:

(i) Balance sheet;

(ii) Profit and loss statement; and

(iii) Cash flow statement.

(8) Describe all material adverse changes, if any, in the financial position of the applicant that have occurred since the closing date of the balance sheet submitted in response to item (7), above.

(9) List all claims in litigation, and any liabilities more than 60 days past due, on the date of the application.

(10) Identify all FAA authority held by the applicant, and give the address and telephone number of the responsible FAA office.

(d) Projected Operations. (1) State the general geographic scope, the aircraft type, and the revenue hours anticipated for the first year of operations.

(2) Provide for the first year of operations an illustrative profit and loss statement, pro forma balance sheet (as at the end of the period), and income statement.

(3) For applicants not now providing air service, provide an organizational plan of the proposed company, identify the directors, partners, trustees, officers, and principal management personnel, and briefly state the relevant qualifications.

(4) Describe in detail all provisions for the payment of cargo loss or damage claims, including insurance, claims reserves, etc.

(5) State whether applicant's projected operations will require additional authority from the FAA and, if so, describe the status of any application for that authority, and give the name, mailing address and telephone number of the FAA personnel responsible for processing the application.

(e) Compliance disposition. (1) Provide a description of each formal or docketed complaint lodged against the applicant, any predecessor or affiliate thereof (or against any other transportation company over which the applicant or any predecessor exercises or has ever exercised control) in the past 5 years, regarding compliance with the Federal Aviation Act or the rules, regulations and requirements thereunder. Indicate the final disposition, if any, of each incident.

(2) State whether any of the persons and/or companies listed in item (1) above, either as a partner, officer, director, or stockholder, has been affiliated with, controlled by, or participated in control of any air carrier which, during such association, was found to have committed knowing, willful violations of the Act, or of any order, rule, or regulation issued pursuant to the Act. If so, list the orders, covering the period from 5 years ago to date.

(3) Indicate any action taken by the FAA under 14 CFR 13.15 (involving civil penalties) 13.17, 13.19, and 13.23 in the past 5 years, and the disposition of each.

(4) Indicate whether the applicant, any predecessor, or any of the persons listed in the applicant's application, has ever been found to have committed a felony, antitrust violation, or to have engaged in criminal or civil fraud. If so, identify the proceeding and provide a description, including current status or final disposition.

(f) Insurance. The Applicant shall provide certificates complying with §§ 291.22 and 291.23, or state when its certificates will be filed with the Board.

(g) Other information. The applicant may submit any other information that it believes to be relevant to the Board's determination that it should receive in all-cargo air service certificate.

§ 291.12 Procedure on receipt of applications.

(a) Within 14 business days after the receipt of an application, the Board will notify the applicant whether its application is complete. If the application is not complete, the applicant will be advised what information is necessary to complete its application. Applications will not be processed (and the 180-day period for issuance of a certificate will not begin to run), until the application is complete.

(b) Promptly upon the determination that an application is complete, the Board will (i), prepare a summary of the application and forward it to the FEDERAL REGISTER for publication and (ii) forward a copy of the application to the FAA with a request for a safety and compliance report.

(c) The Board will hold the application for 21 days following the date of publication in the FEDERAL REGISTER for the receipt of opposition to the grant of the application from any member of the public. Opposition must be in writing, must identify the applicant and the docket number assigned to its application, and must relate to the fitness, willingness or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The applicant shall be served by the opposing person with a copy of all documents submitted in opposition to the grant of its application, at the same time that the documents are filed with the Board, and the opposing documents shall contain a certificate of such service. The applicant shall have 14 days after receipt to reply to any opposing documents.

(d) After the period for the receipt of documents has expired, the Board will either (i) grant or deny the application on the basis of the written record, (ii) request further information, or (iii) set any disputed materials issues of fact for expedited hearing before an Administrative Law Judge.

(e) In the case of applications that are opposed by any person, including the FAA, any further proceedings shall be governed by the Board's Rules of Practice, 14 CFR Part 302.

(f) The Board will transmit a copy of each certificate to the FAA when it is issued.

§ 291.13 Certificate conditions.

(a) All-cargo air service certificates shall remain effective only so long as the holder retains its U.S. citizenship (as defined in section 101(14) of the Act) and its insurance coverage required by §§ 291.22 and 291.23.

(b) All-cargo service certificates shall confer no right to receive subsidy, for the carriage of mail or otherwise.

(c) All-cargo air service certificates shall confer no right to carry passengers (except cargo attendants), or to engage in any air transportation outside the geographical scope of domestic cargo transportation. They shall not, however, restrict the right of the holder to provide scheduled, charter, contract, or other transportation of cargo, by air, within that geographical scope.

(d) All-cargo air service certificates shall entitle the holder to carry cargo attendants actually accompanying a shipment.

(e) Failure to file the reports required by this part, or to comply with the act or the Board's regulations, shall be sufficient grounds to revoke a certificate.

Subpart C—General Rules for Domestic Cargo Transportation

§ 291.20 Applicability.

Except as otherwise noted, the following rules apply to all domestic cargo transportation performed by air carriers certificated under section 401 or 418 of the act. Section 418 carriers that operate passenger-only or combination aircraft under section 401, 14 CFR part 298, or other Board authority, must comply with these rules in connection with all domestic cargo transportation, whether provided on all-cargo or combination aircraft, operated pursuant to this authority or otherwise. In case a carrier can operate a particular flight either under a section 401 certificate or under a section 418 certificate, it will be presumed that

the flight is being operated under the carrier's section 418 authority.

§ 291.21 Cargo liability insurance.

Each carrier shall maintain in effect cargo liability insurance, from one or more reputable and financially responsible insurers licensed to issue cargo liability insurance policies in any State in the United States, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands, with a liability limit of at least $500,000 per occurrence. Filing requirements for certificates of insurance shall be governed by the provisions of subpart E of 14 CFR part 298.

§ 291.22 Public liability insurance.

Each carrier operating all-cargo aircraft shall maintain public liability insurance. Policy conditions and certificate filing requirements shall be governed by the provisions of subpart E of 14 CFR part 298, except that carriers operating all-cargo aircraft larger than those eligible to be operated under 14 CFR part 298 shall maintain liability limits of at least $500,000 per person and $20 million per occurrence, with respect to such aircraft.

§ 291.23 Record retention.

The provisions of 14 CFR part 249, Preservation of air carrier accounts, records, and memoranda, shall apply to all carriers, except that records pertaining to transportation provided on aircraft eligible to be operated under 14 CFR part 298, and records concerning transportation outside the geographic scope of domestic cargo transportation, need not be maintained unless required by other Board regulations.

§ 291.24 Waiver of Board Economic Regulations.

Except for this part and those parts of the Board's economic regulations (14 CFR parts 200 through 299) specifically referred to in this part, carriers providing domestic cargo transportation are, with respect to that transportation, relieved from all obligations imposed on aircarriers by those economic regulations. Flights operated entirely within the geographic scope of domestic cargo transportation shall be free from those obligations, even though they may also carry shipments to or from points outside that geographic scope.

Subpart D—Exemptions for Domestic Cargo Transportation

§ 291.30 General.

The following exemptions, except as otherwise specifically noted, apply only to domestic cargo transportation. They do not relieve a carrier from obligations derived from other transportation.

§ 291.31 Exemptions from the act.

Each carrier providing domestic cargo transportation is, with respect to that transportation, exempted from the following sections or subsections of the act:

(a) Section 403, except for airtransportation of property within the States of Akaska or Hawaii;

(b) Subsection 404(a), except for air transportation of property within the States of Alaska or Hawaii, and (for all domestic cargo transportation) except the requirement to provide safe and adequate service, equipment, and facilities in connection with that transportation;

(c) The requirement, in subsection 405(b), that carriers providing mail transportation shall file schedules with the Board;

(d) Subsections 407(b) and 407(c);

(e) Subsection 408(a); but only with respect to transactions involving domestic cargo transportation assets or securities; and

(f) Sections 409 and 412, but only with respect to relationships and agreements involving domestic cargo transportation.

§ 291.32 Exemption of certain acquisitions.

The acquisition of control of any all-cargo air carrier is exempted from subsection 408(a)(5) of the act. This exemption does not relieve any person from the provisions of any other paragraph of subsection 408(a) other than paragraph (5).

§ 291.33 Approval of certain relationships.

To the extent that any officer or director of any air carrier would be in violation of paragraph (3) or (6) of subsection 409(a) of the act because of any interlocking relationships covered by the exemption granted in § 291.31(f), such participation is hereby approved by the Board.

§ 291.34 Duration of exemptions.

The exemptions and approvals granted in §§ 291.31 through 291.33 for any person or class of persons shall continue in effect only until such time as the Board shall find that the exemption or approval is no longer in the public interest.

§ 291.35 No relief from antitrust laws.

The exemptions and approvals granted in §§ 291.31 through 291.33 do not constitute orders, within the meaning of section 414 of the act, and confer no immunity or relief from the "antitrust" laws or any other statute except the act. These exemptions do not relieve any person from the preacquisition notification requirements of the Clayton Act, 15 U.S.C. § 18a, which apply to certain transactions involving firms with annual sales or assets of $10 million or more.

Subpart E—Reporting Rules

§ 291.40 Reporting of prices and rules governing carriage.

Each carrier shall mail or deliver to the Board (Attention: Director, Bureau of Pricing and Domestic Aviation), no later than the date on which carriage at a stated charge commences, one copy of each rate sheet, contract, or other document reflecting changed, new, or other previously-unreported general or special prices or rules governing the carriage of freight in domestic cargo transportation (except mail), unless the transportation was performed in accordance with an effective tariff on file with the Board. Individual airbills or contracts need not be filed if they are constructed in accordance with a standard weight, mileage or other formula, and the carrier has filed a document fully describing that formula. Reports of changed prices or rules shall identify (by filing date or other acceptable method) the superseded charges or rules.

§ 291.41 Financial and statistical reporting—general.

(a) Carriers providing domestic cargo transportation that also conduct other operations under section 401 shall comply with the provisions of 14 CFR Part 241 only.

(b) Carriers providing domestic cargo transportation under section 418 certificates only shall comply with § 291.42.

(c) Carriers providing domestic cargo transportation under section 418, and also providing other services under 14 CFR Part 298, shall report their domestic cargo transportation operations in accordance with § 291.42, and shall report all other traffic in accordance with the provisions of subpart F of 14 CFR Part 298.

§ 291.42 Section 418 financial and statistical reporting.

(a) General Instructions and Certification.

(1) Carriers holding section 418 certificates shall file a balance sheet, schedule 291-A, a statement of operations, schedule 291-B, and a summary of traffic and capacity statistics, schedule 291-C. These schedules will not be required from carriers who are subject to part 241 of the Economic Regulations.

NOTE.—Schedules 291-A, 291-B, and 291-C are set forth, respectively, as appendices B, C, and D to this part.

(2) Schedules required by this section shall be filed with the Civil Aeronautics Board semiannually on August 10 and February 10.

(3) All reports shall be addressed as follows: Bureau of Accounts and Statistics, Reports Control and Administration Division, B-46, Civil Aeronautics Board, Washington, D.C. 20428.

(4) The carrier's chief accounting officer shall sign the certification statement which appears at the bottom of the balance sheet and which relates to the information presented on the balance sheet, the statement of operations, and the summary of traffic and capacity statistics.

(i) "Scheduled Service" shall include all transport revenues derived from operations between pairs of points which are served on a regularly scheduled basis. Transport revenues received from scheduled service operations shall be categorized as follows:

(A) Property;

(B) Mail; and

(C) Other. Revenues generated by the transportation of passengers shall be included in this category.

(ii) "Nonscheduled Service" shall include all transport revenues derived from operations between pairs of points which are not served on a regulatory scheduled basis.

(iii) "Transport-Related Revenues" shall include moneys received for providing air transportation facilities associated with the performance of services which flow from and are incidental to air transportation services performed by the air carrier. For example, this category would include cargo pickup and delivery charges; the preparation of extra documents; storage beyond the free period; and the provision of inflight services.

(5) "Operating Expenses" shall be segregated as follows:

(i) "Flying Operations" shall include expenses incurred directly in the inflight operation of aircraft and expenses attaching to the holding of aircraft and aircraft operational personnel in readiness for assignment to an inflight status.

(ii) "Maintenance" shall include all expenses which are specifically identifiable with the repair and upkeep of property and equipment used in the performance of air transportation.

(iii) "General and Administrative" shall include that portion of all expenses of a general corporate nature and all other expenses not provided for elsewhere which are related to air transport operations either directly or indirectly.

(iv) "Depreciation and Amortization" shall include all depreciation and amortization expenses applicable to property and equipment used in providing air transportation services. These expenses shall be segregated between those applicable to owned property and equipment and those applicable to property and equipment which is leased.

(v) "Operating Profit (Loss)" shall be computed by subtracting the total operating expenses from the total operating revenues.

(b) Balance sheet.

(1) This schedule shall reflect account balances at the close of business on the last day of each semiannual period for the corporate entity of each reporting carrier.

(2) "Current Assets" shall be comprised of all resources which may reasonably be expected to be realized in cash or sold or consumed within one year. This classification shall include cash, notes and accounts receivable, temporary cash investments, materials and supplies, and short term prepayments.

(3) "Property and Equipment" shall be segregated into that which is owned and that which is leased under capital leases. All property and equipment, with the exception of land, shall be reported net of accumulated depreciation or amortization.

(4) "Other Assets' shall include all assets not included in the above categories, such as long term investments, long term prepayments, long term receivables, deferred charges and intangible assets.

(5) "Current Liabilities" shall be comprised of all obligations, the liquidation of which is reasonably expected to require the use of existing resources within 1 year. This classification shall include notes and accounts payable, accrued taxes and other debts, advances received, and current maturities of long term debt.

(6) "Long Term Debt" shall include all obligations which are not reasonably expected to be liquidated within 1 year. Typical examples include bonds payable, long term notes payable, lease obligations and pension obligations.

(7) "Other Liabilities" shall include any debts or obligations which are not properly listed in the "Current Liabilities" or "Long Term Debt" sections.

(8) "Deferred Credits" shall include all credit balances of a general clearing nature, including credits held in suspense pending receipt of further information necessary for final disposition.

(9) "Stockholder's Equity" shall be reported as follows:

(i) "Capital Stock" shall be segregated as between common and preferred. The number of shares outstanding, along with the par or stated value of the stock, shall be reported. In the case of no part stock without stated value, the full consideration received shall be reported.

(ii) "Other Paid-In Capital" shall include the difference between the price at which the capital stock is sold and the par or stated value of the stock.

(iii) "Retained Earnings" shall represent the net income or loss from all operations of the corporate entity less dividends.

(iv) "Treasury Stock" shall represent the cost of stock issued by the carrier and reacquired by it but not retired or canceled.

(10) The statement of certification shall be signed by the carrier's chief accounting officer as provided above in subparagraph (a)(4).

(c) Statement of operations.

(1) This schedule shall be filed semiannually by each reporting carrier and shall reflect the results of the carrier's corporate operations.

(2) "Operating Revenue" shall be categorized as follows:

(i) "Transport Revenues" shall include the revenues generated by the performance of air transportation services. This category shall be subdivided as follows:

(5) "Nonoperating Income and Expense" shall include all revenues and expenses resulting from commercial ventures which are not inherently related to the performance of air transport services. For example, the revenues and expenses related to operating a hotel or motel would be reported under this category. This category shall also include the total interest expense incurred from all sources and be subdivided as follows:

(i) Interest expense.

(ii) Other nonoperating (net).

(6) "Income Tax" shall reflect the semiannual provision for accruals of Federal, State, local, and foreign taxes based upon taxable income, and computed at the normal and surtax rates in effect during the current accounting year.

(7) "Discontinued Operations, Extraordinary Items or Accounting Changes" shall reflect any earnings or losses from discontinued operations, the net of the tax amount of extraordinary items, and the cumulative effect of any changes in accounting principles.

(d) Summary of traffic and capacity statistics.

(1) Each reporting carrier shall file this schedule semiannually.

(2) "Traffic on Revenue Flights" shall be reported in the following categories:

(i) "Revenue ton-miles" shall reflect the total revenue ton-miles in all-cargo service for the semiannual period. Revenue ton-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of tons of revenue traffic transported on that stage. Revenue ton-miles shall be reported based on the following categories:

(A) Scheduled service. This statistic will be broken down between revenue

ton-miles applicable to property and those applicable to mail.

(B) Nonscheduled service.

(ii) "Nonrevenue ton-miles" shall reflect the total nonrevenue ton-miles in all-cargo service for the semiannual period. Nonrevenue ton-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of tons of nonrevenue traffic transported on that stage.

(iii) "Revenue tons enplaned" shall reflect the total revenue tons of cargo loaded on aircraft during the semiannual period.

(3) "Aircraft capacity operated" shall be reported in the following categories:

(i) "Available ton-miles" shall reflect the total revenue ton-miles available for all-cargo service during the semiannual period. Available ton-miles are computed by multiplying the aircraft miles flown on each flight stage by the number of tons of aircraft capacity available for use on that stage. Available ton-miles shall be reported based on the ton-miles available for scheduled service and those available for nonscheduled service.

(ii) "Revenue aircraft miles flown" shall reflect the number of aircraft miles flown in revenue cargo service during the semiannual period.

(iii) "Nonrevenue aircraft miles flown" shall reflect the number of aircraft miles flown in nonrevenue cargo service during the semiannual period.

(iv) "Revenue aircraft departures performed" shall reflect the total number of takeoffs performed in revenue cargo service during the semiannual period.

(v) "Nonrevenue aircraft departures performed" shall reflect the total number of takeoffs performed in nonrevenue cargo service during the semiannual period.

(iv) "Revenue aircraft hours (airborne)" shall reflect the aircraft hours of flight (from takeoff to landing) performed in revenue cargo service.

(vii) "Nonrevenue aircraft hours (airborne)" shall reflect the aircraft hours of flight (from takeoff to landing) performed in nonrevenue cargo service.

Subpart F—Enforcement

§ 291.50 Enforcement.

In case of any violation of any of the provisions of the Act, or this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to section 1002 and 1007 of the Act before the Board or a U.S. District Court, as the case may be, to compel compliance therewith; or to civil penalties pursuant to the provisions of section 901(a) of the Act; or, in the case of a willful violation, to criminal penalties pursuant to the provisions of section 902(a) of the Act; or other lawful sanctions including suspension or revocation of operating authority.

(Secs. 204, 416, and 418 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743 and 758, 91 Stat. 1284; 49 U.S.C. 1324, 1386, and 1388.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

APPENDIX A

Report of Section 418 Operations--Schedule T-8

Air Carrier Six-Months Ended	Operations Section 401	Section 418 *
Operating Revenue		
Transport Revenues		
Scheduled Service		
Property		
Mail		
Other		
Nonscheduled Service		
Transport-Related Revenues		
Traffic on Revenue Flights		
Revenue Ton-miles		
Scheduled Service:		
Property		
Mail		
Nonscheduled Service		
Nonrevenue Ton-miles		
Revenue Tons Enplaned		
Aircraft Capacity Operated		
Aircraft Ton-miles:		
Scheduled Service		
Nonscheduled Service		
Aircraft Miles Flown:		
Revenue		
Nonrevenue		
Aircraft Departures Performed:		
Revenue		
Nonrevenue		
Aircraft Hours (Airborne)		
Revenue		
Nonrevenue		

* All-Cargo operations
Schedule T-8

CAB Form 41

APPENDIX B

Balance Sheet -- Schedule 291-A

Carrier _____

As at _____

ASSETS

Current assets:	
Cash	
Notes and accounts receivable-net	
Other current assets	
Total current assets	
Property and equipment:	
Owned property and equipment	
Less accumulated depreciation	
Property and equipment obtained under capital leases	
Less accumulated amortization	
Total property and equipment	
Other assets	
Total assets	

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:	
Notes and accounts payable	
Accrued taxes	
Other current liabilities	
Total current liabilities	
Long-term debt	
Other liabilities	
Deferred credits	
Stockholders' equity:	
Capital stock	
Preferred _____ shares outstanding	
Common _____ shares outstanding	
Other paid-in capital	
Retained earnings	
Total stockholders' equity	
Less: Treasury stock	
Net stockholders' equity	
Total liabilities and stockholders' equity	

I, the undersigned, (Title) _____ of the above-named air carrier certify that the above report and the attached Statement of Operations and Summary of Traffic and Capacity Statistics have been examined by me and to the best of my knowledge and belief are true, correct and complete reports for the period stated.

Signature: _____

_____ (Date)

Name (Please Type or Print): _____

APPENDIX C

Statement of Operations--Schedule 291-B

Operating Revenue
Transport Revenues

Scheduled Service
Property _____
Mail _____
Other _____

Nonscheduled Service _____

Transport Related Revenues _____

Total Operating Revenue _____

Operating Expense

Flying Operations _____
Maintenance _____
General and Administrative _____
Depreciation and Amortization
Owned Property and Equipment _____
Leased Property and Equipment _____

Total Operating Expense _____

Operating Profit (Loss) _____

Nonoperating Income and Expense:
Interest Expense _____
Other Nonoperating (Net) _____

Income Tax _____

Discontinued operations, extraordinary items or Accounting changes _____

Net Income (Loss) _____

APPENDIX D

Summary of Traffic and Capacity Statistics--Schedule 291-C

Traffic on Revenue Flights

Revenue Ton-miles
Scheduled Service:
Property _____
Mail _____

Nonscheduled Service _____

Nonrevenue Ton-miles _____

Revenue Tons Enplaned _____

Aircraft Capacity Operated

Available Ton-miles:
Scheduled Service _____
Nonscheduled Service _____

Aircraft Miles Flown:
Revenue _____
Nonrevenue _____

Aircraft Departures Performed:
Revenue _____
Nonrevenue _____

Aircraft Hours (Airborne):
Revenue _____
Nonrevenue _____

[FR Doc. 78-21152 Filed 7-31-78; 8:45 am]

[3710-08]

DEPARTMENT OF DEFENSE

Department of the Army

[32 CFR Part 552]

[USASCH Reg. 210-2]

REGULATIONS AFFECTING MILITARY RESERVATIONS

Entry Regulations for Certain Army Training Areas in Hawaii

AGENCY: Department of the Army.

ACTION: Proposed rule.

SUMMARY: This section clarifies the entry procedures for certain Army training areas in Hawaii as defined herein. The clarification is needed to provide public notice that entry onto the training areas described herein is prohibited except as authorized under the procedures established by this section. Entry upon these training areas is restricted because the continued and uninterrupted use of these training areas by the military is vital in order to maintain and improve combat readiness. In addition, conditions exist within these training areas which could be dangerous to any unauthorized persons who enter these areas. The intended effect of this section is to alert the public to the fact that entry onto these training areas in Hawaii is prohibited at all times except as authorized under the procedures established by this section.

DATES: Comments must be received by September 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert N. Kittel, Major, JAGC, Asst. Staff Judge Advocate, 808-438-2287.

Accordingly, it is proposed to amend 32 CFR part 552 by adding a new § 552.25 to read as follows:

§ 552.25 Entry Regulations for Certain Army Training Areas in Hawaii.

(a) *Purpose.* (1) This regulation establishes procedures governing the entry upon certain Army training areas in Hawaii as defined by paragraph (d) of this section.

(2) These procedures have been established to prevent the interruption of the use of these Army training areas by any person or persons. The continued and uninterrupted use of these training areas by the military is vital in order to maintain and improve the combat readiness of the U.S. Armed Forces. In addition, conditions exist within these training areas which could be dangerous to any unauthorized persons who enter these areas.

(b) *Scope.* The procedures outlined herein apply to all individuals except for military personnel and civilian employees of the United States who in performance of their official duties enter the areas defined herein.

(c) *Definition.* For the purpose of this regulation, "certain Army training areas in Hawaii" is defined as:

(1) Makua Valley, Waianae, Oahu, Hawaii: That area reserved for military use by Executive Order No. 11166, paragraph (f)(3) of this section.

(2) Pohakuloa Training Area, Hawaii: That area reserved for military use by Executive Order No. 11167, paragraph (f)(4) of this section.

(d) *Procedures.* (1) Except for military personnel and civilian employees of the United States in the performance of their official duties, entry upon any Army training area described herein for any purpose whatsoever without the advance consent of the Commander, United States Army Support Command, Hawaii or his authorized representative, is prohibited (reference paragraph (f)(1) and (f)(2) of this section).

(2) Any person or group of persons desiring the advance consent of the Commander, United States Army Support Command, Hawaii, shall, in writing, submit a request to the following address:

Commander, USASCH, Attention: Chief of Staff, Fort Shafter, Hawaii 96858.

(3) Each request for entry will be considered on an individual basis weighing the operational and training commitments of the area involved, security, and safety with the purpose, size of party, duration of visit, destination and the military resources which would be required by the granting of the request.

(e) *Violations.* (1) Any person entering or remaining upon any training area described herein without the advance consent of the Commander, USASCH, or his authorized representative shall be subject to the penalties prescribed by reference paragraph (f)(1) of this section, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than $500 or imprisoned not more than 6 months or both."

(2) Moreover, any person who willfully violates this regulation is subject to a fine not to exceed $500 or imprisonment for not more than one (1) year or both as provided in reference paragraph (f)(2) of this section.

(3) In addition, violation of this regulation by persons subject to the Uniform Code of Military Justice (10 U.S.C. 801-940) is a violation of Article 92 of the Uniform Code of Military Justice.

(f) *References.* (1) Title 18 United States Code, section 1382.

(2) Internal Security Act of 1950, section 21 (50 U.S.C. 797).

(3) Executive Order No. 11166 of August 15, 1964 (3 CFR, 1964-1965 Comp. pp. 219-220).

(4) Executive Order No. 11167 of August 15, 1964 (3 CFR, 1964-1965 Comp. pp. 220-222).

Dated: July 21, 1978.

WILLIAM MASTORIS, Jr.,
Colonel, Infantry
Chief of Staff.

[FR Doc. 78-21224 Filed 7-31-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 62]

[FRL 936-4]

STATE OF IDAHO DEPARTMENT OF HEALTH AND WELFARE

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Request for Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today giving notice of its intention to approve a request from the State of Idaho Department of Health and Welfare for an 18-month extension in submitting a plan to control fluoride emissions from existing phosphate fertilizer production plants as required by section 111(d) of the Clean Air Act.

DATES: Comments are requested by August 31, 1978.

ADDRESS: Environmental Protection Agency, Region X (M/S 629), 1200 Sixth Avenue, Seattle, Wash. 98101.

FOR FURTHER INFORMATION CONTACT:

Clark L. Gaulding, Chief, Air Programs Branch (M/S 629), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Wash. 98101, telephone 206-442-1230 (FTS 399-1230).

SUPPLEMENTAL INFORMATION: Section 111(d) of the Clean Air Act requires States to submit plans to control certain pollutants from specific existing sources nine months after promulgation of requirements by EPA. Plans for the control of fluoride emissions from existing phosphate fertilizer production plants were due to EPA

on December 1, 1977. However, 40 CFR 60.27(a) states that the Administrator may extend the period for submission of a section 111(d) plan.

On June 20, 1978, the State of Idaho Department of Health and Welfare requested an extension to June 1, 1979 for submittal of a plan to control fluorides emissions.

The State started procedures to develop and implement a plan under section 111(d) in mid-1977 but due to lack of resources and the higher priority given to revisions of the State Implementation Plan under section 110 of the Clean Air Act, as amended in August 1977, the rulemaking procedures were not completed. EPA Region X has reviewed the State's request and considers it to be reasonable.

EPA is therefore today proposing to approve the State's request for an extension. Comments on the proposed approval are invited for a period of 30 days and should be directed to Mr. Clark Gaulding at the address listed at the beginning of this notice. EPA will review and evaluate any comments received and publish a Notice of Final Rulemaking in the FEDERAL REIGSTER after the public comment period.

Therefore, part 62 of chapter I, title 40, Code of Federal Regulations, is proposed to be amended as follows:

1. Section 62.3105 is added as follows:

§ 62.3105 Extensions.

(a) The Administrator hereby extends to June 1, 1979 the date for submittal of a plan for the control of fluoride emissions from phosphate fertilizer plants as required by section 111(d) of the Clean Air Act.

Issued under the authority of section 111(d) of the Clean Air Act. (42 U.S.C. 7411(d).)

Dated: July 17, 1978.

DOUGLAS C. HANSEN,
Acting Regional Administrator.

[FR Doc. 78-21158 Filed 7-31-78; 8:45 am]

[6560-01]

[40 CFR Part 65]

[FRL 935-8]

STATE AND FEDERAL ADMINISTRATIVE ENFORCEMENT OF IMPLEMENTATION PLAN REQUIREMENTS AFTER STATUTORY DEADLINES

Proposed Delayed Compliance Order for Plum Island Animal Disease Center, Plum Island, N.Y.; and U.S. Public Health Service Hospital, Staten Island, N.Y.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The EPA proposes to issue administrative orders requiring the U.S. Department of Agriculture and the U.S. Public Health Service to bring incinerators located at the Plum Island Animal Disease Center (the center) on Plum Island, N.Y. and at the U.S. Public Health Service Hospital (the hospital) on Staten Island, N.Y., respectively, into compliance with certain regulations contained in the federally approved New York State Implementation Plan (SIP). The proposed orders would, because of the inability of these sources to comply with these regulations at this time, establish schedules requiring final compliance by the center by June 30, 1979, and by the hospital by January 31, 1979. Source compliance with the orders would preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act (the Act) for violation of the SIP regulations covered by these orders. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on the EPA's proposed issuance of the orders.

DATES: Written comments and requests for a public hearing must be received on or before August 31, 1978. All requests for a public hearing should be accompanied by a statement of 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 thirty days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to the Director, Enforcement Division, Region II, USEPA, 26 Federal Plaza, New York, N.Y. 10007. Material supporting these orders 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:

Mr. Stuart N. Roth, General Enforcement Branch, Enforcement Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, N.Y. 10007, 212-264-8157.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture (USDA) operates the Plum Island Animal Disease Center at Plum Island, N.Y. The proposed order addresses emissions from two pathological incinerators at this source, which are subject to part 219.4 of title 6 of the New York Codes, Rules, and Regulations (a part of the federally approved State Implementation Plan for the State of New York). The order requires final compliance by June 30, 1979, and an authorized representative of the USDA has consented to its terms. The center has, during the time required for issuing this order, satisfied particular increments contained therein.

The U.S. Public Health Service (USPHS) operates a hospital located on Staten Island, N.Y. The proposed order addresses emissions from an incinerator at the Hospital, which is subject to part 219.4 of title 6 of the New York Codes, Rules, and Regulations (a part of the federally approved State Implementation Plan for the State of new York). The order requires final compliance by January 31, 1979, and an authorized representative of the USPHS has consented to its terms. The hospital has, during the time required for issuing this order, satisfied particular increments contained therein.

The proposed orders satisfy the applicable requirements of section 113(d) of the Act. If an order is issued, source compliance would preclude further EPA 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 a source under the citizen suit provisions of section 304 of the Act would be similarly precluded. Failure by a source to achieve final compliance by July 1, 1979, will result in a requirement to pay a noncompliance penalty under section 120. In the event of such failure, formal notice, pursuant to section 120(b)(3) and any regulations promulgated thereunder, will be provided to such source.

Comments received by the date specified above will be considered in determining whether EPA should issue these orders. Testimony given at any public hearing concerning the orders will also be considered. After the public comment period and any public hearing, the Administrator of the EPA will publish in the FEDERAL REGISTER the Agency's final action on the orders 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 an order 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.

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

Dated: June 30, 1978.

ECKARDT C. BECK,
Regional Administrator,
Region II.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding § 65.370 to read as follows:

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

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION II

CONSENT ORDER—PLUM ISLAND ANIMAL DISEASE CENTER (PLUM ISLAND, N.Y.)

[Index No. 80209]

FINDINGS

On December 5, 1977, the United States Environmental Protection Agency ("EPA") issued a notice of violation, pursuant to section 113(a)(1) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. ("the Act"), to the Plum Island Animal Disease Center ("the center"), a facility under the jurisdiction of and operated by the U.S. Department of Agriculture. The notice of violation was issued upon a finding that two (2) pathological incinerators located at the center in laboratory 101 are in violation of part 219.4, title 6 of New York Codes, Rules, and Regulations (hereinafter "6 NYCRR 219.4"), effective June 27, 1973, relating to the allowable emission of particulate matter from incinerators. The finding of violation was based upon stack tests performed on the pathological incinerators on April 29 and 30, 1976.

Section 118 of the Act specifies that Federal departments having jurisdiction over a facility which causes the discharge of air pollutants must comply with, among others, all Federal and State requirements respecting the abatement of air pollution, and are subject to the same administrative authority, process, and sanctions, as any nongovernmental entity.

As an approved portion of the New York State Implementation Plan ("NYSIP"), 6 NYCRR 219.4 is a Federal requirement respecting the abatement of air pollution with which the center must comply, this order is among the administrative authorities available for assuring compliance therewith, and compliance with the requirements of this order by the center is, therefore, mandated by section 118.

Since issuance of the notice of violation by the EPA on December 5, 1977, operation of the incinerators in question has not been discontinued, nor have they been replaced, or has air pollution control equipment been installed thereon. Thus, the center continues to be in violation more than thirty days after issuance of the notice of violation.

The EPA, region II has determined that the source has acted in good faith, that the violation involved does not cause or contribute to a violation of national ambient air quality standards, and that the center can, by meeting the terms of this order, be in final compliance prior to July 1, 1979. The EPA, region II has determined that the schedule embodied herein will provide for compliance by the center as expeditiously as is practicable.

Public notice, opportunity for a public hearing and 30 days notice to the State of New York have been provided.

ORDER

Based upon the foregoing, after consideration of public comment, and pursuant to section 113(d) of the Act: *It is hereby ordered:*

I. That the center shall install three replacement incinerators, designed to comply with the requirements of 6 NYCRR 219.4, in accordance with the following schedules:

A. New unit I (one new incinerator—west wing)

1. Award contract—June 19, 1978;
2. Initiation of construction—July 26, 1978;
3. Completion of construction—June 1, 1979;
4. Provide performance test results or other authoritative evidence indicating the compliance of new unit I with the requirements of 6 NYCRR 219.4—June 24, 1979;
5. Start-up of operations—June 30, 1979.

B. New units II (two new incinerators—east wing)

1. Award contract—completed;
2. Initiation of construction—commenced;
3. Completion of construction—December 1, 1978;
4. Provide performance test results or other authoritative evidence indicating the compliance of new units II with the requirements of 6 NYCRR 219.4—December 24, 1978;
5. Start-up of operations—December 31, 1978.

C. Upon start-up of new units I and II, the existing incinerators shall be removed from service.

D. No stack tests will be required at the new incinerators if said incinerators are on the NYSDEC list, "Incinerator Models Capable of Meeting State Emission Standards".

II. That source shall comply with the following reporting requirements:

A. No later than 5 days after any date specified in paragraph I, above, for achievement of any incremental step (including final compliance), the center shall notify the EPA in writing of its status of compliance with respect to said incremental step. If compliance with any incremental step is not achieved, or at any time is not anticipated to be achieved, in a timely manner, the notification required by this paragraph shall provide a full explanation for the failure or expected failure to so comply. Notwithstanding any explanation for a delay or expected delay, any failure to meet the incremental step by the date specified herein shall be deemed a violation of this order and shall subject the center to the remedies described in paragraph V, below.

B. No later than 5 days after the end of each calendar month, the center shall provide EPA with the waste load to each existing unit on a daily basis. This report shall be submitted until the existing units are removed from service.

C. All submittals, notifications and reports to the EPA pursuant to this order shall be made to Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Status of Compliance Branch, Enforcement Division, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, N.Y. 10007.

III. That the center shall comply with the following interim requirements (which are determined to be the best reasonable and practicable interim system of emission reduction, taking into account the requirements with which the source must ultimately comply, the necessity to avoid an imminent and substantial endangerment to the health of persons, and to assure compliance insofar as the center is able to comply during the period the order is in effect):

A. As soon as the first new unit is completed and put into service, the waste load to the existing incinerators shall be reduced by 50 percent.

IV. Nothing herein shall effect the responsibility of the center to comply with State or local regulations. This order shall be terminated in accordance with section 113(d)(8) of the Act if the Administrator (or his delegate) determines on the record, after notice and hearing, that an inability to comply with 6 NYCRR 219.4 no longer exists.

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

A. Enforcement of such requirement pursuant to section 113 (a), (b), or (c) of the Act, including possible judicial action for an injunction or criminal prosecution.

B. Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of 6 NYCRR 219.4 in accordance with the preceding paragraph.

C. If such violation continues beyond July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the Act.

So ordered, effective immediately.

Dated: ——.

DOUGLAS COSTLE,
Administrator, U.S.
Environmental Protection Agency.

CONSENT

Dr. J. J. Callis, having full authority to represent the U.S. Department of Agriculture in these proceedings, has read the foregoing order, believes it to be reasonable, and therefore consents to both its issuance and to its terms. Furthermore, Dr. Callis acknowledges that the Plum Island Animal Disease Center has been and continues to be in violation of the requirements of 6 NYCRR 219.4. He explicitly waives both the notification requirement and the thirty (30) day waiting period embodied in section 113(a) of the Act, recognizes that the U.S. Department of Agriculture is subject to all remedies provided in section 113 of the Act for failure to comply with the terms of the foregoing order, and explicitly waives any and all rights under any provision of law to challenge this order.

Date: ——————.

DR. J. J. CALLIS.

For U.S. Department of Agriculture.

2. By adding § 65.370 to read as follows:

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

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION II

CONSENT ORDER—U.S. PUBLIC HEALTH SERVICE HOSPITAL (STATEN ISLAND, N.Y.)

[Index No. 80211]

FINDINGS

On December 5, 1977, the United States Environmental Protection Agency ("EPA") issued a notice of violation, pursuant to section 113(a)(1) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. ("the Act"), to the U.S. Public Health Service Hospital ("the Hospital"), a facility under the jurisdiction of and operated by the U.S. Department of Health, Education, and Welfare. The notice of violation was issued upon a finding that a pathological incinerator located at the Hospital is in violation of part 219.4, title 6 of New York Codes, Rules, and Regulations (hereinafter "6 NYCRR 219.4"), effective June 27, 1973, relating to the allowable emission of particulate matter from incinerators. The finding of violation was based upon a finding that the hospital is using a single-chamber incinerator not meeting the requirements of 6 NYCRR 219.4.

Section 118 of the Act specifies that Federal departments having jurisdiction over a facility which causes the discharge of air pollutants must comply with, among others, all Federal and State requirements respecting the abatement of air pollution, and are subject to the same administrative authority, process, and sanctions, as any nongovernmental entity.

As an approved portion of the New York State Implementation Plan ("NYSIP"), 6 NYCRR 219.4 is a Federal requirement respecting the abatement of air pollution with which the hospital must comply, this order is among the administrative authorities available for assuring compliance therewith, and compliance with the requirements of this order by the Hospital is, therefore, mandated by section 118.

Since the issuance of the notice of violation by the EPA on December 5, 1977, operation of the incinerator in question has not been discontinued, nor has it been replaced, nor has air pollution control equipment been installed thereon. Thus, the hospital continues to be in violation more than 30 days after issuance of the notice of violation.

The EPA, region II has determined that the source has acted in good faith, that the violation involved does not cause or contribute to a violation of national ambient air quality standards, and that the hospital can, by meeting the terms of this order, be in final compliance prior to July 1, 1979. The EPA, region II has determined that the schedule embodied herein will provide for compliance by the hospital as expeditiously as is practicable.

Public notice, opportunity for a public hearing and 30 days' notice to the State of New York have been provided.

ORDER

Based upon the foregoing, after consideration of public comment, and pursuant to section 113(d) of the Act: *It is hereby ordered:*

I. That the hospital shall install a replacement incinerator, designed to comply with the requirements of 6 NYCRR 219.4, in accordance with the following schedule:

A. New incinerator:

1. Complete design—May 31, 1978;
2. Award contract—August 31, 1978;
3. Completion of construction—January 1, 1979;
4. Provide performance test results or other authoritative evidence indicating the compliance of the new incinerator with the requirements of 6 NYCRR 219.4—January 24, 1979;
5. Start-up of operations—January 31, 1979.

B. Upon start-up of the new incinerator, the existing incinerator shall be removed from service.

C. No stack tests will be required at the new incinerator if such incinerator is on the NYSDEC list, "Incinerator Models Capable of Meeting State Emission Standards".

II. That hospital shall comply with the following reporting requirements:

A. No later than 5 days after any date specified in paragraph I, above, for achievement of any incremental step (including final compliance), the hospital shall notify the EPA in writing of its status of compliance with respect to said incremental step. If compliance with any incremental step is not achieved, or at any time is not anticipated to be achieved, in a timely manner, the notification required by this paragraph shall provide a full explanation for the failure or expected failure to so comply. Notwithstanding any explanation for a delay or expected delay, any failure to meet the incremental step by the date specified herein shall be deemed a violation of this order and shall subject the Hospital to the remedies described in paragraph V, below.

B. All submittals, notifications and reports to the EPA pursuant to this order shall be made to Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Status of Compliance Branch, Enforcement Division, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, N.Y. 10007.

III. That interim requirements, as described in section 113(d)(7) of the Act, not being reasonable and practicable, need not be implemented.

IV. Nothing herein shall effect the responsibility of the hospital to comply with State or local regulations. This order shall be terminated in accordance with section 113(d)(8) of the Act if the Administrator (or his delegate) determines on the record, after notice and hearing, that an inability to comply with 6 NYCRR 219.4 no longer exists.

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

A. Enforcement of such requirement pursuant to section 113 (a), (b), or (c) of the Act, including possible judicial action for an injunction or criminal prosecution.

B. Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of 6 NYCRR 219.4 in accordance with the preceding paragraph.

C. If such violation continues beyond July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the Act.

So ordered, effective immediately.

Date: ———————.

DOUGLAS COSTLE,
Administrator, U.S. Environmental Protection Agency.

CONSENT

Dr. Florence Kavaler, having full authority to represent the U.S. Department of Health, Education, and Welfare in these proceedings, has read the foregoing order, believes it to be reasonable, and therefore consents to both its issuance and to its terms. Furthermore, Dr. Kavaler acknowledges that the U.S. Public Health Service Hospital on Staten Island has been and continues to be in violation of the requirements of 6 NYCRR 219.4. She explicitly waives both the notification requirement and the thrity (30) day waiting period embodied in section 113(a) of the Act, recognizes that the U.S. Department of Health, Education, and Welfare is subject to all remedies provided in section 113 of the Act for failure to comply with the terms of the foregoing order, and explicitly waives any and all rights under any provision of law to challenge this order.

Date: ———————.

For U.S. Department of Health, Education, and Welfare.

DR. FLORENCE KAVALER.

[FR Doc. 78-21153 Filed 7-31-78; 8:45 am]

[6560-01]

[FRL 935-1]

[40 CFR Part 65]

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

Notice of Proposed Approval of a Delayed Compliance Order for Boise Cascade Corporation, Latex Division, Beaver Falls, N.Y.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Commissioner of the New York State Department of Environmental Conservation (DEC) to the Boise Cascade Corp., Latex Division. The order requires the company to bring air emissions from a coal fired steam generator at its Beaver Falls, N.Y. plant into compliance with certain provisions of the federally-approved New York State implementation plan (SIP) by June 30, 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 (DCO) under the Clean Air Act. If approved by EPA, the order will constitute an addition to the SIP and will alter the rights of persons to bring judicial actions against the source for violations of the SIP. 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 31, 1978.

ADDRESSES: Comments should be submitted by writing to: Eckardt C. Beck, Regional Administrator, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, N.Y. 10007.

The State order, material supporting the 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:

Mr. Walter Mugdan, Attorney, General Enforcement Branch, Enforcement Division, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, N.Y. 10007, 212-264-4434.

SUPPLEMENTARY INFORMATION: The Boise Cascade Corp., Latex Division, operates a coal fired steam generator at its Beaver Falls, N.Y. plant. The order under consideration concerns particulate emissions from this generator, which are subject to the provisions of Title 6, Official Compilation of Codes, rules and regulations of the State of New York (NYCRR), section 227.3. This regulation is part of the federally-approved State implementation plan for the air quality control region in which the source is located. The order requires that, on or before May 1, 1978, the source shall complete engineering and design work, obtain the necessary corporate approvals for expenditures, and place its orders for pollution control equipment. By June 1, 1978 the source shall apply for the necessary State permits to construct and operate, and by October 1, 1978 the source shall commence construction. By June 30, 1979, the source shall complete construction of the pollution control equipment. The source has consented to the issuance of the order and to its terms, and it has satisfied those increments of progress which have fallen due as of this date.

The purpose of this notice is to invite public comment on EPA's proposed approval of this order as a DCO. If approved, the order would constitute an addition to the New York State implementation plan for the purposes of Sections 110 ("Implementation Plans"), 304 ("Citizen Suits"), and 307 ("General Provisions Relating to Administrative Proceedings and Judicial Review") of the act. 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 order in 40 CFR Part 65. The provisions of 40 CFR Part 65 will be promulgated by EPA soon, and will contain the procedures for EPA's issuance, approval, or disapproval of an 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.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the requirements of 6 NYCRR Part 227, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the act. EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

This Agency believes that the order does satisfy the applicable requirements of section 113(d), and therefore proposes to approve it as a delayed compliance order. If the order is approved, source compliance with its terms would preclude further EPA enforcement against it for violation of 6 NYCRR Part 227 during the period the order is in effect (so long as the source complies with terms). Enforcement against the source under the citizen suit provision of the act (section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether EPA should approve the order as a delayed compliance order. Final action on this proposal will be published in the FEDERAL REGISTER.

Dated: June 30, 1978.

ECKARDT C. BECK,
Regional Administrator, Environmental Protection Agency, Region II.

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DELAYED COMPLIANCE ORDER

[File No. 4157]

In the matter of the alleged violation of 6 NYCRR section 227.3 by: The Boise Cascade Corp., Latex Fiber Products, Beaver Falls, Lewis (County), respondent.

Whereas:

1. The Environmental Conservation Law ("ECL") authorizes the Department of Environmental Conservation ("Department") to promulgate rules and regulations concerning air pollution and the operation of stationary combustion operations (ECL sec. 19-0301). Pursuant to this authority, the Department has promulgated 6 NYCRR sec. 227.3.

2. 6 NYCRR section 227.3 provides that, with certain exceptions not here applicable, no person may cause or allow to be emitted into the outdoor atmosphere from any stationary combustion installation burning coal, particulates in excess of the emission rates specified in table 1 of this section.

3. Respondent owns and operates a coal-burning stationary combustion installation, a boiler which produces steam for respondent's papermaking machines, at its plant located in Beaver Falls, N.Y.

4. This installation uses a spreader stoker, and emits particulates at a rate which exceeds the rate allowed in table 1, note "c," for installations with spreader stokers (0.60 pounds per million Btu input), as determined by two tests conducted by respondent (April 16 and 17, 1975; April 26, 1977) and two tests conducted by the Department (September 23, 1975; December 8, 9, 1975). Respondent thus has violated and is violating 6 NYCRR section 227.3, and article 19 of the ECL.

5. Respondent has publicized notice of the contents of this order with an opportunity for public hearing, as required by the Federal Clean Air Act, as amended, and regulations promulgated thereunder. This notice was published in the Lowville "Journal and Republican," the local newspaper, on December 21, 1977. No comment was received after 30 days; accordingly, it has been determined that there is not sufficient interest expressed to hold a hearing.

6. Respondent hereby waives its right to an administrative hearing as provided by ECL section 19-0505 et seq., and agrees to be bound by this order.

Now therefore, having considered this matter and being duly advised: *It is ordered*, That:

I. Upon receipt of a conformed copy of this order, respondent will undertake an air pollution abatement program according to the following schedule:

By May 1, 1978: Complete engineering, develop installation costs and equipment costs, obtain corporate approval for expenditures, and place order for dust collector equipment and installation-related materials.

By June 1, 1978: Complete and submit an application for a New York State permit to construct or modify a source of air contamination.

By October 1, 1978: Commence construction.

By June 30, 1979: Complete installation, and achieve operational levels, and thereafter operate the said stationary combustion installation in compliance with article 19 of the ECL and applicable regulations promulgated thereunder.

This program has been determined by the Department to require respondent to achieve compliance with 6 NYCRR section 227.3 as expeditiously as possible.

No change in emissions is to be expected until the control equipment is installed. Accordingly, no monitoring by respondent is required in the above compliance schedule. The Department will require stack tests, pursuant to 6 NYCRR section 202, at an appropriate time after installation of equipment is completed.

II. Both before and after the date of this order, noncompliance with the applicable particulate emission rate given in table I of 6 NYCRR section 227.3 constitutes a continuing violation of 6 NYCRR section 227.3 and article 19 of the ECL; *Provided, however*, That no action for penalties or other re-

medial work for such violation shall be instituted by the Department, or the U.S. Environmental Protection Agency, so long as respondent complies with the terms of this order, and completes the air pollution abatement program described in paragraph I hereof.

III. To insure compliance with this order, the ECL, and rules and regulations thereunder, authorized representatives of the Department shall be permitted access to respondent's premises in order to make inspections.

IV. If respondent cannot comply with the schedule set forth in paragraph I hereof for any reason other than negligence or willful misconduct on the part of respondent, it shall apply in writing to the Commissioner within 30 days after it obtains knowledge of such reason for an extension or a modification of such schedule.

In the event respondent cannot comply with the schedule stated in paragraph I hereof by July 1, 1979, respondent shall be subject to the levying by the Commissioner or by the U.S. Environmental Protection Agency of a noncompliance penalty as required by section 120 of the Federal Clean Air Act, as amended, and regulations promulgated thereunder.

V. Until the completion of the installation of the equipment described in paragraph I hereof, respondent will operate its boiler, insofar as possible, to comply as nearly as possible with the standards established in 6 NYCRR section 227.3.

VI. Respondent shall submit quarterly reports to the Regional Air Quality Engineer, region 6, on the first day of each quarter, commencing the quarter after service of a conformed copy of this order upon respondent, describing the actions taken by respondent to comply with this order and the current status of its air pollution abatement program. Such reporting shall continue until respondent shall have complied fully with the terms of this order.

VII. No change in this order shall be effective except as set forth in a written order of the Commissioner: (a) Upon written application by respondent and with specific justification for the reflief sought, or (b) upon the Commissioner's own findings after an opportunity to be heard has been given to the respondent, or (c) pursuant to the summary abatement provisions of the ECL.

VIII. This order shall be deemed to bind respondent, his agents, servants, employees, successors, grantees, and assigns.

Dated: Watertown, N.Y., February 24, 1978.

PETER A. A. BERLE,
Commissioner, New York State Department of Environmental Conservation.

By: JOHN E. WILSON,
Regional Director, Region 6.

U.S. Environmental Protection Agency.

By: ——————.
Date: ——————.
To: Mr. R. P. Langdon, Chief Engineer, Boise Cascade Specialty Paperboard Division, Latex Fiber Products, Beaver Falls, N.Y. 13305.

SAMUEL R. PHILLIPS,
Boise Cascade, General Manager.

Dated: February 16, 1978.

Corporate acknowledgement: State of New York, County of Lewis.

On this 16th day of February 1978, before me personally came Samuel R. Phillips to me known, who being by me duly sworn, did depose and say that he resides at Beaver Falls, N.Y., and that he is the general manager of Boise Cascade, Latex Fiber Products, the corporation described in and which executed the foregoing instrument; and that he signed his name as authorized by said corporation.

DINAH L. YOUSEY,
Notary Public.

[FR Doc. 78-21154 Filed 7-31-78; 8:45 am]

[6560-01]

[40 CFR Part 65]

[FRL 935-6; Docket Nos. 80165, 80166, 80167, 80169, 80170 and 80171]

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

Proposed Delayed Compliance Orders for Six Bulk Gasoline Facilities in New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes the issuance of administrative orders to operators of six gasoline bulk plants and gasoline terminal facilities in the State of New Jersey so as to expeditiously bring these facilities into compliance with regulations governing the control of hydrocarbon vapors created during gasoline transfers. These regulations are a part of the federally approved New Jersey implementation plan. The orders in this package all establish dates for final compliance in the fall of 1978, with the latest date being December 15, 1978. If the orders are issued by EPA, they would insulate the operators of the affected bulk gasoline facilities from further Federal enforcement action for violations of the regulations covered by the orders during the period that the orders are in effect and the facilities are complying with their terms. Citizen enforcement actions would be similarly precluded. 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 orders.

DATES: Written comments must be received on or before August 31, 1978, and requests for a public hearing must be received on or before August 16, 1978. All requests for a public hearing should be accompanied by a statement of 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.

ADDRESSES: Comments and requests for a public hearing should be submitted to: Meyer Scolnick, Director, Enforcement Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, N.Y. 10007. Material supporting the order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at: U.S. Environmental Protection Agency, General Enforcement Branch, Room 437, 26 Federal Plaza, New York, N.Y. 10007.

FOR FURTHER INFORMATION CONTACT:

William J. Friedman, Attorney, U.S. Environmental Protection Agency, General Enforcement Branch, 26 Federal Plaza, New York, N.Y. 10007, telephone No. 212-264-4940.

SUPPLEMENTARY INFORMATION: EPA regulations, codified as § 52.1595 and 52.1598 of title 40 of the Code of Federal Regulations (40 CFR 52.1595 and 52.1598), cover the transfer of gasoline from one vessel or storage tank to another in the New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia interstate air quality control regions, and are part of the New Jersey State implementation plan ("SIP") as defined in section 110(d) of the act. These regulations require that facilities utilized for the filling of gasoline-delivery vessels must employ a vapor control system so that the loading and unloading of gasoline is accomplished in such a manner that all displaced vapors and air are vented only to a vapor collection system, and so that these displaced vapors and air are then directed to a vapor disposal system. The use of these procedures must prevent release to the atmosphere of no less than 90 percent by weight of organic compounds in the vapors and gases displaced during any loading or unloading operation.

This action covers six companies (hereinafter "respondents") whose gasoline storage facilities in the State of New Jersey are not in compliance with 40 CFR 52.1595 and or 52.1598. EPA, region II, has determined that it is reasonable to establish compliance schedules which will allow these respondents additional time in which to install vapor-control systems at their facilities, but which will require compliance with the above-cited regulations as expeditiously as is practicable. EPA has embodied these compliance schedules in orders which have been consented to by the respondents. Respondents have agreed to meet increments of these orders during the period of this informal rulemaking.

This Agency believes that the proposed orders satisfy the applicable requirements of section 113(d) of the act. Pursuant to section 113(d)(1) of the act, notice to the State of New Jersey 30 days prior to issuance of the orders is being provided. If these orders are issued, compliance by respondents with the terms of the orders would preclude further EPA enforcement against respondents for violation of the regulations covered by the orders during the periods in which the orders are in effect. Enforcement against respondents under the citizen suit provisions of the act (section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether EPA should issue the orders. Testimony given at any public hearing concerning the orders 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 orders 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 an order 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.

(42 U.S.C. 7413 and 7601.)

Dated: July 6, 1978.

ECKARDT C. BECK,
Regional Administrator,
Region II.

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

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding § 65.350 to read as follows:

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

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION II

CONSENT ORDER—MOORE BROS. OIL CO., INC. (MAHWAH, N.J.)

[Index No. 80165]

This order is issued this date pursuant to section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. ("the act"). The order contains a schedule for compliance, interim requirements, and reporting requirements. Public notice, opportunity for a public hearing, and 30 days notice to the State of New Jersey have been provided pursuant to section 113(d)(1) of the act.

FINDINGS

Regulations of the U.S. Environmental Protection Agency ("EPA"), codified as §§ 52.1595 and 52.1598 of title 40 of the Code of Federal Regulations (40 CFR 52.1595 and 52.1598), cover the transfer of gasoline from one vessel or storage tank to another in the New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia interstate air quality control regions, and are part of the New Jersey State implementation plan ("SIP") as defined in section 110(d) of the act. These regulations require that facilities utilized for the filling of gasoline-delivery vessels and having a daily throughput of 20,000 gallons of gasoline or less (commonly called "small bulk plants") have a vapor control system in operation no later than May 31, 1977, so as to prevent release to the atmosphere of no less than 90 percent by weight of organic compounds in the vapors and gases displaced during any loading or unloading operation.

Moore Bros. Oil Co., Inc. (hereinafter "respondent"), did not install the required vapor-control system at its small bulk plant at Mahwah, N.J. ("the subject facility"), by May 31, 1977, and has not installed such a system as of the date of this order. Thus, respondent, in loading and unloading gasoline at the subject facility, is in violation of the requirements of 40 CFR 52.1595 and 52.1598.

Pursuant to respondent's request, EPA, Region II, has determined that it is reasonable to establish a compliance schedule which will allow respondent additional time in which to install a vapor-control system at the subject facility, but which will require compliance with the above-cited regulations as expeditiously as is practicable.

Respondent acknowledges that the subject facility is presently in violation of the requirements of 40 CFR 52.1595 and 52.1598. Respondent explicitly waives both the notification requirement and the 30-day waiting period embodied in section 113(a)(1) of the act. Furthermore, respondent consents to the issuance of this order, and to its terms. In accordance with the provisions of title 5, section 553 of the United States Code, this order will become effective immediately upon publication in the FEDERAL REGISTER of final rulemaking incorporating the terms of said order, inasmuch as respondent will by then have had substantial actual prior notice of the substantive terms of the order.

ORDER

Based upon the foregoing, after consideration of public comment, and pursuant to section 113(d) of the act; *It is hereby ordered:*

I. That respondent install the equipment necessary to bring the subject facility into compliance with the requirements of 40 CFR 52.1595 and 52.1598 in accordance with the following schedule:

(a) By no later than June 15, 1978, the necessary contracts for the installation of a vapor-control system shall be signed.

(b) By no later than August 1, 1978, onsite construction of a vapor-control system shall be completed.

(c) By no later than September 1, 1978, and at all times thereafter, all gasoline loading and unloading operations at the subject facility shall be performed in full compliance with the provisions of 40 CFR 52.1595 and 52.1598.

II. That no later than 5 days after any date specified in paragraph I, above for achievement of any incremental step (including final compliance), respondent shall notify EPA in writing of its status of compliance with respect to the said requirement. If compliance with any incremental step is not achieved in a timely manner, the notification required by this paragraph shall provide a full explanation of such noncompliance, which explanation shall not be held to excuse the noncompliance. If delay is anticipated in meeting any requirement of this order, respondent shall immediately notify EPA in writing of the aniticipated delay and the reasons therefor. Notification to EPA of any anticipated delay shall not be held to excuse the delay.

All submittals and notifications to EPA pursuant to this order shall be made to Mr. Gerald DeGaetano, Air and Environmental Applications Section, Status of Compliance Branch, Enforcement Division, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, N.Y. 10007.

III. Beginning immediately upon the effective date of this order, respondent shall comply with the following requirements, which are determined to be the most reasonable and practicable means of minimizing pollutant emissions from the subject facility during the interim period until final compliance with the requirements of 40 CFR 52.1595 and 52.1598 is achieved:

1. Respondent shall monitor its operating procedures during the loading and unloading of gasoline so as to prevent to the greatest extent possible the release to the atmosphere of unnecessary emissions of organic compounds in vapors and gases created during any gasoline transfer operation.

2. If respondent makes use of top-loading procedures for the filling of gasoline delivery vessels, respondent shall use a loading arm with a loading spout extended to within 6 inches of the bottom of the tank being filled. During the top-loading operation, the loading rate shall be decreased until the bottom of the spout is covered with product.

3. Respondent shall take the action necessary to assure that during loading operations the loading arm is completely drained of liquid product before removal from the delivery vessel, so as to minimize the spillage of gasoline. Respondent shall also take all other actions necessary to minimize gasoline spillage.

4. Respondent shall take measures to assure that dome covers and other potential points of emission on all vessels loading and unloading at its facility are closed and sealed during the transfer operation, unless the dome cover must be open to allow the insertion of any loading or unloading apparatus into the vessel, or unless safety considerations require that an emission point be open for the purpose of venting.

5. Whenever possible, respondent shall make arrangements to have vapor-laden delivery vessels bypass its small bulk plant and refill only at facilities equipped with a vapor recovery system or the equivalent.

IV. Nothing herein shall affect the responsibility of respondent to comply with State or local regulations. This order shall be terminated in accordance with section 113(d)(8) of the act if the Administrator (or his delegate) determines on the record, after notice and hearing, that an inability to

comply with 40 CFR 52.1595 and 52.1598 no longer exists.

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

(a) Enforcement of such requirement pursuant to sections 113 (a), (b), or (c) of the act, including possible judicial action for injunction and/or civil penalties, and, in appropriate cases, criminal prosecution.

(b) Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of 40 CFR 52.1595 and 52.1598 in accordance with the preceding paragraph.

(c) If such violation continues beyond July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the act, including the assessment of a noncompliance penalty.

So ordered, effective immediately.

Dated: ——————————.

DOUGLAS COSTLE,
Administrator, U.S.
Environmental Protection Agency.

CONSENT

W. E. Sheriff, having full authority to represent Moore Bros. Oil Co., Inc., in these proceedings, has read the foregoing order, believes it to be reasonable, and therefore consents to both its issuance and to its terms. Furthermore, Mr. Jacklin acknowledges that the Mahway bulk plant of the Moore Bros. Oil Co., Inc., is presently in violation of the requirements of 40 CFR 52.1595 and 52.1598. He explicitly waives both the notification requirement and the 30-day waiting period embodied in section 113(a) of the act, recognizes that Moore Bros. Oil Co., Inc., is subject to all remedies provided in section 113 of the act for failure to comply with the terms of the foregoing order, and explicitly waives any and all rights under any provision of law to challenge this order.

Dated: March 30, 1978.

W. E. SHERIFF,
President and
Chief Executive Officer.

For Moore Bros. Oil Co., Inc.

RALPH JACKLIN,
Area Vice President.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION II

CONSENT ORDER—TAYLOR OIL CO., INC.
(SOMERVILLE, N.J.)

[Index No. 80166]

This order is issued this date pursuant to section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. ("the act"). The order contains a schedule for compliance, interim requirements, and reporting requirements. Public notice, opportunity for a public hearing, and 30 days notice to the State of New Jersey have been provided pursuant to section 113(d)(1) of the act.

FINDINGS

Regulations of the U.S. Environmental Protection Agency ("EPA"), codified as §§ 52.1595 and 52.1598 of title 40 of the Code of Federal Regulations (40 CFR 52.1595 and 52.1598), cover the transfer of gasoline from one vessel or storage tank to another in the New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia interstate air quality control regions, and are part of the New Jersey State implementation plan ("SIP") as defined in section 110(d) of the act. These regulations require that facilities utilized for the filling of gasoline-delivery vessels and having a daily throughput of 20,000 gallons of gasoline or less (commonly called "small bulk plants") have a vapor control system in operation no later than May 31, 1977, so as to prevent release to the atmosphere of no less than 90 percent by weight of organic compounds in the vapors and gases displaced during any loading or unloading operation.

The Taylor Oil Co., Inc. (hereinafter, "respondent"), did not install the required vapor-control system at its small bulk plant at Somerville, N.J. ("the subject facility"), by May 31, 1977, and has not installed such a system as of the date of this order. Thus, respondent, in loading and unloading gasoline at the subject facility, is in violation of the requirements of 40 CFR 52.1595 and 52.1598.

Pursuant to respondent's request, EPA, Region II, has determined that it is reasonable to establish a compliance schedule which will allow respondent additional time in which to install a vapor-control system at the subject facility, but which will require compliance with the above-cited regulations as expeditiously as is practicable.

Respondent acknowledges that the subject facility is presently in violation of the requirements of 40 CFR 52.1595 and 52.1598. Respondent explicitly waives both the notification requirement and the 30-day waiting period embodied in section 113(a)(1) of the act. Furthermore, respondent consents to the issuance of this order, and to its terms. In accordance with the provisions of title 5, section 553 of the United States Code, this order will become effective immediately upon publication in the FEDERAL REGISTER of final rulemaking incorporating the terms of said order, inasmuch as respondent will by then have had substantial actual prior notice of the substantive terms of the order.

Based upon the foregoing, after consideration of public comment, and pursuant to section 113(d) of the act: *It is hereby ordered:*

I. That respondent install the equipment necessary to bring the subject facility into compliance with the requirements of 40 CFR 52.1595 and 52.1598 in accordance with the following schedule:

(a) By no later than July 1, 1978, the necessary contracts for the installation of a vapor-control system shall be signed.

(b) By no later than September 1, 1978, onsite construction of a vapor-control system shall be completed.

(c) By no later than October 1, 1978, and at all times thereafter, all gasoline loading and unloading operations at the subject facility shall be performed in full compliance with the provisions of 40 CFR 52.1595 and 52.1598.

Provided that, should respondent determine (and so notify EPA) by July 1, 1978, that it will not utilize the subject facility for the storage of gasoline after December 1, 1978, then the above-listed compliance schedule shall not apply, and the subject facility may operate without the installation of the controls required in said schedule (but in conformity with section III below) until the date that the subject facility ceases to store gasoline, which date shall in no event be later than December 1, 1978. Should respondent reduce its gasoline throughput at the subject facility to less than 4,000 gallons per day by no later than July 1, 1978 (and so notify EPA), then the above-listed compliance schedule shall also not apply, and the subject facility may operate without the installation of the controls required in said schedule (but in conformity with section III below). If this latter option is chosen, then respondent at all times after July 1, 1978, shall insure that the daily gasoline throughput at the subject facility is less than 4,000 gallons per day unless and until such time as respondent shall install a vapor-control system at this location so as to bring it into compliance with the requirements of 40 CFR 52.1595 and 52.1598.

II. That no later than 5 days after any date specified in paragraph I, above for achievement of any incremental step (including final compliance), respondent shall notify EPA in writing of its status of compliance with respect to the said requirement. If compliance with any incremental step is not achieved in a timely manner, the notification required by this paragraph shall provide a full explanation of such noncompliance, which explanation shall not be held to excuse the noncompliance. If delay is anticipated in meeting any requirement of this order, respondent shall immediately notify EPA in writing of the anticipated delay and the reasons therefor. Notification to EPA of any anticipated delay shall not be held to excuse the delay.

All submittals and notifications to EPA pursuant to this order shall be made to Mr. Gerald DeGaetano, Air and Environmental Applications Section, Status of Compliance Branch, Enforcement Division, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, N.Y. 10007.

III. Beginning immediately upon the effective date of this order, respondent shall comply with the following requirements, which are determined to be the most reasonable and practicable means of minimizing pollutant emissions from the subject facility during the interim period until final compliance with the requirements of 40 CFR 52.1595 and 52.1598 is achieved:

1. Respondent shall monitor its operating procedures during the loading and unloading of gasoline so as to prevent to the greatest extent possible the release to the atmosphere of unnecessary emissions of organic compounds in vapors and gases created during any gasoline transfer operation.

2. If respondent makes use of top-loading procedures for the filling of gasoline delivery vessels, respondent shall use a loading arm with a loading spout extended to within 6 inches of the bottom of the tank being filled. During the top-loading operation, the loading rate shall be decreased until the bottom of the spout is covered with product.

3. Respondent shall take the action necessary to assure that during loading operations the loading arm is completely drained of liquid product before removal from the delivery vessel, so as to minimize the spillage of gasoline. Respondent shall also take all other actions necessary to minimize gasoline spillage.

4. Respondent shall take measures to assure that dome covers and other potential points of emission on all vessels loading and unloading at its facility are closed and sealed during the transfer operation, unless the dome cover must be open to allow the insertion of any loading or unloading appa-

ratus into the vessel, or unless safety considerations require that an emission point be open for the purpose of venting.

5. Whenever possible, respondent shall make arrangements to have vapor-laden delivery vessels bypass its small bulk plant and refill only at facilities equipped with a vapor recovery system or the equivalent.

IV. Nothing herein shall affect the responsibility of respondent to comply with State or local regulations. This order shall be terminated in accordance with section 113(d)(8) of the act if the Administrator (or his delegate) determines on the record, after notice and hearing, that an inability to comply with 40 CFR 52.1595 and 52.1598 no longer exists.

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

(a) Enforcement of such requirement pursuant to sections 113 (a), (b), or (c) of the act, including possible judicial action for injunction and/or civil penalties, and, in appropriate cases, criminal prosecution.

(b) Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of 40 CFR 52.1595 and 52.1598 in accordance with the preceding paragraph.

(c) If such violation continues beyond July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the act, including the assessment of a noncompliance penalty.

So ordered, effective immediately.

Dated: ————————.

DOUGLAS COSTLE,
Administrator, U.S.
Environmental Protection Agency.

CONSENT

George F. Taylor, having full authority to represent the Taylor Oil Co., Inc. in these proceedings, has read the foregoing order, believes it to be reasonable, and therefore consents to both its issuance and to its terms. Furthermore, Mr. Taylor acknowledges that the Somerville bulk plant of the Taylor Oil Co., Inc. is presently in violation of the requirements of 40 CFR 52.1595 and 52.1598. He explicitly waives both the notification requirement and the 30 day waiting period embodied in section 113(a) of the act, recognizes that the Taylor Oil Co., Inc. is subject to all remedies provided in section 113 of the act for failure to comply with the terms of the foregoing order, and explicitly waives any and all rights under any provision of law to challenge this order.

Dated: May 1, 1978.

(For Taylor Oil Co., Inc.)

GEORGE F. TAYLOR.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION II

CONSENT ORDER—GLOBE PETROLEUM, INC.
(RED BANK, N.J.)

[Index No. 80167]

This order is issued this date pursuant to section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. ("the act"). The order contains a schedule for compliance, interim requirements, and reporting requirements. Public notice, opportunity for a public hearing, and 30 days notice to the State of New Jersey have been provided pursuant to section 113(d)(1) of the act.

FINDINGS

Regulations of the U.S. Environmental Protection Agency ("EPA"), codified as §§ 52.1595 and 52.1598 of title 40 of the Code of Federal Regulations (40 CFR 52.1595 and 52.1598), cover the transfer of gasoline from one vessel or storage tank to another in the New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia interstate air quality control regions, and are part of the New Jersey State implementation plan ("SIP") as defined in section 110(d) of the act. These regulations require that facilities utilized for the filling of gasoline delivery vessels and having a daily throughput of 20,000 gallons of gasoline or less (commonly called "small bulk plants") have a vapor control system in operation no later than May 31, 1977 so as to prevent release to the atmosphere of no less than 90 percent by weight of organic compounds in the vapors and gases displaced during any loading or unloading operation.

Globe Petroleum, Inc. (hereinafter, "respondent") did not install the required vapor-control system at its small bulk plant at Red Bank, N.J. ("the subject facility") by May 31, 1977, and has not installed such a system as of the date of this order. Thus, respondent, in loading and unloading gasoline at the subject facility, is in violation of the requirements of 40 CFR 52.1595 and 52.1598.

Pursuant to respondent's request, EPA, region II has determined that it is reasonable to establish a compliance schedule which will allow respondent additional time in which to install a vapor-control system at the subject facility, but which will require compliance with the above-cited regulations as expeditiously as is practicable.

Respondent acknowledges that the subject facility is presently in violation of the requirements of 40 CFR 52.1595 and 52.1598. Respondent explicitly waives both the notification requirement and the 30 day waiting period embodied in section 113(a)(1) of the act. Furthermore, respondent consents to the issuance of this order, and to its terms. In accordance with the provisions of title 5, section 553 of the United States Code, this order will become effective immediately upon publication in the FEDERAL REGISTER of final rulemaking incorporating the terms of said order, inasmuch as respondent will by then have had substantial actual prior notice of the substantive terms of the order.

ORDER

Based upon the foregoing, after consideration of public comment, and pursuant to section 113(d) of the act: *It is hereby ordered:*

I. That respondent install the equipment necessary to bring the subject facility into compliance with the requirements of 40 CFR 52.1595 and 52.1598 in accordance with the following schedule:

(a) By no later than June 15, 1978, the necessary contracts for the installation of a vapor-control system shall be signed.

(b) By no later than August 1, 1978, onsite construction of a vapor-control system shall be completed.

(c) By no later than September 1, 1978, and at all times thereafter, all gasoline loading and unloading operations at the subject facility shall be performed in full compliance with the provisions of 40 CFR 52.1595 and 52.1598.

II. That no later than 5 days after any date specified in paragraph I, above for achievement of any incremental step (including final compliance), respondent shall notify EPA in writing of its status of compliance with respect to the said requirement. If compliance with any incremental step is not achieved in a timely manner, the notification required by this paragraph shall provide a full explanation of such noncompliance, which explanation shall not be held to excuse the noncompliance. If delay is anticipated in meeting any requirement of this order, respondent shall immediately notify EPA in writing of the anticipated delay and the reasons therefor. Notification to EPA of any anticipated delay shall not be held to excuse the delay.

All submittals and notifications to EPA pursuant to this order shall be made to Mr. Gerald DeGaetano, Air and Environmental Applications Section, Status of Compliance Branch, Enforcement Division, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, N.Y. 10007.

III. Beginning immediately upon the effective date of this order, respondent shall comply with the following requirements, which are determined to be the most reasonable and practicable means of minimizing pollutant emissions from the subject facility during the interim period until final compliance with the requirements of 40 CFR 52.1595 and 52.1598 is achieved:

1. Respondent shall monitor its operating procedures during the loading and unloading of gasoline so as to prevent to the greatest extent possible the release to the atmosphere of unnecessary emissions of organic compounds in vapors and gases created during any gasoline transfer operation.

2. If respondent makes use of top-loading procedures for the filling of gasoline delivery vessels, respondent shall use a loading arm with a loading spout extended to within 6 inches of the bottom of the tank being filled. During the top loading operation, the loading rate shall be decreased until the bottom of the spout is covered with product.

3. Respondent shall take the action necessary to assure that during loading operations the loading arm is completely drained of liquid product before removal from the delivery vessel, so as to minimize the spillage of gasoline. Respondent shall also take all other action necessary to minimize gasoline spillage.

4. Respondent shall take measures to assure that dome covers and other potential points of emission on all vessels loading and unloading at its facility are closed and sealed during the transfer operation, unless the dome cover must be open to allow the insertion of any loading or unloading apparatus into the vessel, or unless safety considerations require than an emission point be open for the purpose of venting.

5. Whenever possible, respondent shall make arrangements to have vapor-laden delivery vessels bypass its small bulk plant and refill only at facilities equipped with a vapor recovery system or the equivalent.

IV. Nothing herein shall affect the responsibility of respondent to comply with State or local regulations. This order shall be terminated in accordance with section 113(d)(8) of the act if the administrator (or his delegate) determines on the record, after notice and hearing, that an inability to comply with 40 CFR 52.1595 and 52.1598 no longer exists.

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

(a) Enforcement of such requirement pursuant to sections 113 (a), (b), or (c) of the act, including possible judicial action for injunction and/or civil penalties, and, in appropriate cases, criminal prosecution.

(b) Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of 40 CFR 52.1595 and 52.1598 in accordance with the preceding paragraph.

(c) If such violation continues beyond July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the act, including the assessment of a noncompliance penalty.

So ordered, effective immediately.

Dated: ——————.

DOUGLAS COSTLE,
Administrator, U.S.
Environmental Protection Agency.

CONSENT

Ralph Mazzucca, president, having full authority to represent Globe Petroleum, Inc. in these proceedings, has read the foregoing order, believes it to be reasonable, and therefore consents to both its issuance and to its terms. Furthermore, Mr. Mazzucca acknowledges that the Red Bank bulk plant of Globe Petroleum, Inc. is presently in violation of the requirements of 40 CFR 52.1595 and 52.1598. He explicitly waives both the notification requirement and the 30 day waiting period embodied in section 113(a) of the act, recognizes that Globe Petroleum, Inc. is subject to all remedies provided in section 113 of the act for failure to comply with the terms of the foregoing order, and explicitly waives any and all rights under any provision of law to challenge this order.

March 20, 1978.

RALPH MAZZUCCA,
President.
RALPH MAZZUCCA,
For Globe Petroleum, Inc.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION II

CONSENT ORDER

[Index No. 80169]

Andrews Oil Co. (Salem, N.J.).

This order is issued this date pursuant to section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. ("the act"). The order contains a schedule for compliance, interim requirements, and reporting requirements. Public notice, opportunity for a public hearing, and 30 days notice to the State of New Jersey have been provided pursuant to section 113(d)(1) of the act.

FINDINGS

Regulations of the U.S. Environmental Protection Agency ("EPA"), codified as §§ 52.1595 and 52.1598 of title 40 of the Code of Federal Regulations (40 CFR 52.1595 and 52.1598), cover the transfer of gasoline from one vessel or storage tank to another in the New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia interstate air quality control regions, and are part of the New Jersey State implementation plan ("SIP") as defined in section 110(d) of the act. These regulations require that facilities utilized for the filling of gasoline delivery vessels and having a daily throughput of 20,000 gallons of gasoline or less (commonly called "small bulk plants") have a vapor control system in operation no later than May 31, 1977 so as to prevent release to the atmosphere of no less than 90 percent by weight of organic compounds in the vapors and gases displaced during any loading or unloading operation.

The Andrews Oil Co. (hereinafter, "respondent") did not install the required vapor-control system at its small bulk plant at Salem, N.J. ("the subject facility") by May 31, 1977, and has not installed such a system as of the date of this order. Thus, respondent, in loading and unloading gasoline at the subject facility, is in violation of the requirements of 40 CFR 52.1595 and 52.1598.

Pursuant to respondent's request, EPA, region II has determined that it is reasonable to establish a compliance schedule which will allow respondent additional time in which to install a vapor-control system at the subject facility, but which will require compliance with the above-cited regulations as expeditiously as is practicable.

Respondent acknowledges that the subject facility is presently in violation of the requirements of 40 CFR 52.1595 and 52.1598. Respondent explicitly waives both the notification requirement and the 30 day waiting period embodied in section 113(a)(1) of the act. Furthermore, respondent consents to the issuance of this order, and to its terms. In accordance with the provisions of title 5, section 553 of the United States Code, this order will become effective immediately upon publication in the FEDERAL REGISTER of final rulemaking incorporating the terms of said order, inasmuch as respondent will by then have had substantial actual prior notice of the substantive terms of the order.

ORDER

Based upon the foregoing, after consideration of public comment, and pursuant to section 113(d) of the act: *It is hereby ordered:*

I. That respondent install the equipment necessary to bring the subject facility into compliance with the requirements of 40 CFR 52.1595 and 52.1598 in accordance with the following schedule:

(a) By no later than July 1, 1978, the necessary contracts for the installation of a vapor-control system shall be signed.

(b) By no later than September 1, 1978, onsite construction of a vapor-control system shall be completed.

(c) By no later than October 1, 1978, and at all times thereafter, all gasoline loading and unloading operations at the subject facility shall be performed in full compliance with the provisions of 40 CFR 52.1595 and 52.1598.

Provided that, should respondent notify EPA, by no later than July 1, 1978, that it will not utilize the subject facility for the storage of gasoline after October 1, 1978, then the above-listed compliance schedule shall not apply, and the subject facility may operate without the installation of the controls required in said schedule (but in conformity with section III below) until the date the subject facility ceases to store gasoline, which date shall in no event be later than October 1, 1978.

II. That no later than 5 days after any date specified in paragraph I, above for achievement of any incremental step (including final compliance), respondent shall notify EPA in writing of its status of compliance with respect to the said requirement. If compliance with any incremental step is not achieved in a timely manner, the notification required by this paragraph shall provide a full explanation of such noncompliance, which explanation shall not be held to excuse the noncompliance. If delay is anticipated in meeting any requirement of this order, respondent shall immediately notify EPA in writing of the anticipated delay and the reasons therefor. Notification to EPA of any anticipated delay shall not be held to excuse the delay.

All submittals and notifications to EPA pursuant to this order shall be made to Mr. Gerald DeGaetano, Air and Environmental Applications Section, Status of Compliance Branch, Enforcement Division, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, N.Y. 10007.

III. Beginning immediately upon the effective date of this order, respondent shall comply with the following requirements, which are determined to be the most reasonable and practicable means of minimizing pollutant emissions from the subject facility during the interim period until final compliance with the requirements of 40 CFR 52.1595 and 52.1598 is achieved:

1. Respondent shall monitor its operating procedures during the loading and unloading of gasoline so as to prevent to the greatest extent possible the release to the atmosphere of unnecessary emissions of organic compounds in vapors and gases created during any gasoline transfer operation.

2. If respondent makes use of top-loading procedures for the filling of gasoline delivery vessels, respondent shall use a loading arm with a loading spout extended to within 6 inches of the bottom of the tank being filled. During the top loading operation, the loading rate shall be decreased until the bottom of the spout is covered with product.

3. Respondent shall take the action necessary to assure that during loading operations the loading arm is completely drained of liquid product before removal from the delivery vessel, so as to minimize the spillage of gasoline. Respondent shall also take all other actions necessary to minimize gasoline spillage.

4. Respondent shall take measures to assure that dome covers and other potential points of emission on all vessels loading and unloading at its facility are closed and sealed during the transfer operation, unless the dome cover must be open to allow the insertion of any loading or unloading apparatus into the vessel, or unless safety considerations require that an emission point be open for the purpose of venting.

5. Whenever possible, respondent shall make arrangements to have vapor-laden delivery vessels bypass its small bulk plant and refill only at facilities equipped with a vapor recovery system or the equivalent.

IV. Nothing herein shall affect the responsibility of respondent to comply with State or local regulations. This order shall be terminated in accordance with section 113(d)(8) of the act if the Administrator (or his delegate) determines on the record, after notice and hearing, that an inability to comply with 40 CFR 52.1595 and 52.1598 no longer exists.

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

(a) Enforcement of such requirement pursuant to sections 113 (a), (b), or (c) of the

act, including possible judicial action for injunction and/or civil penalties, and, in appropriate cases, criminal prosecution.

(b) Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of 40 CFR 52.1595 and 52.1598 in accordance with the preceding paragraph.

(c) If such violation continues beyond July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the act, including the assessment of a noncompliance penalty.

So ordered, effective immediately.

Dated: ——————.

DOUGLAS COSTLE,
Administrator, U.S. Environmental Protection Agency.

CONSENT

G. G. Andrews, Jr., President, having full authority to represent the Andrews Oil Co. in these proceedings, has read the foregoing order, believes it to be reasonable, and therefore consents to both its issuance and to its terms. Furthermore, Mr. Andrews acknowledges that the Salem bulk plant of the Andrews Oil Co. is presently in violation of the requirements of 40 CFR 52.1595 and 52.1598. He explicitly waives both the notification requirement and the 30 day waiting period embodied in section 113(a) of the act, recognizes that the Andrews Oil Co. is subject to all remedies provided in section 113 of the act for failure to comply with the terms of the foregoing order, and explicitly waives any and all rights under any provision of law to challenge this order.

Dated: March 24, 1978.

G. G. ANDREWS, Jr.,
President.

CARLA H. ANDREWS,
Secretary.

For Andrews Oil Co.

U.S. EVIRONMENTAL PROTECTION AGENCY, REGION II

CONSENT ORDER—AGWAY PETROLEUM CORP., (SYRACUSE, N.Y.)

[Index No. 80170]

This order is issued this date pursuant to section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. ("the act"). The order contains a schedule for compliance, interim requirements, and reporting requirements. Public notice, opportunity for a public hearing, and 30 days notice to the State of New Jersey have been provided pursuant to section 113(d)(1) of the act.

FINDINGS

Regulations of the U.S. Environmental Protection Agency ("EPA"), codified as §§ 52.1595 and 52.1598 of title 40 of the Code of Federal Regulations (40 CFR 52.1595 and 52.1598), cover the transfer of gasoline from one vessel or storage tank to another in the New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia interstate air quality control regions, and are part of the New Jersey State implementation plan ("SIP") as defined in section 110(d) of the act. These regulations require that facilities utilized for the filling of gasoline delivery vessels and having a daily throughput of 20,000 gallons of gasoline or less (commonly called "small bulk plants") have a vapor control system in operation no later than May 31, 1977 so as to prevent release to the atmosphere of no less than 90 percent by weight of organic compounds in the vapors and gases displaced during any loading or unloading operation.

Agway Petroleum Corp. (hereinafter, "respondent") did not install the required vapor-control system at its small bulk plant at Mt. Holly, N.J. ("the subject facility") by May 31, 1977, and has not installed such a system as of the date of this order. Respondent has also not installed such a system on its Chester, Freehold, or Hightstown, N.J. small bulk plants as of this date. Thus, respondent, in loading and unloading gasoline at these four facilities, is in violation of the requirements of 40 CFR 52.1595 and 52.1598.

Pursuant to respondent's request, EPA, Region II has determined that it is reasonable to establish a compliance schedule which will allow respondent additional time in which to install a vapor-control system at the subject facility, but which will require compliance with the above-cited regulations as expeditiously as is practicable. Respondent has agreed to reduce the gasoline throughput at the other above-cited small bulk plants below 4,000 gallons per day, and thus it will not be required to install vapor-control systems at these facilities at this time. EPA has provided in the compliance schedule included herein a date by which gasoline throughput at these facilities must be reduced below 4,000 gallons per day.

Respondent acknowledges that the subject facility is presently in violation of the requirements of 40 CFR 52.1595 and 52.1598. Respondent explicitly waives both the notification requirement and the 30 day waiting period embodied in section 113(a)(1) of the act. Furthermore, respondent consents to the issuance of this order, and to its terms. In accordance with the provisions of Title 5, Section 553 of the United States Code, this order will become effective immediately upon publication in the FEDERAL REGISTER of final rulemaking incorporating the terms of said order, inasmuch as respondent will by then have had substantial actual prior notice of the substantive terms of the order.

ORDER

Based upon the foregoing, after consideration of public comment, and pursuant to section 113(d) of the act; *It is hereby ordered:*

I. That respondent install the equipment necessary to bring the subject facility and its order facilities listed below into compliance with the requirements of 40 CFR 52.1595 and 52.1598 in accordance with the following schedule:

(a) By no later than June 15, 1978, the necessary contracts for the installation of a vapor-control system at the subject facility shall be signed.

(b) By no later than August 1, 1978, onsite contruction of a vapor-control system at the subject facility shall be completed.

(c) By no later than September 1, 1978, and at all times thereafter, all gasoline loading and unloading operations at the subject facility shall be performed in full compliance with the provisions of 40 CFR 52.1595 and 52.1598.

(d) By no later than June 1, 1978, respondent shall reduce the gasoline throughput at its Chester, Freehold and Hightstown, N.J. small bulk plants to a level below 4,000 gallons per day, and at all times thereafter it shall insure that the daily gasoline throughput at each of these facilities is less than 4,000 gallons per day unless and until such time as respondent shall install vapor-control systems at these locations so as to bring them into compliance with the requirements of 40 CFR 52.1595 and 52.1598.

II. That no later than 5 days after any date specified in paragraph I, above for achievement of any incremental step (including final compliance), respondent shall notify EPA in writing of its status of compliance with respect to the said requirement. If compliance with any incremental step is not achieved in a timely manner, the notification required by this paragraph shall provide a full explanation of such noncompliance, which explanation shall not be held to excuse the noncompliance. If delay is anticipated in meeting any requirement of this order, respondent shall immediately notify EPA in writing of the anticipated delay and the reasons therefor. Notification to EPA of any anticipated delay shall not be held to excuse the delay.

All submittals and notifications to EPA pursuant to this order shall be made to Mr. Gerald DeGaetano, Air and Environmental Applications Section, Status of Compliance Branch, Enforcement Division, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, N.Y. 10007

III. Beginning immediately upon the effective date of this order, respondent shall comply with the following requirements, which are determined to be the most reasonable and practicable means of minimizing pollutant emissions from the subject facility during the interim period until final compliance with the requirements of 40 CFR 52.1595 and 52.1598 is achieved:

1. Respondent shall monitor its operating procedures during the loading and unloading of gasoline so as to prevent to the greatest extent possible the release to the atmosphere of unnecessary emissions of organic compounds in vapors and gases created during any gasoline transfer operation.

2. If respondent makes use of top-loading procedures for the filling of gasoline delivery vessels, respondent shall use a loading arm with a loading spout extended to within 6 inches of the bottom of the tank being filled. During the top loading operation, the loading rate shall be decreased until the bottom of the spout is covered with product.

3. Respondent shall take the action necessary to assure that during loading operations the loading arm is completely drained of liquid product before removal from the delivery vessel, so as to minimize the spillage of gasoline. Respondent shall also take all other actions necessary to minimize gasoline spillage.

4. Respondent shall take measures to assure that dome covers and other potential points of emission on all vessels loading and unloading at its facility are closed and sealed during the transfer operation, unless the dome cover must be open to allow the insertion of any loading or unloading apparatus into the vessel, or unless safety considerations require that an emission point be open for the purpose of venting.

