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THURSDAY, AUGUST 3, 1978

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highlights

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September 8, 1978

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HOW TO USE THE FEDERAL REGISTER

FOR: Any person who must use the Federal Register and Code of Federal Regulations.

WHAT: Free public workshop (approximately 2½ hours) to present:

1. Brief history of the Federal Register system.
2. Difference between legislation and regulations.
3. Relationship of Federal Register and the Code of Federal Regulations.
4. Important elements of a typical Federal Register document.
5. An introduction to the finding aids of the FR/CFR system.

WHEN: September 8, 1978, at 10:00 a.m.

WHERE: Conference Room 914, Federal Building, 111 W. Huron St., Buffalo, New York.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in government actions. There will be no discussion of specific agency regulations.

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rules and regulations

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

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

[3410-02]

Title 7—Agriculture

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

[Valencia Orange Reg. 600]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period August 4-10, 1978. Such action is needed to provide for orderly marketing of fresh Valencia oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: August 4, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Valencia Orange Administrative Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of Valencia oranges, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on August 1, 1978, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports the demand for Valencia oranges is somewhat stronger than the previous week.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 908.900 Valencia orange regulation 600.

Order. (a) The quantities of Valencia oranges grown in Arizona and California which may be handled during the period August 4, 1978, through August 10, 1978, are established as follows:

(1) District 1: 252,000 cartons;

(2) District 2: 448,000 cartons;

(3) District 3: Unlimited.

(b) As used in this section, "handled", "District 1", "District 2", "District 3", and "carton" means the same as defined in the marketing order.

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

Dated: August 2, 1978.

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

[FR Doc. 78-21829 Filed 8-2-78; 11:55 am]

[3410-02]

PART 919—PEACHES GROWN IN MESA COUNTY, COLO.

Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses and a rate of assessment for the 1977-78 fiscal period to be collected from handlers to support activities of the committee which locally administers the Federal marketing order covering peaches grown in Mesa County, Colo.

DATES: Effective December 1, 1977, through November 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to marketing order No. 919, as amended (7 CFR part 919), regulating the handling of peaches grown in Mesa County, Colo., effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the committee, established under the marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereafter provided, will tend to effectuate the declared policy of the act.

§ 919.217 Expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Administrative Committee during the fiscal period December 1, 1977, through November 30, 1978, will amount to $1,000.

(b) *Rate of assessment.* The rate of assessment for the fiscal period, payable by each handler in accordance with § 919.41, is fixed at $0.02666 per cwt. of peaches.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), as the order requires that the rate of assessment for a particular fiscal period shall apply to all assessable peaches handled from the beginning of such period which began December 1, 1977. To enable the committee to meet fiscal obligations which are now accruing, approval of the expenses and assessment rate are necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assess-

ment rate at an open meeting of the committee. It is necessary to effectuate the declared purposes of the act to make these provisions effective as specified.

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

Dated: July 31, 1978.

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

[FR Doc. 78-21509 Filed 8-2-78; 8:45 am]

[3410-02]

PART 930—CHERRIES GROWN IN MICHIGAN, NEW YORK, WISCONSIN, PENNSYLVANIA, OHIO, VIRGINIA, WEST VIRGINIA, AND MARYLAND

Expenses, Rate of Assessment, and Carryover of Unexpended Funds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses and a rate of assessment for the 1978-79 fiscal period to be collected from handlers to support activities of the Cherry Administrative Board which locally administers the Federal marketing order covering cherries grown in the eight designated States.

DATES: Effective May 1, 1978, through April 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to marketing order No. 930, (7 CFR part 930), regulating the handling of cherries grown in eight designated States, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendation and information submitted by the Cherry Administrative Board, established under the marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereafter provided, will tend to effectuate the declared policy of the act.

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

(a) Expenses that are reasonable and likely to be incurred by the Cherry Administrative Board during the fiscal year May 1, 1978, through April 30, 1979, will amount to $99,300.

(b) The rate of assessment for said year payable by each handler in accordance with § 930.41, is fixed at $1.20 per ton of cherries.

(c) Unexpended funds in excess of expenses incurred during fiscal year ended April 30, 1978, shall be carried over as a reserve in accordance with § 930.42.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), as the order requires that the rate of assessment for a particular fiscal period shall apply to all assessable cherries handled from the beginning of such period which began May 1, 1978. To enable the committees to meet fiscal obligations which are now accruing, approval of the expenses and assessment rate are necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the board. It is necessary to effectuate the declared purposes of the act to make these provisions effective as specified.

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

Dated: July 28, 1978.

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

[FR Doc. 78-21508 Filed 8-2-78; 8:45 am]

[3410-05]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1427—COTTON

Subpart—Cotton Loan Program Regulations

AGENCY: Commodity Credit Corporation.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to change the eligibility requirements for upland cotton, delete the provision that loan clerks may charge an additional 10 cents per bale for Forms A-1 prepared in a manner which does not require retyping by the Commodity Credit Corporation (CCC), provide that interest rates on upland cotton will be set quarterly, provide that upland cotton loans may be extended for an additional 8 months under certain conditions at the request of the producer and delete the failure to comply provisions. This rule is necessary so that producers will be informed of these changes. This rule will permit eligible producers to obtain loans on their eligible cotton and will permit producers to extend upland cotton loans under certain conditions.

DATE: Effective August 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Dalton Ustynik, ASCS, 202-447-6611, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking with respect to the price support program for upland and extra long staple lint and seed cotton was published in the FEDERAL REGISTER on December 22, 1977, 42 FR 46126. No comments were received. The following changes have been made to incorporate provision of the Food and Agriculture Act of 1977 and other changes for effective program operation. The definition of a cooperator has been changed, the provision that loan-clerks may charge an additional 10 cents per bale for Forms A-1 which do not require retyping by CCC has been deleted, provisions that producers may extend upland cotton loans under special conditions have been added, and the failure to comply provisions have been deleted.

FINAL RULE

In order to incorporate program changes and an amendment to the regulations, the cotton loan program regulations published at 40 FR 30092, as amended, are hereby revised for the 1978 and subsequent crops of cotton to read as provided below. The material previously appearing in this subpart remains in full force and effect as to the crop years to which it was applicable.

Subpart—Cotton Loan Program Regulations

Sec.

1427.1 General statement.
1427.2 Definitions.
1427.3 Administration.
1427.4 Availability of loans.
1427.5 Eligible producer.
1427.6 Eligible cotton.
1427.7 Forms and authorizations.
1427.8 Approved storage.
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1427.10 Preparation of documents.
1427.11 Disbursement of loans.
1427.12 Service charges.
1427.13 Clerk fees.
1427.14 Liens.
1427.15 Setoffs.
1427.16 Classification and micronaire readings of cotton.
1427.17 Interest rate.
1427.18 Maturity.
1427.19 Warehouse receipt and insurance.
1427.20 Special procedure where note amount advanced.
1427.21 Reconcentration of cotton.
1427.22 Custodial offices.

1427.23 Loss of or damage to pledged cotton.
1427.24 Repayment of loan.
1427.25 Cotton cooperative marketing association loans.
1427.26 Death, incompetency, or disappearance.

AUTHORITY: Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444, 1421). Sec. 602, 91 Stat. 934 (7 U.S.C. 1444).

Subpart—Cotton Loan Program Regulations

§ 1427.1 General statement.

(a) The regulations in this subpart, including any amendments and the annual supplements hereto, set forth the requirements with respect to loans on cotton of the 1978 crop and each subsequent crop for which an annual supplement to this subpart is issued. Loans will be made available by CCC to eligible cotton producers on eligible upland and extra long staple cotton through county offices. For other than cotton cooperative marketing association loans, each producer shall obtain loan(s) through the county office and is responsible for delivering necessary required loan documents to the county office for disbursement of the loan(s). County committees or county executive directors may approve loan clerks at convenient locations to assist producers in preparing loan documents.

(b) Disbursement of Form A loan proceeds will be made by county offices.

§ 1427.2 Definitions.

As used in the regulations in this subpart, and in all instructions, forms, and documents in connection therewith, the words and phrases listed in this section shall have the meaning assigned to them therein unless the context or subject matter otherwise requires.

(a) "Person," "State Executive Director," "County Executive Director," and "farm," respectively, shall each have the same meaning as the definition of such term in part 719 of this title and any amendment thereto.

(b) "CCC" shall mean Commodity Credit Corporation.

(c) "Management Field Office" shall mean the Management Field Office, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, 8930 Ward Parkway, Kansas City, Mo. 64114 (mailing address P.O. Box 205, Kansas City, Mo. 64141).

(d) "Kansas City Commodity Office" shall mean the Kansas City Commodity Office, Agriculture Stabilization and Conservation Service, U.S. Department of Agriculture, Brymer Office Center, 2400 West 75th Street, Praire Village, Kans. 66208 (mailing address P.O. Box 8377, Shawnee Mission, Kans. 66208).

(e) "State committee" shall mean the Agricultural Stabilization and Conservation State Committee and shall include only the State committee and not its representative.

(f) "County committee" shall mean the Agricultural Stabilization and Conservation county committee and shall include only the county committee and not its representative.

(g) "County office" shall mean the Agricultural Stabilization and Conservation Service county office which keeps the farm records for the farm on which the cotton was produced.

(h) "Loan clerk" shall mean a person approved by CCC to assist producers in preparing loan documents other than in the county office.

(i) "Charges" shall mean all fees, costs, and expenses paid by CCC incident to insuring or reinsuring, reconcentrating, carrying, handling, storing, conditioning, and otherwise protecting the interest in the loan collateral of CCC and the producer.

(j) "Financial institution" shall mean (1) a bank in the United States which accepts demand deposits, (2) an association organized pursuant to State law and supervised by State banking authorities, or (3) a production credit association.

(k) "False-packed," "water-packed," "mixed-packed," "reginned," and "repacked" cotton shall each have the same meaning as the definition of such term in part 28 of this title and any amendment thereto.

§ 1427.3 Administration.

(a) The Price Support and Loan Division, Agricultural Stabilization and Conservation Service, will administer the provisions of this subpart under the general supervision and direction of the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, in accordance with program provisions and policy determined by the CCC Board and the Executive Vice President, CCC. In the field, the program will be administered through State committees, county committees, and the Management Field Office.

(b) Forms will be available at State and county offices and from loan clerks.

(c) State and county committees and employees thereof, loan clerks, the Management Field Office, and employees thereof do not have authority to modify or waive any of the provisions of this subpart or any amendment or supplement thereto.

(d) No delegation herein to a State or county committee or to the Kansas City Commodity Office or Management Field Office shall preclude the Executive Vice President, CCC, or his designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee or by the Kansas City Commodity Office or Management Field Office.

§ 1427.4 Availability of loans.

(a) *Warehouse-storage loans.* Loans on cotton represented by warehouse receipts will be available to eligible producers on:

(1) Eligible upland cotton stored at CCC approved warehouses.

(2) Eligible extra long staple cotton produced in counties listed in part 722 of this title and any amendment thereto and stored at CCC approved warehouses.

(b) *Period of availability of loans.* Producers may request loans on a crop of cotton from the beginning of harvest of the crop through May 31, following the calendar year in which such crop is grown. Notes for loans must be signed by the producer and mailed or delivered to the county office within 15 days after the producer signs the notes and within this period of loan availability. Whenever the final date of availability falls on a nonworkday for county offices, the applicable final availability date shall be extended to include the next workday.

§ 1427.5 Eligible producer.

(a) *Producer.* An eligible producer is any individual, partnership, corporation, association, trust, estate, or other legal entity, a State or political subdivision thereof, or any agency of such State or political subdivision producing eligible upland or extra long staple cotton in the capacity of landowner, landlord, tenant, or sharecropper. If eligible cotton is produced on a farm by a landlord and a share tenant or sharecropper, a loan may be obtained only as follows:

(1) If the cotton is divided among the producers entitled to share in such cotton, each landlord, tenant, or share- cropper may obtain a loan on the producer's separate share.

(2) If the cotton is not divided, all producers having a share in the cotton may obtain a joint loan on such cotton.

(b) *Estates and trust.* A receiver of an insolvent debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and a trustee of a trust estate shall be considered to represent the insolvent debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person represented. Loan docu-

ments executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for a loan only if the minor meets one of the following requirements: (1) The right of majority has been conferred on the minor by court proceedings or by statute; (2) a guardian has been appointed to manage the minor's property and the applicable loan documents are signed by the guardian; (3) any note signed by the minor is cosigned by a financially responsible person; or (4) a bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

§ 1427.6 Eligible cotton.

Upland cotton produced by eligible producers or extra long staple cotton produced by eligible producers in counties listed in part 722 of this title and any amendment thereto is eligible cotton if it meets the following requirements:

(a) Upland cotton must have been produced on a farm by a "cooperator" as defined in section 408(b) of the Agricultural Act of 1949, as amended, who has complied with the set-aside and the normal crop acreage requirements, if any, specified in parts 718, 722, 728, 775, and 791 of this title and any amendment thereto. Extra long staple cotton must have been produced by a "cooperator" as defined in section 408(b) of the Agricultural Act of 1949, as amended, on a farm on which it has been determined that the acreage planted to such cotton does not exceed the farm allotment as prescribed in parts 718, 722, and 791 of this title and any amendment thereto. The cotton in any bale may have been produced by two or more cooperators on one or more farms if the bale is not a repacked bale.

(b) Such cotton must be tendered for a loan within the availability period of § 1427.4(b) and must be cotton of a crop for which loans are available as provided in an annual supplement to the regulations in this subpart.

(c) Such cotton must be of a grade and staple length specified in (1) the schedule of premiums and discounts for upland cotton, or (2) the schedule of loan rates for extra long staple cotton, contained in the applicable annual supplement to the regulations in this subpart and must be represented by a warehouse receipt meeting the requirements of § 1427.19.

(d) Such cotton must not be false-packed, water-packed, mixed-packed, reginned, or repacked; upland cotton must not have been reduced more than two grades because of preparation; extra long staple cotton must have been ginned on a roller gin, must not have a micronaire reading of 2.6 or less, and must not have been reduced in grade for any reason.

(e) Such cotton must be in existence and in good condition.

(f) Such cotton must not be compressed to universal density where side pressure has been applied or to high density at a warehouse.

(g) The producer or association tendering the cotton for a loan must have the legal right to pledge it as security for a loan.

(h) Such cotton must not have been produced on land owned by the Federal Government if such land is occupied without a lease, permit, or other right of possession.

(i) The producer or association tendering such cotton must not have previously sold and repurchased such cotton or placed it under CCC loan and redeemed it.

(j) Each bale of cotton must weigh not less than 325 pounds net weight.

(k) Cotton which has been compressed to standard or higher density, either at a warehouse or at a gin, must have not less than eight bands.

(l) Each bale must be packaged in materials which meet CCC specifications for bale coverings and bale ties or must be packaged in material and/or bale ties identified with the experimental programs of the Cotton Industry Bale Packaging committee sponsored by the National Cotton Council. Heads of bales must be completely covered.

(m) Each bale must be ginned by a ginner (1) who has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag, and (2) who has entered into CCC-809, Cooperating Ginners' Bagging and Bale Ties Certification and Agreement, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (l) of this section.

(n) The beneficial interest in the cotton must be in the producer tendering the cotton for a loan (or in the producer-member delivering the cotton to the cooperative marketing association which tenders the cotton for a loan) and must have always been in the producer or in the producer and a former producer whom the producer succeeded before it was harvested. To meet the requirements of succession to a former producer, the right, responsibilities, and interest of the former producer with respect to the farming unit on which the cotton was produced shall have been substantially assumed by the person claiming succession. Mere purchase of the crop prior to harvest without acquisition of any additional interest in the farming unit shall not constitute succession. The county committee shall determine whether the requirements with respect to succession have been met. The producer's beneficial interest in cotton shall not be considered to have been divested if the producer enters into a contract to sell, or gives an option to buy, the cotton if, under the contract or option, the producer retains control and risk of loss of and title to the cotton and retains control of its production.

(o) If the person tendering cotton for a loan is a landowner, landlord, tenant, or sharecropper, the cotton must be such person's separate share of the crop and must not have been acquired by such person directly or indirectly from a landowner, landlord, tenant, or sharecropper or have been received in payment of fixed or standing rent.

§ 1427.7 Forms and authorizations.

(a) *Forms.* The following documents must be delivered by producers in connection with every loan except loans made pursuant to § 1427.25:

(1) Cotton producer's Note and Security Agreement, Form CCC Cotton A (referred to in this subpart as "Form A").

(2) Schedule of Pledged Cotton, Form CCC Cotton A-1 (referred to in this subpart as "Form A-1").