5. Whenever possible, respondent shall make arrangements to have vapor-laden delivery vessels bypass its small bulk plant and refill only at facilities equipped with a vapor recovery system or the equivalent.

IV. Nothing herein shall affect the responsibility of respondent to comply with State or local regulations. This order shall be terminated in accordance with section 113(d)(8) of the act if the Administrator (or his delegate) determines on the record, after notice and hearing, that an inability to comply with 40 CFR 52.1595 and 52.1598 no longer exists.

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

(a) Enforcement of such requirement pursuant to sections 113 (a), (b), or (c) of the act, including possible judicial action for injunction and/or civil penalties, and, in appropriate cases, criminal prosecution.

(b) Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of 40 CFR 52.1595 and 52.1598 in accordance with the preceding paragraph.

(c) If such violation continues beyond July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the act, including the assessment of a noncompliance penalty.

So ordered, effective immediately.

Dated:———————.

DOUGLAS COSTLE,
Administrator, U.S.
Environmental Protection Agency.

CONSENT

The undersigned, having full authority to represent Agway Petroleum Corp., in these proceedings, has read the foregoing order, believes it to be reasonable, and therefore consents to both its issuance and to its terms. Furthermore, the undersigned acknowledges that the Mount Holly bulk plant of Agway Petroleum Corp., is presently in violation of the requirements of 40 CFR 52.1595 and 52.1598, as are its Chester, Freehold and Hightstown, N.J. bulk plants. He explicitly waives both the notification requirement and the 30-day waiting period embodied in section 113(a) of the act, recognizes that Agway Petroleum Corp. is subject to all remedies provided in section 113 of the act for failure to comply with the terms of the foregoing order, and explicitly waives any and all rights under any provision of law to challenge this order.

Dated: April 26, 1978.

(For Agway Petroleum Corp.)

E. H. YOUNG,
President.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
REGION II

CONSENT ORDER—TRENTON OIL CO., INC.
(TRENTON, N.J.)

[Index No. 80171]

This order is issued this date pursuant to section 113(d) of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. ("the Act"). The order contains a schedule for compliance, interim requirements, and reporting requirements. Public notice, opportunity for a public hearing, and thirty days notice to the State of New Jersey have been provided pursuant to section 113(d)(1) of the act.

FINDINGS

A regulation of the U.S. Environmental Protection Agency ("EPA"), codified as § 52.1595 of Title 40 of the Code of Federal Regulations (40 CFR 52.1595) covers the transfer of gasoline from loading facilities to mobile non-marine vessels in the New Jersey portions of the New Jersey-New York-Connecticut and Metropolitan Philadelphia interstate air quality control regions, and is part of the New Jersey State implementation plan ("SIP") as defined in section 110(d) of the act. This regulation requires that facilities utilized for the filling of gasoline delivery vessels must employ a vapor recovery system so that the loading of gasoline shall be accomplished in such a manner that all displaced vapors and air are vented only to a vapor collection system, and so that these displaced vapors and air are then directed to a vapor disposal system.

The vapor disposal portion of the vapor recovery system must consist of one of the following:

1. An absorber system or condensation system that processes all vapors and recovers at least 90 percent by weight of the gasoline vapors and gases from the equipment being controlled, or

2. A vapor handling system that directs all vapors to a fuel gas system, or

3. Other equipment of an efficiency equal to or greater than the above-listed equipment, if approved by the Administrator of EPA or his delegate.

The Trenton Oil Co., Inc. (hereinafter "respondent") has not installed the required vapor recovery system at its bulk gasoline facility at Trenton, N.J. as of the date of this order. Thus, respondent, in loading and unloading gasoline at the subject facility, is in violation of the requirements of 40 CFR 52.1595.

Pursuant to respondent's request, EPA, region II has determined that it is reasonable to establish a compliance schedule which will allow respondent additional time in which to install a vapor-recovery system at the subject facility, but which will require compliance with the above-cited regulation as expeditiously as is practicable.

Respondent acknowledges that the subject facility is presently in violation of the requirements of 40 CFR 52.1595. Respondent explicitly waives both the notification requirements and the 30 day waiting period embodied in section 113(a)(1) of the act. Furthermore, respondent consents to the issuance of this order, and to its terms. In accordance with the provisions of Title 5, Section 553 of the United States Code, this order will become effective immediately upon publication in the FEDERAL REGISTER of final rulemaking incorporating the terms of said order, inasmuch as Respondent will by then have had substantial actual prior notice of the substantive terms of the order.

ORDER

Based upon the foregoing, after consideration of public comment, and pursuant to section 113(d) of the act, It is hereby ordered:

I. That respondent install the equipment necessary to bring the subject facility into compliance with the requirements of 40 CFR 52.1595 in accordance with the following schedule:

(a) By no later than September 15, 1978, the necessary contracts for the installation of a vapor recovery or equivalent system shall be signed.

(b) By no later than October 1, 1978, on-site construction of a vapor recovery or equivalent system shall be begun.

(c) By no later than November 15, 1978, on-site construction of a vapor recovery or equivalent system shall be completed.

(d) By no later than December 15, 1978, and at all times thereafter, all gasoline loading operations at the subject facility shall be performed in full compliance with the provisions of 40 CFR 52.1595.

II. That no later than 5 days after any date specified in paragraph I, above for achievement of any incremental step (including final compliance), respondent shall notify EPA in writing of is status of compliance with respect to the said requirement. If compliance with any incremental step is not achieved in a timely manner, the notification required by this paragraph shall provide a full explanation of such noncompliance, which explanation shall not be held to excuse the noncompliance. If delay is anticipated in meeting any requirement of this order, respondent shall immediately notify EPA in writing of the anticipated delay and the reasons therefor. Notification to EPA of any anticipated delay shall not be held to excuse the delay.

All submittals and notifications to EPA pursuant to this order shall be made to Mr. Gerald DeGaetano, Air and Environmental Applications Section, Status of Compliance Branch, Enforcement Division, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, N.Y. 10007.

III. Beginning immediately upon the effective date of this order, respondent shall comply with the following requirements, which are determined to be the most reasonable and practicable means of minimizing pollutant emissions from the subject facility during the interim period until final compliance with the requirements of 40 CFR 52.1595 is achieved:

1. Respondent shall monitor its operating procedures during the loading and unloading of gasoline so as to prevent to the greatest extent possible the release to the atmosphere of unnecessary emissions of organic compounds in vapors and gases created during any gasoline transfer operation.

2. If respondent makes use of top-loading procedures for the filling of gasoline delivery vessels, respondent shall use a loading arm with a loading spout extended to within 6 inches of the bottom of the tank being filled. During the top loading operation, the loading rate shall be decreased until the bottom of the spout is covered with product.

3. Respondent shall take the action necessary to assure that during loading operations the loading arm is completely drained of liquid product before removal from the delivery vessel, so as to minimize the spillage of gasoline. Respondent shall also take all other actions necessary to minimize gasoline spillage.

4. Respondent shall take measures to assure that dome covers and other potential points of emission on all vessels loading and unloading at its facility are closed and sealed during the transfer operation, unless the dome cover must be open to allow the insertion of any loading or unloading apparatus into the vessel, or unless safety considerations require that an emission point be open for the purpose of venting.

5. Whenever possible, respondent shall make arrangements to have vapor-laden delivery vessels bypass its facility and refill only at facilities equipped with a vapor recovery system or the equivalent.

IV. Nothing herein shall affect the responsibility of respondent to comply with

State or local regulations. This order shall be terminated in accordance with section 113(d)(8) of the act if the Administrator (or his delegate) determines on the record, after notice and hearing, that an inability to comply with 40 CFR 52.1595 no longer exists.

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

(a) Enforcement of such requirement pursuant to sections 113 (a), (b), or (c) of the act, including possible judicial action for injunction and/or civil penalties, and, in appropriate cases, criminal prosecution.

(b) Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of 40 CFR 52.1595 in accordance with the preceding paragraph.

(c) If such violation continues beyond July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the act, including the assessment of a noncompliance penalty.

So ordered, effective immediately

Dated: ——————————.

DOUGLAS COSTLE,
Administrator, U.S.
Environmental Protection Agency.

CONSENT

Anthony F. Conte, President, having full authority to represent Trenton Oil Co., Inc. in these proceedings, has read the foregoing order, believes it to be reasonable, and therefore consents to both its issuance and to its terms. Furthermore, Mr. Conte acknowledges that the Trenton bulk gasoline facility of Trenton Oil Co., Inc. is presently in violation of the requirements of 40 CFR 52.1595. He explicitly waives both the notification requirement and the 30 day waiting period embodied in section 113(a) of the act, recognizes that Trenton Oil Co., Inc. is subject to all remedies provided in section 113 of the act for failure to comply with the terms of the foregoing order, and explicitly waives any and all rights under any provision of law to challenge this order.

Dated: June 2, 1978.

(For Trenton Oil Co., Inc.)

ANTHONY F. CONTE,
President.

[FR Doc. 78-21155 Filed 7-31-78; 8:45 am]

[4110-12]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[41 CFR Part 3-1]

PUBLICIZING PROCUREMENT ACTIONS

AGENCY: Department of Health, Education, and Welfare.

ACTION: Proposed rule.

SUMMARY: The Office of the Secretary, Department of Health, Education, and Welfare, is proposing to amend the procurement regulations by adding a new Subpart 3-1.10, Publicizing Procurement Actions. The new subpart relates the Department's policy with respect to making solicitations available to interested parties and clarifies the Federal procurement regulations exemption for synopsizing procurements for services from educational institutions. The Department is proposing the amendments to insure that interested parties are able to obtain copies of solicitations after procurements are synopsized in the Commerce Business Daily, and to insure that response dates for bids or proposals permit adequate time for an interested party to request and receive a solicitation and to prepare and submit an offer by the closing date. In addition, the Department is proposing a clarification to the exemption for synopsizing procurements for services from educational institutions under § 1-1.1003-2(a)(8). That is, the exemption from the requirement to synopsize is to be applicable only when there is a noncompetitive procurement for services from one educational institution. When more than one educational institution is to be solicited, the procurement is to be synopsized.

DATE: Comments must be received by August 31, 1978.

ADDRESS: Any person or organization wishing to submit data, views, or comments pertaining to the proposed amendment may do so by sending them to: Mr. Ed Lanham, Division of Procurement Policy and Regulations Development, OP-OASB-OS, Room 539-H, Hubert H. Humphrey Building, Department of Health, Education, and Welfare, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Mr. Ed Lanham, 202-245-6347.

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

It is therefore proposed to amend 41 CFR Chapter 3, Part 3-1, in the manner set forth below.

Dated: July 14, 1978.

E. T. RHODES,
Deputy Assistant Secretary
for Grants and Procurement.

Under Part 3-1, General, Subpart 3-1.10, Publicizing Procurement Actions, is established. In addition, the table of contents for Part 3-1 is amended to add the following:

Subpart—3-1.10—Publicizing Procurement Actions

Sec.
3-1.1000 Scope of subpart.
3-1.1001 General policy.
3-1.1002 Availability of invitations for bids, requests for proposals, and requests for quotations.
3-1.1003 Synopses of proposed procurements.
3-1.1003-1 [Reserved]
3-1.1003-2 General requirements.

Subpart—3-1.10—Publicizing Procurement Actions

§ 3-1.1000 Scope of subpart.

This subpart establishes departmental policy with respect to making solicitations available to interested parties and synopsizing proposed procurements in the Commerce Business Daily.

§ 3-1.1001 General policy.

It is the Department's policy to conduct its procurements in an open fashion, to make procurements known to the public in a timely manner, to foster open and unrestricted competition, and to allow potential bidders and offerors to participate in the procurement process without artificial restrictions.

§ 3-1.1002 Availability of invitations for bids, requests for proposals, and requests for quotations.

(a) Potential offerors/bidders must be allowed a reasonable period of time in which to prepare and submit a response to a solicitation. As a general rule, the response period is to be at least 20 calendar days when procuring standard commercial articles or services, and at least 30 calendar days when procuring other than standard commercial articles or services. The 20 and 30 calendar day response periods begin on the date the solicitation is issued. The response periods are applicable to all formally advertised and negotiated procurements and for small purchases of $5,000 and above, except in cases of unusual emergency.

(b) As indicated in § 1-1.1002, a reasonable number of copies of each solicitation publicized in the Department of Commerce synopsis, including specifications and other pertinent information, are to be made available by the issuing office for distribution to requesting parties.

(1) A reasonable number of copies is defined as that number of copies necessary to promptly satisfy all requests received for the first 20 calendar days beginning on the date the solicitation is issued. All requests received during the 20-day periods are to be filled. Requests received after the 20-day periods may be filled on a supply available, first-come-first-served basis. If the supply of solicitations is exhausted after the 20th day, an interested party requesting a copy should be so notified and advised that a copy of the solicitation is available in the issuing office for viewing.

(2) When response periods of less than 20 days for standard commercial articles or services and less than 30

days for other than standard articles or services are used, all requests received during these shorter than preferred periods are to be promptly filled. If a requestor requires a copy of a solicitation after these periods and the supply is exhausted, the requestor should be so notified.

§ 3-1.1003 Synopses of proposed procurements.

§ 3-1.1003-1 [Reserved]

§ 3-1.1003-2 General requirements.

(a)(1)-(7) [Reserved]

(8) The exemption from the requirement to synopsize in § 1-1.1003-2(a)(8) is applicable only when there is to be a noncompetitive procurement for services from one educational institution. When more than one educational institution is to be solicited, the procurement is required to be synopsized in the Commerce Business Daily.

[FR Doc. 78-21133 Filed 7-31-78; 8:45 am]

[4110-87]

Public Health Service

[42 CFR Part 37]

CHEST ROENTGENOGRAPHIC EXAMINATIONS OF UNDERGROUND COAL MINERS

Transfer of Affected Miners to Less Dusty Areas; Conditions

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise 42 CFR 37.7 which specifies the conditions under which coal miners will be afforded the option to transfer to less dusty areas of the mine based upon a reading of the miner's chest roentgenogram (X-ray). Determinations that a miner's X-ray shows evidence of pneumoconiosis are based upon the "ILO-U/C International Classification of Radiographs of Pneumoconioses" (a system for identifying and classifying pneumoconiosis that was developed by an international group of medical experts of the International Labor Office (ILO)). The classification system provides that small rounded (less than 1 cm in diameter) irregular opacities viewed on the X-ray be classified into one of four major categories (0, 1, 2, or 3); a scale of increasing density. The ILO-U/C instructions state that a physician is to first classify an X-ray into one of the four categories and, during the process, if the category above or below is considered a serious alternative, it, too, is recorded. Thus, a 12-point scale is provided (0/-, 0/0, 0/1, 1/0, 1/1, 1/2, 2/1, 2/2, 2/3, 3/2, 3/3, and 3/4).

Section 37.7 currently specifies that the development of category 1 (1/0, 1/1, 1/2) simple pneumoconiosis is basis for transfer only if the miner develops the condition in less than 10 years from first entering the coal mining industry. It is proposed to afford the miner the option to transfer if his chest X-ray shows category 1 (1/1, 1/2) simple pneumoconiosis regardless of the number of years he or she worked in underground coal mining.

DATES: Comments on the proposed rule must be received on or before August 31, 1978. A public hearing to discuss the issues raised by this proposal will be held on September 15, 1978, beginning at 10 a.m. Requests to participate in the hearing must be received by September 5, 1978.

ADDRESSES: Comments and inquiries may be submitted to: Ms. Mary L. Flint, Regulations Specialist, National Institute for Occupational Safety and Health, 5600 Fishers Lane, Room 8-11, Rockville, Md. 20857. Comments will be available for public inspection at this address during regular business hours.

The public hearing will be held in conference room G, Public Health Service, at the above address. The hearing will be open to the public; however, space is limited and will be on a first-come-first-served basis with priority given to those making presentations.

Those persons wishing to present statements at the public hearing should send their requests to the regulations specialist at the above address. The requests should include the name, address, and telephone number of the participant, and the approximate time needed for the presentation.

FOR FURTHER INFORMATION CONTACT:

Ms. Mary L. Flint, Regulations Specialist, NIOSH, phone 301-443-3745,

or

Mr. Harlan Amandus, Chief, Examinations Processing Branch, Division of Respiratory Disease Studies, NIOSH, 944 Chestnut Ridge Road, Morgantown, W. Va. 26505, phone 304-599-7306, or FTS 923-7306.

SUPPLEMENTARY INFORMATION: Section 203 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 843) provides that underground coal miners be afforded the opportunity for periodic chest roentgenographic (X-ray) examinations. If the X-ray or other medical findings show evidence of the development of pneumoconiosis, the miner shall be given the option to transfer to an area of the coal mine where the coal dust concentration in the atmosphere is less than 1 mg/m³ of air, or if such an area does not exist, to an area where the dust level is less than 2 mg/m³ of air.

Under existing regulations (Title 42, Code of Federal Regulations, Part 37), a miner is afforded the option to transfer if the miner's X-ray shows category 1 simple pneumoconiosis if the miner has worked less than 10 years in underground mining. This notice proposes to delete the less than 10 years requirement if a miner's X-ray is classified in category 1. Miners with minor categories 1/1 and 1/2 simple pneumoconiosis would be afforded the same option to transfer as miners with category 2 (2/1, 2/2, 2/3), category 3 (3/2, 3/3, 3/4), and complicated pneumoconiosis (ILO-U/C classification). Category 1/0 is excluded from the transfer criteria since physicians frequently disagree on the presence of this category.

The provisions of this proposal and the issue relating to the withdrawal of transfer rights were included in a draft of proposed revisions to part 37 which was made available to the public on October 27, 1976 (41 FR 47091). In view of the comments on those provisions, the Institute chose to propose this revision to § 37.7 as a separate notice from the other proposed revisions to part 37 which were published as proposed rules on December 27, 1977 (42 FR 64642).

The Bituminous Coal Operators' Association (BCOA) and a representative of the American Thoracic Society commented that the factor of work experience should not be removed from consideration of transfer rights to miners whose X-rays are classified as category 1. They contended that coal workers' pneumoconiosis is not harmful unless it has developed rapidly in less than 10 years of coal mining experience. The Institute acknowledges that category 1 simple pneumoconiosis is not usually associated with significant decrements in lung volume or flow rates. The Institute, however, notes that simple pneumoconiosis is irreversible and precedes the complicated stages. Furthermore, data do not exist on U.S. coal miners to determine whether present dust standards prevent the progression of pneumoconiosis from category 1 to complicated pneumoconiosis in a miner's working lifetime, nor are there data available to enable determination of which miners will progress to complicated pneumoconiosis. The Institute believes that, until data are available on these points, a miner with category 1 should be afforded the option to transfer.

The United Mine Workers of America (UMWA) argued that any miner who has been advised that he or she has the option to transfer should not have the option withdrawn by subse-

quent examinations. The BCOA, however, stated that the specifications make permanent a transfer right granted to a miner even though subsequent examination indicates the miner may not be so entitled. The BCOA contends that the statutory provision specifically makes this a temporary right. The act directs that a miner shall be granted the option to transfer "for such period or periods as may be necessary to prevent further development of the disease." While this language would indicate that the right is temporary, sufficient data are not yet available to define a temporary period which will insure against further development of the disease.

The proposed revision to § 37.7 if adopted, would become effective after the start of the next open period of examinations, i.e., when the specifications proposed in the FEDERAL REGISTER for December 27, 1977 (42 FR 64642), are promulgated. The intention of the Institute is to apply this proposed transfer criteria to miners examined under the new specifications. This decision reflects the Institute's recognition that X-ray reading procedures and classification have changed since the first two rounds of X-ray examinations. Miners examined in previous periods would not be eligible for transfer under the new criteria based on those previous X-ray interpretations. Similarly, the review procedures set out in section 37.70 of the December 27 proposal would apply to examinations under the new specifications. Thus, a determination that a miner met the previous transfer criteria would not be subject to the review procedures.

It is, therefore, proposed to amend the subpart entitled "Chest Roentgenographic Examinations" in Part 37 of Title 42, Code of Federal Regulations, 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 economic impact statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Dated: May 24, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 25, 1978.

HALE CHAMPION,
Acting Secretary.

Section 37.7(a) is revised to read as follows:

§ 37.7 Transfer of affected miner to less dusty area.

(a) Any miner who, in the judgment of the Secretary based upon the interpretation of one or more of the miner's chest roentgenograms, shows evidence of the development of category 1 (1/1, 1/2), category 2 (2/1, 2/2, 2/3), or category 3 (3/2, 3/3, 3/4) simple pneumoconiosis, or complicated pneumoconiosis (ILO-U/C classification) shall be afforded the option of transferring from his or her position to another position in an area of the mine where the concentration of respirable dust in the mine atmosphere is not more than 1.0 mg/m³ of air, or if such level is not attainable in the mine, to a position in the mine where the concentration of respirable dust is the lowest attainable below 2.0 mg/m³ of air.

(b) * * *

(Sec. 203, 83 Stat. 763 (30 U.S.C. 843).)

[FR Doc. 78-21225 Filed 7-31-78; 8:45 am]

[4110-35]

Health Care Financing Administration

[42 CFR Part 405]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Clinical Laboratory Proficiency Examination

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: These amendments would permit us to continue administering a public health service proficiency examination by which an individual may qualify as a clinical laboratory technologist or cytotechnologist. The current regulation authorizes the use of these examinations only until December 31, 1977. This amendment would delete that expiration date and provide continued opportunity for a person who lacks the required academic and other qualifications to qualify as a technologist by passing a proficiency examination. The intent is to increase the availability of competent laboratory personnel available to provide services for patients whose care is funded under medicare.

EFFECTIVE DATE: Consideration will be given to written comments or suggestions received on or before October 2, 1978.

ADDRESS: Address comments to: Administrator, Health Care Financing Adminstration, Department of Health, Education, and Welfare, P.O. Box 2382, Washington, D.C. 20013.

In commenting, please refer to file code HSQ-49-P. Comments will be available for public inspection from 8:30 a.m. to 5 p.m., beginning approximately 2 weeks after publication in room 5231, Switzer Building, 330 C Street SW., Washington, D.C. 20201, 202-245-0950.

FOR FURTHER INFORMATION CONTACT:

Martha Chestem, 301-594-7930.

SUPPLEMENTARY INFORMATION: Current medicare regulations provide that an individual who does not meet specified academic requirements could qualify as a technologist or cytotechnologist by passing a public health service proficiency examination given on or before December 31, 1977. The statutory requirement for the examination program (section 1123 of the act) expired on December 31, 1977. However, sections 1861(s)(11) and 1871 of the act authorize us to extend the program. Our experience with the proficiency examination has been a positive one. Numerous laboratory professional societies and State health departments have indicated their approval of the proficiency examination program and their desire that it be continued. We believe that continuation of the examination would benefit the medicare program and protect the health of medicare beneficiaries by increasing the availability of competent clinical laboratory personnel. Continuation of the proficiency examination program is also consistent with proposed legislation now under review by the Congress.

At the present time, all of the personnel standards for medicare independent and hospital laboratories, as well as interstate laboratories licensed under the Clinical Laboratory Improvement Act of 1967 (42 U.S.C. 263a) are being carefully reviewed. On June 22, 1976, we published a notice of intent to revise these standards (41 FR 25043). Comments received on that notice, as well as from a subsequent public hearing, were considered in developing a comprehensive notice of proposed rulemaking. When that notice is published, questions about what proficiency examination, if any, should be used will be addressed more broadly. Meanwhile, this regulation would provide for continuing the current proficiency examinations.

42 CFR Part 405 is amended by revising § 405.1315 (b)(6) and (c)(3) to read as follows:

§ 405.1315 Conditions—clinical laboratory; technical personnel.

(a) * * *

* * * * *

(b) Standard; technologists—qualifications. * * *

* * * * *

(6) Achieves a satisfactory grade in a proficiency examination approved by the Secretary.

(c) Standard; cytotechnologists—qualifications. * * *

* * * * *

(3) Achieves a satisfactory grade in a proficiency examination approved by the Secretary.

* * * * *

(Sec. 1102, 1861 (s)(11), 1871 of the Social Security Act; 49 Stat. 647; 79 Stat. 322, 331 (42 U.S.C. 1302, 1395x (s)(11) and 1395hh).)

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare Hospital Insurance.)

Dated: May 26, 1978.

WILLIAM D. FULLERTON,
Acting Administrator, Health Care Financing Administration.

Approved: July 25, 1978.

HALE CHAMPION,
Acting Secretary.

[FR Doc. 78-21222 Filed 7-31-78; 8:45 am]

[4110-83]

Public Health Service

[42 CFR Part 122]

GOVERNING BODY REQUIREMENTS FOR HEALTH SYSTEMS AGENCIES

Reopening of Comment Period

AGENCY: Public Health Service, HEW.

ACTION: Notice of reopening of comment period.

SUMMARY: This notice reopens the public comment period for the proposed regulations pertaining to governing body requirements for Health Systems Agencies under section 1512(b)(3)(C) of the Public Health Service Act. The Secretary issued proposed regulations concerning governing body requirements for health systems agencies on May 26, 1978 (43 FR 22858). The public comment period terminated on July 10. The Department has received requests from the public asking for extensions of the comment period for these proposed regulations. Due to the complexity and importance of the subject matter, the Secretary has elected to reopen the comment period for 30 Days.

DATE: Comments must be received by August 31, 1978.

ADDRESS: Written comments and recommendations should be submitted to: Director, Office of Policy Coordination, Bureau of Health Planning and Resources Development, Center Building, Room 6-22, 3700 East-West Highway, Hyattsville, Md. 20782. All materials received in response to the proposed regulations will be available for public inspection and copying at the above location on weekdays (Federal holidays excepted) between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Colin C. Rorrie, Jr. Ph.D., Acting Director, Bureau of Health Planning and Resources Development, Center Building, Room 6-22, 3700 East-West Highway, Hyattsville, Md. 20782, 301-436-6850.

Dated: July 24, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 27, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-21298 Filed 7-31-78; 8:45 am]

[4110-83]

[42 CFR Parts 122, 123]

HEALTH SYSTEMS AGENCY AND STATE AGENCY REVIEWS OF THE APPROPRIATENESS OF EXISTING INSTITUTIONAL HEALTH SERVICES AND OF PROPOSED NEW INSTITUTIONAL HEALTH SERVICES

Reopening of Comment Period

AGENCY: Public Health Service, HEW.

ACTION: Notice of reopening of comment period.

SUMMARY: This notice reopens the public comment period for the proposed regulations pertaining to Health Systems Agency and State Agency Reviews of the Appropriateness of Existing Institutional Health Services and of Proposed New Institutional Health Services under sections 1523(g) and 1523(a)(6) of the Public Health Service Act. The Secretary issued proposed regulations for health systems agency and State agency reviews of the appropriateness of existing and new institutional health services on May 16, 1978 (43 FR 21274). The public comment period terminated on June 30. The Department has received requests from the public asking for extensions of the comment period for these proposed regulations. Due to the complexity and importance of the subject matter, the Secretary has elected to reopen the comment period for 30 days.

DATE: Comments must be received on or before August 31, 1978.

ADDRESS: Written comments and recommendations should be submitted to: Director, Office of Policy Coordination, Bureau of Health Planning and Resources Development, Center Building, Room 6-22, 3700 East-West Highway, Hyattsville, Md. 20782. All materials received in response to the proposed regulations will be available for public inspection and copying at the above location on weekdays (Federal holidays excepted) between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Colin C. Rorrie, Jr. Ph.D., Acting Director, Bureau of Health Planning and Resources Development, Center Building, Room 6-22, 3700 East-West Highway, Hyattsville, Md. 20782, 301-436-6850.

Dated: July 24, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 27, 1978.

JOSEPH A. CALIFANO, Jr.
Secretary.

[FR Doc. 78-21297 Filed 7-31-78; 8:45 am]

[6820-35]

LEGAL SERVICES CORPORATION

[45 CFR PART 1609]

FEE—GENERATING CASES

Statutory Change Regarding Authorized Representation

AGENCY: Legal Services Corporation.

ACTION: Proposed amendment.

SUMMARY: The provisions in the Legal Services Corporation Act restricting legal services lawyers from undertaking fee-generating cases were amended in 1977. The proposed revision implements the statutory change. It would eliminate the need for a legal services program to attempt to refer an eligible client to a private attorney if the client is seeking either social security or supplemental security income benefits.

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

ADDRESS: Legal Services Corporation, 733 15th Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Walters, 202-376-5113.

SUPPLEMENTARY INFORMATION: Part 1609 implements section 1007(b)(1) of the Act. The regulation requires a legal services program to attempt referral of every fee-generating case except when "other adequate representation is deemed to be unavailable" according to criteria established in § 1609.4.

The current regulation treats social security and supplementary security income cases as "fee-generating" because there is statutory authority for the award of attorney's fees in them. Referral of these cases was troubling to legal services programs, however, and to the Congress—because the fee

award is deducted from the retroactively owed subsistence payments to which the client is entitled. This concern was the apparent basis for the 1977 amendment to section 1007(b)(1). As amended, it reads, in pertinent part, as follows:

> No funds made available by the Corporation under this title, either by grant or contract, may be used—
> (1) To provide legal assistance (except in accordance with guidelines promulgated by the Corporation) with respect to any fee-generating cases (which guidelines shall not preclude the provision of legal assistance in cases in which a client seeks only statutory benefits and appropriate private representation is not available). * * *

The second parenthetical clause was added by the 1977 amendments to the Act. The House bill, which would have codified the Corporation's current regulation without change, was rejected in conference, where the Senate provision, adding the second parenthetical clause, was adopted. Commenting on it the Senate committee report said:

> The language added by section 9(a) [section 10 of the amendments] would require the Corporation to exclude from the definition of "fee-generating" social security and supplemental security income cases and such other cases as the Corporation deems appropriate because the only recovery sought by the eligible client is the amount of subsistence benefits to which he or she is statutorily entitled. In such instances legal services lawyers would not be required to attempt referral to a private lawyer before providing representation. Sen. Rep. No. 95-172, 95th, Cong., 1st Sess. (1977) at 15.

The amendment proposed here is designed to implement the statutory change.

At the May board meeting the regulations committee presented a draft amendment that would have eliminated the need for a legal services program to attempt to refer a case if

> the case involves only a claim for statutory benefits and any fee that is awarded would be deducted from the retroactive benefits to which the claimant is entitled.

In the course of board discussion the committee became convinced that the formulation was too broad, and withdrew the proposal.

A substitute draft, that the committee believes meets the board's concerns and still fulfills the congressional intent, was approved at the May 18, 1978 meeting of the regulations committee, and is presented with the committee's recommendation that it be published for comment.

The addition proposed here has been drafted narrowly, to cover only SSI and social security cases.[1] The committee reached its recommendation after discussion of both policy and legal issues presented by the proposed amendment. The principal policy objection to eliminating the referral requirement is that Corporation resources should never be used in any case in which the private bar is willing to provide representation. The committee was of the view, however, that this concern was outweighed by other factors. First, the committee thought it undesirable to require a person who met the Corporation's financial eligibility requirements to be deprived of a portion of a statutory benefit needed for subsistence. Further, eliminating the referral requirement is consistent with the spirit of current §1609.4(a), that permits a legal services program to provide representation when "free referral is not possible". In the view of the committee, the client is not receiving "free" representation when an attorney's fee is deducted from an award of subsistence benefits.[2]

The committee could find no policy consideration that outweighed the unmistakable congressional intent to have the Corporation eliminate the referral requirement in these cases. Indeed, the committee recognized that the statute would permit eliminating referral in other cases as well, but it believed that doing so would be inconsistent with the board's concern to avoid an overly broad general formulation. If the board adopts the committee's recommendation that the draft be published for comment, responses from legal services programs should indicate whether it is too narrow, and whether there are other categories of cases to which the rationale for excusing referral in SSI and social security cases should apply.

The proposes addition is as follows:

§1609.4 Authorized representation in a fee-generating case.

Other adequate representation is deemed to be unavailable when:

* * * * *

(d) An eligible client is seeking benefits under title II of the Social Security Act, 42 U.S.C. 401, et seq., Federal Old-Age, Survivors, and Disability Insurance Benefits; or title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., Supplemental Security Income for Aged, Blind, and Disabled.

ALICE DANIEL,
General Counsel,
Legal Services Corporation.

[FR Doc. 78-21168 Filed 7-31-78; 8:45 am]

[1] There are a variety of other statutory programs from which eligible clients seek benefits, but we know of no others that authorize deduction of attorneys' fees from an award to a claimant. If the attorneys' fees are added to (rather than deducted from), the award, there is no objection to referral. And in the absence of a provision for attorneys' fees, the private bar generally is not interested in such cases. In that event, referral would be excused if a recipient determined, pursuant to §1609.4(a)(3) of the current regulation, that "the case is of the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee." This provision remains unchanged by the proposed addition of §1609.4(d).

[2] Congress authorized attorneys' fees in these cases to encourage the private bar to aid the unrepresented at a time when free legal assistance supported by Federal funds was generally unavailable. We do not believe the statutory provisions indicate congressional preference for private lawyers instead of legal services lawyers in these cases. Authorization of fees may have been a necessity, but it does not promote the purposes of the programs. The purpose of the SSI program, for example, is "to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and do not have sufficient income or resources to maintain a standard of living at the established minimum level."

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR—PART 73]

[BC Docket No. 78-102; FCC 78-504]

ENFORCING SECTION 312(a)(7) OF THE COMMUNICATIONS ACT

Report and Order

NOTE: The first document in this proceeding was published in the notices section of the FEDERAL REGISTER (43 FR 12938). That document was submitted without the CFR citation "(47 CFR Part 73)" which would have indicated that the document should have been published in the Proposed Rules section of the FEDERAL REGISTER.

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: The Commission reviews its policy of enforcing section 312(a)(7) of the Communications Act which requires broadcast licensees to provide reasonable access to their facilities to legally qualified candidates for Federal elective office.

EFFECTIVE DATE: Nonapplicable.

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

FOR FURTHER INFORMATION CONTACT: Milton O. Gross, Broadcast Bureau, 202-632-7586.

SUPPLEMENTARY INFORMATION:

Adopted: July 12, 1978.

Released: July 31, 1978.

By the Commission: Commissioner White concurring in the result.

In the matter of Commission Policy in enforcing section 312(a)(7) of the Communications Act [43 FR 16809].

1. On March 22, 1978 the Commission issued a notice of inquiry concerning its policy in enforcing section 312(a)(7) of the Communications Act.[1] That section provides that:

[1] 43 FR 12938. Released March 28, 1978. Comments were due May 1, 1978. An extension was granted to May 15, 1978. Reply comments were due May 15, 1978. An extension was granted to May 30, 1978.

(a) The Commission may revoke any station license or construction permit—

* * * * *

(7) For willful or repeated failure to afford reasonable access to or to permit the purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

Since the passage of section 312(a)(7) as part of the Federal Election Campaign Act of 1971, the Commission's policy has generally been to defer to the reasonable, good faith judgment of licensees as to what constitutes "reasonable access" under all the circumstances present in a particular case. The Commission desired, through its inquiry into this area, to learn whether that policy was proving manageable and equitable for candidates and licensees or whether additional rules or guidelines would be advisable.[2]

I. General Comments

2. The majority of parties submitting comments on the notice of inquiry recommended that the Commission not promulgate specific rules concerning what constitutes "reasonable access" under section 312(a)(7). Many believed that such rules would be impractical in light of the diversity of circumstances with which each licensee is faced during an election period including (1) the number of Federal offices in contention; (2) the number of candidates vying for these offices; (3) the number of state and local offices of importance and interest; (4) differing requests from Federal candidates for access; and (5) the amount of broadcast time available. ABC and KAZY suggested that specific rules would eliminate the flexibililty now enjoyed by candidates and licensees in "customizing" access to best suit particular Federal races. Other parties commented that a licensee familiar with all of the circumstances in the community would be the one most able to determine what constituted "reasonable access" in a particular case. The RNC objected to the establishment of specific rule under section 312(a)(7) because "licensees will be encouraged to treat the rules requirements as a maximum as well as a minimum." Many suggested that such rules would be burdensome for licensees to apply and for the Commission to enforce.

3. A few of the parties commenting suggested that the promulgation of rules in this area was either improper or illegal. CBS stated that the Commission "is not required by statute [3] to adopt implementing rules or guidelines," and to do so would "constitute an unwarranted governmental intrusion upon content and scheduling judgments of broadcasters." Boston Broadcasters contended that the form which any rules in this area would take "would be so specific as to dictate the format, duration, number of exposures, etc. of the political broadcasts which licensee would be required to present." It alleged that such an intrusion into "selection or presentation of specific programming" would be "constitutionally and statutorily prohibited." MDCD disputed whether the Commission possesses the authority to promulgate rules under section 312(a)(7). It asserted that the Commission "can act in no greater capacity than that of an overseer under authorization and powers given under the Communications Act * * *" In general, the parties urged the Commission to continue to defer to a licensee's reasonable, good faith judgment under the facts and circumstances present in each individual case in determining what constitutes "reasonable access." The NAB, among others, suggested that "the need to accord great latitude to the judgment of the broadcaster as to what constitutes reasonable access is underscored by the severity of the ultimate penalty for violation of section 312(a)(7)"—revocation of license.

4. Some of the parties' comments on the notice did request that the Commission give more guidance to candidates and licensees concerning what will be considered "reasonable" under section 312(a)(7). D. J. Leary of Campaign Media Consultants, Inc. suggested that there is a need for "specific guidelines" from the Commission, and that prior to the drafting of such guidelines public hearings should be held to "delve into what the current practices are of broadcasters in their consideration of 'reasonable access,' and equally important, seek out testimony from those * * * who deal professionally with section 312(a)(7) on behalf of political candidates and their campaigns."

5. Boston Broadcasters indicated that the Commission should "promptly issue a comprehensive 'primer' on 'reasonable access' to provide some certainty in this area," but to "continue to rule, on a case-by-case basis, on specific complaints involving the 'reasonable access' provision."

6. Eduard Berlin asserted that the present policy of the Commission concerning "reasonable access" is uncertain and contradictory. He recommended that the FCC either:

(1) Request Congress to replace this section of the Communications Act with a separate provision that defines what rights to access [on] broadcast facilities Congress intends to afford federal office seekers, or in the alternative, (2) issue regulations or a "primer" to clarify how the Commission intends to apply current section 312(a)(7) in particular situations.

7. Southern and United, while urging the Commission to continue to leave it "to the good faith of the politicians and the broadcast licensees to work out individual resolutions on a case-by-case basis," suggested that the Commission draft intelligible and simple general guidelines in this area.

8. In contrast, there were those who suggested that the few guidelines now provided by the Commission are unnecessary and an intrusion into the journalistic prerogatives of the broadcaster. For instance, PBS urged the Commission to "reduce the importance of the amount of time a candidate requests" and "defer to licensee determinations as to how to discharge their obligations under section 312(a)(7) unless the plan was so unreasonable as to effectively deny federal candidates the opportunity to appear on the station and to express their views on the issues in the campaign." PBS suggested that the standard to be applied under section 312(a)(7) was whether the broadcaster had grossly abused its discretion in determining what constituted "reasonable access."

9. The Commission has determined that, absent unusual circumstances such as a multiplicity of candidates, broadcast licensees are required under section 312(a)(7) to afford Federal candidates program time in prime time.

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[2] The following parties have submitted comments in this proceeding: Southern Tier Educational Television Association, Inc. (Southern Tier); Eduard B. Berlin, Esq.; Chapman Television of Tuscaloosa, Inc.; Educational Broadcasting Corp. (WNET-TV); The Republican National Committee (RNC); Maryland-District of Columbia Delaware Broadcasters Association (MDCD); Boston Broadcasters, Inc.; Telemundo, Inc.; National Association of Broadcasters (NAB); The National Broadcasting Co., Inc. (NBC); Southern Broadcasting Co. and United Broadcasting Co. (joint comments) (Southern and United); National Radio Broadcasters Association (NRBA); Greater Washington Educational Telecommunications Association, Inc. (GWETA); Ohio Educational Television Network Commission (OETNC); CBS; Public Broadcasting Service (PBS); D. J. Leary of Campaign Media Consultants, Inc.; Robert G. Gauteaume; broadcast licensees including Board of Education of Jefferson Co., Ky. (joint comments) (WKPC-TV); broadcast licensees including KAZY, Denver, Colo. (joint comments) (KAZY). American Broadcast Cos., Inc. (ABC); Metromedia, Inc.

Reply comments were submitted by Public Broadcasting Service and Blonder-Tougue Labratories, Inc. (B-T Labs). Also, see par. 56, below, regarding letter from Media Access Project.

[3] Section 312(a)(7) contains no specific congressional directive concerning the promulgation of rules. This is in contrast with section 315 which provides that the "Commission shall prescribe appropriate rules and regulations to carry out the provisions of [the] section."

Licensee Responsibility Under Amendments to the Communications Act Made by the Federal Election Campaign Act of 1971, 47 FCC 2d 516 (1974). Both the NAB and WKPC-TV urged that this requirement not be considered absolute. Rather, stated the NAB, "a licensee should be allowed to make nonprime time periods available if such a course of action would best serve the interests of the public served by the station."

10. A number of the commenting parties questioned whether the "reasonable access" provision was itself constitutional. WNET-TV recommended that the Commission instruct its general counsel to issue an opinion that the statute is unconstitutional on the following basis: "(1) Vagueness to the extent of being a denial of due process; * * * (2) improper governmental interference in broadcast journalism in violation of the First Amendment * * *; and (3) as applied to public televisions creates such an unfair and unwarranted burden on those stations, and not others, as to constitute a denial of due process." The NAB stated that a recent court decision, *Gore Newspapers* v. *Shevin*, 397 F. Supp. 1253 (S.D. Fla. 1975) aff'md per curiam, 2 Med. L. Rptr. 1818 (1977), "cast doubt on the constitutionality of the 'reasonable access' provision * * *, when considered with the companion 'lowest unit charge' requirement of section 315(b)(1)." [4] In that case, the court held that a Florida campaign financing law which required newspapers and broadcast stations to offer advertising to political candidates at the lowest advertising rate violated the First Amendment.

11. In its notice of inquiry the Commission asked various questions concerning the areas in which additional guidance should be given, if such guidance was necessary.[5] For instance, the Commission asked whether the licensees obligation to afford "reasonable access" should begin at any particular point in a campaign. NRBA urged that the Commission not make any determination in this area. It stated that "while designation of a particular date would, in effect, eliminate any 'reasonable access' claims raised prior to the designation date, it would also in effect give rise to a presumption that Federal candidates would be absolutely entitled to access following such date." Berlin suggested a plan to obligate licensees to offer a specific amount of time to candidates to be used at whatever point in the campaign that the candidate wishes, thus eliminating the need for the Commission to impose any date when access is to begin.

12. Both ABC and KAZY urged the Commission not to obligate licensees to grant access to a Federal candidate as soon as he or she becomes legally qualified. They noted that such a rule might give an advantage to candidates who qualify early and disadvantage candidates who do not establish their candidacy until a time closer to the "traditional campaign period." KAZY also suggested that such an extension of the access period would be less a justifiable intrusion on the audiences' programming preferences than access limited to times closer to an election.

13. A majority of those submitting comments recommended that the Commission establish the same periods for access as those dictated by Congress for the operation of the "lowest unit charge provision"—45 days prior to a primary election and 60 days before a general or special election. Parties expressing that view based their recommendations on various reasons including: (1) Such a limit would coincide with traditional campaign periods and concentrate political broadcasting in times when it will be of greatest interest and benefit to the viewers or listeners; [6] (2) a limit would not prejudice candidates who do not qualify for the ballot at an early date and; (3) a limit would provide licensees with some guidance in planning political broadcast policies.

14. Boston Broadcasters expressed the belief that the 45- and 60-day limits on "reasonable access" are mandated by Congress, as evidenced by the legislative history surrounding the passage of section 312(a)(7). It pointed out that the Senate report accompanying the bill which ultimately was exacted as the Federal Election Campaign Act of 1971 stated:

> The committee is also persuaded that a limitation on the length of time when this most favored rate is available will be an incentive to candidates to shorten the duration of their campaigns, thereby helping to reduce campaign costs. Accordingly, the legislation provides that the lower unit rate will only be available forty-five days before a primary election, and sixty days before a general or special election. (Senate Report No. 92-96, 92d Cong. 1st Sess. (May 6, 1971).)

Boston Broadcasters contended that "the congressional intent in limiting the time of applicability of the 'lowest unit charge' provision applies with equal force to limiting the time frame within which a licensee is required to afford 'reasonable access' to Federal candidates."

15. The Commission also asked in its inquiry whether broadcast licensees should be under some obligation to grant a particular amount of time, or to accommodate candidates requests for particular lengths of program time or for spot time, and whether a candidate is entitled to particular classes of time. In addition to parties opposed generally to any regulation in this area, NAB, ABC, MDCD, WKPC-TV and NRBA objected specifically to any Commission rules and/or guidelines concerning the lengths and classes of time offered to Federal candidates. They based their objections on the same rational expressed in paragraphs 2 and 3 supra.

16. Of those recommending some Commission guidance in this area, Leary and the RNC suggested that licensees be obliged to afford candidates the same lengths and classes of time which they offer to commercial advertisers. Southern and United also recommended that "a licensee's determination to afford to the politician the same schedule and lengths as is accorded to regular commercial clients should not be held unreasonable," but suggested that the Commission might wish to adopt a guideline which provides that a licensee must allocate a certain portion of its regular public affairs broadcasts, on a non-paid basis, to Federal candidates. Southern and United additionally proposed that the Commission publish guidelines for determining "reasonable access" for renewal applicants. Stations would propose in their renewal applications a plan of access for Federal candidates. The Commission could then regulate the amount of access time on a "promise versus performance" standard. Under this plan, different sets of standards would apply to stations depending upon their formats—an "all news" station being required to provide more access to Federal candidates than "beautiful music" stations.

17. Eduard Berlin agreed that "candidates should be able to purchase or otherwise obtain the same 'type' of broadcast time that commercial advertisers have access to." He also urged the Commission to attempt to quantify the amount of time which must be afforded to Federal candidates "either

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[4] Section 315(b)(1) provides that:

(b) The charges made for the use of any broadcast station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed—

(1) During the 45 days preceeding the date of a primary or primary runoff election and during the 60 days preceeding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period.

[5] Some parties, including CBS, recommended generally that no specific rules or guidance be given, while other parties, agreeing with CBS on this point, commented specifically on the inadvisability of Commission action in the specific areas addressed in the notice of inquiry.

[6] MDCD suggests that an even shorter period, for instance 30 days, would better allow a licensee to strike a balance between "the candidates' ability to advertise, and the listening public's ability to not hear political advertising if they should so choose. * * *"

by setting minimum guidelines for how much time to give candidates, depending on the number of opponents or other federal candidates, or by setting an amount which is a percentage of the commercial time sold during that time period in the previous year." As an alternative to this proposal, Berlin suggested the following: Licensees would establish a policy concerning how much program and spot time was available and notify all Federal candidates of that policy. Candidates would then "register" for time and be given a gross amount to be used in the types and lengths which he or she desired.

18. Chapman Television proposed a similar aggregate amount of time be afforded for candidates. Under its plan, the station would set a dollar limit on the amount of time which a candidate could purchase. Each candidate could buy what ever combination of types, lengths and classes of time he or she desired within that monetary limit.

19. Robert A. Gauteaume suggested that although candidates in primaries should be afforded equal access, the amount of access afforded candidates for election to office should be based upon the amount of support garnered by that candidate as evidenced by votes in the primary or the collection of signatures.

20. Boston Broadcasters stated its belief that "a combination of free political time, public affairs programming time, and paid spot announcements provide the most effective 'mix' of airtime to assure a Federal candidate a reasonable opportunity to present his candidacy to the electorate by means of television." It also indicated that it would:

> have no objection to adoption by the Commission of a requirement that licensees offer Federal candidates broadcast time during all classes of time during the broadcast day, provided that: (a) The candidate is not given the right to dictate to the station the particular length of program time in question, and (b) the station is not required to provide the candidates' programing or announcements any particular placement, in terms of a specific date and/or specific time.

Finally, Boston Broadcasters suggested that "reasonable access" be held to require stations to provide spot time to candidates in whatever lengths they offer to commercial advertisers.

II. Noncommercial Educational Licensees

21. Ten of the parties submitting comments on the notice of inquiry addressed the Commission's question of whether a different standard of reasonableness under section 312(a)(7) should apply to noncommercial educational broadcast stations. Boston Broadcasters suggested that if a different standard is justified, that standard should be even more rigorous than the one to which commercial licensees are held because of "the special educational and public service obligations of such stations." (PBS disputed this statement in its reply comments). Leary commented that these licensees appeared to be in the "best position to provide 'no charge' air time to political candidates for a full range of access opportunities * * *." He suggested, however, that the access afforded "need not include the airing of a candidate's prepared political announcements." Rather, a noncommercial licensee should initiate and produce programing featuring candidates. Berlin proposed that educational stations not be required to make available "spot time or any other type of access unless it is a normal component of their broadcast schedule." Southern Tier urged the Commission to apply the same standard of reasonableness to educational stations as it does to commercial stations and not "discriminate" among its licensees.

22. Many of those commenting in this area suggested that a different standard should apply to noncommercial licensees. PBS and WNET cited the possibility of unmanagable requests for access being directed to such stations because of the lack of "market mechanism" which commercial stations have—the ability to charge for broadcast time and thus limit access to those candidates with financial support. OETNC stated that "the necessity to devote large amounts of time to political broadcasting will have not only a disruptive effect on a noncommercial station's programing, but it may also result in depriving it of the bulk of its budget for local programing." It pointed out that "this undesirable effect can be minimized by commercial broadcasters, but not by noncommercial broadcasters."

23. Some respondents stated that the unique character of public broadcasting dictates that such stations not be judged by the same standard under section 312(a)(7) as commercial licensees. Specifically, they concluded that noncommercial educational stations should not have to provide spot announcements or accept "commercial type" prepared announcements. Many commented that such broadcasters should be able to consider "non-uses" of the station by a candidate toward that candidate's reasonable access.

24. Concerning the sale of spot announcements, OETNC stated that although noncommercial stations do have "spot" announcement breaks in programing, "it would be consistent with the basic function of noncommercial broadcasting for the Commission to interpret the 'reasonable access' requirement not to require the availability of announcements for political candidates over noncommercial facilities." GWETA stated that a typical commercial television station has as many as 100 opportunities a day for the insertion of spot announcements while a noncommercial educational station may have as few as 10 opportunities for such announcements a day during its adult viewing hours. Both OETNC and GWETA suggested that to obligate a noncommercial station to afford spot announcements would result in "commercial-like clutter" which the Commission has deplored in other contexts.[7]

25. In its decision in *Public Broadcasting Council of Central New York*, 63 FCC 2d 952 (1976), known as the *Buckley* decision, the Commission found certain noncommercial educational broadcast stations in violation of the reasonable access provision, but stated that the licensees were not required to broadcast the prepared 5-minute programs requested by the complainant. The licensees apparently took this decision to mean that they could refuse to broadcast any program prepared for commercial stations. However, in a decision in January, 1978, the Broadcast Bureau clarified the earlier opinion. It explained that a candidate may not dictate the exact length of a program, but a noncommercial station may not refuse to broadcast any material (of whatever length) merely on the basis that it was produced for broadcast on a commercial station. All stations are forbidden by section 315 of the Communications Act from censoring any uses of a broadcast station by a legally qualified candidate for public office and may not dictate the content or format of any non-exempt appearance of such candidate.

26. WKPC-TV and Southern Tier, among others, urged the Commission to overturn this ruling and allow noncommercial broadcasters to refuse to air "commercial type" political announcements. Southern Tier suggested that "such commercial-oriented political advertising is fundamentally at odds with the spirit of noncommercial broadcasting, and is disruptive of the programing approach which noncommercial stations work deligently at achieving." WKPC-TV contended that the broadcast of "commercial-styled" announcements by noncommercial educational broadcast stations was "improper and illegal." It based its conclusion on an interpretation of section 399 of the Communications Act which prohibits partisanship on the part of such licensees, and section 501(c)(3) of the Internal Revenue

[7] *Notice of Inquiry-Commission Policy concerning the Noncommercial Nature of Educational Broadcast Stations*, FCC 77-162 (March 2, 1977).

Code, which "prohibits partisan broadcasts."

27. As noted above, many who commented on the applicability of section 312(a)(7) to noncommercial broadcasters urged that such stations be permitted to include as part of a candidates' "reasonable access" appearance of candidates on programs exempt from section 315.[8] Some, including PBS, contended that the language of the statute did not require an interpretion that "access" referred only to non-exempt uses of the station. It argued that:

> Read in the most reasonable manner, [section 312(a)(7)] creates two severable obligations. The first—"to allow reasonable access to * * * a broadcasting station"—applies to situations in which time is provided without charge. The second—"to permit the purchase of reasonable amounts of time for the use of a broadcasting station"—applies to situations in which time is sold to a candidate. It is only in the latter case, however, that the statute requires a "use"; no such obligation is imposed by the language of the Section where time is provided free. Thus, by its terms, the section does not require that time provided without charge be a "use."

PBS also asserted that the section did not apply exclusively to "uses" because: (1) "Section 312(a)(7) requires that the candidate must use the station 'on behalf of his candidacy'—an obligation which is foreign to a section 315 'use';" (2) The Federal Election Campaign Act of 1971 frequently employs the phrase "use on behalf of his candidacy" to include appearances which are not section 315 "uses;" (3) At one point in the development of the FECA Presidential and Vice-Presidential candidates campaigns were to be exempt from section 315 and licensees were to afford such candidates "flexibility and discretion" in determining the format of their appearances on a broadcast station. PBS argued that such a provision would have been superfluous had section 312(a)(7) been merely a codification of the preexisting obligation of licensees to cover political campaigns and not the creation of a new obligation to allow "uses" of the station.

28. OETNC and others based their arguments for the inclusion of exempt appearances as "access" on the fact that "News interviews and debates * * * may constitute the most informative beneficial programs from the point of view of enlightening the public." WKPC-TV argued that "the public broadcast licensee [should have] the broad discretion to determine the appropriate manner in which 'reasonable access' will be secured, including the format, the duration, and the scheduling of such presentations."

[8] NBC urged that commercial stations also be able to dictate the format for "access" under section 312(a)(7).

29. As a corollary to the above, GWETA recommended that the Commission "consider guidelines that specifically encourage noncommercial stations (at least) to provide joint appearances by all of the candidates for a particular office, since such appearances uniquely serve as the best way to inform and indicate the public on the people and issues in a campaign." PBS agreed and urged that a candidates failure to appear on such a program constitute a waiver of section 315 equal opportunities.

III. Miscellaneous

30. The Commission received comments from several parties concerning areas not specifically addressed in its notice of inquiry. NBC, Southern and United, Chapman and Berlin suggested that licensees be able to set a date before an election after which requests for "reasonable access" would not be granted. Metromedia urged the Commission "to emphasize the Federal preemption of (State and local) regulations relative to political broadcast." Telemundo, Inc. took no position on the need for rules concerning section 312(a)(7), but requested that Puerto Rican broadcast stations be excluded from any such rules. B-T Labs requested that "reasonable access" not be applied to "scrambled" subscription programing.

IV. Discussion

31. We pointed out in our notice of inquiry that the Commission has received little guidance from Congress as to how it is to interpret section 312(a)(7) of the Communications Act.[9] However, Congress did indicate that the purpose of the Federal Election Campaign Act (FECA), of which section 312(a)(7) was a part, was:

> * * * to give candidates for public office greater access to the media so that they may better explain their stand on the issues and thereby more fully and completely inform the voters. (117 Cong. Rec. 512872 (daily ed. August 2, 1971).)

The Commission considers this mandate to be an extremely important and serious one.

32. Prior to the enactment of the FECA, we recognized political broadcasting as one of the fourteen basic elements necessary to meet the public interest, needs and desires of the community.[10] No legally qualified candidate had, at that time, a specific right of access to a broadcasting station. However, stations were required to make reasonable, good faith judgments about the importance and interest of particular races. Based upon those judgments, licensees were to "determine how much time would be made available for candidates in each race on either a paid or unpaid basis." [11] There was no requirement that such time be made available for specific "uses" of a broadcasting station to which section 315 "equal opportunities" would be applicable.

33. When Congress enacted section 312(a)(7), it imposed an additional obligation on the general mandate to operate in the public interest. Licensees were specifically required to afford reasonable access to or to permit the purchase of reasonable amounts of broadcast time for the "use" of Federal candidates.

34. We see no merit to the contention that section 312(a)(7) was meant merely as a codification of the Commission's already existing policy concerning political broadcasts. There was no reason to commit that policy to statute since it was already being enforced by the Commission. Moreover, Congress limited the applicability of the "reasonable access" provision to candidates for Federal elective office. The Commission's policy made no specific distinction between those candidates and candidates for State and local office. Therefore, it seems clear that Congress was creating a different, additional obligation which was to apply only to Federal candidates.

35. PBS argues (see paragraph 27, above) that the phrase "to allow reasonable access to" modifies "a broadcasting station" and not "reasonable amounts of time for the use of the broadcasting station." Therefore, it asserts, a licensee may satisfy its obligation under section 312(a)(7) wholly or in part through the broadcast of programing which is exempt form section 315. It also asserts that such "nonuses" should be considered as fulfillment of a licensee's obligation when time is given rather than sold. If we accepted PBS' argument, the entire basis for section 312(a)(7) would be rendered meaningless since commercial licensees could presumably meet their "reasonable access" obligation by covering candidates in exempt programing and by refusing to sell time for use by political candidates. This certainly was not the intent of Congress. It enacted the "lowest unit charge" provision of section 315 (47 U.S.C. 315(b)) at the same time it en-

[9] The Commission's authority to interpret section 312(a)(7) derives from section 303(r) of the Communications Act which provides that the Commission shall "(r) make such rules and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act * * *".

[10] *Network Programming Inquiry*, 44 FCC 2303 (1960).

[11] *Hon. Richard M. McCarthy*, 23 FCC 2d 773 (1970). The same standard continues to apply to access to broadcasting stations by legally qualified candidates for state and local office. See, *Use of Broadcast and Cablecast Facilities by Candidates for Public Office*, 34 FCC 2d 510 at 535 (1972).

acted section 312(a)(7). Since section 315(b) applies only to "uses" by a candidate, it is only logical that Congress intended section 312(a)(7) also to apply only to "uses." There is nothing in the legislative history to indicate that Congress desired that access to free time was to be judged by a different standard than the sale of broadcast time. We believe that the particular phraseology of section 312(a)(7) reflects Congress intention that access may be provided either through the gift or the sale of time. This is in contrast to an earler version of the FECA which limited access to candidates for President and Vice President and required a station to "make available without charge the use of its facilities." [12]

36. The fact that Congress wished "reasonable access" to be afforded through the kind of "uses" contemplated under section 315 is supported by an analysis of congressional action in amending section 315 at the time of adoption of section 312(a)(7). Prior to the enactment of the FECA, section 315 provided that:

> No obligation is hereby imposed upon any licensee to allow the use of its station by any [legally qualified candidate for public office].

Concurrent with the passage of the "reasonable access" provision, Congress amended section 315 to provide that no obligation to allow "uses" of the station was imposed "under this subsection," clearly implying that such obligation was imposed elsewhere in the Communications Act, specifically by section 312(a)(7).

37. PBS contends that the fact that the phrase "use on behalf of candidacy" appears elsewhere in the FECA, where it does not refer to section 315 "uses," indicates that this phrase need not be read consistently with section 315. However, those other sections of the FECA were not meant to be incorporated into the Communications Act. We believe it is reasonable to expect that Congress, being aware of the Commission's interpretation of the word "use," intended the same meaning to be applied to amendments to the Communications Act which contained that term.

38. It is clear, therefore, that Congress expressed a desire that licensees afford candidates for Federal office a special right of access to a broadcasting station which no other group enjoyed.[13] This right to access is, of course, not absolute. As we stated in Use Broadcast and Cablecast Facilities by Candidates for Public Office.[14]

> Important as an informed electorate is in our society, there are other elements in the public interest standard, and the public is entitled to other kinds of programing than political. It was not intended that all or most time be preempted for political broadcasts.

However, in enforcing section 312(a)(7) we must keep in mind the basic desire of Congress to allow candidates to use a station's facilities to "better explain their stand on the issues and thereby more fully and completely inform the voters."

39. We continue to believe that the best method for achieving a balance between the desires of candidates for air time and the commitments of licensees to the broadcast of other types of programing is to rely on the reasonable, good faith discretion of individual licensees.[15] We are convinced that there are no formalized rules which would encompass all the various circumstances possible during an election campaign. However, there do appear to be some areas, discussed below, where some guidelines would be appropriate to clear up confusion expressed by candidates and licensees and to insure that the Congressional intent in enacting section 312(a)(7) is fully realized.[16]

40. Initially, we reaffirm our previous holding that, absent certain unusual circumstances, "reasonable access" requires that a legally qualified candidate be afforded program time in prime time.[17] We continue to believe that a refusal to afford such time "would deny the candidate access to the time periods with the greatest audience potential, and would be inconsistent with the congressional intent * * *."[18] In reiterating this policy, we are aware that there may be situations where the number of Federal candidates in a particular election may make it impossible for a station to make prime-time program-time available. We have never held that the "prime-time, program-time" policy is absolute and inflexible. We will continue to make exceptions to this policy where circumstances dictate. However, notwithstanding that a station has offered prime-time, program-time to Federal candidates, it must make prime-time, spot time available. As Boston Broadcasters noted, many candidates have found the broadcast of spot announcements to be the most effective way of reaching the voters. We believe that under section 312(a)(7) a candidate not only must be afforded an opportunity to address a prime-time audience, but must be allowed flexibility to do so in the manner best suited to his or her campaign.

41. We believe it to be generally unreasonable for a licensee to follow a policy of flatly banning access by a Federal candidate to any of the classes and lengths of program or spot time in the same periods which the station offers to commercial advertisers.[19] We feel certain that Congress in granting Federal candidates a specific right of access to a station wished such candidates to be at least on par with commercial advertisers who have no such access rights. Except for prime time, this does not necessarily mean that a licensee must always allow a candidate access to every class and length of time. In tailoring access to meet the needs of candidates for a particular office, licensees may consider such factors as the unavailability of particular classes of time; a multiplicity of candidates; the specific desires of candidates; etc. However, an arbitrary "blanket" ban on the use by a candidate of a particular class or length of time in a particular period cannot be considered reasonable. A Federal candidate's decisions as to the best method of pursuing his or her media campaign should be honored as much as possible under the "reasonable" limits imposed by the licensee.

42. We do not believe that this policy will in any way disrupt a station's broadcast schedule. It only requires that the licensee follow its usual commercial practices. Nor do we foresee that this policy will result in an inundation of a station's broadcast day by political announcements. We do not require that certain amounts of time be made available to Federal candidates but rather that they be afforded the opportunity for varied access.

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[12] S.1, 92d Cong., 1st Sess. (1971).

[13] *See, Columbia Broadcasting System v. Democratic National Committee*, 412 U.S. 94 (1973).

[14] 34 FCC 2d 510, 536 (1972).

[15] We reject the suggestion, however, that the Commission "reduce the importance of the amount of time a candidate requests" in the determination of whether a station has afforded reasonable access. As discussed above, we believe that Federal candidates are the intended beneficiary of section 312(a)(7) and therefore a candidate's desires as to the method of conducting his or her media campaign should be considered by licensees in granting reasonable access.

[16] Since we will continue to rely on the good faith, reasonable judgment of licensees under all the circumstances present to determine what constitutes "reasonable access," we see no reason to provide any particular exemptions for Puerto Rican broadcasting stations.

[17] *See Licensee Responsibility Under Amendments to the Communications Act Made by the Federal Election Campaign Act of 1971*, 47 FCC 2d 516 (1974). "Prime time" as used in this document means the period of the broadcast day in which there is maximum audience potential. For television that would be the time specified in section 73.658(k) of the Commission's rules (47 CFR 73.658(k)). For radio, it would usually be the so-called "drive time." In any case where questions are raised as to what constitutes a particular station's "prime time," we will examine all relevant facts brought to our attention.

[18] Id.

[19] Where a commercial station does not sell time but rather donates time to candidates it must make available free spot time, of the various lengths, classes and periods which are available to commercial advertisers.

Indeed, we believe that this statement of policy will result in little practical change in the political broadcast policies of most licensees who already afford Federal candidates their full complement of broadcast times.

43. We must emphasize that although a candidate for Federal office is entitled under section 312(a)(7) to varied broadcast times, such candidate is not entitled to a particular placement of his or her political announcement on a station's broadcast schedule. We recognize that it would be very difficult for a licensee to afford "equal opportunities" to opposing candidates if one candidate had his or her spot placed adjacent to a highly rated program which was broadcast only once or very rarely. Additionally, there may be circumstance when a licensee might reasonably refuse broadcast time to political candidates during certain parts of the broadcast day.[20] It is best left to the discretion of a licensee when and on what date a candidate's spot announcement or program should be aired.

44. Some of the parties commenting on the Inquiry suggested that a candidate's requests for access not be honored after a certain point before an election. We cannot agree. A Federal candidate may have varied and legitimate reasons for waiting until a short time before election day to make a request for "access" e.g. a late receipt of funds to purchase time. Of course, a candidate who requests time late in the campaign need not be offered the same aggregate amount of time which opposing candidates who have long been exercising their access rights have been afforded.[21] Those candidates who make late requests for access, however, cannot be denied time altogether.

45. We turn now to the question of whether there should be a particular point during a campaign at which a licensee's obligation to afford reasonable access begins. The setting of such a limit is difficult because each campaign is unique with respect to the controversiality and importance of the issues involved, the public interest in the race, and the amount of campaigning done by the candidates. For instance, a presidential campaign may be in full swing almost a year before an election; other campaigns may be limited to a short concentrated period. However, we believe that the fact that section 312(a)(7) and the "lowest unit charge" provision of section 315 were passed concurrently suggests that Congress desired section 312(a)(7) to be effective at least during the periods when the latter provision was applicable.[22] We also agree with many of the parties that these periods—45 days prior to a primary election and 60 days prior to a general election—correspond with the "traditional campaign periods." Thus, we believe that, generally, a licensee would be unreasonable if it refused to afford access to Federal candidates at least during those time periods. Moreover, it may be required to afford reasonable access before these periods; however, the determination of whether "reasonable access" must be afforded before these periods for particular races must be made in each case under all the facts and circumstances present.

46. The Commission has received no Congressional guidance as to when section 312(a)(7) should be effective prior to a convention or caucus since the "lowest unit charge" provision applies only before elections. Additionally, none of the parties commenting on the Inquiry addressed this question. In light of this fact, and in view of the large variation in procedures utilized for obtaining nomination through such methods, we will not suggest any time limits on access in those situations. However, we expect licensees to afford access at a reasonable time prior to a convention or caucus. We will review a licensee's decisions in this area on a case-by-case basis.

47. Regarding noncommercial educational broadcast stations, we find nothing in either the language of section 312(a)(7) or the legislative history of that statute to indicate that Congress intended to exempt noncommercial educational stations. Although such stations may perhaps feel a stronger commitment to political broadcasting because of their mandate to educate and their direct public funding, we do not believe the commitment can or should be translated into a more rigid standard of reasonableness under section 312(a)(7). In applying section 312(a)(7) we take into consideration the nature of noncommercial educational broadcasting. Just as commercial licensees are generally not required to disrupt their programing schedules by offering candidates lengths of program time which are not a normal component of their broadcast day, noncommercial broadcasters should not be required to change the basic nature of their broadcast schedules to accommodate candidates unless absolutely necessary. Thus, noncommercial stations need only offer lengths of programing to candidates which are consistent with the lengths of programing ordinarily broadcast. For example, such stations need not interrupt their regular programing in order to make available spot announcements if they do not ordinarily do so.[23] We recognize that there are substantial differences in the services offered by noncommercial educational stations and those offered by commercial stations. We will consider these differences in resolving complaints in this area.

48. We must once again emphasize, however, that all licensees are required to provide Federal candidates with non-exempt "uses" of the station under section 312(a)(7). Such "uses" are subject to section 315 which provides, in part, that:

> * * * licensees shall have no power of censorship over the material broadcast under the provisions of this section.

Thus, while a noncommercial educational licensee may limit candidates to specific lengths of broadcast time, it may not dictate the content of that broadcast. Therefore, a station may not refuse material of the length it has agreed to broadcast merely because it was originally prepared for airing on a commercial station.[24]

49. We see no inherent conflict between the obligations of noncommercial educational licensees under section 312(a)(7) and the requirements of section 399 of the Communications Act or section 501 of the Internal Revenue Code. Section 399 provides that:

> No noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for public office.

We fail to see how the broadcast of a candidate's announcement as required by section 312(a)(7) can be considered either editorializing or support for that candidate, especially when the station must afford "equal opportunities" to opposing candidates under section 315.

50. The same rationale applies to the application of section 501 of the Internal Revenue Code which provides that tax-exempt organizations, such as noncommercial educational broadcasting stations, may "not participate in, or in-

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[20] See, *Anthony R. Martin-Trigona*, appeal dismissed, *Anthony R. Martin-Trigona*, FCC 78-109 (February 16, 1978).

[21] Section 73.1940(e) of the Commission's rules requires that a request for equal opportunities under section 315 be made within seven days of the first prior "use" by an opposing candidate. Additionally, the Commission has indicated that one candidate may not save all of his or her "equal time" until the last day or two before the election. *Hon. Allen Oakley Hunter*, 40 FCC 246 (1952); *Emerson Stone, Jr.*, 40 FCC 385 (1964); *Summa Corp. KLAS-TV*, 49 FCC 2d 443 (1974).

[22] However, although Congress may have wished to encourage candidates to concentrate their campaigning to these periods, there is nothing to indicate that it intended to require candidates to so limit their campaigns.

[23] Although a noncommercial educational station might normally broadcast spot promotional or public service announcements, it generally need not make those spot times available to political candidates.

[24] As then Chairman Wiley and Commissioner Fogarty noted in the *Buckley* decision, supra, any change in this requirement would have to be accomplished through congressional action.

tervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office." Again, we do not believe that a required grant of access may be considered an intervention in a political campaign, or support for any candidate. Indeed, because of the licensee's inability to affect the content of a political announcement, the licensee is isolated from any appearance of intervention in a campaign.

51. Licensees are, of course, free to make suggestions to candidates concerning the format of their appearances. Thus, they may invite candidates to appear on a debate or other joint program. But a candidate may not be penalized for his failure to agree to a format suggested by a licensee and does not waive his "equal opportunities" rights because he declines to appear.

52. The amount of time which must be devoted by public broadcasters to Federal candidates will depend on many factors including the time available and the number of candidates. If a noncommerical educational station must make access available to a greater number of candidates because of the lack of "market mechanism" inherent in the sale of time, it may have to afford each candidate less time than offered by commercial licensees. We do not believe that any special Commission policy is necessary to apply to those situations. Rather, we will continue to rely on the reasonable, good faith judgment of licensees in the particular circumstances of each case.

53. B-T LABS in its reply pleading, states that the Commission policy that Federal candidates' right of reasonable access embody a right to prime time spots and programing would not apply to STV stations. B-T Labs claim that if STV stations were obligated to honor requests for political broadcast time during the prime time hours that they are broadcasting on a scrambled basis the noncommercial nature of over-the-air STV service would be destroyed and one of the major incentives for subscription for such a service, uninterrupted entertainment programing, would be lost. The purpose of giving of Federal candidates the right to prime time spots and programing is based upon the fact that prime time generally is the period of maximum audience potential. Since subscription television programing is generally geared to selective audiences it would appear that those stations engaged in STV would have their periods of mixiimum audience potential outside of normal prime viewing period. Therefore, we do not believe that reasonable access requires STV stations to make available to Federal candidates those periods of time in which they are engaged in STV programing. Of course, since STV is a relatively new service, our holding here is subject to any future determinations we may make in this area.

54. Finally, we take no postion on the constitutionality of section 312(a)(7) or the Federal preemption or the area of political broadcasting. We believe that such issues are for the courts and Congress to resolve. The Commission's authority extends to the interpretation of statutes which Congress has enacted.

55. To summarize, the Commission will continue to rely generally on the reasonable, good faith judgments of licensees as to what constitutes reasonable access under all the circumstances present in particular cases. However, we will apply the following general principles in determining whether a licensee's judgments in this area can be considered reasonable:

(a) Reasonable access must be provided through the gift or sale of "uses" of a station by legally qualified candidates for Federal elective office.

(b) Licensees must provide part-time program time absent unusual circumstances and prime-time spot announcements as part of the fulfillment of their "reasonable access" obligations.

(c) Licensees may not have a policy of flatly banning Federal candidates from access to the types, lengths and classes of times which they sell to commercial advertisers.

(d) Reasonable access must be provided at least during the 45 days before a primary and 60 days before a general or special election. The question of whether access should be afforded before these periods and when access should apply before a convention or caucus will be determined on a case-by-case basis.

(e) Noncommerical educational stations generally need not provide Federal candidates with lengths of program time which are not a normal component of the station's broadcast day.

(f) In view of the no-censorship provision of section 315(a) noncommercial broadcasters may not censor the content of a "use" by a candidate and, therefore, may not reject broadcast matter submitted by candidates merely on the basis that it was originally prepared for broadcast on a commercial station.

(g) Although educational and commercial licensees may suggest the format for appearances of candidates under section 312(a)(7), a candidate need not accept these suggestions and may not be penalized by loss of "equal opportunities" if he or she declines to appear on a program designed by the broadcasters.

56. On May 31, 1978 a letter was received in the Chairman's office from Media Access Project (MAP) expressing concern with the lack of input from citizens groups in this inquiry and requesting that the time for reply be extended for at least 1 month. The Commission is also aware of the failure of various citizens groups, candidates and candidate representatives to submit comments. We had hoped to have a larger representation of comments from these parties, and we made a special effort to inform them of the inquiry. However, the limit on reply time was necessitated by the need to have this report and order issued in time to be useful in the November 1978 elections. The 2 months provided for comments were not unduly short as indicated by the fact that 22 parties did submit comments. MAP also requested, in the alternative, that if we do not extend the time for reply, we should make it "explicit" in our report and order "that any rules adopted are only interim, and that they do not reflect any effort to prejudge these issues, which will be opened for further inquiry after the November 1978 elections." Since we have adopted no specific rules to implement section 312(a)(7), MAP's request to that extent is moot. We intend to review these policies in light of our experience in the present campaign and the months thereafter; and of course, we are prepared to reevaulate these policies if and as appropriate.

57. Accordingly, it is ordered that the proceeding in BC docket No. 78-102 is terminated.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-21144 Filed 7-31-78; 8:45 am]

[6712-01]

[47 CFR-PART 73]

[Docket No. 21383; RM-2814]

FM BROADCAST STATION IN CAMP LEJEUNE, N.C.; PETITION FOR RULEMAKING DENIED AND PROCEEDING TERMINATED

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: After considering comments both supporting and opposing a proposal to add FM Channel 253 at Camp Lejeune, N.C., the FCC denied the proposal and terminated the proceeding.

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

EFFECTIVE DATE: Nonapplicable.

FOR FURTHER INFORMATION CONTACT:

Carol P. Foelak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: July 20, 1978.
Released: July 25, 1978.

Report and Order

By the Chief, Broadcast Bureau.

In the matter of amendment of §73.202(b), Table of Assignments, FM Broadcast Stations. (Camp Lejeune, N.C.) [42 FR 59763].

1. In response to a petition filed by Francon, Inc. ("petitioner"), we adopted a *Notice of Proposed Rulemaking*, released September 7, 1977, which proposed to add FM Channel 253 at Camp Lejeune, N.C., or in the alternative, to add Channel 252A at Cherry Point, N.C. Petitioner had requested the Camp Lejeune assignment, and we added the mutually exclusive Cherry Point alternative because petitioner's proposal would also preclude making an assignment to Cherry Point, a fairly sizable community which lacks an FM channel.

2. Comments supporting the proposal were timely filed on or before November 28, 1977, by the petitioner and by David O. Manko.[1] Comments opposing the proposal were timely filed on November 28, 1977, by Seaboard Broadcasting Corp. ("Seaboard"), licensee of WLAS, Jacksonville, N.C.; Marine Broadcasting Corp. ("Marine"), licensee of WXQR(FM), Jacksonville, N.C., Beasley Broadcast Group of Jacksonville, N.C., and 1st Capital Radio, Inc., licensee of WRNB and WRBK(FM), New Bern, N.C. Reply comments were timely filed on December 19, 1977, by petitioner, Seaboard, Marine, and Beasley. On March 20, 1978, Seaboard filed a "Request for Official Notice" of petitioner's having tendered for filing, on December 23, 1977, an application for a new AM station at Camp Lejeune and seeking to raise questions concerning petitioner's character and proposed programming. Petitioner filed an opposition to Seaboard's pleading.[2]

3. *Community Data:*

(a) *Location:* Camp Lejeune is a Marine Corps reservation located in Onslow County on the coast of North Carolina, 176 kilometers (110 miles) southeast of Raleigh and 320 kilometers (200 miles) east of Charlotte. Camp Lejeune is located southeast of Jacksonville, N.C., and has a common boundary with it.

(b) *Population:* Camp Lejeune, 34,549; Onslow County, 103,126; both figures from U.S. Census, 1970.

(c) *Present Aural Services:* Camp Lejeune—none. Nearby Jacksonville, N.C.—fulltime AM Stations WJNC, 1240 kHz, and WLAS, 910 kHz; daytime—only AM Station WBBS, 1290 kHz; FM Stations WRCM, channel 221A and WXQR-FM, Channel 288A.

4. *Preclusion Considerations:* Preclusion will be caused as follows to various communities with over 1,000 population in the State of North Carolina: Jacksonville (pop. 16,289) (contained in U.S. Census Reports 135-6); Swansboro (pop. 1,207); Morehead City (pop. 5,233); Beaufort (pop. 3,368); Harkers Island (pop. 1, 633); Bellhaven (pop. 2,259); Newport (pop. 1,735); Havelock (pop. 5,283); James City (pop. 2,577); and Cherry Point (pop. 12,029). Except for Cherry Point and James City, each community with over 2,000 population has a least one FM channel allocation (Beaufort has no exclusive FM allocation but shares unused, but applied for, Channel 277 with Morehead City). The precluded communities with less than 2,000 population, Swansboro, Harkers Island and Newport, have neither FM nor AM assignments.

5. *Background:* In our *Notice of Proposed Rulemaking* we indicated our views regarding several questions which were raised by the proposal and the responses to it, namely whether Camp Lejeune is a community; whether our policy against intermixture of classes of stations should apply to the proposal; and to what extent the proposal would provide first and second services. We also took note of the Commission's decision a few years ago declining to add Channel 253 as a third authorization at adjacent Jacksonville on the grounds of intermixture, preclusion, and lack of need for the service in view of the size of Jacksonville's population. *FM Table of Assignments (Jacksonville, N.C.)*, 37 FCC 2d 50 (1972). The opponents had argued that this was really the same proposal, especially since the physical facilities of a Camp Lejeune station could not be located at Camp Lejeune.

6. We concluded that Camp Lejeune is a community, separate from Jacksonville, in view of its several functions, including employment, schools, housing, etc., even though there are no businesses there to purchase advertising. This was also the Commission's finding in the *Jacksonville* case, *supra*.

7. As to intermixture, channel 253 would be a class C assignment and the two nearby Jacksonville stations are class A stations. Although we found that Camp Lejeune is a separate community and that the policy against intermixture of class A and C stations generally applies to assignments within the same community,[3] we noted that Camp Lejeune would provide no advertising revenues on its own and therefore is more closely tied to Jacksonville economically than would ordinarily be the case with two adjacent communities. One of the purposes of the policy against intermixture is to foster competition among stations in a particular locality through the use of equivalent facilities. Here one station would be at a decided competitive advantage with respect to advertisers since it would have wider coverage than the others. We especially asked for comment on this point.

8. Petitioner had estimated the first and second FM service that its proposed facilities would provide, but it did not make a Roanoke Rapids[4] showing. Seaboard had submitted a Roanoke Rapids showing that petitioner's proposal would provide first and second FM services to 217 persons in an area of 21 square kilometers (8 square miles) and 455 persons in an area of 106 square kilometers (41 square miles), respectively. We stated that petitioner should make a Roanoke Rapids showing and also take into account nighttime AM service—see Anamosa, Iowa, 40 FCC 2d 520 (1974).

9. In summary, we stated that in view of our finding that Camp Lejeune is a community, we would have had no hesitation in proposing a class A assignment there.[5] However, because of the extent of preclusion, our questions about intermixture, and the apparently small amount of first and second service which the proposal would provide, we would need more support for a class C assignment.

10. The comments filed in response to the notice give us no reason to disturb our earlier conclusion that Camp Lejeune is a community, but did not provide the additional support for a class C assignment that we had sought. Petitioner did not, as we had requested, make a Roanoke Rapids/Anamosa showing. It argued that, since Seaboard had already submitted a Roanoke Rapids showing, there was no point in duplicating this effort, and that the Commission has a complete picture on which to base its assignment decision in this proceeding.[6] The Commission staff found that Seaboard's showing for first and second FM service was essentially correct, but these very small numbers of people are not sufficient to provide independent support for making the assignment.

11. On the issue of the need for the assignment, while the proposal would of course provide service to Camp Lejuene, some of the comments argued that existing stations give a good deal of service to Camp Lejeune. Beasley

[1] Mr. Manko is the owner of Station WBBS, Jacksonville, N.C. He stated that if Channel 253 were assigned at Camp Lejeune, he would apply for it, but he did not comment substantively on the proposal at any length.

[2] Petitioner requested us to dismiss this pleading on the ground that it was filed after the date on which reply comments were due. We reject this argument since Seaboard gave us notice of changed circumstances occurring after the due date for reply comments. As to Seaboard's questions concerning petitioner's proposed religious format and character, these are not properly brought before us in connection with a rulemaking proceeding.

[3] FM Table of Assignments (Paso Robles, Calif.), 35 RR 2d 639 (1975).

[4] Roanoke Rapids, Goldsboro, N.C., 9 Fcc 2d 672 (1967), setting forth assumptions to be used in calculating the extent of such service which an FM proposal would provide.

[5] Petitioner maintained, and our staff confirmed, that there is no class A channel available for assignment at Camp Lejuene.

[6] The opponents objected to this short cut. One of them asked whether a party which was unwilling to spend about $500 for a Roanoke Rapids/Anamosa showing was really committed to build a station which would cost about $250,000.

alleged that a total of eight radio stations, including the five Jacksonville stations give service there, and that five more FM stations provide some coverage of the area. It noted that four of the Jacksonville Stations, WBBS, WLAS, WRCM-FM, and WJNC, carry "Camp Lejuene Reports" one or more times per day. It states further that its FM Station WRCM has a 2 hour daily program produced by Marines at the base which contains a variety of information directed at the Marines stationed there and their families. Also, it says that the 1½ hour daily call-in program on its AM station WJNC is often devoted to military topics. Seaboard alleges that there are 21 FM stations providing 1 mV/m service to all or part of the area which would receive service from another class C proposal. It observes that the area is saturated with broadcast facilities but is sparsely populated. Finally, there is a possibility of an AM station's being established at Camp Lejeune by petitioner.

12. The comments did not provide anything to allay our concern about the effects of intermixture in the area. We are inclined to think that although Camp Lejeune and Jacksonville may be two communities from one point of view, they are one community economically, with people at Camp Lejeune dependent on Jacksonville for many of their consumer purchases and Jacksonville dependent on Camp Lejeune for much of its business. Certainly, if there were a station at Camp Lejeune, it would be competing with the Jacksonville stations for the same advertising dollars, since all the advertisers are located in Jacksonville.

13. Petitioner argues that class C facilities would merely equalize a new station with the existing class A stations since each is commonly owned with an AM station in Jacksonville. However, whatever weight might otherwise be attached to this point is diminished by petitioner's own application for an AM station at Camp Lejeune.

14. Petitioner claims that the opponents' arguments all serve their private interest in keeping all the available advertising dollars for themselves and should be disregarded in favor of the public interest in having more stations. Petitioner has oversimplified the public interest judgment to be made.

15. If a class A channel were available for assignment, the showing by petitioner could be viewed as sufficient to warrant making it. However, more is needed to justify a class C assignment and this fact was clearly expressed in the notice. It was necessary to establish the need for such an assignment, especially in light of the extensive service in response to Camp Lejeune's needs that the neighboring stations are providing already. Petitioner has not gone beyond its original showing to convince us to overcome our reluctance to assign a class C channel at Camp Lejeune in view of the preclusion, small amount of first and second service, and intermixture involved with this proposal. Accordingly we will deny it. Since there has been no expression of interest by any party willing to build a station there, we will not make any assignment at Cherry Point.

16. *It is ordered*, That the petition filed by Francon, Inc. to add FM channel 253 at Camp Lejeune is denied.

17. *It is further ordered*, That this proceeding is terminated.

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

[FR Doc. 78-21146 Filed 7-31-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[49 CFR Ch. X]

[Ex Parte No. 344]

TRANSPORTATION OF NONPERISHABLE COMMODITIES

Terminal Performance Standards

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposed new regulations establishing performance standards governing the transportation of nonperishable commodities. The performance standards will require a rail carrier to complete certain designated terminal operations within maximum twenty-four (24) hour periods. The purpose of the proposed regulations is to facilitate prompt and reliable transportation of nonperishable commodities by railroads. Terminal service studies will be conducted 180 days after the adoption of terminal operations regulations.

DATE: Comments must be received on or before August 31, 1978.

ADDRESSES: Send comments to: Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Janice M. Rosenak, Deputy Director, or Harvey Gobetz, Assistant Deputy Director, Section of Rates, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, 202-275-7693.

SUPPLEMENTARY INFORMATION: In Ex parte No. 270 (Sub-No. 2), Investigation of Railroad Freight Service, the Commission, in a decision entered June 19, 1978, considered recommendations made by the Commission Coordinator in a prior report, 345 ICC 1224, concerning action the Commission should take in order to better rail freight service quality and reliability.

The Commission determined that it was in the public interest to institute a rulemaking proceeding to establish performance standards governing terminal operations in the transportation of nonperishable commodities. The proposed regulations establish nine performance standards under which specific terminal operations are to be accomplished within a given railroads "usual and customary time," but not in excess of 24 hours. In addition, the proposed regulations allow for flexibility in resolving specific problems that may arise in certain terminal areas without abandoning the concept of service standards. In instances where carriers are confronted with a situation where the regulations would impose unreasonable requirements, the Railroad Service Board would be authorized to grant exceptions which would become effective on the date published in the FEDERAL REGISTER. The estalbishment of minimal capability standards in a defined context should provide railroad management with further incentive actively to commit themselves to resolving reliability problems.

The Commission also concluded that service studies at major terminals should be conducted by the railroads 180 days after terminal regulations go into effect. The purpose behind these service studies would be to evaluate the effectiveness of the implemented performance standards. The Commission stated that it would entertain suggestions and comments as to what major terminals should come under study and what format and procedure should be followed in conducting the studies. A format for gathering relevant service activity information was suggested by the Commission.

Accordingly, it is the purpose of this notice to initiate such a rulemaking, inform all interested parties of its scope, and invite comments. If participants in this proceeding object to particular provisions of the proposed regulations, they are urged to state their objections with specificity and to propose alternative solutions and draft provisions. The parties are also invited to submit their comments of the proposed terminal service studies.

The proposed rulemaking does not appear to constitute a major Federal action requiring preparation of an en-

vironmental impact statement under the procedures of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq. However, comments regarding environmental issues, if any, should be included in statements filed with the Commission in response to this notice.

It is ordered:

1. A rulemaking proceeding is instituted with the objective of adopting performance standards governing terminal operations in the transportation of nonperishable commodities.

2. All rail common carriers are made respondents to this proceeding.

3. Respondents and other interested persons will file an original and 15 copies (if possible) of their views at the dates and places noted above.

4. To expedite procedures and to avoid the delay and expense associated with cross service of pleadings by parties on each other, we only require that the above views and comments be filed with this Commission, one set of which will be available in the Secretary's Office for public inspection during regular business hours of the Commission. Since this is not an adversary proceeding, the filing of replies to the views and comments is not necessary.

The notice of proposed rulemaking is promulgated pursuant to authority under 49 U.S.C. 304(a)(1) and 304(a)(6), 49 U.S.C. 1003(a) and 1012(a), and 5 U.S.C. 553 and 559, and was adopted formally at a General Session of the Interstate Commerce Commission on June 19, 1978.

By the Commission, Chairman O'Neil, Vice Chairman Christian, Commissioners Murphy, Brown, Stafford, Gresham, and Clapp. Commissioner Clapp absent and not participating.

NANCY L. WILSON,
Acting Secretary.