(3) Warehouse receipts complying with the provisions of § 1427.19.

(4) Cotton Classification Memorandum, Form 1 or Form A3, for each bale showing the classification (including micronaire reading) assigned by a board of examiners of the U.S. Department of Agriculture.

(5) Lien Waiver, Form CCC 679 (referred to in this subpart as "Form 679") or other form approved by CCC, or Lienholder's Subordination Agreement, Form CCC 864, if used in lieu of execution of Lienholder's Waiver on Form A in accordance with provisions of § 1427.14.

(b) *Powers of attorney.* A producer who desires to appoint an attorney-in-fact to act in the producer's place and stead in obtaining loans may use power of attorney, Form ASCS 211 (referred to in this subpart as "Form 211"), or a power of attorney on another form if it is determined by CCC to be legally sufficient. The original or facsimile of the power of attorney or a copy certified by a notary public as a true and correct copy must be filed with the county office.

§ 1427.8 Approved storage.

Except as provided otherwise in § 1427.21, cotton will be accepted as security for loans only if stored at warehouses approved by CCC.When the operator of a warehouse receives

notice from CCC that a loan has been made by CCC on a bale of cotton, the operator shall, if such cotton is not stored within the warehouse, promptly place such cotton within the warehouse. Persons desiring approval of their facilities should communicate with the Kansas City Commodity Office. The names of approved warehouses may be obtained from the Kansas City Commodity Office or from State or county offices. Storage charges paid by a producer on cotton which is later pledged to CCC as security for a loan will not be refunded by CCC. If cotton is redeemed from the loan, the person removing the cotton from storage shall pay all unpaid warehouse charges at the established tariff rate.

§ 1427.9 Weight, loan rate, and amount.

(a) *Weight.* Loans will be made on the net weight of the cotton as shown on the warehouse receipt, except that in the case of a bale which has a net weight of more than 600 pounds, the weight to be used in determining the amount of the loan on the bale shall be 600 pounds. Notes for loans on cotton pledged on reweights will not be accepted if CCC determines that such reweights reflect an increase in weight due to the absorption of moisture.

(b) *Loan rate.* (1) The base loan rate for strict low middling 1 1/16 inch upland cotton of each crop at each approved warehouse location will be stated in the schedule of base loan rates for upland cotton by warehouse locations contained in the supplement to this subpart for such crop. The schedule will be available at county offices.

(2) The premium or discount applicable to each other eligible grade and staple length of upland cotton of each crop and the discount, if any, for each micronaire reading will also be contained in the supplement to this subpart for such crop.

(3) Loan rates and micronaire discounts, if any, for extra long staple cotton of each crop will be contained in the supplement to this subpart for such crop.

(c) *Amount.* The amount of the loan for each bale will be determined by multiplying the net weight of the bale, as determined under paragraph (a) of this section by the applicable loan rate, as determined under paragraph (b) of this section, and subtracting any unpaid warehouse receiving charges, any warehouse storage charges in excess of 60 days as of the date of tender to CCC, as provided in § 1427.19(c) and any unpaid charge for furnishing new bale ties as prescribed in § 1427.19(c) of this subpart. CCC will not increase the amount loaned on any bale of cotton as a result of a redetermination of the quality of the bale after it is tendered to CCC and will not increase the amount loaned as a result of any redetermination of weight after the cotton is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made in the weight of the bale or the loan rate for the bale on the Form A-1, such error may be corrected. In establishing the correct weight of the bale, CCC will deduct from the current weight of the bale any estimated weight gained while in storage.

§ 1427.10 Preparation of documents.

(a) *Preparation of loan forms.* The producer may obtain assistance in preparing and executing loan forms from the county office or from a loan clerk. All applicable blanks on the loan forms shall be filled in with typewriter or ballpoint pen. Documents containing addition, alterations, or erasures may be rejected by CCC. All copies shall be clearly legible, and the copies shall contain all information contained on the original, including all signatures.

(b) *Schedule of pledged cotton.* All cotton pledged as security for a loan must be stored in the same warehouse, must have same compression and compression paid status, and must have been shipped to the warehouse by same mode of transportation, but may be of different grades and staple lengths. All bales pledged on a single Form A-1 must be packaged with the same type bagging and ties and must have the same tare weight.

(c) *Producer's request for payment.* The spaces provided in the Form A for the producer to request payment of the loan proceeds must be completed. If a person or firm has advanced the loan proceeds to the producer (by cash, book credit, or otherwise), the person or firm which advanced the loan proceeds is responsible under the regulations in §§ 1205.500-1205.540 of this title, and any amendment thereto, for collecting the appropriate research and promotion fee and for transmitting such fee to the Cotton Board.

(d) *Execution of loan forms.* Loan forms shall not be signed in blank under circumstances. A Form A must be signed by the producer in the presence of the loan clerk or county office employee who witnesses the producer's signature, except that loan documents for nonresident producers may be prepared in the county office and mailed to the producer for signature. All applicable entries must be completed on the Form A and Forms A-1 prior to the time the Form A is signed by either the producer or by the witness. The loan clerk or county office employee shall not sign as witness on his own or his spouse's Form A A loan clerk or county office employee who under power of attorney, executes the Form A on behalf of the producer shall not sign as witness on the Form A.

§ 1427.11 Disbursement of loans.

Disbursement of each Form A loan will be made by the county office which keeps the farm program records for the farm on which the cotton was produced by means of drafts drawn on CCC by the county office. Service charges and cotton research and promotion fees, when required under the regulations in §§ 1205.500-1205.540 of this title, and any amendment thereto, will be deducted from the loan proceeds. If the producer so elects, clerk fees may be deducted from the loan proceeds instead of being paid in cash. The producer or the producer's agent shall not present the Form A and supporting documents for disbursement unless the cotton covered by the Form A is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer shall immediately return the draft issued in payment of the loan, or if the draft has been negotiated, shall promptly refund the proceeds.

§ 1427.12 Service charges.

A producer shall pay a service charge to CCC for each loan disbursed at the rate of $1.50 per loan plus 25 cents for each bale thereon. The service charge to be paid to CCC by the producer shall be in addition to any clerk fee paid to a loan clerk as authorized in § 1427.13. The service charge is not refundable.

§ 1427.13 Clerk fees.

Loan clerks may collect fees from producers for preparing loan documents not to exceed the fees shown in the following schedule:

Number of bales on note and maximum fee allowed

1—25 cents.
2 to 6—25 cents plus 15 cents for each bale over 1.
7 and over—$1 plus 10 cents for each bale over 6.

§ 1427.14 Liens.

Except as otherwise provided in this section, cotton tendered for loan must be free and clear of all liens (except the warehouse lien (including a warehouse lien held by a cooperative warehouse for its producer-patrons) for those charges which are authorized in the storage agreement with CCC). The signatures of the holders of all such existing liens on cotton tendered as security for a loan, such as landlords, laborers, or mortgagees, must be obtained on the lienholder's waiver on each Form A, except that in lieu of

signing the lienholder's waiver on each Form A, the lienholder may waive his lien on all cotton of that crop produced by a producer on a farm (or on all farms) or pledged on one Form A by use of Form 679 or by use of another form approved by CCC. In lieu of waiving a prior lien on cotton tendered as security for a loan, a lienholder may execute a Lienholder's Subordination Agreement (Form CCC-864) with CCC in which the lienholder subordinates the lienholder's security interests to the right of CCC in the cotton. If cotton is subject to warehouse lien for advances or charges not authorized in the storage agreement, the cotton will be acceptable hereunder if such liens are subordinated to the rights of CCC. A fraudulent representation as to prior liens or otherwise will render the producer personally liable and subject the producer, and any other person who causes the fraudulent representation to be made, to criminal prosecution under the provisions of the Commodity Credit Corporation Charter Act.

§ 1427.15 Setoffs.

(a) If any installment(s) on any loan made available by CCC on farm-storage facilities or drying equipment is due and payable under the provisions of the note evidencing such loan out of any amount due the producer under the program provided for in this subpart, the producer must designate CCC as payee of such amount to the extent of such installment(s), but not to exceed that portion of the amount remaining after deduction of clerk fees, service charges, research and promotion fees, and amounts due prior lienholders.

(b) If the producer is indebted to CCC, or if the producer is indebted to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under the program provided for in this subpart, after deduction of amounts payable under paragraph (a) of this section, shall be applied to such indebtedness, as provided in the Secretary's Setoffs and Withholding Regulations, Part 13 of this title and any amendments thereto.