The Commission proposes to supplement title 49 of the Code of Federal Regulations by adding terminal operations performance standards for nonperishable service. The regulations will read as follows:

§ 1039 Terminal operations performance standards for nonperishable service.

(a) Performance of transportation within the standard for nonperishable service consists of the completion by the carrier within the usual and customary period but not in excess of twenty-four (24) hours of each of the following functions, unless subject to exceptions authorized in paragraph (b) of this section.

(1) Removal of a loaded car from the track serving the shipper and forwarding from origin in line-haul service or delivery to a connection at origin after loading is completed and instructions sufficient for forwarding are furnished the carrier, exclusive of Saturdays, Sundays, and holidays.

(2) Forwarding of a loaded car from any yard or interchange connection between origin and destination.

(3) Delivery of a loaded car to a connecting line after arrival at an interchange point.

(4) Actual or constructive placement of a loaded car after arrival at destination when on the line of the carrier directly serving the consignee; exclusive of Saturdays, Sundays, and holidays.

(5) Loaded cars held at destination for accessorial terminal services described in the applicable tariffs, such as holding for orders or inspections, shall be placed on unloading, hold, or inspection tracks, and proper arrival or constructive placement notice will be issued, exclusive of Saturdays, Sundays, and holidays.

(6) Empty cars must be removed from point of unloading or interchange tracks of industrial plants within the required time, following unloading or release by consignee or shipper, unless such empty cars are ordered or appropriated by the shipper for reloading within the required period of time, exclusive of Saturdays, Sundays, and holidays. Empty cars shall be forwarded within the required period of time.

(7) Cars held for light repairs shall be placed on repair tracks not later than the first 7 a.m., after time carded for repairs, or after arrival at point where repairs are performed, exclusive of Saturdays, Sundays, and holidays.

(8) Completion of light repairs to a car shall be accomplished within required time. Light repairs are those which can be accomplished in twenty (20) man-hours or less.

(9) The shipper must be notified within twenty-four (24) hours, exclusive of Saturdays, Sundays, and holidays of cars delayed for repairs.

(b) Exceptions: (1) At points at which less than daily train, switching, or repair service is provided, compliance with the standards required by these regulations shall be deemed to have been accomplished if service is provided on the next day on which such services are performed. (2) Exceptions may be authorized by the Railroad Service Board and become effective on the date such exceptions are published in the FEDERAL REGISTER. Notice of such exceptions must be posted in the offices of the carrier from which arrival notices are sent or given. (3) Empty cars owned by and leaving the registered reporting marks assigned to the line holding the car, and empty cars of private ownership reported and awaiting instructions from the car owner, are excluded from the requirements of paragraph (a)(6), (a)(7), and (a)(8) of this section.

APPENDIX B

The suggested draft format set out below for use in gathering terminal service information will allow the Commission to determine under what circumstances and to what degree a delay results from a particular railroad operation at a major terminal. A car becomes available for handling in a terminal when it is received either (1) from a line-haul, (2) from a switch movement, (3) from a connecting carrier in interchange, (4) after being released from an industry, or (5) after being released from a terminal service. Upon receipt of the car, it will be handled either by (1) forwarding in a line-haul movement, (2) forwarding in a switch movement, (3) delivery to a connecting line interchange, (4) placement at an industry, or (5) forwarding to or from a terminal service. (This includes such functions as weighing, inspection, repairs, cleaning, etc.) We believe that the suggested terminal study format is a simple form which will provide necessary information for a valid data base on terminal operations associated with all of the alone aspects of terminal movement. In addition to car in and car out data the suggested format would provide data on the time used by shippers loading and unloading cars and time consumed in providing terminal services, whenever applicable. The test method and time period for sampling will be determined by the Commission depending upon the individual terminals selected for study.

SUGGESTED TERMINAL STUDY FORM

1. Car initial and number ——.
2. Load or empty ——.
3. Car arrived terminal or available for movement (date and hour) ————.
4. Arrived or available from:
—— line haul, —— switch movement, —— interchange connection.
—— terminal service: Weighing, inspection, repair, cleaning, etc.
—— released from industry, —— released from terminal service.
5. Car forwarded (date and hour) ————.
6. Car forwarded:
—— in line haul, —— in switch movement, —— to interchange connection.
—— to industry placement, —— sent for terminal service.
7. If car placed at industry, car released (date and hour) ————.
8. If car sent to terminal service, car available for further movement (date and time) ————.
9. Additional comments.

[FR Doc. 78-21221 Filed 7-31-78; 8:45 am]

[7035-01]

[49 CFR Part 1121]

[Ex Parte No. 274 (Sub-No. 2B)]

INCREASED PUBLIC PARTICIPATION IN RAIL ABANDONMENT PROCEEDINGS

AGENCY: Interstate Commerce Commission.

ACTION: Proposed revision of regulations.

SUMMARY: The Commission proposes to change its regulations so that an applicant may be required to publi-

cize the Commission's decision to investigate an abandonment application. Also proposed are provisions requiring all notices of intent to file an abandonment application to be served on the United States Departments of Transportation, Defense and Interior, and State Cooperative Extension Services. Finally, the Commission proposes to change the filing date of the annual amended system diagram map from March 31 to June 30.

DATES: Comments must be received on or before August 31, 1978.

ADDRESS: Comments should be filed with the Section of Finance, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Edward J. Schack, 202-275-7581.

SUPPLEMENTARY INFORMATION:

NOTICE OF INVESTIGATION

Under section 1a(3) of the Interstate Commerce Act, 49 U.S.C. 1a, the Commission must postpone the proposed effective date of an abandonment and investigate if a petition requesting an investigation is received. If no petitions are filed, the Commission may investigate a proposed abandonment on its own initiative.

The Commission has recently reopened the abandonment regulations for public comment on, among other things instances in which it may decide to investigate a proposed abandonment without having received any petitions, for example, when it believes that the line is one of several related lines identified as potential abandonment candidates. See the notice in Ex Parte No. 274 (Sub-No. 2A), published April 14, 1978, at 43 FR 15754.

When the Commission investigates on its own initiative, it does not have the benefit of opposing parties to present evidence responsive to that of the applicant. To develop a record upon which to base its determination, the Commission must seek information from all interested persons.

Similarly, there may be instances in which petitions have been filed, but the Commission needs additional information from persons who are not parties to the proceeding.

It is proposed that the carrier be required to publicize the Commission's determination to investigate (and the issues to be examined) in these situations, in the same manner as it did its notice of intent to file an abandonment application. This would include service on State agencies and significant users, posting in agency stations, and publication for three consecutive weeks in local newspapers, at the applicant's expense.

This procedure will be used only when the Commission determines that the additional publicity is necessary to develop a record which permits full consideration of the issues presented by the carrier's application. The small additional burden imposed upon the applicant is outweighed by the public interest in insuring an opportunity for full public participation in the proceeding. This participation may be necessary to an adequate assessment of the impact on community development required by section 1a(4)(a) of the act.

Section 1121.37(a)(3) would be amended by inserting the following additional sentences:

§ 1121.37 Commission determination and certification under section 1a(3) of the act.

* * * * *

(3) * * * The order may include a notice of the Commission's intention to investigate the proposed abandonment. The notice may be general or may set forth the specific issues upon which public comment is desired. The applicant must serve, post, and publish such notice, if ordered by the Commission, in the same manner as prescribed in § 1121.30(a).

NOTICES OF INTENT

The regulations currently provide in section 1121.30(a), that notices of intent to file an abandonment application must be served upon significant users and the Governor, Public Service Commission and designated State agency of each State in which any part of the line involved is located. It is proposed that this provision be expanded to include service of the notice on agencies representing the Federal Government which may have an interest in the proposed abandonment. This would include the Department of Transportation (Federal Railroad Administration), Defense (Military Traffic Management Command), and Interior (Bureau of Outdoor Recreation). It would also include the State Cooperative Extension Service of each State in which any part of the line to be abandoned is located.

AMENDED SYSTEM DIAGRAM MAPS

Under § 1121.23, amended system diagram maps are required to be filed by each carrier annually on March 31. In determining changes in line categorizations, a carrier may wish to utilize the branch line accounting data collected for the prior year. However, that data is not required to be reported until June 30 of each year. 49 CFR 1201, § 900 (43 FR 1732). Since the carrier may not have summarized the branch line accounting data when revising its system diagram map, it is proposed that the date for submission of the annual amended system diagram maps be changed to June 30.

Decided: June 29, 1978.

By the Commission:

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21256 Filed 7-31-78; 8:45 am]

[3510-22]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 611]

Proposed 1979 Fee Schedule for Foreign Fishing

Request for Comment on Proposed Rulemaking

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Publication of proposed rulemaking and request for comments.

SUMMARY: This document is notice of a proposed fee schedule for the calendar year 1979, for fishing by foreign vessels in fisheries under the exclusive fishery management authority of the United States. This proposed schedule establishes fees which must be paid by the owner or operator of any foreign fishing vessel wishing to fish within the United States fishery conservation zone as authorized by the Act, before actually engaging in any fishing activity except as otherwise authorized.

DATE: Comments must be received no later than August 29, 1978.

ADDRESS: Comments may be submitted to the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Washington, D.C. 20235. Please mark the words "Fee Schedule" on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Schaefer, Chief, Fisheries Management Operations Division, National Marine Fisheries Service, Washington, D.C. 20235, 202-634-7454.

SUPPLEMENTARY INFORMATION: Section 201(d) of the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 et seq. (the Act) provides that foreign fishermen may be allowed to fish for "* * * that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States * * *." Section 204(b)(10) of the act further provides that reasonable fees shall be paid by the owner or operator of any foreign fishing vessel for which a permit is issued. Fishing vessels are defined by

section 3(11) of the Act to include several types of vessels in addition to those actually engaged in harvesting fish. This includes any vessel "* * * aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing * * *." Section 204(b)(10) of the Act further provides, in part: "In determining the level of such fees, the Secretary may take into account the cost of carrying out the provisions of this Act with respect to foreign fishing, including, but not limited to, the cost of fishery conservation and management, fisheries research, administration, and enforcement."

This proposed schedule of fees amends the 1978 schedule which was published in the FEDERAL REGISTER on October 7, 1977 (42 FR 54588) and was amended and codified as 50 CFR 611.22(b) on May 4, 1978 (43 FR 19232).

CRITERIA FOR ESTABLISHING FEE SCHEDULE

The following criteria, identical to those used in 1977, were considered in developing the fee schedule for foreign fishing in 1979.

1. Fees will not be used as a management tool to restrict foreign fishing. Foreign fishing effort will be controlled by management plans and associated regulations.

2. The fees will not be so high as to prevent nations from utilizing the allocated surplus solely because of the fee level. The fees must be reasonable.

3. Fees will recover an appropriate part of the management costs related to foreign fishing.

4. The same rate must apply to all foreign nations and the rate will not change within a given calendar year.

5. Fees will be simple to compute and collect. Fees shall be paid as provided in the Act.

6. Every vessel, by law, must pay a fee and obtain a permit, but the fee may vary with size and function of the vessel.

NOTE.—This proposed amendment does not constitute a major Federal action within the meaning of the National Environmental Policy Act of 1969, as amended. It has been determined that this action does not require the preparation of economic impact analysis.

Signed at Washington, D.C., this 25th day of July 1978.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

50 CFR 611.22(b) is hereby proposed to be amended by substituting new values for species of fish based on U.S. commerial landings as published in the "Fisheries of the United States, 1977, Current Fishery Statistics No. 7500, National Marine Fisheries, April 1978," except where noted. For the purpose of comparison, values used in 1978 are set out in parentheses.

Average Ex-vessel Values Per Metric Tons

Species	Values proposed for use in 1979	Values used in 1978
Butterfish	$626	$622
Cod, Pacific	359	282
Crab, tanner (snow)	691	441
Flounders, Pacific	407	387
Hake, Pacific	43	32
Hake, red	199	185
Hake, silver (whiting)	205	184
Herring, Atlantic	98	87
Herring, Pacific	[1]100	100
Herring, river (alewives)	100	96
Mackeral, atka	[2]	138
Mackeral, Atlantic	385	259
Mackeral, jack	110	110
Other billfish, Pacific	[3]638	875
Other finfish, Atlantic	[4]382	334
Other groundfish, Pacific	[5]49	48
Pollock, Alaska	176	84
Pacific ocean perch	302	280
Rockfish	378	298
Sablefish	[6]1,477	399
Seamount groundfish	[2]	172
Sharks, Atlantic (except dogfish)	[7]210	140
Sharks, Pacific (except dogfish)	[7]396	134
Snails (meat)	[2]	600
Squid, Atlantic (illex)	[8]472	414
Squid, Atlantic (loligo)	[8]938	414
Squid, Pacific	[9]938	55
Striped marlin, Pacific	[10]1,395	1,579
Swordfish, Pacific	[10]6,064	4,040

[1] Price for roeless herring, which will constitute the foreign harvest. Price based on unit value of landings in Alaska, 1977.

[2] Species not landed in the United States. Prices will be based on unit values of landings in foreign countries.

[3] Average price from U.S. landings of blue marlin, black marlin, and sailfish. Source: Division of Data Management and Statistics, NMFS, 1977.

[4] Average price from U.S. Atlantic landings of anglerfish, conger, dogfish, flounders (except yellowtail flounder), sculpins, sea robins, and skates. Source: Division of Data Management and Statistics, NMFS, 1977.

[5] Used for production of fish meal. Price based on unit value of U.S. landings of anchovy and Pacific hake, 1977.

[6] Price for longline caught sablefish, from landings in the State of Washington, 1977.

[7] Separate prices for Atlantic and Pacific sharks are based on raw data used to develop the value for sharks in "Fisheries of the United States, 1977." (Division of Data Management and Statistics, NMFS).

[8] Separate prices for illex and loligo squids are based on raw data used to develop the value for Atlantic squids in "Fisheries of the United States, 1977." (Division of Data Management and Statistics, NMFS).

[9] Squids from Gulf of Alaska and Bering Sea/Aleutians, not landed in the United States. Price based on unit value of landings of loligo squid, Atlantic, 1977.

[10] Separate prices for striped marlin and swordfish are based on raw data used to develop the value for other marine finfishes, Pacific, in "Fisheries of the United States, 1977." (Division of Data Management and Statistics, NMFS).

[FR Doc. 78-21296 Filed 7-31-78; 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.

[3410-11]

DEPARTMENT OF AGRICULTURE

Forest Service

CRANBERRY WILDERNESS STUDY AREA REPORT

Public Hearing

Notice is hereby given that public hearings will be held on a proposal for the future management of the Cranberry Wilderness Study Area comprised of approximately 36,300 acres within the Monongahela National Forest in the Counties of Pocahontas and Webster in the State of West Virginia. The hearings will be held according to the following schedule:

7 p.m.—September 21, 1978, Rooms A and B, Highway Department Building, 1800 Washington Street, East Charleston, W. Va.

7 p.m.—September 22, 1978, Marlinton Municipal Building, Marlinton, W. Va.

10 a.m.—September 23, 1978, Nicholas County Memorial Park, Dining Hall Building.

Individuals and organizations may express their views by appearing at one of these hearings or may submit written comments for inclusion in the official record to the Forest Supervisor, Monongahela National Forest, Box 1548, Elkins, W. Va. 26241. Those persons wishing to present oral testimony at the hearings should notify the Forest Supervisor at the above address prior to September 7, 1978.

A brochure containing a map and information about the proposal and a limited number of the draft study report/environmental statement are available and can be obtained upon request from the Forest Suspervisor.

Dated: July 25, 1978.

R. MAX PETERSON,
Deputy Chief,
Forest Service.

[FR Doc. 78-21230 Filed 7-31-78; 8:45 am]

[3410-15]

Rural Electrification Administration

OGLETHORPE ELECTRIC MEMBERSHIP CORP.

Final Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a final environmental impact statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a loan guarantee application from Oglethorpe Electric Membership Corp. to finance a 30-percent ownership interest in Plant Scherer. This statement describes the anticipated environmental effects of construction and operation of Plant Scherer, and related 500 kV transmission facilities currently under construction by Georgia Power Co. and related 500 kV transmission lines.

Additional information may be secured on request, submitted to Mr. Richard F. Richter, Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Copies of the REA final environmental impact statement have been sent to various Federal, State, and local agencies, as outlined in the Council of Environmental Quality guidelines. The final environmental impact statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue SW., Washington, D.C., Room 4310, or at the borrower's address indicated above, or at the following local libraries in Georgia:

1. Georgia Forestry Commission Library.
2. Macon Junior College Library.
3. Mercer University (Stetson Memorial Library).
4. Middle Georgia Regional Library.
5. Gordon Park Library.
6. Jones County Public Library.
7. Twiggs County Public Library.
8. Flint River Regional Library.
9. Carnegie Library.
10. Monroe County Library.
11. Clayton County Library.

Final REA action with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 20th day of July 1978.

DAVID A. HAMIL,
Administrator, Rural
Electrification Administration.

[FR Doc. 78-21124 Filed 7-31-78; 8:45 am]

[3410-16]

Soil Conservation Service

CANE CREEK WATERSHED PROJECT, OKLAHOMA

Intent To Not Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the remaining work in the Cane Creek Watershed project, Okmulgee and Muskogee Counties, Okla.

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. Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for watershed protection and flood prevention. The planned works of improvement include land treatment and 10 single-purpose floodwater retarding structures.

The notice of intent to not prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment is on file and may be reviewed by interested parties at the Soil Conservation Service, Agricultural Center building, Farm Road and Brumley Street, Stillwater, Okla. 74074; 405-624-4360. 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 is available to fill single copy requests.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection

and Flood Prevention Program, Pub. L. 83-566, 16 U.S.C. 1001-1008.)

Dated: July 24, 1978.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service, U.S. Department of Agriculture.

[FR Doc. 78-21244 Filed 7-31-78; 8:45 am]

[3410-16]

WILLOW SWAMP WATERSHED PROJECT, SOUTH CAROLINA

Intent To Not Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the proposed action in the Willow Swamp Watershed project, Colleton and Bamberg Counties, S.C.

The watershed project was planned in 1963 and authorized by congressional committees in 1964. The planned structural measures were installed during 1971, 1972, and 1973. The proposed action is to provide better access to the downstream segments of the channel work previously installed to facilitate maintenance operations. For an average of 700 feet on the downstream end of eleven separate channels, an earth travelway will be constructed. Material for the travelway will come from the channel.

The notice of intent to not prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment is on file and may be reviewed by contacting Mr. George E. Huey, State Conservationist, Soil Conservation Service, One Greystone West, 240 Stoneridge Drive, Columbia, S.C. 29210; 803-765-5681. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program, Pub. L. 83-566, 16 U.S.C. 1001-1008.)

Dated: July 24, 1978.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service, U.S. Department of Agriculture.

[FR Doc. 78-21245 Filed 7-31-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket 32327-1; Order 78-7-106]

CONNER AIR LINES, INC. AND F. A. CONNER ET AL.

Former Large Irregular Air Service Investigations

Adopted by the Civil Aeronautics Board at its Office in Washington, D.C., on the 21st day of July, 1978.

In the matter of Conner Air Lines, Inc., and F. A. Conner, dockets 32393 and 32394; Blatz Airlines, Inc., 32409; Joseph W. North and Holiday Airways, Inc., 32410; Richard D. Neumann and California Air Charter, Inc., d.b.a. Air United States, 32411; Eric Pearson d.b.a. Pearson Alaska Airlines, 32412; Shields B., and N.Y. Craft d.b.a. Standard Airways 32413; Edgar A. Stewart d.b.a. Stewart Air Services, 32414; Ralph W. E. Cox, Jr., d.b.a. United States Overseas Airlines, 32415; Fritz Hutcheson and U.S. Aircoach, Inc., 32416; Donald D. Duffy and Virgin Islands Air Service, Inc., 32417; Roy Briten d.b.a. Westair Transport, 32418; Amos E. Heacock d.b.a. Air Transport Associates, 32441; Edmund J. Averman, Jr. d.b.a. Imperial Airlines, Inc., 32460; Transocean Air Lines, Inc., 32462; Paramount Airlines, Inc., 32488; Sourdough Air Transport, 32489; Amos E. Heacock d.b.a. Air Cargo Express, 32491; Totem Air Service, Inc., 32502; Arrow Airways, Inc., 32516 and 32517; R. R. Hart d.b.a. Trans American Airlines, 32529; Edna K. Sherman d.b.a. California Hawaiian Airlines, 32530; Gus and Georgette Callas d.b.a. General Airways 32531; Ida H. Herrmann d.b.a. Great Lakes Airlines, 32532; S. E. Spicher d.b.a. SSW, Inc., 32537; Stanley D. Weiss d.b.a. Twentieth Century Aircraft Co., 32556; Aero Finance Corp., 32637 and 32638; Miami Airline, Inc., 32639 and 32640; Peninsular Air Transport, Inc., 32643 and 32644; Royal Air Service, Inc., 32645 and 32646; Southern Air Transport, Inc., 30882 and 30883; Red Carpet Air Lines, Inc., 32464 and 32465; Central American Air Taxi, Inc., 32493 and 32494; Fast Air Service, Inc., 32512 and 32513; Alaska International Air, Inc., 32518 and 32519; Aeroamerica, Inc., 32542 and 32543; Tropics International, Inc. d.b.a. Skyfreight, 32544 and 32545; Rich International Airways, Inc., 32546 and 32547; Jet Fleet Corporation, Inc., 32550 and 32551; Southeast Airlines, Inc., 32565; McCulloch International Airlines, Inc., 32619; Zantop International Airlines, Inc., 32636; Jet Executive International, Inc., 32775 and 32776; Land Air Corporation, 32440; Central Air Transport, Inc., 32490; DHL Airways, Inc., 32495, 32496 and 31542; Skyways International, Inc., 32504 and 32505; General Transport, Inc., 32506 and 32507; Trans Air Link, Inc., 32508 and 32509; Miami Air Lease, Inc., 32510 and 32511; Falcon Airlines, Inc., 32514 and 32515; International Travel Arranger, Inc., 32548 and 32549; Travel-Go-Round, Inc., 32552 and 32553; Young Aerosystems Corp., 32580; Charter Adventures, Inc., 32603 and 32604; Worldwide Airlines, Inc., 32606 and 32607; Global American Transport Co., 32608 and 32609; Southeast Aircraft Corp., 32625 and 32626; Arthurs Travel Center, Inc., 32630 and 32632; Monarch Aviation, Inc., 32641 and 32642; Carefree Travel, Inc., 32649 and 32650; World Air Leasing Corp. d.b.a. World Air, 32654 and 32655; International Weekends' Charter Tours, Inc., 32808 and 32809; and Two Americas Trading Co., Inc., d.b.a. International Charter Brokers, 33005 and 33006.

ORDER

By Order 78-3-159, we opened this docket in response to applications filed by two former large irregular carriers, Standard Airways and Transocean Air Lines, Inc., for exemption authority to engage in supplemental air transportation domestically and between the United States and other parts of the world. We suggested that the authority sought was more properly pursued under section 401(d)(3), which covers the issuance of certificates to engage in supplemental air transportation. We invited applications for supplemental certificate authority under section 401(d)(3) from any person, although our solicitation was obviously prompted by the requests of the former large irregular carriers. Finally, we stated our intention to conduct the necessary proceedings expeditiously and economically with a view toward minimizing the cost to the applicants.

The response has been extraordinary—66 persons have filed applications for supplemental authority under section 401(d)(3). Out of that number, at least 25 persons who once held authority as large irregular carriers[1] (including Standard and Trans-

[1] Arrow Airwys, Inc.; Edmund J. Averman, Jr. d.b.a. Imperial Airlines, Inc.; Blatz Airlines, Inc.; Roy Briten d.b.a. Westair Transport; Gus and Georgette Callas d.b.a. General Airways; Conner Air Lines, Inc. and F.A. Conner; Ralph W. E. Cox, Jr., d.b.a. United States Overseas Airlines; Donald D. Duffy and Virgin Islands Air Service, Inc.; R. R. Hart d.b.a. Trans American Airlines; Amos E. Heacock d.b.a. Air Cargo Express;

Footnotes continued on next page

ocean, whose requests for exemptions led to the Board's solicitation) have filed applications for certificates to engage in interstate, overseas, and foreign supplemental air transportation. Fifteen more applicants who are authorized to provide direct air service under sections 401(d)(3) or 418 of the Act, Part 298 of the Board's Economic Regulations, or part 121 of the Federal Aviation Regulations (private carriage) have filed. Of these, eight certificated carriers have filed applications for new or amended certificate authority and motions to consolidate.[2] World and Trans International filed separate requests for new authority to engage in transatlantic supplemental transportation of property and intrastate supplemental transportation of persons and property between points in Alaska;[3] Rich International has requested that its respective certificates of pubic convenience and necessity, issued by Orders 77-8-148 and 77-5-94, be amended to allow it to engage in supplemental air transportation of persons as well as property, that the clause in Order 77-8-148 "pursuant to contracts with the Department of Defense" be deleted, and finally, that other foreign points be added to its certificate issued by Order 77-5-94; Central American and Southern Air Transport have applied for broad interstate supplemental authority to engage in the transportation of persons and property[4] and selective foreign and overseas supplemental authority to transport persons and property; McCulloch and Zantop have applied for the broadest possible supplemental authority, technically including every possible foreign and overseas point, with Zantop seeking authority to engage in supplemental air transportation of property only. Six air-taxi operators[5] who are now engaged in the air transportation of persons and property under Part 298 of the Board's economic regulations have also applied for supplemental authority to provide interstate, overseas, and foreign transportation of persons and property. Two carriers[6] who currently have authority from the Federal Aviation Administration to operate for hire in the private carriage of persons or property in air commerce under Part 121 of that agency's regulations (14 CFR 121) have also applied for authority similar to that sought by the Part 298 carriers.[7]

Finally, 22 applicants[8] who have never engaged in direct air transportation have filed motions to consolidate and have requested supplemental authority to engage in interstate, overseas, and foreign transportation of persons and property.

Answers in opposition to the applications of Trans International and World to engage in transatlantic supplemental transportation of property and intrastate supplemental transportation of persons and property between points in Alaska were filed by Wien Air Alaska and Alaska International Air, Inc.

INTRODUCTION

This order will define the scope of the issues to be considered (and correspondingly which applications will not be considered) and establish procedural groundwork for the investigation. Because of the breadth and number of applications,[9] the case would be infinitely ponderous if each and every issue raised were litigated along the lines conventionally followed in route certificate proceedings. There the traditional practice has been to approach certification eligibility according to the two statutory issues of: (1) Whether the transportation covered by the application is required by the public convenience and necessity; and (2) whether the applicant is fit, willing, and able to perform such transportation properly. The first issue is further subdivided into two parts: (a) Is there a need for the award sought; and (b) in the event more than one applicant seeks authority, which should be selected. While these issues have also served as a framework for considering applications for supplemental authority, the standards for resolving the issues in such cases differ from those conventionally followed in route certificate proceedings, for the simple reason that supplemental air transportation is unlike scheduled air transportation. By its very nature, supplemental transportation is provided only when there is a demand for it and this demand occurs irregularly over time from one place or another. Because of this difference in the mode of operations, determinations in supplemental certification proceedings on need and carrier selection have necessarily depended upon more general reasoning than would usually be employed in a route certification proceeding. As we discuss in more detail below, we tentatively find that in view of the basic nature of the supplemental industry and on the basis of well-established Board policy, there is a need for additional supplemental service in domestic, overseas, and foreign air transportation and that an applicant's proposal will be considered as required by the public convenience and necessity if it is reasonably calculated to meet a portion of the demand for charter service and if it will not impair any existing carrier's ability to fulfill certificate obligations. Accordingly, in the absence of an evidentiary showing requiring a different result, we propose to award a certificate to engage in supplemental air transportation to all persons who meet these criteria and can show that they are fit, willing, and able properly to perform the transportation covered by their applications and to conform to the provisions of the act and the requirements of the Board.

We discuss our tentative findings and conclusions on our policies relating to the public convenience and necessity first. Then, we outline the procedural guidelines for this case. Final-

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Footnotes continued from last page

Amos E. Heacock d.b.a. Air Transport Associates; Ida H. Herrmann d.b.a. Great Lakes Airlines; U.S. Aircoach, Inc., and Fritz Hutcheson; Miami Airline, Inc.; Richard D. Neumann and California Air Charter, Inc. d.b.a. Air United States; Joseph W. North and Holiday Airways, Inc.; Paramount Airlines, Inc.; Eric Pearson d.b.a. Pearson Alaska Airlines; Peninsular Air Transport, Inc.; Royal Air Service, Inc.; Edna K. Sherman d.b.a. California Hawaiian Airlines; Shields B. and N.Y. Craft d.b.a. Standards Airways; Sourdough Air Transport; S.E. Spicher d.b.a. SSW Inc.; Edgar A. Stewart d.b.a. Stewart Air Services; Transocean Air Lines, Inc.; Stanley D. Weiss d.b.a. Twentieth Century Aircraft Co.; Totem Air Service, Inc.; and Aero Finance Corporation.

[2] These carriers have certificates under either section 401(d)(3) or 418: Central American Air Taxi, Inc.; McCulloch International Airlines, Inc.; Rich International Airways, Inc.; Southern Air Transport, Inc.; Trans International Airlines, Inc.; World Airways, Inc.; and Zantop International Airlines, Inc.

[3] World, however, asserts that transatlantic cargo charter authority should not be considered in this proceeding.

[4] This request as it applies to all-cargo right is mooted since these parties have received certificates under section 418 of the act.

[5] Fast Air Service, Inc.; Jet Executive International, Inc.; Jet Fleet Corp., Inc.; Red Carpet Air Lines, Inc.; Southeast Airlines, Inc.; and Tropics International, Inc., d.b.a. Skyfreight.

[6] Alaska International Air, Inc., and Aeroamerica, Inc.

[7] In order to obtain a Part 121 certificate, the FAA requires that a certain standard of financial and operational fitness be met.

[8] Two Americas Trading Company, Inc.; Arthurs Travel Center, Inc.; Carefree Travel, Inc.; Central Air Transport, Inc.; Charter Adventures, Inc.; DHL Airways, Inc.; General Transport, Inc.; Global American Transport Co.; International Travel Arrangers, Inc.; Land Air Corp.; Miami Air Lease, Inc.; Monarch Aviation, Inc.; Skyways International, Inc.; Southeast Aircraft Corp.; Star Trek Ltd.; Trans Air Link, Inc.; Travel-Go-Round, Inc.; World Air Leasing Corp. d.b.a. World Air; Worldwide Airlines, Inc.; Young Aerosystem Corp.; International Weekends' Charter Tours, Inc.; and Falcon Airlines, Inc.

[9] Several applications seeking foreign or overseas as well as interstate authority did not technically comply with section 201.4(b) of our Economic Regulations, which specifies that separate applications be filed for interstate air transportation or overseas and foreign air transportation. Had the applications been in technical compliance with section 201.4(b), their number would be even greater. In any event, we waive the requirement of Part 201 in the interests of minimizing delay.

ly, we discuss several questions of scope raised by the applications.

POLICY: NEED FOR SUPPLEMENTAL ENTRY

We tentatively find and conclude that there is a continuing need for additional entry into supplemental air transportation in domestic, overseas, and foreign markets. We previously have determined that there is a public need for expanded supplemental services, both domestically and internationally, in the *Supplemental Air Service Proceeding*, 45 CAB 231, and, more recently, in the *Supplemental Renewal Proceeding*, Opinion and Order 77-1-98. This need, by the very nature of supplemental service, cannot be defined discretely. We have chosen in the past to describe it as a necessary competitive parallel for scheduled services, recognized by Congress in its enactment of amendments to the act covering supplemental carriers and certification, required by the marketplace as an alternative to scheduled service in the form of a lower cost, lower priced economic prototype responsive to the ever-shifting currents of demand, ready as an available source of additional airlift in the event of national emergency or a disequilibrium in the demand for and supply of scheduled air transport, and a base from which tried and proved carriers could be selected to satisfy the demand for scheduled services.

Time has confirmed these past judgments. There has been a stong, steady growth in international charter traffic. In the areas served by U.S. supplemental carriers, passenger charter traffic increased 54 percent during the 6 year period 1972 and 1977. Cargo traffic increased 41 percent during the same period. Thus, the outlook for supplemental air transportation is one of continued expansion. The public benefits from this competition have far exceeded our expectations. The competitive spur of supplemental transportation has, in fact, brought about intense and effective competitive responses from other carriers. Scheduled carriers, domestic and foreign, have instituted their own charter programs, with striking results in such areas as Canada, the Caribbean, Latin America, and the transatlantic. Moreover, deep discount fares on scheduled service have so affected charter operations that we are currently reevaluating certain restrictions in our charter regulations. The consumer is definitely benefiting.

Although the outcome of this intense competition for the existing supplemental carrier is by no means assured, the largest of them and the smallest have demonstrated an impressive staying power. Trans International, a giant in the supplemental industry, has led the industry in profitability. Smaller and younger entrants, Evergreen and Rich International, have overcome initial losses and showed profits in 1977. These developments, in our view, point up the ability of supplemental carriers to compete successfully and to do so regardless of size.

The presence of intense competition has not, however, been without its casualties. World Airways, another giant in the supplemental industry, continues to experience losses from its supplemental operations. Others have either gone out of the business or merged: ONA has withdrawn from service; McCulloch is in bankruptcy;[10] Johnson has merged into Evergreen. The recent influx of low-fare scheduled service in both domestic and international markets has had a considerable impact on charter service and the supplementals. It may be that the substantial growth in charters in past years was the product of a domestic and international regulatory environment that did not encourage vigorous price competition by scheduled service carriers and that in a more fully competitive environment supplemental carriers may cater to more limited and specialized classes of consumers. On the other hand, the development of new types of charters that the Board's new regulations make impossible may lead to an increase in charter traffic from a broader class. In either case, it would be foolish for the Board to let the current problems faced by the supplementals impede the granting of new authority to applicants who are well aware of the state of the industry and are still willing to enter the field.

The staying power of the scheduled carriers, in contrast, is subject to no doubt whatever. Not only have they not been driven out of business by the competitive spur of supplemental service; they have developed competitive charter programs of their own, which have captured a sizeable share of the charter market; and the low-priced scheduled fares that have proliferated as a competitive response to charter prices have been immensely successful in recapturing traffic from charters. In the transatlantic area, for example, U.S. scheduled carriers are maintaining a 35 percent share of the passenger charter market—a share equal to that of the U.S. supplemental carriers. In the Caribbean and Latin American areas, U.S. scheduled carriers hold 70 percent of the total passenger charter market compared to the 20 percent held by the supplementals. By contrast, neither scheduled nor supplemental carriers have done well in promoting charter carriage in the transpacific area, because of very restrictive foreign government policies on charter operations. In that area, passenger and cargo traffic carried in charter service have declined since 1974, with passenger traffic dropping off 32 percent in 1975. The public has not benefited from those restrictive policies.

In light of experience, our judgments concerning the future demand for and desirability of expanded charter authority have served the public interest. In both the *Supplemental Air Service Proceeding* and *Supplemental Renewal Proceeding*, need for charter service was estimated on the basis not only of the past, but of the future as well. As the Presiding Examiner in the former case expressed it in his recommended decision:

It has long been established that public convenience and necessity include the desired goals of the future as well as the proven needs of the present and past. The Board's function under the act is not simply one of providing a kind of after-the-fact regulation by correcting demonstrated service deficiencies and fulfilling existing service demands shown on the factual record. * * * Rather, the act affirmatively invests the Board with the duty to consider, as being in accordance with the public convenience and necessity, the "promotion," "development," and "encouragement" of air transportation. This mandate imposes duties which are peremptory, and in compliance with it the Board, with judicial approval, has experimented widely in authorizing new and largely uncharted operations. * * *

In exercising its developmental responsibilities the Board of necessity must rely to a substantial extent on its evaluation of the future. * * * The fact that such an evaluation involves liberal amounts of prophecy and judgment does not make it any less firm a basis to support certification, for the provisions of the act embodying the declaration of policy "are as much an enactment by Congress as is any other section of statute." What is essential is that the record contain a "hard core of factual possibility" which will undergird the exercise of a particular judgment. (45 CAB at 352, footnotes omitted.)

WE BELIEVE THAT THIS REASONING IS STILL COMPELLING

The demand of the public for low-cost air travel cannot be seriously disputed. While charter activity as a whole has expanded, the number of firms specializing in this service has decreased and the industry has become markedly more concentrated. It is our view that competition and new entry (or, at least the threat of new entry) are the most effective ways to encourage efficient air carrier operations and thereby preserve and expand opportunities for low-cost air

[10] Acquisition of McCulloch is now under consideration by the Board in Docket 32271.

travel. The Board has taken action in a variety of areas to foster this development: We have relaxed substantially, and tentatively decided to relax even further, restrictions on charter travel, which have tended to constrain consumer demand in the past; we have approved deep discount fares in a number of prime domestic vacation travel markets; we have proposed to permit carriers to engage in normal fare price competition within a broad zone; and we are reviewing IATA agreements which embody collective pricing. It is likely that the combined impact of these and other actions will be increased price competition, more efficient operations, and a corresponding tendency to lower fares. While it is impossible to forecast the precise impact, it seems clear that there will be a substantial expansion of low-cost travel opportunities, and the opening up of large untapped pools of potential low-cost travelers. Charter service, because it is generally based on the economies of full planeload operations, not only offers an important option to meet the demand for low-cost service, but also provides a competitive spur to the pricing of other air services and to carrier efficiency.

The principle we followed in awarding new authority in the *Supplemental Renewal Proceeding, supra*, was the genesis of freer entry in supplemental air transportation. The present proceeding offers us the opportunity to refine and adapt that policy to a more mature industry, one prepared to compete in price and to absorb new entrants whose presence will stimulate a greater variety of price/service options. The role and importance of supplemental air transportation in the growth of low-price, bulk air service is well documented. The public need for that kind of service has sustained the supplemental industry over almost three decades and has resulted in strong price competition among supplementals and between supplemental and scheduled carriers.

The best evidence of need for additional entry into supplemental air transportation is the willingness of the entrepreneurs who have filed applications to risk their capital in meeting the demand for such services. They obviously believe that there is a need for their services, a need which will sustain contemplated operations and ultimately yield a return on capital invested. This optimism cannot be ignored. The fact that it exists symbolizes the competitive spirit of supplemental carriage and reconfirms our view that supplemental air transportation needs new entry to reinforce its competitive role and to supply the demand for low-cost/low-priced air transportation.

No other class of carriers can duplicate the competitive role of the supplementals. They operate basically in response to specific requests for charters and their supply thus follows demand more closely than is the case for scheduled services. Supplementals are certificated to serve broad geographical areas, not city pairs. Supplemental carriers, once certificated, can operate whenever and wherever they are needed and can correspondingly "withdraw" from a market at will. The Board does not prescribe the prices they charge for their services. This absence of price regulation coupled with the freedom to exit from particular markets has not created any significant economic problems for the traveling public, and we can infer from the price competition this has fostered that this freedom from regulations of charter prices and carrier exit has benefited the public. Lowering or removing entry barriers likewise will not harm the public and will certainly provide an environment for even greater price/service competition and consumer benefits. The supplemental carriers, unlike their counterparts in the scheduled industry, are already operating under market conditions which share with the theoretical ideal the fact that price and the location and volume of investments are not artifically encumbered. What is missing is freedom of entry or the threat of entry to insure that the response of supply to demand is adequate. Our current entry restrictions also affect the use of resources currently committed, because they have involved the Board, rather than the market, in selecting the managements who will employ them. We have in several contexts explained why we believe the marketplace is a better selector of carriers than we—see, for example, our recent tentative opinion in the *Oakland Service Case*, Order 78-4-121. The marketplace, however, cannot operate effectively to select carriers if they are precluded by a stiff requirement first to prove need to a regulatory agency. This proceeding offers us an opportunity to realize this widely accepted principle, and we intend to do so unless presented with a persuasive showing of why we should not.

POLICY: CARRIER SELECTION

In determining the supplemental authority awards that may be required by the public convenience and necessity under section 401(d)(3) of the act, the Board has historically considered (1) the extent of the public need or demand for charter service; (2) the proper role that the supplementals should play in meeting this demand; and (3) the impact of supplemental awards on incumbents. Under the policy explained in the preceding section, the Board recognizes a public need for additional charter services which new applicants should be permitted to meet. Complementing that policy, we tentatively find and conclude that the public need for supplemental service is met by any applicant offering a realistic service proposal reasonably calculated to serve a portion of the demand for supplemental service and one which, if operated, would not impair an existing air carrier's ability to fulfill its certificate obligations. Any applicant satisfying those criteria and whom we find fit, willing, and able to perform the service covered by the application will be issued a certificate to engage in supplemental air transportation.

Over the years, the Board has evolved a policy of noncomparative carrier selection for such authority. The most recent definitive articulation of that policy is our opinion in the *Supplemental Renewal Proceeding, supra*. In that case, we awarded all applicants, including a new entrant, the authority they were requesting, with the exception of authority to serve certain limited geographical areas which were treated differently because of foreign policy.[11] The awards were based upon findings and conclusions with long-range implications. We concluded that the possibility of competitive damage among the supplemental carriers (intra-sector competition) and between the supplementals and the scheduled carriers (inter-sector competition) is outweighed as a decisional consideration bearing on carrier selection by freer entry opportunity as a policy objective. This policy conclusion was based in turn on findings, first, that the supplemental carriers have the facility to tailor their operations to actual demand to a far greater extent than their counterparts in scheduled service; second, that competition from the supplemental carriers had not proved ruinous to scheduled services; and, third, that the existence of competition from scheduled carriers was not a controlling factor in developing our certification policies for supplemental air transportation.

The supplemental industry is inherently capable of adjusting to new entry. The record in the *Supplemental Renewal Proceeding* establishes that these carriers have excellent control over short-run cash outlays affected by fluctuations in demand within a market and a remarkable flexibility in transferring capital from one market to another to follow shifts in demand. The picture is equally bright for the longer run from the standpoint of economic durability—in the face of significant changes in overall demand, the supplemental industry has shown

[11] The issue of transatlantic cargo authority was also deferred.

its ability to survive when given a fair chance to compete. In that decision, the Board also disparaged the usefulness of diversion estimates to measure future competitive impact. On the topic of diversion from competition among supplementals, we made the following observation:

> To summarize, we believe that the impact of intra-sector diversion can be minimized and controlled to a large degree by individual supplemental carriers. In any event, there is no logical reason to be minutely concerned with the level of competition among the supplemental carriers when scheduled carriers, foreign as well as our own, are likely to have a far greater impact on the fortunes of charter carriage. The scheduled carriers normally have the potential means and authority to undertake major charter programs to their on-route points, and to a lesser degree to off-route points as well. There is also the possibility of diversion to route carriers resulting from the introduction of a competitive group fare that is operated as a component of scheduled service. Further, changes in the aggregate demand for air transportation are at least equally important determinants of the scale of charter operations as are changes in the number of competitors operating in a given area. In all the circumstances there is an air of other-worldliness involved in examining diversion estimates with their inherent uncertainty as to the threshold question of what is new and what is diverted traffic. We are confident that very little harm will result from the awards here authorized. Moreover, we expect that there are significant potential gains for the public and all of the supplemental carriers involved. (Opinion and Order 77-1-98 at 18.)

Experience likewise provides little evidence to suggest that more or potentially more supplemental carriers would be disastrous for the scheduled carriers. Our judgment of a decade ago in the *Supplemental Air Service Proceeding* that the scheduled carriers could withstand competition from charters has been confirmed again and again by experience. The prosperity of both sectors has been affected less by inter-sector competition than by the rise and fall of total demand for air transportation and the continuing rise in costs of production. The scheduled carriers have responded to the competitive spur of the supplementals by offering low-priced charter and off-peak scheduled services. This competitive response on the part of scheduled carriers has been so effective that the Board is currently in the process of relaxing restrictions on the types of charters the supplementals may operate.[12] Competition between supplemental and scheduled carriers has undoubtedly benefited the traveling public, especially the discretionary demand segment, and this, coupled with the absence of evidence that scheduled service has been impaired, is enough to persuade us that the benefits from supplemental competition outweigh any detriment to the scheduled industry from expanded supplemental authority.

Our entry policy expressly provides individual incumbents with an opportunity to show impairment caused by proposed supplemental operations. We can hardly go farther to protect their interests. In truth, we do not see what difference it makes in the long run whether two or twenty new entrants are authorized to compete. Public demand will determine how many, and which, operators survive and what will be the overall volume of supplemental services performed. The risks of entry will be borne primarily by the new carriers.

The longest stride we are taking in our policy on carrier selection is a tentative conclusion that no restrictions be imposed either on the number of applicants or the markets to be served in foreign areas. Traditionally, we have limited awards in international areas, in part because of the attitudes of foreign governments. While the reaction from other governments is uncertain, the mere existence of multiple licenses held by U.S. flag carriers need not be a deterrent to cooperation between governments leading to improved levels of service abroad. The policy we propose is similar to the one we have followed in other areas, such as our liberalization of our charter rules, and plainly manifests this nation's determination to spread where possible the benefits of competition in international air transportation. But the ramifications should not be overstated. By comparison, for example, with our recently announced position on the possible unlawfulness of IATA pricing agreements,[13] the policy we tentatively adopt here for entry of supplemental carriers is not missionary. Supplemental service is still just that. Its purpose is to respond to pockets of demand for low-priced, bulk air transportation which can be provided at hours often inconvenient to users and in markets often removed from the mainstream of commerce. Consequently, where scheduled carriers offer prices and service attractive to the public, traffic has not and will not forsake the superior conveniences and comforts they provide.

Further, our policy will not predetermine the rights of carriers to operate on foreign soil. Those rights will ultimately be determined at the bargaining table or by the carriers themselves as they convince foreign governments that the service they propose will be beneficial to them. The fact that other governments may interfere with the workings of the marketplace is merely another obstacle, albeit an acute one, to the realization of greater benefits from competition. At best, the policy we adopt here will result in freer and fuller competition in foreign air transportation; at worst, the operating flexibility which we have provided supplemental carriers in the past and will provide them in the future should work to reduce the hardship of such impediments to a free market as foreign governments may pose.

The fundamental difference between our policy of open entry to all fit supplemental applicants and a policy of selectivity is that the new carriers will have to absorb the costs of competition and the financial losses if they fail to compete successfully. In another time, perhaps it was reasonable to design supplemental awards to protect fledgling carriers from competition, but there is no evidence in this mature industry that the management of supplemental carriers cannot act rationally in the face of competition, provided they are not artificially inhibited by regulatory constraints in competing for their share of the demand for charter services. Obviously, we are not guaranteeing either profitability or competitive success to any of the applicants awarded certificates under the policies we adopt in this proceeding. Some will fail. Many of the incumbents, both supplemental and scheduled carriers, are financially far better equipped to compete than any of the new applicants. The odds are great that, in terms of their number, the new entrants who ultimately survive might approximate the number chosen had we selected them. This we will never know. We believe, however, that the costs of selection by the market compare favorably with the costs of selection by the Board. These carriers already engage in a highly mobile, demand-oriented business, virtually unregulated except on the side of entry. This industry is even better situated than scheduled service to make the transition to open entry without injury to the public. The incumbents already are free to enter and exit from any market within the broad geographical areas they are certificated to serve, so that dislocations, if any, which may follow the introduction of new carriers into the markets should not be severe and, in fact, can be accommodated with the same facility as attends current operations. Moreover, restrictive policies on entry imposed by this agency ordinarily lead to protracted litigation. The costs to the public from a mistake on our part in selecting a carrier which the market would not select and from being deprived of needed services during the

[12] For example, the Board has published a proposed rule which would remove many of the traditional restrictions on charters including minimum group size, advance purchase, and round-trip requirements. EDR-348, SPDR-64, Docket 32242, dated Mar. 14, 1978.

[13] Order 78-6-78.

pendency of the regulatory selection process are quite real. The time has come to let the applicants, the principal beneficiaries of our operating authority policies, absorb the costs of the selection process while they compete in the marketplace instead of in the hearing room.

The policy of carrier selection which we endorse will reduce substantially the time required to litigate and decide the issues. The reduction in complexity of the carrier selection issues as well as the consequent reduction in the required volume of evidence will go far to keep the investigation within reasonably manageable limits of time and expense—expense to the parties, to the taxpayers, and to the traveling public. Because we have already formulated the underlying policies in other investigations, the foundation for fashioning this proceeding already exists, and the occasion is opportune.

The guidelines for the evidentiary submissions on carrier selection issues and on fitness, which we discuss next, are framed to comport with these substantive policies.

FITNESS ISSUES

The Board has always recognized that fitness of applicants for certificates to engage in supplemental air transportation is of great concern under the act. The term "fitness" generally encompasses the language in section 401(d)(3) of the act which reads "* * * fit, willing, and able to properly perform the transportation covered by the application and to conform to the provisions of this act and the rules, regulations, and requirements of the Board hereunder." Our opinion in the *Supplemental Renewal Proceeding* explains this requirement. There we stated:

> * * * the Board's chief responsibility regarding fitness is to determine and assure that supplemental carriers have the wherewithal and willingness to operate properly and in accordance with the law, and to protect the public from undue risk.[14]

In addition, the Board has expressed statutory authority to monitor the continuing fitness of supplementals, to make and enforce regulations, and to terminate their operating authority in the event they become unfit.[15] The focus of the present proceeding will be on the fitness of the applicants to provide the service they apply for. Although fitness is not defined in the act, the Board has over the years applied several tests, which may be grouped into four categories: financial strength, managerial experience, operating plan, and compliance disposition. Insight into the Board's treatment of fitness can be gained by consulting numerous Board opinions where these criteria are described and applied to particuluar sets of facts. For the benefit of those parties who may wish to consult recent cases where the Board applied these tests, we refer them to *Eugene Horbach Acquisition of Modern Air Transport, Inc.*, Opinion and Order 77-3-88/89 and, in a more limited context, *Supplemental Renewal Proceeding*, Order 77-1-98, pages 34-38. In addition, we have attached an evidence request which sets out in detail the evidence needed to meet these tests of fitness.

PROCEDURES AND EVIDENCE

The procedures and evidence required to complete the investigation within an acceptable period of time and with a sufficiently developed record are critical. As we explained above, we are tentatively adopting policies on public convenience and necessity which eliminate the requirement that an applicant first show need for its services and then show why its proposal is superior to that of another applicant. Therefore, the parties shoud concentrate their attention on the issues related to fitness.

We intend to proceed expeditiously to the hearings on that subject and the related evidence on operational ability. Accordingly, final determinations on the policies proposed here will be made separately, and the hearings on fitness will not be delayed pending those determinations. In our earlier order, we promised to hear expeditiously all applications submitted. Although our commitment was directed to the former large irregular air carriers, many other applicants have applied who are also deserving of expeditious treatment. Now that they have entered the case, we must recognize the desirability of equal treatment for all applicants, but keep our commitment. We believe the procedures we are adopting will afford all applicants an opportunity for timely consideration and assure procedual fairness.

First, it is apparent that a case to consider over 60 applications simply could not be completed expeditiously. Therefore, we will divide Docket 32327 into three phases to hear the applications by groups delineated according to operating experience. Some applicants have never operated direct air service, others have operated but no longer do so, and the remainder currently provide such service. This fundamental and readily ascertainable distinction among the applicants provides a rationale basis for separating them into manageable groups, to be tried separately. We expect the hearings will be started as closely together in time as possible without undue inconvenience or hardship on the parties so the division into separate cases should not favor any one group over the others. Further, it is possible that one or more of the applicants within a group may not be able to produce the evidence required here as quickly as others. We do not believe the other applicants' cases should be delayed if this should occur. Accordingly, because fitness is not a comparable test, but rather one that each applicant must pass or fail on his own merits, we urge the judge or judges assigned to issue separate decisions on each applicant or group of applicants as they complete their cases. Finally, we again emphasize the importance of expedition with, of course, due regard for the procedural rights of the parties.

One further matter. We recognize that the former large irregular air carriers as a class have made a valuable contribution to air transportation through their efforts to develop economically priced service. Nevertheless, applicants must demonstate that they are currently fit, willing, and able to provide the transportation covered by their applications. We are setting a course designed to consider speedily and fairly all of the applications conforming to the scope defined here; consequently, we are providing an unprecedented opportunity to all applicants for a hearing on the merits of their proposals. All will benefit from an adherence to the plain meaning of our observation in Order 78-3-159 that this proceeding was not instituted to countenance charges of past agency malfeasance or renunciation of previous findings affecting the supplemental industry in general or any of the applicants in particular.[16]

Petitions for reconsideration of this order may be filed within 30 days after the date of adoption. Such petitions may address themselves to the scope of the proceeding and to the general procedures to be followed. They should not comment on the proposed policy determinations; these will be the subject of separate comments. They should also not reply to the Board's tentative findings in this order on matters, such as impact on incumbents, which will be open to rebuttal at the hearing unless the party shows why its disagreement with these findings cannot be dealt with adequately in that way. Answers to petitions for reconsideration shall be filed within 15 days following the due date for filing such petitions.

The evidence required to resolve the issues related to fitness is a matter we leave in the hands of the Bureau of

[14] Opinion and Order 77-1-98, p. 34.

[15] Section 401(n) of the Federal Aviation Act of 1958, as amended.

[16] On the other hand, the evidence request incorporates limitations on the periods we will examine for evidence of an applicant's previous violations of the act, regulations, etc.

Administrative Law Judges. To assist them, we have asked our staff to prepare evidence requests which reflect what they believe is the minimum essential information to determine issues of fact in this proceeding. The results are contained in attachment B.[16a] Environmental and energy issues should also be explored during the hearings. Parties should direct their attention to our findings and conclusions on environmental impact and energy consumption in the *Supplemental Renewal Proceeding, supra*, p. 32. We found there that the supplemental authority awarded could not significantly affect the environment because such operations are geographically dispersed and generally irregular. With regard to energy consumption, the plane-load operations of supplementals are inherently fuel efficient.

For the hearing, operating proposals are required to demonstrate that the applicant's proposed service is reasonably calculated to meet some demand in the market. Evidence concerning operating proposals will be sufficient if it shows that an applicant's proposed operations would be economically feasible in a market with aircraft suitable for the traffic density and stage length. This evidence is required to show general economic feasibility, and there will be no comparison of the proposal of one applicant with that of another as to operating costs, profitability, etc. For these reasons, coupled with the fact that supplemental service has no inherently minimal level of service,[17] applicants need not submit detailed service proposals purporting to show a complete profile of area-wide operations including traffic forecasts or alternative estimates reflecting various competitive assumptions. The actual service patterns that may eventually be offered will be established by competitive conditions which cannot be forecast. Incumbents who oppose certification of additional entrants may submit evidence on diversion provided they show how additional supplemental operations will threaten their ability to perform their certificate obligations. All issues related to fitness of applicants will be tried with the foregoing in mind.

MARKETS IN ISSUE, PRETRIAL RESTRICTIONS, AND CONSOLIDATION

Applications for supplemental authority were solicited by Order 78-3-159 without restriction. The filings in response are summarized in attachment A. In the interest of facilitating expeditious handling of the numerous applications, we have determined to consider supplemental passenger, cargo, and military air transportation authority for the markets or geographical areas covered by the applications with these exceptions: (a) Intra-Alaska, (b) the polar regions, and (c) outer space. We also restrict consideration of supplemental authority in the transatlantic area to passenger and military transport. To the extent conforming to the scope of this proceeding, we shall consolidate the applications or parts thereof and grant the motions to consolidate; we dismiss those not conforming.

The question of intra-Alaska authority was specifically raised by motions of Trans International Airlines and World Airways, who filed contingently to include their applications should intra-Alaska authority be placed in issue. Answers in opposition were filed by Alaska International Air and Wien Air Alaska. They stress that the Board has customarily restricted entry of supplementals into these markets, that intra-Alaska air transportation depends upon subsidization, and that this proceeding should not be delayed by introducing complex and controversial issues surrounding intra-Alaska supplemental awards. In view of the fact that the motions to consolidate are contingent upon the inclusion of intra-Alaska markets, that other applicants have not applied specifically for this authority, and that inclusion of these markets would contribute to prolonging this proceeding, we are not including them.

At least one application, that of Southern Air Transport, extends to the polar regions. Although neither past nor present demand for supplemental services in those areas necessarily reflects future prospects, we have reservations at this juncture about the ability of an applicant to provide a plausible, realistic operating plan for service in those regions. Unless a strong showing can be made for reconsideration, those areas will not be in issue.

Royal Arms, Inc. d.b.a. Star Trek Ltd. has filed an application for a supplemental certificate issued under section 401 to engage in air transportation of persons, property, and mail between Cape Canaveral and the Moon, on the one hand, and Mars, on the other hand, and between the Moon and Mars, on the one hand, and the Bonneville Salt Flats in Utah, on the other hand. The applicant states that it would operate under the Board's single entity charter rules, the charterer would bear the total cost of the flight, the passengers would pay nothing directly or indirectly, and the charters would be limited with the use of the McDonnell Douglas Space shuttle (picture enclosed with application). This is a pioneering proposal, and in keeping with the Board's innovating disposition. We do not believe, however, that this investigation is the proper forum to consider it, and will therefore dismiss the application. It is not clear whether the applicant seeks authority to operate as a supplemental or as an indirect air carrier. If it is the latter, then this proceeding is inappropriate. If it is the former, the reservations we expressed previously about realistic operating proposals to serve the polar regions apply even more cogently here. Finally, this proceeding is not the time and place for a determination of the Board's jurisdiction over outer space, an area outside of and beyond the atmosphere.

The areas in issue will be those generally established in previous broad investigations of worldwide supplemental authority. They include supplemental air transportation between:

(1) Any point in one of the 50 States or the District of Columbia and any point in another State or the District of Columbia;

(2) Any point in the United States, on the one hand, and in any of the following areas:

a. Canada;

b. Mexico;

c. Transatlantic;

d. Transpacific—American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and points in Australasia, Indonesia, and Asia as far west as longitude 60 degrees east via a transpacific routing;

e. Caribbean—points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea; and

f. Central and South America—points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and in the countries on the continent of South America.

Expansion of the issues to include supplemental authority to other areas and for markets not mentioned herein will be considered only upon request accompanied by a showing that the public benefits from such inclusion outweigh the costs in terms of delay and effort required to litigate the issues raised.

Transatlantic supplemental cargo authority will not be heard in this proceeding. These issues are currently pending in the *Transatlantic Cargo Service Case*, Docket 30789. Applications for new, renewed, or expanded cargo operating rights should be filed

[16a] Attachments and appendices filed as part of the original document.

[17] Section 208.25 of the Board's Economic Regulations specifies that failure to perform 500 hours of revenue flight in any two consecutive calendar quarters will be deemed grounds for suspension of a supplemental carrier's operating authority, unless the carrier shows unusual circumstances constituting good cause for the failure. We intend to reevaluate the regulation, and service proposals need not be based on it.

in that docket. The order activating that proceeding will be issued shortly.[18]

Accordingly, it is ordered that:

1. The *Former Large Irregular Air Service Investigation*, Docket 32327, instituted by Order 78-3-159 and this order, shall be conducted under authority granted by the Federal Aviation Act of 1958, as amended, and particularly sections 201, 401, 408, 409,416, and 801;

2. The primary issues in this proceeding shall be:

(a) Whether the public convenience and necessity may require the grant of additional certificated supplemental authority for the transportation of persons, property, and military traffic in domestic, overseas, or foreign supplemental air transportation between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia and between any point in the United States, on the one hand, and the following areas: Canada, Mexico, Caribbean, Central and South America, Transpacific, and Transatlantic (except cargo);

(b) Whether the applicants for such authority are fit, willing, and able to perform the supplemental air transportation found by the Board to be required by the public convenience and necessity;[19]

3. The following authority will not be considered in this proceeding:

(a) Property between points in the United States and points in the transatlantic area;

(b) Between points in the United States, on the one hand, and points in the polar regions or in outer space, on the other hand;

(c) Between points within the State of Alaska;

4. Petitions for reconsideration of this order shall be filed within thirty (30) days following the date of adoption of this order, and answers shall be filed within fifteen (15) days thereafter;

5. The proceeding shall consist of two parts as follows:

(a) COMMENTS ON PROPOSED POLICY DETERMINATIONS

All interested parties will have 30 days from the date of adoption of this order (which will also be published in the FEDERAL REGISTER) to file comments on the proposed policy, that is, that there is a continuing need for additional supplemental entry which can be satisfied by selection of entrants on a noncomparative basis. Interested parties will then have an additional 21 days to file reply comments reacting to the initial comments. The Board will endeavor to issue an order setting forth its determination on the policy issue as soon as possible thereafter.

Interested parties should appraise the proposed policy from the standpoint of law, fact, economics, and public policy. Any factual material that a party wishes the Board to consider should be reduced to exhibit or affidavit form and appended to the party's comments.

Apart from questions arising under the Federal Aviation Act itself, we are particularly interested in parties' views on the interaction between our proposed policy and laws relating to energy conservation and protection of the environment. While specific factual questions relating to energy and environmental issues will be dealt with in the hearing (see below), general policy questions should be considered in this phase of the proceeding to the extent they involve whether or not the Board should go forward with the proposed policy. In particular, if any party contends that the environmental or energy laws preclude the Board from adopting the proposed policy, we expect this contention to be raised at the outset. We will also welcome comments suggesting how the proposed policy can be accommodated with the environmental and energy laws. Our environmental regulations, in section 312.12 (14 CFR 312.12), require all applicants to file environmental evaluations which contemplate more detailed schedule proposals than it is practical to require under the proposed policy. We solicit comments on the extent to which this regulation can and should be waived or modified to fit in with the procedures we propose to follow in this proceeding.

Interested persons who do not plan to participate in the hearings in this proceeding (see subsequent sections) may nevertheless participate in this resolution of the policy issue by filing 20 copies of written data, views, or arguments pertaining thereto, without the necessity for seeking leave to intervene or becoming a formal party. Individual members of the public can likewise participate informally by filing their comments with the Docket section in letter form, without the necessity of filing additional copies. All comments so filed will be available for inspection in the Docket section.

(b) HEARINGS

All issues in the proceeding other than the policy determination covered by paragraph 5(a) shall be heard before an administrative law judge or judges at a time and place to be determined later. To facilitate the hearings, applicants are assigned to dockets (paragraph 6) according to the guidelines discussed under *Procedures and Evidence* in this order. This part of the proceeding shall focus on the Board's tentative findings as to the bases for demonstrating applicants' ability to participate in need for supplemental service; the effects of new operations on the ability of incumbents to operate; the fitness, willingness, and ability of applicants to perform the transportation covered by their applications; and environmental and energy issues. The evidentiary guidelines are set forth in the attachments hereto, subject to the rulings of the administrative law judge.

6. Docket 32327 is subdivided into the following:

(a) 32327-1 for consideration of applicants once operating but no longer operating direct air services;

(b) 32327-2 for consideration of applicants operating direct air services;

(c) 32327-3 for consideration of applicants not covered by (a) or (b) above;

7. To the extent they conform to the scope of the proceeding,

(a) The following applications will be considered in Docket 32327-1: Arrow Airways, Inc. (Dockets 32516, 32517); Edmund J. Averman, Jr. d.b.a. Imperial Airlines, Inc. (Docket 32460); Blatz Airlines, Inc. (Docket 32409); Roy Briten d.b.a. Westair Transport (Docket 32418); Gus and Georgette Callas d.b.a. General Airways (Docket 32531); Conner Air Lines, Inc. and F. A. Conner (Dockets 32393, 32394); Ralph W. E. Cox, Jr. d.b.a. United States Overseas Airlines (Docket 32415); Shields B. and N.Y. Craft d.b.a. Standard Airways (Docket 32413; Donald D. Duffy and Virgin Islands Air Service, Inc. (Docket 32417); R. R. Hart d.b.a. Trans American Airlines (Docket 32529); Amos E. Heacock d.b.a. Air Cargo Express (Docket 32491); Amos E. Heacock d.b.a. Air Transport Associates (Docket 32441); Ida H. Herrmann d.b.a. Great Lakes Airlines (Docket 32532); Fritz Hutcheson and U.S. Aircoach, Inc. (Docket 32416); Richard D. Neumann and California Air Charter, Inc. d.b.a. Air United States (Docket 32411); Joseph W. North and Holiday Airways, Inc. (Docket 32410); Paramount Airlines, Inc. (Docket 32488); Eric Pearson d.b.a. Pearson Alaska Airlines (Docket 32412); Peninsular Air Transport, Inc. (Dockets 32643, 32644); Edna K. Sherman d.b.a. California Hawaiian Airlines (Docket 32530); Sourdough Air Transport (Docket 32489); S. E. Spicher d.b.a. SSW, Inc. (Docket 32537); Edgar A. Stewart d.b.a. Stewart Air Services (Docket 32414); Totem Air Service, Inc. (Docket 32502);

[18] The applications or parts thereof for transatlantic supplemental cargo authority filed in the instant case will be dismissed without prejudice to refiling if the respective applicants wish to pursue the authority in the *Cargo Service Case*.

[19] This will include all issues arising under other sections of the act including sections 408 and 409.

Trans- ocean Air Lines, Inc. (Docket 32462); Stanley D. Weiss d.b.a. Twentieth Century Aircraft Co. (Docket 32556); Miami Airline, Inc. (Dockets 32639, 32640); Royal Air Service, Inc. (Dockets 32645, 32646); and Aero Finance Corp. (Dockets 32637, 32638);

(b) the following applications will be considered in Docket 32327-2: Aeroamerica, Inc. (Dockets 32542, 32543); Alaska International Air, Inc. (Dockets 32518, 32519); Central American Air Taxi (Dockets 32493, 32494); Fast Air Service, Inc. (Dockets 32512, 32513); Jet Executive International, Inc. (Dockets 32775, 32776); Jet Fleet Corp. (Dockets 32550, 32551); McCulloch International Airlines, Inc. (Docket 32619); Red Carpet Air Lines, Inc. (Dockets 32464, 32465); Rich International Airways, Inc. (Dockets 32546, 32547); Southeast Airlines, Inc. (Docket 32565); Southern Air Transport (Dockets 30882, 30883); Tropics International, Inc. d.b.a. Skyfreight (Dockets 32544, 32545); and Zantop International Airlines, Inc. (Docket 32636);

(c) the following applications will be considered in Docket 32327-3: Arthurs Travel Center, Inc. (Dockets 32630, 32632); Carefree Travel, Inc. (Dockets 32649, 32650); Charter Adventures, Inc. (Dockets 32603, 32604); Central Air Transport, Inc. (Docket 32490); DHL Airways, Inc. (Dockets 32495, 32496, 31542); Falcon Airlines, Inc. (Dockets 32514, 32515); General Transport, Inc. (Dockets 32506, 32507); Global American Transport Co. (Dockets 32608, 32609); International Travel Arrangers, Inc. (Dockets 32548, 32549); International Weekends' Charter Tours, Inc. (Dockets 32808, 32809); Land Air Corp. (Docket 32440); Miami Air Lease, Inc. (Dockets 32510, 32511); Monarch Aviation, Inc. (Dockets 32641, 32642); Skyways International, Inc. (Dockets 32504, 32505); Southeast Aircraft Corp. (Dockets 32625, 32626); Trans Air Link, Inc. (Dockets 32508, 32509); Travel-Go-Round, Inc. (Dockets 32552, 32553); World Air Leasing Corp. d.b.a. World Air (Dockets 32654, 32655); Worldwide Airlines, Inc. (Dockets 32606, 32607); Young Aerosystems Corp. (Docket 32580); Two Americas Trading Co., Inc. d.b.a. International Charter Brokers (Dockets 33005, 33006). To the extent parts thereof do not conform, those parts are dismissed;

8. The motions of Star Trek, Ltd.; Trans International Airlines, and World Airways, Inc., for consolidation of their applications, respectively, in Docket 32623, Dockets 32499 and 32500, and Dockets 32612 and 32613 are denied and the applications are dismissed;

9. Leave to file late is granted to applicants having filed applications in Docket 32327 after twenty-one (21) days allowed by Order 78-3-159; [20]

10. Petitions to intervene should be filed no later than thirty (30) days following the date of adoption of this order;

11. All environmental evaluations prepared pursuant to Part 312 of the Procedural Regulations shall be filed no later than the date set for the exchange of information response exhibits.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board: [21]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21305 Filed 7-31-78; 8:45 am]

[6320-01]

[Docket No. 32070; Order 78-7-109]

AIR TRANSPORT ASSOCIATION OF AMERICA

Order Regarding Petition for Board Approval To Hold Joint Air Carrier Discussions on a Uniform Method of Payment for International Shipments Moving on U.S. Government Bills-of-Lading

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of July 1978.

The Air Transport Association of America (ATA) on behalf of certain carriers [1] has filed with the Board, under sections 204(a) and 414 of the Federal Aviation Act, a petition for authority [2] to hold joint air carrier discussions to establish a uniform carrier billing practice for international shipments moving on U.S. Government Bills-of-Lading. The Federal Property Management Regulations [3] provide that transportation charges for air freight shipments moving on Government Bills-of-Lading may be paid either (a) on a presumption of delivery basis,[4] or (b) on a certification of delivery basis.[5] The carriers want to discuss the feasibility of adopting the presumption of delivery procedure as a uniform method of payment.

In support of its proposal, ATA asserts that a uniform practice may reduce the loss of bills-of-lading overseas, which often leads to lengthy delays in receipt of payment; and that a uniform practice will result in cost savings to both the U.S. Government and the carriers providing the service and will speed processing requests for payment and the ul mate receipt of payment for services rendered.

The General Services Administration (GSA) submitted comments stating that it does not oppose a uniform carrier billing practice provided it conforms to the regulations set out in 41 CFR Part 101-41.

By companion Order 78-7-110, we have set out the criteria we will employ in judging applications for antitrust immunity covering discussion authority. Applying those criteria here, we conclude that ATA's petition should be dismissed without prejudice to refile.

First, we presume that ATA has determined that its proposed discussions need to be immunized from the normal workings of the antitrust laws, yet ATA has not explained what possible anticompetitive consequences of its proposed discussions require the requested immunity under section 414. Not all consequences of approval of discussion authority are obvious and the burden must be on the applicant to allege and explain the need for immunity.

Second, since we presume there will be anticompetitive consequences of the discussions for which antitrust immunity is sought, we will apply the *Local Cartage Agreement* case [6] test to determine the public interest in the grant of discussion authority. Under *Local Cartage*, the Board will permit carrier discussions only when the purpose is to meet a serious transportation need or to secure important public benefits and when the intended result is one that cannot be readily achieved by less anticompetitive action.[7]

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[20] Applications received after July 10, 1978, and not specifically mentioned here will be disposed of in a later order.

[21] All members concurred.

[1] Allegheny Airlines, Inc., American Airlines, Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., The Flying Tiger Line, Frontier Airlines, Inc., Hughes Air Corp., National Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines Inc., Pan American World Airways, Inc., United Air Lines, Inc., and Wien Air Alaska, Inc.

[2] The carriers request that the discussion authority be granted for a period of 180 days from the date of the Board's order.

[3] These rules are promulgated by the General Services Administration.

[4] 41 CFR 101-41.312. Under presumption of delivery, carrier(s) are not permitted to submit bills for payment until 30 days after shipment has departed the point of origin, provided that, when the bills are submitted by other than the delivering carrier, the billing carrier must submit with its bill or have on file with the paying office a blanket certificate that protects the United States from duplicate payments and from the consequences of loss, damage, or shrinkage of property shipped.

[5] 41 CFR 101-41.401. Under the certification of delivery method, a carrier may bill immediately for the charges, provided the bill is accompanied by a certification that the shipment involved has been delivered in good order and condition.

[6] 15 CAB 850, 853 (1952).

[7] See Capacity Reduction Agreements Case, Order 75-7-98. See also, Agreements adopted by the International Air Transport Association relating to the Traffic Conferences, Order To Show Cause, 78-6-78, June 9, 1978, at 5-6.

ATA has not made a showing of a transportation need or public benefit sufficient to justify the extraordinary relief it requests. We are aware of the documentation requirements involved in transporting shipments via Government bills-of-lading and that some documents are lost. However, in the absence of more detailed information, we cannot accept the ATA's allegation that the loss of bills-of-lading is a serious problem, nor do we understand why the presumption of delivery, now available on an individual carrier basis, is an inadequate remedy.

Finally, we have no indication of what less anticompetitive alternatives may have been considered by the ATA and why they were rejected. In light of these considerations, we must conclude that the public interest does not warrant approval of the joint carrier discussions.

We note that several of the carriers, on whose behalf ATA filed this petition, are also members of IATA. Thus, they are already authorized to hold discussions such as those for which immunity is sought here. We are not by this order retracting the immunity granted in 6 CAB 639. Nevertheless, we intend to review all trade association agreements under the standard of *Local Cartage* and we will carefully examine the immunity available to IATA carriers as that review progresses.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 412, 414:

It is ordered, That:

1. The petition of ATA to authorize joint carrier discussion is dismissed without prejudice to refile; and

2. This order shall be served upon all U.S. air carriers, and the General Services Administration.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[8]
Secretary.

[FR Doc. 78-21303 Filed 7-31-78; 8:45 am]

[6320-01]

[Docket Nos. 31448, etc.; Order 78-7-110]

FRONTIER AIRLINES, INC. ET AL

Order Dismissing Requests For Discussion Authority

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of July 1978.

By this order we are dismissing, with permission to refile, three pending requests for discussion authority; clarifying our policy as to when we intend to act favorably on such requests in the future; and announcing that we are re-examining the need and desirability of continued approval of the Airline Scheduling Committee Agreements, in docket 20051, used for the past 10 years to allocate landing slots at the so-called high density airports.

The three requests we are dismissing are: first, of Frontier Airlines for authority to discuss, with the other carriers serving Denver's Stapleton International Airport, what it considers to be rising air traffic congestion problems at that airport;[1] second, by Trans World Airlines (TWA) for authority to conduct discussions aimed at reducing the size of the Official Airline Guide (OAG); and third, a request of the Association of Retail Travel Agents (ARTA) for authority to conduct discussions among persons marketing charter air transportation to consider the possibility of an industry-wide form of self-regulation.

Frontier is seeking authority to consider a number of possible approaches to the problem of congestion at Stapleton, including "variable landing fees between peak and lower volume periods, minimum capacities during peak periods for scheduled operations, refinements in general aviation operations * * * (and) * * * other solutions." It premises its request on the rapid traffic growth Stapleton has been experiencing recently as a result of the overall growth of the Denver area, and the corresponding increase in air traffic delays, which it characterizes as significant.[2] Traffic conditions at Stapleton are of particular concern to Frontier because that airport is its principal hub and operating base. Although it concedes that the current situation at Stapleton is not as severe as in New York and other major metropolitan airports in the late 1960's, Frontier believes that action must be taken now before the problem becomes more critical.

Continental Air Lines (which also serves Stapleton) has filed an answer in opposition to Frontier's application. Continental contends that Frontier's request is premature, and that alternative, less anti-competitive means exist for achieving the objectives of the proposed discussions. Continental notes, for instance, that talks are currently underway with the Federal Aviation Administration in an attempt to increase the number of landings which can be handled at Stapleton.

In response to Continental's answer, Frontier contends that Stapleton's landing capabilities can be only modestly increased, and that its proposed discussions would not be anticompetitive since it is not seeking authority to discuss schedule reductions, capacity limitations or changes in fares.[3]

TWA is seeking authority to discuss ways to reduce the number of "effective/discontinued" listings currently reported in the OAG. These listings are necessary because the current effective dates of the OAG (the 1st and 15th of each month) normally do not correspond with the dates of the carriers' major seasonal schedule changes. TWA says that as a result there is an unusually large number of "effective/discontinued" listings during the months of January, June, September, and December—the months during which the carriers traditionally make their major seasonal schedule changes. It notes, for instance, that while the OAG for July 1, 1977 contained 1,234 pages, the OAG for September 1, 1977 contained 2,018 pages.

In support of its request, TWA contends that the large number of "effective/discontinued" listings has increased the cost of the OAG[4] and hampered its usefulness as a quick-reference tool. In a clarifying letter sent to the Director-designate, Bureau of Pricing and Domestic Aviation, TWA states that the primary objective of its proposed discussion would be to reach a consensus as to when the OAG should become effective. TWA did not rule out, however, that is was also seeking authority to consider possible agreements establishing common dates for major schedule changes. Indeed, it contended that the discussion of possible common dates for schedule changes would not be anticompetitive.

Six carriers—American, Braniff, Continental, Frontier, North Central and Southern—have filed answers in support of TWA's application.

The third request for discussion authority was filed by the Association of Retail Travel Agents (ARTA), seeking authority for all interested direct and indirect carriers, and others engaged in the marketing and sale of charter air transportation, to discuss the development of possible uniform standards of conduct, experience, and financial ability for those marketing charters. In support of its request, ARTA points to the rapid recent growth in charter travel; the corresponding growth of the tour operator industry; the lack of specific standards governing the level of expertise, professional conduct and financial ability of persons engaged in the marketing

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[8] All Members concurred.

[1] By letter, dated July 17, 1978, Frontier asks that its request for discussion authority be withdrawn. In view of our action in this order, its request for withdrawal is rendered moot.

[2] Frontier notes that there were an additional 3,000 landings a month at Stapleton this past summer over the previous summer—an increase of 17 percent.

[3] The reply which Frontier filed was accompanied by a motion for leave to file an otherwise unauthorized document. We will grant that motion.

[4] It has not, however, provided us with any specific cost information.

of charters;[5] and the recent increase in the number of consumer complaints involving charters.[6] ARTA believes that a form self-regulation would offer the least anticompetitive and restrictive approach to the maintenance of a stable retail travel agency industry, and prefers this alternative to Federal licensing or registration.

Anwers in support of ARTA's application were filed by the U.S. Tour Operators Association, the Air Charter Tour Operators of America and United Air Lines. On the other hand, the American Society of Travel Agents (ASTA) filed an answer in opposition. ASTA believes ARTA's request is overly broad, unnecessary, and unsupported. ARTA then filed a reply.[7]

We have decided to dismiss the three foregoing applications with permission to refile revised requests. In so doing, we will clarify our policy on what we will require in the future from parties seeking discussion authority.

First, when carriers file for discussion authority, we will presume that they perceive possible anticompetitive consequences requiring immunity from the antitrust laws, and we will expect applicants to set out those consequences. The Federal Aviation Act does not require air carriers to obtain authority before they commence discussions. Rather, the reason for and consequence of discussion authority is to immunize the participants.[8] Sometimes the anticompetitive effects of the discussions the carriers contemplate are obvious, while in other instances they are not as clear. Henceforth, we do not intend to entertain requests for discussion authority unless the applicants first state why their proposed discussions would or could violate antitrust or common law restraints absent a grant of immunity.

Second, we will expect applicants to provide us with a reasonably precise explanation of the specific topics they propose to discuss. We understand that it will not always be possible for them to foresee all the matters likely to be raised at their proposed discussions, and, of course, we do not want pleadings to contain bargaining positions. Nevertheless, we will expect applicants to state the subjects they propose to discuss in sufficient detail to enable us to assess the public interest in their doing so.

Frontier, TWA, and ARTA have not advised us why they believe they need immunity and they should do so in any refiling. Also they have not explained with any precision just what it is they propose to discuss. Further, Frontier and TWA assert that their discussions would not be anticompetitive. If this is so, they need not seek our sanction under sections 412 and 414.

We turn now to our views of the public interest weight to be given the anticompetitive potential of discussions requiring immunity from the antitrust laws and to the countervailing showing of benefit required to secure immunity. A grant of discussion authority and concommitant antitrust immunity is extraordinary relief not availiable to competitors in most industries. The principles embodied in the Nation's antitrust laws are essential to preserve and enhance the competition which we believe should play a central role in the Nation's air transportation system. Therefore, we have concluded that anticompetitive discussions should be condoned and shielded only upon a showing of extraordinary benefit. Absent such a showing, air carriers will be subject to the same antitrust constraints in negotiating agreements as competitors in other industries.

Accordingly, we will require all future requests for discussion authority to be fully justified in accordance with our local cartage standard as enunciated in the *Capacity Reduction Agreements Case*, Order 75-7-98, July 21, 1975.[9] Under this standard we intend to authorize discussions only where there has been a clear and convincing showing that they are required by a serious transportation need or are necessary to secure other important public benefits. We will also expect applicants to provide us with a detailed explanation of all alternative, less anticompetitive means they have considered to achieve the objectives of their proposed discussions, and the reasons why these alternatives were rejected.

In our view, neither Frontier, TWA, nor ARTA has made adequate local cartage showings in support of their requests. First, we do not believe that either Frontier, TWA, or ARTA has demonstrated the existence of a serious transportation need or the promise of important public benefits. Little if any information was provided in support of their requests. Frontier and TWA merely said that the problem they described has been or will be costly; while ARTA has only said that there is a problem. Local cartage demands much more. As has been previously recognized, local cartage places "an arduous burden" on those seeking immunity.[10] Not vague and broad generalizations, but substantial and specific allegations are required.

Nor have Frontier, TWA, or ARTA explained what alternatives they have considered and why those alternatives were rejected. Frontier's request is a case in point. Although we have previously authorized inter-carrier discussions and allocation agreements as a means of coping with the problems of airport congestion (see, for instance, our approval of the Airline Scheduling Committee Agreements, most recently by order 77-10-49), these approvals do not relieve Frontier of the duty to consider less anticompetitive, alternative means for achieving the objectives of its proposed discussions. For example, Frontier mentions possible variable landing fees as one subject of its proposed discussions. While we express no view as to the merit of this particular possibility, Frontier should focus on this and other market-type solutions if it chooses to reapply for discussion authority.

At the outset, we indicated that we were reexamining the need for and desirability of continued approval of the Airline Scheduling Committee agreements, which are due to expire this fall. We believe that these agreements may be significantly anticompetitive. Airport congestion is a straight-forward problem of resource allocation. At times the demand for landing slots exceeds supply. As a general rule, rationing by agreement among competitors should be permitted only where more competitive alternatives are impractical. We will therefore expect any request to reapprove these agreements to be fully supported in accordance with local cartage, including a thorough discussion of all less anticompetitive alternatives which have been considered; and the reasons why these alternatives were rejected.

Accordingly, it is ordered, That: 1. The requests of Frontier Airlines, Inc.

[5] ARTA points out that travel agents appointed by the airline members of the Air Traffic Conference, through agreements which we have approved, are subjected to selection and retention standards as well as standards relating to professional conduct, experience, financial strength and ability.

[6] In support of this contention ARTA relies on data more than two years old provided by our Office of Consumer Advocate in Docket 29165.

[7] The United and ASTA answers, as well as ARTA's reply, were accompanied by motions for leave to file otherwise unauthorized documents, which we will grant.

[8] In Order 71-11-35 the first domestic capacity reduction agreement was rejected on the grounds that the carriers had not obtained discussion authority before reaching the agreement. Thus, failure to obtain immunity where the discussions are per se violations of the antitrust laws or are plainly repugnant to established antitrust principles not only exposes the discussants to the normal operations of the antitrust laws but may also be a factor in our public interest consideration of the resultant agreement. Of course, failure to seek authority is not such a factor where the discussions themselves are not per se violative of the antitrust laws or plainly repugnant to antitrust principles.

[9] See also, agreements adopted by the International Air Transport Association relating to the Traffic Conferences, Order to Show Cause, 78-6-78, June 9, 1978, at 5-6.

[10] See initial decision of Judge Robert Seaver in the *Capacity Reduction Agreements Case*, docket 22908. Also see order 75-7-98 and *U.S. v. CAB*, 511 F. 2d 1315.

in docket 31448, Trans World Airlines, Inc. in docket 31596, and the Association of Retail Travel Agents in docket 32014 for discussion authority be dismissed with permission to refile revised requests;

2. The motions filed by Frontier Airlines in docket 31448, American Airlines, Inc. and Continental Airlines, Inc. in docket 31596, and the American Society Travel Agents, the Association of Retail Travel Agents, and United Airlines, Inc., in docket 30214, for leave to file otherwise unauthorized documents be granted; and

3. Copies of this order shall be served on all parties of record in dockets 20051, 31448, 31596, and 32014.

In addition, this order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[11]
Secretary.

[FR Doc. 78-21302 Filed 7-31-78; 8:45 am]

[6320-01]

[Docket No. 30777; Agreement C.A.B. 27281 R-1 through R-21; Order 78-7-113]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order regarding Europe—Israel passenger fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of July 1978.

An agreement has been filed with the Board, under section 412(a) of the Federal Aviation Act of 1958 and Part 261 of the Board's Economic Regulations, between various U.S. and foreign member air carriers of the International Air Transport Association (IATA). The agreement was adopted at the Reconvened 76th Meeting of Passenger Traffic Conference 2, held in Geneva on April 17-19, 1978, and was filed with the Board on May 4, 1978.

The agreement, which has indirect application in air transportation as defined by the Act, establishes first-class, economy, and promotional fares between Europe and Israel for effectiveness June 1, 1978, through March 31, 1979. All of the promotional fares are subject to advertising, sales, and combinability restrictions, and most include passport or residency requirements as well. In general, advertising and sales of the promotional fares are limited to the specific countries from which each fare applies; the group fare from Switzerland to Israel, for example, may be advertised and sold only in Switzerland, and the Portugal-Israel GIT only in Portugal and Israel. Only the first-class and normal economy fares are combinable with fares to and from the United States. A number of the promotional fares also require that passengers hold country-of-origin passports, submit signed residency certificates, or provide proof of long-term residence (three months or more) in the country from which the particular fare applies.

We will disapprove the agreement insofar as it prohibits advertising and sales of Europe-Israel fares in the United States, readopts or establishes fares which are not combinable with fares to and from the United States, and/or imposes passport or residency requirements on passengers using Europe-Israel fares.

Air transportation is a commercial service which under every regime of law must be made available to all comers on a just and equitable basis. Arbitrary restrictions on the sale of such transportation serve only to create and perpetuate discrimination among passengers, favoring some and purposely disadvantaging others by exacting higher fares for equivalent services. As a result of the IATA resolutions which bar advertising and sales of Europe-Israel promotional fares in the United States, U.S. residents are denied knowledge of the existence of these "hidden" fares, deprived of the opportunity to buy a ticket at low fares which are widely available in Europe, and subjected to financial penalties in the form of higher fares for essentially identical transportation between points in Europe and Israel. The IATA restrictions on fare combinability impose a similar hardship on U.S.-originating passengers, since noncombinable fares may not be sold as part of a through ticket from the United States. While these provisions would not prevent sophisticated U.S. travelers from purchasing the special fares in Europe, as a practical matter they are virtually inaccessible to U.S. consumers. To refuse information about and access to these special fares to one segment of the public, while making them freely available to others, is a gross discrimination. There is no known justification for depriving U.S. residents of the benefit of these low fares, and we fail to understand why this discrimination should persist.

Many of the fare resolutions proposed in this agreement also incorporate passport or residency requirements which totally preclude use of the fares by U.S. citizens. Under these resolutions, a European passport is tantamount to a discount-service coupon. There is no reason why U.S.-originating passengers or U.S. residents traveling within Europe should pay a premium for air service to Israel, solely on the basis of nationality, while their European counterparts enjoy the benefit of inexpensive excursion, group, and inclusive-tour fares. Discount fares to and from the United States, in contrast, are available to foreign nationals without restriction. We can see no justification for this inequity, other than the most anachronistic sort of nationalism or a most short-sighted and unfortunate attempt to exploit U.S. citizens.

In the past, we have generally disclaimed jurisdiction over noncombinable fares between foreign points, on the ground that they have no application in air transportation as defined by the act and therefore need not be approved or disapproved by the Board. In view of the clearly discriminatory impact of these hidden fares, however, we can no longer maintain a neutral stance. The resolutions at issue here do not merely establish fares between foreign points, but govern sales of those fares within the United States and to U.S. citizens regardless of residence. The effect, moreover, is clearly adverse to the public interest, since consumers in the United States cannot purchase tickets at these low fares, and, because of the passport/residency restrictions, U.S. citizens are denied access to some of them altogether. We will therefore exercise our jurisdiction and disapprove the resolutions to the extent that they include such restrictions.

We will also attach a condition to IATA Resolution 001 (Permanent Effectiveness Resolution) to specify that no provision of any IATA resolution or any air tariff filed with the Board shall prevent any agent or air carrier from advertising or selling a ticket for air transportation between foreign points (a) within the United States, (b) in combination with any fare to or from the United States, or (c) to any U.S. citizen who otherwise meets the travel requirements affixed to the air fare.

We encourage U.S. and foreign air carriers and their agents to advertise and sell these fares within the United States, and invite the carriers to file appropriate tariffs. Our disapproval of the IATA restrictions excludes these discriminatory practices from antitrust immunity under section 414 of the act and insures that any carrier or agent who chooses to sell these fares on a nondiscriminatory basis, pursuant to a duly filed tariff, will not be subject to IATA enforcement action.

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[11] All members concurred.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, makes the following findings:

1. It is found that the following resolutions, which have indirect application in air transportation as defined by the Act, are adverse to the public interest and in violation of the Act insofar as they preclude advertising and sales within the United States, prohibit combinations with fares to and from the United States, and/or incorporate passport or residency requirements:

Agreement CAB	IATA No.	Title	Application
27281:			
R-6	002	Standard Adoption Resolution	2
R-7	014s	Special Fares to/from United Kingdom	2
R-8	014x	Special Fares to Elat	2
R-9	072dd	TC2 Creative Fares Europe-Israel	2
R-10	075aa	TC2 Group Fares Europe to Israel	2
R-11	075bb	TC2 Group Fares Europe to Israel	2
R-12	075cc	TC2 Group Fares Switzerland to Israel	2
R-13	080t	TC2 One Month Individual Inclusive Tour Fares, Europe to Israel.	2
R-14	081aa	TC2 Winter Group Inclusive Tour Fares Europe to Israel.	2
R-15	081bb	TC2 Group Inclusive Tour Fares Europe-Israel.	2
R-16	081cc	TC2 Group Inclusive Tour Fares Europe-Israel.	2
R-17	081ff	TC2 Group Inclusive Tour Fares Portugal-Israel.	2
R-18	081pp	TC2 Group Inclusive Tour Fares Scandinavia/Finland to Israel.	2
R-21	080ee	Delayed Effectiveness Inclusive Tours from Federal Republic of Germany and West Berlin to Israel.	2

2. It is not found that the following resolutions, which have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

Agreement CAB	IATA No.	Title	Application
27281:			
R-1	LA20	TC2 Limited Agreement Europe-Israel	2
R-2	001b	TC2 Special Effectiveness Resolution (Tie-in).	2
R-3	001m	Europe-Israel Special Provision Resolution	2
R-4	001uu	Special Escape Resolution Europe-Israel	2
R-5	001yy	Special Escape Resolution Europe-Israel	2
R-19	052	TC2 First Class Fares	2
R-20	062	TC2 Economy Class Fares	2

Accordingly, it is ordered, That:

1. Those portions of Agreement C.A.B. 27281 described in finding paragraph one above are disapproved;
2. Those portions of Agreement C.A.B. 27281 described in finding paragraph two above are approved; and
3. IATA Resolution 001 (Permanent Effectiveness Resolution) is hereby conditioned as follows:

No provision of any IATA resolution or any air tariff filed with the Civil Aeronautics Board shall prevent any agent or air carrier from advertising or selling a ticket for air transportation between foreign points: (1) At a location within the United States; (2) in combination with any fare to or from the United States; or (3) to a U.S. citizen who meets all the travel requirements affixed to the air fare other than passport or residency requirements.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[1]

Secretary.

[1]All members concurred.

[FR Doc. 78-21309 Filed 7-31-78; 8:45 am]

[6320-01]

[Docket No. 32710; Order 78-7-126]

SAN FRANCISCO-RENO-ALBUQUERQUE-TEXAS SERVICE INVESTIGATION

Order on Motions To Consolidate Applications

Issued under delegated authority July 25, 1978.

Order 78-5-128, served June 14, 1978, instituted as Docket 32710 an investigation to determine whether the public convenience and necessity require that new nonstop authority be granted in the following markets:

San Francisco/Oakland-Reno
Reno-Albuquerque
Reno-Dallas/Fort Worth
Reno-Houston

The instituting order (at fn. 8) delegated "to the presiding Administrative Law Judge the authority to consolidate by order any applications which conform to the scope of the proceeding."[1] That delegation implicitly includes the authority to dismiss without prejudice any motion to consolidate to the extent consolidation is not granted. 14 CFR 302.12(d).

Applications, and motions to consolidate them, were timely filed by the carriers listed below. The city pairs so listed are those contained in said applications to the extent only that they conform to the scope of the investigation, that is, that they seek nonstop authority in the markets specified above. To the extent that the applications do not conform to that scope, by

[1]To the extent that motions to consolidate include also petitions for reconsideration, however denominated, of Order 78-5-128, they are for disposition by the Board. Until so acted upon in a way which affects the scope of this case, the scope of the proceeding will remain the four nonstop Reno markets.

route description or otherwise, they fail to qualify for consolidation by this order.

Applicant	Docket	Market
American[2]	32461	San Francisco/Oakland-Reno
		Reno-Albuquerque
		Reno-Dallas/Fort Worth
		Reno-Houston
Braniff[3]	29106	San Francisco/Oakland-Reno
		Reno-Albuquerque
Continental[4]	29764	Reno-Dallas/Fort Worth
		Reno-Houston
Delta[5]	32984	San Francisco/Oakland-Reno
		Reno-Dallas/Fort Worth
		Reno-Houston
Eastern[6]	32988	San Francisco/Oakland-Reno
		Reno-Albuquerque
		Reno-Dallas/Fort Worth
		Reno-Houston
National	32987	San Francisco/Oakland-Reno
		Reno-Albuquerque
		Reno-Dallas/Fort Worth
		Reno-Houston
North Central.	32975	San Francisco/Oakland-Reno
		Reno-Albuquerque
		Reno-Dallas/Fort Worth
		Reno-Houston
TWA	32972	San Francisco/Oakland-Reno
		Reno-Albuquerque
Western[7]	32459	Reno-Albuquerque
		Reno-Dallas/Fort Worth
		Reno-Houston

[2] American's motion notes that it had filed an application prior to Order 78-5-128, contrary to the statement at fn. 4 of that order. In the event, American, by its Amendment No. 1 of July 5, 1978, in Docket 32461, has overtaken the earlier filing in that docket.

[3] Per Braniff's Amendment No. 2 in Docket 29106 of even date with its June 27, 1978 motion to consolidate, enlarging on its application (as first amended in Docket 29106) previously consolidated at ordering paragraph 5 of Order 78-5-128.

[4] Per Continental's Amendment Number One in Docket 29764 of even date with its June 26, 1978 motion to consolidate, enlarging on its application previously consolidated at ordering paragraph 5 of Order 78-5-128.

[5] In light of the limited action taken by this order, to consolidate applications of carriers to the extent only that they conform to the scope of this proceeding, it is not necessary nor appropriate to address the answers to motions to consolidate. The objections contained in said answers are to *enlarged* scope in each instance. Thus, for example, Texas International Airlines, Inc., by its "Consolidated Answer * * * to Petitions for Reconsideration and Motions to Consolidate," objects to Delta's consolidation effort as to broadened scope on the grounds, *inter alia*, that Delta omitted the filing of economic data newly mandated at section 302.908 of the Board's Rules of Practice where a carrier applies for authority broader than that already in issue.

[6] Eastern's application would include San Jose at the terminal point Oakland/San Francisco. While San Jose may for some routes and in some cases be treated as a hyphenated service point, there is no reason to suppose that its omission in the instituting order was inadvertent. Accordingly, it would enlarge the scope of this case to include San Jose, Calif. as a point at issue. Presumably the Board will decide whether or not to include San Jose upon disposition of the pending petitions for reconsideration of Order 78-5-128.

[7] Per Western's Amendment No. 1 to its application in Docket 32459 of even date with its July 5, 1978 motion to consolidate.

Accordingly, *it is ordered*, That:

1. The motions to consolidate the applications of American Airlines, Inc., in Docket 32461, Braniff Airways, Inc., in Docket 29106, Continental Air Lines, Inc., in Docket 29764, Delta Air Lines, Inc., in Docket 32984, Eastern Air Lines, Inc., in Docket 32988, National Airlines, Inc., in Docket 32987, North Central Airlines, Inc., in Docket 32975, Trans World Airlines, Inc., in Docket 32972, and Western Air Lines, Inc., in Docket 32459, into the investigation in Docket 32710 are granted to the extent that they conform to the scope of the investigation into the need for new nonstop authority in the markets specified in Order 78-5-128, and such applications are otherwise dismissed.

2. The following are made parties to the proceeding in Docket 32710: American Airlines, Inc., Delta Air Lines, Inc., Eastern Airlines, Inc., National Airlines, Inc., North Central Airlines, Inc., and Trans World Airlines, Inc.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such 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. 78-21301 Filed 7-31-78; 8:45 am]

[6320-01]

[Docket Nos. 33094, 32484; Order 78-7-135]

TEXAS INTERNATIONAL AIRLINES, INC., SYSTEM MAIL RATES

Order To Show Cause Regarding Class Rate IX

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 25th day of July 1978.

On April 19, 1978, the Board adopted Order 78-4-126 which instituted an investigation directed toward the establishment of a new class rate, class rate IX, to be effective July 1, 1978, for the seven local service carriers (locals) operating under class rate VIII. Among other things, the order directed the locals to submit certain information to the Board, pertaining to the year ended March 31, 1978, which would be used in determining the new rate. In addition, the locals' final subsidy rates were reopened as of July 1, 1978.

Upon consideration of class-rate information recently submitted by Texas International Airlines, Inc. (TXI), together with data regularly filed in its form 41 reports to the Board, we have tentatively decided to establish a final subsidy-free mail rate for TXI's system, effective on and after July 1, 1978.

TXI received subsidy payments on an individual rate basis from 1947 (when the carrier commenced operations) through 1960, and has been a member of various class rates since 1961. The carrier's subsidy payments peaked at $8.7 million in 1972, and have subsequently stabilized in the $7 to $8 million range. As a result of the incentives embodied in class rate VIII, TXI has recently received subsidy in excess of its need by performing more efficiently than other carriers in the class.[1]

Texas International's traffic growth in the past 3 years—since it resumed service in early April 1975 after a 4-month strike—has been phenomenal. As the carrier itself has shown,[2] it eclipsed all other locals and trunks with the highest percentage increase in enplaned passengers (23.4 percent), revenue passenger miles (23.3 percent), and load factor (7.65 percent)[3] in 1977 compared to 1976. Furthermore, TXI's system revenue passenger miles for the year ended May 31, 1978, were 35 percent higher than in the year ended May 31, 1977, which in turn was 23 percent above the results for the year ended May 31, 1976. Load factors have also steadily improved, rising above 60 percent in recent non-peak months.

Much of TXI's growth can be attributed to an aggressive and innovative management which has realigned its system into a hub-and-spoke operation, rationalized its fleet mix, and developed and promoted other new ideas to stimulate traffic (and profits)—the "Peanuts" fare is an excellent example. In addition, TXI is located in an area of the country which is enjoying healthy economic growth.

The Board believes that Texas International's recent traffic growth reflects a long-term trend, not an aberration. The carrier has made great strides in rationalizing its system by suspending operations at many of its most uneconomic points,[4] allowing it

[1] For example, in the third semiannual review period of class rate VIII, TXI showed a 55.27-percent reduction in its adjusted eligible need. Only one other carrier showed a reduced eligible need, and the median carrier showed an increased need of approximately 6 percent (see order 78-2-20).

[2] See *Omaha-Dallas/Fort Worth Subpart M Proceeding*, docket 32743, exhibits TXIA-805, TXIA-806, TXIA-807.

[3] The load factor increase would have been greater if TXI had not increased the seating capacity on its aircraft by approximately 15 percent.

[4] TXI has ceased service at 12 small points in Texas, Arkansas, and Louisiana, plus El Paso, Tex., where the carrier's authority is highly restricted. In addition, TXI has applications pending to suspend service at

Footnotes continued on next page

to concentrate on longer, larger, and more lucrative markets. In addition, TXI has recently received new authority between Dallas/Fort Worth and Kansas City, Dallas/Fort Worth and Las Vegas,[5] and at Guadalajara on its Mexican route,[6] providing new areas for traffic growth. TXI has also recently activitated some long-dormant nonstop route authority, Houston-Salt Lake City, for example. Any future awards that the carrier may receive as a result of our liberalized route policy also will increase its growth potential.

As mentioned above, TXI has suspended service to many small communities. In fact, excluding those cities where suspension applications are pending, the carrier has only 12 subsidy-eligible cities remaining on its entire system, and none of the 12 are classified as "E" stations (the smallest cities receiving service and which enplane fewer than 64 passengers per day). Of the 12 remaining cities, seven enplane more than 100 passengers per day (Lafayette, La., and McAllen, Tex., enplane over 250 passengers per day), while the other 5 cities enplane between 64 and 100 passengers per day.

Texas International's financial results have been nearly as impressive as its traffic results. From a small carrier on the verge of bankruptcy 6 years ago, TXI has become one of the most profitable locals.[7] For the year ended March 31, 1978, TXI reported an operating profit of $6.346 million.[8] Ratemaking adjustments[9] of $3.975 million produced an adjusted operating profit of $10.321 million. This compares with the carrier's adjusted operating profits of $436,000 in the year ended March 31, 1977,[10] and $3.095 million in the year ended September 30, 1977.[11] TXI had adjusted investment of $48.696 million for the year ended March 31, 1978. The carrier's adjusted operating profit after tax as a percent of its adjusted investment yields a rate of return of 20.96 percent, before subsidy.[12] This translates into a profit after allowance for return and tax on TXI's system operations of $4.447 million. The table below shows the carrier's current results and those of previous review periods, with and without subsidy included in the computations (in thousands):

Review period	Profit subsidy after tax		Total Adjusted Investment	Rate of return (percent)	
	Before subsidy	After subsidy[13]		Before subsidy	After subsidy[13]
Year ending:					
Mar. 31, 1976[14]	(6,817)	(213)	28,980	(23.52)	(0.73)
Sept. 30, 1976	(1,546)	5,149	30,255	(5.11)	17.02
Mar. 31, 1977	410	8,040	33,509	1.22	23.99
Sept. 30, 1977	3,046	10,796	39,961	7.62	27.02
Mar. 31, 1978	10,209	17,781	48,696	20.96	36.51

[13] Actual subsidy in each particular period per form 41.
[14] Strike affected.

Source: Orders 76-11-12, 77-2-128, 77-8-30, and 78-2-20, and Texas International's subsidy report for the year ended Mar. 31, 1978, and form 41.

It can be seen that TXI has been very profitable after subsidy for over 2½ years. TXI has shown a level of high profitability before subsidy for a somewhat shorter period. However, the magnitude of those before-subsidy profits leaves little doubt that TXI has reached the point of self-sufficency. This is particularly true since many of the elements which have led to the carrier's prosperity are not short-term phenomena. On the contrary, with its new management policies and the strong economy in its service area,[15] TXI can be expected to achieve high profits in the future. Clearly, then, TXI's system operations no longer require subsidy support.

Furthermore, even if TXI were not removed from subsidy support (and the class rate) at this time, under the proposed procedures for class rate IX, it would still receive no subsidy. An analysis of TXI's operations for the year ended March 31, 1978, shows that, while the carrier did have an eligible subsidy need on its non-hub services after inclusion of a provision for return and taxes, the need was eliminated by offsetting half of the more-than-sufficient profits from subsidy ineligible and charter services, as was done in Class Rates VII and VIII and presumably will be done in Class Rate IX.[16]

We tentatively conclude that Texas International has become a self-sufficent carrier. The carrier is in a far better position than many other carriers were in when their subsidies were discontinued. While some carriers were treated similarly to TXI in that they were removed from subsidized status when they became self-sufficient (usually after a few years of ap-

Footnotes continued from last page
three small New Mexico communities and Jackson, Miss.

[5] On Nov. 4, 1977, TXI filed a petition for discretionary review of the ALJ's decision in the *Las Vegas-Dallas/Fort Worth Nonstop Service Investigation*, docket 29445, stating that it would accept a subsidy-free mail rate if awarded the authority to compete with Delta Air Lines, the incumbent on the Las Vegas-Dallas/Fort Worth route. For nearly 9 months, TXI has apparently realized that it was close to self-sufficiency, and that one major route award would finally close the gap.

[6] See orders 78-2-115, 78-7-116, and 78-6-198, respectively.

[7] See footnote 1, supra, exhibit TXIA-817.

[8] For TXI's complete financial results, see appendix A.

[9] As proposed in order 78-4-126.

[10] See appendix A of order 77-8-30, Aug. 9, 1977, the 2d amendment to order 76-12-159, which established class rate VIII as the fair and reasonable final subsidy rate for the locals on and after July 1, 1976.

[11] See appendix A of order 78-2-20, Feb. 1, 1978, the 3d amendment to order 76-12-159.

[12] The rate of return after subsidy is 36.51 percent.

[15] While predicting the course of the Nation's economy is an educated guess at best, TXI's service area is forecast to continue its economic growth as long as energy-related activity is concentrated there, providing strong support for the carrier's operations in years to come.

[16] Though we do not intend to prejudge this aspect of the class rate IX investigation, no changes in the offset mechanism were proposed in either order 78-4-126 or in comments filed recently concerning the new class rate.

proaching self-sufficiency),[17] others were removed because of indications of their potential to be self-sufficient [18] or upon the strength of benefits expected to result from growth.[19] Evidence of TXI's self-sufficiently can be found in its recent $27 million public offering [20] of new corporate bonds and stock, an avenue of fund raising often closed to subsidized carriers.[21]

Based on the above discussion, the Board tentatively finds and concludes that, on and after July 1, 1978, the fair and reasonable rates of compensation to be paid to Texas International Airlines, Inc., for the transportation of mail over its entire system as constituted on or subsequent to July 1, 1978, the facilities used and useful therefor, and the services connected therewith, are the service mail rates payable to Texas International Airlines, Inc., by the Postmaster General in effect on July 1, 1978, or subsequently established by the Board.[22]

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly secs. 204(a) and 406 thereof, and the regulations promulgated in 14 CFR Part 302.

It is ordered, That: 1. All interested persons, and particularly Texas International Airlines, Inc., are directed to show cause why the Board should not adopt the tentative findings and conclusions discussed above, setting a final subsidy-free mail rate for Texas International Airlines, Inc., on and after July 1, 1978;

2. Further procedures in this docket shall be in accordance with the Rules of Practice, 14 CFR Part 302. If there is any objection to the rates or to the other findings and conclusions proposed above, notice thereof shall be filed within 20 days from the date of service of this order and shall include a statement of objection specifying the tentative findings or conclusions objected to and the statistical data and/or other evidence to support the objections;

3. If timely and properly supported objections to this order are filed, full consideration will be accorded the matters or issues raised before further action is taken by the Board: *Provided,* That the Board may proceed to enter an order in accordance with its tentative findings and conclusions if it determines that there are no factual issues presented that warrant the holding of an evidentiary hearing;

4. If notice of objection is not filed within 20 days after service of this order or if no material issue of fact is raised, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final order, and the Board may enter an order incorporating the findings and conclusions discussed above and setting the rates as specified;

5. This order shall be served upon Texas International Airlines, Inc., and the Postmaster General.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[23]
Secretary.

APPENDIX A.—*Texas International Airlines, Inc. system subsidy need—year ended Mar. 31, 1978*

[Dollars in millions]

Reported operating revenue [1]	150,320
Reported operating expenses [1]	143,974
Reported operating profit [1]	6,346
Adjustments:	
Conformance with form 41 [2]	120
Excess salary expense [3]	296
Excess legal fees [4]	392
Amortization of developmental and preoperating costs [5]	11
Nonoperating income offset [6]	949
Economic savings adjustment [7]	2,182
Depreciation adjustment [8]	(340)
Mutual aid payments [9]	(10)
Other Miscellaneous ratemaking Adjustments [10]	375
Total	3,975
Adjusted operating profit	10,321
Adjusted investment (five quarter weighted average [11]	48,696
Return on adjusted investment) [12]	5,762
Federal tax at 48 pct. [13]	0
State tax [1]	112
Total tax	112
Profit after return and tax	4,447
Rate of return after tax on adjusted investment (percent)	20.96

[23] All Members concurred.

[1] From the information report, "Distribution of Reported Services and Financial Data to Selected Categories," recently filed with the Board's Subsidy Division and covering the year ended Mar. 31, 1978.

[2] Reconciles the carrier's reported results with form 41 results.

[3] Eliminates officers' salaries in excess of $75,000 for the chief executive officer and $50,000 for all others on an annual basis.

[4] Eliminates expenses charged to account 6840, legal fees and expenses, in excess of $100,000 on an annual basis.

[5] Reconciles the recognized amortization of developmental and pre-operating expenses with the carrier's reported amount.

[6] Unapplied cash discounts, interest income, dividends, and miscellaneous credits are added to recognized revenues in their entirety; income from subsidiaries and associated companies in excess of a 12.35 percent return plus applicable taxes is also added to recognized revenues.

[7] Reflects the revenues, expenses, and return allowance included in operating results which are associated with the suspension or deletion of service at a city.

[8] Eliminates differences between reported and regulatory depreciation by aircraft type.

[9] Removes mutual aid payments from expense totals.

[10] Includes, but is not limited to, contributions, financing expenses, liquor, and entertainment; based on audit findings for calendar year 1975, where the percentage relationship between disallowed and total expenses in certain accounts in that period is applied to total expenses in those accounts for the year ended Mar. 31, 1978.

[11] Investment reported on schedule B-1, form 41, adjusted to: Transfer current notes payable to long term debt; eliminate unamortized discount and expense on debt; recognize the difference between reported and regulatory flight equipment depreciation; eliminate investments in subsidy companies, advances to associated companies, special funds, equipment purchase deposits and advance payments, nonoperating property and equipment, unamortized developmental and preoperating investments, property acquisition adjustments, and other intangible assets.

[12] Overall rate of return of 11.83 percent, comprised of a differentiated rate of return (at 7.25 percent for debt and 20 percent for equity) of 10.27 percent on nonhub investment of $12.098 million, and a 12.35 percent return on certificate-ineligible category I, certificate-eligible category I, and charter investment, which together amounted to $36.598 million.

[13] Texas International is not in a Federal tax position due to tax loss carryforwards which have not been exhausted.

[FR Doc. 78-21304 Filed 7-31-78; 8:45 am]

[17] Allegheny is the most recent example; see order 74-6-42.

[18] *Aloha Airlines, Inc., and Hawaiian Airlines, Inc., Mail Rates,* order E-24230, September 27, 1966, and order E-24430, November 22, 1966.

[19] *Continental Air Lines, Inc., Mail Rates, 25 CAB 76 (1957).*

[20] This was the largest public offering ever made by a local service carrier, and it was quite successful.

[21] Further proof that TXI is a self-sufficient carrier can be seen in its recent $14 million purchase of 9.2 percent of National Airlines stock. A carrier requiring subsidy support would not have the financial resources to accomplish this.

[22] This order is not intended to disturb the service mail rates received by the carrier pursuant to other orders of the Board.

[6320-01]

[Docket No. 32790]

TIGERAIR, INC. ET AL.

Proposed Approval of Acquisition of Aviquipo, Inc.

Application of TigerAir, Inc., the Flying Tiger Line, Inc., and Tiger International, Inc., for approval under section 408 of the Federal Aviation Act of 1958, as amended, of the acquisition of control of Aviquipo, Inc., docket 32790.

Notice is given, pursuant to the statutory requirements of section 408(b) of the Federal Aviation Act of 1958, as amended, that I intend to issue the attached order under delegated authority. Interested persons are afforded until August 7, 1978, within which to file comments or request a hearing with respect to the action proposed in the order.

Dated at Washington, D.C., July 27, 1978.

BARBARA A. CLARK,
Deputy Director-Designate, Bureau of Pricing and Domestic Aviation.

[Docket No. 32790]

TIGERAIR, INC. ET AL.

ORDER OF APPROVAL

Issued under delegated authority.

Application of TigerAir, Inc., the Flying Tiger Line Inc., and Tiger International, Inc., for approval of the acquisition of control of Aviquipo, Inc., docket 32790.

TigerAir, the Flying Tiger Line, Inc. (FTL), and Tiger International (TI) have requested that the Board approve, under section 408(a)(6) of the act, and ordering paragraph 6 of Order 70-6-119, dated May 5, 1970,[1] the purchase by TigerAir of 100 percent of the outstanding equity of Aviquipo. TigerAir is a wholly owned subsidiary of National Equipment Rental Ltd., which is itself a subsidiary of Tiger Leasing Group, Inc. (TLG). TI owns approximately 92 percent of TLG and FTL owns 7.76 percent. FTL is a wholly owned subsidiary of TI.[2]

TigerAir is engaged in the sale and lease of aircraft, including commercial aircraft. It also arranges for repair, maintenance, and refurbishing of aircraft, and it buys and sells aircraft spare parts. TigerAir has two wholly owned subsidiaries. TigerAir Service Center is a fixed base operator specializing in repair of corporate and private aircraft. TigerAir Dealership, Inc. operates a Cessna aircraft dealership.

Aviquipo is a wholly owned subsidiary of Lockheed Corp. Its major business is the sale in foreign markets, through foreign subsidiaries, of aircraft parts and equipment. TigerAir would acquire Aviquipo's interest in these foreign subsidiaries.

Under the terms of the purchase agreement, TigerAir will purchase 60 percent of the outstanding stock of Aviquipo at a price equal to the amount of "Total Corporate Equity" shown on Aviquipo's balance sheet for the month prior to closing. At the same time, Aviquipo will itself repurchase the remaining shares of its stock for a price of $1 million. The applicants estimate that the total purchase price will be $3 million. In addition, Aviquipo will assign to Lockheed its lease of property at Orly Airport, Paris, France, and Lockheed will lease back to Aviquipo so much of the airport property as it requires.

In support of their request, the applicants assert that, although TigerAir is already in the spare parts business, the acquisition of Aviquipo will not lessen competition. They state that TigerAir deals primarily in rotable spare parts, *i.e.*, those that can be repaired and resold while Aviquipo deals in consumable spares, *i.e.*, parts which are not repaired. They assert that the purchase of Aviquipo is a product market extension by TigerAir, and that it will also establish TigerAir in the foreign markets in which Aviquipo now operates.

As to FTL, the applicants state that it does not now have any dealings with Aviquipo and that it is unlikely to in the future because Aviquipo's contracts with suppliers limit it to sales in certain foreign countries.

We have received no comments on this application.

We have concluded that Aviquipo is a person engaged in a phase of aeronautics, that TI is a person controlling an air carrier and that its acquisition of indirect control of Aviquipo, through TigerAir is therefore subject to section 408(a)(6) of the Act. However, we have also concluded that the transaction does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation; does not result in creating a monopoly or otherwise lessen competition;[3] and that the transaction will be consistent with the public interest.

The Board stated recently that its focus in conglomerate type acquisitions will be the potential effects of the acquisition in the air transportation industry,[4] and we have concluded that this acquisition is unlikely to have any such undesirable consequences.[5] The Board has already approved the affiliation of FTL with an aircraft spare parts dealer and the acquisition of Aviquipo does not raise issues which were not considered at that time. Aviquipo is, by the terms of contracts with its suppliers, limited to sales in foreign countries.[6] Thus it is highly unlikely that the affiliation will result in depletion of FTL's resources to the point of endangering its ability to perform its certificate obligations. For the same reason, it is unlikely that Aviquipo would be used as a means of injuring FTL's competitors, at least its U.S. competitors. We will, however, retain jurisdiction to amend or revoke the approval granted here, as the public interest requires.

We therefore find, under authority delegated by the Board in its regulations, 14 CFR 385.3 and 385.13, that approval of the acquisition of control of Aviquipo by TigerAir and through it, by TI, under section 408(a)(6) of the Act and ordering paragraph 6 of Order 70-6-119, is in the public interest and that the public interest does not require a hearing on this matter;[7] that our action is not a major Federal action within the meaning of the National Environmental Policy Act of 1969;[8] and that all other requests in the application should be dismissed.[9]

Accordingly, *it is ordered*, That:

1. The acquisition of control of Aviquipo by TigerAir and through it by Tiger International, Inc., be approved;
2. Except to the extent granted, all other requests in this docket be dismissed; and
3. The Board retains jurisdiction for the purpose of amending or revoking the approval granted here, with or without hearing, as the public interest requires.

Persons entitled to petition the Board for review of this order under the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review is filed, or the Board gives notice that it will review this order on its own motion.

Secretary.

[FR Doc. 78-21389 Filed 7-31-78; 8:45 am]

[1] Applicants state that their request for approval under order 70-6-119 is without prejudice to TI's right to challenge that order.

[2] These control relationships were approved in Order 77-2-124, February 25, 1977.

[3] Our findings are limited to the field of air transportation.

[4] International Air Service Company, Acquisition of Control of Aloha Airlines, Inc., Order 78-8-208.

[5] In any event, we are approving only the acquisition of control here and not any subsequent actions of the affiliated companies.

[6] The applicants state that sales to domestic customers are prohibited under these agreements.

[7] We have published in the Federal Register a notice of intent to dispose of this application without a hearing and have furnished a copy of the notice to the Attorney General not later than the day following the date of its publication, both in accordance with the requirements of section 408(b) of the Act.

[8] From examination of the application it appears that approval will not cause any of the results set forth in § 312.9 of the Board's Procedural Regulations.

[9] To the extent that interlocking relationships within the meaning of section 409 of the Act will exist as a result of the acquisitions of control approved here, they fall within the exemption from section 409 and approval afforded by section 287 of the Board's Economic Regulations.

[6335-07]

CIVIL RIGHTS COMMISSION

ALASKA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Alaska Advisory Committee (SAC) of the Commission will convene at 5:30 p.m. and will end at 9:30 p.m. on August 21, 1978, in the Baranof, 127 Franklin Street, Juneau, Alaska 99801.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northwestern Regional Office of the Commission, 915 Second Avenue, Room 2852, Seattle, Washington 98174.

The purpose of this meeting is to plan for Committee's open meeting on women and minorities in State government.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., July 26, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-21232 Filed 7-31-78; 8:45 am]

[6335-01]

ARKANSAS ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regula-

tions of the U.S. Commission on Civil Rights, that a planning meeting of the Arkansas Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 6 p.m., on August 19, 1978, in Sam Peck Motor Inn (Apollo Room), 625 West Capitol, Little Rock, Ark. 72201.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, New Moore Building, Room 231, 106 Broadway, San Antonio, Tex. 78205.

The purpose of this meeting is with the Block Grant Subcommittee members.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., July 26, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-21233 Filed 7-31-78; 8:45 am]

[6335-01]

HAWAII ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning and briefing session of the Hawaii Advisory Committee (SAC) of the Commission will convene at 7 p.m. and will end at 9 p.m. on August 24, 1978, Ala Moana Hotel, 410 Atkinson Drive, Honolulu, Hawaii 96814.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 312 North Spring Street, Room 1015, Los Angeles, Calif. 90012.

The purpose of this meeting is to review agenda for the 1-day immigration consultation on immigration and naturalization law and the Department's policies, procedures, and practices.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., July 26, 1978

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-21234 Filed 7-31-78; 8:45 am]

[6335-01]

HAWAII ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that an Immigration Conference of the Hawaii Advisory Committee (SAC) of the Commission will convene at 8:45 a.m. and will end at 5 p.m. on August 25, 1978, Prince Kuhio Federal Building, Room 3206, 300 Ala Moana Boulevard, Honolulu, Hawaii 95850.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 312 North Spring Street, Room 1015, Los Angeles, Calif. 90012.

Immigration consultation with experts to provide information on immigration and naturalization law and the Department's policies, procedures, and practices. Experts will also analyze problems faced by legal aliens and discuss the impact of the Carter immigration proposals.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., July 26, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-21235 Filed 7-31-78; 8:45 am]

[6335-01]

MARYLAND ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Maryland Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 3 p.m. on August 26, 1978, in the Holiday Inn/BWI Airport, 890 Elkridge Landing Road, Linthicum I, Md. 21090.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street NW., Room 510, Washington, D.C. 20037.

The purpose of this meeting is to continue discussion on project selection. Review presentations on the issues of growth management and police abuse.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., July 26, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-21236 Filed 7-31-78; 8:45 am]

[6335-01]

NORTH DAKOTA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning and conference meeting of the North Dakota Advisory Committee (SAC) of the Commission will convene at 9 a.m. and will end at 1 p.m. on September 7, 1978, in the Federal Office Building, Conference Room 261, 220 East Rosser, Bismarck, N. Dak. 58501.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Denver, Colo. 80202.

The purpose of this meeting and conference is to release the advisory committee report, "Native American Justice Issues in North Dakota," and to plan future projects.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., July 26, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-21237 Filed 7-28-78; 8:45 am]

[6335-01]

WEST VIRGINIA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the West Virginia Advisory Committee (SAC) of the Commission will convene at 1 p.m. and will end at 5 p.m. on August 29, 1978, in the Mayor's Conference Room, Second Floor, City Hall, Virginia and Court Streets, Charleston, W. Va., 25330.

Persons wishing to attend this factfinding meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street NW., Room 510, Washington, D.C. 20037.

The purpose of this meeting is to discuss civil rights issues within West Virginia.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., July 26, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-21238 Filed 7-31-78; 8:45 am]

[6325-01]

CIVIL SERVICE COMMISSION

DEPARTMENTS OF HEALTH, EDUCATION, AND WELFARE, INTERIOR, TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT

Revocation of Authority to Make Noncareer Executive Assignment

Under authority of section 9.20 of Civil Service rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Departments below to fill by noncareer executive assignment in the excepted service the following positions:

Department of Health, Education, and Welfare—Director, Office of Policy Development and Plannning, Office of the Assistant Secretary for Health, Public Health Service.

Department of the Interior—(1) Director, Bureau of Outdoor Recreation, Assistant Secretary for Fish and Wildlife and Parks; (2) Assistant to the Under Secretary, Office of the Under Secretary, Office of the Secretary.

Department of Transportation—Associate Administrator for Policy and Program Development, Urban Mass Transportation Administration.

Department of Housing and Urban Development—Executive Assistant to the Under Secretary, Office of the Under Secretary, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-21045 Filed 7-31-78; 8:45 am]

[6325-01]

DEPARTMENTS OF INTERIOR, ENERGY, AGRICULTURE

Grant of Authority To Make Noncareer Executive Assignment

Under authority of section 9.20 of Civil Service rule IX (15 CFR 9.20) the Civil Service Commission authorizes the following agencies to fill by noncareer executive assignment in the excepted service the positions listed below:

Department of the Interior—(1) Director, Heritage Conservation and Recreation Service, Assistant Secretary for Fish and Wildlife and Parks, (2) Assistant to the Secretary, Office of the Secretary, Immediate Office and (3) Deputy Under Secretary, Office of the Under Secretary, Office of the Secretary.

Department of Energy—Assistant to the Secretary, Immediate Office, Office of the Secretary.

Department of Agriculture—Deputy Administrator, Rural Electrification Administration.

UNITED STATES CIVIL SERVICE COMMISSION,
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-21046 Filed 7-31-78; 8:45 am]

[3510-25]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

MANAGEMENT-LABOR TEXTILE ADVISORY COMMITTEE

Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Management-Labor Textile Advisory Committee will be held on September 13, 1978, at 1:30 p.m. in Room 4830, Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C. 20230.

The Committee was established by the Secretary of Commerce on October 18, 1961, to advise U.S. Government officials on problems and conditions in the textile and apparel industry and furnish information on world trade in textiles and apparel.

The agenda for the meeting will be as follows: (1) Review of import trends; (2) implementation of textile agreements; (3) report on conditions in the domestic market; (4) other business.

A limited number of seats will be available to the public on a first-come basis. The public may file written statements with the Committee before or after each meeting. Oral statements may be presented at the end of the meetings to the extent time is available.

Copies of the minutes of the meeting will be made available on written request addressed to the ITA Freedom of Information Officer, Freedom of Information Control Desk, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

Telephone requests for the minutes of the meeting and requests for further information concering the Committee may be directed to Arthur Garel, Director, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-5078.

Dated: July 27, 1978.

ARTHUR GAREL,
Director, Office of Textiles.

[FR Doc. 78-21229 Filed 7-31-78; 8:45 am]

[3510-22]

National Oceanic and Atmospheric Administration

SEA-ARAMA INC.

Modification of Permit

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the regulations governing the taking and importing of marine mammals (50 CFR Part 216), Permit No. 162 issued to Sea-Arama, Inc., Seawall Boulevard at 91st Street, P.O. Box 3068, Galveston, Tex. 77550, on December 28, 1976 (42 F.R. 1063), is modified in the following manner:

Section B-2 has been changed to read, "The whales shall be taken by a professional collector in the manner as described in the application, or imported from animals already in captivity. The date and specific location of the taking and the desirability of National Marine Fisheries Service observers shall be determined by the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731."

This modification is effective on August 1, 1978.

The permit, as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;
Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, Calif., 90731; and
Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Fla. 33702.

Dated: July 24, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-21246 Filed 7-31-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

Change in OMB Poverty Income Guidelines

AGENCY: Department of Energy.

ACTION: Notice of change in OMB poverty income guidelines.

SUMMARY: The Department of Energy conducts a program of weath-

erization assistance for low-income persons pursuant to the Energy Conservation and Production Act. For purposes of this program, the act ties the definition of "low-income" to criteria established by the Office of Management and Budget. The Department is providing notice that the Office of Management and Budget has changed its criteria and that the revised criteria are to be used for the program.

FOR FURTHER INFORMATION CONTACT:

Mary M. Bell, Director, Office of Weatherization Assistance, Department of Energy, Room 6443, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-3091.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) hereby gives notice that there have been recent changes in the poverty income guidelines of the Office of Management and Budget (OMB), adopted February 7, 1978, which pertain to the DOE's program of weatherization assistance for low-income persons (program).

The regulations of the program, 10 CFR Part 440, at § 440.3, define "low-income" for purposes of the program as "that income in relation to family size which: (a) *Is at or below the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget,* or (b) is the basis on which cash assistance payments have been paid during the preceding 12-month period under titles IV and XVI of the Social Security Act or applicable State or local law." [Emphasis supplied.] The OMB poverty income guidelines are recognized as the OMB criteria for purposes of the program definition of "low income."

For the convenience of readers, the new OMB poverty income guidelines are reprinted as a table to this notice.

Issued in Washington, D.C., July 26, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

TABLE 1.—*OMB revised poverty guidelines for all States except Alaska and Hawaii*

	Nonfarm family	Farm family
Size of family unit:		
1	$3,140	$2,690
2	4,160	3,550
3	5,180	4,410
4	6,200	5,270
5	7,220	6,130
6	8,240	6,990

For family units with more than six members, add $1,020 for each additional member in a nonfarm family and $860 for each additional member in a farm family.

OMB revised poverty guidelines for Alaska

	Nonfarm family	Farm family
Size of family unit:		
1	$3,940	$3,380
2	5,210	4,450
3	6,480	5,520
4	7,750	6,590
5	9,020	7,660
6	10,290	8,730

For family units with more than six members, add $1,270 for each additional member in a nonfarm family and $1,070 for each additional member in a farm family.

OMB revised poverty guidelines for Hawaii

	Nonfarm family	Farm family
Size of family unit:		
1	$3,620	$3,130
2	4,790	4,110
3	5,960	5,090
4	7,130	6,070
5	8,300	7,050
6	9,470	8,030

For family units with more than six members, add $1,170 for each additional member in a nonfarm family and $980 for each additional member in a farm family.

[FR Doc. 78-21156 Filed 7-31-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket Nos. RP72-142 and RP76-135 (PGA78-4 and AP78-1)]

CITIES SERVICE GAS CO.

Order Accepting For Filing and Suspending Proposed PGA Rate Increase, Subject to Condition, and Initiating Hearing

JULY 21, 1978.

On June 22, 1978, Cities Service Gas Co. (Cities) filed a proposed PGA increase of 5.75 cents per Mcf and a proposed 1.22 cents per Mcf rate decrease brought about by certain advance payment refunds. The PGA increase reflects two emergency purchases made at rates in excess of the applicable nationwide rate. For reasons set forth below we will accept Cities filing, suspend it for 1 day and set the matter for hearing, and condition approval of the advance payment refund upon Cities including interest of 9 percent on all refunds flowed through.

There are two 60 day emergency transactions contained in Cities' PGA filing involving purchases from Northern Gas Co. and from Oklahoma Natural Gas Co., respectively, at prices which exceed the applicable national rate. In addition, there is not sufficient evidence to show that the prices paid by Cities Service were at rates which a reasonably prudent pipeline would pay for gas under the same or similar circumstances. Accordingly, we shall institute hearing procedures for the purpose of resolving this issue. The amounts shall also be collected subject to refund pending the outcome of the hearing.

With regard to the advance payment refund we note that the instant tracker is filed pursuant to the settlement in docket No. RP76-135 approved by the Commission on December 21, 1977. The present tracker provides for a net reduction in rates of 1.22¢ per Mcf. This net reduction is based on (a) $6,069,009 of repayments of advances made to Cities Service, (b) $721,155 of additional advances which have been found to be just and reasonable as required by Commission Order No. 499 and (c) $1,619,718 representing the advance payment charges (to be flowed through to the rate payer pursuant to the Settlement) paid to Cities Service by Colorado Interstate Gas Co. (CIG) due to an assignment of 25 percent of certain advances to CIG and (d) a refund of $721, 859 of carrying charges for the period January 23, 1977, until July 23, 1978. The $721,859 of refunds relates to a $2,555,231 advance to CSG Exploration Co. (CSC) and Amoco Production Co. (Amoco) made after November 5, 1976, the date opinion N. 770-A was issued. In addition, the prospective rates reflect a reduction in rate base of the $2,555,231 advance. This proposed refund is to adjust Cities' rates as if the advance had never been in rate base, and therefore to allow Amoco to collect the full rate under opinion No. 770-A.

Under opinion No. 770-A, if a producer accepts an advance payment form a pipeline after November 5, 1976, (the date of issuance of opinion No. 770-A), the rate charged by such producer must be reduced by the total carrying charges (return and related taxes) which would be charged to the pipeline's customer during the period the advance would be in the pipeline's rate base. Alternatively, if the pipeline refuses to renegotiate the advance payment agreement with the producer, the advance cannot receive rate base treatment. Cities' proposal is an attempt to put its ratepayers in the same financial position they would have been in if the advance had never been included in rate base in order to allow Amoco to collect the full opinion No. 770-A rate. Upon review of this matter, we shall accept this proposal subject to the condition that Cities refund interest at 9 percent per annum on the carrying charges collected. This condition is necessary to compensate Cities' ratepayers for the time value of the carrying charges held by Cities during the period the advance payment was in rate base. We find that the remainder of the advance payment portion of the filing is reasonable and appropriate.

Public notice of Cities' filing was issued on July 12, 1978 with protests and petitions to intervene due on or before July 21, 1978.

The Commission orders:

(A) Subject to the condition contained in ordering paragraph (B), Cities' proposed PGA rates are accepted for filing and suspended for 1 day until July 24, 1978, at which time they may be made effective subject to refund.

(B) Within 15 days of the date of issuance of this order, Cities shall file revised rates to become effective subject to refund on July 24, 1978, which reflect a reduction in rates equal to interest at 9 percent per annum on the carrying charges collected as a result of the Amoco advance being included in Cities' rate base.

(C) Cities shall file its direct evidence in support of the prudency of the emergency purchases included in this filing on or before August 16, 1978.

(D) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge (18 CFR 3.5(d)) shall convene a settlement conference in this proceeding to be held within 10 days after the service of Staff's top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary and to rule on all motions (except motions to sever, consolidate or dismiss) as provided for in the rules of practice and procedure.

(E) Staff shall serve top sheets on or before November 13, 1978.

(F) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21190 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. ES78-24]

EL PASO ELECTRIC CO.

Order Approving the Issuance of First Mortgage Bonds

JULY 24, 1978.

On June 13, 1978, El Paso Electric Co. (applicant) filed an application with the Federal Energy Regulatory Commission seeking authority pursuant to section 204 of the Federal Power Act to issue and sell in a negotiated private placement an additional $9,000,000 principal amount of 6¾ percent first mortgage bonds due in 1998. On July 3, 1978, applicant filed an amendment to its application filed on June 13, 1978. There presently are $15,800,000 principal amount of 6¾ percent bonds of this series already outstanding.

The applicant is incorporated under the laws of the State of Texas with its principal business office at El Paso, Tex., and is engaged in the electric utility business in the States of Texas and New Mexico in an area in the Rio Grande Valley extending approximately 110 miles northwest of El Paso to the Caballo Dam in New Mexico and approximately 120 miles southeast of El Paso to Van Horn, Tex. with a population of approximately 480,000 of whom 385,000 reside in metropolitan El Paso.

BACKGROUND

In its application, the applicant states that it is presently undertaking a substantial construction program estimated to be approximately $321,765,000 (for the period 1978–1980). The applicant estimates that internally generated funds will only finance 30 to 32 percent of construction program with the remainder to be financed by funds obtained from short-term borrowings and the sale of securities,[1] from time to time.

However, at present, applicant is limited by its indenture of mortgage from issuing additional bonds.[2] Specifically, the applicant opines that the indenture of mortgage currently requires annual contribution of a maintenance and replacement fund in an amount equal to the "minimum provision for depreciation" (15 percent of total operating revenues, less certain credits and deductions). Because in recent years its fuel costs have increased so significantly (offsetting increases in revenues) by virtue of the "pass through" of increased fuel costs, the applicant's fuel costs have increased the "minimum provision for depreciation" out of proportion to reasonable maintenance and replacement needs. More importantly, the increased "minimum provision for depreciation" reduces the "unfunded net addition" and the amount of net earnings available for interest coverage which in turn limits that amount of new bond issuances.

The applicant in 1976 proposed to modify the indenture of mortgage by excluding the offsetting increases in revenues resulting from the "pass through" of fuel cost increases from the calculation of operating revenues in determining "minimum provisions for depreciation." The applicant's attempt to modify the indenture of mortgage failed because it did not receive requisite consent from a major group of bondholders.[3]

On March 21, 1978, applicant filed with the Commission pursuant to section 204 of the Federal Power Act, a request for authorization to negotiate privately for the issuance and sale of up to $11 million[4] principal amount of 6¾ percent first mortgage bonds due 1988. On May 11, 1978, the applicant filed a motion for expedited consideration[5] requesting prompt Commission consideration of its request for authority to negotiate in order to facilitate the tentatively planned issuance of additional bonds and preferred stock around August 1, 1978. By letter dated June 1, 1978, the Commission granted the applicant permission to engage in negotiations for the placement of up to $9 million principal amount of 6¾ percent first mortgage bonds. The applicant now seeks (via its application filed on June 13, 1978 and the subsequent amendment filed on July 3, 1978) authority for the proposed issuance and sale of up to $9 million prin-

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[1] Around Aug. 1, 1978, the applicant tentatively plans to seek authority to issue approximately $30 million in new bonds and $20 million in preferred stock (pursuant to competitive bidding) based on its need to pay off its short-term debt in October 1978.

[2] According to the applicant, the pertinent part of the indenture of mortgage provides: Bonds of any series (other than bonds of the 1980 series) may be issued from time to time on the basis of (1) *60 percent of unfunded net additions* (original indenture § 404) (i.e., gross additions *less* the greater of retirements or *the sum of the minimum provision for depreciation* plus all amounts provided for the amortization of bondable leasehold property (original indenture § 154.9); (2) deposit of cash (original indenture § 405); and (3) retirement of bonds or refundable debt (original indenture § 406). With certain exceptions in the case of (3) above, the issuance of bonds is subject to net earnings available for interest for 12 consecutive months out of the preceding 15 months being at least twice the annual interest requirements on all amounts to be outstanding and all prior lien debt (original indenture §§ 157.1 and 152.2).

[3] The applicant states that the modification in the indenture of mortgage can be obtained by a supplemental indenture executed by the applicant and the trustee under the indenture of mortgage with the consent of the holders of 75 percent of the bonds outstanding (including 60 percent from the holders of all except one series. The State of California Public Employees Retirement System and the California State Teachers Retirement System holding $7,500,000 principal amount (approximately 47 percent) of the series of 6¾ percent bonds due in 1998, and whose approval are required for the desired modification, have refused to consent to the modification.

[4] In a supplemental submittal (dated May 30, 1978), the applicant reduced its original request for authority to issue $11 million principal amount first mortgage bonds to $9 million principal amount first mortgage bonds.

[5] Inasmuch as the Commission considered the applicant's requests for authorization of negotiation during its agenda meeting of May 31, 1978, we believe that it is unnecessary for the Commission to rule on the motion.

cipal amount 6¾ percent first mortgage bonds of the 1998 series (additional bonds) in order to obtain the requisite consent necessary to effectuate a change in the "minimum provision of depreciation."

Support of Application: In support of its application, the Applicant states that it did not engage in negotiations for the private placement of the additional bonds until it was authorized to do so by the Commission letter of June 1, 1978. Furthermore, the Applicant represents that after receiving permission to negotiate, it engaged in negotiations with several investment banking firms and selected the Kidder Peabody & Co. Inc. to act as finder for the private sale of the additional bonds.[6] (See, Appendix for results of negotiations). The Applicant states that it will request the purchasers of the additional bonds to consent to the proposed modification of the Bond Indenture so as to effectuate a change in the "minimum provision for depreciation".

In support of its requests for exemption from competitive bidding requirements of the Commission's regulations, the Applicant states that additional bonds should be offered through a negotiated private placement rather than pursuant to the competitive bidding process because:

(i) Of the relative small ($6,997,500) of the proposed sale of the additional bonds;

(ii) The additional bonds will be sold at a discount in view of the 6¾ percent rate;

(iii) Of the need to secure the consent of the purchasers of the additional bonds to the modification of the Indenture of Mortgage;

(iv) A public offering would require substantially larger printing, legal and accounting fees than required in a private placement;

(v) Additional bonds issued on a competitive bidding basis in the public market currently amounts to a yield to the public of approximately 9.60 percent or more, compared with a current yield of 8.9285 percent and a yield to maturity of 9.51 percent for the additional bonds.

Finally, the applicant posits that if the instant application is not approved, or is delayed so as to prevent its tentatively planned issuance of bonds and preferred stocks (See, note 1, supra), the Applicant would be required to redeem, at a current redemption price of 104 percent, the entire series of 6¾ percent bonds, aggregating $15.8 million and replace such bonds with $15.8 million of approximately 9½ percent bonds of which the additional costs will be borne the Applicant and its ratepayers.

Written notice of this application has been given to the Texas Public Service Commission, the New Mexico Public Service Commission, and the governor of each of those States. Notice has also been given by publication in the FEDERAL REGISTER stating that any person desiring to be heard shall file petitions or protests with the Federal Energy Regulatory Commission, Washington, D.C. 20426, on or before July 7, 1978. No petition, protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds: (1) Applicant, a corporation, is a public utility within the meaning of section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore set forth in the Commission's order of January 25, 1962, *El Paso Electric Company*, Docket No. E-7170, (20 FPC 174).

(2) The proposed issuance and sale of First Mortgage Bonds, as described above, will constitute an issuance of securities within the purview of section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State Commission within the meaning of section 204(f) of the act; and the proposed issue of securities, is, therefore, not exempt by virtue of that section from the requirements of section 204 of the act.

(4) The proposed issuance of securities, all as described above, will be in excess of 5 percent of the par value of other securities of the Applicant, and, therefore, will not be exempt by virtue of section 204(e) of the act.

(5) The proposed issuance of First Mortgage Bonds will be exempt from the competitive bidding requirements of the Commission's regulations under the Federal Power Act.

(6) The proposed issuance of First Mortgage Bonds as hereinafter authorized will be for a lawful object within the corporate purposes of the Applicant and compatible with the public interest which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service and is reasonably necessary and appropriate for such purposes.

The Commission orders: (A) The proposed issuance of $9 million principle amount of 6¾ percent First Mortgage Bonds due in 1998 upon the terms and conditions and for the purposes specified in the application, as described above, is hereby authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of First Mortgage Bonds as described above shall be exempted from the competitive bidding requirements of the Commission's regulations.

(C) The proposed issuance and sale of up to $9 million principle amount of First Mortgage Bonds by negotiated underwriting shall not be consummated until the Commission by letter order, shall have approved the price to be received by the Applicant for the First Mortgage Bonds and the interest rates thereon.

(D) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(E) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(F) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security which this order relates.

By the Commission.

KENNETH F. PLUMB,
Secretary.

APPENDIX.—*Results of the negotiations are detailed below.*

	Kidder Peabody & Co.	Dean Witter Reynolds, Inc.	E. F. Hutton & Co.
Offering price	756.000	752.18	749.22
Yield to maturity	9.5	9.55	9.5
Current yield	8.9285	8.9739	9.0094
Gross proceeds to company	6,804,000	6,769,620	6,742,980
Placement fee	29,500	27,000	27,000

[FR Doc. 78-21187 Filed 7-31-78; 8:45 am]

[6] Originally, the Applicant received written proposals from four investment banking firms: E. F. Hutton & Co. Inc. Kidder, Peabody & Co. Inc., Smith Barney, Harris Upham & Co. Inc., and Dean Witter Reynolds Inc. After reviewing the four proposals, the Applicant selected E. F. Hutton & Co. Inc. to act as finder for the private sale of the additional bonds. Thereafter, E. F. Hutton & Co. Inc. advised the Applicant that it was unable to place the additional bonds at the price and yield quoted in its original letter primarily because of a change by Standard & Poor's Corp. on June 19, 1978, of the Applicant's commercial paper rating from A-1 to A-2 and an increase during the period in the general rate level for fixed income bonds. The Applicant then solicited additional proposals from the investment banking firms and received written proposals from three investment banking firms: E. F. Hutton & Co. Inc. dated June 28, 1978, Dean Witter Reynolds Inc. date June 27, 1978. After reviewing these new proposals, the Applicant selected Kidder Peabody & Co. Incorporated to act as finder for the private sale of the additional bonds.

[6740-02]

[Docket Nos. CI76-492, et al.]

COTTON PETROLEUM CORP., ET AL. (SUCCESSOR TO WEWOKA EXPLORATION CO.)

Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[1]

JULY 24, 1978.

Take notice that each of the applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein. all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before August 9, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commision's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI76-192, F[2] May 12, 1978	Cotton Petroleum Corp. (Sucessor to Wewoka Exploration Co.), Tulsa, Okla. 74103.	United Gas Pipe Line Co., Boise Southern No. 1 well, West Fields area, Beauregard Parish, La.	[3]	15.025
CI77-327, C, January 9, 1977.	Cities Service, Co. P.O. Box 300, Tulsa, Okla. 74102.	El Paso Natural Gas Co., sections 7 and 8 of 18S-29E, Eddy County, N. Mex..	[3]	14.65

[1] Applicant requests to continue the service previously rendered by Wewoka, effective Sept. 1, 1977.
[2] Being renoticed to reflect the change in docket number. Originally noticed in docket No. CI78-766 in error which is hereby canceled.
[3] Applicant states that the new wells qualify for the opinion No. 770-A rates.

Filing code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Succession. F—Partial succession.

[FR Doc. 78-21188 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. C178-673]

HELMERICH & PAYNE, INC.

Order Granting Rehearing for Purposes of Further Consideration and Granting Intervention out of Time

JULY 21, 1978.

By letter order issued May 12, 1978, we issued a temporary certificate of public convenience and necessity to Helmerich & Payne, Inc., authorizing a sale of natural gas to El Paso Natural Gas Co. (El Paso). The certificate was conditioned that if any of the costs associated with processing, dehydration, compression, or other conditioning of the subject gas were included in the rates of the purchaser then the purchaser will be required to prove that these costs have not been compensated for in the applicable national ceiling rate. The order also provided that this condition is subject to whatever action is taken by the Commission on rehearing in Docket Nos. CI77-412, CP77-558 and CP77-577.

On June 9, 1978, El Paso filed a petition to intervene in the captioned case and an application for rehearing of the above order. The application raises objections in connection with the provisions relating to costs of conditioning the subject gas.

The Commission finds: Participation in this proceeding by El Paso may be in the public interest.

The Commission orders: (A) El Paso is permitted to intervene in the captioned proceeding subject to the rules and regulations of the Commission; *Provided, however,* that the participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and *Provided, further,* that the admission of such intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order of the Commission entered in this docket.

(B) The application for rehearing of our order of May 12, 1978, filed by El Paso is hereby granted solely for the purpose of affording further time for consideration. Since this order is not a final order on rehearing, no response to the order will be entertained by the Commission in accordance with the terms of section 1.34 of the Commission's rules of practice and procedure.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21191 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. RP74-26]

LOUISIANA-NEVADA TRANSIT CO.

Proposed Changes in FERC Gas Tariff

JULY 21, 1978.

Take notice that Louisiana-Nevada Transit Co. on July 12, 1978, tendered for filing proposed changes in its FERC gas tariff, volume 1. The proposed changes are to reflect changes in purchased gas cost as provided in the company's purchase gas adjustment clause applicable to its rate schedule No. G-1. The change provides for a total adjustment of 14.10 cents per Mcf including a deferred gas cost adjustment of 1.35 cents per Mcf, to amortize a deferred balance, and a cumulative cost of gas adjustment of 12.75 cents per Mcf.

Copies of the filing were served upon the company's jurisdictional customer and the Arkansas Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commissions Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 31, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21192 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. RP78-75]

NORTHERN NATURAL GAS CO. (PEOPLES NATURAL GAS DIVISION)

Proposed Rate Increase

JULY 21, 1978.

Take notice that Northern Natural Gas Co. (Northern) on June 29, 1978, tendered for filing proposed changes in its FPC gas tariff, original volume No. 4. The proposed changes would increase revenues from jurisdictional sales and service by $49,596 based on the 12-month period ending February 28, 1978, as adjusted.

Northern states that the primary reasons for filing this increase are to recover the increased costs of operations and provide sufficient revenues to enable it to earn a fair and reasonable rate of return on its utility investment.

Copies of the filing were served upon the company's jurisdictional customers and the New Mexico and Oklahoma Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests must be filed on or before August 7, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21193 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. RP73-8]

NORTH PENN GAS CO.

Proposed Changes in FERC Gas Tariff

JULY 21, 1978.

Take notice that North Penn Gas Co. (North Penn) on July 14, 1978, tendered for filing proposed changes in its FERC Gas Tariff, first revised Volume No. 1, pursuant to its PGA Clause for rates to be effective August 1, 1978.

North Penn states that the rates contained in 56th revised sheet No. PGA-1 reflect an increase of 0.277 cents per Mcf over the rates contained in substitute 55th revised sheet No. PGA-1 as submitted for approval to the Federal Energy Regulatory Commission (Commission) on July 13, 1978, and will result in an annual increase of approximately $38.2 thousand to jurisdictional customers.

Fifty-sixth revised sheet No. PGA-1 reflects the increased rates filed by Consolidated Gas Supply Corp. (Consolidated) on June 30, 1978, for effectiveness August 1, 1978.

North Penn requests a waiver of the Commission's rules and regulations, specifically § 154.22, Notice Requirements, stating that it did not receive Consolidated's rate change in time to make a timely filing. Additionally, North Penn requests a waiver of any other of the Commission's rules and regulations as may be deemed necessary to allow the revised tariff sheets to become effective on August 1, 1978, as proposed.

Copies of this filing were served upon North Penn's jurisdictional customers as well as interested State commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 31, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21194 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. RP73-89 (PGA78-2)]

SEA ROBIN PIPELINE CO.

Filing of Revised Gas Tariff Sheet

JULY 21, 1978.

Take notice that on July 13, 1978, Sea Robin Pipeline Co. (Sea Robin) tendered for filing a revised tariff sheet with a proposed effective date of July 1, 1978. The sheet is identified as follows:

Substitute 16th revised sheet No. 4 to Sea Robin's FERC Gas Tariff, Original Volume No. 1

Sea Robin states that the revised gas tariff sheets are being filed to reflect modifications set forth in the Commission's letter order dated July 5, 1978. Pursuant to these modifications, Sea Robin has reflected rates from POGO Producing Co. at Opinion 770-A levels. Moreover, Sea Robin has also eliminated purchases from Mobil Oil Corp. in Eugene Island Block 305 field which were not certificated by July 1, 1978.

Sea Robin states that the filing has also been sent to jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before July 31, 1978. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on

file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21195 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. ER78-446]

WEST PENN POWER CO.

Order Accepting for Filing and Suspending Proposed Rate Increase, Granting Interventions, Denying Motion To Reject, Providing for Hearing, Establishing Price Squeeze Procedures

JULY 21, 1978.

On June 20, 1978, West Penn Power Co. (West Penn) tendered for filing proposed rate schedules [1] which would increase rates by $419,032 for the 12-month period ending July 31, 1979, to its four wholesale for resale customers.[2] West Penn requests an effective date of July 21, 1978.

The proposed rate schedules applicable to the cooperatives and the boroughs [3] consists of a flat demand charge, an energy charge, and a monthly customer charge. The proposed rate schedule applicable to Edison provides for a flat energy charge and a monthly customer charge.

Notice of the filing was issued on July 3, 1978, with protests or petitions to intervene due on or before July 10, 1978. On July 10, 1978 the cooperatives and the boroughs requested [4] the Commission to grant them intervenor status. Both the cooperatives and boroughs state that they receive electric service from West Penn and have an interest in the proceeding which is not adequately represented by any other party. We shall grant intervenor status to both the cooperatives and boroughs.

In support of their request [5] for a 5-month suspension period, the cooperatives contend that the proposed rates are inordinately excessive, unjust, unreasonable, and unduly discriminatory in that:

1. West Penn's requested 14.5-percent rate of return on common equity ignores Commission precedent [6] and the standards enunciated in the *Bluefield* [7] and *Hope* [8] cases as applied to the facts of this case.
2. West Penn improperly included accumulated investment tax credit as part of the company's equity capitalization.
3. The proposed rates to be borne by the cooperatives do not correctly reflect a decrease in the cooperatives' total allocated rate base.
4. West Penn improperly included annualized wage and salary increases in its cost of service.
5. West Penn has failed to submit certain work papers and testimony to support the demand and energy allocators and other adjustments found summarized in its statement M.

In addition, the cooperatives contend that the "availability provision" (third revised sheet No. 11 of Wholesale Service Ec) which limits service to the cooperatives to loads of no more than 5,000 kilowatts at each point of delivery is a severe anticompetitive restriction of the cooperatives' ability to compete with West Penn for which no justification has been shown.

In support of their motion for rejection or, in the alternative, motion for 5 months suspension, the boroughs propound several arguments, some of which are similar to the arguments raised by the cooperatives.[9] Initially, the boroughs contend that while the inclusion of CWIP associated with pollution control expenditures is specifically authorized by Commission Order No. 555, it is improper to assess Chambersburg for pollution control expenditures when West Penn limits its firm power obligation (capacity ceiling) to provide power to Chambersburg to a maximum capacity of 35,000 Kw. Moreover, the boroughs maintain that the capacity ceiling imposed upon Chambersburg is discriminatory inasmuch as Chambersburg is the only customer subject to the capacity ceiling (for which no justification has been shown). The boroughs also question West Penn's inclusion in the proposed rate schedules the 2 percent penalty charge and tax adjustment clause. Finally, the boroughs opine that the West Penn wholesale rates place them in a price squeeze. Accordingly, we will establish procedures to ascertain that issue in conformity with Order No. 563 and § 2.17 of our regulations.

The boroughs' motion to reject the filing of July 20, 1978, shall be denied inasmuch as we find that the filing substantially complies with our filing regulations. See, *Municipal Light Boards* v. *F.P.C.*, 350 F. 2d 1341 (D.C. Cir. 1971). Our review indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Therefore, the Commission shall accept the submittal for filing and suspend the proposed rates for 5 months from the effective date, after which the rates and services will go into effect on December 21, 1978, subject to refund.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the Federal Power Act that the commission enter upon a hearing concerning the lawfulness of the proposed rate increase submitted for filing by West Penn Power, establish procedures for that hearing, and that the proposed rate increase be accepted for filing, suspended, and the use thereof deferred, all as hereinafter ordered.

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402 (a) of the Department of Energy Act and by the Federal Power Act, particularly sections 205, 206, 301, 308 and 309 thereof, and pursuant to the Commission's rules of practice and procedure and to the regulations under the Federal Power Act (18 CFR Ch. I), a public hearing shall be held concerning the justness and reasonableness of the rate increase proposed by West Penn Power in this proceeding.

(B) Pending such hearing and decision thereon, the proposed increased rates and charges filed by West Penn Power on June 20, 1978, are hereby accepted for filing, suspended, and the use thereof deferred until December 21, 1978, when they shall become effective, subject to refund.

(C) The boroughs' motion that West Penn Power's filing be rejected is hereby denied.

(D) The Federal Energy Regulatory Commission Staff shall serve top sheets in this proceeding on or before October 20, 1978.

(E) A presiding administrative law judge to be designated by the chief ad-

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[1] See attachment for rate schedule designations.

[2] West Penn's wholesale for resale customers are as follows: Borough of Chambersburg, Pa. (Chambersburg); Borough of Mont Alto, Pa. (Mont Alto); Allegheny Electric Coooperative, Inc. (Cooperatives) (is a federation of REA Cooperatives in Pennsylvania and New Jersey); Metropolitan Edison Co. (Edison).

[3] Mont Alto and Chambersburg shall be collectively referred to as "boroughs".

[4] The cooperatives filed a pleading entitled "Protest and Petition To Intervene". The boroughs filed a pleading entitled "Protest, Petition To Intervene, Motion To Reject and Motion for Maximum Suspension of the Boroughs of Chambersburg and Mont Alto, Pa."

[5] Although the cooperatives did not request a rejection of June 20, 1978, filing in their prayer for relief, the cooperatives did state on p. 13 of their pleading: "However, certain deficiencies in West Penn's tendered filing stand out which further necessitate not only a full 5 month suspension period, but also a complete rejection of the tendered filing."

[6] See, *Public Service Company of Indiana, Inc.*, Opinion No. 783, issued Nov. 10, 1976; *Minnesota Power & Light Company*, Opinion No. 12, issued Apr. 14, 1978, and *Idaho Power Co.*, Opinion No. 13, issued May 14, 1978.

[7] *Bluefield Water Works and Improvement Company* v. *Public Service Company*, 262 U.S. 679 (1923).

[8] *F.P.C.* v. *Hope Natural Gas Company*, 320 U.S. 591 (1944).

[9] We shall outline only those arguments used by the boroughs that were not raised by the cooperatives.

ministrative law judge for that purpose shall preside at a prehearing conference in this proceeding to be held on October 31, 1978, at 10 a.m. in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Said judge is authorized to establish procedural dates and to rule upon all motions (except petitions to intervene, motions to consolidate and sever, and motions to dismiss) as provided for in the Commission's rules of practice and procedure.

(F) The petitioners (borough of Mont Alto, borough of Chambersburg, and Allegheny Electric Cooperative, Inc.), are hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission, *Provided, however,* That participation by such intervenors shall be limited to matters set forth in their petitions to intervene; and *Provided further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(G) The presiding administrative law judge shall convene a prehearing conference within 15 days from the date of this order for the purpose of hearing the boroughs' request for data required to present their case, including a prima facie showing, on the price-squeeze issue.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

WEST PENN POWER CO. (DOCKET NO. ER78-446)

Filed: June 20, 1978.
Dated: (1), (2) June 14, 1978, (3) undated.

Designations	Company's designation
(1) 4th revised sheet No. 11 and 1st revised sheet No. 13 under FPC Electric Tariff, original vol. No. 1 (supersedes 3d revised sheet No. 11 and original sheet No. 13 thereunder).	3d revised sheet No. 11 and 1st revised sheet No. 13.
(2) 1st revised sheet Nos. 2, 10, 11, 12, and original sheet Nos. 14 through 20 under FERC Electric Tariff, original vol. No. 2 (supersedes original sheet Nos. 2, 10, 11, 12, 13 thereunder, and FERC Electric Tariff, original vol. No. 3).	1st revised sheet Nos. 2 and 10 through 20.
(3) 1st revised sheet No. 4-A under FERC Electric Tariff, original vol. No. 2 (supersedes original No. 4-A thereunder).	First revised sheet No. 4-A (map).

[FR Doc. 78-21196 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. ER77-531]

ILLINOIS POWER CO.

Order Granting Rehearing

JULY 25, 1978.

On February 28, 1978, Illinois Power Co. (hereinafter referred to as IP or Company) filed a document entitled "Motion for an Order Granting Leave To Collect a Rate Level Different From That Provided in a Filed Rate Schedule." The Company stated that on July 29, 1977, it tendered for filing a proposed rate increase applicable to the village of Ladd, the city of Oglesby, and the Cedar Point Light & Water Co. (Customers). By order issued September 23, 1977, the Commission[1] accepted the proposed rates for filing and suspended their effectiveness for 5 months, until March 1, 1978.

IP proposed to charge the customers the amount that it would recover under the terms of a settlement offer made to the customers, pending a resolution of the issues by settlement or decision by the Commission. The settlement rate would reduce the Company's filed rate increase from $176,479 to $83,864.

[1]On Oct. 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (Aug. 4, 1977) and Executive Order No. 12009, 42 FR 46267 (Sept. 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on Oct. 1, 1977.

The "savings provisions" of section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of these proceedings were specifically transferred to the FERC by section 402(a)(1) of the DOE Act.

The joint regulation adopted on Oct. 1, 1977, by the Secretary of the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR ——, provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

By order issued March 30, 1978, the Commission granted IP's motion. The Commission's granting of the motion was predicated on its construction of the motion as one for authority to substitute IP's proposed settlement rates for the rates it originally filed on July 29, 1977. The Commission accepted the $83,864 rate for filing and suspended it for 1 day to become effective March 1, 1978, subject to refund.

On April 14, 1978, IP filed a petition for rehearing of the Commission's March 30, 1978, order. The Company argued that the Commission misconstrued its filing as a motion to unilaterally reduce its requested rate increase. IP maintained that it only sought the limited authority contemplated by section 35.1(e) of the Commission's regulations which allows a public utility to charge a different rate than that contained in rate schedules on file with the Commission for good cause shown. It requested that the Commission modify its order to grant it the limited authority to collect the lower rate it requested or to reinstate its original rate increase request.

By order issued June 2, 1978, the Commission granted rehearing and deemed IP's motion withdrawn. IP's originally filed rates were reinstituted as of March 1, 1978.

On June 8, 1978, the village of Ladd, the city of Oglesby, and the Cedar Point Light & Water Co. filed a petition for rehearing of the Commission's June 2 rehearing order. The Customers argued that the Commission should have affirmed its interpretation of IP's motion or, alternatively, should have allowed them to pay at the lower rate level proposed by IP during the pendency of the proceeding.

By order issued July 10, 1978, in this docket, the Commision granted rehearing for further consideration.

After further deliberation, the Commission shall grant rehearing of its June 2 order in this docket and grant IP the limited authority to collect the lower rate during the pendency of this proceeding. If the Commission ultimately determines that something more than $83,864 is the lawful rate in this docket, IP will only be able to collect the higher amount prospectively.

The Commission finds: Good cause exists to grant the Customers' petition for rehearing.

The Commission orders: (A) The Customers' petition for rehearing is hereby granted.

(B) From the date of the issuance of this order, IP is hereby authorized to collect the $83,864 figure during the pendency of the proceeding in this docket.

(C) If the Commission ultimately determines that an amount greater than $83,864 is the just and reasonable rate,

IP will only be able to collect the higher amount prospectively.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21200 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. ER78-353]

INDIANA AND MICHIGAN ELECTRIC CO.

Order Accepting for Filing and Suspending Proposed Rates

JULY 21, 1978.

On May 2, 1978, in Docket No. ER78-353, the Indiana & Michigan Electric Co. (I&ME) tendered for filing a letter stating that it was providing notice under Docket No. E-8691 that the supplement filed in Docket No. E-8691 contained a demand rate to become effective June 1, 1978.[1] The original filing in Docket No. E-8691 in 1974 contained a demand charge of $2.15 per kW per month through 1977 and a formula for computing a revised demand charge for 1978. The filing in Docket No. E-8691 was accepted by Secretary letter on July 12, 1974, which noted the formula for the 1978 rates and stated that section 35.3(a) of the Commission's rules and regulations requires the filing thereof from 30 to 90 days before its effective date.

The rates filed in the instant docket provide for the sale of 500 MW of firm power to Commonwealth Edison Co. (Edison) for the period June 1, 1978, through September 30, 1978, with a concomitant approximate increase in revenues of $16.3 million. The instant submittal proposes to increase the demand rate to Edison to $7.80 per kW per month.

Notice of the instant submittal was issued on May 10, 1978, with protests or petitions to intervene due on or before May 22, 1978. No protests or petitions were filed.

I&ME contends that the Commission approved the second (formula) part of the demand rate at issue here when it accepted the rate in effect from 1974 to 1977, and that I&ME need now only give notice of the 1978 rate. This is patently incorrect. In the cover letter to its original submittal, dated March 20, 1974, I&ME indicated that the formula part of the dual demand rate was not being submitted for review and acceptance by the Commission as a rate to be made effective with the set rate:

> With respect to this rate, it is understood that it will require a submittal to the Commission for filing at the appropriate time. Accordingly, the parties will submit this rate for filing from 30 to 90 days before its effective date.

Accordingly, in its letter acceptance of I&ME's filing dated July 12, 1974, the Commission stated, *inter alia*, the following:

> It is noted that the aforementioned agreement provides a formula upon which 1978 "annual contract period" rates are proposed to be based. Be advised that with respect to this *proposed rate*, section 35.3(a) of the Commission's regulations under the Federal Power Act requires the filing thereof from 30 to 90 days before its effective date. (Emphasis added.)

It is thus clear that the Commission, acting explicitly upon the representation of I&ME that the 1978 demand rate formula was not at that time ripe for filing as an effective rate schedule, did not accept for filing or pass upon the justness and reasonableness of this portion of the formula and the resulting rate. Consequently, the 1978 demand formula and this rate must now be submitted for filing pursuant to section 35.3(a) of our regulations and section 205 of the act.

Our review indicates that the rates submitted in the instant docket have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Therefore, the Commission will accept I&ME's submittal for filing and suspend the proposed rates and services for 1 day after which they will go into effect as of June 1, 1978, subject to refund. A hearing will be held to consider, *inter alia*, I&ME's cost formula.

The Commission orders: (A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205, 301, 307, 308 and 309 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates and services proposed by the Indiana and Michigan Electric Co.

(B) The rates and services proposed by I&ME are hereby accepted for filing and suspended for 1 day after which they will go into effect as of June 1, 1978, subject to refund.

(C) Waiver of the requirement to file Statements A through P pursuant to section 35.13 of the Commission's rules and regulations is hereby granted.

(D) I&ME is hereby ordered to submit its case-in-chief supporting the rationale of the cost of service formula from which the rates were computed within 60 days of the issuance of this order. Staff is hereby ordered to submit within 60 days thereafter a preliminary summary of its responding case including top sheets if appropriate.

(E) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (see Delegation of Authority, 18 CFR section 3.5(d)), shall convene a conference in this proceeding to be held in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Said Law Judge is authorized to establish all procedural dates and to rule upon all motions (except petitions to intervene, motions to consolidate and sever and motions to dismiss), as provided for in the Commission's rules of practice and procedure.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21201 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. CP76-492 et al.]

NATIONAL FUEL GAS SUPPLY CORP., ET AL.

Application for Temporary Authorization To Construct Compressor Facility

JULY 24, 1978.

Take notice that on June 23, 1978, National Fuel Gas Supply Corp. and National Gas Storage Corp. (applicants) filed an application pursuant to section 7(c) of the Natural Gas Act, requesting temporary authorization to construct a 5,000 horsepower compressor facility at their existing Beech Hill compressor site. This proposed compressor facility and its role in the proposed gas storage project are described more fully in the joint abbreviated application filed by the applicants in this docket and in Amendment No. 1 thereto.

Applicants state that a prior request for temporary authority to construct the same Beech Hill compressor facility dated October 14, 1977, is already on file with the commission, and to applicant's knowledge, no action has been taken by the Commission on this prior request. Since several specifics of the October 14, 1977, application contained in the June 23, 1978, application be substituted for that contained in the earlier application.

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[1] By Secretary letter dated May 26, 1978, I&ME was notified that an increase of the apparent magnitude involved was required to be supported by the data specified by section 35.13(b)(4)(iii) and that their May 2, 1978 filing was deficient. I&ME cured such deficiency on June 21, 1978.

In support of their application for temporary authorization to construct the Beech Hill compressor facility applicants state that the presiding administrative law judge's initial decision in these consolidated proceedings issued on May 30, 1978, found the proposed storage service technically feasible, environmentally sound, and urgently needed by customer utilities.

Applicants state that they intend to provide the proposed storage as quickly as possible. Applicants set forth a revised construction schedule and maintain that if construction is not begun immediately after August 1, 1978, the proposed 6.6 Bcf storage service from Beech Hill for April 1980 through March 1981 will be lost. They believe that the loss of this potential storage during 1980-81 is contrary to the public interest.

If the requested temporary authorization is granted, applicants state that they will comply with the conditions imposed on the recommended certificate by Judge Jensen in his initial decision in these dockets at pages 96 through 100. The applicants also state that the compressor site is owned in fee by the applicants so that the construction of the compressor station will not require access to land not owned by applicants.

Finally applicants state that they are fully aware of, and accept that the grant of such temporary authorization would be without prejudice to whatever final action the Commission may take in these proceedings and that in the event that the proposed Beech Hill compressor facility is not finally certificated for operation and service, the costs of this compressor facility would not, without further justification be recoverable by applicants in their jurisdictional rates.

Any person desiring to be heard or to make any protest with reference to this application should on or before August 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropiate action to be taken by will not serve to make protestants parties to the proceeding. Any person desiring to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21202 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket Nos. CI77-37, et al.]

PHILLIPS PETROLEUM CO.

Order Granting Reconsideration for Purposes of Further Consideration

JULY 21, 1978.

By order issued May 22, 1978, we issued certificates of public convenience and necessity to Phillips Petroleum Co. (Phillips) authorizing sales of natural gas to El Paso Natural Gas Co. in Docket Nos. CI77-37 and CI77-707.[1]

The certificates were conditioned that if any of the costs of conditioning the subject gas were included in the rates of the purchaser then the purchaser will be required to prove that these costs have not been compensated for in the applicable national ceiling rate.

The certificates also provided that this condition is subject to whatever action is taken by the Commission on rehearing in Docket Nos. CI77-412, CP77-558 and CP77-577.

On June 22, 1978, Phillips filed an application for rehearing and reconsideration in Docket No. CI77-707; it also filed an application for rehearing and reconsideration in Docket No. CI77-37 on June 23, 1978. These applications raise objections in connection with the provisions relating to the costs of conditioning the subject gas.

Since the order in Docket No. CI77-37 for which rehearing is sought was issued May 22, 1978, and since the application of Phillips was not filed until June 23, 1978, the application was filed 2 days after the expiration of the 30-day limit perscribed by section 19 of the Natural Gas Act and section 1.34 of the Commission's rules.

Similarly, since the order in Docket No. CI77-707 for which rehearing is sought was issued on May 22, 1978, and since the application of Phillips was not filed until June 22, 1978, the application was filed one day after the expiration of the 30-day limit prescribed by section 1.34 of the Commission's rules.

The Commission orders:

Insofar as the applications filed by Phillips request rehearing of our order of May 22, 1978, they are rejected. However, we shall treat them as applications for reconsideration, and, as such, we grant reconsideration of our order of May 22, 1978, solely for the purpose of affording further time for consideration. Since this order is not a final order, no responses to the order will be entertained by the Commission in accordance with the terms of section 1.34 of the Commission's Rule of Practice and Procedure.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21203 Filed 7-28-78; 8:45 am]

[1] These certificates were issued in Chevron U.S.A., Inc. (Operator), *et al.*, Docket No. G-4809, *et al.*

[6740-02]

[Docket No. CI78-31]

PHILLIPS PETROLEUM CO.

Order Granting Reconsideration for Purposes of Further Consideration

JULY 24, 1978.

By order issued May 22, 1978, we issued a certificate of public convenience and necessity to Phillips Petroleum Co. (Phillips) authorizing the sale of natural gas to Transwestern Pipeline Co. in Docket No. CI78-31.[1]

The certificate was conditioned that if any of the costs of conditioning the subject gas were included in the rates of the purchaser then the purchaser will be required to prove that these costs have not been compensated for in the applicable national ceiling rate.

The certificate also provided that this condition is subject to whatever action is taken by the Commission on rehearing in Docket No. CI77-412, CP77-558 and CP77-577.

On June 23, 1978, Phillips filed an application for rehearing and reconsideration in Docket No. CI78-31, raising objections in connection with the provisions relating to the costs of conditioning the subject gas.

Since the order in Docket No. CI78-31 for which rehearing is sought was issued May 22, 1978 and since the application of Phillips was not filed until June 23, 1978, the application was filed after the expiration of the 30-day limit prescribed by section 19 of the Natural Gas Act and section 1.34 of the Commission's rules. However, we shall treat the application as one for reconsideration, and, as such, we shall grant it.[2]

The Commission orders:

Insofar as the application filed by Phillips requests a rehearing of our order of May 22, 1978, it is rejected. However, we shall treat it as an application for reconsideration and, as such, we grant reconsideration of our order of May 22, 1978, solely for the purposes of affording further time for consideration.

Since this order is not a final order, no responses to the order will be entertained by the Commission in accordance with the terms of section 1.34 of the Commission's Rules of Practice and Procedure.

[1] This certificate was issued in Chevron U.S.A. (operator), et al., Docket No. G-4809, et al.

[2] Turnbull & Zoch Drilling Co., et al., Docket No. G-17960, et al., order issued Oct. 14, 1966, 36 FPC 762.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21204 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. CP78-411]

SOUTHERN NATURAL GAS CO.

Application

JULY 24, 1978.

Take notice that on July 3, 1978, Southern Natural Gas Co. (applicant), P.O. Box 2563, Birmingham, Ala. 35202, filed in Docket No. CP78-411 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of gas for Atlanta Gas Light Co. (Atlanta), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 50,000 Mcf (at 14.73 psia) of natural gas per day pursuant to a transportation agreement between applicant and Atlanta dated May 24, 1978, for delivery to Transcontinental Gas Pipe Line Corp. (Transco) for injection into Transco's underground storage for Atlanta's account. Said transportation agreement is for a primary term of 2 years, subject to yearly extensions thereafter, and is said to be the implementation of the agreement between applicant and Atlanta dated August 9, 1977, whereby all the issues relating to the allocation of gas and curtailments of natural gas service on applicant's system since applicant began operating under a plan of curtailment in January 1972, were settled.

Pursuant to the transportation agreement dated May 24, 1978, it is indicated, Atlanta would make available the gas to be transported by Southern at any of the delivery points from which it purchases gas from applicant, and applicant would deliver said gas to Transco at the currently authorized interconnection of their systems near Jonesboro, Ga.

It is stated that Atlanta may nominate quantities of gas for delivery to Transco on any day during the months of April and October, and that such quantities, plus the quantities of gas purchased by Atlanta, would not exceed the maximum daily volume to which Atlanta is entitled in accordance with the provisions of section 9 of the general terms and conditions of applicant's FERC gas tariff.

For each day the transportation service is rendered, it is said, Atlanta has agreed to pay applicant an administrative charge of $50, in addition to reimbursing applicant for all costs which applicant may incur in providing this service including, but not limited to: (1) All new or additional facilities required at the interconnection of applicant's and Transco's systems in order to commence the subject transportation service, and other modifications to applicant's system necessary to deliver, control, and measure the gas transported for Atlanta, and (2) Atlanta's pro rata share of any new or additional facilities required at said point of interconnection and of other modifications to Southern's system necessary in order to continue the subject transportation service.

It is asserted, however, that at the present time there is available capacity at the said point of interconnection to accommodate the proposed transportation service; therefore, no new facilities are required at this time.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 9, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21205 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. CI75-45, et al.]

TENNECO OIL CO., ET AL.

Order Clarifying Opinion No. 10 and Denying Stay

JULY 21, 1978.

On June 19, 1978, Tennessee Gas Pipeline Co. filed a Motion for Clarification of the transportation authorization issued in Docket No. CP75-119.[1] Tennessee stated that it understands that it is authorized to transport for the account of Shell Oil Co. with ultimate delivery to Air Products and Chemicals, Inc. an amount of gas not to exceed one-half of Air Products process and feedstock requirements. This understanding implies deliveries of approximately 19,050 Mcf per day. Tennessee stated that Shell has requested it to transport 22,500 Mcf per day. It requests clarification as to whether this amount is authorized by its certificate.

It is the Commission's understanding that the authorization granted in docket No. CP75-119 covers deliveries of natural gas up to the maximum specified in Shell's contract with Air Products of 22,500 Mcf per day from non-Federal domain sources only. Tennessee is authorized to honor Shell's request for transportation up to that amount.

The Commission takes note of Tennessee's statement that it has sufficient pipeline capacity to transport 22,500 Mcf per day for Shell. The Commission also notes its understanding that the 3,450 Mcf per day in question will not result in lessened deliveries of gas by Shell to Tennessee for resale in interstate commerce.

The effect of this clarification is that Air Products will have access to an additional supply equivalent to 3,450 Mcf per day from onshore sources. It appears on the basis of Air Products' Request for Stay, *infra*, that this access should at least partially offset and possibly completely offset the amount of offshore gas which, as a result of Opinion No. 10, is no longer authorized to be transported to Air Products.

In Opinion No. 10 the Commission specifically reserved for later decision the question of the Commission's jurisdiction over sales by Tenneco and Shell Oil Co. to Creole Gas Pipeline for resale to Air Products. This clarification is without prejudice to the ultimate determination of that jurisdictional issue.

On July 3, 1978, Air Products and Chemicals, Inc. filed an Application for Partial Stay Pending Judicial

[1] Air Products and Chemicals, Inc. filed an answer in support of Tennessee's motion for clarification. No filings in opposition to the Tennessee motion have been received.

Review of Opinion No. 10.[2] Opinion No. 10 denied applications for authority to transport to Air Products' New Orleans plant, natural gas produced by Tenneco Oil Co. from the offshore Federal domain. Air Products states that the gas is used for feedstock and process uses and requests a stay to avoid termination of deliveries.

Air Products states that it is receiving approximately 8,000 Mcf per day of natural gas produced by Tenneco Oil Co. Of this amount, some 5,500 Mcf is from the offshore Federal domain. Air Products indicates that on July 1, 1978, Tenneco reduced its deliveries to Air Products from 8,000 Mcf to 5,500 Mcf per day. Air Products' Application for Stay indicates that as a result of Opinion No. 10, Tenneco will reduce deliveries from the Federal domain by 5,500 Mcf per day. However, the affidavit in support of the application filed on July 6, 1978, indicates that this reduction in deliveries will be 3,000 Mcf per day.

In determining Air Products' Motion for Stay, the factors that must be weighed are: (1) Is the petitioner likely to prevail on the merits of its appeal, (2) absent relief, will the petitioner be irreparably injured, (3) will issuing a stay harm other parties interested in the proceeding, and (4) where does the public interest lie.[3] If the other three factors strongly favor interim relief discretion may be exercised to grant a stay, provided the petitioner made a substantial case on the merits.[4]

Air Products has not satisfied the criteria established in *Virginia Petroleum Jobbers* and *Holiday Tours*. Air Products claims of irreparable injury are not supported by the underlying affidavit submitted with the application. It does not contend that its plant will be closed if the stay is not granted; at worst it indicates a lack of deliveries from the offshore Federal domain will result in reduced production. Additionally, as noted, in response to the clarification requested by Tennessee, the clarification will result in Air Products having access to an amount of onshore gas possibly greater than the eliminated deliveries from the offshore Federal domain. Therefore, we find that Air Products has not made a showing of irreparable injury sufficient to support a stay.

Air Products argues that if the stay is granted, there will be no injury to other parties and that the public interest supports maintenance of the status quo pending judicial review. We cannot agree with these allegations. The party that will be injured by the stay is the interstate consumer of natural gas. The supplies available to the interstate market will be diminished by any deliveries made from the offshore Federal domain to Air Products during the pendency of judicial review. Opinion No. 10 held that the curtailment situation in the interstate market requires this Commission to seek to maximize supplies available to the interstate market in accord with its statutory mandate. In order for the Commission to grant Air Products' requested stay, it would have to reach conclusions not compatible with the conclusions reached in Opinion No. 10. Accordingly, the Commission must deny Air Products' Application for Stay.

On July 18, 1978 Tenneco Oil Co. filed a Motion for Stay of Opinion No. 10. Tenneco's motion does not satisfy the criteria set out in *Virginia Petroleum Jobbers*. Our previous discussion of Air Products allegations regarding the public interest and injury to other parties are equally applicable to Tenneco's motion. As to Tenneco's allegations of irreparable injury, they are unsupported by any factual analysis which would justify such a claim.

Nonetheless, we recognize that Opinion No. 10 will become effective in a matter of days. Therefore, solely as an exercise of our discretion, we will extend our previous stay through July 31, 1978. This extension will provide time for Air Products and Tenneco to determine whether to seek relief from the Judiciary.