(c) Any amount which is to be set off must be entered by the county office on the Form A.

(d) Compliance with the provisions of this section shall not deprive the producer of any right the producer otherwise has to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 1427.16 Classification and micronaire readings of cotton.

(a) References made to "classification" in this subpart shall include micronaire readings. All cotton tendered for loan must be classed by a USDA, AMS, Marketing Services Office (referred to in this subpart as "the Marketing Services Office") and tendered on the basis of such classification. A Cotton Classification Memorandum Form 1 showing the classification of a bale must be based upon a representative sample drawn from the bale in accordance with instructions to samplers drawing samples for organized improvement groups under the Smith-Doxey program. If the producer's cotton has not been sampled for a Form 1 classification, the warehouse shall sample such cotton and forward the samples to the Marketing Services Office serving the district in which the cotton is located. Such warehouse must be licensed by the Agriculture Marketing Service, U.S. Department of Agriculture, to draw samples for submission to the board. If a sample has been submitted for a Form 1 or Form A classification, another sample shall not be drawn and forwarded to a board except for a review classification. Where review classification is not involved, if through error or otherwise two or more samples from the same bale are submitted for classification, the loan rate shall be based on the classification having the lower loan value. The classification Form 1 or Form A must be dated not more than 15 days prior to the date the warehouse receipt was issued (State committees may in arid regions extend this period to not to exceed 30 days prior to the date the warehouse receipt was issued upon determining that such extension will not result in reduction in the grade of the cotton during the extension period), otherwise a new sample must be drawn and a review classification based on the new sample will be required. If a Form 1 or Form A review classification is obtained, the loan value of the cotton represented thereby will be based on such review classification.

(b) The applicable classification charge shall be collected from the producer by the warehouse for all cotton for which samples are submitted to a board for a Form A review classification. The board will bill the warehouse at the end of each month for such charges. Payment of these bills shall be made by check or money order payable to "Commodity Credit Corporation" and mailed to the Kansas City Commodity Office.

§ 1427.17 Interest rate.

Loans shall bear interest at the rate(s) in effect on date of disbursement through maturity of the loan. Interest rates for upland cotton loans will be determined quarterly and announced in separate notice(s) published in the FEDERAL REGISTER. Interest rates for extra long staple cotton will be set annually and announced in the FEDERAL REGISTER.

§ 1427.18 Maturity.

(a) Loans on Form A cotton (and loan advances to cotton cooperative marketing associations on Form G cotton) mature on the last day of the 10th calendar month from the first day of the month in which the loan (or loan advance) is made, or upon such earlier date as CCC may make demand for payment, except that whenever such date falls on a nonworkday for county offices, the date of maturity shall be the next workday. Upland cotton loans may at the producer's request be extended for an additional eight (8) months during the 10th month of the initial loan provided the average spot market price for Strict Low Middling 1 1/16 inch cotton during the ninth month of the loan did not exceed 130 percent of the average spot market price for Strict Low Middling cotton for the preceding 36 months. CCC may, by public announcement, extend the time for repayment of the loan indebtedness or carry the loan in a past due status.

(b) Upon maturity and nonpayment of a note, CCC is authorized without notice to the producer to sell, transfer, and deliver the cotton, or documents evidencing title thereto, at such time, in such manner, and upon such terms and conditions as CCC may determine, at any cotton exchange or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand, advertisement, or notice of the time and place of sale or adjournment thereof or otherwise; and, upon such sale, CCC may become the purchaser of the whole or any part of such cotton at its market value, as determined by CCC. Any overplus remaining from the proceeds received therefrom, after deducting from such proceeds the amount of the loan, interest, and charges, shall be paid to the producer or to the producer's personal representative without right of assignment to or substitution of any other person. In the event the producer has made a fraudulent representation in the loan documents or in obtaining the loan, the proceeds received from the sale of the cotton shall be credited by CCC against the amount due on the loan, and the producer shall be personally liable for any balance due on the loan.

(c) On or after maturity and nonpayment of the note, title to the cotton shall, at CCC's election, without a sale thereof, vest in CCC, and CCC shall have no obligation to pay for any

market value which such cotton may have in excess of the amount of the loan, plus interest and charges. In the event the producer has made a fraudulent representation in the loan documents or in obtaining the loan, the producer shall be personally liable for any amount by which the amount due on the loan exceeds the market value of the cotton securing the loan as of the date title vests in CCC, as determined by CCC.

(d) To avoid administrative costs of making small payments and handling small accounts, amounts of $3 or less will be paid to the producer only upon the producer's request. Deficiencies of $3 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1427.19 Warehouse receipt and insurance.

(a) *General.* Producers may obtain loans on cotton represented by warehouse receipts only if the warehouse receipts are negotiable machine card-type warehouse receipts, are issued by CCC approved warehouses, provide for delivery of the cotton to bearer or are properly assigned by endorsement in blank, so as to vest title in the holder of the receipt, and otherwise are acceptable to CCC. The warehouse receipt must contain the tag number (warehouse receipt number), must show that the cotton is covered by fire insurance, and must be dated on or prior to the date the producer signs the note. If a bale is stored at the origin warehouse (the warehouse to which the bale was first delivered for storage after ginning), the warehouse receipt must contain the gin bale number. If a bale has been moved from the origin warehouse, the warehouse receipt shall, in lieu of the gin bale number, contain the tag number and identification of the origin warehouse. Open yard endorsement, if any, on the warehouse receipt must have been rescinded with the legend "open yard disclaimer deleted" with appropriate signature of the warehouse operator or the authorized representative. Block warehouse receipts will not be accepted.

(b) *Weight.* Each receipt must set out in its written or printed terms the tare and the net weight of the bale represented thereby. The net weight shown on the warehouse receipt shall be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight, except that the warehouse receipt may show the net weight established at a gin (1) in case the gin is in the immediate vicinity of the warehouse and is operated under common ownership with such warehouse or in any other case in which the showing of gin weights on the warehouse receipts is approved by CCC, and (2) if the showing of gin weights on the warehouse receipts is permitted by the licensing authority for the warehouse. The tare shown on the receipt shall be the tare furnished to the warehouse by the ginner or entered by the ginner on the gin bale tag. A warehouse receipt reflecting an alteration in tare or net weight will not be accepted by CCC unless it bears, on the face of the receipt, the following legend or similar wording approved by CCC, duly executed by the warehouse or an authorized representative of the warehouse:

Corrected (tare or net) weight _____

_____

(Name of warehouse)

By _____

Date _____

Alterations in other inserted data on the receipt must be initialed by an authorized representative of the warehouse.

(c) *Storage and receiving charges.* If warehouse storage charges have been paid, the receipt must be stamped or otherwise noted to show that date through which the storage charges have been paid. For receipts showing accrued storage charges in excess of 60 days as of the date of tender to CCC, the loan amount will be reduced for each month of unpaid storage or fraction thereof in excess of 60 days by the monthly storage charge specified in the storage agreement between the warehouse and CCC. If warehouse receiving charges have been paid or waived, the receipt must be stamped or otherwise noted to show such fact. If the receipt does not show that receiving charges have been paid or waived, the loan amount will be reduced by the amount of the receiving charges specified in the storage agreement: *Provided, however,* That except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia, if receiving charges due on the bale include a charge, if any, for a new set of ties for compressing flat bales tied with ties which cannot be reused, the warehouse receipt must show such receiving charges and state: "Rec. charges due include charge for new set of ties," or similar notation, and the loan amount will be reduced by the amount of the receiving charges shown on the warehouse receipt (this will be the amount payable by CCC if it pays for receiving, notwithstanding the provisions of the storage agreement). In any case where the loan amount is reduced by unpaid storage or receiving charges, the charges will be paid to the warehouseperson by CCC after loan maturity if the cotton is not redeemed from the loan, or as soon as practicable after the cotton is ordered shipped by CCC or destroyed by fire while in loan status. Except for bales stored in the States of Alabama, Florida, Georgia, North Carolina, South Carolina, or Virginia, if the bale is stored at a warehouse which does not have compress facilities or arrangements, and if the bale ties are not suitable for reuse when the bale is compressed, the warehouse receipt must show this fact, and the loan amount will be reduced by the charge which will be assessed by the nearest compress in line of transit for furnishing new bale ties.

(d) *Rail shipments.* If the bale was received by rail, the receipt must be stamped or otherwise noted to show such fact.

(e) *Compression.* The warehouse receipt must show the compression status of the bale, i.e. flat, modified flat, standard, gin standard, gin universal, or warehouse universal density. If the compression charge has been paid, or if the warehouse claims no lien for such compression, the receipt must be stamped or otherwise noted to show such fact.

§ 1427.20 Special procedure where note amount advanced.

(a) *Purpose.* This special procedure is provided to assist persons or firms which in the course of their regular business of handling cotton for producers have made advances to eligible producers on eligible cotton to be placed under loan and desire to obtain credit at a financial institution for the amounts advanced. A financial institution which has made advances to eligible producers on eligible cotton may also obtain reimbursement for the amounts advanced under this procedure.

(b) *Eligible documents.* This special procedure shall apply only to loan documents covering cotton on which a person or firm has advanced to the producers (including payments to prior lienholders and other creditors) the note amounts shown on the Form A, except for authorized loan clerk fees, the research and promotion fee collected for transmission to the Cotton Board, and CCC loan service charges, and shall apply only if such person or firm is entitled to reimbursement from the proceeds of the loans for the amounts advanced and has been authorized by the producers to deliver the loan documents to the county office for disbursement of the loans.

(c) *Preparation of notes.* The Forms A and A-1 shall be prepared by an approved loan clerk who is the person who made the loan advance or is an employee of the person or firm which made the loan advances and shall show the entire proceeds of the loans,

except for CCC loan service charges, for disbursement to (1) the financial institution which is to allow credit to the person or firm which made the loan advances or to such financial institution and such person or firm as joint payees, or (2) the financial institution which made the loan advances to the producers.

(d) *Delivery of notes to county offices.* Each Form A and related documents as required by § 1427.7 shall be mailed or delivered to the county office which keeps the farm records for the farm on which the cotton was produced. When received in the county office (or postmarked, if mailed) warehouse receipts and loan documents must reflect not more than 60 days' accrued storage, or the loan amount must be reduced by the excess storage as specified in § 1427.19. The documents shall be accompanied by Form CCC-825, transmittal schedule of Form A Cotton Loans, in original and two copies, numbered serially for each county office by the financial institution. The Form CCC-825 shall show the amounts invested by the financial institution in the loans, which shall be the amounts of the notes minus the amounts of CCC loan service charges shown on the notes. Upon receipt of the loan documents and Form CCC-825, the county office will stamp one copy of the Form CCC-825 to indicate receipt of the documents and return this copy to the financial institution.

(e) *Disbursement of loans.* The county office will review the loan documents prior to disbursement and will return to the financial institution any documents determined not to be acceptable because of errors or illegibility. The county office will disburse the loans for which loan documents are acceptable by issuance of one draft to the payee indicated on the Form A and will mail the draft to the address shown for such payee on the Form A with a copy of Form CCC-825. The Form CCC-825 will show the date of disbursement by the county office and amount of interest earned by the financial institution.

(f) *Investment of funds by the financial institution.* The financial institution shall be deemed to have invested funds in the loans as of the date loan documents acceptable to CCC were delivered to the county office or, if received by mail, the date of mailing as indicated by postmark or the date of receipt in the county office if no postmark date is shown. Patron postage meter date stamp will not be recognized as a postmark date.

(g) *Basis of computing interest earned.* Interest will be computed on the total amount invested by the financial institution in the loan represented by accepted loan documents from and including the date of investment of funds by the financial institution to, but not including, the date of disbursement by the county office.

(h) *Interest rate.* Interest will be at the same rate(s) as is applicable to commodity loans, other than upland cotton loans, as announced in separate notice(s) published in the FEDERAL REGISTER.

(i) *Payment of interest.* Interest earned by the financial institution in the investment in loans disbursed during a month will be paid by the county office after the end of the month.

§ 1427.21 Reconcentration of cotton.

(a) *As cotton enters loan.* Loans on cotton to be reconcentrated shall be available only on cotton received at CCC approved warehouses in areas where there is a shortage of storage space and the local warehouse certifies such fact to CCC. A producer who desires to obtain a loan on cotton to be reconcentrated under the provisions of this paragraph shall request such reconcentration and present the same documents as required for a regular loan to the county office. The Forms A-1 and warehouse receipts covering cotton to be reconcentrated must show the reconcentration order number furnished by the county office under which the cotton will be shipped. The county office shall arrange for reconcentration of the cotton under the direction of the Kansas City Commodity Office. Any fees, cost, or expenses incident to such actions shall be charges against the cotton. That office shall obtain new warehouse receipts, allocate to individual bales shipping and other charges incurred against the cotton, and return new warehouse receipts and reconcentration charges applicable to each bale to the county office. Such reconcentration charges shall be added to bale loan amounts and must be repaid for bales redeemed from loan.

(b) *Cotton under loan.* CCC may under certain conditions, before loan maturity, compress, store, insure, or reinsure the cotton against any risk, or otherwise handle or deal with the cotton as it may deem necessary or appropriate for the purpose of protecting the interest therein of the producer or CCC. CCC may also move the cotton from one storage point to another with the written consent of the producer or borrower and upon the request of the local warehouse and certification that there is congestion and lack of storage facilities in the area: *Provided, however,* That if CCC determines such loan cotton is improperly warehoused and subject to damage, or if any of the terms of the loan agreement are violated, or if carrying charges are substantially in excess of the average of carrying charges available elsewhere and the local warehouse, after notice, declines to reduce such charges, such written consent need not be obtained. Any fees, costs, or expenses incident to such actions shall be charges against the cotton. After the cotton is reconcentrated, the Kansas City Commodity Office shall allocate shipping and other charges incurred against the cotton and return new warehouse receipts and reconcentration charges applicable to each bale to the county office. Such reconcentration charges shall be added to bale loan amounts and must be repaid for bales redeemed from loans.

§ 1427.22 Custodial offices.

Forms A and A-1, collateral warehouse receipts, cotton classification memorandums, and related documents will be maintained in custody of the county office.

§ 1427.23 Loss of or damage to pledged cotton.

In any case where loss of or damage to cotton occurs while such cotton is pledged to CCC, CCC shall have the right to determine and file claims against any liable parties for the resulting loss. Upon determination of the indentity of the bales of loan cotton lost or damaged, CCC will give credit on the producer's note for the loan value (including interest and charges) of such cotton. If the proceeds of the claim exceed the loan value of such cotton, the excess proceeds shall be remitted to the producer or to the party repaying the loan if the loan has been repaid.

§ 1427.24 Repayment of loan.

(a) If a producer desires to redeem one or more bales of cotton pledged to CCC as security for a loan, the producer may receive the warehouse receipts (and the classification memorandums applicable to such cotton, if requested) upon payment of the loan, interest, and charges applicable to the bales of cotton being redeemed at the county office. The producer may also request that the warehouse receipts (and classification memorandums) be forwarded to a bank for payment, in which case the amount of the loan, interest, and charges must be paid to the bank within 5 business days after the documents are received by the bank. Repayments will not be accepted after CCC acquires the cotton. All charges assessed by the bank to which the receipts are sent must be paid by the producer.

(b) A producer who desires to appoint an attorney-in-fact to act in the producer's place and stead in redeeming the producer's loan cotton, selling the producer's equities in loan cotton, or executing Forms CCC 813, Release

of Warehouse Receipts (referred to in this subpart as "Form 813"), shall use Form 211, except that a power of attorney on another form will be accepted if it is determined by CCC to be sufficient. The original or facsimile of the power of attorney or a copy certified by a notary public as a true and correct copy must be filed with the county office. The attorney-in-fact must execute and file with the county office an agreement of attorney-in-fact, Form CCC-815 (referred to in this subpart as "Form 815"), and the attorney-in-fact will not be allowed to redeem cotton, or to execute Form 813, pursuant to the power of attorney if the attorney-in-fact does not file the required Form 815. The attorney-in-fact shall not make any purchase of cotton redeemed from a CCC loan or producers' equities in such cotton for the attorney-in-fact's own account or as agent for others, or sell any such cotton or equities therein to any person by whom the attorney-in-fact is employed or who has the right to control or direct the attorney-in-fact's sale of the redeemed cotton or equities in any case where the attorney-in-fact redeems the cotton under authority of the power of attorney or signs the Form 813 under authority of the power of attorney. The attorney-in-fact shall not adopt any scheme or device to circumvent the intent of the regulations in this subpart or Form 815. If the attorney-in-fact holds powers of attorney from more than one producer, the attorney-in-fact may not pool their cotton or the proceeds therefrom nor make settlement with such producers on a pool basis upon sale of the cotton or the equities therein and will make an accounting to each producer for the proceeds of each bale of the producer's cotton which the attorney-in-fact redeems and sells and each equity which the attorney-in-fact transfers, unless the attorney-in-fact has a valid annual marketing agreement with such producers authorizing the attorney-in-fact to pool the cotton or the proceeds therefrom.