The Commission orders: (A) The authorization issued to Tennessee Gas Pipeline in docket No. CP75-119 is clarified to indicate that Tennessee is permitted to transport for the account of Shell Oil Co. a maximum of 22,500 Mcf per day of non-Federal domain gas only for ultimate delivery to Air Products and Chemicals, Inc. to meet Air Products' process and feedstock requirements.

(B) The stay previously issued in this proceeding is extended to July 31, 1978. In all other respects, the Applications for Stay filed by Air Products and Chemicals, Inc. on July 3, 1978, and by Tenneco Oil Co. on July 18, 1978, are denied.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21206 Filed 7-31-78; 8:45 am]

[2] The Public Service Commission of the State of New York filed an answer opposing Air Products' request for a stay. New York indicated its support for the clarification requested by Tennessee. Associated Gas Distributors also filed an answer opposing the requested stay.

[3] *Virginia Petroleum Jobbers Assoc.* v. *F.P.C.*, 259 F. 2d 921 (D.C. Cir. 1958).

[4] *Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, 559 F. 2d 841 (D.C. Cir. 1977).

[6740-02]

[Docket No. CP78-412]

TEXAS GAS TRANSMISSION CORP.

Application

JULY 24, 1978.

Take notice that on July 5, 1978, Texas Gas Transmission Corp. (applicant), 3800 Frederica Street, Owensboro, Ky. 42301, filed in Docket No. CP78-412 an application pursuant to section 7 of the Natural Gas Act and § 157.7(g) of the Commission's regulations under the Natural Gas Act (18 CFR 157.7(g)), for a certificate of public convenience and necessity authorizing the construction and for permission for and approval of the abandonment, during the 12-month period commencing November 5, 1978, and operation of field gas compression and related metering and appurtenant facilities, all as more fully set forth in the application on file with the Commission and open for public inspection.

The stated purpose of this budget-type application is to augment applicant's ability to act with reasonable dispatch in the construction, relocation, and operation and abandonment of facilities which will not result in changing applicant's system salable capacity or service from that authorized prior to the filing of the instant application.

Applicant states that the total cost of the proposed construction and abandonment of facilities would not exceed $3,000,000 and that the cost of any single project would not exceed $500,000. Applicant indicates that it would finance such cost from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's

rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMP,
Secretary.

[FR Doc. 78-21207 Filed 7-31-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. RI78-80]

ADA RESOURCES, INC., ET AL.

Petition for Declaratory Order

JULY 25, 1978.

Take notice that on May 24, 1978, ADA Resources, Inc, et al. (petitioner), 6910 Fannin, Houston, Tex. 77001, filed a petition for a declaratory order in Docket No. RI78-80. Petitioner seeks an order stating that it is entitled to receive the nationwide rates in section 2.56a(a) (1) and (2) of the Commission's general policy and interpretations for the sale of gas in the Hackberry A Sand, Reservoir C HBY A RC SUA in the Lake La Rose Field, St. Martin Parish, La. Petitioner states that although the natural gas in the Hackberry A Sand is being produced by a well spudded prior to January 1, 1975, the production attributable to its interest is due to the drilling of a well spudded after January 1, 1975, because additional reserves were discovered. Petitioner states that the well spudded after January 1, 1975, was abandoned, but as a result of discovering additional reserves the acreage proven productive by the additional well was included in the proration unit where the well spudded before January 1, 1975, is located.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21208 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. CI73-293]

BELCO PETROLEUM CORP.

Petiton To Amend Certificate

JULY 24, 1978.

Take notice that on June 22, 1978, Belco Petroleum Corp. (Belco) filed a petiton to amend the certificate issued to it in opinion No. 659, as amended, pursuant to the optional certificate procedure. Belco in its petition request the Commission to amend the certificate of public convenience and necessity issued to Belco on May 30, 1973, in the caption docket by (1) expanding the area within which Belco is to make exploration and development expenditures pursuant to said cerfificate so as to include the Texas gulf coast area and (2) eliminating the certificate requirement that a specified portion of such expenditures be expended in the Federal domain offshore.

Any person desiring to be heard or to make any protest with reference to said application, on or before August 11, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commision's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is requird by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21197 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. CP 78-361]

COLORADO INTERSTATE GAS CO. ET AL

Notice of Application

JULY 25, 1978.

Take notice that on July 5, 1978, Colorado Interstate Gas Co. (CIG), P.O. Box 1087, Colorado Springs, Colo. 80944, and Columbia Gas Transmission Corp. (Columbia Transmission), P.O. Box 1273, Charleston, W. Va. 25325, and Panhandle Eastern Pipe Line Co. (Panhandle), P.O. Box 1642, Houston, Tex. 77001, (applicants) filed in Docket No. CP78-361 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a short-term sale and delivery of natural gas to Columbia Gas of Ohio, Inc. (Columbia of Ohio), an affiliated distribution customer of Columbia Transmission, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that as a consequence of a curtailment policy by one of Columbia of Ohio's major gas suppliers, Columbia of Ohio is in immediate need of an additional gas supply so that it may continue serving its high-priority customers during the summer of 1978. CIG indicates that it can make certain volumes of gas available to Columbia of Ohio during August and September of 1978.

CIG proposes herein to sell natural gas to Columbia of Ohio pursuant to the terms of a 60-day emergency sale agreement dated May 11, 1978, which sale will commence on the date of issuance of the requested authorization and could continue for a period of up to 60 consecutive days thereafter. It is stated that the price of all gas sold by CIG to Columbia under the 60-day emergency sale agreement would be $1.16 per Mcf or, if higher, the effective unit rate of CIG's Rate Schedule EX-1 pursuant to its Gas Tariff, Third Revised Volume No. 2.

The application states that CIG's pipeline system is remote from Columbia of Ohio's system. Thus, to effectuate the sale and delivery, Columbia of Ohio has negotiated agreements with Panhandle and Columbia Transmission to transport the gas, it is stated. Consequently, pursuant to the transportation agreements, CIG would deliver the gas to Panhandle at an existing system interconnection located in Texas County, Okla., and Panhandle proposes to transport and deliver the gas to Columbia Transmission at an existing system interconnection located near Maumee, Ohio. Columbia Transmission would then transport and deliver the gas to Columbia of Ohio at several existing delivery points which it regularly utilizes for deliveries to Columbia of Ohio, it is stated.

It is indicated that Columbia Transmission would charge 23.05 cents for the proposed transportation service and would retain 2.51 percent of all volumes transported for Columbia of Ohio for gas used as compressor fuel and shrinkage. It is further indicated that Panhandle would assess a transportation charge of 25.13 cents per Mcf to Columbia of Ohio.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21209 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. CP78-413]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Application

JULY 25, 1978.

Take notice that on July 6, 1978, Columbia Gas Transmission Corp. (Applicant), P.O. Box 1273, Charleston, W. Va. 25325, filed in Docket No. CP78-413 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon Irwin Storage Field (Irwin) and related facilities in Westmoreland County, Pa. and Iowa Storage Field (Iowa) in Jefferson County, Pa., all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that Irwin consists of 3 storage wells, associated lines, measuring and regulating equipment and that a compressor station was activated in 1942 and acquired by Applicant from its predecessor, the Manufacturers Light & Heat Co. Applicant indicates that in order to continue the operation of Irwin under existing Pennsylvania law it would be necessary for it to replug eight abandoned wells in the Irwin Field at an estimated cost of $200,000, which cost, in view of the limited contribution of Irwin's turnover and peak day deliverability to Applicant's total storage operations resulted in Applicant's decision to abandon Irwin. Applicants states that it would dispose of the physical facilities in Irwin either by abandonment by sale to Columbia Gas of Pennsylvania, Inc., by transfer to production plant, by salvage where possible or by sale as junk. Irwin Compressor Station would be abandoned and salvagable materials would be utilized where possible, it is said.

The application states that Iowa consists of two storage wells, associated lines, and measuring and regulating equipment and was activated in 1945 and acquired by Applicant from a predecessor, the Manufacturers Light & Heat Company. The application further states that in 1976, withdrawal operations were begun to reduce pressure in the reservoir when it was determined that both of the Iowa's storage wells were leaking, one due to casing failure and the other to a packer failure. Shortly thereafter it was learned that 3 old abandoned wells located with Iowa's boundary were leaking, and although it was Applicant's belief that such leakage was not related to the operation of Iowa, Applicant would be required to redrill and replug the 3 abandoned wells at an estimated cost of $137,000 in order to continue the operation of Iowa under existing Pennsylvania law. Applicant proposes to continue the withdrawal of stored gas until the storage field passage reaches a point that flow to the connecting pipe line system cannot be accomplished. Applicant proposes further to dispose of the physical facilities in Iowa by either abandonment in place or by salvage where possible. Approximately 622 acres of gas rights would be transferred to production plant, it is said.

It is indicated that Applicant is in the process of developing additional storage capability in Crawford Storage Field and of improving the annual turnover and peak day deliverability in its Coco and Donegal storage fields, respectively. The abandonment of Irwin and Iowa would not significantly reduce Applicant's overall storage capability and would not affect Applicant's ability to serve its existing market requirements, it is stated. Therefore, Applicant states that the abandonment of Irwin and Iowa would not result in any reduction of service to Applicant's customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own

review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21210 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket Nos. CP78-102, CP78-111]

COLUMBIA GULF TRANSMISSION CO.

Order Denying Rehearing

JULY 21, 1978.

On June 21, 1978, Amoco Production Co. (Amoco) filed an application for rehearing of the Commission's order herein issued May 30, 1978. That order authorized Columbia Gulf Transmission Co. to transport certain volumes of gas for Amoco to be ultimately delivered to Florida Gas Transmission Co. on Amoco's behalf. The authorization in Docket No. CP78-102, which involves transportation of offshore Louisiana gas, was conditioned, inter alia, to prohibit any of the gas being used to satisfy a certain gas warranty contract between Amoco and Florida Power & Light Co. The condition was imposed because the gas would be used for boiler fuel. It is this condition to which Amoco objects.

In its application for rehearing, Amoco requests that the Commission defer action on such application because the same issues present here are also before the U.S. Court of Appeals for the Fifth Circuit in *Florida Power & Light Co., et al.* v. *FERC,* Case No. 77-2869. However, we fail to see how this fact is a basis for granting the relief requested by Amoco. Accordingly, we shall deny rehearing for the same reasons advanced in *Florida Power,* supra.*

The Commission finds: Amoco's application for rehearing presents no new facts or principles of law which warrant any modification of our May 30, 1978 order.

The Commission orders: Amoco Production Co.'s application for rehearing, filed June 21, 1978, is hereby denied.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21198 Filed 7-31-78; 8:45 am]

*See our orders in *Florida Gas Transmission Company, et al.,* Docket No. CP65-393, et al., issued May 2 and July 27, 1977.

[6740-02]

[Project No. 2480]

GREEN MOUNTAIN POWER CORP.

Extension of Time

JULY 21, 1978.

On July 11, 1978, Green Mountain Power Corp. filed a motion to extend the time to file an answer to a Petition to Intervene Out-of-Time and an Application to Intervene filed June 26, 1978, by the town of Middlesex, Vt., in the above-indicated proceeding.

Upon consideration, notice is hereby given that an extension of time is granted to and including August 10, 1978, within which to file answers to the town of Middlesex's petition.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21199 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. CP77-99]

NORTHERN NATURAL GAS CO.

Notice of Petition To Amend

JULY 25, 1978.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Public Law 95-91, 91 Stat. 565 (Aug. 4, 1977) and Executive Order No. 12009, 42 FR 46267 (Sept. 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977. The functions which are the subject of this proceeding were specifically transferred to the FERC by section 402(a)(1) or 402(a)(2) of the DOE Act.

Take notice that on June 1, 1978, Northern Natural Gas Co. (Petitioner), 2223 Dodge Street, Omaha, Nebr. 68102, filed in Docket No. CP77-99 a petition to amend the order of May 23, 1977 (53 FPC —) issued by the Federal Power Commission (FPC) in the instant docket pursuant to section 7(c) of the Natural Gas Act so as to provide for the continued operation of two 1,250-horsepower compressor units in lieu of the two 1,050-horsepower compressor units originally authorized for Petitioner's Stevens County No. 5 compressor station in Stevens County, Kans., all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is indicated that pursuant to the order of May 23, 1977, Petitioner was authorized to construct and operate the Stevens County No. 5 compressor station. It is further indicated that Petitioner requested authorization in its application filed December 17, 1977, to construct and operate a new compressor station consisting of two 1,050-horsepower, natural-gas-fuled, reciprocating-type compressor units. It is stated that on February 1, 1977, on the basis of studies comparing operating costs of natural-gas-fueled compressors and electric-driven compressor units, Petitioner filed a supplement to its application filed in the instant docket proposing installation of the electric-driven compressors. Attached to the supplement was an updated flow schematic of the Stevens County No. 5 compressor station showing a new total calculated requirement of 2,048 horsepower, and as specified in the original application, the facilities proposed totaled 2,100 horsepower. Stevens County No. 5 became a forerunner for Petitioner of larger size compressor unit installations utilizing electric motor drives, it is said.

Petitioner states that, based upon the specific requirements for Stevens County No. 5, a supplier of electric drives proposed two options to Petitioner; (1) a 1,000-horsepower motor with a 1.15 service factor (continuous operation at 1,000 horsepower, peak capability of 1,150 horsepower) and (2) a 1,250-horsepower motor with a 1.0 service factor. Petitioner states that the 1,250-horsepower unit provides greater reliability of operation and is available at a lower cost to Petitioner. Consequently, Petitioner decided to purchase motor drives rated at 1,250 horsepower, it is stated.

Petitioner asserts that it assumed that the 1,250-horsepower motors would be operated at 15 percent deration to match the operation of the alternative choice, that is 1,250 horsepower/1.15 or 1,060 horsepower, and that since the 1,060-horsepower rating of the units closely matched the rating of the units proposed in the application, it was not considered necessary, at the time to amend the application. Petitioner asserts further that it determined later that the manufacturer of the 1,250-horsepower motors has approved of continued operation at the full nameplate horsepower, and that the compressor loading curves were then based on continuous operation capability at 1,250 horsepower. Petitioner states that the difference in this rating and the rating of the facilities authorized was inadvertently overlooked, and that steps have been taken

to insure that such situation does not reoccur.

Any person desiring to be heard or to make any protest with reference to said petition to amend should, on or before August 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21211 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket Nos. EL78-15, ER78-339]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

Order Clarifying and Modifying Previous Order in Part

JULY 25, 1978.

By motion dated June 28, 1978, the Public Service Co. of New Hampshire (PSNH) requested clarification of the Commission's order of June 9, 1978.[1] Therein, PSNH was ordered to file a case-in-chief in response to, inter alia, 22 numbered questions in support of its application to include all CWIP in rate base. PSNH is requesting clarification of question 22, which appeared in that order as follows:

Provide detailed PSNH cash flow analyses for each year, commencing with calendar year 1978, and continuing through the estimated service lives of the facilities for which CWIP rate base treatment is requested. The cash flow analyses should reflect the Company's total electric operations, and should also separate each year's totals into portions allocable to the wholesale services here at issue, and to all other services as a composite group. Separate analyses should be shown for a rate base which includes no CWIP other than pollution control and fuel conversion facilities, and a rate base which includes PSNH's view of the minimum level of CWIP which would permit PSNH to acquire needed capital at a reasonable cost. For each of the analyses, and for each year, the cash flow supporting detail should include the required rate of return on rate base (both overall and on common equity), the estimated capitalization, the rate base and the net operating income. Also included should be narrative and quantified explanatory materials to fully support the bases of all projected data included in the analyses.

PSNH states that while the Company can estimate the revenue requirement for the facilities it seeks to have included in rate base over the service lives of those facilities, it cannot with any accuracy project total company cash flow over that full period of time.[2]

We agree. It is not necessary for PSNH to calculate total cash flow beyond 1985. For the period commencing with 1978 and extending through the service lives of the facilities for which PSNH seeks rate base treatment, the Company is directed to supply projections of relevant revenue requirement components (i.e. depreciation, taxes, and return) for (1) the period prior to service, (2) the service life under the alternate assumptions that (a) CWIP is included in rate base and (b) only pollution control is included in rate base.

Except as herein stated, the Company is required to respond in all respects to question 22 as stated in our order of June 9, 1978.

The Commission orders: (A) Question 22 as contained in the June 9, 1978 order in Docket Nos. EL78-15 and ER78-339 is hereby modified in the manner described in the body of this order.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21212 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. CP78-414]

SOUTHERN NATURAL GAS CO.

Notice of Application

JULY 25, 1978.

Take notice that on July 7, 1978, Southern Natural Gas Co. (Applicant), P.O. box 2563, Birmingham, Ala. 35202, filed in Docket No. CP78-414 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the 12-month period commencing October 21, 1978, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which would be purchased from producers or other similar sellers thereof, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally coextensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant.

Applicant states that the total estimated cost of the proposed facilities would not exceed $12,000,000, with no single offshore project to exceed $2,500,000, and with no single onshore project to exceed $1,500,000. Applicant indicates that the cost of the proposed facilities would be financed with cash on hand or which would be available from current operations.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the National Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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[1] Docket Nos. EL78-15 and ER78-339; Order Granting and Denying Motions in Part, Consolidating Proceedings and Establishing Procedures.

[2] On July 10, 1978, the New Hampshire Electric Cooperative, the towns of Ashland and Wolfsboro and the village precinct of New Hampton, N.H. (Customers) filed a response to PSNH's motion. Customers partially concur in the limitation of the cash flow analyses suggesting that such analyses should only be required through the 5-year period following the completion of the last Seabrook unit.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21213 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. CP70-185]

TENNESSEE GAS PIPELINE CO., A DIVISION OF TENNECO, INC.

Petition To Amend

JULY 25, 1978.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (Aug. 4, 1977), and Executive Order No. 12009, 42 FR 46267 (Sept. 15, 1977), the Federal Power Commission (FPC) ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977. The functions which are the subject of this proceeding were specifically transferred to the FERC by section 402(a)(1) of the DOE Act.

Take notice that on July 12, 1978, Tennessee Gas Pipeline Co., a division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Tex. 77001, filed in docket No. CP70-185 a petition pursuant to section 7(c) of the Natural Gas Act to amend the FPC's order issued June 22, 1970, in said docket, so as to authorize the rendition of natural gas service by Petitioner to the city of Springfield, Tenn. (Springfield), under Petitioner's GS-1 rate schedule in lieu of under Petitioner's G-1 rate schedule, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is asserted that Petitioner presently renders natural gas service to Springfield under authorization granted by the order issued June 22, 1970, in Docket Nos. CP70-185, et al., and pursuant to the provisions of a gas sales contract between Petitioner and Springfield dated April 1, 1970, and Petitioner's G-1 rate schedule. It is stated that Springfield has determined that, due to the relatively low load factor at which it now purchases gas from Petitioner pursuant to said contract, it would be economically more advantageous for Springfield to make such purchases at the one-part rate set forth in Petitioner's GS-1 rate schedule, which rate is based upon the monthly volume of gas actually delivered to Springfield and does not include a minimum monthly bill.

Petitioner asserts that it is agreeable to the change in service to Springfield as above-stated and has entered into a precedent agreement with Springfield dated June 27, 1978, which provides for the execution of a new sales contract as soon as Petitioner receives the authorization it requests by this petition.

However, Petitioner states, it has determined that due to Springfield's previous takes from Petitioner in excess of the daily volumetric limitation specified in section 1(d) of the availability provisions of Petitioner's GS-1 rate schedule, Springfield does not qualify under said section for service under the GS-1 rate schedule. Petitioner, therefore, requests that the Commission waive the requirements of section 1(d) in order to permit Petitioner to render service to Springfield under the GS-1 rate schedule.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20246, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21214 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. CP76-46]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Petition To Amend

JULY 25, 1978.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (Aug. 4, 1977), and Executive Order No. 12009, 42 FR 46267 (Sept. 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977. The functions which are the subject of this proceeding were specifically transferred to the FERC by section 402 (a) (1) of the DOE Act.

Take notice that on June 30, 1978, Transcontinental Gas Pipe Line Corp. (Petitioner), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP76-46 a petition to amend the order issued October 23, 1975 (54 FPC ——), by the FPC, pursuant to section 7(c) of the Natural Gas Act and section 2.79 of the Commission's general policy and interpretations (18 CFR 2.79) so as to authorize the transportation of natural gas for Dan River, Inc. (Dan River) for a 2-year period, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that on November 15, 1977, Petitioner filed a petition to amend the order issued October 23, 1975, so as to provide for the transportation of natural gas for Dan River for an additional 2-year period from December 5, 1977, the expiration date of the initial authorization. Due to the Commission's then pending review of the certificate procedure established by Order Nos. 533 and 533-A for transportation service of the kind there proposed by Petitioner, a temporary certificate authorizing the continuation of said service through July 31, 1978, was issued to Petitioner on December 6, 1977, the petition asserts. Said authorization was issued without prejudice to the filing of an application for an extension consistent with the standards and conditions set forth in any new order and a showing of a continuing need for the transportation service, in the event the Commission should decide to continue to permit the type of transportation services provided for in Order Nos. 533 and 533-A, it is stated. Petitioner asserts that this petition complies with the above provisions.

No changes are made by this petition in the arrangement between Petitioner, Dan River and the city of Danville, Va. (Danville) as set forth in the petition filed November 15, 1977. The requested authorization would allow the continuation of the transportation, on an interruptible basis, of up to 1,000 Mcf (at 14.65 psia) of natural gas per day to Danville for the account of Dan River for redelivery by Danville to Dan River's local plant. The original petition to amend stated, and nothing in the instant petition modifies, that the gas would be purchased pursuant to a gas purchase agreement dated September 20, 1977, extending the sale of gas through September 20, 1979, from Lester Moore Tank & Supply Co., Inc. and others (MER) in the Double U Field, Duval County, Tex., by Dan River at a price of $1.70 per Mcf during the first year of the

additional period and $1.73 per Mcf during the second, and that such gas would be delivered to Petitioner at mile post 27.94 on the Conoco-Driscoll pipeline in that county. Petitioner also indicated by such previous petition that the transportation service was rendered pursuant to Rate Schedule X-79 on file with the Commission in Petitioner's FERC Gas Tariff, Original Volume No. 2, that is, at a rate of 29.8 cents per dekatherm equivalent of natural gas (dt) delivered, and that Petitioner would retain 3.8 percent of the volumes transported for fuel and line loss.

By letter dated March 31, 1978, Dan River was advised by Danville that it would not be able to supply Dan River with gas during the summer of 1978. No changes in the end uses of the subject gas, previously designated as Priority 2 process uses in Dan River's Danville plant, are hereby proposed.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21215 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. CP77-240]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Petition To Amend

JULY 25, 1978.

Take notice that on July 12, 1978, Transcontinental Gas Pipe Line Corp. (petitioner), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP77-240 a petition pursuant to section 7(c) of the Natural Gas Act and § 2.79 of the Commission's general policy and interpretations (18 CFR 2.79) so as to amend the order issued October 26, 1977, in said docket. The petition requests authorization to transport up to 50 Mcf of natural gas per day to Columbia Corrugated Container Corp. (Columbia), as industrial customer of Long Island Lighting Co. (LILCO), one of the petitioner's CD-3 customers, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that by the order issued October 26, 1977, and the temporary certificates issued on December 8, 1977, and February 17, 1978, Petitioner is authorized to transport up to 2,745 Mcf of natural gas per day to LILCO for the account of the following existing LILCO consumer-customers: Cerro Wire & Cable Co., Division Cerro-Marmon Corp.; Entenmann's Inc., Fabric Lesther Corp., a wholly owned subsidiary of Borden, Inc., Global Steel Products Corp.; Kaiser Aluminum & Chemical Corp.; Knickerbocker Partition Corp.; Lawerence Aviation Industries, Ind., and Gim Metals Products Division of Lightron Corp. (buyers).

The subject gas, it is said, is purchased from George C. Ayers, *et al.* in the Papalote West Field, Bee County, Tex.; Northcott Exploration Co., Inc., et al. in the Tigre Lagoon field area, Vermillion Parish, La., and R. L. Burns Corp. (Burns) in the S. W. Lake Bouef field, Lafourche Parish, La.

The transportation, it is added, takes place pursuant to an agreement dated February 7, 1977, as amended between petitioner, buyers, acting severally and not jointly by and through Energy Buyers Service Corp. (energy buyers)[1] and LILCO. It is stated that petitioner, LILCO, and energy buyers, as agent for buyers have entered into an agreement dated March 27, 1978, which amends the February 7, 1977, agreement, as amended, so as to provide transportation for Columbia.

The petition further states that Columbia has purchased from Burns a maximum daily volume of 50 Mcf of natural gas, which volume petitioner requests be added to the maximum daily volume of 2,745 Mcf per day which petitioner is presently authorized to transport. By an amendment to the gas purchase contract between Burns and buyers dated January 1, 1978, petitioner asserts, Powers Fiat Co. (Fiat) has assigned its purchase rights under such contract to Columbia since Fiat has shifted certain manufacturing operations and will not be able to utilize the gas for which it had contracted. It is indicated that pursuant to the gas purchase agreement between buyers and Burns, the initial price of the gas is $1.75 per million Btu's for the first year and $1.85 per million Btu's for the second. The Btu content of the gas per cubic foot is said to be 1155.3.

By this petition, LILCO advises that Columbia would be curtailed 100 percent during the winter periods of the 2-year term for which petitioner proposes to render the transportation service for Columbia. By an affidavit dated October 13, 1977, Columbia asserts that the subject gas would be used for priority 3 process uses for which there is no technically feasible alternate fuel capability.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21216 Filed 7-31-78; 8:45 am]

[1] Formerly named the Stone Energy Corp.

[6740-02]

[Docket No. CP77-280]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Petition To Amend

JULY 25, 1978.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (Aug. 4, 1977), and Executive Order No. 12009, 42 FR 46267 (Sept. 15, 1977), the Federal Power Commission (FPC) ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on Ocober 1, 1976. The functions which are the subject of this proceeding were specifically transferred to the FERC by section 402(a)(1) of the DOE Act.

Take notice that on July 12, 1978, Transcontinental Gas Pipe Line Corp. (petitioner), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP77-280 a petition pursuant to section 7 of the Natural Gas Act and § 2.79 of the Commission's general policy and interpretations (18 CFR 2.79) so as to amend the order issued by the FPC in the instant docket on August 5, 1977 (58 FPC), by extending the term of its transportation service to Kerr Finishing Division of Allied Products Corp. (Kerr) to July 16, 1980, all as

more fully set forth in the petition which is on file with the Commission and open to public inspection.

By order issued August 5, 1977, petitioner was authorized to transport up to 250 Mcf of natural gas per day on an interruptible basis for Kerr, an industrial customer of Public Service Co. of North Carolina, Inc. (PSNC), a distribution customer of petitioner, for a period of 1 year from the date of initial delivery. Petitioner states that it has agreed to extend for a term of 2 years, to July 16, 1980, its currently authorized transportation service for Kerr for Evangeline Parish, La., to existing delivery points to PSNC for ultimate delivery to Kerr's Concord, N.C., plant.

By an affidavit dated May 15, 1978, Kerr indicates its continued need for the transportation service rendered it by petitioner.

The petition also indicates that Kerr entered into a gas purchase contract dated May 19, 1978, with Trinidad Petroleum Corp. (Trinidad), its current supplier of natural gas, to provide for a continued supply of gas for the proposed additional term at a price of $2.05 per Mcf.

There is no indication that the terms of the extended transportation service would differ form those authorized by the order issued August 5, 1977.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to by taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21217 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket No. CP78-418]

TRANSWESTERN PIPELINE CO.

Notice of Application

JULY 25, 1978.

Take notice that on July 11, 1978, Transwestern Pipeline Co. (Applicant), One Houston Center, Houston, Tex. 77002, filed in Docket No. CP78-418 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a 12-inch interconnection facility on its 24-inch panhandle lateral and the transportation of up to 150,000 dekatherms equivalent of natural gas (dt) per day for Pacific Interstate Transmission Co. (Pacific), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is indicated that as a result of the continuing gas shortage there presently exists available capacity on applicant's system. In January 1974, it is said, applicant commenced curtailing deliveries to its customers and is presently curtailing approximately 400,000 Mcf, or 40 percent of the authorized delivery and design capacity. Applicant asserts that in order to assist its customers and their affiliates in securing the immediate delivery, at a minimum cost by utilization of the available capacity, of gas supplies which they through their own efforts secured, applicant proposes to provide a transportation service pursuant to the new rate schedule TS-1. Applicant states that it recognizes that certificate authorization will be necessary for all transportation arrangements to be performed under rate schedule TS-1 and will make separate applications for each such authorization as required. Under the terms of the proposed TS-1 schedule, Applicant continues, it would transport, on an interruptible basis, a maximum daily quantity to be agreed upon by service agreement.

Applicant asserts that Pacific and Michigan Consolidated Gas Co. (Consolidated) entered into a gas exchange agreement providing for the exchange of quantities of natural gas between them. Such agreement, the application states, provides for the sale by Consolidated to Pacific of up to 150,000 Mcf per day for the period November 1, 1978, through March 31, 1981. The gas, the application continues, would be delivered to applicant for the account of Pacific by Michigan Wisconsin Pipeline Co. (Michigan Wisconsin) at the proposed interconnection between the facilities of Michigan Wisconsin and applicant in Roberts County, Tex.

Pursuant to a service agreement dated June 21, 1978, between applicant and Pacific, it is said, applicant would transport the gas received from Michigan Wisconsin, up to 150,000 dt per day, to the existing interconnection between Pacific's and applicant's systems on the Arizona-California border near Needles, Calif. Applicant states that the initial transportation rate, based on the current CDQ-1 commodity rate less applicant's base average cost and fuel cost, would be 47.98 cents per dt.

To effectuate the exchange of gas between Michigan Wisconsin and applicant in Roberts County, Tex., applicant requests authorization to construct and operate a 12-inch interconnection facility on its 24-inch panhandle lateral. The cost of such construction is estimated at $134,812. Said cost would be financed from applicant's funds, it is indicated. Applicant would be reimbursed by Pacific pursuant to proposed rate schedule TS-1, it is added.

Any person desiring to be heard or to make any protests with reference to said application should on or before August 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21218 Filed 7-31-78; 8:45 am]

[6740-02]

[Docket Nos. ER76-654, E-9145]

UTAH POWER & LIGHT CO.

Order Affirming in Part and Modifying in Part Initial Decision on Proposed Electric Rate Increase

JULY 24, 1978.

BACKGROUND

Utah Power & Light Co. (UPL) is incorporated under the laws of the State of Utah, and generates electricity for sale in Utah, Idaho, and Wyoming. The Company's FERC tariff sales for resale constitute approximately 13.5 percent of its total sales for the test period (exhibit 40, schedule 4).

UPL now has three "pancaked" rate cases before the Federal Energy Regulatory Commission, inherited from the former Federal Power Commission:[1]

1. On November 29, 1974, UPL filed for a jurisdictional rate increase of $311,000.[2]

2. UPL filed a second proposed wholesale rate increase on April 29, 1976, for approximately $4,500,000, based upon a test year ending December 31, 1976 (Docket No. ER76-654).[3]

3. On April 20, 1977, UPL tendered for filing a third proposed rate increase in Docket No. ER77-311. On June 23, 1977, the FPC accepted the filing and suspended its effectiveness until November 21, 1977, subject to refund.[4]

The first two dockets (E-9145 and ER76-654) are now before us on exceptions to an initial decision of the administrative law judge (Oct. 14, 1977). In the present order, we dispose of the high voltage rate (RS-4) issue remaining from the 1974 case (E-9145) and the several issues from the 1976 case (ER76-654).

RATE OF RETURN

Rate of return on equity determination has as its starting point the familiar *Bluefield-Hope* criteria.[5]

The administrative law judge, rejecting both UPL's arguments in favor of 16 percent and the Commission staff's recommendation of 12.5 percent, determined that a 12 percent rate of return on equity was appropriate for UPL. UPL excepts to the judge's holding as being "without evidentiary basis in the evidence," and insufficient to allow continued attraction of capital and construction of new facilities.

UPL argues that the judge's holding was based only upon a superficial comparison of UPL's financial situation with that of the Illinois Power Co.

The judge had taken note of *Illinois Power Company*, the most recent Federal Power Commission rate of return decision for an electric company at the time of his initial decision.[6]

The Company has argued that a more appropriate comparison could be made to the fact situation of *Nevada Power Co.*[7] UPL argues that Opinion No. 768 suggests that high rates of return on equity are "required for fast growing areas in the west."

The company's argument for a higher rate of return is based primarily on the need to finance an extensive construction program that it has in progress. The company argues that it has been able to finance its construction only because it has been allowed a 16 percent rate of return by the Utah Public Service Commission (with inclusion of CWIP) and a 14.5 percent rate of return by the Idaho regulatory commission.

UPL has also argued that subsequent to the Staff witness' rate of return recommendation in two earlier electric rate cases, the bonds of the subject companies were downgraded. (The purport of this argument is not clear, though it may be regarded as an attempt to impeach the witness' ability correctly to evaluate or forecast market requirements.)

UPL presented its capital structure in Exhibit 36, which shows the actual capital structure for 1971-75 and the projected capital structure for 1976-80. For 1976 (the test year of this rate proposal) UPL has projected a capital structure comprised of 51.1 percent long-term debt, 11.7 percent preferred stock, and 37.2 percent common equity. The common equity ratio is projected to increase to 40 percent by 1980.

In calculating its rate of return requirements, UPL used a capital structure of 53 percent long-term debt, 10 percent preferred stock, and 37 percent common equity (exhibit 36, pp. 10-11). The 16 percent requested rate of return on equity is designed to produce an interest coverage ratio of 2.73 with inclusion of CWIP.[7a] The company argues that the 2.73 recommended coverage ratio is within the range recommended by Standard & Poor's (Tr. 250-251). The Company further projects that the rate of return on equity must rise to 18.11 percent in 1980 to maintain a 2.73 interest coverage ratio (Tr. 251; Exhibit 36, p. 11). UPL's witnesses testified that in order to maintain an "A" bond rating, the company would need a coverage ratio of 2.50 to 2.80 after tax and 3.00 to 3.50 pretax, and further, that a company entering upon an ambitious construction program should be in the upper end of these ratio ranges (Tr. 249).

Staff, though initially recommending 12.5 percent, supports the 12 percent as adequate and properly grounded in the record. Staff's rate of return presentation (exhibit 45) shows that UPL's 11.36 percent average actual return on equity for 1971-75 compares favorably with the 11.03 percent average for the A&B Electrics. Staff also compared UPL's 1971-75 earned return on equity with the 1971-75 earned returns for several other industries, which ranged from 10.63 percent for building materials to 18.15 percent for Coals.[8]

Staff's rate of return analysis (exhibit 45, table 12) proposes 12.5 percent, to produce a potential 3.89

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[1] The "Commission" when used in the context of an action taken prior to Oct. 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC. The joint regulation adopted on Oct. 1, 1977, by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR , provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

[2] This is the case in Docket No. E-9145. On Apr. 29, 1975, the FPC accepted for filing and suspended the proposed rates until June 3, 1975, subject to refund. On Sept. 8, 1976, the FPC approved a settlement of all but two issues: a rate design question raised by Lincoln Service Corp. (Lincoln), an intervenor, and a special high voltage rate (RS-4) proposed by another intervenor, Mt. Wheeler Power, Inc. (Mt. Wheeler) The two remaining issues were reserved for hearing before an administrative law judge. A prehearing conference was begun on January 5, 1977.

[3] On May 28, 1976, the FPC suspended the proposed rates until Aug. 1, 1976, subject to refund, and granted intervention to Mt. Wheeler, Lincoln, Sierra Pacific Power Co. (Sierra), California Pacific Utilities Co. (CalPac), and the Division of Public Utilities of the Department of Business Regulation of Utah (Utah DPU). On July 12, 1976, the FPC granted late intervention to the Navajo Tribal Utility Authority (Navajo), a UPL customer.

[4] The rate design question raised by Lincoln was again reserved by the administrative law judge in Docket No. ER76-654 for consideration at the hearing in Docket No. ER77-311. On June 12, 1978, the judge issued an initial decision in that docket wherein he denied Lincoln's request for a separate and lower rate for wholesale electric service from UPL. Lincoln and UPL had previously stipulated that the resolution of the rate design question by the Commission in Docket No. ER77-311 would apply also to the two earlier dockets. On April 25, 1978, the administrative law judge certified to this Commission a proposed settlement of all other issues in Docket No. ER77-311. Mt. Wheeler did not sign the settlement agreement but agreed to be bound in Docket No. ER77-311 by the Commission's or the Court's ultimate decision on the reserved issue in Docket Nos. E-9145 and ER76-654.

[5] *Bluefield Water Works and Improvement Co.* v. *Public Service Commission*, 262 U.S. 679 (1923); *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944).

[6] *Illinois Power Co.*, Opinion No. 816, —, FPC —, issued Aug. 1, 1977.

[7] Opinion No. 768, issued July 7, 1976.

[7a] The company requests a 17.95 percent rate of return on equity if inclusion of CWIP is not allowed. This would produce an interest coverage ratio of 2.91.

[8] Exhibit 45, table 9.

pretax interest coverage and a 1975 actual figure of 2.89, compared with a 1975 pretax coverage figure of 2.65 for the A&B Electrics (exhibit 45, table 6).

Staff's capitalization and proposed rates of return (using UPL's December 31, 1976 pro forma capitalization) are summarized in table 11 of exhibit 45:

[Dollars in millions]

Description	Amount	Ratio	Cost	Weighted return
			Percent	
Long-term debt	$546,370	51.13	7.35	3.76
Preferred stock	125,000	11.70	8.64	1.01
Deferred taxes	0	0	0	0
Common equity	397,220	37.17	12.50	4.65
Total	1,068,500	100.00		
Return on total capital				9.42

The administrative law judge is not subject to the specific criticism of "superficiality" in his reliance on Illinois Power that UPL claims. He compared the bond ratings of the company, its commercial paper ratings, comparable earnings performance, recent stock sales and the appreciation of the stock, a stock split on June 21, 1977, and the fact that UPL's stock was selling above book value at the time of the hearing. Further, the judge found that UPL has an extraordinarily reserve fuel supply, as 96 percent of its fuel for electric generation is coal.

At the same time, he limits his focus to one company only. It would have been more constructive to compare UPL's earnings with the earnings of a range of other companies.

On balance, our analysis of the evidence persuades us that the financial position of UPL has improved, is sound, and has enabled the company to attract both equity and debt capital.

The stock of UPL has traded above book value since May, 1976, and has traded above book value for 10 of the last 12 years, with the only exceptional years being 1974-75, and a short period during 1973 which did not drive the average price below book value for that year (Tr. 270-271). UPL put into evidence exhibit 31, which shows that three issues of common stock (on Oct. 1, 1974, April 23, 1975, November 14, 1975 were sold below book value.

UPL's common stock prices increased 19 percent from December 1974 to December 1975 (Tr. 262), at a time when the company earned only 10.25 percent on equity. The Company's average earned return on common equity for 1976 (the test year) was approximately 13.9 percent, as admitted by UPL's vice president on cross examination (Tr. 262). At the time of the hearing, UPL's common stock was selling at about $44 per share, an increased of 60 percent over the average price for 1975 (Tr. 262). The proceeds-to-book ratio of the March 23, 1977, common stock issuance (the most recent at the time of the hearing) was 117 percent (Tr. 270), while a common stock issuance in late 1976 had sold at only 94 percent of book value.

In exhibit 20, the company projected its embedded cost of long-term debt to be 7.41 percent for the test year ending December 31, 1976 (statement 6, p. 2). The projections included two issues of 9 percent bonds, to mature in 2006. These bonds were subsequently issued at 8.75 percent ($32,000,000) and 8.375 percent ($40,000,000). It is from these lowered costs that the staff witness recomputed UPL's debt cost to be 7.35 percent. UPL presented testimony demonstrating that the years 1971-75 were difficult years for the electric utility industry.[9]

However, UPL has weathered the storm in good shape. The bonds of UPL have not been downgraded by either Moody's or Standard & Poor's in the last 5 years (Tr. 268). The Company's bonds are rated "Aa" by Moody's and "A" by Standard & Poor's (Tr. 267). The company's March 23, 1977, bond issue was at 8.5 percent (Tr. 266). The company does not have any debt with a sinking fund provision or call provision longer than the normal 5 years for electrical utilities. (Tr. 265).

The administrative law judge properly found that UPL is in a superior fuel supply position, although he seems to have limited his comparison on this point to the Illinois Power Co., (ID, p. 3). UPL's fuel situation has considerably less risk than that of the industry as a whole. Ninety-six percent (96%) of UPL's generation is produced by coal, as opposed to approximately 45 percent for the A & B Electrics.[10] The company's witness admitted that this would favorably impress investors (Tr. 264-265). The company has adequate coal supplies for the life of the plant for all generation existing or planned to the year 2000.[11]

On balance, we conclude that the 12 percent figure set by the judge, though arguably supportable, is probably too low to sustain this company in a healthy condition. On the other hand, UPL's proposals are far too high:

1. There is no support in Opinion No. 768 for UPL's assertion that expanding utilities in the West are presumed to be entitled to higher rates of return than other companies. The 14.0 percent rate of return on equity which the FPC allowed in Opinion No. 768 was based upon the severely troubled financial condition of the specific utility. To the extent that a high rate of return is required to support new construction, a 12.5 percent rate should be sufficient. On the whole, UPL has been successful in attracting capital during the 1971-75 period. When its actual earned returns on average common equity have averaged 11.36 percent.[12]

2. As the previous analysis shows, UPL does not require an unusually high rate of return for capital attraction. The 12.5 percent rate of return on equity is adequate to continue UPL's recent success in the bond and equity markets and will enable UPL to finance its ongoing construction program.

Construction Work in Progress (CWIP)

UPL has requested that it be allowed to include construction work in progress (CWIP) by phasing it into the rate base over a 5-year period at the rate of 20 percent each year. The amount proposed for inclusion in 1976 is $50,280,000.[13] Staff opposes inclusion and the judge properly excluded CWIP. We affirm the judge's ruling.

Inclusion is permissible only for pollution control equipment and conversions or if the filing utility is in extraordinary financial difficulty. It is

[9] See, e.g., exhibit 27, which lists bond downgradings from January 14, 1970, to January 21, 1976.

[10] Exhibit 45, Table 5.
[11] UPL Annual Report 1975, p. 13.
[12] Brief on Exceptions, p. 6.
[13] Exhibit 20, statement L, p. 4.

allowed only in rate cases filed subsequent to the effective date of Order No. 555, December 8, 1976.[14] UPL filed its proposed rate increase in Docket No. ER76-654 on April 26, 1976, nearly 7 months before RM75-13 and nearly 8 months before Order No. 555 was effective. UPL is ineligible for inclusion of CWIP in rate base.

Certain Income Tax Computation

(A) Adjustment to Interest Expense

In computing its income tax, UPL has deducted $36,280,000 as interest paid in the test year, 1976. Staff proposed that this amount be adjusted to $38,050,669, based on staff's weighted cost of long-term debt (3.76 percent) as used in developing the rate of return. The administrative law judge approved staff's proposed adjustment. It has been the policy of the Federal Power Commission that the approved weighted component of long-term debt should be used in the calculation of the interest deduction for income tax purposes.[15] Accordingly, the holding of the administrative law judge will be affirmed.

(B) Interest on Special Deposits

From time to time, UPL invests the proceeds of some of its pollution control and other construction bonds, in order to realize interest income. The company nets out actual interest expense incurred in financing its construction and the interest received from these special deposits. UPL has included as taxable income $1,435,000 in interest earned in this manner. (See exhibit 20, statement J, p. 1.) The administrative law judge disallowed this sum, finding that it was not income from utility operations. We affirm the judge's holding on this point and hold that the company should not be allowed to offset the interest income against the interest charges on its construction bonds.

(C) Contributions in Aid of Construction

In its calculation of income taxes for cost of service purposes, UPL has included certain contributions in aid of construction (CIAC) as an additional income item to the amount of $3,135,000.[16] Under Internal Revenue Service Revenue Ruling No. 75-557, issued December 4, 1975, such contributions received after February 1, 1976, are considered taxable income to regulated utilities in the year the contribution was made. UPL's expense of the tax liability is about $1.5 million in the test year of which approximately $110,000 is allocable to the wholesale service here at issue.

The administrative law judge found the contributions to be a capital item for ratemaking purposes, and thus refused to allow the tax liability as an expense item requiring capitalization at a future time. The judge also determined that the tax liability might never be paid, noting that it "is questionable whether the revenue ruling will survive a challenge in court." (Id., p. 5.) The judge went on to state that UPL would be allowed to increase its rates in a new filing to cover the return allowed on the taxes (treating them as a capital investment), and stated that even if tax liability is ultimately established UPL would be required to make refunds if it "shall not show that it has done everything a reasonable and prudent operator would do to eliminate or minimize that liability." (Id., p. 6.)

Staff proposed treatment of the tax liability as a deferred tax item, and proposed normalization of such amounts consistent with Order No. 530-B.

As UPL has argued in its brief on exceptions (p. 11), this case should be decided on the basis of the present tax law, and not continued until the law is changed. We must assume at this time that Rev. Rul. 75-557 is valid law.[17]

CIAC is a capital item, the taxes on it are an expense item and should be spread out over the life of the facilities on which the contributions are spent. UPL will be required to normalize this tax expense. Further, UPL will be required to refund any collections related to this expense if the company is ultimately held to be not liable for the tax. The initial decision is accordingly modified.

Power Factor Adjustment Charge and Ratchet

Power systems contain both "real power" which actually produces useful work and which is measured in kilowatts (kW) and "reactive power" which is not usable, but circulates in the system and is measured in kilovars (kVARs) or kilovolt (kV) amperes reactive. UPL has included in its Primary Voltage Service Rate (RS-1), Transmission Service Rates for 46 and 69 kV (RS-2), and Transmission Service Rates for 138 kV and above (RS-3), a power factor adjustment charge to cover the cost of compensating for reactive power associated with service to its wholesale customers.

Monthly charges of $0.065 per kVAR, $0.080 per kVAR and $0.069 per kVAR of excess kVAR demand[18] have been proposed for service under RS-1, RS-2, and RS-3, respectively. The charges are to be applied to the maximum excess kVAR demand established during the last 12 months, including the current month (i.e., a 12-month ratchet). The power factor adjustment charges are designed to reflect UPL's cost of capacitor installations. Such installations are designed to prevent voltage drops and energy losses on the UPL system which would result from customer operation at a power factor below 90 percent (Tr. 110). The derivation of the charges is shown in exhibit No. 17, page 8.

The initial decision provided that the $0.069 per kVAR charge applicable to Cal-Pac (RS-3) should be revised to reflect a rate of return on equity of 12 percent. We affirm the judge with respect to the required revision, except that the revision is required for each of the RS rates. Further, the revisions are required to reflect our decision herein with respect to the 12.5 percent rate of return on common equity.

California Pacific Utilities Co. (Cal-Pac) consistently takes power from UPL at a 97 percent power factor (Tr. 112). Cal-Pac has argued that it should be given a power factor credit to take account of the alleged benefit which UPL derives from Cal-Pac's high power factor operations, such credit to correspond in amount to the charges made for falling below 90 percent power factor.

The administrative law judge rejected Cal-Pac's proposed credit as unsupported by the evidence of record. We affirm the judge's holding. No evidence has been produced in this case to show the existence of monetary savings, much less a showing of the actual amount of any such savings.

UPL argues that a ratchet is necessary to recover its investment in capacitors and to provide incentive for customers to correct their low power factors. The monthly charge for excess reactive power contained in the RS rates should provide adequate incentive to correct low power factors. Moreover, to continue charging, for 12 additional months, a customer who has corrected his low power factor would diminish the customer's incentive to make the correction in the first place. The proposed adjustment charge will compensate UPL for the use of installed facilities and the

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[14] Docket No. RM75-13, issued Nov. 8, 1976. See, also *Florida Power & Light Company*, Opinion No. 784, Docket No. E-8008, issued December 15, 1976.

[15] *Sierra Pacific Power Company*, opinion No. 730, —— FPC ——, issued May 15, 1975, mimeo, pp. 15-16; *Public Service Company of Oklahoma*, Opinion No. 788, —— FPC ——, issued Feb. 17, 1977, mimeo, pp. 4-5.

[16] Exhibit 20, Statement J. p. 1.

[17] We note that on May 17, 1978, a bill to amend sec. 118 of the Internal Revenue Code of 1954 to provide that CIAC is not taxable income, was introduced in the U.S. Senate and subsequently referred to the Committee on Finance. See Senate bill S. 3176, 95th Cong., 2d sess.

[18] The term "excess kvAR demand" refers to the actual load kvAR in excess of the kvAR which is equivalent to a 90 percent power factor. For a 90 percent power factor load, the number of kvAR is equal to about one-half the number of kW.

ratchet is unnecessary for the recovery of investment in capacitors. The finding that a ratchet is needed to compensate UPL for the "idle time and moving costs" (Id., p. 8) is without basis in the record.

The holding of the administrative law judge that a ratchet will be allowed is reversed.

PROPOSED HIGH VOLTAGE (RS-4) RATE SCHEDULE FOR MT. WHEELER

Mt. Wheeler Power, Inc., an electric cooperative in east central Nevada and west central Utah, does not directly purchase power from UPL. It receives portions of its electric requirements from Sierra Pacific Power Co., and the Intermountain Consumers Power Association, both wholesale Customers of UPL. Mt. Wheeler contends that UPL should be required to file a high-voltage rate (RS-4) for customers taking service at 230 kV and above. With such a new rate, Mt. Wheeler would benefit by a flowthrough of the benefit of the lower power costs by Mt. Wheeler's suppliers. UPL and the Commission staff oppose creation of an RS-4 rate. The administrative law judge refused Mt. Wheeler's request and we affirm the judge's holding.

Mt. Wheeler bases its request for an RS-4 rate schedule on UPL's response to staff justifying its RS-1, RS-2, and RS-3 schedules. UPL response stated that the three schedules were necessary because of the distinct differences in plant and associated costs required to supply service at the three different voltage levels. Mt. Wheeler's witness presented testimony reflecting a cost for service at the 230-kV level and above that is lower than the cost of serving the 138-kV to 230-kV level.

The FPC has used a rolled-in basis for allocated transmission costs in ratemaking proceedings. (See, e.g., *Detroit Edison Company*, Opinion No. 748 (1975).) In the present case staff, in preparing its top sheets, rolled in the costs for the RS-2 and RS-3 rates, which would be consistent with past FPC precedent.

We cannot, on the basis of this record, give different treatment here to Mt. Wheeler's suppliers. UPL's witness testified that Mt. Wheeler is served through the use of UPL's entire power supply and backbone transmission system. Mt. Wheeler's witness admitted on cross-examination that UPL's generation is introduced into the transmission system at various voltages, and that once having been so introduced, the energy cannot be identified as it flows through the transmission system (Tr. 183-186). This testimony, together with a review of a map (FPC Form No. 12, General Map, Utah Power & Light Co.) showing that transmission lines of several voltages ranging from 46 kV to 345 kV are interwoven over most of UPL's system, leads us to conclude that in this docket, the judge's decision on this issue should be affirmed.[19]

The Commission further finds: (1) UPL's rates, which have been in effect in this docket subject to refund, have not been shown to be just and reasonable or otherwise lawful under the applicable provisions of the Federal Power Act, and UPL should therefore be required to file just and reasonable rates in conformance with this order.

(2) The company should be required to refund to its jurisdictional customers any sums of money reflecting the differences between its proposed rates and the rates required to be filed by this order.

The Commission orders: (A) The increased rates referred to in paragraph (1) above are disallowed to the extent that they do not conform to this order.

(B) Within 60 days of the issuance of this order, UPL shall file a revised cost of service and any necessary amendments to its applicable rate schedule in lieu of those at issue herein, in accordance with the findings and conclusions of this decision and with the rules and regulations of this Commission.

(C) Within 30 days of the Commission's approval of UPL's substitute tariff sheets filed pursuant to paragraph (B) above, UPL shall report to the Commission refunds made to the customers for the period beginning August 1, 1976, when the proposed rates became effective, and ending November 20, 1977, with interest at 9 percent per annum from the date of payment to the date of refund, in accordance with the Commission's rules and regulations. A copy of the refund report shall also be sent to the State commissions regulating UPL's nonjurisdictional service.

(D) Exceptions not granted herein are denied.

(E) The Initial Decision of the administrative law judge is affirmed to the extent not inconsistent with this order.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21219 Filed 7-31-78; 8:45 am]

[19] We note that the effect of our rulings in this proceeding and the agreements of the parties to use staff's top sheets as the basis for setting UPL's rates will result in elimination of any transmission cost based differential between the RS-2 and RS-3 rate levels.

[6740-02]

[Docket No. CS78-509]

WALTER DUNCAN, ET AL.

Petition for Declaratory Order

JULY 25, 1978.

Take notice that on June 14, 1978, Walter Duncan, J. Walter Duncan, Jr., Walter Duncan, III, Vincent J. Duncan, and Raymond T. Duncan (Petitioners) petitioned the Federal Energy Regulatory Commission for a declaratory order terminating a controversy between petitioners and Mississippi River Transmission Corp. (MRT) concerning the maximum base rate authorized to be charged and collected for sales to MRT of gas attributable to Petitioners' interests in the Coltharp No. 1 well, section 51, block A-7, H & GN PR. Co. Survey, Wheeler County, Tex. (the "Coltharp well"), by declaring that Petitioners' sales to MRT of gas produced from the Coltharp well constitute "small producer sales" within the meaning of § 157.40(a)(5) of the Commission's regulations.

According to the application, originally petitioners were owners of undivided interests in the lease underlying the Coltharp No. 1 well. They assigned their interest to Freeport Oil Co. (Freeport), retaining an overrriding royalty interest convertible to a 50 percent working interest upon payout of a well to be drilled by Freeport (the Coltharp No. 1). Freeport subsequently assigned to various parties undivided interests in the rights acquired by it from petitioners. Two of its assignees were large producers. Petitioners, now having converted their interest to a 50 percent working interest, MRT insists, contrary to petitioners' contentions, that the large producer rate is applicable to the portion of the gas attributable to that portion of the Coltharp No. 1 well which was owned by large producers.

Any person desiring to be heard or to make any protest with reference to said petition should on or before August 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to be proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to inter-

vene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21220 Filed 7-31-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 77-010-LNG, FPC Docket Nos. CP77-100, et al.]

TENNECO ATLANTIC PIPELINE CO., ET AL.

Time for Filing Written Comments and Availability of Transcript of Oral Argument

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of time for filing written comments and availability of transcript of oral argument.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of the time in which parties and other interested persons may file written comments responding to or supplementing statements made at the oral argument in ERA Docket No. 77-010-LNG, in New York, N.Y., on July 18, 1978. ERA also gives notice of the times and places the transcript of the oral argument may be inspected by the public.

DATES: Written comments to be filed by 4:30 p.m., August 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Finn K. Neilsen, Office of Fuels Regulation, 2000 M Street NW., Room 6318, Washington, D.C. 20461, 202-254-9730.

Barry M. Smoler, Office of General Counsel, 12th and Pennsylvania Avenue NW., Room 5116, Washington, D.C. 20461, 202-566-9380.

SUPPLEMENTARY INFORMATION: ERA hereby gives notice that it will accept filing of written comments, which will become part of the public file in *Tenneco Atlantic Pipeline Company, et al.*, ERA Docket No. 77-010-LNG. These written comments should address, respond to, or supplement statements made during the oral argument in the case held on July 18, 1978, in New York, N.Y. Such written comments should be filed with Finn K. Neilsen, the Office of Fuels Regulation, Room 6318, 2000 M Street NW., Washington, D.C. 20461, no later than 4:30 p.m., on August 8, 1978. The envelope and first page of the written comment should contain the designation "Tenneco Atlantic Pipeline Company, et al."

ERA hereby gives further notice that the transcript or the oral argument in ERA Docket No. 77-010-LNG is available for public inspection between the hours of 8 a.m., and 4:30 p.m., Monday through Friday, except for Federal holidays, beginning July 24, 1978, at the following locations:

Department of Energy, Public Reading Room (3200), 26 Federal Plaza, New York, N.Y. 10007. Contact: Eugene Hennessy, Coordinator, 212-264-8051.

ERA Docket Room (6317), 2000 M Street NW., Washington, D.C. 21046. Contact: Judith Mariassy, 202-254-6775.

Issued in Washington, D.C., July 25, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels, Regulation, Economic Regulatory Administration.

[FR Doc. 78-21262 Filed 7-31-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 936-5]

INFORMATION REQUIRED BY SECTION 304(a)(5)(B) OF THE CLEAN WATER ACT

Availability of Information

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of availability of information.

SUMMARY: The Clean Water Act, as amended, requires EPA to develop and publish information on the factors necessary for the protection of public water supplies, the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, and the protection of recreational activities, for purposes of acting on applications for modifications of EPA's secondary treatment requirements under section 301(h) of the act. That information is being published as part of EPA's general section 301(h) regulations, 40 CFR 233 (proposed Apr. 25, 1978, 42 FR 17484).

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Section 304(a)(5)(B), 33 U.S.C. 1314(a)(5)(B) of the Clean Water Act, as amended, requires that:

> The Administrator * * * before consideration of any application under section 301(h) of this Act and within six months after the date of enactment of the Clean Water Act of 1977 shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, and to allow recreational activities, in and on the water.

Section 301(h) provides a means by which a publicly owned treatment works (POTW) which discharges into marine waters may qualify for a modification of EPA's secondary treatment requirements (i.e., effluent limitations for suspended solids, biochemical oxygen demand and pH) if it complies with the eight statutory criteria listed in sections 301(h) (1) through (8). One of those criteria, section 301(h)(2) states that:

> such modified requirements will not interfere with the attainment of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities in and on the water.

EPA believes that Congress intended through the provisions of section 304(a)(5)(B) to insure that the Agency identify and publish specific criteria upon which to evaluate the effect of an applicant's discharge on the marine water uses described in section 301(h)(2).

Those criteria have been identified in §§ 233.13, 233.14, and 233.15 of EPA's proposed regulations implementing section 301(h) published on April 25, 1978 (43 FR 17484). Applicants for section 301(h) modifications and other interested persons should refer to those proposed regulations (and EPA's final sec. 301(h) regulations, when promulgated), for information on the factors described in section 304(a)(5)(B).

Dated: July 25, 1978.

THOMAS C. JORLING,
Assistant Administrator for Water and Hazardous Materials.

[FR Doc. 78-21147 Filed 7-31-78; 8:45 am]

[6560-01]

(FRL 936-7)

DOCUMENT AVAILABILITY

Documents Concerning Houston Air Quality Research Study Available to Public

The Environmental Protection Agency is conducting an air quality research study in the city of Houston, Tex.

The following contracts and grants have been awarded, award is imminent, or requests for proposals (RFP's) have been issued as part of the proposed study:

A. PLANNING

1. Development of Research Plan (RFP).[1]

B. AEROSOL-HAZE STUDIES

2. Characterization of Ambient Aerosols (Radian Corp.)[2]
3. GC/MS Analysis of Ambient Aerosols (RFP).[1]
4. Mobile Lab for Aerosol Studies (Env. Meas. Inc.).[2]
5. Purchase of Automated Dichotomous Samplers (Beckman).[2]
6. GC/MS Analysis of Aerosols (Ariz. State U.).[3]

C. OZONE/OXIDANT STUDIES

7. Trend Analysis of Emissions and Ozone (Tech. Serv. Corp.).[1]
8. Oxidant Measurements and Analysis (WSU).[3]
9. Stratospheric Ozone (N.Y. State Dept. of Health).[3]
10. Research Support, Emission Inventory (Radian).[1]
11. Photochemical Air Quality Modelling (RFP).[1]

D. HEALTH STUDIES

12. Effect of Short-Term Exposure to Texas Gulf Coast Air Pollution in Ill and Healthy Persons (RFP).[1]
13. Effect of Exposure to Texas Gulf Coast Air Pollution in Maximally Exercising Healthy Persons (RFP).[1]

Copies of these contracts, grants, and RFP's are available on request from the EPA regional office in Dallas. Requests should be sent to Peyton Davis, U.S. Environmental Protection Agency, Office of Public Awareness, 1201 Elm Street, Dallas, Tex. 75270.

Dated: July 18, 1978.

ADLENE HARRISON,
Regional Administrator.

[FR Doc. 78-21136 Filed 7-31-78; 8:45 am]

[1] Research contracts which have been awarded or for which award is imminent. Comments will be taken into account in technical guidance of the research by the EPA project officer.
[2] Equipment purchases.
[3] Research grants.

[6210-01]

FEDERAL RESERVE SYSTEM

DETROITBANK CORP.

Acquisition of Bank

JULY 26, 1978.

Detroitbank Corp., Detroit, Mich., 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 the Detroit Bank-Novi, N.A., Novi, Mich. 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 Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 29, 1978.

Board of Governors of the Federal Reserve System, July 26, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-21185 Filed 7-31-78; 8:45 am]

[6820-24]

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPR 33]

FEDERAL PROCUREMENT

Current Interest Rate

To: Heads of Federal Agencies.

Subject: Current interest rate of 9 percent pursuant to Pub. L. 92-41.

1. *Purpose.* This bulletin provides, for the information of executive agencies, the current interest rate established by the Secretary of the Treasury pursuant to Pub. L. 92-41 (50 U.S.C. App. 1215(b)(2)) for the Renegotiation Board.

2. *Expiration date.* This bulletin expires December 31, 1978, unless sooner revised or superseded.

3. *Background.* Pub. L. 92-41 provides that the Secretary of the Treasury shall set the interest rate to be paid by contractors on excessive profits as determined by the Renegotiation Board. Various provisions of the FPR require contractors to pay interest on amounts owed the Government at the rate established by the Secretary of the Treasury pursuant to Pub. L. 92-41. The FPR also provides that the same rate of interest shall be paid by the Government when a contractor's claim is decided in his favor under the disputes clause. The interest rate for the January 1-June 30, 1978, period was set forth in GSA Bulletin FPR 32.

4. *Agency information.* The Secretary of the Treasury has established an interest rate of 9 percent as applicable to the 6-month period beginning on July 1, 1978, and ending on December 31, 1978. The following sections of the Federal Procurement Regulations are affected by the interest rate:

§§ 1-1.322, 1-7.203-15, 1-8.212-1(f), 1-8.701(j), 1-8.702(j), 1-8.703(j), 1-8.704-1(f), 1-8.706(h), 1-8.804-2(b), 1-8.806-4 (article 6, paragraph (e)), 1-30.403, 1-30.414-2(k)(2), and 1-30.414-2(n)(3).

Dated: July 13, 1978.

ROBERT P. GRAHAM,
Commissioner, Federal Supply Service.

[FR Doc. 78-21248 Filed 7-31-78; 8:45 am]

[6820-22]

REGIONAL PUBLIC ADVISORY PANEL ON ARCHITECTURAL AND ENGINEERING SERVICES

Meeting

JULY 21, 1978.

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Regional Public Advisory Panel on Architectural and Engineering Services, Region 10, August 18, 1978, from 9 a.m. to 3 p.m., Public Buildings Service Conference Room, GSA Center, 15th and C Streets SW., Auburn, Wash. The meeting will be devoted to the initial step of the procedures for screening and evaluating the qualifications of architect-engineers under consideration for selection to furnish professional services for one year A/E term contracts for: (1) Washington State, east of the Cascade Crest and northern Idaho, within the Pacific time zone; and (2) Oregon State, east of the Cascade Crest and southern Idaho, within the Mountain time zone. The meeting will be open to the public.

ROBERT D. GREEN,
Regional Administrator.

[FR Doc. 78-21247 Filed 7-31-78; 8:45 am]

[4110-88]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

NATIONAL ADVISORY COUNCIL ON ALCOHOL ABUSE AND ALCOHOLISM

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory body scheduled to assemble during the month of September 1978:

National Advisory Council on Alcohol Abuse and Alcoholism, September 18-19, 9:30 a.m., Conference Rooms G and H, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857. Open—September 18. Closed—September 19. Contact: Rhoda L. Christensen, Room 16-86, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4703.

Purpose. Advises the Secretary, Department of Health, Education, and Welfare regarding policy direction and program issues of national signficance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and coherence with Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Agenda. September 18 will be devoted to a status report on the Secretary's DHEW Alcohol Program and Policy Review, a report on the budget, the status of the third special report to the U.S. Congress on Alcohol and Health, a report on NIAAA legislation, and a discussion of the national plan to combat alcohol abuse and alcoholism. Agenda items are subject to change as priorities dictate.

September 19, the Council will conduct a final review of grant applications for Federal assistance and this session will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions set forth in section 552b(c)(6), title 5, United States Code, and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

The NIAAA information officer who will furnish upon request summaries of the meeting and rosters of the committee members is Mr. Harry Bell, Associate Director, Office of Public Affairs, NIAAA, Room 11A-17, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3306.

Dated: July 26, 1978.

CAROLYN T. EVANS,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-21170 Filed 7-31-78; 8:45 am]

[4110-03]

Food and Drug Administration

[Docket No. 76G-0273]

INVERSAND CO.

Withdrawal of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the withdrawal without prejudice of the petition (GRASP 5G0052) proposing affirmation that greensand zeolite and manganese greensand zeolite used in the treatment of potable and industrial water are generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7 Withdrawal of petition without prejudice of the procedural food additive regulations (21 CFR 171.7), Inversand Co., 226 Atlantic Ave., Clayton, N.J. 08312, has withdrawn its petition (GRASP 5G0052), notice of which was published in the FEDERAL REGISTER of July 26, 1976 (41 FR 30700), proposing that greensand zeolite and manganese greensand zeolite used in the treatment of potable and industrial water are GRAS.

Dated: July 21, 1978.

ROBERT M. SCHAFFNER,
Acting Director of Bureau of Foods.

[FR Doc. 78-21027 Filed 7-31-78; 8:45 am]

[4110-03]

[Docket No. 77N-0085]

COMMITTEE FOR A STUDY ON SACCHARIN AND FOOD SAFETY POLICY

Public Meeting on Food Safety Policy and Societal Impact

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee for a Study on Saccharin and Food Safety Policy will hold a public meeting on current food safety statutes and policies to consider the views of all interested persons.

DATES: The meeting will be held on September 7, 1978 from 9 a.m. to 4:30 p.m.; written requests to make oral presentations at the meeting must be postmarked before August 31, 1978.

ADDRESSES: The meeting will be held in the auditorium of the National Academy of Sciences Building, 2101 Constitution Avenue NW., Washington, D.C. 20418. Written requests to participate and written views should be submitted to the contact person, address below. A copy of each written request and views should be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Knut Ringen, Institute of Medicine, National Academy of Sciences, 2101 Constitution Avenue NW., Washington, D.C. 20418, 202-389-6854.

SUPPLEMENTARY INFORMATION: The Saccharin Study and Labeling Act (SSLA), Pub. L. 95-203, became law on November 23, 1977. Among other things, the SSLA required a warning to be placed on the label and labeling of food that contains saccharin and placed an 18-month moratorium on FDA action concerning saccharin. The SSLA also directs FDA to request the NAS to conduct two studies: (1) An evaluation of available information on saccharin and its impurities; and (2) an assessment of current food safety policy. Both studies are underway.

A public meeting was held on June 19, 1978 by the NAS/IOM Committee for a Study on Saccharin and Food Safety Policy to receive from interested persons oral and written views on issues related to potential benefits and hazards to human health from the consumption of saccharin.

This notice announces that the NAS/IOM Committee will conduct a public meeting on food safety policy on September 7, 1978 from 9 a.m. to 4:30 p.m. in the Auditorium of the National Academy of Sciences in Washington, D.C. The NAS/IOM Committee invites participants to address issues related to the appropriateness and feasibility of assessing risks and benefits in the regulation of food safety and more generally, the design of food safety policy.

To schedule the public meeting, the NAS/IOM Committee must be informed of the number of persons who wish to participate and the amount of time requested to give their views. Accordingly, any person who wishes to appear at the public meeting to make an oral presentation should send a written request to Knut Ringen, Institute of Medicine, National Academy of Sciences, 2101 Constitution Avenue NW., Washington, D.C. 20418. Requests must be postmarked before August 31, 1978, and should state the subject of the presentation. Depending on the number of requests, the NAS/IOM Committee may impose a time limit for each presentation. Individuals and organizations with common interests are urged to consolidate their presentations. The NAS/IOM Committee and panel members and Academy staff will respond to questions from the floor during a question and answer period.

All submitted material will be incorporated in the record of NAS/IOM Committee activities. A copy of each request to participate should be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and will be placed on public display in that office.

Any interested person may, in lieu of oral presentations, submit written views, which will become part of the NAS/IOM Committee record. Written views should be addressed to Knut Ringen at the address noted above,

and must be postmarked before August 31, 1978. A copy of any written views should be sent to the Hearing Clerk, Food and Drug Administration, to be placed on public display in that office.

Dated: July 28, 1978.

WILLIAM F. RANDOLPH
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-21464 Filed 7-31-78; 11:14 am]

[4110-83]

Health Resources Administration

AREA HEALTH EDUCATION CENTER PROGRAMS

Availability of Draft Regulations

The Health Resources Administration announces that draft regulations for contracts for area health education center programs are available to the public.

The area health education center (AHEC) program, under section 781 of the Public Health Service Act, is designed to improve the distribution, supply, quality, utilization, and efficiency of health manpower in underserved areas through a regionalized health manpower network.

Section 781 of the PHS Act, as amended by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484, October 12, 1976), authorizes the Secretary to enter into contracts with medical and osteopathic medical schools and consortia of these schools which have cooperative arrangements with area health education centers for the planning, development, and operation of area health education center programs. The draft programs regulations contain proposed policies which the Department is considering for formal publication in the FEDERAL REGISTER to govern the award of these contracts, including eligibility requirements, application procedures, project requirements and criteria for evaluating applications.

Copies of the draft program regulations are being provided to schools of medicine and osteopathic medicine, the only eligible applicants under the statute.

However, any interested individual may obtain copies of these draft program regulations by writing to Daniel R. Smith, Chief, Educational Systems Section, Division of Medicine, Bureau of Health Manpower, Health Resources Administration, Room 4-50, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782.

Dated: July 25, 1978.

ROBERT GRAHAM,
Acting Deputy Administrator, Health Resources Administration.

[FR Doc. 78-21480 Filed 7-31-78; 12:07pm]

[4110-02]

Office of Education

NATIONAL ADVISORY COUNCIL ON ETHNIC HERITAGE STUDIES

Meeting

AGENCY: National Advisory Council on Ethnic Heritage Studies.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda on the forthcoming meeting of the National Advisory Council on Ethnic Heritage Studies. It also describes the functions of the Council. Notice of these meetings is required under the Federal Advisory Committee Act (5 U.S.C. App. 1.10(a)(2)). This document is intended to notify the general public of their opportunity to attend.

DATES: Meetings August 17-18, 1978, 9 a.m. to 4:30 p.m.

ADDRESS: Room 3652, Regional Office Building No. 3, 7th and D Streets SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:

Mr. Edward L. Meador, Director, Division of International Education, Office of Education, Room 3919, ROB3, 7th and D Streets SW., Washington, D.C. 20202, telephone 202-245-9506.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Ethnic Heritage Studies was established under section 906(a) of the Elemetary and Secondary Education Act of 1965 as added by section 504(a) of the Education Amendments of 1972, Pub. L. 92-318 (20 U.S.C., 900a-4).

The Council is directed to:

(1) Advise the Secretary, the Assistant Secretary for Education; and the Commissioner of Education on the implementation of Title IX of the Elementary and Secondary Education Act of 1965 in order to provide assistance designed to afford students the opportunity to learn about their own cultural heritage and the contributions of the other ethnic groups of the Nation.

(2) Perform specific functions as follows:

a. Make recommendations to the Commissioner, the Assistant Secretary, and the Secretary regarding the collection of data to facilitate program planning and evaulation; e.g., recommend a survey of needs to determine or modify program priorities, or suggest national or regional reviews of intercultural curriculum and personnel development.

b. Suggest innovations or program changes as the program evolves and develops toward improving ethnic heritage studies.

c. Suggest promising areas of inquiry to give direction to research; e.g., recommend ethnographic studies as required for substantial intercultural curriculum materials development.

d. Provide such administrative and legislative proposals as may be appropriate.

e. Not later than March 31 of each year, submit to the Congress a report of its activities, findings, and recommendations.

The meeting will open to the public beginning at 9 a.m. and ending at 4:30 p.m. each day. The meeting will be held at Room 3652, Regional Office Building No. 3, 7th and D Streets SW., Washington, D.C. 20202.

The proposed agenda includes:

Action on minutes of the previous meeting and adoption of the agenda.
Subcommittee reports.
Meeting with Commissioner of Education to discuss program and budget.
Review of the recommendations for the 1979 program.
Review of the Assistant Secretary's educational projects.
Public testimony.

Records shall be kept of all Councils proceedings and shall be available for public inspection at the office of the Ethnic Heritage Studies Branch, Office of Education, Room 3919, Regional Office Building No. 3, 7th and D Streets SW., Washington, D.C. 20202.

Signed at Washington, D.C., on July 27, 1978.

RICHARD T. THOMPSON,
Acting Director, Division of International Education.

[FR Doc. 78-21242 Filed 7-31-78; 8:45 am]

[4110-07]

Social Security Administration

INCOME MAINTENANCE PROGRAM FUNCTIONS

Redelegations of Authority

Under the Reorganization of the Department of Health, Education, and Welfare (HEW) announced in the FEDERAL REGISTER of March 9, 1977 (42 FR 13262-63), responsibility for a number of income maintenance programs, previously assigned to HEW's Social and Rehabilitation Service (SRS), has been transferred by the Secretary of HEW to HEW's Social Security Administration (SSA). Authority to administer these programs, which was formerly delegated to the Administrator of SRS, with authority to redelegate (34 FR 1286-88, dated Jan. 25, 1969, and 34 FR 18562, dated Nov. 21,

1969), is now vested in the Commissioner of Social Security (the Commissioner), with authority to redelegate. All redelegations of the subject authorities made by the Administrator of SRS continue in effect pending further redelegations.

Notice is hereby given that the Acting Commissioner of Social Security has replaced all existing redelegations of such authorities by the Administrator of SRS. The replacement redelegations are as follows:

I. Pursuant to sections 2, 1002, 1402, and 1602 of the Social Security Act, as amended (the act), authority to approve or disapprove State plans submitted by Guam, Puerto Rico, and the Virgin Islands for the provision of financial assistance to needy individuals who are 65 years of age or over; blind; or 18 years of age or over and permanently and totally disabled, or amendments to such plans, pursuant to pertinent provisions of titles I, X, XIV and XVI of the act, including authority to approve payments for repairs to homes owned by recipients of such assistance, pursuant to section 1119 of the act, has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security.

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

CONDITION

Before the incumbents of positions further redelegated this authority by the Associate Commissioner for Family Assistance, pursuant to Part A of section XXV below, may finally disapprove State plans or State plan amendments, they must consult with the Associate Commissioner for Family Assistance.

II. Pursuant to sections 3, 1003, 1403 and 1603 of the act, authority to estimate the quarterly amounts to be paid to Puerto Rico, Guam, and the Virgin Islands for financial assistance provided under their respective State plans to needy individuals who are 65 years of age or over; blind; or 18 years of age or over and permanently and totally disabled, and authority to determine the proper reimbursement for necessary amounts expended in administration of such plans, pursuant to titles I, X, XIV and XVI of the act, including authority to determine the proper amount of payments for repairs to homes owned by recipients of such assistance, pursuant to section 1119 of the act, has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security.

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

CONDITION

Disallowances of State claims for reimbursement involving expenditures of a significant nature require consultation with higher level officials, as determined by the application of Office of Family Assistance criteria.

III. Pursuant to sections 3, 4, 1003, 1004, 1403, 1404, 1603 and 1604 of the act, authority to approve or disapprove grant awards to Puerto Rico, Guam, and the Virgin Islands for expenditures under their respective State plans for financial assistance to needy individuals who are 65 years of age or over; blind; or 18 years of age or over and permanently and totally disabled, pursuant to pertinent provisions of titles I, X, XIV, and XVI of the act, and for payments for repairs to homes owned by recipients of such assistance, pursuant to section 1119 of the act, has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security.

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

CONDITION

The Commissioner/Acting Commissioner retains authority to allow Federal financial participation in expenditures questioned by the General Accounting Office; the HEW Audit Agency; or SSA officials.

IV. Pursuant to section 402 of the act, authority to approve or disapprove State plans submitted by States and the Northern Mariana Islands for the provision of aid and services to needy families with children, or amendments to such plans, pursuant to Part A of title IV of the act, including authority to approve payments for repairs to homes owned by recipients of such aid, pursuant to section 1119 of the act, has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security.

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

CONDITION

Before the incumbents of positions further redelegated this authority by the Associate Commissioner for Family Assistance, pursuant to Part A of section XXV below, may finally disapprove State plans or State plan amendments, they must consult with the Associate Commissioner for Family Assistance.

V. Pursuant to section 403 of the act, authority to estimate quarterly amounts to be paid to States and the Northern Mariana Islands for aid and services provided to needy families with children under their respective State plans, and authority to determine the proper reimbursement for necessary amounts expended in administration of such plans, pursuant to Part A of title IV of the act, including authority to determine the proper amount of payments for repairs to homes owned by recipients of such aid, pursuant to section 1119 of the act, has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security.

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

CONDITION

Disallowances of State claims for reimbursement involving expenditures of a significant nature require consultation with higher level officials, as determined by the application of Office of Family Assistance criteria.

VI. Pursuant to sections 403 and 404 of the act, authority to approve or disapprove grant awards to States and the Northern Mariana Islands for expenditures under their respective State plans for aid to needy families with children, pursuant to Part A of title IV of the act, and for payments for repairs to homes owned by recipients of such aid, pursuant to section 1119 of the act, has been redelegated to following SSA positions:

A. Deputy Commissioner of Social Security.

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

CONDITION

The Commissioner/Acting Commissioner retains authority to allow Federal financial participation in expenditures questioned by the General Accounting Office; the HEW Audit Agency; or SSA officials.

VII. Pursuant to subsections (a) and (b) of section 1116 of the act, authority to hold hearings and make decisions on requests for reconsideration of disapprovals of State plans, or amendments to such plans, under titles I, IV (Part A), X, XIV and XVI of the act, has been redelegated to the position of Deputy Commissioner of Social Security.

VIII. Pursuant to section 1102 of the act, authority to make determinations on State appeals concerning audit questions or recommendations by the HEW Audit Agency which involve practices reviewed under titles I, IV (Part A), X, XIV and XVI of the act

has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security.

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

CONDITION

The Office of Family Assistance is to perform this function in conjunction with the Office of Management and Administration.

IX. Pursuant to section 1113 of the act, authority to approve or disapprove amounts to be paid for services, and authority to develop plans and make arrangements for temporary assistance, to citizens of the United States and their dependents directly, or through utilization of the services and facilities of appropriate public or private agencies and organizations, if such citizens and their dependents are identified by the Department of State as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizens or the illness of such citizens or any of their dependents, or because of war, threat of war, invasion, or similar crisis and the citizens and their dependents are without available resources, including authority to determine whether repayment by recipients is appropriate, has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security.

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

X. Pursuant to Pub. L. 86-571, authority to approve or disapprove amounts to be paid for hospitilization, provision of other care, treatment and assistance to certain nationals of the United States who are adjudged insane or otherwise mentally ill in a foreign country and are returned from that country, and authority to make arrangements for such hospitilization, care, treatment and assistance, has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security.

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

XI. Pursuant to section 1110 of the act, authority to approve or disapprove cooperative research and demonstration projects which involve income maintenance programs has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security.

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

C. Associate Commissioner for Program Policy and Planning.

CONDITIONS

1. All such projects require collateral approval by the Office of Family Assistance and the Office of Program Policy and Planning. Where there is disagreement between the Office of Family Assistance and the Office of Progam Policy and Planning as to approval of a particular project, the matter will be referred to the Commission/Acting Commissioner for decision.

2. Where all or any part of a demonstration project is wholly financed with Federal funds made available under section 1110 of the act, without any State, local, or other non-Federal financial participation, such project must be personally approved by the Secretary or Under Secretary of HEW.

XII. Pursuant to section 1110 of the act, authority to sign and issue grant awards relative to cooperative research and demonstration projects which involve income maintenance programs, and authority to perform all related business management functions of the grants process, has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security.

B. Associate Commissioner for Management and Administration, and Deputy Associate Commissioner for Management and Administration.

C. Director and Deputy Director, Division of Contracting and Procurement, Office of Materiel Management, Office of Management and Administration.

CONDITIONS

1. Payments shall not be made with respect to any demonstration project all or any part of which is wholly financed with Federal funds made available under section 1110 of the act, without any State, local, or other non-Federal financial participation, unless such project has been personally approved by the Secretary or Under Secretary of HEW.

2. Incumbents of positions redelegated this authority, or further redelegated such authority pursuant to part D of section XXV below, may not exercise such authority until the effective date specified in grants management officer warrants issued to them by the Director, Division of Contracting and Procurement, Office of Materiel Management, Office of Management and Administration. Their subsequent exercise of such authority shall be governed by the terms and conditions set forth in the warrants.

XIII. Pursuant to section 1115 of the act, authority to waive compliance with any of the State plan requirements of sections 2, 402, 1002, 1402, and 1602 of the act, to the extent and for the period found necessary, so as to enable States to carry out experimental, pilot, or demonstration projects which involve income maintenance programs, has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security;

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance;

C. Associate Commissioner for Program Policy and Planning.

CONDITIONS

1. All such projects require collateral approval by the Office of Family Assistance and the Office of Program Policy and Planning. Where there is disagreement between the Office of Family Assistance and the Office of Program Policy and Planning as to approval of a particular project, the matter will be referred to the Commissioner/Acting Commissioner for decision.

2. Where all or any part of a project is wholly financed with Federal funds made available under section 1115 of the act, without any State, local or other non-Federal financial participation, such project must be personally approved by the Secretary or Under Secretary of HEW.

XIV. Pursuant to section 1115 of the act, authority to approve or disapprove experimental, pilot, or demonstration projects which involve income maintenance programs has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security;

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance;

C. Associate Commissioner for Program Policy and Planning.

CONDITIONS

1. All such projects require collateral approval by the Office of Family Assistance and the Office of Program Policy and Planning. Where there is disagreement between the Office of Family Assistance and the Office of Program Policy and Planning as to approval of a particular project, the matter will be referred to the Commissioner/Acting Commissioner for decision.

2. Where all or any part of a project is wholly financed with Federal funds made available under section 1115 of the act, without any State, local, or

other non-Federal financial participation, such project must be personally approved by the Secretary or Under Secretary of HEW.

XV. Pursuant to section 1115 of the act, authority to sign and issue grant awards for experimental, pilot, or demonstration projects which involve income maintenance programs, and authority to perform all related business management functions of the grants process, has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security;

B. Associate Commissioner for Management and Administration, and Deputy Associate Commissioner for Management and Administration;

C. Director and Deputy Director, Division of Contracting and Procurement, Office of Materiel Management, Office of Management and Administration.

CONDITIONS

1. Payments shall not be made with respect to any experimental, pilot, or demonstration project all or any part of which is wholly financed with Federal funds made available under section 1115 of the act, without any State, local, or other non-Federal financial participation, unless such project has been personally approved by the Secretary or Under Secretary of HEW.

2. Incumbents of positions redelegated this authority, or further redelegated such authority pursuant to part D of section XXV below, may not exercise such authority until the effective date specified in grants management officer warrants issued to them by the Director, Division of Contracting and Procurement, Office of Material Management, Office of Management and Administration. Their subsequent exercise of such authority shall be governed by the terms and conditions set forth in the warrants.

XVI. Pursuant to the Indochina Migration and Refugee Assistance Act of 1975 (Pub. L. 94-23), as amended, authority to approve or disapprove agreements with States for the provision of assistance to refugees from Cambodia, Vietnam, and Laos has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security;

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

XVII. Pursuant to the Indochina Migration and Refugee Assistance Act of 1975 (Pub. L. 94-23), as amended, authority to approve or disapprove amounts to be paid to States for the provision of assistance to refugees from Cambodia, Vietnam, and Laos has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security;

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

XVIII. Pursuant to the Indochina Migration and Refugee Assistance Act of 1975 (Pub. L. 94-23), as amended, authority to approve or disapprove projects involving English language and employment services and other special projects for adult Indochinese refugees has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security;

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

XIX. Pursuant to the Migration and Refugee Assistance Act of 1962 (Pub. L. 87-510), as amended, authority to approve or disapprove agreements with States for the provision of assistance to refugees from Cuba has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security;

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

XX. Pursuant to the Migration and Refugee Assistance Act of 1962 (Pub. L. 87-510), as amended, authority to enter into interagency agreements with other Federal agencies for the provision of assistance to refugees from Cuba has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security;

B. Associate Commissioner for Management and Administration, and Deputy Associate Commissioner for Management and Administration;

C. Director, Office of Financial Management, Office of Management and Administration.

XXI. Pursuant to the Migration and Refugee Assistance Act of 1962 (Pub. L. 87-510), as amended, authority to approve or disapprove amounts to be paid to States for the provision of assistance to refugees from Cuba has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security;

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

XXII. Pursuant to section 1102 of the act, authority to approve or disapprove applications from States for Federal financial participation in the acquisition of automatic data processing equipment or the design of automated information systems, in support of income maintenance programs, has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security;

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance.

XXIII. Pursuant to section 1115 of the act, authority to review waivers by States of compliance with the requirements for State plans contained in paragraphs (1), (3), (8) and (19) of subsection (a) of section 402 of the act, as these waivers relate to demonstration projects under section 1115, has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security;

B. Associate Commissioner for Family Assistance and Deputy Associate Commissioner for Family Assistance;

C. Associate Commissioner for Program Policy and Planning.

CONDITIONS

1. All such reviews require collateral approval by the Office of Family Assistance and the Office of Program Policy and Planning. Where there is disagreement between the Office of Family Assistance and the Office of Program Policy and Planning as to approval, the matter will be referred to the Commissioner/Acting Commissioner for decision.

2. No such waiver of the requirements of paragraph (8) of subsection (a) of section 402 of the act shall operate to waive any amount in excess of one-half of the earned income of any individual.

XXIV. Pursuant to the Indochina Migration and Refugee Assistance Act of 1975 (Pub. L. 94-23), as amended, authority to sign and issue grant awards involving English language and employment services and other special projects for adult Indochinese refugees has been redelegated to the following SSA positions:

A. Deputy Commissioner of Social Security;

B. Associate Commissioner for Management and Administration, and Deputy Associate Commissioner for Management and Adminstration;

C. Director and Deputy Director, Division of Contracting and Procurement, Office of Materiel Management, Office of Management and Administration.

CONDITION

Incumbents of positions redelegated this authority, or further redelegated such authority pursuant to part D of section XXV below, may not exercise

such authority until the effective date specified in grants management officer warrants issued to them by the Director, Division of Contracting and Procurement, Office of Materiel Management, Office of Management and Administration. Their subsequent exercise of such authority shall be governed by the terms and conditions set forth in the warrants.

XXV. Further redelegations of the authorities described in sections I through XXIV above are subject to the following conditions:

A. The authorities contained in sections I, II, IV, V, and VIII above may be further redelegated by the Associate Commissioner for Family Assistance to headquarters positions in the Office of Family Assistance at or above the Division Director level, and to Regional Commissioners, without authority to make additional redelegations.

B. The authorities contained in sections III, VI, IX, X, XVI, XVII, XVIII, XIX, XXI, and XXII above may be further redelegated by the Associate Commissioner for Family Assistance to headquarters positions in the Office of Family Assistance at or above the Division Director level, without authority to make additional redelegations.

C. The authorities contained in sections XI, XIII, XIV, and XXIII above may be further redelegated by the Associate Commissioner for Family Assistance and the Associate Commissioner for Program Policy and Planning to positions in their headquarters components at or above the Division Director level, without authority to make additional redelegations.

D. The authorities contained in sections XII, XV, and XXIV above may be further redelegated by the Associate Commissioner for Management and Administration to appropriate positions in the Office of Materiel Management, Office of Management and Administration, without authority to make additional redelegations.

E. The authorities contained in sections VII and XX above may not be further redelegated.

F. Written notice of further redelegations made under the provisions of parts A through D of this section is to be provided to the Office of Management and Administration's Office of Administrative Appraisal and Planning at the time such further redelegations are made.

XXVI. The redelegations specified in sections I through XXIV above are effective as of the date that this notice thereof is published in the FEDERAL REGISTER. Any actions taken by SSA officials prior to the date that this notice is published in the FEDERAL REGISTER which, in effect, involve the exercise of the authorities redelegated by this document are hereby affirmed and ratified, to the extent that such actions are within the scope of the subject authorities.