(c) A producer or the producer's authorized agent may enter into an agreement with a person or persons to redeem the producer's cotton and may authorized the release of the applicable warehouse receipts to such person(s) or transferee (hereinafter called the buyer) on Form 813. If the buyer executes and files the Form 813 with the county office, the buyer shall be obligated to redeem the cotton specified on such form on or before the maturity date of the loan on such cotton. CCC will use its best efforts to make certain that the cotton is not redeemed by anyone other than the buyer and to provide for the delivery to the buyer of the warehouse receipts (and the classification memorandums, if requested) covering the cotton on payment to the county office of the loan, interest and charges within 5 business days after the documents are received by the bank. All charges assessed by the bank to which the documents are sent must be paid by the buyer. Redemptions will not be permitted after the maturity date of the loan. On failure of the buyer to redeem all such cotton:

(1) At CCC's election, title to the cotton shall, without a sale thereof, immediately vest in CCC, and CCC shall have no obligation to pay for any market value which such cotton may have in excess of the amount of the loan thereon, plus interest and charges. The buyer shall be personally liable for any amount by which the amount due on the loan on such cotton exceeds the market value of the cotton as of the date title vests in CCC, as determined by CCC.

(2) At CCC's election, CCC is authorized, without notice to the buyer, to sell, transfer and deliver the cotton or documents evidencing title thereto, at such time, and in such manner, and upon such terms and conditions as CCC may determine, at any cotton exchange or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand, advertisement, or notice of the time and place of sale or adjournment thereof or otherwise; and upon such sale, CCC may become the purchaser of the whole or any part of such cotton at its market value, as determined by CCC. Any overplus remaining from the proceeds received therefrom, after deducting from such proceeds the amount of the loan on such cotton, plus interest and charges, shall be paid to the buyer or the buyer's personal representative without right of assignment to or substitution of any other person. If the proceeds from the sale do not cover the amount of the loan on such cotton, plus interest and charges, the buyer shall be liable to CCC for any difference.

(d) Warehouse receipts will not be released except as provided in paragraphs (a), (b), and (c) of this section.

§ 1427.25 Cotton cooperative marketing association loans.

A cotton cooperative marketing association which meets the eligibility requirements established by CCC as contained in the regulations in part 1425 of this chapter and any amendment thereto may inter into a cotton cooperative loan agreement, Form CCC Cotton G, which provides for loans through the association to its producer-members. Copies of the form of agreement will be furnished to all associations which have been approved under such regulations. The loan rates under this agreement will be the same as for loans made to individual producers on Forms A and eligibility requirements for cotton and producers tendering cotton to the association and other loan provisions will be similar to those for Form A loans made to individual producers. Producers must furnish the cooperative a CCC 822, certificate of eligibility, before the cooperative can pledge the producer's cotton for loan.

§ 1427.26 Death, incompetency, or disappearance.

In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any proceeds in settlement of a loan, payment shall, upon proper application to the county office which disbursed the loan, be made to the person or persons who would be entitled to such producer's payment as provided in the regulations entitled Payment Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent, part 707 of this title, and any amendment thereto.

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

RAY FITZGERALD,
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 78-21500 Filed 8-2-78; 8:45 am]

[6210-01]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Z; Docket No. R-0134]

PART 226—TRUTH IN LENDING

Right of Rescission

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule and interpretation.

SUMMARY: The Board hereby adopts an amendment to § 226.9(g) of Regulation Z creating an exception to the rescission provisions of the regulation for individual transactions under certain open end credit plans secured by consumers' residences. The amendment applies only to open end transactions in which the creditor and the seller are not the same or related persons. Concurrrently, the Board is issuing an official Board interpretaton of the amendment.

Regulation Z provides that in the case of any credit transaction in which

a security interest is retained or acquired in the principal residence of the consumer, the consumer shall have 3 business days from consummation of the transaction in which to rescind the transaction. The creditor is required to disclose this right to the consumer and may not disburse the proceeds of the credit transaction, except in escrow, during the 3-day period.

The Board finds that requiring the right of rescission, notice of that right, and the 3-day cooling off period in connection with each individual transaction under certain types of open end credit plans secured by consumers' residences unduly complicates compliance with Regulation Z, hampers creditors that desire to offer such credit plans, and, thereby, may prevent consumers from utilizing the equity in their homes to obtain open end credit. The amendment, which is designed to remedy these problems, exempts from the rescission provisions of Regulation Z individual transactions on an open end credit account secured by the customer's residence if the creditor provides an appropriate disclosure, as specified in the amendment, upon the opening of such an account, prior to any increase in the line of credit associated with the account, prior to a change in the terms of the account, and at the time of an addition of a security interest in the customer's residence to an existing open end account. Additionally, a disclosure must be provided at least annually reminding customers of such accounts that their homes stand as security for their accounts.

The interpretation of the amendment, which is issued herewith, provides sample disclosures which creditors may use to achieve compliance with certain of the amendment's requirements.

EFFECTIVE DATE: August 3, 1978.

FOR FUTHER INFORMATION CONTACT:

Glenn E. Loney, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3867.

SUPPLEMENTARY INFORMATION: Section 226.9(a) of Regulation Z provides that a customer shall have the right to rescind any credit transaction in which a security interest is or will be retained or acquired in any real property which is used or is expected to be used as the principal residence of the customer. The right to rescind continues for 3 business days from the consummation of the transaction or the delivery of all specified disclosures, whichever is later. Under § 226.9(b), whenever a customer has the right to rescind a transaction, the creditor must provide a disclosure of that right in the form prescribed by the regulation. Under § 226.9(c), the creditor must delay its performance (i.e., refrain from disbursing the proceeds of the credit transaction) until the rescission period has expired and the creditor has satisfied itself that the customer has not exercised the right of rescission.

Several creditors that desired to offer open end credit plans secured by consumers' residences asserted that requiring the right of rescission, disclosure of that right, and the 3-day cooling off period in connection with each individual transaction under an open end account secured by the customer's residence presented operational problems which prevented the extension of such credit. It was pointed out that in connection with 3-party credit transactions under an open end plan (e.g., use of a cash advance check to obtain goods or services from a party other than the creditor of the open end account), the customer decides when and for what purpose to use the credit, and the creditor can neither readily provide disclosure of the right of rescission nor effectively delay its performance for the requisite 3 days. In an effort to alleviate these difficulties without depriving consumers of the protection of their homes intended by Congress when it created the right of rescission, the Board proposed an amendment to Regulation Z which it now adopts, with modifications, in final form.

As a result of comments received in response to its proposal and based upon its own analysis, the Board believes that the amendment, including the modifications discussed below, will facilitate compliance with Regulation Z by creditors that wish to offer open end credit plans secured by consumers' residences and will afford continued protection for consumers who enter into such plans. Perhaps most significantly, the Board feels that the amendment will enable consumers to utilize the equity in their homes to obtain the convenience and flexibility offered by open end credit which might otherwise be unavailable to them.

Under the amendment, individual transactions on an open end credit account secured by the customer's residence are not subject to the right of rescission if the creditor provides the customer with the applicable disclosure prescribed in the amendment at the time the disclosures required by § 226.7(a) of Regulation Z are required to be made, prior to any increase in the line of credit associated with the account, prior to a change in terms (within the meaning § 2226.7(f) of the regulation) of the account, and at the time of an addition of a security interest in the customer's residence to an existing open end account. A disclosure reminding customers of such accounts that their homes stand as security for their accounts must also be provided at least annually.

The amendment as adopted by the Board includes certain modifications of the original proposal. The amendment applies only to open end credit transactions in which the creditor of the open end credit plan and the seller of goods or services purchased by means of the plan are not the same or related persons. A change in the terms of an open end account secured by the customer's residence has been added to the amendment as an occasion on which a disclosure must be provided to the customer. An annual disclosure reminding customers of the security interest in their homes is also required.