Dated: July 25, 1978.

DON I. WORTMAN,
Acting Commissioner of Social Security.

[FR Doc. 78-21231 Filed 7-31-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ELKO DISTRICT GRAZING ADVISORY BOARD

Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Elko District Grazing Advisory Board will be held on August 25, 1978.

The meeting will begin at 9 a.m. in the conference room of the Bureau of Land Management Office at 2002 Idaho Street, Elko, Nev.

The agenda for the meeting will include: (1) Election of officers and organization of the Board; (2) a discussion of the function of the Board; (3) the expenditure of range betterment funds for range improvements; (4) a review of the current policy and program relating to allotment management plans; and (5) review of the Frost Creek and 25 corporation allotment management plan revisions.

The meeting is open to the public. Interested persons may make oral statements to the Board between 2 p.m. and 3 p.m. on Friday, August 25, 1978, or file written statements for the Boards consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 2002 Idaho Street, Elko, Nev. 89801 by August 18, 1978. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproductions (during regular business hours) within 30 days following the meeting.

Date signed: July 21, 1978.

WAYNE W. WILDE,
District Manager.

[FR Doc. 78-21161 Filed 7-31-78; 8:45 am]

[4310-84]

[Serial No. AR 04855]

ARIZONA

Opportunity for Public Hearing and Republication of Proposed Withdrawal, Correction

The legal description appearing in the July 10, 1978, FEDERAL REGISTER, volume 43, page 29630, Document No. 78-18890, is corrected to read as follows:

* * * * *

T. 4 S., R. 7 W.
Sec. 7, SW¼NW¼ and SW¼,
Sec. 17, S½ and S½NW¼,

* * * * *

Sec. 33, SE¼NW¼, W½NW¼, SW¼, W½SE¼, and SE¼SE¼.
T. 4 S., R. 8 W.

* * * * *

Date: July 20, 1978.

MARIO L. LOPEZ,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-21249 Filed 7-31-78; 8:45 am]

[4310-84]

[Wyoming 64308]

WYOMING

Application

JULY 24, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Co. of Colorado Springs, Colo. filed an application for a right-of-way to construct a 2⅜" O.D. Pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 20 N., R. 101 W.,
Sec. 22, N½SW¼, NW¼SE¼, S½SE¼, and SW¼SW¼;
Sec. 26, N½NE¼ and NE¼NW¼;
Sec. 36, NW¼NE¼.

The proposed pipeline will transport natural gas produced from the Ship <rock Federal No. 22-1 Well located in the SW¼ of section 22, to a point of connection with Colorado Interstate Gas Co.'s Point of Rocks Compressor Station facilities in the NW¼NE¼ of section 36, all within T. 20 N., R. 101 W., in Sweetwater County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments

should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyo. 82901.

MARLA B. BOHL,
Acting Chief, Branch of Lands and Minerals Operation.

[FR Doc. 78-21250 Filed 7-31-78; 8:45 am]

[4310-84]

[W-64422]

WYOMING

Application

JULY 21, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Kansas-Nebraska Natural Gas Co., Inc. of Hastings, Nebr. filed an application for a right-of-way to construct 6⅝" O. D. pipelines for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 39 N., R. 90 W.,
Sec. 31, lot 2.
T. 38 N., R. 91 W.,
Sec. 1, NE¼SW¼ and SW¼SW¼;
Sec. 2, SE¼SE¼;
Sec. 5, lot 1, SE¼NE¼, E½SE¼ and SW¼SE¼;
Sec. 8, NW¼NE¼;
Sec. 11, SW¼NE¼.

The pipelines will transport natural gas from three separate wells to a point of connection with Kansas-Nebraska Natural Gas Co.'s existing gathering system located in sections 1 and 5, T. 38 N., R. 91 W., in Fremont County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyo. 82301.

WILLIAM S. GILMER,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-21251 Filed 7-31-78; 8:45 am]

[4310-31]

Geological Survey

HOSPAH, N.Mex.

Known Recoverable Coal Resource Area

Pursuant to authority contained in the act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and section 8A of the Mineral Leasing Act of February 25, 1920, as added by section 7 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, Aug. 4, 1976), Federal lands within the State of New Mexico have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(31) NEW MEXICO

Hospah (New Mexico), known recoverable coal resource area; December 1, 1977; 558,772.57 acres.

A diagram showing the boundaries of the area classified has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colo. 80225.

Dated: July 25, 1978.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 78-21252 Filed 7-31-78; 8:45 am]

[4310-31]

GARRISON, N. DAK.

Known Recoverable Coal Resources Area

Pursuant to authority contained in the act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and section 8A of the Mineral Leasing Act of February 25, 1920, as added by section 7 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, Aug. 4, 1976), Federal lands within the State of North Dakota have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(34) NORTH DAKOTA

Garrison (North Dakota), known recoverable coal resource area; March 3, 1978; 49,917 acres.

A diagram showing the boundaries of the area classified for leasing has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, MS 609, Box 25046, Federal Center, Denver, Colo. 80225.

Dated: July 25, 1978.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 78-21253 Filed 7-31-78; 8:45 am]

[4310-31]

WILLISTON, N. DAK.

Known Recoverable Resource Area (Coal)

REVISION

Pursuant to authority contained in the act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and section 8A of the Mineral Leasing Act of February 25, 1920, as added by section 7 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, August 4, 1976), Federal lands within the State of North Dakota have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(34) NORTH DAKOTA

Williston (North Dakota), known recoverable coal resource area (KRCRA); August 1, 1977; 65,304 acreas were previously within the KRCRA, and 194,512 acres were added. Total area now classified is 259,816 acres.

A diagram showing the revised boundary and acreage has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colo. 80225.

Dated: July 25, 1978.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 78-21254 Filed 7-31-78; 8:45 am]

[4310-03]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Additions, Deletions, and Corrections

By notice in the FEDERAL REGISTER of February 7, 1978, Part II, there was published a list of the properties included in the National Register of Historic Places. Further notice is hereby given that certain amendments or revisions in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat. 16 U.S.C. 470 et seq. (1970 ed.), and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800.

WILLIAM J. MURTAGH,
Keeper of the National Register.

The following list of properties has been added to the National Register of Historic Places since notice was last given in the February 7, 1978, FEDERAL REGISTER National Historic Landmarks are designated by NHL; properties recorded by the Historic American Buildings Survey are designated by HABS; properties recorded by the Historic American Engineering Record are designated by HAER; properties receiving grants-in-aid for historic preservation are designated by G.

ALASKA

Anchorage Division

Anchorage, *Anderson, Oscar, House,* 4th Ave. extended (6-13-78).
Anchorage, *Federal Building-U.S. Courthouse,* 601 W. 4th Ave. (6-23-78).

Bristol Bay Division

Kanatak vicinity, *Archeological Site 49 Mk 10,* N of Kanatak, Katmai National Monument (6-23-78).
Kanatak vicinity, *Kaguyak Village Site,* Katmai National Monument (6-23-78).
Naknek vicinity, *Old Savonoski Site,* Katmai National Monument (6-23-78).
Naknek vicinity, *Savonoski River Archeological District,* Katmai National Monument (6-23-78).

ARIZONA

Mohave County

Kingman, *Hubbs House,* 4th and Golconda Sts. (6-15-78).

Pima County

Tucson, *Pima County Courthouse,* 115N. Church St. (6-23-78).

Pinal County

Casa Grande, *Casa Grande Stone Church,* Florence Blvd. and N. Park Ave. (6-15-78).

ARKANSAS

Jefferson County

Altheimer vicinity, *Elms, The,* S of Altheimer (7-7-78).,

Washington County

Fayetteville, *Wade-Heerwagen House,* 338 Washington Ave. N. (6-15-78).

CALIFORNIA

Alameda County

Berkeley, *Toverii Tuppa,* 1819 10th St. (7-12-78).

Colusa County

Colusa, *Colusa Grammar School,* 425 Webster St. (6-13-78).

Los Angeles County

Norwalk, *Paddison Ranch Buildings,* 11951 Imperial Hwy. (6-23-78).

Marin County

Inverness, *Schreiber, Brock, Boathouse and Beach,* 12830 Sir Francis Drake Blvd. (7-7-78).

Mariposa County

El Portal vicinity, *McCauley and Meyer Barns,* N of El Portal in Yosemite National Park (6-15-78).
Wawona, *Acting Superintendents Headquarters,* Yosemite National Park (6-9-78).
Wawona, *Hodgdon Homestead Cabin,* Yosemite National Park (6-9-78).
Wawona vicinity, *Yosemite Transportation Company Office,* N of Wawona in Yosemite National Park (6-9-78).

Gualala, County

Gualala, *Milano Hotel,* 38300 Highway One S. (6-23-78).

Sacramento County

Galt, *Brewster House,* 206 5th St. (6-23-78).

San Diego County

Julian, *Robinson Hotel,* 2032 Main St. (6-23-78).

Santa Clara County

Mountain View, *Rengstorff, Henry A., House,* 1737 Stierlin Rd. (6-13-78).

Siskiyou County

Sawyers Bar, *Sawyers Bar Catholic Church,* Klamath National Forest (7-7-78).

Solano County

Benicia vicinity, *SS Jeremiah O'Brien,* E of Benicia at Suisun Bay (7-7-78).

COLORADO

Denver County

Denver, *All Saints Episcopal Church,* 2222 W. 32nd Ave. (6-23-78).

Larimer County

Fort Collins, *Ammons Hall,* Colorado State University campus (6-15-78).

GEORGIA

Baldwin County

Milledgeville vicinity, *Storehouse, State Lunatic Asylum,* Broad St. and Lawrence Rd. (6-15-78).

Elbert County

Ruckersville, *Rucker House,* GA 985 (6-23-78).

HAWAII

Hawaii County

Hilo, *Shipman, W. H. House,* 141 Kaiulani St. (6-23-78).

Honolulu County

Wahiawa, *Dole, James D., Homestead,* 148 Dole Rd. (6-23-78).

IDAHO

Boundary County

Bonners Ferry vicinity, *Harvey Mountain Quarry,* N of Bonners Ferry (6-23-78).

Idaho County

Kooskia vicinity, *Lochsa Historical Ranger Station,* Clearwater National Forest (6-9-78).

Twin Falls County

Twin Falls, *Idaho Power Substation,* Van Buren St. and Filer Ave. (6-23-78).

ILLINOIS

Cook County

Glencoe, *Sylvan Road Bridge,* Sylvan Rd. (6-23-78).

Kane County

St. Charles vicinity, *Garfield Farm and Tavern,* W of St. Charles at IL 38 and Garfield Rd. (6-23-78).

Madison County

Alton, *Middletown Historic District,* roughly bounded by Broadway, Market, Alton, Franklin, Common, Liberty, Humboldt, and Plum Sts. (7-11-78).

Monroe County

Maeystown, *Maeystown Historic District,* SR 7 (6-23-78).

Stephenson County

Kent vicinity, *Kellogg's Grove,* SE of Kent (6-23-78).

INDIANA

Lake County

Gary, *Miller Town Hall,* jct. Miller Ave., Old Hobart Rd., and Grand Blvd. (7-7-78).

IOWA

Lyon County

Rock Rapids, *First Methodist Church,* 302 S. Carroll St. (6-23-78).

KANSAS

Jackson County

Soldier vicinity, *Harris Site,* S of Soldier (6-23-78).

Sedgwick County

Wichita, *Long, Chester I., House,* 3401 E. 2nd St. (7-10-78).

KENTUCKY

Fayette County

Lexington, *South Hill Historic District,* roughly bounded by S. Broadway, W. High, S. Limestone, and Pine Sts. (6-13-78).

Jefferson County

Louisville, *Ursuline Academy and Convent,* 800 E. Chestnut St. (6-13-78).

Pulaski County

Somerset, *Somerset City School and Carnegie Library,* 300 College St. (7-7-78).

Warren County

Bowling Green, *Underwood-Jones House,* 506 State St. (7-7-78).

Whitley County

Corbin, *Louisville and Nashville Railroad Depot,* Lynn Ave. (6-15-78).

LOUISIANA

Calcasieu Parish

Lake Charles, *Arcade Theater,* 822 Ryan St. (7-7-78).

Ouachita Parish

Monroe, *Mulberry Grove (Layton Castle),* 1133 S. Grand St. (7-7-78).

MAINE

Lincoln County

New Castle vicinity, *Sheepscot Historic District,* W of New Castle (6-23-78).

MARYLAND

Frederick County

Thurmont vicinity, *Covered Bridges in Frederick County,* Old Frederick, Utica, and Roddy Rds. (6-23-78).

MICHIGAN

Wayne County

Detroit, *Wayne State University Buildings,* 4735-4841 Cass Ave. (6-23-78).

MINNESOTA

Dakota County

Hastings, *Howes, Byron, House,* 718 Vermillion St. (6-15-78).

MISSISSIPPI

Carroll County

Greenwood vicinity, *Rowland Site,* S of Greenwood (6-23-78).

Claiborne County

Bruinsburg vicinity, *Smithfield Site,* S of Bruinsburg (6-9-78).

Port Gibson vicinity, *Bayou Pierre Site,* W of Port Gibson (6-23-78).

Coahoma County

Clarksdale vicinity, *Davis, Rufus, Site,* W of Clarksdale (6-15-78).

Harrison County

Biloxi, *Gillis House,* 513 E. Beach Blvd. (7-7-78) HABS.

Lawrence County

Monticello vicinity, *Mill Creek Site,* S of Monticello (6-9-78).

Leflore County

Wakeland vicinity, *Sweethome Mound,* W of Wakeland (6-9-78).

Newton County

Enterprise vicinity, *Lavelle Site,* NW of Enterprise (6-9-78).

Wilkinson County

Fort Adams vicinity, *Smith Creek Site,* N of Fort Adams (6-13-78).

MISSOURI

Jackson County

Kansas City, *Quality Hill,* roughly bounded by Broadway, 10th, 14th, and Jefferson Sts. (7-7-78).

St. Charles County

St. Charles, *Stumberg, Dr. John H., House,* 100 S. 3rd St. (7-12-78).

St. Louis (independent city)

Midtown Historic District, Lindell and Grand Blvds. (7-7-78).

NEBRASKA

Nemaha County

Peru Vicinity, *Majors, Thomas J., Farmstead,* W of Peru at 800 Mulberry St. (6-15-78).

Scotts Bluff County

Scottsbluff vicinity, *Fort Mitchell Site,* W of Scottsbluff on NE 29 (6-7-78).

Wayne County

Wayne, *Wightman, Dr. W. C., House,* 702 Lincoln St. (6-13-78).

NEVADA

Nye County

Tonopah, *Mizpah Hotel,* 100 Main St. (7-7-78).

NEW MEXICO

Bernalillo County

Albuquerque, *Rosenwald Building,* 320 Central Ave., SW. (6-29-78).

NEW YORK

Chemung County

Elmira, *Chemung Canal Bank Building,* 415 E. Water St. (6-23-78).

Madison County

Morrisville, *Old Madison County Courthouse,* E. Main St. (6-15-78).

New York County

New York, *SoHo Historic District,* roughly bounded by W. Broadway, Houston, Crosby, and Canal Sts. (6-29-78).

New York, *Wavertree,* Pier 17, foot of Fulton St. (6-13-78).

NORTH CAROLINA

Vance County

Henderson, *Zollicoffer's Law Office,* 215 N. Garnett St. (6-13-78).

NORTH DAKOTA

Ramsey County

Devils Lake, *U.S. Post Office and Courthouse,* 502 4th St. (6-22-78).

OHIO

Athens County

Athens vicinity, *Blackwood Covered Bridge,* S of Athens on SR 46 (6-23-78).

Darke County

Greenville vicinity, *Studebaker-Scott House and Beehive School,* S of Greenville on OH (6-15-78).

Hamilton County

Cincinnati vicinity, *United Brethren in Christ,* S of Cincinnati off I 275 (6-13-78).

Highland County

Greenfield, *Smith, Samuel, House and Tannery,* 103 Jefferson St. (7-5-78).

Trumbull County

Warren, *McLain-Gillmer House,* 720 Mahoning Ave., NW. (6-15-78).

Washington County

Marietta vicinity, *Barker, Col. Joseph, House,* N of Marietta on Masonic Park Rd. (6-23-78).

OKLAHOMA

Roger Mills County

Berlin vicinity, *Goodwin-Baker Archeological Site,* NE of Berlin (7-7-78).

OREGON

Deschutes County

Bend vicinity, *Bend Skyliners Lodge,* 11 mi. (17.6 km) W of Bend in Deschutes National Forest (6-13-78).

PENNSYLVANIA

Indiana County

Indiana, *Clark, Silas M., House,* 6th St. and Wayne Ave. (6-15-78).

Philadelphia County

Philadelphia, *Arch Street Opera House,* 1003-1005 Arch St. (6-13-78) HABS.

Philadelphia, *Graham and Laird, Schober and Mitchell Factories,* 19th St. between Hamilton and Buttonwood Sts. (7-7-78).

TENNESSEE

Davidson County

Nashville, *Robincroft,* 746 Benton Ave. (7-10-78).

Marshall County

Belfast, *Tate, J. C., General Merchandise Store,* Old Belfast Rd. (7-12-78).

TEXAS

Bowie County

Texarkana, *Saenger Theather*, 219 Main St. (7-12-78).

Colorado County

Columbus, *Colorado County Courthouse Historic District*, roughly bounded by Preston, Walnut, Milam, Front, Washington, and Live Oak Sts. (6-23-78).

Ellis County

Waxachchie, *Williams-Erwin House*, 412 W. Marvin St. (7-7-78).

Grimes County

Navasota, *Steele House*, 217 Brewer St. (6-13-78).

Guadalupe County

Seguin, *Johnson, Joseph F., House*, 761 Johnson Ave. (6-23-78) HABS.

Harris County

Houston, *Rice Hotel*, Main St. and Texas Ave. (6-23-78).

UTAH

Grand County

Moab vicinity, *Elk Mountain Mission Fort Site*, NW of Moab off U.S. 160 (6-15-78).

Weber County

Ogden, *Farr, Valasco, House*, 700 Canyon Rd. (6-13-78).

VIRGIN ISLANDS

St. John Island

Cruz Bay vicinity, *Cinnamon Bay Plantation*, NE of Cruz Bay on Cinnamon Bay (7-11-78) HAER.

Cruz Bay vicinity, *Lameshur Plantation*, E of Cruz Bay on Little Lameshur Bay (6-23-78).

VIRGINIA

Russell County

Lebanon vicinity, *Daugherty's Cave and Breeding Sites*, N of Lebanon (6-23-78).

Smyth County

Marion vicinity, *Fox Farm Site*, W of Marion (6-23-78).

WEST VIRGINIA

Greenbrier County

Lewisburg, *Lewisburg Historic District*, irregular pattern along U.S. 60 and U.S. 219 (7-7-78).

* * * * *

The following is a list of corrections to properties previously listed in the FEDERAL REGISTER.

MASSACHUSETTS

Essex County

Lawrence, *Mechanics Block Historic District*, Orchard, Union, and Gerden Sts (4-3-73) G.

OHIO

Portage County

Kent, *Kent, Charles, House (Palmer House)*, 125 N. Pearl St. (2-23-78).

PENNSYLVANIA

Berks County

Reading vicinity, *Gruber Wagon Works*, W of Reading off PA 183 in Tulpehocken Creek Park (6-2-72) NHL.

WYOMING

Laramie County

Cheyenne vicinity, *Fort David A. Russell*, W of Cheyenne (10-1-69) HABS; NHL (formerly listed as Francis Warren AFB).

* * * * *

The following properties have been demolished and/or removed from the National Register of Historic Places.

MASSACHUSETTS

Hampden County

Chicopee, *Kendall Block*, 6-20 Springfield St.

SOUTH CAROLINA

Oconee County

Westminister vicinity, *Prather's Bridge*, 10 mi. SW of Westminster.

* * * * *

Determinations of eligibility are made in accordance with the provisions of 36 CFR 63, procedures for requesting determinations of eligibility, under the authorities in section 2(b) and 1(3) of Executive Order 11593 and section 106 of the National Historic Preservation Act of 1966, as amended, as implemented by the Advisory Council on Historic Preservation's procedures, 36 CFR Part 800. Properties determined to be eligible under section 63.3 of the procedures for requesting determinations of eligibility are designated by 63.3.

Properties which are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800. Agencies are advised that in accord with the procedures of the Advisory Council on Historic Preservation, before an agency of the Federal Government may undertake any project which may have an effect on an eligible property, the Advisory Council on Historic Preservation shall be given an opportunity to comment on the proposal.

The following list of additions, deletions, and corrections to the list of properties determined eligible for inclusion in the National Register is intended to supplement the cumulative version of that list published in February of each year.

CALIFORNIA

San Bernardino County

Highland, *Highland Historic District*, Bounded by AT & SF RR. line, Pacific St., Church Ave., rear lots of Main St. and Cole Ave. (63.3).

CONNECTICUT

Hartford County

Hartford, *Frog Hollow Historic District*, 35 square blocks S of Capitol Ave. between Oak St. and Park Ter. (63.3).

Middlesex County

East Hampton, *Rapallo Viaduct*, Smith St. vicinity.

New London County

Colchester, *Lyman Viaduct*, Bull Hill Rd. vicinity.

Colchester, *Warren Truss Bridge*, Bull Hill Rd. vicinity.

INDIANA

Tippecanoe County

Lafayette, *Interurban Power Station*, E bank of Wabash River at the foot of 7th St.

IOWA

Cerro Gordo County

Mason City, *Rainbow Arch Bridge*, Hwy. 18, over the Winnebago River (63.3).

Marshall County

Marshalltown, *Rainbow Arch Bridge*, S. 3rd Ave., over Linn Creek (63.3).

MASSACHUSETTS

Bristol County

Somerset, *Montaup Prehistoric Site (19-BR-131)* (63.3).

Essex County

Amesbury, *Amesbury U.S. Post Office*, 100 Main St. (63.3).

Hampden County

South Hadley, *South Hadley Canal*, Canal St. vicinity (63.3).

NEBRASKA

Douglas County

Omaha, *Nash Buildings*, 902-912 Farnam St. and 901-911 Douglas St.

Omaha, *Smith, M. E., Building*, 201-211 S. 10th St.

NEW HAMPSHIRE

Coos County

Berlin, *Androscoggin Valley Hospital/St. Regis Academy Complex*, Bounded by Main, Pleasant, Church, School, and Success Sts. (63.3).

NORTH CAROLINA

Durham County

Durham, *Bennehan-Cameron Plantation Historic District* (63.3).

Guilford County

Greensboro, *Greensboro Railroad Station*, 300 E. Washington St. (63.3).
High Point, *High Point Railroad Station*, 100 W. High St. (63.3).

PENNSYLVANIA

Philadelphia County

Philadelphia, *Lighthouse, The*, 152 W. Lehigh Ave.

TEXAS

Hunt County

Greenville, *Edge House*, Stonewall and Marshall Sts. (63.3).
Greenville, *Rosenburg House*, Stonewall and Morse Sts. (63.3).

TRUST TERRITORY OF THE PACIFIC ISLANDS

Tafunsak District

Kosrae Island, *Okat Jungle Road Site*, Okat Harbor vicinity (63.3).

VIRGINIA

Danville (independent city)

Danville Railroad Station, 701 Craghead St. (63.3).

Henrico County

Deep Bottom West Site.

Lynchburg (independent city)

Kemper Street Station, 825 Kemper St.

* * * * *

The following properties have been either demolished or placed on the National Register and are therefore removed from the Determinations of Eligibility listing.

CALIFORNIA

Siskiyou County

Sawyers Bar, *Sawyers Bar Catholic Church*, Klamath National Forest (placed on National Register 7-17-78).

NORTH CAROLINA

Mecklenburg County

Charlotte, *U.S. Post Office and Courthouse*, 401 W. Trade St. (placed on National Register 6-7-78).

WASHINGTON

King County

Seattle, *Home of the Good Shepherd*, Sunnyside N. and 50th St. (placed on National Register 6-23-78).

[FR Doc. 78-21051 Filed 7-31-78; 8:45 am]

[4310-03]

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before July 21, 1978. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by Ausust 11, 1978.

WILLIAM J. MURTAGH,
Keeper of the National Register.

CALIFORNIA

Fresno County

Orange Cove, *Orange Cove Santa Fe Railway Depot*, 633 E. Railroad Ave.

San Francisco County

San Francisco, *Jackson Square Historic District*, roughly bounded by Broadway, Sansome and Washington Sts., and Columbus Ave. (boundary increase).

San Luis Obispo County

San Miguel, *Southern Pacific Railroad Depot*, 1300 Mission St.

DISTRICT OF COLUMBIA

Washington

Bachelor Apartment House, 1737 H St., NW.
Chase's Theater and Riggs Building (Keith's), 15th and G Sts., NW.
Concordia German Evangelical Church and Rectory, 20th and G Sts., NW.
Eighteen Hundred Block Park Road, NW., 1801-1869 Park Road, NW.
National Metropolitan Bank Building, 613 15th St., NW.
Washington Arsenal (Fort Lesley J. McNair), 4th and P Sts., SW.

FLORIDA

Brevard County

Merritt Island vicinity, *Old Haulover Canal*, N of Merritt Island.

Collier County

Miles City vicinity, *Hinson Mounds*, E of Miles City.
Miles City vicinity, *Platt Island*, N of Miles City.
Ochopee vicinity, *Ostl, C. J., Site*, E of Ochopee.
Ochopee vicinity, *Sugar Pot Site*, SE of Ochopee.
Ochopee vicinity, *Turner River Site*, E of Ochopee.

Sant Rosa County

Gulf Breeze vicinity, *Naval Live Oaks Historic District*, E of Gulf Breeze.

INDIANA

Clinton County

Frankfort, *Clinton County Courthouse*, Public Sq.

Marion County

Indianapolis, *Levey, Louis, Mansion*, 2902 N. Meridian St.

Vanderburgh County

Evansville, Liberty Baptist Church, 701 Oak St.

Evansville, *Riverside Historic District*, roughly bounded by Southland Dr., Walnut, 3rd., and Parrett Sts.

IOWA

Clayton County

McGregor vicinity, *Hartwick House*, W of McGregor on U.S. 18.

Muscatine County

Muscatine, *Welch Apartments*, 224 Iowa Ave.

KANSAS

Doniphan County

White Cloud, *Dorland Building*, Main St.

Sedgwick County

Wichita, *McCormick School*, 855 S. Martinson St.

MARYLAND

Montgomery County

Bethesda, *Bethesda Meetinghouse*, 9400 Wisconsin Ave. (boundary increase).

MINNESOTA

St. Louis County

Duluth, *Duluth Young Women's Christian Association*, 202 W. 2d St.

MISSISSIPPI

Monroe County

Aberdeen, *Davis, Reuben, House*, 803 W. Commerce St.

MISSOURI

Newton County

Newtonia, *Ritchey, Mathew H., House*, Mill St.

NEW YORK

New York County

New York, *Schomburg Center for Research in Black Culture*, 103 W. 135th St.

Washington County

Cambridge, *Cambridge Historic District*, irregular pattern along Main and S. Union Sts.

OHIO

Butler County

Oxford, *Western Female Seminary*, U.S. 27.

Guernsey County

Cambridge, *McCracken-McFarland House*, 216 N. 8th St.

Cambridge, *McCracken-Scott House*, 819 Steubenville Ave.

Hamilton County

Cleves vicinity, *Dravo Gravel Site*, N of Cleves.

Mariemont, *Mariemont Historic District*, roughly bounded by S boundary line, Wooster Pike, Harvard Acres, Murray, Indianview, and Mt. Vernon Aves.

Lucas

Toledo, *Wright, Dr. Johnn A., House*, 1822 Cherry St.

Muskingum County

Zanesville vicinity, *Pearis Homestead*, E of Zanesville on OH 146.

Sandusky County

Fremont, *Fremont City Hall*, 401 Croghan St.

Wood County

Stony Ridge, *Empire House*, U.S. 20.

OREGON

Baker County

Baker, *Baker Historic District*, irregular pattern along Main St. from Estes to Madison Sts.

TEXAS

Cameron County

Brownsville, *Southern Pacific Railroad Passenger Depot*, 601 E. Madison St.

VERMONT

Rutland County

Castleton vicinity, *Hydeville School, W of Castleton on VT 4A.*

WASHINGTON

Okanogan County

Oroville vicinity, *Enloe Dam and Powerplant*, 4 mi. (6.4 km) W of Oroville.

[FR Doc. 78-21050 Filed 7-31-78; 8:45 am]

[4310-10]

Office of the Secretary

OUTER CONTINENTAL SHELF ADVISORY BOARD

Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92-643 (5 U.S.C. app. I), and the Office of Management and Budget's Circular No. A-63, revised.

The Outer Continental Shelf Advisory Board will meet during the period 10 a.m. to 5:30 p.m., August 28, 1978, and 9 a.m. to 2 p.m., August 29, 1978, at the Hyatt Regency Cambridge, 575 Memorial Drive, Cambridge, Mass.

The meeting will cover the following principal subjects:

(1) Oil spill prevention, containment, and cleanup.
  (a) GAO report on Coast Guard's response capabilities.
  (b) Preliminary findings of Coast Guard's studies.
  (c) Status of revisions to the national contingency plan.
  (d) Results of June/July IMCO Conference on crew standards.
  (e) Status of Comprehensive Oil Spill Liability and Compensation Act.
(2) Assessment of worldwide supply of oil and gas.
(3) Status of amendments to the OCS Lands Act.
(4) Impact of the amendments on the OCS leasing program.
(5) Status of intergovernmental transportation planning process.
(6) Status of BLM's environmental studies program.
(7) The CZM program—the State's perspective.

The meeting is open to the public. Interested persons may make oral or written presentations to the Board. Such requests should be made no later than August 15 to:

Alan D. Powers, Office of OCS Program Coordination, Department of the Interior—Room 4126, Washington, D.C. 20240, 202-343-9311.

Minutes of the meeting will be available for public inspection and copying 3 weeks after the meeting at the Office of OCS Program Coordination, Room 4126, Department of the Interior, 18th and C Streets NW., Washington, D.C.

Dated: July 26, 1978.

ALAN D. POWERS,
Director, Office of OCS Program Coordination.

[FR Doc. 78-21141 Filed 7-31-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-36]

CERTAIN PLASTIC FASTENER ASSEMBLIES

Order regarding Reassignment of Investigation

Pursuant to a request of the presiding officer that this investigation be reassigned. *It is hereby order*, That this investigation is reassigned to the Office of the Administrative Law Judges for hearing.

Issued: July 27, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-21268 Filed 7-31-78; 8:45 am]

[7020-02]

[AA1921-185]

NYLON YARN FROM FRANCE

Investigation and Hearing

Having received advice from the Department of the Treasury on July 18, 1978, that certain nylon yarn and grouped nylon filaments from France is being, or is likely to be, sold at less than fair value, the U.S. International Trade Commission on July 26, 1978, instituted investigation No. AA1921-185 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether 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 into the United States of nylon yarn and grouped nylon filaments, not textured, provided for in items 309.3030, 309.3130, 310.0149 and 310.0249 of the Tariff Schedules of the United States Annotated.

A public hearing in connection with the investigation will be held on Tuesday, August 29, 1978, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, beginning at 10 a.m., e.d.t. Requests to appear at the public hearing should be filed with the Secretary of the Commission, in writing, not later than noon, Thursday, August 24, 1978.

Issued: July 27, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-21267 Filed 7-3-78; 8:45 am]

[4410-10]

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

FEDERAL ADVISORY COMMITTEE ON IMMIGRATION AND NATURALIZATION

Notice of Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: This notice announces the meeting of the Federal Advisory Committee on Immigration and Naturalization to be held in San Francisco, Calif., on August 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Arnold Flores or E. B. Duarte, Special Assistants to the Commissioner of Immigration and Naturalization, Room 7056, 425 Eye Street NW., Washington, D.C. 20536, telephone, 202-376-8211.

SUPPLEMENTARY INFORMATION AND MEETING AGENDA: 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 Federal Advisory Committee on Immigration and Naturalization to be held from 8:30 a.m. to 5:30 p.m., Friday, August 18, 1978, at the Jack Tar Hotel, International Room, Van Ness at Geary, San Francisco, Calif.

FRIDAY, AUGUST 18, 1978

I. Call to order.
II. Welcome remarks by the Regional Commissioner.
III. Opening remarks by Commissioner Castillo.
IV. Staff presentations:
A. Progress report on CRS/INS.
B. Border management issues and cooperative efforts.
C. Immigration—A legislative update.
V. Public commentary.
VI. Presentations (continued):
D. Undocumented schoolchildren.
VII. Subcommittee meetings.
VIII. Formal recommendations to the Commissioner.
IX. Old/new business.
X. Meeting adjourns.

Attendance is open to the interested public on a space available basis. Persons or groups wishing to attend the meeting should address a letter indicating their intention to Mr. Duarte or Mr. Flores at the address shown above.

Dated: July 27, 1978.

LEONEL J. CASTILLO,
Commissioner of Immigration and Naturalization.

[FR Doc. 78-21263 Filed 7-31-78; 8:45 am]

[4510-26]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

OREGON STATE STANDARDS

Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the act and 29 CFR Part 1902. On December 28, 1972, notice was published in the FEDERAL REGISTER 39 FR 28628 of the approval of the Oregon plan and the adoption of subpart D to part 1952 containing the decision. The notice of approval of revised developmental schedule was further published on April 1, 1974, in the FEDERAL REGISTER.

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the act. Section 1953.20 provides that "where any alteration in the Federal program could have an adverse impact on the at least as effective as" status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated December 21, 1977, from Roy G. Green to James W. Lake and incorporated as part of the plan, State standards comparable to 29 CFR 1910.217 Mechanical Power Presses as published in the FEDERAL REGISTER, 39 FR 41841, December 3, 1974, with corrections published in FEDERAL REGISTER, Vol. 40, No. 18 (3982), January 27, 1975.

These State standards, which are contained in OAR 437 Chapter 10 Machinery and Machine Guarding were promulgated after public hearings held on September 28, 1977.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are at least as effective as the comparable Federal standards and accordingly should be approved. The significant area of difference was in employer reporting of injuries to employees operating mechanical power presses. The State adequately collects data and responds to special reporting of serious and hospitalized injuries through the Workers' Compensation Department (WCD). The standards comparison document is available at the locations specified below.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Wash. 98174; Workers' Compensation Board, Labor and Industries Building, Salem, Oreg. 97310; and the Technical Data Center, Room N2349, Third and Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon plan as a proposed change and making the Regional Adminstrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be unnecessary.

This decision is effective July 28, 1978.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (20 U.S.C. 667).)

Signed at Seattle, Wash., this 10th day of July 1978.

JAMES W. LAKE,
Regional Administrator, Occupational Safety and Health Administration.

[FR Doc. 78-21094 Filed 7-31-78; 8:45 am]

[4510-26]

[V-78-7]

UNITED STATES STEEL CORP.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTIONS: (1) Notice of application for variance and interim order; (2) denial of interim order.

SUMMARY: This notice announces the application of United States Steel Corp. for a variance and interim order pending a decision on the application for a variance from the standard prescribed in 29 CFR 1910.1029(g)(2)(ii) concerning the provision of respiratory protection.

It also announces the denial of the request for an interim order to provide relief until a decision is rendered on the application for variance.

DATES: The last date for interested persons to submit comments is August 31, 1978. The last date for affected employers and employees to request a hearing on the application is August 31, 1978.

ADDRESSES: Send comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N-3668, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination, at the above address, telephone 202-523-7121, or the following regional and area offices:

U.S. Department of Labor, Occupa-

tional Safety and Health Administration, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pa. 19104.

U.S. Department of Labor, Occupational Safety and Health Administration, 400 Penn Center Boulevard, Suite 600, Pittsburgh, Pa. 15235.

U.S. Department of Labor, Occupational Safety and Health Administration, William J. Green Jr., Federal Building, 600 Arch Street, Room 4256, Philadelphia, Pa. 19106.

U.S. Department of Labor, Occupational Safety and Health Administration, 32nd Floor, Room 3263, 230 South Dearborn Street, Chicago, Ill. 60604.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 734, 234 North Summit Street, Toledo, Ohio 43604.

U.S. Department of Labor, Occupational Safety and Health Administration, U.S. Post Office and Courthouse, Room 423, 46 East Ohio Street, Indianapolis, Ind. 46204.

U.S. Department of Labor, Occupational Safety and Health Administration, 110 South Fourth Street, Room 437, Minneapolis, Minn. 55401.

U.S. Department of Labor, Occupational Safety and Health Administration, 1375 Peachtree Street, NE., Suite 587, Atlanta, Ga. 30309.

U.S. Department of Labor, Occupational Safety and Health Administration, Todd Mall, 2047 Canyon Road, Birmingham, Ala. 35216.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, Room 15042, 1961 Stout Street, Denver, Colo. 80294.

U.S. Department of Labor, Occupational Safety and Health Administration, U.S. Post Office Building, Room 451, 350 South Main Street, Salt Lake City, Utah 84101.

I. Notice of Application

Notice is hereby given that United States Steel Corp., 600 Grant Street, Pittsburgh, Pa. 15230, has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance, and interim order pending a decision on the application for a variance, from the standards prescribed in 29 CFR 1910.1029(g) (2) (ii) of the Occupational Safety and Health Standards.

The places of employment covered by this application are the "regulated areas" (as defined by the coke oven emissions standard at 29 CFR 1910.1029(d)) located at the following coke plant facilities of United States Steel:

Clairton Works, 400 State Street, Clairton, Pa. 15025.

Fairless Works, Fairless Hills, Pa. 19030.

Lorain Works, 1807 East 28th Street, Lorain, Ohio 44055.

Fairfield Works, P.O. Box 599, Fairfield, Ala. 30564.

Gary Works, 100 North Broadway, Gary, Ind. 46401.

Duluth Works, Morgan Park, Duluth, Minn. 55808.

Geneva Works, Geneva, Utah 84601.

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representative, and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that it is providing a place of employment as safe as that required by § 1910.1029(g) (2) (ii) which states that, "Not later than January 20, 1978, whenever respirators are required by this section for concentrations not greater than 1,500$\mu g/M^3$, the employer shall provide, at the option of each affected employee, either a particulate filter respirator as provided in paragraph (g)(2)(i)(b) of this section, or a powered air purifying respirator as provided in paragraph (g)(2)(i)(a) of this section."

The applicant states that there is no need to offer the employees a choice of respirator types as required by this paragraph. Since either a particulate filter respirator or a powered air purifying respirator is permitted by table I(b) of § 1910.1029(g)(2) for levels under 1,500$\mu g/M^3$, the applicant states that it would be providing protection to employees equal to that required by the standard by providing a particulate filter respirator, without providing the employee a choice of using a powered air purifying respirator.

The applicant further states that during a recent test employees objected to the wearing of powered air purifying respirators because of discomfort, interference with eye protection, and lack of mobility.

In addition, the applicant states that the financial cost of providing powered air purifying respirators for 3,945 employees who work in the regulated areas of these facilities is unreasonable, since the standard states (in table I) that particulate filter respirators provide adequate protection for employees at levels not greater than 1,500$\mu g/M^3$.

II. Denial of Interim Order

The applicant has also requested an interim order to be effective at the above-named worksites until a decision is rendered on the variance application. Two comment letters concerning the granting of the interim order and the variance have been received.

Section 1910.1029(g)(2) (ii) requires employers to allow employees a choice of using particulate filter respirators or powered air purifying respirators in regulated areas of coke ovens where emission concentrations do not exceed 1,500$\mu g/M^3$.

The applicant has not presented a method of replacing the subjective personal decision necessary to determine whether an individual employee can wear a particular type of respirator. As explained in the preamble to the standard (41 FR 46774), this is an important factor in the determination of whether a particular type of respirator provides adequate protection for the employee.

Therefore, it does not appear from the facts presented that the applicant will be providing a place of employment as safe as if powered air purifying respirators were provided for employees who requested them.

For these reasons, pursuant to the authority in 29 CFR 1905.11(c) and in Secretary of Labor's order No. 8-76 (41 FR 25059), the application for an interim order is denied.

Signed at Washington, D.C., this 26th day of July 1978.

Eula Bingham,
Assistant Secretary of Labor.

[Fr Doc. 78-21095 Filed 7-31-78; 8:45 am]

[4510-28]

Office of the Secretary

[TA-W-3123]

PACIFIC UNION METAL DIVISION, THE UNION METAL MANUFACTURING CO., FREMONT, CALIF.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3123: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 13, 1978, in response to a worker petition received on January 19, 1978, which was filed on behalf of all workers producing light poles and attachments at the Fremont, Calif., plant of the Pacific Union Metal Division of the Union Metal Manufacturing Co. The investigation revealed that steel street light poles, flood light

poles and traffic signal poles were produced at the Fremont plant.

The Notice of Investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8207). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Pacific Union Metal Division of the Union Metal Manufacturing Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Office of Trade Adjustment Assistance conducted a survey of some of the customers of the Fremont, Calif., plant of the Pacific Union Metal Division of the Union Metal Manufacturing Co. None of the customers that responded purchased imported street light poles, flood light poles or traffic signal poles in 1976. During the first half of 1977 before plant closing, most customers again did no importing. The one customer who decreased purchases from the company and increased imports, represented only a small percentage of sales.

CONCLUSION

After careful review I determine that all workers of the Fremont, Calif., plant of the Pacific Union Metal Division of the Union Metal Manufacturing Co. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 24th day of July 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-21096 Filed 7-31-78; 8:45 am]

[4510-23]

Office of the Secretary

NATIONAL ADVISORY COMMITTEE FOR WOMEN

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of the first official meeting of the National Advisory Committee for Women.

Date and time: August 16 and 17, 1978, 10 a.m. to 5 p.m. each day.

Place: First floor, Auditorium, Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

The purpose of the meeting is to initiate plans for the National Advisory Committee for Women which was established by Executive Order 12050 to promote equality for women in the cultural, social, economic, and political life of this Nation.

The agenda will include a discussion of the final printed copy of the Spirit of Houston and its implementation, organization of NACW task forces, consideration of the President's report, and related matters to all of the above.

Dated: July 27, 1978.

CARMEN DELGADO VOTAW,
Co-Chair of National Advisory Committee for Women.

[FR Doc. 78-21327 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-3445]

ALPHA HANDBAG CORPORATION, NEW YORK, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3445: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on March 30, 1978 in response to a worker petition received on March 20, 1978 which was filed on behalf of workers formerly producing ladies' handbags at Alpha Corp., New York, N.Y.

The Notice of Investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17551). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Alpha Handbag Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that the closure of Alpha Handbag Corporation involved a domestic transfer of production from New York City to Hialeah, Fla.

CONCLUSION

After careful review of the fact obtained in the investigation, I determine that workers of Alpha Handbag Corporation, New York, New York are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 29th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21273 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-3269]

ARMCO STEEL CORP., BUTLER, PA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3269: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 1, 1978, in response to a worker petition received on February 21, 1978, which was filed by the Butler Armco Independent Employees Union on behalf of workers and former workers producing hot and cold rolled stainless sheet and strip, flat rolled electrical steels, grained oriented electrical sheet, and cold rolled nonoriented sheet at the Butler, Pa., plant of Armco Steel Corp. The investigation revealed that steels produced at the Butler plant can be placed into three groups: Stainless steel sheet and strip, silicon steel sheet and strip, and carbon steel ingots and blooms.

The Notice of Investigation was published in the FEDERAL REGISTER on

March 14, 1978 (43 FR 10649). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials from Armco Steel Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. Witout regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production or both of such firm or subdivision have decreased absolutely.

Total sales and production at the Butler, Pa., plant increased 8 percent in value in 1977 compared to 1976 and 6 percent in value in the first 2 months of 1978 compared to the corresponding months of 1977. Total production at the Butler, Pa., plant increased 2 percent in 1977 compared to 1976 and increased 17 percent in the first 2 months of 1978 compared to the corresponding months of 1977. Sales and production increased in value in the first, second, and fourth quarters of 1977 compared to the corresponding quarters of 1976. Sales and prduction value data were adjusted for price changes through the Wholesale Price Index commodity grouping for finished steel products. Quantity data were not used in this analysis because of the wide variation in unit price among the three product groups. All workers at the Butler plant were certified as a result of TA-W-534. The certification was issued on April 2, 1976, and expired on April 2, 1978.

CONCLUSION

After careful review I determine that all workers of the Butler, Pa., plant of Armco Steel Corp. are denied eligibility to apply for trade adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-21274 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-3117]

BEL AIR FASHION, INC., NEW YORK, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3117: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 13, 1978, in response to a worker petition received on January 23, 1978, which was filed on behalf of workers formerly producing men's leather coats and jackets at Bel Air Fashion, Inc., New York, N.Y.

The notice of investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8207). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Bel Air Fashion, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

Imports of leather coats and jackets increased from $154.0 million in 1975 to $237.0 million in 1976 and declined to 204.1 million dollars in 1977. The ratio of imports to domestic production increased from 59.5 percent in 1975 to 96.3 percent in 1976.

Almost all of Bel Air's production in 1975 and 1976 and over 50 percent of its production in 1977 was done under contract from a manufacturer whose sales had declined and which decreased orders from Bel Air in 1977 compared to 1976. A survey of this manufacturer's customers indicated that customers had reduced purchases of men's leather coats and jackets from the manufacturer and increased purchases of imports in 1977 compared to 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's leather coats and jackets produced at Bel Air Fashion, Inc., New York, N.Y., contributed importantly to the decline in production and to the total or partial separation of the workers of that firm. In accordance with the provisions of the act, I make the following certification:

All workers at Bel Air Fashion, Incorporated, New York, N.Y., who became totally or partially separated from employment on or after January 15, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-21275 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-2897]

BRAEMAR COAT CO., LOS ANGELES, CALIF.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2897: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 11, 1978 in response to a worker petition received on December 30, 1977, which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing ladies' coats and jackets at Braemar Coat Co., Panorama City, Calif. During the course of the investigation, it was established that in August 1975, Braemar Coat Co. closed its Panorama City plant and moved its ladies' coat operations to a plant in Los Angeles, Calif.

The date of the petition in this case is December 27, 1977. In accordance with section 223(b) of the act, no certification may apply to any worker whose last total or partial separation from the subject firm occurred before December 27, 1976, one year prior to the date of the petition. Thus, the scope of this investigation was limited to workers and former workers producing ladies' coats and jackets at Braemar Coat Co., Los Angeles, Calif.

The Notice of Investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3776). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Braemar Coat Co., its customers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment as-

sistance, each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

Imports of women's, misses' and children's coats and jackets made of textile materials increased from 2,252 thousand dozen units in 1976 to 2,723 thousand dozen units in 1977. The ratio of imports to domestic production decreased from 57.5 percent in 1976 to 54.9 percent in 1977.

In 1976 and until the company closed in March 1977, Braemar Coat Co. performed contract work exclusively for a women's clothing manufacturer in the Los Angeles area. From 1976 to 1977 this manufacturer reduced contract orders with Braemar Coat Co. and increased purchases of imports of finished ladies' coats and jackets.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' coats and jackets produced at Braemar Coat Co., Los Angeles, Calif. contributed importantly to the decline in sales or production and to the total or partial separations of workers at such plant. In accordance with the provisions of the act, I make the following certification:

All workers of Braemar Coat Co., Los Angeles, Calif. who became totally or partially separated from employment on or after December 27, 1976, are eligible to apply for adjustment assistance under title II, chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July 1978.

James F. Taylor,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21276 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-3096, 3491]

CROSS COUNTRY CLOTHES DIVISION, RAPID AMERICAN MENSWEAR, INC., PAINESVILLE, OHIO, GENEVA, OHIO

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3096 and 3491: Investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigations were initiated on February 9, 1978 and April 11, 1978 in response to worker petitions received on January 27, 1978, which were filed by the Amalgamated Clothing and Textile Workers' Union on behalf or workers and former workers producing men's tailored clothing at the Painesville, Ohio plant and the Geneva, Ohio plant of Cross Country Clothes.

During the course of the investigation it was established that the company produces men's suits and sportcoats. It was also established that Cross Country Clothes is a division of Rapid American Menswear, Inc.

Notices of investigation were published in the Federal Register on February 24, 1978 (43 FR 7743) and May 2, 1978 (43 FR 18790). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the Cross Country Clothes Division of Rapid American Menswear, Inc., its customers, the U.S. Department of Commerce, the National Cotton Council, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' dress coats and sportcoats increased in 1976 compared to 1975 and decreased in 1977 compared to 1976. The 1977 level of imports was substantially higher than the 1975 level.

U.S. imports of men's and boys' suits increased in 1977 compared to 1976.

Evidence developed during the course of the Department's investigation revealed that customers accounting for a significant proportion of the Cross Country Clothes Division's 1976 and 1977 sales decreased purchases of men's suits and sportcoats from the Cross Country Clothes Division and increased purchases of imported men's suits and sportscoats in 1977 compared to 1976.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the men's suits and sportcoats produced at the Painesville and Geneva, Ohio plants of the Cross Country Clothes Division of Rapid American Menswear, Inc. contributed importantly to the decline in sales and production and to the total or partial separations of the workers at those plants. In accordance with the provisions of the act, I make the following certification:

All workers of the Painesville, Ohio plant, including the Mentor, Ohio warehouse, and the Geneva, Ohio plant of the Cross Country Clothes Division of Rapid American Menswear, Inc. who became totally or partially separated from employment on or after January 4, 1977 are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of July 1978.

James F. Taylor,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21277 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-3350, 3488, 3489, 3490]

CROSS COUNTRY CLOTHES DIVISION, RAPID AMERICAN MENSWEAR, INC., PHILADELPHIA; EGYPT; EASTON; AND NORTHAMPTON, PA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3350, 3488, 3489, 3490: Investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigations were initiated on March 15, 1978 and April 11, 1978 in response to worker petitions received on February 21, 1978, which were filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's tailored clothing at the Philadelphia, Pa. plant, the Egypt (Whitehall), Easton, and Northampton, Pa. plants of Cross Country Clothes.

During the course of the investigation it was established that the company produces men's suits and sportcoats. It was also established that Cross Country Clothes is a division of Rapid American Menswear, Inc.

On November 28, 1975, the Department issued a certification of eligibility to apply for adjustment assistance for all workers of the Northampton, Pa. and Egypt (Whitehall), Pa. plants of Cross Country Clothes (TA-W-184). The certification expired November 28, 1977.

On January 28, 1976, the Department issued a certification of eligibility to apply for adjustment assistance for all workers of the Philadelphia, Pa. plant of Cross Country Clothes (TA-W-229). The certification expired January 28, 1978.

Notices of investigation were published in the Federal Register on April 7, 1978 (43 FR 14774) and May 2, 1978 (43 FR 18790). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Cross Country Clothes Division of Rapid

American Menswear, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's and boy's dress coats and sportcoats increased in 1976 compared to 1975 and decreased in 1977 compared to 1976. The 1977 level of imports was substantially higher than the 1975 level.

U.S. imports of men's and boys' suits increased in 1977 compared to 1976.

Evidence developed during the course of the Department's investigation revealed that customers accounting for a significant proportion of the Cross Country Clothes Division's 1976 and 1977 sales decreased purchases of men's suits and sportcoats from the Cross Country Clothes Division and increased purchases of imported men's suits and sportcoats in 1977 compared to 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the men's suits and sportcoats produced at the Philadelphia, Egypt, Easton, and Northampton plants of the Cross Country Clothes Division of Rapid American Menswear, Inc. contributed importantly to the decline in sales and production and to the total or partial separations of the workers at those plants. In accordance with the provisions of the act, I make the following certification:

All workers of the plants, listed below, of the Cross Country Clothes Division of Rapid American Menswear, Inc. who became totally or partially separated from employment on or after the corresponding impact dates, listed below, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974:

Plant	Impact date
Philadelphia, Pa	Jan. 28, 1978.
Egypt, Pa	Nov. 28, 1977.
Easton, Pa	Mar. 19, 1977.
Northampton, Pa, including the warehouse facility and the New York sales office.	Nov. 28, 1977.

Signed at Washington, D.C. this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 78-21278 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-3694]

DELAWARE ALLOY FORGE CO., PHILADELPHIA, PA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3694: Investigation regarding certification of eligiblity to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on May 11, 1978 in response to a worker petition received on May 2, 1978 which was filed by the International Association of Machinists on behalf of all workers producing steel forgings at the Philadelphia, Pa. plant of the Delaware Alloy Forging Co.

The Notice of Investigation was published in the FEDERAL REGISTER on May 30, 1978 (43 FR 23036). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Delaware Alloy Forge Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

In 1977 imports of wide flange shapes or sections increased to more than 1.4 billion pounds up 11 percent, while imports of rough forgings increased 27 percent to more than 27 million pounds.

A survey of some of the customers of Delaware Alloy Forge that was conducted by the U.S. Department of Commerce revealed that customers accounting for a majority of the company's decline in sales in 1977 indicated that they were replacing Delaware's products with imports.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with steel forgings produced by Delaware Alloy Forge Co., Philadelphia, Pa. contributed importantly to the total or partial separation of workers at the plant. In accordance with the provisions of the act, I make the following certification:

All workers at Delaware Alloy Forge Co. who became totally or partially separated from employment on or after April 19, 1977 are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21279 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-2751]

E.S.I., INC., GARWOOD, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2751: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on December 8, 1977, in response to a worker petition received on November 29, 1977, which was filed on behalf of workers and former workers producing power supply packages and CB antennas and kits at E.S.I., Inc., Garwood, N.J.

The notice of investigation was published in the FEDERAL REGISTER on December 30, 1977 (42 FR 65307). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of E.S.I., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. It is concluded that all of the requirements have been met.

E.S.I. produced power supply packages accounting for 90 percent of production and CB antennas and kits accounting for 10 percent of production.

U. S. imports of power supplies for electronic applications increased from $6.9 million in 1975 to $9.5 million in 1976, and to $14.4 million in 1977. Imports as a percentage of production increased from 4.5 percent in 1975 to 5.9 percent in 1976 and 7.7 percent in 1977.

Customers surveyed who decreased purchases from E.S.I. in 1977 increased purchases of imported power supply packages during the same time period.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with power supply packages produced by E.S.I., Inc., Garwood, N.J., contributed importantly to the total or partial separations of workers of the firm. In accordance with provisions of the act, I make the following certification:

All workers of E.S.I., Inc., Garwood, N.J., who became totally or partially separated from employment on or after February 9, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21280 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-2700]

HARLEY-DAVIDSON MOTOR CO., INC., MILWAUKEE, WIS., YORK, PA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2700: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on December 5, 1977, in response to a worker petition received on November 22, 1977, which was filed on behalf of workers and former workers producing motorcycles at the Milwaukee, Wis., area facilities of Harley-Davidson Motor Co., Inc. The investigation was expanded to include workers producing golf cars and motorcycles at Harley-Davidson's facility in York, Pa.

The Notice of Investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63487). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Harley-Davidson Motor Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. With respect to workers producing motorcycles, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of such firm or subdivision have decreased absolutely.

On September 2, 1975, the Department issued a certification of eligibility to apply for adjustment assistance applicable to all workers engaged in employment related to the production of motorcycles at the Milwaukee area facilities of Harley-Davidson Motor Co. (TA-W-72). That certification remained in effect until September 2, 1977—2 years from its date of issuance. In the fourth quarter of 1977, the first full quarter following the expiration of the previous certification, both sales and production of motorcycles increased compared to the prior quarter and compared to the same quarter of the previous year.

With respect to workers producing golf cars, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with those produced by the firm or appropriate subdivision contributed importantly to the separations, or threat thereof, and to the decline in sales and production.

Workers at the Milwaukee and York facilities work interchangeably on both heavy weight motorcycles and golf cars. Sales and production of golf cars constitute an insignificant proportion of total sales and production of domestically manufactured goods by Harley-Davidson.

CONCLUSION

After careful review, I determine that workers of the Milwaukee, Wis., and York, Pa., plants of Harley-Davidson Motor Co., Inc., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21281 Filed 7-31-78; 8:45 am]

[4510-28]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under title II, chapter 2, of the act in accordance with the provisions of subpart B of 29 CFR part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 11, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 11, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 25th day of July 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
AMA Fishing Corp.—Boat Curlew (workers).	Gloucester, Mass	July 18, 1978	July 15, 1978	TA-W-3,986	Catching and selling of fish.
Bobbie Brooks, Inc., Colebrook Mills Division (workers).	Hialiah, Fla	July 17, 1978	July 10, 1978	TA-W-3,987	Knitted fabrics and sweaters.
Do	do			TA-W-3,988	Knitted fabrics.
Central Coloso (workers)	Aguadilla, P.R		July 3, 1978	TA-W-3,989	Raw sugar.
Coblentz Bags Co., Inc. (Leather Goods, Plastics, Handbags and Novelty Workers' Union).	New York, N.Y		July 11, 1978	TA-W-3,990	Ladies' leather and vinyl handbags.
Ferag, Inc. (company)	Bristol, Pa	July 18, 1978	July 17, 1978	TA-W-3,991	Conveyors and mailroom equipment (machinery).
The Firestone Tire and Rubber Co., Akron plant II (URW).	Akron, Ohio			TA-W-3,992	Bias passenger car tires.
Rockwell International, Rockwell-Draper Division (company).	Tupper Lake, N.Y			TA-W-3,993	Cobbin blanks, Loom skids, boxing material and semifinished loom parts.
Thomas Menswear Corp. (company).	New York, N.Y		June 30, 1978	TA-W-3,994	Operates as a sales agent for manufacturers of men's and boys' knit shirts.
Youthful Foundations, Inc. (ILGWU).	New York, N.Y	July 10, 1978	June 29, 1978	TA-W-3,995	Brassieres parts.

[FR Doc. 78-21272 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-2539]

JOHN POMER DIVISION OF LESLIE FAY, INC., WILKES-BARRE, PA. AND NEW YORK, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents in the results of TA-W-2539: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on October 31, 1977, in response to a worker petition received on October 26, 1977, which was filed on behalf of workers and former workers producing men's apparel at the John Pomer Division of Leslie Fay, Inc., Wilkes-Barre, Pa. The investigation revealed that the articles produces were primarily men's suits along with men's sportcoats, shirts, pants, and vests. The investigation was expanded to include John Pomer Division Headquarters and Sales Office in New York City.

The notice of investigation was published in the FEDERAL REGISTER on November 15, 1977 (42 FR 59131). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of John Pomer Division, its parent firm, Leslie Fay, John Pomer's customers, the National Cotton Council, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibilityh requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' tailored suits increased absolutely in each successive year from 1972 to 1977. Imports increased from 3,106 thousand units in 1975 to 3,562 thousand units in 1976 and further increased to 4,091 thousand units in 1977.

U.S. imports of men's and boys' tailored dress coats and sportcoats increased in 1976 to 6,965 thousand units compared to 5,465 thousand units in 1975.

U.S. imports of men's and boys' woven dress and business shirts increased to 64,283 thousand units in 1976 compared to 30,800 thousand units in 1975, and further increased to 64,446 thousand units in 1977.

U.S. imports of men's and boys' knit sport and dress shirts increased to 74.0 million units in 1976 compared to 66.2 million units in 1975, and increased to 75.2 million units in 1977.

U.S. imports of men's and boys' dress and sport trousers and shorts increased to 73,209 thousand units in 1976 compared to 55,508 thousand units in 1975, and further increased to 76,419 thousand units in 1977.

A substantial proportion of John Pomer customers surveyed by the Department indicated that they increased purchases of imported men's suits, sportcoats, shirts, pants, and vests while decreasing purchases of the same garments from John Pomer in 1976 and 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's suits, sportcoats, shirts, pants, and vests produced by the John Pomer Division, of Leslie Fay, Inc., Wilkes-Barre, Pa. contributed importantly to the decline in sales and production and to the separations of workers of that Division. In accordance with the provisions of the act, I make the following certification:

All workers of the John Pomer Division of Leslie Fay, Inc., Wilkes-Barre, Pa., and of the John Pomer Division office and sales office in New York City who became totally or partially separated from employment on or after October 24, 1976, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21282 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-2879]

JONES AND LAUGHLIN STEEL SERVICE CENTER, CHICAGO, ILL.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-2879: Investigation regarding certification of eligibility to apply for worker adjustment assistance prescribed in section 222 of the act.

The investigation was initiated on January 9, 1978, in response to a worker petition received on December 19, 1977, which were filed by the United Steelworkers of America on behalf of workers engaged in minor processing and handling of orders less than mill orders at the Chicago, Ill.,

Steel Service Center of Jones and Laughlin Steel Corp.

The Notice of Investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3778). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jones and Laughlin Steel Corp. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Evidence developed during the course of the investigation revealed that shipments by the Chicago, Ill., Steel Service Centers increased from 1976 to 1977. Shipments increased in every quarter of 1977 compared to shipments during the corresponding quarters of 1976. The Chicago, Ill., service center was strictly a distribution facility and did not contain any production operations.

CONCLUSION

After careful review, I determine that workers of the Chicago, Ill., Steel Service Center of Jones and Laughlin Steel Corp. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21283 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-2880]

JONES AND LAUGHLIN STEEL SERVICE CENTER, GLENSHAW, PA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2880: Investigation regarding certification of eligibility to apply for worker adjustment assistance prescribed in section 222 of the act.

The investigation was initiated on January 9, 1978, in response to a worker petition received on December 19, 1977, which was filed by the United Steelworkers of America on behalf of workers engaged in minor processing and handling of orders less than mill orders at the Glenshaw, Pa., Steel Service Center of Jones and Laughlin Steel Corp.

The Notice of Investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3778). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jones and Laughlin Steel Corp. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Evidence developed during the course of the investigation revealed that shipments by the Glenshaw, Pa., Steel Service Center increased from 1976 to 1977. Shipments increased in every quarter of 1977 compared to shipments during the corresponding quarters of 1976. The Glenshaw, Pa. service center was strictly a distribution facility and did not contain any production operations.

CONCLUSION

After careful review, I determine that workers of the Glenshaw, Pa., Steel Service Center of Jones and Laughlin Steel Corp. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21284 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-2882]

JONES AND LAUGHLIN STEEL SERVICE CENTER LANCASTER, PA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2882: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 9, 1978, in response to a worker petition received on December 19, 1977, which was filed by the United Steelworkers of America on behalf of workers engaged in minor processing and handling of orders less than mill orders at the Lancaster, Pa., Steel Service Center of Jones and Laughlin Steel Corp.

The Notice of Investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3778). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jones and Laughlin Steel Corp. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that shipments and employment at the Lancaster Steel Service Center increased in 1977 from 1976 and continued to increase until the closing of the facility during March 1978.

The Lancaster Steel Service Center was 1 of 10 service centers operated by Jones and Laughlin Steel Corp. All but one of the service centers were sold by Jones and Laughlin on March 1, 1978. The Lancaster facility was the only service center which was not sold. The Lancaster Steel Service Center was the smallest service center operated by Jones and Laughlin and its purchase did not appear to be profitable to the buyer. All of the other steel service centers continue to operate as they had while they were under the ownership of Jones and Laughlin Steel Corp.

CONCLUSION

After careful review, I determine that workers of the Lancaster, Pa., Steel Service Center of Jones and Laughlin Steel Corp. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21285 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-2621]

KAY WINDSOR, INC., NEW BEDFORD, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2621: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on November 17, 1977, in response to a worker petition received on November 7, 1977, which was filed on behalf of workers and former workers producing ladies' sportswear and dresses at Kay Windsor, Inc., North Dartmouth, Mass.

During the course of the investigation, it was determined that the petition was filed on behalf of workers and former workers producing women's and misses' dresses at the New Bedford, Mass., plant of Kay Windsor, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on December 13, 1977 (42 FR 62557). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Kay Windsor, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The impact of imports in the domestic market for women's and misses' dresses has been small and did not change appreciably from 1975 to 1976 or from 1976 to 1977. From 1975 to 1976 the ratio of imports to domestic production remained constant at 4.5 percent while imports increased by only 2.2 percent in absolute terms. Imports fell by 11 percent in 1977 compared to 1976.

A departmental survey of Kay Windsor's customers reflected the relatively minor influence of imports of women's dresses in the market served by Kay Windsor, Inc. Customers of the New Bedford plant were not separately identifiable from customers of Kay Windsor. A survey of a random sample of the larger customers of Kay Windsor revealed that customers who increased purchases of imported dresses, while decreasing purchases from the subject firm represented only a small percentage of the subject firm's sales in 1976 and 1977.

CONCLUSION

After careful review, I determine that all workers of the New Bedford, Mass., plant of Kay Windsor, Inc., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21287 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-2883]

JONES AND LAUGHLIN STEEL SERVICE CENTER, MEMPHIS, TENN.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2883: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 9, 1978 in response to a worker petition received on December 19, 1977 which were filed by the United Steelworkers of America on behalf of workers engaged in minor processing and handling of orders less than mill orders at the Memphis, Tenn., Steel Service Center of Jones and Laughlin Steel Corp.

The Notice of Investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3778). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jones and Laughlin Steel Corp. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Evidence developed during the course of the investigation revealed that shipments by the Memphis Steel Service Center increased from 1976 to 1977. Shipments increased in every quarter of 1977 compared to shipments during the corresponding quarters of 1976. The Memphis, Tenn. service center was strictly a distribution facility and did not contain any production operations.

CONCLUSION

After careful review, I determine that workers of the Memphis, Tenn., Steel Service Center of Jones and Laughlin Steel Corp. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21286 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-2977]

LOSITO MUSHROOM CORP., ALL FRESH MUSHROOM CORP., ALL FRESH COMPOST, INC., TOUGHKENAMON, PA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2977: Investigation regarding certification eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 30, 1978, in response to a worker petition received on January 12, 1978, which was filed on behalf of workers and former workers growing and canning mushrooms for Losito Mushroom Corp., Toughkenamon, Pa. The investigation was expanded to include All Fresh Mushroom Corp. and All Fresh Compost, Inc., both of Toughkenamon, Pa.

The Notice of Investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7069). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Losito Mushroom Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

U.S. imports of canned mushrooms increased from 50,179 thousand pounds in 1975 to 57,351 thousand pounds in 1976 and to 69,434 thousand pounds in 1977.

On May 11, 1976, the Losito Mushroom Corp., All Fresh Mushroom Corp., All Fresh Compost, Inc., Atlantic Mushroom Corp., General Rental Service Corp., and Vincent Losito & Sons were certified as eligible to apply to the U.S. Commerce Department's Economic Development Administration for financial assistance under the Trade Act of 1974.

All of the aforementioned companies are affiliates of one another with common ownership. All of the companies support the production and sales of fresh and canned mushrooms. Declines in sales by Losito Mushroom Corp. adversely affected the sales of its affiliated companies.

The major customer of Losito Mushroom Corp. in 1977 ceased purchases of canned mushrooms from Losito Mushroom in 1978 and began purchasing imports of canned mushrooms.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with mushrooms grown and canned by the Losito Mushroom Corp., All Fresh Mushroom Corp., and All Fresh Compost, Inc., Toughkenamon, Pa., contributed importantly to the decline in production and to the total or partial separation of the workers at those firms. In accordance with the provisions of the act, I make the following certification:

All workers of Losito Mushroom Corp., All Fresh Mushroom Corp., and All Fresh Compost, Inc., Toughkenamon, Pa., who became totally or partially separated from employment on or after January 10, 1977, are eligible to apply for adjustment assistance under title II, chapter 2, of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July, 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21288 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-3354]

LOUISIANA-PACIFIC CO., OROVILLE, CALIF.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance.

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3354: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on March 15, 1978 in response to a worker petition received February 27, 1978 which was filed by the Brotherhood of Carpenters Union on behalf of all workers producing hardboard at the Oroville, Calif., plant of Louisiana-Pacific Co.

The notice of investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Louisiana-Pacific Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

U.S. Imports of hardboard increased slightly from .511 billion square feet in 1976 to .632 billion square feet in 1977. The ratio of imports to domestic production increased from 6.6 percent in 1976 to 8.2 percent in 1977.

A survey of some of the customers that purchased hardboard from the Oroville plant of Louisiana-Pacific in 1976, 1977 and the first quarter of 1978 was conducted by the Department. Most customers that responded indicated that they increased purchases from Louisiana-Pacific. Those customers that decreased purchases did no importing at all.

CONCLUSION

After careful review I determine that all workers of the Oroville, Calif., plant of Louisiana-Pacific Co., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21289 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-2907]

MAX ROTH LEATHER GOODS CORP., NEW YORK, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2907: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 11, 1978, in response to a worker petition received on December 27, 1977, which was filed on behalf of workers and former workers producing plastic handbags at Max Roth Leather Goods Corp., New York, N.Y.

The notice of investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3776). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Max Roth Leather Goods Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. The investigation revealed that all of the requirements have been met.

U.S. imports of handbags increased both absolutely and relative to domestic production during 1976 compared to 1975, and increased both absolutely and relative to domestic production during 1977 compared to 1976.

Customers surveyed who decreased purchases from Max Roth Leather Goods Corp. in 1976 and 1977 increased purchases of imported handbags during the same period.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with plastic handbags produced at Max Roth Leather Goods Corp., New York, N.Y.,

contributed importantly to the total or partial separation of workers and to the decline in sales and production of that firm. In accordance with the provisions of the act, I make the following certification:

All workers of Max Roth Leather Goods Corp., New York, N.Y. who became totally or partially separated from employment on or after December 20, 1976, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21290 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-3037]

NEW JERSEY ZINC CO., EAGLE MINE, GILMAN, COLO.

Certification Regarding Eligibility To Apply Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3037: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 6, 1978 in response to a worker petition received on January 31, 1978, which was filed by the United Steel Workers of America, on behalf of workers and former workers producing zinc concentrate, nickel concentrate and crude are (iron, copper, and silver) at the Eagle Mine, Gilman, Colo., of New Jersey Zinc Co. The investigation revealed that the Eagle Mine was producing zinc concentrate and lead concentrate.

The notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7064). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from officails of the New Jersey Zinc Co., the U.S. Department of Commerce, the U.S. International Trade Commission, U.S. Department of Interior, Metal Week and Metal Bulletin, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

New Jersey Zinc Co. produced zinc concentrate from ores mined at its Eagle Mine, Gilman, Colo. The zinc concentrate was shipped for processing to New Jersey Zinc's Palmerton, Pa., smelter.

Imports of slab zinc increased in absolute terms from 1975 to 1976 and decreased from 1976 to 1977. The ratios of imports to domestic production and domestic consumption increased from 1975 to 1976 and from 1976 to 1977. The ratio of imports to domestic production have been for the last two years, above the 100 percent mark, while the ratio of imports to domestic consumption have been above the 50 percent mark for the last 2 years.

Industry sources maintain that domestic suppliers of zinc can remain competitive with foreign suppliers as long as the domestic producers' price is within 5 cents per pound of the London Metal Exchange price. Except for brief periods in the spring and summer of 1976 and in March 1977, the price differential between U.S. producers and the L.M.E. has exceeded 5 cents per pound. The average U.S. producers price for zinc was 8.2 cents per pound higher than the average L.M.E. zinc price in 1977, well above the 5 cents limit at which domestic suppliers can remain competitive.

The depressed price of zinc has resulted in cutbacks and shutdowns at many mines and concentrators producing zinc concentrate among them the Eagle Mine in Gilman, Colo.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the zinc concentrate produced at the Eagle Mine, Gilman, Colo., of New Jersey Zinc Co. contributed importantly to the decline in production and to the total or partial separation or workers at the mine. In accordance with the provisions of the act, I make the following certification:

All the workers at the Eagle Mine, Gilman, Colo., of New Jersey Zinc Co. who became totally or partially separated from employment on or after September 2, 1977 are eligible to apply for adjustment assistance under title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21291 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-2915]

UNIVERSITY CLOTHING CORP., SOMERVILLE, MASS.

Negative Determination regarding Eligiblity To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2915: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 11, 1978 in response to a worker petition received on December 22, 1977 which was filed on behalf of workers and former workers producing men's and women's raincoats at University Clothing Corporation, Somerville, Mass. (formerly of Cambridge, Mass.). The investigation revealed that workers at University Clothing Corp. produce men's raincoats only.

The Notice of Investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3776). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of University Clothing Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A selected sample of customers who purchase raincoats produced by University Clothing Corp. was surveyed. The survey results indicated that customers purchased only small quantities of raincoats from foreign sources. Customer comments demonstrated that there has been little effect from imports in the domestic tailored raincoat market.

Layoffs of production workers at University Clothing were caused by the transfer of company facilities from University Clothing's original plant in Cambridge, Mass. to a new plant in Somerville, Mass. By June, 1978 all laid-off production workers had been recalled by the company.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that workers of University Clothing Corp., Somerville, Mass., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July 1978.

JAMES F. TAYLOR
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21292 Filed 7-31-78; 8:45 am]

[4510-28]

[TA-W-3063]

UNITED STATES STEEL CORP., AMERICAN BRIDGE DIVISION, AMBRIDGE, PA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3063: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 6, 1978 in response to a worker petition received on January 16, 1978 which was filed by the United Steelworkers of America on behalf of workers producing structural shapes and steel plates at the Ambridge, Pa. plant of the American Bridge Division of the United States Steel Corp.

The Notice of Investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7064). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the United States Steel Corp. and its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. It is concluded that all of the group eligibility criteria have been met.

Imports of fabricated structural steel increased 62.0 percent from 87,700 tons in 1976 to 142,100 tons in 1977. The ratio of imports to domestic shipments increased from 2.4 percent in 1976 to 4.1 percent in 1977 and continued to increase from 3.0 percent in the first quarter of 1977 to 3.3 percent in the first quarter of 1978.

All of the plants business is obtained through competitive bids. The Department conducted a study of the bids placed by the plant in 1976 and 1977. No contracts were lost to foreign fabricators in 1976 but business lost to foreign fabricators began in August 1977. Beginning in August 1977, a significant percentage of the work bid upon by the Ambridge plant, for which the plant was the lowest domestic bidder was awarded to foreign fabricators.

CONCLUSION

It is therefore concluded that increased imports of articles like or directly competitive with the fabricated structural steel produced by the Ambridge, Pa. plant of the American Bridge Division of the United States Steel Corp. have contributed importantly to the total or partial separation of workers and to the decline in sales and production at the plant as required for certification under section 222 of the Trade Act of 1974. In accordance with the provisions of the Act, I make the following certification:

All workers of the Ambridge, Pennsylvania plant of the American Bridge Division of the United States Steel Corp. who became totally or partially separated from employment on or after July 31, 1977 are eligible to apply for adjustment assistance benefits under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of July 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-21293 Filed 7-31-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-213]

CONNECTICUT YANKEE ATOMIC POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued amendment No. 27 to facility operating license No. DPR-61 issued to Connecticut Yankee Atomic Power Co. which revised technical specifications for operation of the Haddam Neck Plant located in Middlesex County, Conn. The amendment is effective as of the date of issuance.

The amendment revises appendix A technical specifications by incorporating new requirements on the operability of water level alarms in the primary auxiliary building and screenwell building. Water level alarms in these buildings alert operators to the potential for flooding of safety-related equipment and thereby provide time for the operator to take corrective action.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated February 15, 1977, and March 21, 1978, and supplement thereto dated February 28, 1978, (2) amendment No. 27 to license No. DPR-61, including the Commission's letter of transmittal, and (3) the Commission's related safety evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Russell Library, 119 Broad Street, Middletown, Conn. 16457. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 20th day of July, 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch 2, Division of Operating Reactors.

[FR Doc. 78-21138 Filed 7-31-78; 8:45 am]

[7590-01]

[Docket No. 50-247]

CONSOLIDATED EDISON CO. OF NEW YORK, INC., INDIAN POINT NUCLEAR GENERATING STATION, UNIT NO. 2

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 41 to Facility Operating License No. DPR-26, issued to Consolidated Edison Co. of New York, Inc., which revised the license for op-

erating of the Indian Point Nuclear Generating Station, Unit No. 2 located in Westchester County, N.Y. The amendment is effective as of its date of issuance.

The amendment revises the provisions in the license to conform to an Order of the Atomic Safety and Licensing Board dated June 14, 1978. The license now states that all governmental approvals required to proceed with construction of the closed cycle cooling system have been received.

The Commission has determined that since the issuance of this amendment merely reflects the legal status of governmental approvals, it does not require an analysis of environmental impacts. Pursuant to 10 CFR 51.5(d)(4), an environmental impact statement, negative declaration or environmental impact appraisal need not, therefore, be prepared in connection with issuance of this amendment.

For further details with respect of this action, see (1) the Atomic Safety and Licensing Board Order dated June 14, 1978, and (2) Amendment No. 41 to License No. DPR-26. Both of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555 and at the White Plains Public Library, 100 Martine Avenue, White Plains, N.Y. 10601.

A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 25th day of July 1978.

For The Nuclear Regulatory Commission.

RONALD L. BALLARD,
Chief, Environmental Projects Branch 1, Division of Site Safety and Environmental Analysis.

[FR Doc. 78-21139 Filed 7-31-78; 8:45 am]

[7590-01]

[Docket No. 50-312]

SACRAMENTO MUNICIPAL UTILITY DISTRICT

Order for Modification of License

I.—The Sacramento Municipal Utility District (the licensee), is the holder of Facility Operating License No. DPR-54 which authorizes the operation of the nuclear power reactor known as Rancho Seco Nuclear Generating Station (the facility) at steady state reactor power levels not in excess of 2,772 megawatts thermal (rated power). The facility consists of a Babcock and Wilcox Co. (B&W) designed pressurized water reactor (PWR) located at the licensee's site in Sacramento County, Calif.

II.—In accordance with the requirements of the Commission's Emergency Core Cooling System (ECCS) Acceptance Criteria, 10 CFR 50.46, the licensee submitted on July 8, 1975, an ECCS evaluation for the facility. The ECCS performance submitted by the licensee was based upon an ECCS Evaluation Model developed by B&W, the designer of the Nuclear Steam Supply System for this facility. The B&W ECCS Evaluation Model has been previously found to conform to the requirements of the Commission's ECCS Acceptance Criteria, 10 CFR 50.46 and appendix K. The evaluation indicated that with the limits set forth in the facility's Technical Specifications, the ECCS cooling performance for the facility would conform with the criteria contained in 10 CFR 50.46(b) which govern calculated peak clad temperature, maximum cladding oxidation, maximum hydrogen generation, coolable geometry and long-term cooling.

On April 12, 1978, B&W informed the Commission that it had determined that in the event of a small break Loss of Coolant Accident (LOCA) on the discharge side of a reactor coolant pump, high pressure injection (HPI) flow to the core could be reduced somewhat. Subsequent calculations indicated that in such a case the calculated peak clad temperature might exceed 2200° F.

Previous small break analyses for B&W 177 fuel assembly (FA) lowered loop plants had identified the limiting small break to be in the suction line of the reactor coolant pump. Recent analyses have shown that the discharge line break is more limiting than the suction line break.

The Rancho Seco Nuclear Generating Station has a ECCS configuration which consists of two HPI trains. Each train has a HPI pump and the train injects into two of the four reactor coolant system (RCS) cold legs on the discharge side of the RCS pump. (There is also a third HPI pump installed.) The two parallel HPI trains are connected but are kept isolated by manual valves (known as the crossover valves) that are normally closed. Upon receiving a safety injection signal the HPI pumps are started and valves in the four injection lines are opened. Assuming loss of offsite power and the worst single failure (failure of diesel to start) only one HPI pump would be available and two of the four injection valves would fail to open.

If a small break is postulated to occur in the RCS piping between the RCS pump discharge and the reactor vessel, the high pressure injection flow injected into this line (about half of the output of one high pressure pump) could flow out the break. Therefore, for the worst combination of break location and single failure, only one-half of the flow rate of a single high pressure ECCS pump would contribute to maintaining the coolant inventory in the reactor vessel. This situation had not been previously analyzed and B&W had indicated that the limits specified in 10 CFR 50.46 may be exceeded.

Following discovery of this problem, B&W stated that they had analyzed a spectrum of small breaks in the pump discharge line and had determined that to meet the limits of 10 CFR 50.46, operator action was required to open the two manually operated crossover valves and to manually aline the two motor driven isolation valves which had failed to open. This would allow the flow from the one HPI pump to feed all four reactor coolant legs. B&W assumed that 30 percent of the flow would be lost through the break and 70 percent would refill the core. By letters dated April 14 and 21, 1978, supplemented by discussions with the staff, the licensee committed to provide for the necessary operator actions within the required time frame. That is, in the event of a small break and a limiting single failure, manual action would be taken to begin opening these valves within 5 minutes and have them fully opened and an adequate flow split obtained within an additional 10 minutes. To facilitate this operation, the licensee committed to maintain one of the series-connected, manually operated crossover valves normally open. The analyses performed by B&W assumed that the flow split was established at 650 seconds by operator action. We therefore concluded that the modeling of operator action used in the analyses was a reasonable approximation of the operator action that actually will be taken, provided specific procedures were prepared and followed to assure such action.

Based on the B&W analyses available at that time, unrelated plant conditions which limited the attainable power level, and the licensee's commitment to provide operator action consistent with that assumed in the analyses, we issued an Order for Modification of License dated April 26, 1978, which amended the facility license to: (1) Limit the maximum reactor power level to 2,080 Mwt, (2) require operation in accordance with the procedures committed to by the licensee, and (3) require submission of further analyses as soon as possible.

By letter dated July 18, 1978, B&W submitted a summary of further analyses of this event. This summary (the 2,772 Summary) described the methods used and the results obtained for small breaks in the pump discharge piping for a reactor power of 2772 Mwt, which is the rated power level of Rancho Seco. The results provided in this 2772 Summary were obtained by

incorporating two modifications in the B&W ECCS evaluation model. These modifications, which involve use of a two node inner vessel simulation and phase distributional multipliers for bubble rise in all control volumes within the reactor vessel, were described in a B&W letter to the staff, dated May 26, 1978, and have been reviewed and approved by the staff.

By letter dated July 18, 1978, the licensee stated that he had reviewed the B&W submittal of July 18, 1978, and had found the conclusions acceptable and applicable to Rancho Seco. Based on this review, the licensee requested authorization to operate Rancho Seco at 100 percent full power (2,772 Mwt). In a submittal dated July 7, 1978, the licensee also confirmed that procedures for operator action consistent with the assumptions of the B&W analyses had been implemented, that drills had been conducted which verified that the required operations could be completed in less time than assumed in the B&W analyses and that all five operating shifts had been trained in the procedures. Representatives of the Commission's regional office state that they have verified the licensee's implementation of the procedures and have inspected the licensee's training records to verify that training in the procedures was conducted. Based on the above, we conclude that the procedures implemented by the licensee relative to operator action in the event of a small break are acceptable. In addition, in his letter dated April 21, 1978, the licensee committed to submit by July 21, 1978, a proposal for any long-term modification (to eliminate the need for prompt operator action) considered appropriate.

Regarding the licensee's request for authorization to operate the facility at full power (2,772 Mwt), we have reviewed the B&W submittal of July 18, 1978. This submittal presents the results of analyses performed for reactor coolant pump discharge line break sizes of 0.15, 0.10, 0.085, 0.07, 0.055, and 0.04 ft^2 at a reactor power level of 2,772 Mwt. Based on these results, B&W states that with operator action consistent with that modeled in the analysis, a 0.07 ft^2 discharge line break is the most limiting case. In this case, core uncovery occurs for about 410 seconds and the conservatively calculated peak clad temperature is approximately 1,092° F. This temperature is well below the limit specified in 10 CFR 50.46(b).

Based on our review of these analyses, we find that the calculations support the conclusion that a 0.07 ft^2 discharge line break is the most limiting case. The analyses which have been submitted used a simplified input to the FOAM code for the distribution of steam sources which the licensee describes as conservative. However, these analyses did not provide adequate justification that this approach was clearly conservative. Therefore, we require that the licensee provide a sensitivity analysis of the most limiting break (0.07 ft^2 split on the pump discharge) using the more exact steam source distribution as input to the FOAM code (normally used to predict the mixture height whenever core uncovery is predicted) to demonstrate that the assumptions used in the submitted analysis are conservative. Accordingly, we cannot conclude at this time that operation of Rancho Seco at 2772 Mwt would be fully in conformance with 10 CFR 50.46. On the other hand, for operation of this facility at power levels up to 2772 Mwt, ECCS performance calculations for the limiting small break indicate that this break has a very substantial margin on peak clad temperature below the limits of 10 CFR 50.46(b) if operator action consistent with that assumed in the analysis is properly taken. However, the additional analysis is needed to fully confirm that the submitted calculations are suitably conservative and the submission of such analysis is being made a condition of this Order. Accordingly, because of the very substantial margin on peak clad temperature below the limits of 10 CFR 50.46(b), the NRC staff believes that operation of Rancho Seco at power levels of up to 2772 Mwt in accordance with appropriate operating procedures identified herein will not endanger life or property or the common defense and security, and the conditions which were imposed by the Order of April 26, 1978, may be modified accordingly. The conditions modified by this Order have been discussed with an agreed to by the licensee.

III.—Copies of the following documents are available for inspection at the Commission's Public Document Room at 1717 H Street, Washington, D.C. 20555, and are being placed in the Commission's local public document room at the Sacramento City-County Library, Sacramento, Calif.

(1) Letters from J. J. Mattimoe to R. W. Reid, Chief, Operating Reactors Branch 4, dated April 17 and 21, 1978.

(2) Order for Modification of License, Docket No. 50-312, dated April 26, 1978.

(3) Letters from J. H. Taylor to S. A. Varga, Chief, Light Water Reactors Branch 4, dated May 26, and July 18, 1978.

(4) Letters from J. J. Mattimoe to R. W. Reid, Chief, Operating Reactors Branch 4, dated July 7 and 18, 1978.

IV.—Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, our Order for Modification of License dated April 26, 1978, is superseded effective this date and *it is ordered*, That Facility Operation License No. DPR-54 is hereby amended by adding the following new provisions:

(1) As soon as possible, the licensee shall submit a reevaluation of ECCS cooling performance calculated in accordance with the B&W Evaluation Model for operation with operating procedures described in its letters of April 14, 1978 and April 21, 1978, which is wholly in conformance with 10 CFR 50.46 except for the credit for operator action within 10 minutes after initiation of the event,

(2) The steady state reactor core power level shall not exceed 2772 Mwt,

(3) Until further authorization by the Commission, the licensee shall operate in accordance with the procedures described in its letter of April 14, 1978, supplemented by letters dated April 21, and July 7, 1978, except that the maximum time for completion of operator action shall be 10 minutes after initiation of the event, and

(4) As soon as possible, the licensee shall submit a description and safety evaluation of a proposed plant modification which will eliminate reliance on prompt operator action described herein.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Md., this 21st day of July 1978.

VICTOR STELLO, Jr.,
Director, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

[FR Doc. 78-21140 Filed 7-31-78; 8:45 am]

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the office of Management and Budget on July 26, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from

the clearance office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration:
Application for Federal Assistance: Internship Program, SF-424 W/LEAA 4000/10, annually, 50 Leep Program participants, Laverne Collins, 395-3214.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration:
Cosmetic Product Experience Reports, FD-2704 and 2706, Other (See SF-83), Cosmetic Product Manufacturers and Distributors, 1,000 responses, 7,260 Hours, Richard Eisinger, 395-3214.
Social Security Administration:
Retirement History Survey—Fifth Resurvey, SSA-9508, Single-Time, National Sample of retirees and older workers, 8,100 responses, 6,033 hours, Off. of Federal Statistical Policy and Standard, 673-7956.
Application for parent's insurance benefits, SSA-7 F6, on occasion, parent's who were dep. upon W/E for at least ½ Supp., 4,000 responses, 667 hours, Caywood, D. P. 395-3443.
Application for widow's or widower's insurance benefits, SSA-10-F8, on occasion, wage earner's widow/widower, 450,000 responses, 75,000 hours, Caywood, D. P., 395-3443.
Application for surviving child's insurance benefits, SSA-6 F6, on occasion, children of a deceased worker, 400,000 responses, 66,666 hours, Caywood, D. P., 395-3443.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service:
Application claim and agreement—Non-food Assistance, FNS-65, on occasion, public and private schools family and group day care homes, 2,500 responses, 5,750 hours, Ellett, C. A., 395-6132.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Policy Development and Research:
Survey of Market Absorption, H-31, monthly, apartment building owners or managers, 14,400 responses, 2,400 hours, Off. of Federal Statistical Policy and Standard, 673-7956.

DEPARTMENT OF JUSTICE,

Law Enforcement Assistance Administration:
Internship evaluation form, LEAA5500/6, annually, internship program participants, 500 responses, 125 hours, Economics and General Government Division, 395-3451.