The Board has restricted the applicability of the amendment to transactions on open end credit plans in which the creditor and the seller are not tne same or related persons for two reasons. First, the Board feels that the operational problems attendant to providing the right of rescission in connection with individual transactions on an open end credit account where the creditor and the seller are not the same or related persons do not arise where the creditor is also the seller. Second, the possibility of undue influence by the creditor is less in transactions in which the creditor and the seller are unrelated because the customer chooses when and for what purpose to use the open end account and the seller obtains no interest in the customer's home.

The Board believes that a change in the terms of an open end account, within the meaning of § 226.7(f) of Regulation Z, merits a notice reminding the customer that his or her residence stands as security for the account. As pointed out by the Federal Reserve Bank of Cleveland, which suggested this modification of the amendment, if the notice is not required prior to a change in terms, a customer could find that his or her residence stands as security for extensions of credit, some of the terms of which were imposed unilaterally by the creditor.

Under the amendment as adopted, a creditor may not change the terms of a customer's open end account (within the meaning of § 226.7(f) of Regulation Z) without affording the customer an opportunity to refuse the change in terms and repay any existing obligation on the account under the existing terms of the account. However, if the customer refuses the change in terms, the creditor need not extend any further credit on the account.

The Board is concerned that customers of open end credit plans which are

subject to the amendment may, after a period of time, lose sight of the fact that their accounts are secured by their homes. For this reason, the Board has required that a disclosure be provided annually to customers of open end accounts which fall within the amendment.

Several comments on the amendment as originally proposed suggested that the disclosure of the right of rescission prescribed by § 226.9(b) of Regulation Z is inappropriate for some of the occasions on which disclosure would be required under the amendment and could cause confusion among consumers. The amendment as adopted, therefore, specifies that the disclosure required by § 226.9(b) is to be used in connection with the opening of an account and the addition of a security interest in a consumer's residence to an existing account. The amendment also prescribes disclosures to be furnished to a consumer prior to an increase in the line of credit or a change in the terms of the consumer's account and at least once each calendar year to remind the consumer that the consumer's home stands as security for the account.

Simultaneously with the adoption of this amendment to Regulation Z, the Board is issuing an official Board interpretation of the regulation, § 226.904, which provides sample disclosures which creditors may use in order to satisfy the requirements, as to form and content, of §§ 226.9(g)(6) (iii) and (iv) of the regulation as amended.

Finally, it should be noted that when a disclosure under the amendment is furnished to a consumer prior to an increase in the line of credit or a change in the terms of the consumer's account, the effect of the disclosure is prospective only and the consumer is not thereby entitled to void the creditor's security interest in the consumer's residence insofar as it secures prior extensions of credit on the account. Similarly, the disclosure furnished to a consumer prior to the addition of a security interest in the consumer's residence to a preexisting open end account would not enable the consumer to rescind prior transactions on the account. Likewise, the required annual disclosure would not enable consumers to rescind any prior transactions or cancel any existing obligation on their accounts or void any security interest insofar as it secured those existing obligations.

Therefore, pursuant to the authority granted in 15 U.S.C. § 1604 (1970):

The Board hereby amends § 226.9(g) of Regulation Z, 12 CFR 226, as follows:

§ 226.9 Right to rescind certain transactions.

* * * * *

(g) Exceptions to general rule. * * *

(6) Individual transactions under an open end credit account: *Provided,*

(i) That the creditor and the seller are not the same or related persons.[14a]

(ii) That the creditor provides the disclosure required by § 226.9(b) at the time the disclosures required under § 226.7(a) are required to be made, or, if the security interest is not retained or acquired at the time the § 226.7(a) disclosures are required to be made, at the time the security interest is retained or acquired.

(iii) That the creditor does not change the terms of a customer's account within the meaning of § 226.7(f) or increase the customer's line of credit without affording the customer the opportunity to refuse the change in terms of the increase. If the customer refuses the change in terms, the creditor need not extend any further credit on the account; however, the customer shall have the right to repay any existing obligation on the account under the then existing terms of the account. At the time a disclosure of a change in terms under § 226.7(f) is required to be made or prior to an increase in the customer's line of credit, the creditor shall provide the customer with two copies of a disclosure setting forth, as applicable: The fact that the creditor intends to change the terms or increase the line of credit of the customer's account; the fact that the account is secured by the customer's real property; and the fact that the customer may refuse the change in terms and repay any existing obligation under the then existing terms of the account, or refuse the increase in the line of credit, by giving the creditor written notice within 3 business days of the date of the disclosure.

(iv) That at least once each calendar year the creditor furnishes to the customer a disclosure of the fact that the customer's account is secured by the customer's real property and that failure to pay any outstanding balance in accordance with the terms of the account could result in the loss of the customer's real property.

(v) That each disclosure provided pursuant hereto is made on one side of a statement separate from any other documents, that the disclosure sets forth the name of the creditor and, in the case of the disclosures required by paragraph (g)(6)(iii) of this section, the creditor's address, the date on which the disclosure is furnished to the customer, the date by which the customer should give notice of refusal of the increase in the line of credit or the change in terms of the account, and the fact that one copy of the disclosure can be used for that purpose. [End of amendment.]

The Board hereby adopts the following official board interpretation of regulation Z, 12 CFR Part 226:

SECTION 226.904—RIGHT OF RESCISSION FOR CERTAIN OPEN END CREDIT ACCOUNTS

Section 226.9(g)(6) provides an exception to the right of recission for individual transactions on an open end credit account provided, among other things, that the disclosures required by that section are made at the times specified. The question arises as to what disclosures will satisfy the requirements of §§ 226.9(g)(6) (iii) and (iv).

The disclosures set forth below, if accurate and when properly completed, will satisfy the requirements, as to form and content, of the indicated sections of the regulation. No specific type size or style is required. If the real property on which the security interest may arise does not include a dwelling, the creditor may substitute such words as "the property you are purchasing" for "your home" or "lot" for "home" where these words appear in the disclosure.

Section 226.9(g)(6)(iii) (increase in line of credit).

NOTICE TO CUSTOMER REQUIRED BY FEDERAL LAW

(Name of creditor) _____
Has approved an increase in the amount of credit available to you on your open end account secured by your home. Any additional credit you use will also be secured by your home. You have a right to refuse to accept this increase. You may exercise this right within three business days from (date disclosure delivered to customer) by notifying us at (address of creditor's place of business) by mail or telegram sent not later than midnight of (date). You may also use any other form of written notice to refuse the increase if it is delivered to the above address not later than that time. This notice may be used for that purpose by dating and signing below.

I hereby refuse the increase in the credit available on my account; (date) (customer's signature).

Section 226.9(g)(6)(iii) (change in terms).

NOTICE TO CUSTOMER REQUIRED BY FEDERAL LAW

(Name of creditor) _____
Intends to change the terms of your open end credit account which is secured by your home. You have a right to refuse to accept this change in terms. If you refuse this change in terms, we have the right to refuse to extend any further credit on your open end account and may require you to repay any existing obligation on your account under the present terms of the account. You may exercise your right to refuse the change in terms within three business days of (date disclosure delivered to customer) by

[14a] For purposes of § 226.9(g)(6) a person is related to a creditor if that person would be deemed related to the creditor under footnote 9b to § 226.7(k).

notifying us at (address of creditor's place of business) by mail or telegram sent not later than midnight of (date). You may also use any other form of written notice to refuse the change in terms if it is delivered to the above address not later than that time. This notice may be used for that purpose by dating and signing below.

I hereby refuse the change in the terms of my account; (date) (customer's signature).

Section 226.9(g)(6)(iv) (annual disclosure).

NOTICE TO CUSTOMER REQUIRED BY FEDERAL LAW

This is to remind you that your open end credit account with (name of creditor) is secured by a lien, mortgage, or other security interest on your home. This means that your failure to pay any outstanding balance in accordance with the terms of the account could result in the loss of your home.

By order of the Board of Governors, July 26, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-21570 Filed 8-2-78; 8:45 am]

[4910-13]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 78-SO-51]

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

Revocation of Transition Area and Control Zone, Donaldson Center Airport, Greenville, S.C.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Donaldson Center Airport, Greenville, S.C., 700-foot transition area and control zone because the IFR ASR approach procedure to the airport has been canceled and the nonfederal Airport Traffic Control Tower is no longer in operation.