DEPARTMENT OF LABOR

Labor Management And Service Administration:
Labor organization officer and employee report, IM-30, on occasion, union officers, 200 responses, 50 hours, Strasser, A., 395-6132.
Employment And Training Administration:
Request for college advisory opinion, MA 6077, on occasion, job corps counselors, 1,500 responses, 750 hours, Strasser, A., 395-6132.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-21395 Filed 7-31-78; 8:45 am]

[7905-01]

RAILROAD RETIREMENT BOARD

ACTUARIAL ADVISORY COMMITTEE WITH RESPECT TO THE RAILROAD RETIREMENT ACCOUNTS

Public Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that the Actuarial Advisory Committee will hold a meeting on September 21, 1978, at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Ill., on the conduct of the 14th Actuarial Valuation of the Railroad Retirement account. The agenda for this meeting will include the results of the recently completed mortality, remarriage and family composition studies for the 14th Valuation, together with the recommendations of the Chief Actuary as to the mortality, remarriage and family composition assumptions to be used for the 14th Valuation.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Ill. 60611.

Dated: July 25, 1978.

R. F. BUTLER,
Secretary of the Board.

[FR Doc. 78-21255 Filed 7-31-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 14996; SR-Amex-78-15]

AMERICAN STOCK EXCHANGE, INC.

Filing of Proposed Rule Change and Order Approving Proposed Rule-Change

JULY 26, 1978.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act"), notice is hereby given that on July 13, 1978, the American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, N.Y. 10006, filed with the Commission copies of a proposed amendment to Amex Rule 950.[1] The proposed rule change would implement a trial program to provide for the continuous display on the Amex floor of the highest bid and lowest offer on a specialist's limit order book and an indication of the number of option contracts represented by each such bid and offer.[2] The specialist would continue to be the sole member on the Amex floor with knowledge of limit orders in his book at prices other than the best bid or offer. This trial program would be limited to ten option classes, with both solely and dually traded options (some of which trade both puts and calls) eligible for inclusion. Further, the duration of the trial program would not exceed a period of 6 months from the date of commencement of the program.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change within 21 days from the date of this publication. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-Amex-78-15.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those

[1] The text of the proposed rule is as follows: 950.T-1 The provisions of Rule 174 and Commentary thereto, as modified by the provisions of Rule 950(a) shall apply to the trading of option contracts, and the following additional Commentary shall also apply:

Commentary: The limit orders in the custody of a specialist shall constitute his book. So far as practicable, a specialist shall continuously display, in a visible manner, the highest bid and lowest offer, along with an indication of the number of option contracts bid for at the highest bid and offered at the lowest offer in his book in each option series for which he is acting as specialist, provided, however, that where the highest bid and lowest offer is for more than twenty-five option contracts, or such other number of option contracts as may be prescribed from time to time by a Floor Official, the specialist shall display an indication that the bid or offer is for at least that number of option contracts and, whenever practicable, shall display a reasonable indication of the full size of such bid or offer. When required by market conditions, he may make such quotations available orally rather than by displaying them.

[2] The proposed rule provides that, if the size of a bid or offer is greater than 25 contracts and if it is impracticable to indicate the full size of such bid or offer, the indication would be "25+".

which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C.

The Commission finds that the proposed rule change is consistent with the requirements of the act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of sections 6 and 11(b) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 13th day after the date of publication of notice of filing thereof. The disclosure of the best bid and offer, with size, on the specialists' order book may provide registered options traders on the Amex floor with greater information concerning market trends and forces and may thereby encourage registered options traders, as market makers, to be more competitive with specialists on the Amex floor.[3] Fair competition among market makers is a stated objective of the Securities Acts Amendments of 1975 [4] and, in this instance, is in the public interest since it may encourage the addition of further depth and liquidity to Amex's options markets.

It is therefore ordered, Pursuant to section 19(b)(2) of the act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-21171 Filed 7-31-78; 8:45 am]

[8010-01]

[Release No. 14983; SR-CB08-78-17]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Order Approving Proposed Rule Change

JULY 21, 1978

On June 19, 1978, the Chicago Board Options Exchange, Inc. ("CBOE"), La Salle at Jackson, Chicago, Ill. 60604, filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "act") and rule 19b-4 thereunder, copies of a proposed rule change which would enable CBOE members to use the exchange's order support system ("OSS"), an order routing and automated book facility, in conjunction with their own telecommunication systems for placing orders with a board broker. Further, since OSS will electronically maintain a record of all orders on the book, the proposed rule change eliminates the requirement that the board broker maintain a written record of orders placed in his custody. The proposed rule change also would establish a procedure for the crossing of orders by board brokers through OSS.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission release (Securities Exchange Act release No. 34-14882, June 22, 1978) and by publication in the FEDERAL REGISTER (43 FR 28269, June 29, 1978).[1] All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's public reference room.

The Commission finds that the proposed rule change is consistent with the requirements of the act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of sections 6 and 17(a) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, in order that the experimental phase of OSS, which is scheduled to be implemented on or about July 24, 1978, may operate under the conditions provided by this rule change. The Commission notes that the rule proposal which it is approving changes the means by which records of orders are maintained by members of the CBOE, but does not change requirements that information concerning orders handled by OSS be available for regulatory purposes. Indeed, the utilization of OSS may provide for the more efficient operation of the CBOE in that it provides for automated routing of orders and for an automated book facility.

It is therefore ordered, Pursuant to section 19(b)(2) of the act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-21172 Filed 7-31-78; 8:45 am]

[8010-01]

[Release No. 34-14988; File No. SR-CBOE-1978-22]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on July 18, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

RULE 2.5—BUSINESS CONDUCT COMMITTEE

The Business Conduct Committee shall consist of at least four members of the Exchange or persons registered as Options Principals under Rule 9.2 *and either* [plus] one officer of the Exchange *or one non-member who is not engaged in the conduct of a public securities business.* Directors of the Exchange are not eligible for appointment to the Business Conduct Committee during the term of their directorship. The presence of a majority of the Committee members shall constitute a quorum for the transaction of business, except that a smaller number of members of the Committee may act on behalf of the Committee when specifically authorized by the Rules or by resolution of the Board.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The proposed rule change would make it possible for someone not actively engaged in the securities business, for example, a practicing lawyer or an academician, to serve on the Exchange's Business Conduct Committee in lieu of an officer of the Exchange. If a qualified expert in the field of securities law can be added to the Committee, the Exchange believes that such a person would provide valuable expertise and perspective to the Committee in the discharge of its disciplinary functions.

The bases under the Act for the proposed rule change are Sections 6(b)(1), 6(b)(5) and 6(b)(6) in that the Exchange believes the proposed rule

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[3] In view of the trial nature of this proposal and its limited duration, the Commission, in considering any proposal by the Amex to adopt this program on a permanent basis, will be interested in any information which the Amex, its registered options traders, or other interested persons may provide as to whether this partial disclosure of the book is a sufficient incentive to encourage more competitive market making by registered options traders on the Amex.

[4] Pub. L. No. 94-29 (June 4, 1975). See e.g., section 11A(a)(1)(C)(ii).

[1] The comment period for this proposed rule change expired on July 20, 1978, and no comments were received.

change will enhance its capacity to enforce compliance with its rules, protect investors and the public interest and provide a fair procedure for the disciplining of members and persons associated with members.

No comments were solicited or received on the proposed rule change.

The Exchange does not believe that the proposed rule change will impose any burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submission will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before August 22, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-21183 Filed 7-31-78; 8:45 am]

[8010-01]

[File No. 1-6227]

LEE ENTERPRISES, INC.

Application To Withdraw From Listing and Registration

JULY 26, 1978.

The above-named issuer has filed an application with the Securities and Exchange Commission, pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of Lee Enterprises, Inc. (the "Company") has been listed for trading on the Amex since March 17, 1970. On April 11, 1978, the stock was also listed for trading on the New York Stock Exchange, Inc. ("NYSE") and concurrently therewith, such stock was suspended from trading on the Amex. In making the decision to withdraw its common stock from listing and registration on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing. The Company does not see any particular advantage in the dual trading of it common stock and believes that dual listing would fragment the market for such stock.

Any interested person may, on or before August 23, 1978, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-21173 Filed 7-31-78; 8:45 am]

[8010-01]

[Release No. 10339; 812-4326]

METROPOLITAN LIFE INSURANCE CO. AND METROPOLITAN VARIABLE ACCOUNT B OF METROPOLITAN LIFE INSURANCE CO.

Filing of Application of the Act To Exempt a Proposed Transaction for Exemption

JULY 25, 1978.

Notice is hereby given that Metropolitan Life Insurance Co. ("Metropolitan"), a New York mutual life insurance company, and Metropolitan Variable Account B of Metropolitan Life Insurance Co. ("Account B"), a separate account of Metropolitan registered as an open-end management investment company under the Investment Company Act of 1940 ("Act"), hereinafter collectively referred to as "Applicants", 1 Madison Avenue, New York, N.Y. 10010, filed an application on June 10, 1978, and an amendment thereto on July 14, 1978, for an order pursuant to section 17(b) of the act exempting a proposed transaction from the provisions of section 17(a) of the act and for an order pursuant to section 6(c) granting exemption from the provisions of sections 22(d) and 27(a)(3) of the act. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Metropolitan has another separate account, Metropolitan Variable Account A of Metropolitan Life Insurance Co. ("Account A"), which funds certain variable annuity contracts, the "Account A contracts", which are designed solely to provide retirement payments under pension and profit-sharing plans which meet the requirements of section 401 or section 403(a) of the Internal Revenue Code of 1954, as amended ("Code"). Accordingly, pursuant to the exemption provided by section 3(c)(11) of the act, Account A is not registered as an investment company. Account A contracts are offered pursuant to a registration statement filed under the Securities Act of 1933 by Metropolitan as registrant. Since March 1, 1978, Metropolitan has discontinued the sale of Account A contracts to new purchasers, but continues to accept payments under existing Account A contracts.

Metropolitan established Account B on December 16, 1969, pursuant to New York insurance law. Account B is a registered open-end diversified management investment company. Metropolitan allocates to Account B purchase payments, after certain deductions, received under two forms of individual variable annuity contracts (the "Account B contracts"). That form of Account B contract entitled variable annuity contract is designed: (i) to provide retirement payments to employees of public school systems and certain other tax-exempt organizations under annuity purchase arrangements meeting the requirements of section 403(b) of the Code and (ii) when purchased for use under section 408 of the Code, to provide retirement benefits for working persons who are not active participants under other tax-favored retirement programs. Since March 1, 1978, Metropolitan discontinued the sale of variable annuity contracts to new purchasers, although outstanding variable annuity contracts issued prior to March 1, 1978, continue to be funded by Account B, under which purchase payments may continue to be made. That form of Account B contract entitled variable retirement annuity contract has been offered for sale since March 1, 1978, and is designed for the same market as the Account A contracts; i.e., to provide retirement payments under specified qualified pension and profitsharing plans, as well as for the same markets as the Variable Annuity Contracts.

In order to effect economies and to simplify the administration of individual variable annuity contracts sold by

Metropolitan in connection with tax-qualified pension and profitsharing plans, which are now funded by two different separate accounts, Metropolitan proposes to transfer all assets in Account A to Account B. Such transfer is permitted by the Account A contracts and by the Account B contracts and is authorized under New York insurance law, if permitted by the superintendent of insurance.

The transfer of assets from Account A to Account B will be effected at net asset value and no charge of any kind will be imposed, nor will any expense be attributed to Account A or Account B or any contract funded by either Account. The transfer is not considered by Metropolitan to involve a sale of assets and in the opinion of Metropolitan's counsel such assets will not acquire a new cost basis nor will a taxable event occur as a result of such transfer of assets.

At the time of the transfer of assets from Account A to Account B, the dollar value of each Account A contract in the accumulation stage will be determined and the number of Account B accumulation units which are equivalent to that same dollar value will be credited to each Account A contract. For those Account A contracts in the annuity payment stage, the individual contract will be credited with the number of Account B annuity units that would produce the same monthly payments as the Account A annuity units if both payments were calculated at the time of transfer.

SECTION 17

Section 17(a) of the act prohibits, inter alia, any affiliated person of or principal underwriter for a registered investment company acting as principal, from knowingly selling any security or other property to such registered investment company. The proposed transfer might be viewed as being prohibited by section 17(a), if it were considered to be a sale by Metropolitan (the principal underwriter for and an affiliated person of Account B) of securities held in Account A to Account B, a registered investment company. Section 17(b) of the act provides that the Commission, upon application, may exempt a proposed transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid and received are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the act.

Applicants assert that the transfer does not involve a sale of assets within the meaning of section 17(a), but if the transfer is considered within the purview of section 17(a) the terms of the transaction do meet the standards of section 17(b) of the act for exempting such transaction. The contractual rights of each Account A contractowner will remain unaffected by the transfer. The proposed transfer would not affect the operation or objectives of Account B, the registered investment company concerned, in that Account B is presently being used to fund contracts used for the same purposes as the Account A contracts. In addition, the general purposes of the act will be furthered in that one of the effects of the transfer will be to afford owners of Account A contracts the protection of the act.

SECTION 22(d)

Section 22(d) of the act provides, in pertinent part, that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by it to any person except at a current offering price, including sales charges described in the prospectus. If the proposed transfer of assets is considered to involve a sale, it could be viewed as requiring an exemption from section 22(d) since the sales charge normally imposed on the purchase of Account B contracts is not proposed to be levied on Account A contractowners. Applicants request an exemption from section 22(d) to permit the proposed transfer as detailed above without imposing any sales charge.

Applicants assert that no unfair discrimination would result from the elimination of sales charges under the foregoing circumstances. In all instances a sales charge will have been previously deducted from the Account A contracts that is equal to the sales charge that would have been deducted at that time from the Account B contracts if they had been purchased instead. Applicants assert that any additional charges would be unfair and to the detriment of Account A contract owners.

SECTION 27(a)(3)

Section 27(a)(3) of the act provides that no registered investment company issuing periodic payment plan certificates and no depositor of or underwriter for such company, may sell any such certificate if the amount of sales load deducted from any one of the first 12 monthly payments exceeds proportionately the amount deducted from any other subsequent payment. Rule 27a-2 provides an exemption from the prohibitions of section 27(a)(3) to a registered separate account provided the amount of sales load deducted from any payment during the contract period does not exceed the proportionate amount deducted from any prior payment during the contract period. Also, while Rule 27a-2 eliminates the requirement that the sales load rate be uniform, the rule prohibits an increase in the level of deduction during the term of the contract.

Applicants state that pursuant to the terms of the proposed transfer, no charges of any kind will be imposed against the Account A contracts at the time of transfer to Account B. However, all subsequent purchase payments made under these contracts to Account B will be subject to the appropriate sales charge stated in the contract. This could be viewed as a violation of section 27(a)(3), if the proposed transfer is considered a sale, since the sales charge deducted from other payments within the first 12 months after the transfer will exceed the first sales charge and therefore the sales deduction schedule will not conform with the uniformity of deduction provisions of section 27(a)(3). In addition, since all payments subsequent to the proposed transfer will be subject to a sales charge, Rule 27a-2 may not be considered to be available to give relief from the provisions of section 27(a)(3).

Applicants assert that the heretofore described transfer of assets should be permitted without imposition of a sales charge against the Account A contracts, although future payments under the Account A contracts will be subject to a sales charge. Applicants assert that this type of transaction does not involve a front-end load arrangement and therefore cannot lead to the abuses intended to be curbed by section 27(a)(3). Further, since the effectuation of the transfer without sales load is beneficial to Account A contractowners and does not harm Account B contractowners, sufficient grounds exist for the Commission to grant the necessary exemption and applicants request it.

SECTION 6(c)

Section 6(c) authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities, or transactions, from the provisions of the act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the act.

Notice is further given that any interested person may not later than August 17, 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 should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon applicants, at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the rules and regulations promulgated under the act, an order disposing of the application will be issued as of course following August 17, 1978, 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 notice or order issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-21174 Filed 7-31-78; 8:45 am]

[8010-01]

[Release No. 20638; 70-6186]

MIDDLE SOUTH UTILITIES, INC.

Proposed Issuance and Sale of Common Stock in Accordance With Employees' Savings Plan

JULY 24, 1978.

Notice is hereby given that Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, La. 70112, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("act"), designating sections 6(a) and 7 of the act and rule 50(a)(5) promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

In accordance with an employees' savings plan ("plan"), Middle South proposes to issue and sell to Hibernia National Bank in New Orleans, La., as trustee for the plan ("trustee"), from time to time through December 31, 1983, a maximum 1,000,000 shares of its authorized but unissued common stock, $5 par value ("additional common stock"). Middle South proposes to apply the proceeds from the sale of the additional common stock to the payment of any short-term notes outstanding from time to time and to other corporate purposes.

The plan is to become effective on October 1, 1978. Eligible employees of Middle South and any Middle South system company which adopts the plan ("employer") may participate in the plan. A participant may contribute to the plan, through payroll deductions each payroll period, from 1 percent to 6 percent of his regular earnings. Each employer will contribute to the plan each month out of its current or accumulated earnings and profits (defined to mean net income on the books of the employer before deduction of taxes on or measured by net income and before employer contributions under the plan) an amount equal to 50 percent of the contributions made by each of its employee participants for the preceding month. In accordance with the Employee Retirement Income Security Act of 1974, the amount allocated to any participant's account due to employer contributions may not exceed the lesser of 25 percent of his regular earnings or $25,000 (subject to adjustment for cost of living changes) or the maximum amount permitted by section 415 of the Internal Revenue Code.

The contributions made by participants and employers will be remitted to the trustee and credited to the accounts of the participants. Each participant's contribution will be invested by the trustee, as directed by the participant, in one, or equal portions in any two or all, of the following three funds: (a) the Middle South Utilities Stock Fund—contributions to which are invested by the trustee solely in shares of common stock of Middle South; (b) the Equity Fund—contributions to which are invested by the trustee or, to the extent authorized by the board of directors of Middle South, by an independent investment manager primarily in common stock or certain other equity securities, provided that no investment shall be made in securities issued by Middle South or any system company except to the extent such securities are held in an investment trust; or (c) the Insured Guaranteed Investment Fund—contributions to which are invested by the trustee under a contract between the trustee and the Equitable Life Assurance Society of United States ("Equitable") which guarantees repayment of any amounts paid to Equitable and payment of interest at an effective annual rate of 8.5 percent (subject to increase under certain limited circumstances) through September 30, 1988. It is provided that no participant may direct the trustee to invest his contributions exclusively in the Middle South Utilities Stock Fund; however, a participant or former participant having an interest in any fund may transfer investments in one fund into another at least once each year. Employer contributions will be invested solely in the Middle South Utilities Stock Fund.

A member may instruct the trustee as to the voting of shares of Middle South common stock held for his account. Any such shares held by the trustee for which instructions are not received will not be voted. The trustee has the authority to vote all other securities in its discretion. The trustee is responsible solely for the investment (except to the extent responsibility therefor is delegated to an investment manager) and safekeeping of assets of the trust. The administrative expenses of the plan may be paid out of forfeitures, and to the extent not paid out of forfeitures, will be paid by the employers. Direct charges and expenses arising from the purchase or sale of securities for the three funds will be paid by the trustee from the fund or funds involved.

The trustee may purchase Middle South common stock for the plan in the open market or by private purchase. The price therefor in a private purchase may not be greater that the last sale price or highest current independent bid price, whichever is higher, for Middle South common stock on the New York Stock Exchange, plus an amount equal to the commission payable in a stock exchange transaction; provided that if a private purchase is made from Middle South no commission shall be paid. Middle South will offer to sell to the trustee and issue from time to time the additional common stock as proposed in the instant filing.

It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. Information as to fees and expenses to be incurred in connection with the proposed transactions is to be filed by amendment.

Notice is further given that any interested person may, not later than August 22, 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 declarant at the above-stated address, and proof of service (by affidavit or, in case of attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as pro-

vided 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. 78-21175 Filed 7-31-78; 8:45 am]

[8010-01]

[Release No. 14987; SR-MSE-77-32]

MIDWEST STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

JULY 24, 1978.

On September 1, 1977, the Midwest Stock Exchange, Inc. ("MSE"), 120 South LaSalle Street, Chicago, Ill. 60603, filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "act") and Rule 19b-4 thereunder, copies of a proposed rule change which would amend MSE Article XLIV, Rules 5 and 13 to permit an order to be entered on an "all or none" or "fill or kill" basis and to define the following types of orders; combination, all or none, fill or kill and immediate or cancel.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a commission release (Securities Exchange Act Release No. 34-13981, Sept. 21, 1977) and by publication in the FEDERAL REGISTER (42 FR 49854, Sept. 28, 1977). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the act and the rules and regulations thereunder applicable to registered national securities exchanges, and in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-21176 Filed 7-31-78; 8:45 am]

[8010-01]

[Release No. 14989; SR-MSRB-78-9]

MUNICIPAL SECURITIES RULEMAKING BOARD

Order Approving Proposed Rule Change

JULY 25, 1978.

On June 9, 1978, the Municipal Securities Rulemaking Board (the "MSRB"), Suite 507, 1150 Connecticut Avenue, NW., Washington, D.C. 20036, filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 (the "Act"), and Rule 19b-4 thereunder, copies of a proposed rule change. The propose rule change would amend he MSRB's interdealer uniform practice rule, MSRB rule G-12, the extend by 2 business days the time at which a confirming party in a "when, as and if issued" transaction must initiate the verification and comparison procedures prescribed by subparagraph G-12(d)(iii). The change in this requirement is designed to accommodate the fact that initial confirmations of "when, as and if issued" transactions must be sent within 2 days of the trade date, rather than within 1 day as required for other transactions.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 14858 (June 15, 1978)) and by publication in the FEDERAL REGISTER (43 FR 26659 (1978)). No comments with respect to the proposed rule change were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the act and the rules and regulations thereunder applicable to the MSRB, and in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-21177 Filed 7-31-78; 8:45 am]

[8010-01]

[Rel. No. 10337; 812-4312]

NATIONAL CORPORATE TRUST, FIRST SERIES AND PREFERRED STOCK SERIES AND SIMILAR AND SUBSEQUENT SERIES

Filing of Application of the Act for Order Granting Exemption

JULY 25, 1978.

Notice is hereby given that National Corporate Trust, First Series and Preferred Stock Series and Similar and Subsequent Series ("Applicant"), a unit investment trust registered under the Investment Company Act of 1940 ("Act"), c/o Thomson McKinnon Securities Inc., One New York Plaza, New York, N.Y. 10004, filed an application on May 17, 1978, pursuant to section 6(c) of the act for exemption from the provisions of sections 14(a) and 22(d) of the act and rules 19b-1 and 22c-1 under the act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Applicant is composed of unit investment trusts which will be organized under the laws of the Commonwealth of Massachusetts as set forth below. Thomson McKinnon Securities Inc. and Piper, Jaffray & Hopwood Inc. presently act as Sponsors of the Applicant. The public sale of the fractional undivided interests in such trusts (the "Units") may be made through the Sponsors as sole underwriters or through an underwriting account.

Each Series of the Applicant will be governed by a trust agreement for that Series (hereinafter called the "Trust Agreement") to be entered within 6 months of the filing of the Series with the Securities and Exchange Commission under which the Sponsors (or any succeeding sponsor or sponsors) will act as such, United States Trust Company of New York will act as Trustee, State Street Bank and Trust Company (Boston, Mass.) will act as co-Trustee, and Interactive Data Services, Inc. will act as Evaluator. In the case of subsequent Series and subject to compliance with the applicable provisions of the Trust Agreements relating thereto, other firms may act as Sponsor or Sponsors in addition to or in substitution for the Sponsors listed above. The public sale of the Units may be accomplished

[1] The original rule filing would have permitted an order initiated off the floor to be entered on an "all or none" basis. That rule filing was amended to its present form in MSE's Amendment No. 1 to the original filing. (See File No. SR-MSE-77-32, Amendment No. 1 (Mar. 16, 1978) at 1.)

through the Sponsors as sole underwriters or through an underwriting account, which shall include other investment banking firms (all such firms are sometimes hereinafter collectively called the "Sponsors"). The Sponsors listed above have agreed that if none of the Sponsors listed above would remain a Sponsor as a result of any such proposed substitution, the Sponsors shall, as a condition to such substitution, cause to be filed a new Registration Statement under the Act concerning the Applicant. Also, in future Series a different bank may act as co-Trustee or as Trustee and a different evaluating firm may act as Evaluator. The Trust Agreement for each Series will contain terms and conditions of trust common to all Series.

Pursuant to the Trust Agreement, the Sponsors will deposit with the Trustee not less than $3,000,000 principal amount of long-term taxable debt obligations, including contracts and funds (represented by cash, cash equivalents and/or an irrevocable letter of credit issued by a major commercial bank) for the purchase of such obligations (hereinafter called the "Securities"), which the Sponsors shall have accumulated for such purpose. The Securities will be deposited into one or more trusts created under the Trust Agreement (such trust or trusts being hereinafter called the "Trusts"), units of beneficial interest of which Trusts will be offered to the public. After such deposit, the Trustee will deliver to the Sponsors registered certificates for Units (at the rate of approximately one Unit for each $1,000 principal amount or par or liquidation value of the Securities deposited) representing the entire ownership of the Series and which will be allocated among the Trusts in proportion to the aggregate principal amount of Securities in each. Following the deposit, an amendment which forms the basis for the final prospectus relating to the Series will be filed with the Commission.

Following the declaration of effectiveness of that Series' registration statement under the Securities Act of 1933 and clearance by the securities authorities of the various states, the Units will then be offered for sale to the public by the Sponsors separately through a final prospectus at the public offering prices set forth therein plus the sales charges specified and subject to the granting of the appropriate exemption under section 22(d) of the act as set forth below, in some cases may be offered as Combined Units, at the public offering prices and sales charges as specified in the Prospectus. The sales charges may vary in the case of subsequent Series which may or may not be offered in conjunction with the securities of other investment companies. The public offering prices are based upon the aggregate offering side evaluation of the underlying Securities in the Trust portfolio, plus a sales charge. Aggregate offering side evaluation of the Securities is to be determined by the Evaluator on each business day during the initial public offering period and on the last business day of each week upon completion of the initial public offering as of the Evaluation Time (the "Evaluation Time") set forth in the Prospectus for each Series (in the case of the First Series, 4 p.m., New York time), effective for all sales made during the preceding 24 hours or the following week, respectively.

Combined Units (composed of equal portions of Units from each Trust) will be offered during the initial offering period at a Combined Units Public Offering Price which is computed by adding to the sum of the per Unit offering side evaluation of the Securities in the portfolios of each Trust a sales charge which is slightly less than the average of the sales charges applicable to the Units of the Trusts if purchased separately. Combined Units will not be offered beyond the initial offering period.

Applicant represents that the Securities will not be pledged or be in any other way subjected to any debt by the Applicant at any time after the Securities are deposited with the Trustee. The Sponsors will accumulate the Securities for the purpose of deposit in the Applicant's First Series and a similar procedure of accumulating the Securities will be followed for each future Series. Information concerning each issue of Securities of which the portfolio of a Series consists will be set forth in the Prospectus for such Series. The Securities to be deposited in the First Series will be long-term debt obligations, issued primarily by corporations but may also include issues of foreign obligors. Some of the Securities to be deposited may have been acquired in private placements. It is possible that subsequent Series may contain Securities of other maturities and may contain preferred stocks. Any Series which is comprised of more than one Trust may contain a Trust comprised of debt obligations and a Trust comprised of preferred stocks. Series will be selected on the basis of (i) the quality of the Securities and the existence of an A or better rating by either Standard & Poor's Corp. or by Moody's Investors Service, Inc., (ii) the prices and yields of such securities relative to other comparable securities, and (iii) the diversification of the Portfolio. For subsequent Series, the Securities for the Portfolios may be selected on different bases.

The Sponsors may direct the Trustee to dispose of Securities upon default in payment of principal or interest, institution of certain legal proceedings, default in payment of principal or interest on other securities of the same issuer, or decline in prices or the occurrence of other market or credit factors that in the opinion of the Sponsors would make the retention of such Securities in the Series detrimental to the interest of the Unit holders, or if the disposition of such Securities is desirable in order to maintain the qualification of the Series under the Federal Internal Revenue Code. The proceeds of any such dispositions may be distributed to Unit holders or may be reinvested in accordance with the provisions of the Trust Agreement.

The First Series presently makes no provision for reinvestment of distributions. It is possible that some or all future Series may make reinvestment provisions. With each distribution, the Trustee furnishes Unit holders a statement of the amount of interest and the amount of other receipts, if any, which are being distributed. Within a reasonable period after the end of each calendar year the Trustee will furnish to each person who at any time during the calendar year was a Unit holder of record a statement, in reasonable detail, (i) summarizing transactions for such year in the Income, Principal and Reserve Accounts, (ii) identifying Securities sold and purchased during and listing those held at the end of such year, (iii) stating the Redemption Value per Unit based upon the computation thereof made on the 31st day of December of such year and (iv) specifying the amounts distributed during a year from the Income and Principal Accounts.

Each Unit for a particular Trust will represent a fractional undivided interest in that Trust and will be redeemable. The numerator of the fractional interest represented will be 1; the denominator, the number of Units then in the particular Trust. In the event that any Units are redeemed, the denominator of the fraction will be reduced and the fractional undivided interest represented by each Unit increased. Units will remain outstanding until redeemed or until the termination of the Trust Agreement. The Trust Agreement may be terminated with respect to any Trust by agreement of a specified percentage (not less than 66⅔ percent of the Unit holders of such Trust), or, in the event that the value of the Securities falls below an amount specified for such Trust, either upon direction of the Sponsors to the Trustee or by the Trustee without such direction, respectively. There is no provision in the Trust Agreement for the issuance of any Units after the initial offering of

Units and such activitiy will not take place (except to the extent that the secondary trading by the Sponsors in the Units is deemed the issuance of Units under the Securities Act of 1933).

While the Sponsors are not obligated to do so, it is their present intention to maintain a market for Units of each Series of the Applicant and continuously to offer to purchase Units at prices based upon the aggregate offering price of the underlying Securities.

SECTION 14(a)

Section 14(a) of the act, in substance, provides that no registered investment company and no principal underwriter for such a company shall make a public offering of securities of which such company is the issuer unless (1) the company has a net worth of at least $100,000; (2) at the time of a previous public offering it had a net worth of $100,000; or (3) provision is made that a net worth of $100,000 will be obtained from not more than twenty-five responsible persons within ninety days, or the entire proceeds received, including sales charge, will be refunded.

Applicant asserts that section 14(a) of the act is intended to limit the formation of undercapitalized investment companies. Applicant states that it is intended that each Series, at the date of deposit and before any Unit is offered to the public, will have a net worth far in excess of $100,000, that the Sponsors intend to sell all Units to the public at offering prices disclosed in the prospectus for such Series, that it is intended that a secondary market for the Units be maintained, and that interest rates and other applicable information concerning the underlying Securities will be disclosed in the Prospectus.

The Sponsors have agreed to the requested exemption being subject to the condition that they will refund, on demand and without deduction, all sales charges paid by purchasers of Units in the initial public offering of any Trust of any Series if, within 90 days from the time that the Registration Statement relating to such Series becomes effective, either (i) the net worth of such Trust will be reduced to less than $100,000, or (ii) such Trust or Series shall have been terminated. The Sponsors have further agreed to instruct the Trustee on the date of deposit of each Series that in the event that redemption by the Sponsors of Units constituting a part of the unsold Units of a Series shall result in any trust having a net worth or less than $500,000, the Trustee shall terminate such Trust in the manner provided in the Trust Agreement and distribute any Securities or other assets deposited with the Trustee in connection with such Series pursuant to the Trust Agreement as provided therein.

SECTION 22(d)

Section 22(d), in pertinent part, prohibits registered investment companies, underwriters and dealers from selling redeemable securities other than at a current public offering price described in the prospectus. The Applicant seeks an exemption from the provisions of section 22(d) to the extent that the offering price for Combined Units of Units of the Trusts of a Series during the initial offering period as described above and in the prospectus may be in conflict with such section.

The Applicant asserts that the reduction in net sales charge applicable to the purchaser of Combined Units which results in a savings to such purchaser over the cost of such Units purchased separately, is fully disclosed and available to all purchases of Units during the initial offering period, and represents sound business practice on the part of the Sponsors. The Applicant represents that the granting of the aforesaid exemption is necessary and 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.

RULE 19b-1

Rule 19b-1(a) provides, in part, that no registered investment company which is a "regulated investment company" as defined in section 851 of the Internal Revenue Code shall make more than one distribution of long-term capital gains in any one taxable year of such investment company. Paragraph (b) of rule 19b-1 provides that a unit investment trust may distribute capital gain dividends received from a "regulated investment company" within a reasonable time after receipt.

Applicant states that distributions of principal and interest to Unit holders of the Applicant are to be made monthly. Distributions of principal constituting capital gains to Unit holders may arise in three instances: (1) If an issuer calls or redeems a security held in the portfolio, the sums received will be distributed to Unit holders on the next distribution date; (2) if Units are redeemed by the Trustee and securities from the portfolio are sold to provide the funds necessary for such redemption each Unit holder will receive his pro rata portion of the proceeds from the securities sold; and (3) if securities are disposed of in order to maintain the qualification of such Series as a regulated investment company under the Internal Revenue Code. In such instances, a Unit holder may receive in his distribution funds which constitute capital gains because the value of the Securities redeemed or sold may have increased since the date of initial deposit.

Applicant states that the dangers against which rule 19b-1 is intended to guard will not exist in connection with any Series of Applicant, because neither Applicant nor the Sponsors has control over the events which could trigger capital gains. Applicant seeks to make a combined distribution of principal, including capital gains, and interest each month, and states that any capital gains in such distribution will be clearly indicated as such in accompanying reports to Unit holders. Applicant states that the purpose behind paragraph (b) of rule 19b-1 is to avoid forcing unit investment trusts to accumulate valid distributions received throughout the year and distribute them only at year end. Applicant further alleges that its situation places it squarely within the purpose of such provision. In order to comply with the literal requirements of the rule, however, Applicant would be forced to hold moneys which would constitute capital gains upon distribution until the end of its taxable year. Applicant contends that such a practice would clearly be to the detriment of the Unit holders.

RULE 22c-1

Rule 22c-1 provides, in part, that redeemable securities of registered investment companies may be sold, redeemed, or repurchased at a price based on the current net asset value (computed on each day during which the New York Stock Exchange is open for trading not less frequently than once daily as of the time of the close of trading on such Exchange) which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Applicant states that the rule has two purposes: (1) to eliminate or to reduce any dilution of the value of outstanding redeemable securities of registered investment companies which would occur through the redemption or repurchase of such securities at a price above their net asset value or the sale of such securities at a price based on a previously established net asset value which would permit a potential investor to take advantage of an upswing in the market and the accompanying increase in the net asset value of the securities, and (2) to minimize specultive trading practices in the securities of registered investment companies.

Applicant represents that the Sponsors, while not obligated to do so, intend to maintain a market for the Units and continuously to offer to purchase Units, at prices in excess of re-

demption prices. For purposes of the secondary market transactions, an evaluation will only be made once each week. As regards both repurchase from Unit holders and resales in the secondary market, the Sponsors have undertaken to adopt a procedure whereby the Evaluator, without a formal evaluation, will provide estimated evaluations on trading days. Applicant states that these estimated evaluations will be used in two ways. In the case of a repurchase from Unit holders, if the Evaluator cannot state that the bid side evaluation is not higher than or equal to the previous Friday's offering side evaluation, the Sponsors will order a full evaluation. In the case of resales in the secondary market, if the Evaluator cannot state that the previous Friday's price is no more than $5.00 on a unit representing $1,000.00 face amount of underlying securities greater than the current offering price, a full evaluation will be ordered before the secondary market transaction is completed.

Applicant asserts that the sale and repurchase of Units of the Applicant in the secondary market cannot dilute the value of outstanding securities. Such sales and repurchases will be made only by the Sponsors and not the trustee and in no way involve the assets of any Trust. Applicant also asserts that public Unit holders benefit from the Sponsors' pricing procedure in the secondary market, because they receive a normally higher repurchase price for their units without the cost burden of daily evaluation of the Unit redemption price.

Section 6(c) of the act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of the act or of any rule or regulation under the act, if and to the extent 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 18, 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 Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by rule 0-5 of the rules and regulations promulgated under the act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-21178 Filed 7-31-78; 8:45 am]

[8010-01]

[Rel. No. 20640; 70-6187]

OHIO POWER CO.

Proposed Sale of Utility Assets

JULY 25, 1978.

Notice is hereby given that Ohio Power Co. ("Ohio Power"), 301 Cleveland Avenue SW., Canton, Ohio 44702, an electric utility subsidiary company of American Electric Power Co., Inc. ("AEP"), a registered holding company, has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 12(d) of the act and Rule 44 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Ohio Power proposes to sell to Ashland Oil Co. ("Ashland"), which is not affiliated with either Ohio Power or AEP, a certain step-down transformer installation and appurtenant rights located in Canton, Ohio (Stark County). The installation was constructed by Ohio Power for the sole purpose of serving Ashland. Under the present service contract Ashland has the right to select a tariff other than that specified in the contract if Ashland deems an alternate tariff to be more favorable. Ashland has selected a tariff the application of which depends upon Ashland's owning its own transformer facilities.

The facilities to be sold include a 69/12/4 KV step-down transformer installation, two 12/16/20 MVA transformers, one 69 KV oil circuit breaker, and associated equipment, together with appurtenant land rights. The proposed sales price for the installation is $381,895, which is equal to current reproduction cost less depreciation. The original cost of the installation was $165,165, and the original cost less book depreciation is $165,361. The proposed sales price for the appurtenant rights is $986.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,300. No State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than August 18, 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 said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-21179 Filed 7-31-78; 8:45 am]

[8010-01]

[Rel. No. 20639; 70-5703]

SOUTHWESTERN ELECTRIC POWER CO.

Request for Increased Oil and Gas Exploration and Development Authorization

JULY 25, 1978.

Notice is hereby given that Southwestern Electric Power Co. ("SWEPCO"), P.O. Box 21106, Shreveport, La. 71156, an electric utility subsidiary of Central & South West Corp.

("CSW"), a registered holding company, has filed a post-effective amendment to its application-declaration, as amended, previously filed with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6, 7, 9, and 10 of the act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as now amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By order dated February 21, 1978 (HCAR No. 20416), the Commission granted SWEPCO general authority for the acquisition through December 31, 1978, of interests relating to fuel exploration and development activities, to the extent of $11,103,853. The approximate allocation of this amount was $3,067,500 for SWEPCO's wholly owned oil and gas interests, $2,776,353 for its wholly owned Texas and Louisiana lignite interests and $5,260,000 for lignite, coal and uranium interests in which SWEPCO has a 30 percent interest as tenant-in-common with the other operating subsidiaries of CSW.

SWEPCO states that from January 1, 1978, through May 31, 1978, it added 251.16 net acres of oil and gas leasehold interests, while oil and gas exploration and development expenditures during this period totalled $3,063,234, or virtually all of the $3,067,500 allocation for such activities in 1978. SWEPCO now estimates that an additional $2,550,000 of expenditures will be required during the balance of 1978 to complete or continue oil and gas exploration and development activities scheduled for the year. This amount would be in addition to the general authorization of $11,103,853 for 1978 and would create the need for a revised general authoriation of $13,653,853.

SWEPCO therefore requests that the Commission authorize an expenditure of an additional $2,550,000 by SWEPCO in its oil and gas exploration and development program through December 31, 1978 over and above the amounts previously authorized in the Commission's order of February 21, 1978, and increase the general authorization to $13,653,853.

SWEPCO states that nearly $2,000,000 of the additional $2,550,000 of expenditures is required to continue work in progress on six wells in the South Carthage prospect in Panola County, Tex., together with a gathering system which will connect the output of these wells with the Paxton pipeline. Additional expenditures are required to operate wells and related gathering systems on the Elm Grove, East Ada/West Bryceland, Bienville Townsite, Castor/Lucky, North Whelan, South Shreveport and Longwood prospects.

SWEPCO states that the increase in estimated expenditures reflects primarily the increased cost and diminished productivity which it has experienced with respect to drilling and well completion services and equipment. SWEPCO states that the original expenditure estimates for oil and gas activities in 1978 were prepared in the fall of 1977 on the basis of its experience with drilling contracts which provide for payments based generally upon the number of feet drilled; however, such activities in 1978 have been conducted under contracts which, consistent with the emerging pattern in the industry, have provided for payments based on the number of days worked. This development, coupled with a general inflation of costs in the industry, was not anticipated in the preparation of the original estimates of expenditures. SWEPCO further states that with the exception of the $2,550,000 of additional oil and gas exploration and development expenditures, its fuel exploration and development activities during the balance of 1978 will not differ in nature or extent from those being conducted under the Commission's February 21, 1978, order.

It is stated that the fees and expenses to be incurred in connection with the proposed transaction are estimated at $1,750. It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction with respect to the proposed transaction.

Notice is further given that any interested person may, not later than August 15, 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 fact or law raised by said application-declaration, as now further amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended by said post-effective amendment, or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-21180 Filed 7-31-78; 8:45 am]

[8010-01]

[Release No. 14986; SR-SCCP-78-3]

STOCK CLEARING CORP. OF PHILADELPHIA

Order Approving Proposed Rule Change

JULY 24, 1978.

On May 17, 1978, the Stock Clearing Corp. of Philadelphia, 17th Street and Stock Exchange Place, Philadelphia, Pa. 19103, filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "act") and Rule 19b-4 thereunder, copies of a proposed rule change which would enable it to represent its members as a direct inquirer for the purposes of the Lost and Stolen Securities Program as established in accordance with Rule 17f-1 (17 CFR 240.17f-1).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commssion Release (Securities Exchange Act Release No. 34-14863, June 19, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consisent with the requirements of the act and the rules and regulations thereunder applicable to registered clearing corporations, and in particular, the requirements of section 17A and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-21181 Filed 7-31-78; 8:45 am]

[8010-01]

[Rel. No. 10336; 812-4223]

T. ROWE PRICE ASSOCIATES, INC., ET AL.

Filing of Application for an Order Permitting Certain Proposed Transactions

JULY 25, 1978.

Notice is hereby given that T. Rowe Price Associates, Inc. ("Price Associates"), an investment adviser registered under the Investment Advisers Act of 1940, and T. Rowe Price Growth Stock Fund, Inc., Rowe Price New Horizons Fund, Inc., Rowe Price New Era Fund, Inc., Rowe Price New Income Fund, Inc., Rowe Price Prime Reserve Fund, Inc., and Rowe Price Tax-Free Income Fund, Inc. (the "Funds"), all open-end diversified management investment companies registered under the Investment Company Act of 1940 ("act"), 100 East Pratt Street, Baltimore, Md. 21202, filed an application on November 10, 1977, and an amendment thereto on June 13, 1978, pursuant to section 17(d) of the act and rule 17d-1 thereunder for an order permitting Price Associates and the Funds ("Applicants") to enter into a joint arrangement for the payment of premiums for errors and omissions insurance covering Applicants and their officers, directors and employees for the year 1977, and permitting such of them (and any other investment company or companies of which Price Associates is the investment adviser that may hereafter be registered under the act) as may desire to do so to enter into a similar joint arrangement for any subsequent year. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Applicant's propose to enter into a joint arrangement for the payment of the premium for errors and omissions insurance covering Applicants and their officers, directors and employees for the year 1977, and to allocate such premium between Price Associates and the Funds, and then among the individual Funds, on the basis recommended by the insurance underwriter as set forth in the application, and summarized below.

Applicants also propose to enter into similar arrangements for subsequent years among such of them (and any other investment company or companies of which Price Associates is the investment adviser that may hereafter be registered under the act) as may indicate a desire to do so by an affirmative vote of the directors, including an affirmative vote by a majority of those directors who are not interested persons of Price Associates. In each case, the directors will be asked to consider the advice of the insurance carrier, whether any Fund's participation is on a basis less advantageous than the other participants, whether the allocation of premium is both fair and equitable, and whether the portion of the total premiums payable by the Fund is relatively small in relation to its total net assets.

The application states that Price Associates has purchased errors and omissions insurance covering Price Associates, its officers, directors and employees as well as the Funds and their officers and directors, since 1967. At all times the entire cost of the policy has been borne by Price Associates, although it is not obligated to provide such insurance under the terms of its investment advisory agreements with the Funds. The current limits of liability are $10,000,000 for each and every claim in excess of the deductible of $50,000. The premium paid for such coverage for 1977 was $155,300.

The application states that at the beginning of 1977, Price Associates asked the Funds to consider bearing an allocated portion of the total premium cost. The Boards of Directors of the Funds discussed this matter at a joint meeting on February 25, 1977. At the meeting, the directors were presented with a letter from the insurance underwriter setting forth a recommended allocation between Price Associates and the Funds, and a recommended allocation among the Funds themselves. Price Associates also advised the directors that to Price Associate's knowledge the policy under discussion was only written by one insurance carrier. After reviewing the policy, the Boards of Directors voted to assume the allocated portion of the total premium cost recommended by the insurance underwriter subject to confirmation of counsel that the proposed arrangements were permissible under the act. Price Associates received a bill for the joint errors and omissions insurance policy in March, 1977, and made payment April 6, 1977.

Section 17(d) of the act provides, in pertinent part, that it shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal to effect any transaction in which such registered company is a joint or a joint and several participant with such person or affiliated person, in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered company on a basis different from or less advantageous than that of such other participant. Rule 17d-1 provides, in pertinent part, that no affiliated person for any registered investment company, and no affiliated person of such a person acting as principal shall participate in, or effect any transaction in connection with, any joint enterprise or other arrangement in which any such registered investment company is a participant unless an application regarding such joint enterprise or arrangement has been filed with the Commission and has been granted by an order prior to adoption. Rule 17d-1 also provides that in passing on such application the Commission will consider whether the participation of such registered company in such joint enterprise is consistent with the provisions, policies and purposes of the act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Applicants assert that the participation of the Funds in the joint errors and omissions policy according to the proposed allocation is fair and equitable and that no Fund's participation is on a basis less advantageous than that of the other participants. In support of this assertion, applicants state that as of October 18, 1977, the maximum amount of insurance that would be available if separate policies were purchased would be $5 million at a cost of $135,000 to Price Associates and $75,000 to the Funds. Coverage under the joint policy for 1977 is $10 million at an aggregate cost of $155,300. The resultant savings will be allocated between Price Associates and the Funds on the same ratio as the premiums that would be charged on separate policies. The resulting 26 percent saving in each case, amounts to $35,000 for Price Associates and $20,000 for the Funds. The insurance carrier recommended that the premium be allocated among the Funds on the basis of aggregate net asset values.

Applicants represent that the arrangement benefits the Funds since it provides coverage for liability and expenses that the Funds could incur in the event a shareholder sued a Fund and the Fund, for whatever reason, was unable to recover against the adviser or the adviser's officers and directors. Applicants further represent that a Fund's coverage under the errors and omissions policy has the incidental benefit of not requiring a Fund to establish a contingency reserve based upon a shareholder's claim.

Notice is further given that any interested person may, not later than August 18, 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 applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by rule 0-5 of the rules and regulations promulgated under the act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-21182 Filed 7-31-78; 8:45 am]

[4810-31]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 78-12; Reference: ATF O 1100.92]

ASSISTANT DIRECTOR (REGULATORY ENFORCEMENT)

Delegation Order

1. *Purpose.* This order delegates certain authorities, now vested in the Director by regulations in 27 CFR Part 196, Stills, to the Assistant Director (Regulatory Enforcement), and permits redelegation to Regulatory Enforcement personnel in Bureau Headquarters.

2. *Background.* Under current regulations, the Director has authority to take final action on matters relating to the manufacture, taxpayment, removal, use, and registration of stills and condensers, and to the exportation or transfer to foreign-trade zones of stills and condensers with benefit of drawback of internal revenue tax or without payment of tax. It has been administratively determined that certain authorities now vested in the Director by regulations in 27 CFR Part 196, Stills, belong at and should be delegated to a lower organizational level.

3. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, there is hereby delegated to the Assistant Director (Regulatory Enforcement) the authority to take final action on the following matters relating to 27 CFR Part 196, Stills:

a. To prescribe all forms required by regulations including applications, claims, records, and reports, under 27 CFR 196.2.

b. To rule on cases where there is a doubt that changes, repairs, or alterations of any still or condenser constitute the manufacture of a new still or condenser and are of such nature or extent as to incure tax, under 27 CFR 196.32.

4. *Redelegation.* a. The authority in paragraph 3a above, may be redelegated to Regulatory Enforcement personnel in Bureau Headquarters not lower than the position of branch chief.

b. The authority in paragraph 3b above, may be redelegated to Regulatory Enforcement personnel in Bureau Headquarters not lower than the position of ATF specialist.

Effective date. This order becomes effective on July 24, 1978.

JOHN G. KROGMAN,
Acting Director.

[FR Doc. 78-21258 Filed 7-31-78; 8:45 am]

[4810-22]

Customs Service

DIURON FROM ISRAEL

Final Countervailing Duty Determination

AGENCY: U.S. Customs Service, U.S. Treasury Department.

ACTION: Final Countervailing Duty Determination.

SUMMARY: This is to advise the public that a countervailing duty investigation has resulted in a final determination that the Government of Israel has not given benefits considered to be bounties or grants within the meaning of the Countervailing Duty Law on the manufacture, production or exportation of diuron.

EFFECTIVE DATE: August 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald W. Eiss, Office of Tariff Affairs, United States Treasury Department, 15th Street and Pennsylvania Avenue, NW., Washington, D.C. 20220, 202-566-2951.

SUPPLEMENTARY INFORMATION: On June 5, 1978, an affirmative "Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (43 FR 24396). That notice stated that it had preliminarily been determined that benefits had been bestowed by the Government of Israel to manufacturers/exporters of diuron which constituted bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) (hereinafter referred to as "the act").

Diuron, a herbicide, is provided for in item number 405.15 of the Tariff Schedules of the United States. The chemical name for diuron is 3-(3,4-dichlorophenyl)-1, 1-dimethylurea.

Benefits conferred to the sole Israeli manufacturer/exporter of diuron under two programs administered by the Government of Israel were identified in the preliminary determination as possibly constituting bounties or grants. Those programs were:

1. Rebate of a percentage of property taxes when a company achieves a required level of exportation of their manufactured articles.

2. Regional development assistance including:

(a) Cash grants received for the purchase of machinery and the construction of buildings.

(b) Exemption from Customs duties on imported machinery. Although not noted in the preliminary determination, low cost loans were also granted to the firm under the regional assistance program. All benefits conferred as a result of these loans have been included for purposes of the final determination. The firm's eligibility to receive payments under these regional assistance programs expired in January 1977. Therefore, potential "bounties or grants" would be limited to any residual benefits accruing to the manufacturer as the result of payments made during its eligibility period.

Subsequent to the preliminary determination, the Government of Israel provided quantification of the payments made under these programs but also asserted that no net benefit was bestowed under the regional aid program because the dislocation costs incurred by virtue of locating in an economically disadvantageous area of Israel exceeded the benefits received under the program. In support of its contention, the Government of Israel provided a listing of a number of labor costs which it contends are incurred only as the result of its plant's more remote location. Some of the costs enumerated included the cost of operating a "canteen", extra wage payments to cover the travel time of that part of the work force commuting from Tel Aviv and the costs of a number of other fringe benefits of-

fered to workers whether they commute from Tel Aviv to the plant or live more proximate to Ashdod where the plant is located.

While it is clear that most of the costs submitted by the Israelis are incurred incident to the plant's location in a remote area, it has not been shown that these are costs that any business would not have been willing to incur if the return to the firm by virtue of the more remote location of the plant would on balance have been enhanced. Possible cost savings not taken into account might include the reduced costs associated with the plant's location on the Mediterranean Sea and the possible reduction in pollution control costs which might otherwise be required. In this situation it would be inappropriate to conclude that the mere assumption of the additional costs set out by the Government of Israel constitutes a net economic disadvantage to the firm which should be an allowable offset to benefits received under the regional assistance program.

The preliminary determination provided interested parties a period for the submission of any relevant data, views or arguments regarding the findings of the preliminary determination. The Government of Israel has provided information, in addition to that already discussed above, regarding the other programs which Treasury identified as possibly conferring bounties or grants at the preliminary stage. The entire Israeli chemical industry, of which diuron is a part, did not receive any Customs duties exemptions on imported machinery and therefore this aspect of the regional assistance program is categorized as not applicable for purposes of the final determination. Based upon the submission, Treasury also calculated the benefits received by the Israeli manufacturer through property tax exemptions. The Government of Israel provides two property tax exemption programs, one under the regional assistance program limited to approved firms and one which is available to all firms based upon their export performance. The Israeli firm under investigation received its exemptions under the latter program.

On the basis of information provided subsequent to the preliminary determination it is hereby determined that benefits have been paid by the Government of Israel on the manufacture/exportation of diuron in the form of the partial rebates of property taxes depending upon export performance and grants and loans made under the regional assistance program. It has further been determined that these benefits involve an aggregate amount of 0.33 percent, considered to be *de minimis* in size, and that therefore no bounty or grant is being paid or bestowed, directly or indirectly, within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), upon the manufacture, production or exportation of diuron from Israel.

This notice is published pursuant to section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

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 § 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. 78-21184 Filed 7-31-78; 8:45 am]

[4810-25]

Monetary Offices

FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

Modification of Reporting Requirement

Notice is hereby given that, pursuant to the authority contained in sections 241 and 242 of the Currency and Foreign Transactions Reporting Act, 84 Stat. 1124 and 31 CFR 103.46, the due date for the filing of Treasury Department Form 90-22.1 (report of foreign bank, securities and other financial accounts), required under 31 CFR 103.24, has been extended to August 31, 1978, in certain instances. The extension has been granted to persons who resided in a foreign country in 1977 and believe that they qualify for the foreign earned income exclusion under section 911 of the Internal Revenue Code.

This extension has been authorized in response to requests from a number of tax practitioners who have experienced unforeseen difficulties as a result of recent changes in the reporting procedures and IRS requirements. On December 8, 1977, 31 CFR 103.24 was modified to separate the requirement to file the reports made on Treasury Department Form 90-22.1 from the Federal income tax return. Earlier this year, the Internal Revenue Service announced (IR-2000, dated May 24, 1978; and IR-2005, dated June 6, 1978) an automatic extension to August 15, 1978, for taxpayers who qualify for the section 911 exclusion referred to above. Many tax practitioners have been unable to adapt their internal procedures and data processing services to these unexpected changes.

A deferral of the filing date to August 31, 1978, should alleviate a substantial burden on the tax practitioners affected without causing undue inconvenience to the Treasury Department. Since this document does not meet the Treasury Department's criteria for significant regulations, it is not subject to the departmental procedures governing their review.

Dated: July 21, 1978.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

[FR Doc. 78-21186 Filed 7-31-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Decisions Volume No. 17]

DECISION-NOTICE

JULY 19, 1978.

The following applications are governed by special rule 247 of the Commission's rules of practice (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the FEDERAL REGISTER. Failure to file a protest, within 30 days, will be considered as a waiver of opposition to the application. A protest under these rules should comply with rule 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules

and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication.

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We find: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its (his) proposed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its (his) proposed contract carrier service will be consistent with the public interest and the national transportation policy. We also find preliminarily that each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of the Interstate Commerce Act and the Commission's regulations. This decision is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

It is ordered: In the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

By the Commission, Review Board No. 2, members Boyle, Eaton, and Liberman.

H. G. Homme, Jr.,
Acting Secretary.

MC 1328 (Sub-29F), filed June 26, 1978. Applicant: MGS TRANSPORTATION, INC., 401 Park Avenue, Alexandria, IN 46001. Representative: Charles M. Garrett, 401 Park Avenue, Alexandria, IN 46001. Authority granted to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Insulation board,* and *materials and supplies* used in the manufacture and distribution of insulation board, between Alexandria, IN, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VA, WV, WI, and DC; (2) *building materials,* from Rockdale and Waukegan, IL, to points in IN, OH, and the Lower Peninsula of MI; (3) *plastic pipe* from Wilton, IA, to points in IN, OH, and the Lower Peninsula of MI; and (4) *asbestos fibre pipe cement,* from Waukegan, IL, to points in IN, OH, and the Lower Peninsula of MI, under a continuing contract, or contracts, in (1), (2), (3), and (4), with Johns-Manville Sales Corp., of Oak Brook, IL. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 2900 (Sub-336F), filed June 7, 1978. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Road, P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as applicant). Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Bauxite ore* (except in bulk), from Andersonville, GA, to Erwin, TN. (Hearing site: Atlanta, Ga.)

MC 5470 (Sub-152F), filed June 9, 1978. Applicant: TAJON, INC., R.F.D. 5, Mercer, PA 16137. Representative: Brian L. Troiano, 918 16th Street NW., Washington, DC 20006. Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Coke,* in dump vehicles, from points in Erie County, NY, to points in CT, DE, IL, IN, KY, ME, MD, MA, MI, NH, OH, PA, RI, VT, VA, WV, and WI. (Hearing site: Buffalo, NY, or Washington, DC.)

MC 5623 (Sub-39F), filed June 27, 1978. Applicant: ARROW TRUCKING CO., a corporation, P.O. Box 7280, Tulsa, OK 74105. Representative: J. G. Dail, Jr., P.O. Box 567, McLean, VA 22101. Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Components and materials* used in the manufacture or installation of oil well drilling masts and derricks, from the facilities of Lee C. Moore Corp., at or near Neville Island, PA, to points in LA, OK, and TX. (Hearing site: Tulsa, OK.)

MC 5623 (Sub-40F), filed June 27, 1978. Applicant: ARROW TRUCKING CO., a corporation, P.O. Box 7280, Tulsa, OK 74105. Representative: J. G. Dail, Jr., P.O. Box 567, McLean, VA 22101. Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Steel pipe and fittings,* from Ambridge, Beaver Falls, and Koppel, PA, and Alliance, OH, to points in AR, CO, KS, LA, MO, NE, NM, OK, and TX. (Hearing site: Washington, DC.)

MC 8973 (Sub-51F), filed June 23, 1978. Applicant: METROPOLITAN TRUCKING, INC., 2424 95th Avenue, North Bergen, NJ 07047. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th Street NW., Washington, DC 20001. Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Battery boxes, battery jars, and battery covers,* from the facilities of Stokes Molded Products, Division of ESB Inc., at or near Trenton, Cranford, and Clark, NJ, to points in the United States (except AK and HI), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, (except commodities in bulk), from points in the United States (except AK and HI), to the origins named in (1) above, restricted in both (1) and (2) to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: Washington, DC.)

MC 43963 (Sub-15F), filed June 26, 1978. Applicant: CHIEF TRUCK LINES, INC., 1479 Ripley Street, Lake Station, IN 46405. Representative: Joseph Winter, 33 North LaSalle Street, Chicago, IL 60602. Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles,* from Sterling, IL, to points in MN, WI, IL, IN, MO, OH, WV, PA, AL, MS, GA, FL, and LA, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, from the destinations named in (1) above, to Sterling, IL. (Hearing site: Chicago, IL.)

MC 43963 (Sub-16F), filed June 26, 1978. Applicant: CHIEF TRUCK LINES, INC., 1479 Ripley Street, Lake Station, IN 46405. Representative: Joseph Winter, 33 North LaSalle Street, Chicago, IL 60602. Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Pipe, fittings, valves, and hydrants,* and (2) *accessories* for the commodities named in (1) above, from Bessemer and Birmingham, AL, to points in TX, OK, MO, KS, IA, MN, WI, IL, IN, OH, and MI. (Hearing site: Chicago, IL.)

MC 47171 (Sub-109F), filed June 7, 1978. Applicant: COOPER MOTOR LINES, INC., P.O. Box 4259, Greenville, SC 29608. Representative: Harris

G. Andrews, P.O. Box 4259, Greenville, SC 29608. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Floor coverings, and materials, equipment, and supplies* used in the installation, manufacture, and distribution of floor coverings (except commodities in bulk), from Greenville, SC, to those points in CT on and east of the Connecticut River. (Hearing site: Columbia, SC.)

MC 69397 (Sub-44F), filed June 15, 1978. Applicant: JAMES H. HARTMAN & SON, INC., P.O. Box 85, Pocomoke City, MD 21851. Representative: Wilmer B. Hill, 805 McLachlen Bank Building, 666 11th Street NW., Washington, D.C. 20001. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Pipe, fittings, valves, hydrants, and castings*, and (b) *accessories* used in the installation of the commodities named in (1)(a) above, from the facilities of Clow Corp., at or near Coshocton, OH, to points in PA, NY, VT, NH, ME, MA, CT, RI, NJ, DE, MD, VA, NC, SC, and WV, and (2) (a) *pipe, fittings, valves, and hydrants*, and (b) *accessories* used in the installation of the commodities named in (2)(a) above, from the facilities of Clow Corp., at or near Buckhannon, WV, to points in PA, NY, VT, NH, ME, MA, CT, RI, NJ, DE, MD, VA, NC, and SC. (Hearing site: Washington, DC.)

NOTE.—The person or persons which appear to be in engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act or submit an affidavit indicating why such approval is unnecessary.

MC 71593 (Sub-10F), filed June 21, 1978. Applicant: FORWARDERS TRANSPORT, INC., 1815 Front Street, Scotch Plains, NJ 07076. Representative: Charles J. Williams, (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *such commodities as are dealt in or used by retail stores* (except foodstuffs, commodities of unusual value, classes A and B explosives, commodities in bulk, and those requiring special equipment), from the facilities of U.S. Packing & Shipping Co., Inc., at Jersey City, NJ, to points in OH, MI, IN, IL, WI, MN, MO, and KS. (Hearing site: New York, NY.)

MC 72243 (Sub-58F), filed June 21, 1978. Applicant: THE AETNA FREIGHT LINES, INC., P.O. Box 350, Warren, OH 44482. Representative: Edward G. Villalon, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, DC 20004. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: Aluminum articles, (1) from the facilities of Reynolds Metals Co., at or near (a) Lister Hill and Sheffield, AL, and (b) Gum Springs and Jones Mills, AR, to points in AR, CO, CT, DE, IL, IN, IA, KS, MD, MI, MN, MO, NE, NJ, NY, NC, OH, PA, SD, VA, WV, WI, and DC, and (2) from the facilities of Martin Marietta Aluminum, in Hancock County, KY, to points in CT, MD, LA, MA, MI, NJ, NY, TN, VA, WV, and DC. (Hearing site: Washington, DC.)

MC 80443 (Sub-12F), filed June 7, 1978. Applicant: OVERNITE EXPRESS, INC., 2550 Long Lake Road, Roseville, MN 55113. Representative: Sammuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Air filtration systems, internal combustion engines, air silencers, air compressors, and metal*, and (2) *parts, accessories, and attachments* for the commodities named in (1) above, from Waseca, MN, to points in the United States (except AK and HI). (Hearing site: Minneapolis, or St. Paul, MN.)

MC 80443 (Sub-13F), filed June 7, 1978. Applicant: OVERNITE EXPRESS, INC., 2550 Long Lake Road, Roseville, MN 55113. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dust collectors*, and (2) *parts, accessories, and attachments* for the commodities named in (1) above, from Baldwin, WI, to points in the United States (except AK, HI, and WI), and (3) *materials, equipment, and supplies* used in the manufacture of the commodities named in (1) and (2) above, from the destinations in (1) and (2) above to Baldwin, WI. (Hearing site: Minneapolis, or St. Paul, MN.)

MC 80653 (Sub-7F), filed June 26, 1978. Applicant: DAVID GRAHAM CO., a corporation, P.O. Box 115, Croydon, PA 19020. Representative: Paul F. Sullivan, 711 Washington Building, Washington, DC 20005. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from the facilities of Worthington Steel Co., at Baltimore, MD, to points in NJ, OH, NY, and CT, and (2) *materials, equipment, and supplies*, used in the manufacture of the commodities named in (1) above (except commodities in bulk), from the above-named destinations to the above named origins. (Hearing site: Philadelphia, PA, or Washington, DC.)

NOTES.—(1) Applicant states the purpose of this filing (in part) is to substitute single-line service for existing joint-line service. (2) Dual operations may be at issue in this proceeding.

MC 94350 (Sub-411F), filed June 8, 1978. Applicant: TRANSIT HOMES, INC., P.O. Box 1628, Greenville, SC 29602. Representative: Mitchell King, Jr. (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers designed to be drawn by passenger automobiles*, in initial movements, from points in Rutland County, VT, to points in ME, MA, NH, and NY. Condition: In view of the findings in MC 94350 (Sub-361) of which official notice is taken, the certificate to be issued shall be limited in point of time to a period expiring 3 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Montpelier, VT.)

MC 105269 (Sub-65F), filed June 8, 1978. Applicant: GRAFF TRUCKING CO., INC., P.O. Box 986, Kalamazoo, MI 49005. Representative: Thomas R. Woodworth, Jr. (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fiberboard boxes, paperboard boxes and pulpboard boxes*, from the facilities of the Mead Corp., at or near Chicago, IL, to Detroit, MI. (Hearing site: Lansing, MI, or Chicago, IL.)

MC 106398 (Sub-812F), filed June 23, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull, 525 south Main, Tulsa, OK 74103. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pickup trucks*, from the facilities of Gladiator, Inc., at Jacksonville, FL, to points in AL, AR, GA, LA, MS, NC, SC, and TN. Condition: In view of the findings in MC 106398 (Sub-741) of which official notice is taken, the certificate to be issued in this proceeding will be limited to a period expiring 3 years from its effective date unless, prior to its expiration (but not less than 6 months prior to its expiration) applicant files a petition for the extension of said certificate and demonstrates that it has been conducting operations in full compliance with the terms and conditions of its certificate and with the requirements of the Interstate Commerce Act and applicable Commission's regulations. (Hearing site: Jacksonville, FL.)

MC 106603 (Sub-178F), filed June 26, 1978. Applicant: DIRECT TRANSIT LINES, INC., 200 Colrain Street SW., P.O. Box 8099, Grand Rapids, MI

49508. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Building and roofing materials* (except commodities in bulk), from the facilities of GAF Corp., in Posey and Vanderburgh Counties, IN, to points in KY, and TN, and (2) *materials and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk), from the above destinations to the above named origin. (Hearing site: Chicago, IL, or Washington, DC.)

MC 106920 (Sub-75F), filed June 13, 1978. Applicant: RIGGS FOOD EXPRESS, INC., P.O. Box 26, West Monroe Street, New Bremen, OH 45869. Representative: E. Stephen Heisley, 666 11th Street NW., Washington, DC 20001. Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Confectionery* (except in bulk), from the facilities of R. M. Palmer Co., at or near West Reading and Wyomissing, PA, to points in OH, IN, IL, MI, and MO. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 107403 (Sub-1095F), filed June 26, 1978. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Grain flour,* in bulk, from Columbus, OH, to Fredericksburg, VA. (Hearing site: Washington, DC.)

MC 107403 (Sub-1096F), filed June 26, 1978. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Sulphuric acid,* in bulk, in tank vehicles, from Josephtown, Newell, and Langeloth, PA, to Front Royal, VA. (Hearing site: Washington, DC.)

MC 108341 (Sub-104F), filed June 8, 1978. Applicant: MOSS TRUCKING CO., INC., 3027 North Tryon Street, P.O. Box 8409, Charlotte, NC 28208. Representative: Jack F. Counts, 3027 North Tryon St., P.O. Box 8409, Charlotte, NC 28208. Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Precut buildings, knocked down or in sections, and* (2) *materials, equipment, and supplies* used in the construction, distribution, and manufacture of precut buildings (except commodities in bulk), between Fletcher, NC, On the one hand, and, on the other, those points in the United States in and east of WI, IL, KY, TN and MS. (Hearing site: Charlotte, NC, or Washington, DC.)

MC 112595 (Sub-78F), filed June 27, 1978. Applicant: FORD BROS., INC., Box 727, Ironton, OH 45638. Representative: Jerry B. Sellman, 50 West Broad Street, Columbus, OH 43215. Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Chemicals,* in bulk, in tank vehicles, from points in IL, IN, IA, KS, KY, LA, MI, MO, NJ, OH, PA, TN, TX, and WV, to the facilities of Mallinckrodt, Inc., at or near Paris, KY. (Hearing site: Columbus, OH, or Washington, DC.)

MC 113855 (Sub-436F), filed June 26, 1978. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE., Rochester, MN 55901. Representative: Alan Foss, 502 First National Bank Bldg., Fargo, ND 58102. Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Metal working presses, metal drawing presses, metal rolling machinery, machine parts, wrought castings and weldings, and gear,* and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, between Salem, OH, on the one hand, and, on the other, points in the United States (including AK, but excluding HI), restricted to the transportation of traffic originating at or destined to the facilities of E. W. Bliss, Division of Gulf and Western Manufacturing Co., at or near Salem, OH. (Hearing site: Washington, DC.)

MC 114273 (Sub-404F), filed June 27, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk, in tank vehicles), from Fair Lawn, NJ, to Kansas City and Trenton, MO, Minneapolis, MN, and Omaha, NE. Condition: In view of the findings in MC 114273 (Sub-Nos. 147 and 252), of which official notice is taken, the certificate to be issued here shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable rules and regulations. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—Applicant states the purpose of this filing is to substitute single-line service for existing joint-line service.

MC 114273 (Sub-405F), filed June 27, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Welding rods,* and (2) *equipment, supplies, and accessories* for the commodities named in (1) above, (a) from Hanover, PA, to Denver, CO, Gering, NE, Kansas City and St. Louis, MO, and points in IA, and MN, and (b) from Baltimore, MD, to Omaha, NE. Condition: In view of the findings in MC 114273 (Sub-Nos. 147 and 252), of which official notice is taken, the certificate to be issued here shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable rules and regulations. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—Applicant states the purpose of this filing is to substitute single-line service for existing joint-line service.

MC 114273 (Sub-406F), filed June 27, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). Authority granted to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by retail stores* (except foodstuffs and commodities in bulk, in tank vehicles), from points in CT, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, SC, TN, VT, VA, WV, and DC, to the facilities of Ardan Wholesale, at Des Moines, IA. Restricted to the transportation of traffic originating at the named origins and destined to the named destination. Condition: In view of the findings in MC 114273 (Sub-Nos. 147 and 252), of which official notice is taken, the certificate to be issued here shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable rules and regulations. (Hearing site: Chicago, IL, or Washington, DC.)

NOTE.—Applicant states the purpose of this filing is to substitute single-line service for existing joint-line service.

MC 115311 (Sub-286F), filed June 8, 1978. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Paul M. Daniell, P.O. Box 872, Atlanta, GA 30301. Authority granted to op-

erate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper* and *paper products* from the facilities of Olinkraft, Inc., at or near Monroe, LA, to points in AL, AR, FL, GA, MS, and TX. (2) *Materials, supplies, and equipment* used in the manufacture and distribution of of paper and paper products (except commodities in bulk), from the destinations named in (1) above to the facilities named in (1) above. (Hearing site: New Orleans, LA or Atlanta, GA.)

MC 115311 (Sub-289F), filed June 9, 1978. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Ralph B. Matthews, P.O. Box 872, Atlanta, GA 30301. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber* and *particleboard*, from the facilities of the Georgia-Pacific Corp. at or near Taylorsville, MS, to points in AL, FL, GA, LA, TN, and TX. (Hearing site: Jackson, MS or Atlanta, GA.)

MC 115826 (Sub-323F), filed June 13, 1978. Applicant: W. J. DIGBY, INC., 1960 Thirty-first Street, Denver, CO 80217. Representative: Howard Gore (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery* (except in bulk), *dessert preparations, gum ball machines, and gumball stands*, in vehicles equipped with mechanical refrigeration, from the facilities of Leaf Confectionery, Inc., at or near Chicago, IL, to points in AZ, CA, and NM. (Hearing site: Denver, CO, or Chicago, IL.)

MC 115826 (Sub-324F), filed June 13, 1978. Applicant: W. J. DIGBY, INC. 1960 Thirty-first Street, Denver, CO 80217. Representative: Howard Gore (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts*, and *articles distributed by meat-packing houses*, as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides, and commodities in bulk), from the facilities of John Morrell & Co., at or near El Paso, TX, to points in AL, AR, CT, DE, FL, GA, KY, LA, MD, MA, MS, NJ, NY, NC, PA, SC, TN, VA, and DC, restricted to the transportation of traffic originating at the above named origin and destined to the above named destinations. (Hearing site: Denver, CO.)

MC 116273 (Sub-215F), filed June 26, 1978. Applicant: D & L TRANSPORT, INC., 3800 South Laramie Avenue, Cicero, IL 60650. Representative: Arnold L. Burke, 180 North Lasalle Street, Chicago, IL 60601. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from Mokena, IL, to points in AL, AR, LA, NE, ND, OK, SD, WY, and those points in FL on and south of FL Hwy 70, restricted (A) against the transportation of traffic originating at Mokena, IL and (B) to the transportation of traffic received from connecting carriers at Mokena, IL. (Hearing site: Chicago, IL.)

MC 116915 (Sub-64F), filed June 28, 1978. Applicant: ECK MILLER TRANSPORTATION CORP., 1830 South Plate Street, Kokomo, IN 46901. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40602. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Mining conveyors* and *industrial conveyors*, and (2) *material, equipment*, and *supplies* used in the manufacture of the commodities in (1) above, between the facilities of Goodman Conveyor Corp., at or near Murfreesboro, TN, on the one hand, and, on the other, AR, AL, AZ, CO, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NM, NY, NC, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WV, WI, and WY. (Hearing site: Nashville, TN, or Louisville, KY.)

MC 117883 (Sub-227F), filed June 21, 1978. Applicant: SUBLER TRANSFER, INC., One Vista Drive, Versailles, OH 45380. Representative: Neil E. Hannan, P.O. Box 62, Versailles, OH 45380. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), from the facilities of Freezer Queen Foods, Inc., at Buffalo, NY, to points in IN, IL, IA, KS, KY, MI, MN, MO, NE, and WI, restricted to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: Buffalo, NY, or Washington, DC.)

MC 117883 (Sub-228F), filed June 23, 1978. Applicant: SUBLER TRANSFER, INC., One Vista Drive, Versailles, OH 45380. Representative: Neil E. Hannan, P.O. Box 62, Versailles, OH 45380. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except in bulk), from the facilities of Ore-Ida Foods, Inc., at or near Plover, WI, to points in CT, DE, IL, IN, KY, MD, MA, MI, NJ, NY, OH, PA, RI, VA, WV, and DC, restricted to the transportation of traffic originating at the named origin and destined to the named destinations. (Hearing site: Washington, D.C.)

MC 119493 (Sub-213F), filed June 26, 1978. Applicant: MONKEM CO., INC., P.O. Box 1196, Joplin, MO 64801. Representative: Lawrence F. Kloeppel (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, and *tin mill products*, from Chicago, IL, to points in KS, NE, and OK. (Hearing site: Chicago, IL, or St. Louis, MO.)

MC 119741 (Sub-104F), filed June 8, 1978. Applicant: GREEN FIELD TRANSPORT CO., INC., 1515 Third Avenue NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson, P.O. Box 1235, Fort Dodge, IA 50501. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the facilities of Lender's Bagel Bakery, Inc., at Buffalo, NY, to points in CO, IL, IN, IA, KS, MN, MO, and WI, Restricted to the transportation of traffic originating at the named origin facilities and destined to the named destinations. (Hearing site: Buffalo, NY.)

MC 119903 (Sub-14F), filed June 23, 1978. Applicant: D. J. WALRAVEN, P.O. Box 1045, Rome, GA 30161. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, from Tyner, TN, to those points in GA south of U.S. Hwy 80, under continuing contracts with Cotton Producers Association, of Atlanta, GA. (Hearing site: Atlanta, GA.)

MC 121168 (Sub-6F), filed June 26, 1978. Applicant: BOOTH TRANSFER, INC., 7800 K Street, Omaha, NE 68127. Representative: M. M. McMahon, 7800 K Street, Omaha, NE 68127. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, and articles distributed by meatpacking houses*, as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides, and commodities in bulk, in tank vehicles), from Omaha, NE, to the facilities of Nissen Co., at or near Webster City, IA, restricted to the transportation of traffic originating at the named origin and destined to the named destinations. (Hearing site: Omaha, NE.)

MC 123255 (Sub-164F), filed June 26, 1978. Applicant: B & L MOTOR FREIGHT, INC., 1984 Coffman Road, Newark, OH 43055. Representative: C. F. Schnee, Jr., 1984 Coffman Road, Newark, OH 43055. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass containers* and

glass container accessories, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), from the facilities of Brockway Glass Co., Inc., in (a) Washington County, PA, (b) Muskingum County, OH, and (c) Madison County, IN, to points in Johnson, Linn, Clinton, Scott, and Muscatine Counties, IA. (Hearing site: Columbus, OH.)

MC 123407 (Sub-467F), filed June 16, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: H. E. Miller, Jr. (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Laminated wood products and veneer*, from Marion, WI, to those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Chicago, IL.)

MC 123407 (Sub-469F), filed June 16, 1978. Applicant SAWYER TRANSPORT, INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: H. E. Miller, Jr. (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum board*, from Grand Rapids, MI, to points in WI and MN. (Hearing site: Chicago, IL.)

MC 124411 (Sub-16F), filed June 7, 1978. Applicant: SULLY TRANSPORT, INC., P.O. Box 185, Sully, IA 50251. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Asphalt*, in bulk, from Des Moines, IA, to points in MO. (Hearing site: Des Moines, IA, or Omaha, NE.)

MC 123407 (Sub-470F), filed June 16, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: H. E. Miller, Jr., (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural parts and agricultural implements*, Clearfield, UT, to points in the United States (except those in AK and HI). (Hearing site: Salt Lake City, UT, or Denver, CO.)

MC 123407 (Sub-472F), filed June 16, 1978. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: H. E. Miller, Jr., (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Doors, shutters, and millwork*, from the facilities of C-E Morgan Building Products, at or near Oshkosh, WI, to points in AZ, UT, ID, WA, OR, NV, and CA. (Hearing site: Washington, DC.)

MC 124947 (Sub-111F), filed June 16, 1978. Applicant: MACHINERY TRANSPORTS, INC., 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: David J. Lister (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Machinery and machinery parts*, between the facilities of Karch Corp., at or near Addision, IL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

MC 124947 (Sub-112F), filed June 16, 1978. Applicant: MACHINERY TRANSPORTS, INC., 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: David J. Lister (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Yard tractors*, and (2) *accessories and parts* for yard tractors, between Lyons, IL, on the one hand, and, on the other, points in the United States (excluding AK and HI). (Hearing site: Chicago, IL.)

MC 126118 (Sub-81F), filed June 26, 1978. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie, P.O. Box 81228, Lincoln, NE 68501. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prunes, prune extract, and prune juice* in containers, (1) from the Facilities used by Diamond/Sunsweet, Inc., at (a) Kenosha, WI, and (b) North Chicago, IL, to Yuba City, CA, and points in AL, AR, GA, IA, KS, KY, LA, MN, MS, MO, NE, ND, OH, OK, SD, TN, TX, WV, and WI, (2) between Grawn, MI, on the one hand, and, on the other, Kenosha, WI, Bordentown, NJ, Middleboro, MA, and North Chicago, IL, and (3) between Kenosha, WI, North Chicago, IL, Yuba City, CA, Bordentown, NJ, and Middleton, MA, restricted in (1) above to the transportation of traffic originating at the named origins. (Hearing site: San Francisco, CA, or Lincoln, NE.)

NOTE.—Dual operations may be in issue.

MC 127303 (Sub-43F), filed June 15, 1978. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326. Representative: E. Stephen Heisley, 666 11th Street NW., No. 805, Washington, DC 20001. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass bottles*, from Joliet, IL, to Milwaukee, WI, Iowa City, IA, and points in KY. (Hearing site: Washington, DC, or Philadelphia, PA.)

MC 128205 (Sub-50F), filed June 27, 1978. Applicant: BULKMATIC TRANSPORT CO., a corporation, 12000 South Doty Avenue, Chicago, IL 60628. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flour*, in bulk, in tank vehicles, from Cleveland, OH, to points in PA, MI, WV, NY, NJ, IN, MD, KY, and VA. (Hearing site: Cleveland, OH, or Chicago, IL.)

MC 128371 (Sub-5F), filed June 8, 1978. Applicant: BELLEVUE AGGREGATE HAULERS, INC., P.O. Box 296, Holland, OH 43528. Representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Sand, gravel, earth, building blocks, crushed stone*, and *road building materials* (except cement), from points in Hillsdale County, MI, to points in OH; and (2) *stone, building blocks, mortar, cinders, brick, clay tile, agricultural lime, and road building materials*, from points in Lucas County, OH, to points in Hillsdale County, MI. (Hearing site: Columbus, OH.)

MC 128383 (Sub-77F), filed May 23, 1978. Applicant: PINTO TRUCKING SERVICE, INC., 1414 Calcon Hook Road, Sharon Hill, PA 19079. Representative: Leonard C. Zucker (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk, and classes A and B explosives), between New Orleans, LA, and Miami, FL, restricted to the transportation of traffic having a prior or subsequent movement by air. (Hearing site: New Orleans, LA, Washington, DC.)

MC 128473 (Sub-18F), filed June 16, 1978. Applicant: MONTANA EXPRESS, INC., P.O. Box 3346, Butte, MT 59701. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by grocery and food business houses* (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, (1) from the facilities of Kraft, Inc., at or near Pocatello, ID, to points in WA, OR, CA, MT, NV, WY, UT, and AZ, and (2) from points in WA, CA, MT, UT, and AZ, to the facilities of Kraft, Inc., at or near Pocatello, ID, restricted in (1) and (2) above to the transportation of

traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Boise, ID, or Salt Lake City, UT.)

MC 129328 (Sub-10F), filed June 23, 1978. Applicant: PALTEX TRANSPORT CO., a corporation, P.O. Box 296, Palestine, TX 75801. Representative: Kenneth R. Hoffman, 1102 Perry-Brooks Building, Austin, TX 78701. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glassware* (except cut glassware) and *closures for glassware*, from the facilities of Glass Containers Corp., at or near (a) Palestine and Dallas, TX, and (b) Jackson, MS, to points in CO and KS; and (2) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of the commodities in (1) above, (except commodities in bulk), from points in CO and KS, to the facilities of Glass Containers Corp., at or near (a) Palestine, TX, and (b) Jackson, MS, under a continuing contract(s) with Glass Containers Corp., of Indianapolis, IN. (Hearing site: Dallas, TX, or Indianapolis, IN.)

MC 134477 (Sub-246F), filed June 16, 1978. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Road, West St. Paul, MN 55118. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *toilet preparations, and* (2) *commodities* used in the sale of toilet preparations, from the facilities of La Maur, Inc., at Minneapolis, MN, to points in CT, DE, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, and DC. (Hearing site: Minneapolis, MN.)

MC 134755 (Sub-152F), filed June 29, 1978. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, (except in bulk)*. (1) between Cincinnati, OH, and Florence, KY, and points in Queens County, NY, on the one hand, and, on the other, points in CO, GA, IN, IL, IA, MD, MI, MN, MS, MO, NC, TN, TX, and WI, (2) between points in Queens County, NY, on the one hand, and, on the other, Cincinnati, OH and Florence, KY, and (3) between Cincinnati, OH, and Florence, KY. (Hearing site: Kansas City or St. Louis, MO.)

NOTE.—Dual operations are involved.

MC 134888 (Sub-7F), filed June 26, 1978. Applicant: MOROSA BROS. TRANSPORTATION CO., A corporation, 4800 Stine Road, Bakersfield, CA 93309. Representative: R. Y. Schureman, 1545 Wilshire Boulevard, Los Angeles, CA 90017. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fly ash*, in bulk, from those points in CA in and south of San Luis Obispo, Kern, and San Bernardino Counties, to points in CA, restricted to the transportation of traffic having an immediately prior movement by rail. (Hearing site: Los Angeles, CA.)

MC 135950 (Sub-6F), filed June 14, 1978. Applicant: KERN TRUCKING, INC., Rural Route 1, Box 162, Bedford, IN 47421. Representative: Walter R. Jones, Jr., 601 Chamber of Commerce Building, Indianapolis, IN 46204. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are used in the manufacture of cement*, from points in IN, TN, and OH, to Kosmosdale, KY, under a continuing contract(s) with The Flintkote Co., of Kosmosdale, KY. (Hearing site: Louisville, KY, or Washington, DC.)

MC 136343 (Sub-137F), filed June 23, 1978. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from the facilities of International Paper Co., at or near Jay, ME, to those points in NY on and east of Interstate Hwy 81, and those points in PA on and east of U.S. Hwy 15 (except Emigsville). (Hearing site: New York, NY, or DC.)

MC 136343 (Sub-138F), filed June 23, 1978. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Printing paper, groundwood paper, and paper products*, from the facilities of St. Regis Paper Co., at or near Deferiet, NY, to points in PA, NJ, NY, CT, MA, DE, RI, NH, MD, VA, WV, NC, TN, KY, OH, IN, IL, MI, and DC; (2) *paper products, pulpboard, and wrapping paper*, from the facilities of St. Regis Paper Co., at or near Quinlan, FL, to points in IL, IN, OH, MI, WV, PA, NY, NJ, MA, CT, MD, VA, DE, and DC; and (3) *plastic film, plastic sheeting, and plastic bags*, from the facilities of St. Regis Paper Co., at or near West Hazelton, PA, to points in MN, IL, LA, GA, and FL, restricted in (1), (2), and (3) above to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: New York, NY, or DC.)

MC 136343 (Sub-139F), filed June 23, 1978. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority granted to operate as a *common carrier*, over irregular routes, transporting: *Potato Chips*, in containers, from the facilities of Daddy Crisp Co., at or near Quakertown, PA, to points in AL, CT, DE, FL, GA, IL, IN, KY, ME, MD, MI, MS, MA, MN, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VA, VT, WV, and WI. (Hearing site: New York, NY, or DC.)

MC 136363 (Sub-18F), filed June 19, 1978. Applicant: J & P PROPERTIES, INC., P.O. Box 1146, Apopka, FL 32702. Representative: James E. Wharton, Suite 811, Metcalf Building, 100 South Orange Avenue, Orlando, FL 32801. Auithority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bicycles, tricycles, and unicycles*, and (2) *parts, accessories, materials, and supplies* used in the manufacture of the commodities named in (1) above (except commodities in bulk), between Celina, OH, on the one hand, and on the other, points in FL, GA, AL, MS, AR, LA, OK, and TX. (Hearing site: Orlando or Tampa, FL.)

MC 136393 (Sub-1F), filed June 20, 1978. Applicant: N.Y., N.J., CONN., FREIGHT & MESSENGER CORP., 55 Lakeshore Drive, Rockaway, NJ 07866. Representative: Ronald I. Shapss, 450 Seventh Avenue, New York, NY 10001. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, frozen foods, commodities requiring special equipment, and commodities in bulk), between the facilities of American Freight Forwarding Corp., at (a) New York, NY, (b) Carlstadt, NJ, and (c) Chicago, IL, on the one hand, and, on the other, points in WI, IL, MO, KS, OH, NY, and IN, restricted to the transportation of traffic moving on bills of lading of freight forwarder. (Hearing site: New York, NY.)

MC 136553 (Sub-62F), filed June 19, 1978. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, IA 52001. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing materials*, from the facilities of Certain Teed Corp., at Chicago Heights, IL, to points in IA. (Hearing site: Chicago, IL.)

MC 138313 (Sub-38F), filed June 15, 1978. Applicant: BUILDERS TRANS-

PORT, INC., 409 14th Street SW., Great Falls, MT 59404. 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: *Lime*, from points in Tooele County, UT, to points in OR and WA, and those points in ID in and north of Idaho County. (Hearing site: Salt Lake City, UT.)

MC 138328 (Sub-70F), filed June 26, 1978. Applicant: CLARENCE L. WERNER, d.b.a. WERNER ENTERPRISES, I-80 and Hwy 50, P.O. Box 37308, Omaha, NE 68137. Representative: Donna Ehrlich (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles* (except in bulk), from the facilities of Mobil Oil Corp., at or near Temple, TX, to points in AL, AR, CO, FL, GA, IL, KS, KY, LA, MS, MO, MN, OK, and TN. (Hearing site: Omaha, NE.)

NOTE.—Dual Operations are involved.

MC 138762 (Sub-23F), filed June 2, 1978. Applicant: MUNICIPAL TANK LINES LIMITED, P.O. Box 3500, Calgary, Alberta, Canada T2P 2P9. Representative: Richard H. Streeter, 1729 H Street NW., Washington, DC 20006. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soybean oil and soybean meal*, in bulk, from the facilities of Cargill, Inc., at or near Sidney, OH, to ports of entry on the international boundary line between the United States and Canada, located at points in MI and NY, restricted to the transportation of traffic destined to points in Ontario, Canada. (Hearing site: DC, or Buffalo, NY.)

NOTE.—The person or persons which appear to be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act or submit and affidavit indicating why such approval is unnessary. Condition: Prior receipt from applicant of an affidavit setting forth its appropriate complementary Canadian authority or explaining why no such Canadian authority is necessary. Dual operations may be involved. The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled notice to interested parties of new requirements concerning applications for operating authority to handle traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate officials of the Provinces of Alberta, Saskatchewan, and Manitoba regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

MC 138882 (Sub-91F), filed June 7, 1978. Applicant: WILEY SANDERS, INC., P.O. Box 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Aluminum ingots*, from the facilities of Keystone Resources, Aluminum Division, at Greensboro, GA, to points in SC, NC, TN, IL, OH, MI, PA, CT, KY, MO, and AL; and (2) *aluminum scrap*, from points in CT, NY, NJ, PA, IL, IN, OH, KY, NC, SC, TN, MI, MO, and AL, to the plantsite of Keystone Resources, Aluminum Division, at Greensboro, GA. (Hearing site: Atlanta, GA, or Montgomery, AL.)

MC 138891 (Sub-6F), filed June 9, 1978. Applicant: FRANK TRANSFER & STORAGE, INC., 324 East 8th Street, Sioux Falls, SD 57102. Representative: A. J. Swanson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from St. Paul, MN, Milwukee, WI, and Peoria, IL, to Sioux Falls, SD, restricted to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: Sioux Falls, SD.)

MC 139193 (Sub-85F), filed June 19, 1978. Applicant: ROBERTS & OAKE, INC., P.O. Box 1356, Sioux Falls, SD 57101. Representative: Robert P. Sack, P.O. Box 6010 West St. Paul, MN 55118. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *foodstuffs* (except in bulk), and *canned goods*, from the facilities of Skyland Food Corp., at or near Delta, CO, to points in AZ, CA, IL, IA, KS, NE, OK, NM, MO, TX, and UT, under continuing contract(s) with Skyland Food Corp., of Delta, CO. (Hearing site: Chicago, IL.)

MC 139495 (Sub-361F), filed June 29, 1978. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mops, brooms, and brushes*, from Greeenville, NC, to points in the United States (except AK and HI). (Hearing site: Washington, D.C.)

MC 139973 (Sub-48F), filed June 19, 1978. Applicant: J. H. WARE TRUCKING, INC., P.O. Box 398, Fulton, MO 65251. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, (except hides and commodities in bulk), from points in Ford County, KS, to those points in the United States in and east of WI, IL, KY, TN, MS, and LA. (Hearing site: Kansas City or St. Louis, MO.)

MC 140033 (Sub-56F), filed June 16, 1978. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75245. Representative: D. Paul Stafford, Suite 1125 Exchange Park, P.O. Box 45538, Dallas, TX 75245. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and bottled foodstuffs*, (except frozen) from the facilities of Bruce Foods Corp., at Cade and Lozes, LA, to points in TX, KS, CO, OK, MO, NE, and IA. (Hearing site: Dallas, TX or New Orleans, LA.)

NOTE.—Dual operations are involved.

MC 140033 (Sub-57F), filed June 19, 1978. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, Suite 1125, Exchange Park, P.O. Box 45538, Dallas, TX 75245. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fiberglass*, (1) from Graham, TX, to Los Angeles and San Francisco, CA, Kirkland, WA, and St. Paul, MN; (2) from Amsterdam, NY, to Los Angeles, CA, Union, IL, and St. Petersburg and Miami, FL; and (3) from Los Angeles, CA, to Amsterdam, NY, and Graham, TX. (Hearing site: Dallas, TX or Washington, DC.)

NOTE.—Dual operations are involved.

MC 140241 (Sub-12F), filed June 6, 1978. Applicant: DALKE TRANSPORT, INC., Box 7, Moundridge, KS 67107. Representative: John E. Jandera, 641 Harrson Street, Topeka, KS 66603. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrought iron pipe*, from the facilities of Unarco-Leavitt, at Blue Island, Evanston, and Chicago, IL, to points in IA, NE, KS, OK, and TX. (Hearing site: Chicago, IL.)

MC 140563 (Sub-12F), filed June 22, 1978. Applicant: W. T. MYLES TRANSPORTATION CO., a corporation, P.O. Box 321, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 2020, 2200 Century Parkway, Atlanta, GA 30345. Authority granted to

operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pretzels*, from Lancaster, PA, to points in AL, AR, FL, GA, KY, IL, IN, LA, KS, LA, MI, MN, MS, MO, NC, OH, SC, TN, VA, WV, and WI; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodity named in (1) above, form points in AL, AR, FL, GA, KY, IL, IN, IA, KS, LA, MI, MN, MS, MO, NC, OH, SC, TN, VA, WV, and WI, to Lancaster, PA. (Hearing site: Atlanta, GA.)

NOTE.—Dual operations are involved.

MC 140633 (Sub-2F), filed June 26, 1978. Applicant: CAPITAL PARCEL DELIVERY CO., a corporation P.O. Box 161115, Sacramento, CA 95816. Representative: Thomas M. Loughran, 100 Bush Street, 21st Floor, San Francisco, CA 94104. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by department stores and mail order houses* (except commodities in bulk, and those requiring the use of special equipment), between the facilities of Sears, Roebuck & Co., at Sacramento, CA, on the one hand, and, on the other, Reno and Carson City, NV, Bakersfield, CA, and those points in CA north of San Luis Obispo, Kern, and San Bernardino Counties, under continuing contract(s) with Sears, Roebuck & Co., of Chicago, IL. (Hearing site: San Francisco, CA.)

MC 142005 (Sub-2F), filed June 26, 1978. Applicant: CHARLES D. ZEISLOFT, 403 East Elm Street, Wenonah, NJ 08090. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Slag*, from the facilities of Warner Co. in Falls Township, PA, to the facilities of E. P. Henry Co., at or near Vineland, NJ, under continuing contract(s) with E. P. Henry Co., of Vineland, NJ. (Hearing site: Philadelphia, PA or Washington, DC.)

MC 142541 (Sub-3F), filed June 7, 1978. Applicant: J. &. R. TRUCKING, INC., 300 120th NE., Building No. 3, Suite 112, Bellevue, WA 98005. Representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic beverages* (except commodities in bulk, in tank vehicles), from Trenton, NJ, Dundalk and Relay, MD, Melvindale, MI, Chicago and Peoria, IL, St. Louis, MO, Louisville, KY, and Lawrenceburg, IN, to Seattle and Bellevue, WA. (Hearing site: Seattle, WA.)

MC 142668 (Sub-13F), filed June 26, 1978. Applicant: AERO DISTRIBUTING CO., INC., a Florida corporation, 4814 Fulton Industrial Boulevard, Atlanta, GA 30336. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by retail department stores*, (1) from Fargo, ND, to points in ND and SD; and (2) from Atlanta, GA, to points in AL, AR, FL, GA, LA, MS, NC, SC, TN, VA, and WV, under continuning contract(s) with Spiegel, Inc., of Chicago, IL. (Hearing site: Chicago, IL.)

MC 142915 (Sub-1F), filed June 26, 1978. Applicant: LAKESHORE TRANSPORT, INC., 1691 Highway W, Grafton, WI 53024. Representative: Richard C. Alexander, Suite 412 Empire Building, 710 North Plankinton Avenue, Milwaukee, WI 53203. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lime and lime products*, in bulk, from points in Brown, Dodge, and Fond du Lac Counties, WI, to points in IL, IN, IA, MN, MO, ND, SD, and those in MI south of MI Hwy 46, under continuing contract(s) with The Western Lime & Cement Co., of Milwaukee, WI. (Hearing site: Milwaukee, WI.)

MC 143363 (Sub-2F), filed June 23, 1978. Applicant: VOLUNTEER TRANSPORTATION, INC., Route 6, McMinnville, TN 37110. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers designed to be drawn by passenger automobiles;* and (2) *parts and accessories* for the commodities named in (1) above, between Ogden, UT, Forest Park, GA, Palo Pinto, TX, and Richmond, KY, on the one hand, and, on the other, points in the United States (including AK, but excluding HI). (Hearing site: Washington, DC.)

MC 143503 (Sub-13F), filed June 16, 1978. Applicant: MERCHANTS HOME DELIVERY SERVICE, INC., P.O. Box 5067, Oxnard, CA 93031. Representative: T. M. Brown, 223 Ciudad Building, Oklahoma City, OK 73112. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by retail department stores*, between the facilities of May Department Stores Co. (a) in Prince Georges, Montgomery, Anne Arundel, Howard, and Baltiomore Counties, MD; (b) Fairfax and Arlington Counties, Va; and (c) DC, on the one hand, and, on the other, points in MD (except Garrett and Allegany Counties), DC, and points in Frederick, Clarke, Loudon, Fairfax, Arlington, Prince William, Fauquier, Stafford, King George, Spotsylvania, Orange, Madison, Culpeper, Rappahannock, and Shenandoah Counties, Va. (Hearing site: St. Louis, MO or DC.)

NOTE.—Dual operations are involved.

MC 143773 (Sub-3F), filed June 26, 1978. Applicant: TOL-CO., INC., P.O. Box 489, Highway 742, Oakboro, NC 28129. Representative: Allan W. Singer, 810 Baxter Street, Charlotte, NC 28202. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Refractory and insulation materials;* and (2) *equipment, accessories, and supplies* used in the installation and repair of boilers, between points in OK, TX, and NM, under continuing contract(s) with Flame Refractories, Inc., of Oakboro, NC. (Hearing site: Charlotte, NC or Washington, DC.)

MC 144027 (Sub-3F), filed June 16, 1978. Applicant: WARD CARTAGE & WAREHOUSING, INC., Route No. 4, Glasgow, KY 42141. Representative: Walter Harwood, P.O. Box 15214, Nashville, TN 37215. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Printed matter*, and (2) *materials, supplies*, and *equipment* used in the maintenance and operation of printing plants, (except commodities in bulk, in tank vehicles), between the facilities of R. R. Donnelley & Sons Co. at points in IL, IN, and OH, on the one hand, and, on the other, points in KY and TN. (Hearing site: Nashville, TN or Louisville, KY)

MC 144083 (Sub-3F), filed June 20, 1978. Applicant: RALPH WALKER, INC., P.O. Box 3222, Jackson, MS 39207. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the facilities of Chef Pierre, Inc., at or near Forest MS, to points in CA, AZ, NM, TX, FL, SC, GA, AL, TN, CO, KS, MO, AR, and IL. (Hearing site: Jackson, MS or Washington, DC.)

NOTE.—Dual operations are involved.

MC 144663 (Sub-2F), filed June 16, 1978. Applicant: DAVID L. HALDER, P.O. Box 513, Ojo Caliente, NM 87549. Representative: Roger Eaton, P.O. Box 2168, 800 Public Service Building, Albuquerque, NM 87103. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum and gypsum products*, from Rosario, NM, to Denver, Grand Junction, Loveland, and Colorado Springs, CO, under continuing contract(s) with Western

Gypsum Co., of Santa Fe, NM. (Hearing site: Albuquerque, NM or Denver, CO.)

MC 144688 (Sub-3F), filed June 26, 1978. Applicant: READY TRUCKING, INC., 4722 Lake Mirror Place, Forest Park, GA 30050. Representative: Lavern R. Holdeman, 521 South 14th Street, Lincoln, NE 68501. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by grocery and food business houses*, from the facilities of the Clorox Co., at or near Atlanta, GA, to Tampa, FL, Birmingham, AL, and points in KY. (Hearing site: Oakland, CA, or Lincoln, NE).

MC 144743F, filed May 9, 1978. Applicant: CHARLES M. SWINFORD, d.b.a. SWINFORD TRUCKING, 108½ South Main, Cynthiana, KY 41031. Representative: Robert H. Kinker, 314 West Main Street, P.O. Box 464, Frankfort, KY 40602. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Cómmission, commodities in bulk, and those requiring special equipment), (1) between Lexington and Owingsville, KY, serving all intermediate points, from Lexington over U.S. Hwy 27 to Cynthiana, KY, then over KY Hwy 36 to Owingsville, KY, and return over the same route, (2) between junction KY Hwys 36 and 1879, and Millersburg, KY, serving all intermediate points, from junction KY Hwys 36 and 1879, over KY Hwy 1879 to junction U.S. Hwy 68, then over U.S. Hwy 68 to Millersburg, and return over the same route, (3) between junction KY Hwys 36 and 11, Bethel, KY, over KY Hwy 11, serving all intermediate points, (4) between Owingsville and Lexington, KY, serving no intermediate points: over U.S. Hwy 60 or Interstate Hwy 64, and (5) between junction U.S. Hwys 68 and 27 (near Paris, KY), and junction U.S. Hwy 68 and KY Hwy 36, over U.S. Hwy 68, severing the intermediate point of Millersburg, KY and serving Paris, KY, for purposes of joinder only. (Hearing site: Lexington, KY.)

MC 144843 (Sub-1F), filed June 16, 1978. Applicant: W. R. GRACE & CO., a corporation, d.b.a. GRACE DISTRIBUTION SERVICES, P.O. Box 308, Duncan, SC 29334. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Polyester resins, chemicals, glass fiber, brushes, and sprayers*, and (2) *equipment, materials, and supplies* used in the manufacture, sale, and distribution of the commodities named in (1) above, (a) from the facilities of U.S.S. Chemicals, division of U.S. Steel Corp., at or near (i) Swanton, OH, (ii) Doraville, GA, (iii) Jacksonville, AR, (iv) Linden and Edison, NJ, and (v) Miami, Tampa, Pensacola, Bartow, and Orlando, FL, to the facilities of U.S.S. Chemicals, division of U.S. Steel Corp., at or near Colton, CA, and points in the United States in and east of ND, SD, NE, CO, OK, and TX, and (b) from the destinations named in (a) above, to the origins facilities named in (a) above, under continuing contract(s) with U.S.S. Chemicals, division of U.S. Steel Corp., of Linden, NJ. (Hearing site: Pittsburgh, PA, or New York, NY.)

MC 144848 (Sub-2F), filed June 23, 1978. Applicant: I & L TRUCKING, INC., Star Route, Utica, OH 43080. Representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and materials, equipment, and supplies* used in the manufacture, sale, and distribution of glass containers (except commodities in bulk), (1) between the facilities of Chattanooga Glass Co., at (a) Columbus and Mount Vernon, OH, (b) Baltimore, MD, and (c) Chattanooga, TN, and (2) between the facilities of Chattanooga Glass Co., at (a) Columbus and Mount Vernon, OH, (B) Baltimore, MD, and (c) Chattanooga, TN, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Columbus, OH).

MC 144852F, filed June 5, 1978. Applicant: SIRCO TRUCKING, 1919 North Avenue West, Missoula, MT 59801. Representative: John A. Anderson, Suite 1440-200 Market Building, 200 Southwest Market Street, Portland, OR 97201. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *New furniture*, from the facilities of Sirco Manufacturing, at or near (a) Missoula, MT, and (b) Stevens Point, WI, to points in the United States (except AK and HI), to the facilities of Sirco Manufacturing, at or near (a) Missoula, MT, and (b) Stevens Point, WI, under a continuing contract(s) with Sirco Manufacturing, of Missoula, MT. (Hearing site: Missoula, Mt.)

MC 144933F, filed June 19, 1978. Applicant: CONTRACT TRANSPORT CO., a corporation, 83 Progress Avenue, Springfield, MA 01101. Representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043. Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Merrimack, NH, Newark, NJ, and Allentown, PA, to Springfield, MA, under continuing contract(s) with Williams Distributing Corp., of Springfield, MA. (Hearing site: Hartford, CT, or Boston, MA.)

MC 144973F, filed June 22, 1978. Applicant: DENNIS BATY, P.O. Box 594, La Fayette, GA 30728. Representative: Dennis Baty (same address as applicant). Authority granted to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sand and gravel*, in bulk, in dump vehicles, from points in Hamilton County, TN, to points in Walker and Chattooga Concrete, Inc., of La Fayette, GA. (Hearing site: Atlanta, GA, or Nashville, TN.)

Passenger Authority

MC 144887 (Sub-1F), filed June 9, 1978. Applicant: NORTHERN DUTCHESS TAXI, INC., 38 Albany Post Road, Hyde Park, NY 12538. Representative: John T. Orcutt, P.O. Box 656, Pleasant Valley, NY 12569. Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, between points in Dutchess County, NY, on the one hand, and, on the other hand, Newark, Atlantic City, East Rutherford, and Wildwood, NJ. (Hearing site: Poughkeepsie, NY.)

Broker Authority

MC 130502F, filed June 16, 1978. Applicant: THE HOUSE OF TRAVEL, INC., 6221 Baltimore Boulevard, Riverdale, MD 20840. Representative: Judith K. Munger, 11 Dupont Circle NW., No. 600, Washington, DC 20036. Authority granted to engage in operation, in interstate or foreign commerce, as a *broker* at Riverdale, MD, in arranging for the transportation by motor vehicle of: *Passengers and their baggage*, in the same vehicles with passengers, in round trip special and charter operations, beginning and ending at Riverdale, MD, and extending to points in the United States (including AK, but excluding HI). (Hearing site: Washington, DC.)

MC 130503F, filed June 20, 1978. Applicant: GERALD BERMAN AND INA BERMAN, a partnership, d.b.a. HOLIDAY TRAVEL SERVICE, Route 130 and New Albany Road, Cinnaminson, NJ 08077. Representative: Susan L. Yeager (same address as applicant). Authority granted to engage in operation, in interstate or foreign commerce, as a *broker*, at Cinnaminson, NJ, in arranging for the transportation, by motor vehicle of: *Passengers and their baggage* in the same vehicle with passengers, in round trip special and charter operations, beginning and

ending at points in Burlington County, NJ, and extending to points in the United States (except AK and HI). (Hearing site: Burlington, or Trenton, NJ.)

FREIGHT FORWARDER AUTHORITY

FF 446 (Sub-1F), filed June 7, 1978. Applicant: WORLD FORWARDING CORP., 1 Aleppo Street, Providence, RI 02909. Representative: Robert J. Gallagher, 1000 Connecticut Avenue, Suite 1200, Washington, DC 20036. Authority granted to operate as a *freight forwarder*, through the use of the facilities of common carriers by railroad or motor vehicle, in the transportation of: *Used household goods and unaccompanied baggage*, between points in the United States (including HI, but excluding AK). (Hearing site: Providence, RI.)

[7035-01]

[Notice No. 689]

ASSIGNMENT OF HEARINGS

JULY 27, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC-F 13561, Eagle Motor Lines, Inc.—Control—F-B Truck Line Co.; No. FD 28738, Eagle Motor Lines, Inc., and No. FD 28739, F-B Acquisition Corp., are now assigned for hearing October 23, 1978, at the offices of the Interstate Commerce Commission, Washington, DC.

MC 116254 (Sub-108) M1, Chem-Haulers, Inc., now being assigned for prehearing conference on September 26, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC.

MC 119789 (Sub-424F), Caravan Refrigerated Cargo, Inc., is now assigned for hearing October 11, 1978 (3 days) at Chicago, IL, at a location to be later designated.

MC 51146 (Sub-577F), Schneider Transport, Inc., is now assigned for hearing October 16, 1978 (1 week) at Chicago, IL, at a location to be later designated.

MC 123407 (Sub-437F), Sawyer Transport, Inc., is now assigned for hearing October 11, 1978 (3 days), at Chicago, IL, at a location to be later designated.

MC 102817 (Sub-28), Perkins Furniture Transport, Inc., is now assigned October 16, 1978 (1 week), at Chicago, IL, at a location to be later designated.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc. 78-21270 Filed 7-31-78; 8:45 am]

[7035-01]

[Ex Parte No. 349]

INCREASED FREIGHT RATES AND CHARGES, 1978, NATIONWIDE

Decided: July 26, 1978.

In a decision served June 7, 1978, the Commission generally approved a proposed 4-percent increase in rates and charges within eastern territory, within western territory and between eastern and western territories, and a 2-percent increase from, to, and within southern territory. The record disclosed that the revenue yield from the proposed increase will not exceed the increased cost in labor and other expenses shown of record. With the exception of coal,[1] the Commission declined to suspend X-349, as supplemented. Certain conditions were also imposed.[2]

As indicated in the prior decision, however, the Commission instituted an investigation into the lawfulness of the rates, charges, and regulations, as set forth in the Tariff of Increased Rates and Charges X-349, as supplemented, of the 10 commodities listed below:

	SPC No.
1. Newsprint paper	57
2. Sodium alkalies	69
3. Industrial gases	71
4. Sulphuric acid	73
5. Rubber, natural, or synthetic	78
6. Manufactured iron or steel	100
7. Recyclables	(1)
8. Soda ash	70
9. Plastic materials	77
10. Iron and steel pipe, western territory only	101

[1]Not applicable.

These commodities were selected because of apparently high revenue/cost ratios. The first seven of these commodities were investigated in Ex parte

[1]Respondents proposed a 7-percent increase on coal. As noted in the prior decision, the Commission found that this increase was not justified. It was ordered that the proposed coal increase be suspended, without prejudice to the refiling of a lesser increase, upon cancellation of the proposed schedules.

[2]Conditions imposed were as follows:

(a) That the increase on feed grains from Midwest origins to New England points shall be no greater than 2 percent;

(b) That the increase on printing paper, wrapping paper, and paper bags within the West, except Mountain Pacific territory, and from the West, except Mountain Pacific territory, to the East shall be no greater than 2 percent.

(c) That the increase on peanuts from the Southwest to Eastern territory shall be no greater than 2 percent.

(d) That the increase on automobile parts within Eastern territory be limited to 3 percent until July 1, 1978, after which the proposed 4 percent increase shall become effective.

No. 343, *Nationwide Increased Freight Rates and Charges—1977.* The Commission's decision in that proceeding, served June 29, 1978, ordered various percentage holddowns on many of these commodities. As noted in the June 7 X-349 decision, since the carriers' own submission in this proceeding and various protests demonstrate the continued existence of unusually high ratios, these same seven commodities are placed under investigation here.

For the convenience of the parties, the Standard Transportation Commodity Code (STCC) associated with the SPC numbers for the commodities under investigation, as set forth in Ex parte No. 290, *Procedures Governing Rail General Increase Proc.*, 351 I.C.C. 544, 628-635, are as follows:

SPC	Commodity	STCC No.[1]
57	Newsprint paper	26 211
69	Sodium alkalies	28 122
71	Industrial gases	28 128
		28 132
		28 133
		28 139
73	Sulfuric acid	28 193
78	Rubber, natural and synthetic	08 423 20
		08 423 25
		28 212
100	Manufactured iron or steel	33 122
		33 123
		33 124
		33 127
		33 151
		33 152
		33 155
		33 219 72
		33 566
		33 911 26
		34 411
		34 994 15
		34 994 21
		34 994 23
		34 994 25
		34 994 52
		34 994 54
		34 994 60
		34 994 74
		34 994 75
70	Soda ash	28 123 22
77	Plastic materials	28 211
101	Iron and steel pipe, western territory only	33 126

[1]The 4 or 5 digit STCC numbers referred to also embrace all articles assigned additional digits listed thereunder in STCC Tariff 1-E.

The following recyclable or recycled commodities will also be the subject of this investigation:

Commodity	STCC No.
Shavings or sawdust	24 293
Reclaimed rubber	30 3
Rubber or plastic scrap or waste	40 26
Cullet	32 299 24
Iron or steel scrap	40 211
Blast furnace products	33 119
Copper matte (east and west)	33 312
Lead matte (east and west)	33 322
Zinc dross and residue	33 332
Aluminum residue	33 342
Miscellaneous nonferrous metal residue (east and west)	33 398
Ashes	40 1
Brass, bronze, copper or alloy scrap	40 212

Commodity	STCC No.
Lead, zinc or alloy scrap	40 213
Aluminum or alloy scrap	40 214
Tin scrap	40 219 60
Textile waste	22 941
	22 973
	22 994
	40 22
Wood scrap (east and south)	40 23
Paper waste or scrap	40 241
Shipping containers or devices returned empty	42 1
Beverage containers returned empty	42 111 42

Several other recyclables, as well as certain recyclables in the above list in individual territories, are being investigated in Ex parte No. 319 (sub-No. 1), *Further Investigation of Freight Rates for the Transportation of Recyclable or Recycled Materials.* Since the issues are basically the same, we conclude that the final determination of the lawfulness of the general increase on these commodities[3] should be held in abeyance pending conclusion of the investigation in Ex parte No. 319 (sub-No. 1).

All common carriers by railroad subject to part I of the Interstate Commerce Act are respondents, and as such, they have the burden of proof in this investigation.

It is ordered:

That this proceeding be handled under modified procedure as provided by the Commission's General Rules of Practice, except that 20 copies of all statements submitted shall be filed with the Commission, and that the filing and service of pleadings be as follows:

(a) Opening statements of facts and arguments may be submitted no later than August 16, 1978.

(b) Statements by shippers and other parties to this proceeding may be submitted no later than September 15, 1978.

(c) Reply statements by respondents may be submitted no later than October 5, 1978.

Notice is given that petitions and motions filed with regard to this investigation may be disposed of in the Commission's report. Accordingly, all parties should proceed upon the assumption that the pendency of a petition or motion will not justify any party's failure to comply with the scheduled due date for filing of statements.

In the event any increases resulting from the application of this tariff exceed the increases subsequently approved or prescribed by the Commission, the carriers will be required to refund the difference between the increase resulting from the application thereof and any increases which may subsequently be approved or prescribed by the Interstate Commerce Commission with interest as specified in section 15(8)(e). Respondents' master tariff contains an appropriate "Provision for Refund" in the form required by our order served May 4, 1978, with a provision for interest at 6.66 percent.

A copy of this order will be served on each party to the proceeding in Ex parte No. 349, on the Administrator of the Environmental Protection Agency, the Secretary of Transportation, and the Governor of each State. A copy will also be deposited in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. for public inspection. In addition, statutory notice of the substance and procedures in this investigation will be given to the general public by delivering a copy to the Director, Office of the Federal Register, for publication.

By the Commission, Chairman O'Neal.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21271 Filed 7-31-78; 8:45 am]

[3]Bakery refuse (STCC 20 511 18); wood scrap, west only (STCC 40 23); copper matte, south only (STCC 33 312); lead matte, south only (STCC 33 322); miscellaneous nonferrous metal residue, south only (STCC 33 398); municipal garbage (STCC 20 291 14); bags, old (STCC 41 114 34), bags, old, value for conversion (STCC 41 115 80); waste calcium sulfate (STCC 28 719 40); and chemical or petroleum waste (STCC 40 25).

[1505-01]

(Decisions Vol. No. 9)

DECISION-NOTICE

Correction

In FR Doc. 78-17647 appearing at page 28282 in the issue for Thursday, June 29, 1978, make the following corrections:

(1) On page 28285, in the second line from the top of the first column, add "NC" to the States listed for MC 113362 (Sub-331F).

(2) On page 28286, middle column, in the next to the last line in the paragraph for MC 119702 (Sub-57F), "LA" should read "IA".

[1505-01]

[Vol. No. 104]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES) RAILROAD ABANDONMENTS, ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS

Corrections

In FR Doc. 78-19938 appearing at page 31266 in the issue for Thursday, July 20, 1978, the following corrections should be made:

1. In the second full paragraph in the third column on page 31269, the motor carrier application number should read, "MC 2202 (Sub-560F)."

2. In the first paragraph of the middle column on page 31277 the motor carrier application number should read, "MC 117068 (Sub-95F)."

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]

1

[M-151, Amdt 8; July 26, 1978]

CIVIL AERONAUTICS BOARD.

Notice of deletion of item from 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: 6. Docket 27918, North Atlantic Fares Investigation, Petitions of Pan American and TWA for reconsideration of Order 78-5-157, which terminated the investigation (Memo 5317-I, BPDA).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Item 6 was deleted from the July 25, 1978, agenda in order to permit coordination and views by the Board's Bureau of International Aviation. Accordingly, the following Members voted that agency business requires the deletion of Item 6 from the July 25, 1978, agenda and that no earlier announcement of this deletion was possible:

Chairman, Alfred E. Kahn
Vice Chairman, G. Joseph Minetti
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

[S-1564-78 Filed 7-28-78; 10:34 am]

[6355-01]

2

CONSUMER PRODUCT SAFETY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (Not yet known).

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: July 26, 1978, 9:30 a.m.

CHANGES IN THE MEETING: This meeting was canceled. The briefing on the Chain Saw Voluntary Standard Proceeding will be rescheduled, probably in mid-August.

[S-1565-78 Filed 7-28-78; 10:34 am]

[6740-02]

3

FEDERAL ENERGY REGULATORY COMMISSION.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 32025, published July 24, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., July 26, 1978.

CHANGE IN THE MEETING: The following item was added:

Item No., Docket No., and Company

CP-2. CP78-325, Texas Gas Transmission Corp.

KENNETH F. PLUMB,
Secretary.

[S-1569-78 Filed 7-28-78; 2:53 pm]

[6720-02]

4

FEDERAL HOME LOAN MORTGAGE CORPORATION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 43, No. 140, page 31304, Thursday, July 20, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:30 p.m., July 27, 1978.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Henry Judy, 202-624-7107.

CHANGES IN THE MEETING: The following item has been withdrawn from the agenda for the open portion of the meeting:

Consideration of Corporation bylaws.

No. 170, July 28, 1978.

RONALD A. SNIDER,
Assistant Secretary.

[S-1573-78 Filed 7-28-78; 3:55 pm]

[7555-01]

5

NATIONAL SCIENCE BOARD.

DATE AND TIME: Aug. 17, 1978, 1 p.m. to 6 p.m.—Open session. Aug. 18, 1978, 8:30 to 9:30 a.m.—Conclusion of open session, if necessary. 9:30 a.m. to 12:30 p.m.—Closed session.

PLACE: Room 540, 1800 G Street NW., Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSION:

1. Program review—Integrated Basic Research/Applied Research.
2. Minutes, open session, 199th meeting.
3. Chairman's report.
4. Director's report.
a. Report on grant and contract activity—June 13-August 16.
b. Organizational and staff changes.
c. Congressional and legislative matters.
d. NSF budget for fiscal year 1979.
e. Science and Technology Report: 1978.
f. Report on trip to People's Republic of China.
5. Board committees—Reports on meetings.
a. Executive Committee.
b. Planning and Policy Committee.
c. Programs Committee.
d. Committee on Budget.
e. Committee on eleventh NSB Report.
f. Committee on Role of NSF in Basic Research.
g. Committee on Science and Society.
h. Ad Hoc Committee on Audit and Oversight.
i. Ad Hoc Committee on Officers and Elections.
6. NSF advisory groups and annual review—Report on meeting and Board representation at future meetings.
7. Grants, contracts, and programs.
8. Recommendations of Planning and Policy Committee on Alan T. Waterman Award.

9. Other business.
10. Next meetings.
a. National Science Board—September 21-22.
b. NSB committees.

MATTERS TO BE CONSIDERED AT THE CLOSED SESSION:

A. Minutes, closed session, 199th meeting.
B. NSF budgets for fiscal year 1980 and subsequent years.
C. NSB annual reports.
D. Report on NSB nominees.
E. Grants and contracts.

CONTACT PERSON FOR MORE INFORMATION:

Miss Vernice Anderson, Executive Secretary, 202-632-5640.

[S-1566-78 Filed 7-28-78; 10:34 am]

[7590-01]

6

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Friday, July 28 (changes).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

9:30 a.m.—Preliminary budget markup or recall (markup will be closed—exemption 9).
2 p.m. (added)—Discussion of settlement in Midland Special Proceeding (closed—exemptions 6, 9, and 10, postponed from July 20, 1978).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

Dated: July 27, 1978.

WALTER MAGEE,
Office of the Secretary.

[S-1567-78 Filed 7-28-78; 11:17 am]

[7590-01]

7

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Wednesday, July 25 (additional items).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

9 a.m.—Affirmation items: Standardization and Amendment re Plans (approximately 10 minutes, public meeting).
3 p.m.—Discussion of OIA/OGC inquiry in testimony of EDO (approximately 1½ hours, closed, exemption 1).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

Dated: July 26, 1978.

WALTER MAGEE,
Office of the Secretary.

[S-1568-78 Filed 7-28-78; 11:17 am]

[4410-01]

8

UNITED STATES PAROLE COMMISSION.

TIME AND DATE: Tuesday, August 8, 1978, 9 a.m. to 3 p.m.; Wednesday, August 9, 1978, 9 a.m. to 3 p.m.; Thursday, August 10, 1978, 9 a.m. to 5:30 p.m.

PLACE: Room 500, 320 First Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 26 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION:

Lee H. Chait, Analyst, 202-724-3094.

[S-1570-78 Filed 7-28-78; 3:32 pm]

9

[4410-01]

UNITED STATES PAROLE COMMISSION.

TIME AND DATE: August 8, 1978, 3 p.m. to 7 p.m.; August 9, 1978, 3 p.m. to 5:30 p.m.

PLACE: Room 500, 320 First Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of previous meeting.
2. Reports of the Chairman, Vice-Chairman, and Commissioners.
3. Policy and Procedures Memoranda on the following subjects:
(a) Congressional correspondence.
(b) Use of convictions in revocation cases.
4. The following items concerning the Commission's rules as published in the Code of Federal Regulations:
(a) Consideration of rules previously published at 28 CFR 2.6, 2.32, and 2.53.
(b) Proposed modification of original jurisdiction procedures (28 CFR 2.17).
(c) Proposed expansion of presumptive release date policy (28 CFR 2.12 and 2.14).
(d) Proposed revision of guidelines (28 CFR 2.20).
(e) Commission policy and practice relating to type of sentence imposed (28 CFR 2.20 and 2.21).
(f) Proposal concerning conduct of certain hearings with one instead of two examiners (28 CFR 2.13, 2.16, 2.34, 2.43, 2.48, and 2.50).
5. Proposed revision of Notice of Action and related forms.
6. Proposed revision of F-2 Form relating to revocation procedure.
7. Proposed future training plans.
8. Communications between Commissioners.

CONTACT PERSON FOR MORE INFORMATION:

Billie Richards, 724-3117.

[S-1571-78 Filed 7-28-78; 3:32 pm]

[4410-01]

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UNITED STATES PAROLE COMMISSION: National Commissioners (the Commissioners presently maintaining offices at Washington, D.C. headquarters).

TIME AND DATE: Thursday, Aug. 17, 1978, 9:30 a.m.

PLACE: Room 338, 320 First Street, NW., Washington, D.C. 20537.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 20 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION:

Lee H. Chait, Analyst, 202-724-3094.

[S-1572-78 Filed 7-28-78; 3:32 pm]

federal register

TUESDAY, AUGUST 1, 1978
PART II

DEPARTMENT OF DEFENSE

Marine Corps

■

PRIVACY ACT OF 1974

System of Record; Amendment

[3810-71]

DEPARTMENT OF DEFENSE

U.S. Marine Corps

PRIVACY ACT OF 1974

Notice of System of Record Amendment

AGENCY: U.S. Marine Corps, (DOD).

ACTION: Notice of an amendment to a system of records.

SUMMARY: The Marine Corps proposes to amend an existing system of records subject to the Privacy Act of 1974. The specific changes to the system being amended are set forth below followed by the system published in its entirety, as amended.

DATES: This system shall be amended as proposed without further notice on August 31, 1978, unless comments are received on or before August 31, 1978, which would result in a contrary determination.

ADDRESS: Send comments to the system manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT:

Mrs. Gwendolyn R. Rhoads, Privacy Act Coordinator (Code MPI), Headquarters, U.S. Marine Corps, Washington, D.C. 20380, 202-694-4115.

SUPPLEMENTARY INFORMATION: The Marine Corps systems of records notices as prescribed by the Privacy Act of 1974, 5 U.S.C. 552a (Pub. L. 93-579) have been published in the FEDERAL REGISTER as follows:

FR Doc. 77-28255 (42 FR 51177) September 28, 1977.

FR Doc. 77-31445 (42 FR 56978) October 31, 1977.

FR Doc. 78-3002 (43 FR 5472) February 8, 1978.

The Marine Corps proposes to amend a record system identified as MFD00003, entitled "Joint Uniform Military Pay System/Manpower Management System (JUMPS/MMS)" by modifying the general routine use category and the safeguard category. The proposed changes to this system are not within the purview of the provision of the Office of Management and Budget (OMB) Circular A-108, Transmittal Memorandum No. 1, dated September 30, 1975, and Transmittal Memorandum No. 3, dated May 17, 1976, which provided supplemental guidance to Federal agencies regarding the preparation and submission of reports of their intention to establish or alter a system of personal records as required by the Privacy Act. This OMB guidance was set forth in the FEDERAL REGISTER (40 FR 45877) on October 3, 1975.

Dated: July 12, 1978.

MAURICE W. ROCHE,
Director Correspondence and Directives, Washington Headquarters Services, Department of Defense.

AMENDMENT

The following proposed change is to system of record published in the February 8, 1978 issue of the FEDERAL REGISTER at 43 FR 5475.

MFD00003

System name: Joint Uniform Military Pay System/Manpower Management System (JUMPS/MMS) (43 FR 5475).

Change: *Routine uses of records maintained in the system, including categories of users and the purposes of such uses*: Delete the first entry under this category and substitute: "Headquarters, U.S. Marine Corps and Marine Corps commands, activities, and organizations—by officials and employees of the Marine Corps in the performance of their assigned duties in matters relating to a Marine's automated personnel and/or pay record."

Reason: To clearly define that officials and employees of the Marine Corps may only retrieve information from a Marine's automated personnel/pay record when necessary in the performance of their assigned duties.

Immediately following the last entry in this category, add: "Department of Health, Education, and Welfare (DHEW)—disclosure of the name, rank or grade, and social security account number of each Marine Corps active duty military member to the Inspector Ceneral of DHEW for the specific purpose of comparison with appropriate rolls reflecting recipients of Aid to Families With Dependent Children (AFDC)."

Reason: To comply with the requirements of the DOD general routine use notice as set forth in the FEDERAL REGISTER of January 19, 1978, at 43 FR 2653.

Safeguards: Immediately following the last entry in this category, add: "Access to personal information is limited to authorized personnel with a need-to-know. Access is restricted to specific applications programs, records, and files to which personnel have a specific and recorded need-to-know. On-line data sets (both tape and disc) pertaining to personal information are password protected, areas are controlled and access lists are used. The files are also protected at a level appropriate to the type of information being processed."

Reason: To more clearly define the safeguards employed in securing personal information in the pay/personnel system.

MFD00003

System name: Joint Uniform Military Pay System/Manpower Management System (JUMPS/MMS)

System location: Primary System - Marine Corps Automated Services Center, 1500 East Bannister Road, Kansas City, Missouri 64131; Marine Corps Finance Center, 1500 East Bannister Road, Kansas City, Missouri 64197.

Decentralized Segments - There are eight Satellite/Command Data Processing Installations (SDPI/CDPI) which maintain files with similar records at the following locations: SDPI 02, Marine Corps Base, Camp Lejeune, NC 28542; SDPI 03, Marine Corps Base, Camp Pendleton, CA 92055; SDPI 06, FMF Pacific, FPO San Francisco, CA 96610; SDPI 09, Headquarters U S Marine Corps, Washington, D C 20380; SDPI 11, Marine Corps Recruit Depot, Parris Island, SC 29905; SDPI 15, Marine Corps Recruit Depot, San Diego, CA 92140; CDPI 17, Marine Corps Base, Quantico, VA 22134; SDPI 27, Marine Corps Base, Camp S D Butler, FPO Seattle, WA 98773; First Marine Brigade, FPO San Francisco, CA 96615.

Categories of individuals covered by the system: All Marine Corps personnel.

Categories of records in the system: The JUMPS/MMS automated system of records contains the following fields (data elements and data sets) and sub-fields; Social Security Number and the last, first, and middle initial (key); Name, Member Service Number, Contract Legal Agreement, Duty Limitation, Race/Sex/Ethnic Group, Present Unit Identification, Temporary Reporting Unit Code, Former Unit Identification, Intermediate Unit Identification, Future Unit Identification, Command Data Processing Installation Code, Individual Location, Message Routing Indicator, Pay Entry Base Data, Armed Forces Active Duty Base Date, Active Naval Service Base Date, Current Active Duty Began Date, Date of Enlistment/Acceptance, Date of Original Entry Armed Forces, Date of Birth, Estimated Date of Departure, Estimated Date of Arrival, Date Current Tour Began, Date Detached Last Command, Rotation Tour Date, Date Arrived U S Dependents Not Restricted, Date Arrived U S Enlistment, Careerist Flag, Contract Extension Data, Expiration of Obligated Service, Security Investigation, Permanent Grade , Incentive Pay, Proficiency Pay, Special Pay, Hostile Fire Pay, Basic Allowance for Subsistence, Basic Allowance for Quarters, Duty Status, Last Processing Cycle Information, Project Duty Status, Preference for Duty, Grade for Which Selected, Citizenship, Combat Service, Former Prisoner of War, Civilian Education, Accession Code (Program Enlisted Under), Military Occupational Specialties, Reserved for Future Use, Religion, Tour Control Factor, Sea or Foreign Duty, Program Element Number, Responsibility Center Number, Marital Status, Ethnic Group, Intermediate Monitored Command Code - Estimated Date of Arrival, Current Active Duty Begin Date, Estimated Date of Departure, Special Grade and Date of Rank, Old Reason for Transfer Code, New Reason for Transfer Code, Present Tour Control Factor, Prospective Officers Source Code, Reenlistment Bonus Type, Selective Reenlistment Bonus Zone, Separation Document Type, Composite Score, Armed Services Vocational Aptitude Battery, Deployment Monitored Command Code, Date Dependents Location Begin, Visual Audit Field, Date Joined Present Unit, TAD Excess Flag, TAD DPI, Officers School Graduation, Active Duty Officer Base Date, Active Duty Aviation Service Base Date, Accession Code, Future Tour Control Factor, Intended Transfer Date, Permanent Change of Station Code, Reason for Transfer Flag, Advanced Monitored Command Code, Advanced Monitored Command Code - Estimated Date of Arrival, Intermediate Monitored Command Code - Estimated Date of Arrival, Prospective Officers Source Code, Current Source of Entry Code, Home of Record, Prior Key, Days Lost Current Contract, Separation Document Type, Language Proficiency, Language Aptitude Test, Electronic Technician Selection Test (Enlisted Only), Reserved for Expansion, General Military Subjects Test Results, Classification Test, Computed General Technical or General Classification Test, Armed Forces Qualification Test/Army Qualification Test Score (Enlisted Only), Army Qualification Battery Scores, Service Schools, Dependents Information, Aeronautically Designated Officers & Noncommissioned Officers Information, Date Last Tour Combat/Combat Support Area, Optional Narrative Form, Aeronautically Designated, Officers & Noncommissioned Officers Information, Date Designated Military Pilot, Separation Data, Service Date (Officer), Lineal Control Number/Precedence Number Present Rank, Separation Data Addendum, Lineal Control Number/Precedence Number Permanent Rank, Month Attended Service Academy, Lineal Footnotes, Running Mate, Limited Duty Officer/Warrant Officer Footnotes, Date of Acceptance 1st Commission in the Marine Corps, Date of Rank 1st Commission in the Marine Corps, Date of Rank 1st Commission Limited Duty Officer, Visual Audit, Electronic Data Processing Test Score, Language Aptitude Test Date, Social Security Number Validation Monitor, Last Transfer Processing, Information, Temporary Additional Duty Excess Flag, Temporary Additional Duty Data Processing Installation, Graduates Obligation Code, Active Duty Spouse Identification, Fleet Assistance Program Unit Identification, Active Duty Off Service Base Date, Active Duty Officer Aviation Service Base Date, Program Enlisted For, Operational Flying Time, Operational Flying Computation Date, Operational Flying Start Date, Operational Flying Stop Date, Operational Flying Time Base Date, Operational Flying Gate One, Operational Flying Gate Two, Reserved, Platoon Number, Cycle Number, Last Type Transaction Code Touched, Not used at this time, Today's Date, Disbursing Officers Symbol, Command DPI of Parent Reporting Unit Code, Pay Group, Pay Status, Local Disbursing Office Cognizance, Payment Option/Leave and Earnings Statement Distribution/Pay Distribution Code, Federal Withholding Tax Data, Leave Account, Wage and Tax Summaries, Dependency Status, Dependency Determination, Basic Pay, Pay Grade, Years in Service, Serviceman's Group Life Insurance Deduction, Federal Income Tax Withholding, Federal Indemnity Compensation Act Tax Withholding, Payments, JUMPS Account Standing, Total Allotment Deductions, Last Update and Extract Date, Savings Deposits, Pay Extraction Flag, Regular Reenlistment Bonus, Variable Reenlistment Bonus, Time Lost, Detention of Pay, Repayment Date, Dislocation Allowance, Inadequate Quarters, Interim Housing Allowance, Indebtedness for Final Settlement, Incentive Pay 1, Proficiency Pay, Sea and Foreign Duty Pay, Diving Pay, Hostile Fire Pay, Subsistence Credit, Basic Allowance For Quarters, Personal Money Allowance, Family Separation Allowance, Incentive Pay 2, Cost of Living Allowance, Housing Allowance, Additional Federal Tax Withholding, Subsistence Debits, Court Martial/Nonjudicial Punishment Deductions, Miscellaneous Credits, Miscellaneous Debits, Other Continuing Monthly Deductions, Miscellaneous Leave Data, Retired Serviceman's Family Protection Plan Data, Temporary Lodging Allowance, Clothing Maintenance Data, Basic Allowance for Quarters Debits, Pay Change Flag, Pay Day Data, Miscellaneous Data, Check Mailing Address, Other Services Disbursing Officer Indicator, Reduced Tax, Unassigned, Saved Pay Original Entitlement, Saved Pay Current Entitlement, Tax Exclusion/Nonresident Alien Exempt Taxable Pay, Selective Reenlistment Bonus, Officer Status Change Flag, Aviation Career Incentive Pay, Advance Pay and Allowances, Power of Attorney.

The MMS master files consist of a complete magnetic record for each Marine serving on active duty for a period in excess of 30 days. The Remote Entry Data Display Terminal (REDDT) is a subsystem of MMS. It has the capability to directly access an extract of the master file. The procedure used to establish the initial computer record and add the individual to the Marine Corps strength is the accession process. The accession of recruits is accomplished through the Recruit Accession Management Subsystem (RAMS). The Commissioning Accession Management Subsystem (CAMS) is designed to access all officer records into JUMPS/MMS. Accession/ reaccession of all nonrecruit enlisted records is accomplished through the Headquarters Accession Management Subsystem (HAMS) at Headquarters, U S Marine Corps. The Accession Transcription Form (ATF) is an OCR form which contains information extracted from the enlistment contract and transfer/assignment to active duty orders. The ATF is completed and processed to establish the computer record. The Manpower Management Information System (MMIS) consists of models and processes within MMS These models and processes support manpower planners and programmers to optimize assignments to unaccompanied overseas tours, predict enlisted population by grade and military occupational specialty (MOS) and to test various policies related to unrestricted officer promotion planning.

Some manual files containing substantiating documents and other data relative to each member's JUMPS/MMS record are maintained. These file folders may contain any part of the JUMPS/MMS record and any one or more of the following documents: Military Pay Record, Military Payroll Money List, Military Pay Voucher, Certificate for Performance of Hazardous Duty, Application for

Arrears in Pay, Cash Collection Voucher, Authorization/Designation for Emergency Pay and Allowances, Wage and Tax Statement, Employees Withholding Exemption Certificate (IRS W-4), Employees Withholding Exemption Certificate (IRS W-4E), Notice of Levy, General Accounting Office Notice of Exemption, Dependency Certificate (Wife or Child Under 21 Years), Dependency Certificate (Mother or Father), Dependency Certificate (Unmarried Child Over 21 Years), Dependency Application, Clothing Checkage, Statement to Substantiate Payment of Family Separation Allowance, Government Property Checkage, Personal Financial Records, Unit Diary, Dependent Travel Record, Allotment/Bond Authorization, Certificate for Cost of Living and/or Housing Allowance, Certificate for Temporary Lodging Allowance, Removal of Mark of Desertion, Field Rations Certificate, Liquidation of Indebtedness, Initial Uniform Allowance for Officers, Additional Uniform Allowance for Officers, Excess Weight-Household Goods Shipment, Hospital Rations Checkage, Excess Expense Involving Movement of House Trailer, Transportation Checkage, Meal Ticket Checkage, Advance Pay, Advance Pay and Allowances, Discharge Gratuity, Combat Arms Bonus, Health Care Coverage, Government Quarters Termination and Assignment. Inadequate Quarters Termination and Assignment, Lump-Sum Leave, Rations Commuted to Private Mess, Reenlistment Bonus, Variable Reenlistment Bonus, Selective Reenlistment Bonus, Sick Misconduct, Prorated Rations, Supplemental Rations, Basic Allowance for Quarters (Own Right).

Authority for maintenance of the system: Title 10 and 37, U S Code Section 5031 and 5201

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Headquarters, U. S. Marine Corps and Marine Corps commands, activities and organizations - By officials and employees of the Marine Corps in the performance of their assigned duties in matters relating to a Marine's automated personnel and/or pay record.

Department of Defense and its components - By officials and employees of the Department in the performance of their official duties.

The Attorney General of the U S - By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts - By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U S - By the Senate or the House of Representatives of the U S or any committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U S - By the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to the Marine Corps.

By officials and employees of the American Red Cross and the Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

Federal, state and local government agencies - By officials and employees of federal, state and local government through official request for information with respect to law enforcement, investigatory procedures, criminal prosecution, civil court action and regulatory order.

To provide information to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States which has been authorized by law to conduct law enforcement activities pursuant to a request that the agency inititate criminal or civil action against an individual on behalf of the U. S. Marine Corps, the Department of the Navy, or the Department of Defense.

To provide information to individuals pursuant to a request for assistance in a criminal or civil action against a member of the U. S. Marine Corps, by the U. S. Marine Corps, the Department of the Navy, or the Department of Defense.

Department of Health, Education and Welfare (DHEW) - Disclosure of the name, rank or grade, and social security account number of each Marine Corps active duty military member to the Inspector General of DHEW for the specific purpose of comparison with appropriate rolls reflecting recipients of Aid to Families with Dependent Children (AFDC).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Data is recorded on magnetic records and discs, punch cards, computer printouts, microform, file folders, and other documents.

Retrievability: The data contained in magnetic records can be displayed on cathode-ray tubes, it can be computer printed on paper, and it can be converted to microform for information retrieval; the data in the supporting file folders and other manual records is retrieved manually. Computerized and conventional indices are required to retrieve individual records from the system. Normally, all types of records are retrieved by Social Security Number and name.

Safeguards: Building management employs security guards; building is locked nights and holidays. Authorized personnel may enter and leave the building during nonworking hours but must sign in and out. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Access to personal information is limited to authorized personnel with a need-to-know. Access is restricted to specific applications programs, records, and files to which personnel have a specific and recorded need-to-know. Online data sets (both tape and disc) pertaining to personal information are password protected, areas are controlled and access lists are used. The files are also protected at a level appropriate to the type of information being processed.

Retention and disposal: Magnetic records are maintained on all Marine Corps personnel while they are in service, and for a period of 4 months after they are separated from the service. Paper and film records are maintained for a period of 10 years after the final transaction. End calendar and fiscal year 'snapshots' of the MMS data base are maintained indefinitely in magnetic form at Headquarters, U. S. Marine Corps.

System manager(s) and address: Commandant of the Marine Corps, Headquarters U S Marine Corps, Washington, D C 20380.

Notification procedure: Requests from individuals for information concerning pay related matters should be addressed to the Commandant of the Marine Corps (Code FD). Requests from individuals for information concerning personnel matters should be addressed to the Commandant of the Marine Corps (Code MP).

Requesting individual must supply full name and Social Security Number.

The requester may visit the Marine Corps Finance Center, 1500 East Bannister Road, Kansas City, Missouri 64197 to obtain information on whether the system contains records pertaining to him or her.

In order to personally visit the above address and obtain information, individuals must present a military identification card, a driver's license, or other suitable proof of identity.

Record access procedures: Information on JUMPS may be obtained from the member's local disbursing officer. Information on MMS may be obtained from the member's immediate commanding officer. Requests for information from persons no longer in service should be signed by the person requesting the information. Dates of service, Social Security Number, and full name of requester should be printed or typed on the request. It should be sent to the Marine Corps Finance Center, 1500 East Bannister Road, Kansas City, Missouri 64197.

Contesting record procedures: The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

Record source categories: Recruiting offices, disbursing offices, administrative offices, and the individual Marine are the principle sources of the information contained in the JUMPS/MMS record for that person.

Systems exempted from certain provisions of the act: None

[FR Doc. 78-21020 Filed 7-31-78; 8:45 am]

Federal Register

TUESDAY, AUGUST 1, 1978
PART III

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Low Income Housing

■

DEBT SERVICE VACANCY PAYMENTS

[4210-01]

Title 24—Housing and Urban Development

CHAPTER VIII—LOW-INCOME HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-78-479, R-78-480, R-78-481 and R-78-482]

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SUBSTANTIAL REHABILITATION

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—HOUSING FINANCE AND DEVELOPMENT AGENCIES AND NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

Debt Service Vacancy Payments

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This final rule amends the Section 8, New Construction, Substantial Rehabilitation, Farmers Home Administration Section 515, Loan Program and Housing Finance and Development Agencies Program regulations to: (1) Make 1-year debt service vacancy payments available to all HUD-insured projects and (2) allow owners who had received a commitment for permanent financing before December 15, 1976, to qualify for these payments.

EFFECTIVE DATE: August 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Patricia Arnaudo, Deputy Director, Project Management Division, Office of Assisted Housing Management, Department of Housing and Urban Development, Room 6248, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-6460. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 3, 1977 (at 42 FR 57632), the Department published rules proposing to delete the restriction that payments for vacant units up to the amount of debt service may not be made in projects insured under the National Housing Act (except under section 244). While the proposed rules for the debt-service vacancy payments provisions were published together with the proposed rules for the security deposit provisions, the final rules are being published separately.

This amendment to the debt-service vacancy payments provision is applicable to Section 8, New Construction, Substantial Rehabilitation and Housing Finance and Development Agencies Programs (sections 880.107(d), 881.107(d) and 883.204(d)). Proposed amendments to the Section 8, Farmers Home Administration and Section 515, Loan Program (section 883.706(d)), were not published for comment on November 3, 1977, due to an oversight. Since the changes are minor in nature or reflect a statutory change, HUD has determined that it is in the public interest to publish conforming changes for effect at this time to section 883.706(d) for efficient program operation.

Summary of Rules Proposed on November 3, 1977

The Department proposed to delete the restriction that debt-service vacancy payments may not be made in projects insured under the National Housing Act (except under section 244) because section 201(d) of the Housing and Community Development Act of 1977 amended section 8(c)(4) of the U.S. Housing Act of 1937 to make available debt-service vacancy payments in all HUD-insured projects, not just those insured under section 244. The rules also proposed to amend these sections to permit debt service vacancy payments even if the commitment for permanent financing was given before December 15, 1976. Finally, the sections were proposed to be amended to authorize the PHA or HFA, rather than HUD, to consider claims for payments by owners, in the case of private-owner/PHA or HFA projects.

Applicability to All HUD-Insured Projects

The Department received six written comments in response to the proposed regulation. The comments supported making section 8 debt service vacancy payments available in all HUD-insured projects and this proposed change has been adopted.

Deletion of the Effective Date Provision

Several commenters objected to the use of the December 15 qualifying date in sections 880.107(d)(4), 881.107(d)(4), 883.204(d)(4) and 883.706(d)(4) because of the difficulty in determining the exact date the commitment for permanent financing was obtained. Other comments indicated that the section 8 debt-service vacancy payments provision should apply to all projects without regard to the effective date of the financing. The justification for not making the section 8 debt service vacancy payments provisions available where the permanent financing was obtained prior to December 15, 1976, was to reduce program expenditures. Projects with financing by that date presumably do not require the further security of debt-service vacancy payments.

However, in reconsidering this restriction, the Department has determined that the interests of having uniform rules for all projects and simplifying administration to the program outweigh the amount of savings anticipated, particularly since relatively few projects are subject to this restriction. Therefore, the Department is deleting sections 880.107(d)(4), 881.107(d)(4), 883.204(d)(4) and 883.706(d)(4), thereby making the provisions applicable even if the commitment for the permanent financing was given before December 15, 1976.

PHA Responsibility in Private-Owner/PHA or HFA Projects

The sections are also being amended to authorize the PHA or HFA, rather than HUD, to consider claims for payments by the Owner, in the case of Private-Owner/PHA or HFA Projects.

Technical Clarification

Sections 880.107(d)(2)(iii), 881.107(d)(2)(iii), 883.204(d)(2)(iii) and 883.706(d)(2)(iii), as renumbered, have been rephrased for clarity to state that the amount of payments requested may not exceed the amount needed to make up the deficiency.

A finding of inapplicability respecting the National Environmental Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours at the office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Accordingly, title 24 of the CFR is amended as follows:

1. Sections 880.107(d), 881.107(d) and 883.706(d) are revised to read as follows;

§§ 880.107, 881.107, 883.706 [Amended]

Sections 880.107, 881.107 and 883.706, Housing assistance payments to owners.

* * * * *

(d) *Debt-service vacancy payments.* (1) If a unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the owner may submit a claim to receive additional housing assistance payments on a semiannual basis with

respect to the vacant unit in an amount equal to the principal and interest payments required to amortize the portion of the debt attributable to that unit for the period of the vacancy, whether the vacancy commenced during rent-up or after rent-up.

(2) Additional payments under this paragraph (d) for any unit shall not be for more than 12 months for any vacancy period, and shall be made only if:

(i) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed.

(ii) The Owner has taken and is continuing to take the actions specified in paragraphs (b) (1), (2) and (3) or paragraphs (c)(1) (i) and (ii) and (c)(2) of this section, as appropriate.

(iii) The owner has demonstrated, in connection with the semiannual claim on a form and in accordance wih the standards prescribed by HUD with respect to the period of the vacancy, that the project is not providing the owner with revenues at least equal to the project costs incurred by the owner and that the amount of the payments requested is not in excess of the amount needed to make up the deficiency.

(iv) The owner has submitted to HUD or the PHA, as appropriate, in connection with the semiannual claim, a statement with relevant supporting evidence that there is a reasonable prospect that the project can achieve financial soundness within a reasonable time. The statement shall indicate the causes of the deficiency; the corrective steps that have been and will be taken; and the time by which it is expected that the project revenues will at least equal project costs without the additional payments provided under this paragraph.

(3) HUD or the PHA, as appropriate, may deny any claim for additional payments or suspend or terminate payments if it determines that, based on the owner's statement and other evidence, there is not a reasonable prospect that the project can achieve financial soundness within a reasonable time.

2. Section 883.204(d) is revised to read as follows:

§ 883.204 Housing assistance payments to owners.

* * * * *

(d) *Debt-service vacancy payments.* (1) If a unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the owner may submit a claim to receive additional housing assistance payments on a semiannual basis with respect to the vacant unit in an amount equal to the principal and interest payments required to amortize the portion of the debt attributable to that unit for the period of the vacancy, whether the vacancy commenced during rent-up or after rent-up.

(2) Additional payments under this paragraph (d) for any unit shall not be for more than 12 months for any vacancy period and shall be made only if:

(i) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed.

(ii) The owner has taken and is continuing to take the actions specified in paragraphs (b) (1), (2) and (3) or paragraphs (c)(1) (i) and (ii) and (c)(2) of this section, as appropriate.

(iii) The owner has demonstrated, in connection with the semiannual claim on a form and in accordance with the standard prescribd by HUD with respect to the period of the vacancy, that the project is not providing the owner with revenues at least equal to the project costs incurred by the owner and that the amount of the payments requested is not in excess of the amount needed to make up the deficiency.

(iv) The owner has submitted to the HFA, in connection with the semiannual claim, a statement with relevant supporting evidence that there is a reasonable prospect that the project can achieve financial soundness within a reasonable time. The statement shall indicate the causes of the deficiency; the corrective steps that have been and will be taken; and the time by which it is expected that the project revenues will at least equal project costs without the additional payments provided under this paragraph.

(3) The HFA may deny any claim for additional payments or suspend or terminate payments if it determines that, based on the owner's statement and other evidence, there is not a reasonable prospect that the project can achieve financial soundness within a reasonable time.

* * * * *

AUTHORITY: Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)); Sec. 5(b), United States Housing Act of 1937 (42 U.S.C. 1437c(b)).

Issued at Washington, D.C., July 21, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 78-21149 Filed 7-31-78; 8:45 am]

federal register

TUESDAY, AUGUST 1, 1978
PART IV

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

■

SPECIAL INNOVATIVE GRANTS—FISCAL YEAR 1979

Funding Proposal Application

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-78-885]

SPECIAL INNOVATIVE GRANTS—FISCAL YEAR 1979

Funding Proposal Application

AGENCY: Department of Housing and Urban Development.

ACTION: Notice regarding innovative grant proposals—fiscal year 1979.

SUMMARY: HUD is inviting applications for innovative grants from units of general local government with 2,500 or more federally assisted public housing units under management which, in cooperation with public housing authorities, propose to develop long-term plans to improve municipal support for local public housing programs.

FOR FURTHER INFORMATION CONTACT:

Robert L. Blake, Program Manager, Office of Policy Planning, Room 7158, telephone, 755-5620.

DATE: Applications are due by November 1, 1978.

SUPPLEMENTARY INFORMATION: The innovative grant program is authorized by section 107(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.). This program funds projects which are untried, unique, or advance the state of the community development art. This notice informing eligible applicants of requirements for proposals is published pursuant to 24 CFR 570.406(b)(3)(1). Eligible applicants are units of local government (units) as defined in the community development block grant regulations at 24 CFR 570.3(v). In addition, there must be located in such units of local government 2,500 or more federally assisted public housing units under management and applicants must agree to cooperate with public housing authorities in undertaking eligible activities.

Eligible activities must meet the eligibility requirements of 24 CFR Part 570, Subpart C, and must address one or more of the following: (a) development of plans and programs for reusing vacant or underused housing facilities; (b) development of neighborhood and commercial revitalization programs in areas where there are federally assisted public housing projects; and (c) development of plans and programs to improve the level and quality of municipal support for local public housing authorities (e.g., improved police, fire, water, sewer services and upgraded recreation and education). For item (c) public services must be above the existing level. Also, ordinary operating and maintenance costs are not eligible.

HUD will award grants based upon the following selection criteria:

1. Overall technical merit of the proposed project, including the specific impact of the innovation.

2. Unique capabilities, related experiences, facilities or techniques and the commitment which the applicant possesses and offers for achieving the objectives of the project.

3. The extent to which the identified problem is common to a substantial number of communities and the proposed approach can be adopted and replicated in a significant number of other community environments.

4. Extent to which the proposed project improves the living conditions in and around large urban federally assisted public housing projects.

5. Extent to which the proposed project strengthens the management of public housing agencies responsible for these projects.

6. Extent to which the proposed project avoids displacement of low and moderate income residents.

7. Whether the applicant has used community development block grant funds in support of federally assisted public housing projects. Each interested unit will receive an information kit. This kit will help applicants correctly complete their applications, and will assign values to the selection criteria to be used in awarding grants.

In formulating their applications, HUD encourages units to: assume a broader perspective concerning problems and opportunities; help public housing authorities to work more cooperatively with the local government in promoting other community objectives; offer alternatives to demolition and suggest reuse of vacant buildings; leverage other public and private resources; develop alternative management systems; promote homeownership in federally assisted public housing; initiate or improve the delivery of vital social services; improve racial balance; initiate a comprehensive public housing authority crime prevention program; and help to assure the success of local urban revitalization programs.

HUD expects that individual grants will approximate $250,000. Applications shall include the following:

1. A brief letter of transmittal containing the signatures of the chief executive(s) of the applicant and designated project leader who will be primarily responsible for execution of the project.

2. A one page abstract of the project summarizing the proposal.

3. A project narrative statement describing the nature of the problem, the goals and objectives of the project, the proposed solution, the resources to be used, the management plan, the tasks to be carried out, the plan for evaluation and such other elements as are necessary to describe applicant activities for other elements which may be required in priority programs.

4. A proposed budget clearly showing the proposed expenditure of HUD funds.

5. The certifications required by 24 CFR 570.307, except for paragraphs (d) and (f). In addition, the applicant must certify that citizens likely to be affected by the project, particularly low and moderate income persons, have been provided an opportunity to comment on the application.

Applications for the innovative grants program must be delivered or postmarked no later than November 1, 1978. The original plus two copies of the application shall be submitted to HUD's Office of Policy Planning, CPD, Room 7158, Department of Housing and Urban Development, 451 7th Street SW, Washington, D.C. 20410. Simultaneously one copy of the application shall be sent to the applicant's local HUD Area Office.

Issued at Washington, D.C., July 21, 1978.

ROBERT C. EMBRY,
Assistant Secretary for Community Planning and Development.

[FR Doc. 78-21227 Filed 7-31-78; 8:45 am]

Federal Register

TUESDAY, AUGUST 1, 1978
PART V

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

■

ADMINISTRATOR QUALIFICATIONS AND PROCEDURES FOR HUD BUILDING PRODUCTS CERTIFICATION PROGRAMS

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-78-884]

ADMINISTRATOR QUALIFICATIONS AND PROCEDURES FOR HUD BUILDING PRODUCTS CERTIFICATION PROGRAMS

AGENCY: Department of Housing and Urban Development, Office of Assistant Secretary for Housing, Federal Housing Commissioner.

ACTION: Notice.

SUMMARY: This Notice promulgates Administrator Qualifications and Procedures for HUD Building Products Certification Programs under the Technical Suitability of Products Programs Section 521 of the National Housing Act. These qualifications and procedures have been historically accepted in existing certification programs.

DATES: Comments must be received by August 31, 1978.

ADDRESS: Comments should be addressed to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Copies of any comments received will be available for examination during business hours at this address.

FOR FURTHER INFORMATION CONTACT:

Leslie H. Breden, Materials Engineer, Architecture and Engineering Division, Office of Technical Support, Department of Housing and Urban Development, Washington, D.C. 20410, telephone 202-755-5929.

SUPPLEMENTARY INFORMATION: Many of these administrator qualifications and procedures for HUD Building Products Certification Programs have been historically accepted in existing certification programs related to the issuance of Use of Materials Bulletins. It is intended that these qualifications and procedures be continued in the future certification programs for building products. The Department, however, reserves the right to establish additional criteria for specific building products certification programs.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the Secretary, Room 5218, Department of Housing and Uran Development, 451 7th Street SW., Washington, D.C. 20410.

Issued at Washington, D.C. on July 25, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing, Federal Housing Commissioner.

ADMINISTRATOR QUALIFICATIONS AND PROCEDURES FOR HUD BUILDING PRODUCTS CERTIFICATION PROGRAMS

INTRODUCTION

This notice sets forth the qualifications and procedures used with the HUD Building Products Certification Programs when requested or deemed necessary by HUD. These programs are authorized under the Technical Suitability of Products Program, section 521 of the National Housing Act.

These certification programs use administrators to validate the manufacturer's certification of compliance with the applicable standard. The administrator shall be other than the manufacturer or vendor.

These certification programs may be sponsored by associations, testing agencies, societies or other organizations interested in product certification. Each certification program administrator shall meet the qualifications set forth herein.

Specific program procedures and requirements shall be developed for each certification program in conjunction with a referenced building product standard. These certification programs shall be available from the Director, Architecture and Engineering Division, Department of HUD, 451 7th Street SW., Washington, D.C. 20410.

HUD will maintain a list of all certification programs and accepted administrators. This list will be periodically published in a Use of Materials (UM) Bulletin, which will be published as a Notice in the FEDERAL REGISTER. U.M. Bulletins will also be available from HUD field ofices and the Architecture and Engineering Division in Washington, D.C.

When directories are used in conjunction with the certification programs, the directories shall show a facsimile of each administrator's label, a description of the label content and additional required information. Copies of these directories shall be distributed to the HUD offices by each administrator.

Participation in a certification program shall be equally available to all product manufacturers.

A. ADMINISTRATOR QUALIFICATIONS AND APPLICATION PROCEDURES IN HUD BUILDING PRODUCTS CERTIFICATION PROGRAMS

1. *Qualifications.* Each program administrator shall be capable of conducting a certification program with respect to organization, staff and facilities, and have a reputation for adhering to high ethical standards. To be considered acceptable for conducting a certification program, each administrator shall:

(a) Be a technically qualified organization with past experience in the administration of certification programs. Each administrator is responsible for staffing the program with qualified scientists, registered professional engineers, or architects who are capable of interpreting testing standards, test methods, and evaluating test reports to be used in the certification program. The staff shall be adequate to service all aspects of the program.

(b) Have field inspectors trained to make selections of materials for testing from manufacturer's stock or from distributors' establishments. Such inspectors must be trained and experienced in evaluating manufacturer's quality control test records to determine that continuing production remains in compliance with the applicable standard set for in the UM Bulletin.

When inspectors are used to evaluate laboratory operations, they shall be qualified and under the supervision of the administrator. They shall be knowledgeable in such areas as test methods, quality control, testing techniques, and instrument calibration.

(c) Have facilities and capabilities for communications with manufacturers, laboratories, and HUD, including publication of a directory of certified products, if required by the program.

(d) Have adequate policies and practices for preserving the confidential nature of information entrusted to its care. HUD reserves the right to review all technical records related to the program for the purpose of monitoring.

(e) Have a copy of all applicable standards, test methods, and related information necessary to carry out the program.

(f) Have a registered or pending certification mark at the U.S. Patent Office and be willing to license, on a uniform basis, the use of that mark by manufacturers as a validation of the manufacturer's certification that the product complies with the applicable standard.

(g) Show a record of 6 years experience as a testing or inspection agency for product certification programs.

2. *Applications for acceptance.* Any organization desiring HUD acceptance as a qualified administrator to conduct

a certification program shall make application in writing to the Director of Architecture and Engineering Division.

The application shall state the particular certification program for which acceptance is requested and include information indicating compliance with each of the qualification requirements by number and subsection. Attached to the application shall be:

(a) A list of certification programs in which the organization is participating or has participated and the types of participation (sponsor, administrator, testing laboratory, etc.).

(b) A procedural guide used in one of these programs.

(c) A directory or listing used in one of these programs.

(d) A reproduction or fascimile of the organization's registered mark.

(e) A proposed procedural guide for the particular certification program. HUD certification program procedures described in section B shall be followed.

3. *Acceptance.* HUD shall review each submission and notify the applicant whether or not they are accepted or rejected. HUD shall be notified immediately of any change(s) in the administrator's submission regarding program procedures and/or major personnel associated with the program. HUD shall not be involved with or review fees, fee structures or licensing agreements. HUD reserves the right to suspend or debar an administrator in accordance with Part 24 of Title 24 of the Code of Federal Register (CFR).

B. HUD Building Products Certification Program Procedures

1. *Certification program development.* Certification program development by an administrator shall be based upon the procedures and standards for the specific building product described in the UM Bulletin.

2. *License agreement.* Each administrator shall have a written license agreement with each participating manufacturer binding each to the provisions of the specific programs and authorizing the manufacturer to use the administrator's mark, seal, or label on its products. The administrator shall have the right to terminate any agreement prior to an expiration date if there has been a breach of the requirements of the certification program by the manufacturer.

3. *Laboratory approval.* The administrator shall review laboratories that apply for participation in this program on the basis of the procedures described in item 12 of this section. A list of approved laboratories shall be maintained by the administrator. When the certification program allows the use of the administrator's testing laboratories, the laboratories shall be reviewed by a qualified party acceptable to HUD.

4. *Initial testing and quality control review for validation.*

(a) *Initial testing.* Each participating manufacturer shall submit to the appropriate administrator, the product(s) specification and statement(s) that the product complies with the applicable standard. The administrator shall select samples of the product(s) for testing. If a failure occurs on the initial tests, additional sampling and testing may be done at the manufacturer's request. The administrator's validation of the manufacturer's declaration of certification shall be withheld until a finding of compliance is achieved.

(b) *Quality control review.* Each administrator shall examine participating manufacturers' facilities and quality control procedures to determine that they are adequate to assure continuing production of products that shall comply with the applicable standard. These quality control procedures shall be documented in the administrator's files. If a manufacturer's quality control system is not satisfactory to the administrator, validation of the manufacturer's declaration of certification shall be withheld.

5. *Notice of validation.* When initial testing, quality control review, and evaluation of other technical data is satisfactory to the administrator, a notice of validation or certification shall be issued to the manufacturer. This allows the use of the administrator's registered mark on the product label.

6. *Labeling.* Each administrator shall issue to the manufacturer, labels, tags, marks, or stamps containing the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard. The registered administrator's (validator's) mark shall be on the label. A sponsor's (association, testing agencies, society or others) registered mark may be used in lieu of or in addition to the administrator's mark. The manufacturer's certification of compliance to the standard may be coded. Additional information such as type, grade, class, etc. may also be coded. When coding is used, the code shall be described in the directory or listing.

7. *Directory or listing.* When required by the program, the administrator shall publish a directory or listing for all certified products. The directory shall list the items described in section (6). The directory shall also carry a complete list of approved laboratories and shall be updated to reflect additions or deletions of certified products and laboratories. Directories or listings shall be published periodically as described in the specific program. Each administrator shall make a complimentary distribution of the directory or listing to the HUD Field Offices and other government agencies designated by HUD. A subscription fee may be charged to others requesting copies.

8. *Periodic tests and quality control inspections.* Samples of the certified product shall be selected periodically from the plant, warehouse inventory or sales points. The samples shall be sent to an administrator approved laboratory and tested in accordance with the applicable standard. The frequency of testing shall be described in the specific building product program. The administrator shall periodically visit the manufacturer's facility to assure that the initially accepted quality control procedures are being followed.

9. *Product decertification.* If a failure should occur in any test, the laboratory shall notify the administrator and the manufacaturer shall notify the administrator if a retest is requested. If a retest is not requested, validation shall be withdrawn. If the manufacturer requests a retest, the adminstrator shall select new samples and submit them to another laboratory at the manufacturer's expense, for retest of only the test requirement(s) in which the failure(s) occurred. If the specified number of specimens pass the retest, the product can continue to be validated and listed. If the designated number of specimens described in the UM Bulletin fail, the administrator shall decertify the product. The manufacturer may request that a new selection be made of the product after correction or modifications and be subjected to the initial acceptance testing procedure or to a program of retesting established by the adminstrator.

The administrator may decertify the product on the basis of inadequate quality control by the manufacturer. The administrator shall notify the manufacturer, HUD headquarters and the HUD Field Offices of any decertification within 3 days. When the product is decertified the manufacturer shall remove labels, tags or marks from all production and inventory in his control determined to be in noncompliance.

10. *Challenge response.* Any person or organization may submit a sample of a manufacturer's certified product to the administrator in substantiation of a claim of noncompliance. The administrator shall notify the manufacturer that its product has been challenged and shall make arrangements to obtain test samples of the challenged product. An estimate of the cost of the special samply selection and testing shall be made to the complainant, and the complainant shall pay in advance the estimated cost of the investigation before any action is

initiated. The administrator shall submit the sample of the challenged product to an approved laboratory of the administrator's choice with the request to test compliance of only the challenged requirement(s). If the test proves that the product failed to meet the standard, it shall be decertified immediately. The manufacturer whose product is decertified shall reimburse the administrator for all costs of the investigation and the administrator shall refund the complainant's advance payment. If the tests prove that the product does comply with the standard, the complainant shall be notified that the tests do not support the complaint and that the advance fee has been used for the cost of testing and investigating the claim.

11. Maintainance of the program. Each administrator shall maintain the program in conformance with administrative letters issued by HUD for the purpose of clarifying procedures and interpreting the applicable standard. These letters may also be used to revise and amend the procedures used in specific programs. Significant changes in any program shall be published in the FEDERAL REGISTER

12. *Laboratory qualifications.* The following laboratory qualifications apply to all testing laboratories participating in the program including manufacturer's laboratories used for periodic testing and the administrators' own laboratories.

12A. *Organization and personnel.* Laboratories wishing to participate in a certification program shall apply to the administrator and furnish the following information:

1. Name of laboratory, address, telephone number, name and title of official to be contacted for this program.

2. Name and qualifications of person assigned by the laboratory to supervise testing under for a specific certification program.

3. Name and qualifications of engineers and other key personnel who shall conduct the testing.

4. Brief review of training program for personnel associated with program to assure the operational efficiency and uniformity of the testing and quality control procedures.

Each laboratory shall notify the administrator of any change in its submission regarding procedures and/or major personnel associated with the program.

12B. *Requirements for laboratories.*

1. *Equipment and facilities.* Each laboratory shall:

(a) Describe the test instruments and testing facilities to be used in making the test(s) required by the applicable standard. Information shall include: Item of equipment, manufacturer, type or model, serial number, range, precision, frequency of calibration and dates of calibration.

(b) Provide photographs of the listed equipment.

(c) Provide a description of the applicable standards and calibration equipment being used and the calibration procedures followed, including National Bureau of Standards traceability, when applicable. List outside organizations providing calibration services, if used.

(d) Demonstrate that measurements can be made with existing equipment and repeated precision within the limits established by the applicable standards. Administrator may periodically require laboratories to conduct collaborative testing on standard reference materials.

(e) Provide evidence, when regulated temperatures and humidity are required, that charts are maintained from a continuous recorder registering both wet and dry bulb temperature or relative humidity. The charts are to be properly dated, retained and available for inspection.

(f) Provide a list of standards, test methods and other information necessary to carry out the program.

2. *Testing methodology.* (a) Describe concisely the procedures for conducting the tests required and the specific equipment to be used.

(b) Attach a sample test report showing representative test results and accompanied by test data forms for each test required. When approved for program participation, testing laboratories may be required by administrator to report test results on standard summary report forms.

3. *Subcontractors.* If a testing laboratory plans to subcontract any of its testing to other laboratories, only approved laboratories acceptable to the administrator shall be used.

4. *Laboratory quality control.* The laboratory shall develop operating quality control procedures acceptable to the administrator. The procedures of the American Council of Independent Laboratories [1] may be used as a guideline.

5. *Approval of laboratories.* Administrators shall develop detailed laboratory approval requirements and conduct periodic inspections to assure each test laboratory's capability. Laboratory approval may be granted for 2 years. Reapproval of the laboratory shall be necessary every 2 years. When a program allows the use of an administrator's own laboratories, these laboratories shall be reviewed by a qualified third party acceptable to HUD. Documentation of acceptance for administrator laboratories shall be maintained by the administrator and HUD. Administrator laboratories shall be subject to reapproval every 2 years.

6. *Withdrawal of approval.* Laboratory approval shall be withdrawn or temporarily suspended if it is determined that laboratory is not complying with the approved requirements. Causes for suspension include but are not limited to the following:

(a) Incompetence.

(b) Failure to test in accordance with the test methods described in the standard.

(c) Issuance of test reports which fail to comply with the requirements described in the specific product certification program.

(d) Falsification of the information reported.

(e) A statement implying validation of the product using a test report which constitutes only part of the total standard.

(f) Deceptively utilizing references in advertising or other promotional activities.

(g) Submission of incomplete or inadequate information and documentation called for herein.

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[1] Copies are available from the American Council of Independent Laboratories, Inc., 1415 Park Avenue, Hoboken, N.J. 07030.

[FR Doc. 78-21228 Filed 7-31-78; 8:45 am]

federal register

TUESDAY, AUGUST 1, 1978
PART VI

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

CENTRALIZED AUDIOVISUAL SERVICES

[6820-26]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER B—ARCHIVES AND RECORDS

[FPMR Amdt. B-40]

PART 101-11—RECORDS MANAGEMENT

Centralized Audiovisual Services

AGENCY: National Archives and Records Service, General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation informs Federal agencies of the responsibilities of the National Audiovisual Center (NAC) concerning federally produced or sponsored audiovisual materials and outlines the procedures Federal agencies must follow in planning and reporting audiovisual productions. Federal agencies are required by OMB Circular A-114 to supply NAC with the necessary information and materials needed for NAC to meet its Government-wide management responsibilities relating to audiovisual services.

EFFECTIVE DATE: August 1, 1978.

FOR FURTHER INFORMATION CONTACT:

John H. McLean, Director, National Audiovisual Center, 301-763-1872.

ADDRESS: Mailing address: National Audiovisual Center (NAC), General Services Administration, Washington, D.C. 20409. The table of contents for part 101-11 is amended by adding the following entries:

Sec.
101-11.1304 Centralized audiovisual services.
101-11.4931 Standard Form 202, Federal Audiovisual Production Report.
101-11.4932 Standard Form 203, Annual Audiovisual Report.

Subpart 101-11.13—Audiovisual Records Management

Section 101-11.1304 is added as follows:

§ 101-11.1304 Centralized audiovisual services.

(a) *National Audiovisual Center.* The National Audiovisual Center (NAC) serves as a central information source to the general public and Federal agencies concerning the availability of federally produced or sponsored audiovisual products. NAC also serves as a central distribution point for the sale, rental, and, under limited conditions, free loan of these products to the public and Federal agencies. In addition, NAC compiles and publishes Government-wide catalogs on audiovisual products available for loan, rental, and sale and develops criteria, establishes appropriate terminology, and recommends Government-wide practices for the cataloging and indexing of audiovisual materials.

(b) *Agency reporting requirements.*—(1) *Mandatory title check.* (i) Prior to authorizing the production of any type of audiovisual product, all agencies, except as noted in OMB Circular A-114, shall contact NAC and request information about the availability of similar products in an attempt to reduce duplication of effort. When requesting mandatory title checks on intended productions, provide the following information:

(A) Intended subject—broad and specific. For example, broad—sociology, rehabilitation; specific—recreational therapy, nursing, and patient care.

(B) Specific or unique elements desired in production (medical technique, intended audience, new regulation, etc.). For example, audience—nursing home administrators.

(C) Intended purpose of production. For example, to show that awareness to social interaction should be available to home patients to fulfill their need to talk to someone.

(ii) Include the name of the agency or department, bureau or office, and division or branch; the name of the agency contact person; complete mailing address; and telephone number. Then forward the request to the National Audiovisual Center (NAC), General Services Administration, Attn: Mandatory Title Check, Washington, D.C. 20409.

(2) *Federal Audiovisual Production Report.* (i) Standard form 202, Federal Audiovisual Production Report, shall be prepared by each agency according to directions on the form within 30 calendar days after production of an audiovisual product is authorized or budget approval is obtained, except as noted in OMB Circular A-114. Upon completion or cancellation of the production, a new standard form 202 shall be completed and forwarded to NAC.

(ii) When it has been determined that existing Federal audiovisual products do not satisfy agency needs, a separate page shall accompany the initial standard form 202, explaining why existing products do not satisfy agency needs. The explanation must include: The subject area of the mandatory title check; the number of titles identified in the check; a narrative explanation; a statement as to whether or not commercial sources of audiovisual products were investigated; and an authorization block containing the signature, date, title, address, and phone number of the agency official responsible for audiovisual clearance and authorization.

(iii) Copies of standard form 202 may be obtained by submitting written requests to NAC (mailing address: National Audiovisual Center (NAC), General Services Administration, Washington, D.C. 20409). All requests for forms should come from the office which has been assigned responsibility for the management of audiovisual activities in each Federal agency. Upon completion, the forms shall be sent to National Audiovisual Center (NAC), General Services Administration, Attn: Cataloging Section, Washington, D.C. 20409.

(3) *Annual Audiovisual Report.* (i) Standard form 203, Annual Audiovisual Report, shall be submitted within 90 calendar days from the end of each fiscal year (FY) starting with fiscal year 1978.

(ii) Copies of standard form 203 may be obtained by submitting written requests to NAC (mailing address: National Audiovisual Center (NAC), General Services Administration, Washington, D.C. 20409). All requests for forms should come from the office which has been assigned responsibility for the management of audiovisual activities in each Federal agency. Upon completion, the forms shall be sent to National Audiovisual Center (NAC), General Services Administration, Attn: Cataloging Section, Washington, D.C. 20409.

(4) *Evaluations.* (i) All evaluations developed in accordance with attachment E of OMB Circular A-114 shall be forwarded to the National Audiovisual Center (NAC), General Services Administration, Attn: Cataloging Section, Washington, D.C. 20409. NAC will attach these evaluations to the Federal Audiovisual Production Report on file for that audiovisual product.

(ii) Products excluded from the mandatory title check and excluded from the Federal Audiovisual Production report requirements of OMB Circular A-114 need not be evaluated.

(c) *Liaison.* Each agency shall forward to NAC (mailing address: National Audiovisual Center (NAC), General Services Administration, Washington, D.C. 20409 the name, mailing address, and telephone number of the office which is assigned responsibility for management oversight of the agency's audiovisual activities. These designated offices shall serve as the liaison between NAC and Federal agencies for all matters relating to audiovisual activities, including mandatory title checks, submissions of reports and evaluations, and requests for forms.

Subpart 101–11.49—Forms and Reports

1. Section 101–11.4931 is added as follows:

§ 101–11.4931 Standard form 202, Federal Audiovisual Production Report.

Interagency Reports Control No. 051–GSA–xx is assigned to this report.

2. Section 101–11.4932 is added as follows:

§ 101–11.4932 Standard form 203, Annual Audiovisual Report.

Interagency Reports Control No. 0152–GSA–AN is assigned to this annual report.

(Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).)

Dated: July 12, 1978.

JAY SOLOMON,
Administrator of General Services.

[FR Doc. 78–21259 Filed 7–31–78; 8:45 am]

federal register

TUESDAY, AUGUST 1, 1978
PART VII

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

Order Suspending Certain Provision

FOR
OFFICIAL
USE
ONLY

[3410-02]

Title 7—Agriculture

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

[Milk Order No. 36]

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

Order Suspending Certain Provision

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for August 1978 the limit on the amount of milk not needed for bottling use that may be moved (diverted) directly from farms to manufacturing plants and still be priced under the order. The suspension is based on a cooperative association's proposal that was considered at a public hearing held for this order in Cleveland, Ohio, in October 1977, and which was recently recommended for adoption in a decision issued by the Department. This action will aid in the continued association of milk of producers under the order for August.

EFFECTIVE DATE: August 1, 1978.

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, issued 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).

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the eastern Ohio-western Pennsylvania marketing area.

It is hereby found and determined that for the month of August 1978 the following provision of the order does not tend to effectuate the declared policy of the act:

In § 1036.13(e)(3), the words "of August."

STATEMENT OF CONSIDERATION

This action suspends for August 1978 the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants. The order otherwise limits such diversions during the months of August through March to not more than a dairy farmer's production that is actually received at pool plants.

This suspension was requested by a cooperative association supplying the market. The request was based on the findings and conclusions of a recommended decision issued by the Department on March 31, 1978 (43 FR 14478) in which it was concluded that August be eliminated as a month in which diversion limitations to nonpool plants apply. This recommended change, which the cooperative association proposed and supported, was based upon a public hearing held for this order on October 12-14, 1977, at Cleveland, Ohio. There was no opposition to this change at the hearing or in post-hearing briefs and exceptions to the recommended decision.

The cooperative indicated that since it appears final action on this matter will not be completed in time to allow unlimited diversion of producer milk in August 1978, it is necessary that immediate action be taken which will enable it to avoid uneconomic handling of reserve milk supplies and still maintain producer status for all of its member milk during this month.

On the basis of the record evidence developed at the hearing on this issue, it is concluded that if no suspension action is taken, the association would be forced to make uneconomic shipments to assure producer milk status for some of its members during this August. Moreover, there is insufficient time to resolve the diversion problem for August 1978 on an amendatory basis. Therefore, under the circumstances indicated on the hearing record, it is essential to make this suspension effective immediately to carry out the intent of the recommended decision in eliminating August as the month in which diversion limitations apply. The suspension is the only practicable means of assuring continued producer status of the cooperative association's dairy farmer members normally associated with the market for August 1978, without it being forced to make uneconomic movements of milk to pool plants and then reship it to nonpool manufacturing plants.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that the most efficient method of handling reserve milk supplies is by direct movement from producers' farms to manufacturing outlets. This suspension allows such economical movement of milk while the dairy farmers involved retain producer status;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) This suspension carries out the intent of a recommeded decision issued by the Department on March 31, 1978, in which it was concluded that August be eliminated as a month in which diversion limitations to nonpool plants apply;

(d) The marketing problems that provide the basis for this suspension action were fully reviewed at a public hearing and all interested parties had the opportunity of being heard on this matter.

Therefore, good cause exists for making this order effective August 1, 1978.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended with respect to fluid milk marketings during the month of August 1978.

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

Effective date: August 1, 1978.

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

JERRY G. HILL,
Deputy Assistant Secretary for Marketing Services.

[FR Doc. 78-21294 Filed 7-31-78; 8:45 am]

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