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

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

The Donaldson Center Airport, Greenville, S.C., control zone described in § 71.171 (43 FR 355), and transition area, described in § 71.181 (43 FR 440), were designated to provide controlled airspace for IFR operations at Donaldson Center Airport. The IFR ASRA approach procedure has been canceled and the nonfederal Airport Traffic Control Tower is no longer in operation. Therefore, it is necessary to revoke the control zone and transition area. Since this amendment lessens the burden on the public, notice and public procedure hereon are unnecessary.

DRAFTING INFORMATION

The principal authors of this document are Ronald T. Niklasson, Airspace and Procedures Branch, Air Traffic Division, and Keith S. May, Office of Regional Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, subpart F, § 71.171 (43 FR 355) and subpart G, § 71.181 (43 FR 440) of part 71 of the Federal Aviation Regulations (14 CFR 71) are amended, effective 0901 G.m.t., November 2, 1978, as follows:

GREENVILLE, S.C.

"* * * within a 5-mile radius of Donaldson Center Airport (latitude 34°45'7" N., longitude 82°22'30" W.) * * *" is deleted from § 71.171.

GREENVILLE, S.C.

"* * * within an 8.5-mile radius of Donaldson Center Airport (latitude 34°45'17" N., longitude 82°22'30" W.) * * *" is deleted from § 71.181.

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

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

Issued in East Point, Ga., on July 24, 1978.

GEORGE R. LACAILLE,
Acting Director, Southern Region.

[FR Doc. 78-21366 Filed 8-2-78; 8:45 am]

[4910-13]

[Airspace Docket No. 77-WE-20]

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

Alteration of Transition Area, Victorville, Calif.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the 700-foot transition area at Victorville, Calif. This revision is necessary in order to provide additional 700-foot controlled airspace for radar vector services for procedures at George Air Force Base (AFB) Victorville, Calif.

EFFECTIVE DATE: September 7, 1978.

ADDRESSES: Copies of this final rule may be obtained from: Federal Aviation Administration, Air Traffic Division, Chief, Airspace and Procedures Branch, 15000 Aviation Boulevard, Lawndale, Calif. 90261.

FOR FURTHER INFORMATION CONTACT:

Thomas W. Binczak, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, Calif. 90261, telephone: 213-536-6182.

SUPPLEMENTARY INFORMATION:

HISTORY

On November 28, 1977, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (42 FR 60569) stating that the Federal Aviation Administration proposed to alter the 700-foot transition area at Victorville, Calif. to provide additional controlled airspace for radar vector services for George AFB, Calif. Interested persons were invited to participate in the rulemaking proceeding through submission of written comments on the proposal to the FAA. We received 11 responses to the NPRM in which 5 of the 11 commenters posed no objection to the proposal. Section 71.181 was republished in the FEDERAL REGISTER on January 3, 1978 (43 FR 440).

THE RULE

This amendment to part 71 of the Federal Aviation Regulations alters the 700-foot transition area in the vicinity of George AFB, Victorville, Calif. to provide additional controlled airspace for radar vector services for George AFB. This amendment adopts the airspace proposed in the NPRM (42 FR 60569) with changes recom-

mended by some commenters and the Department of the Air Force. The recommendations incorporated into this rule will reduce the designation of controlled airspace in the vicinity of El Mirage Airport.

DISCUSSION OF COMMENTS

Six commenters objected to the proposed rule. The primary concern of the majority of the objectors was based on an economic basis with specific reference to the fact that El Mirage Airport would effectively be forced to curtail flight activity because the additional transition area airspace would encompass the entire airport. We do not agree that the additional transition area would curtail or reduce aerial activity at El Mirage Airport. The existing 700-foot transition area presently encompasses a portion of El Mirage Airport. Both powered aircraft and sailplanes from El Mirage Airport fly in the existing 700-foot transition area when landing in a generally southwesterly to northwesterly direction. All flight operations at El Mirage Airport are conducted during visual flight rules conditions only.

The remaining objections were based on the fact that the proposed airspace would greatly increase the possibility of mid air collisions between civil aircraft and military traffic by allowing military aircraft to fly down to 700 feet above the airport. The radar traffic pattern altitude for George AFB in the vicinity of El Mirage Airport on the downwind leg is 5,300 feet above mean sea level (MSL). This provides 2,435 feet of airspace clearance in the vicinity of El Mirage Airport. The lowering of the transition area would effectively provide for use of 5,000 feet MSL as a cardinal altitude. We do not believe that the lower altitude would compromise air safety.

The designation of controlled airspace does not inhibit visual flight rules (VFR) operations in visual meteorological conditions (VMC) but limits VFR activity during periods of low ceiling and visibilities under instrument flight rules conditions (IFR). The concept of see and avoid would not be compromised during VFR conditions.

We have reviewed the comments received and have coordinated with the Department of the Air Force to exclude the 700-foot transition area within a three (3½) mile radius of El Mirage Airport. The Department of the Air Force has agreed to exclude the aforementioned airspace and would alter their procedures so as not to fly lower than 5,000 feet MSL in the vicinity of El Mirage Airport. Action taken herein will provide for this exclusion and alter the 700-foot transition area accordingly.

DRAFTING INFORMATION

The principal authors of this document are Thomas W. Binczak, Air Traffic Division and Dewitte T. Lawson, Jr., Esquire, Regional Counsel.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, subpart G of part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., September 7, 1978.

1. By amending § 71.181 (43 FR 440) of part 71 of the Federal Aviation Regulations by altering the 700-foot transition areas as follows:

Delete the period following "117°22'55")" and add the following:

VICTORVILLE, CALIF.

"and within 14.5 miles west of the 016° and 166° true radials, George AFB TACAN (latitude 34°35'40.5" N., longitude 117°23'20.5" W.) extending from the 12-mile radius area to 20.5 miles north and south of the TACAN, excluding the airspace within a 3.5 mile radius of El Mirage Airport (latitude 34°37'30" N., longitude 117°36'15" W.).

Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69).

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

Issued in Los Angeles, Calif. on July 17, 1978.

LEON C. DAUGHERTY,
Acting Director, Western Region.

[FR Doc. 78-21365 Filed 8-2-78; 8:48 am]

[6320-01]

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER-1055; Amdt. No. 2]

PART 202—CERTIFICATES AUTHORIZING SCHEDULED ROUTE SERVICE: TERMS, CONDITIONS, AND LIMITATIONS

Transfer of Certain Staff Functions

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

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule amends part 202 of the Board's economic regulations to reflect the transfer of certain staff functions from the former Bureau of Operating Rights to the Bureau of International Aviation.

DATES: Effective: July 25, 1978. Adopted: July 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Simon J. Eilenberg, Office of General Counsel, Rules Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., 202-673-5442.

SUPPLEMENTARY INFORMATION: Further information about this rule can be found in OR-128 and OR-129, which are also being adopted today. Since this amendment is administrative in nature, affecting rules of agency organization and procedure, the Board finds that notice and public procedure are unnecessary and that the rule may become effective immediately.

Accordingly, the Civil Aeronautics Board amends part 202 of its economic regulations as follows:

In § 202.21, parenthetical expressions are added to paragraphs (a) and (b), to read:

§ 202.21 Filing and service of documents; procedures thereon; petitions for reconsideration.

(a) * * * shall be filed with the Board, marked for the attention of the Director, Bureau of Operating Rights (except matters pertaining to operations predominantly in foreign air transportation, which shall be marked for the attention of the Director, Bureau of International Aviation), * * *

(b) * * * shall be filed with the Board, marked for the attention of the Director, Bureau of Operating Rights (except matters pertaining to operations predominantly in foreign air transportation, which shall be marked for the attention of the Director, Bureau of International Aviation), * * *

* * * * *

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

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21585 Filed 8-2-78; 8:45 am]

[6320-01]

[Regulation ER-1056; Amdt. No. 5]

PART 205—INAUGURATION AND TEMPORARY SUSPENSION OF SCHEDULED ROUTE SERVICE AUTHORIZED BY CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

Transfer of Certain Staff Functions

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

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule amends part 205 of the Board's economic regulations to reflect the transfer of certain staff functions from the former Bureau of Operating Rights to the Bureau of International Aviation.

DATES: Effective: July 25, 1978. Adopted: July 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Simon J. Eilenberg, Office of General Counsel, Rules Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., 202-673-5442.

SUPPLEMENTARY INFORMATION: Further information about this rule can be found in OR-128 and OR-129, which are also being adopted today. Since this amendment is administrative in nature, affecting rules of agency organization and procedure, the Board finds that notice and public procedure are unnecessary and that the rule may become effective immediately.

Accordingly, the Civil Aeronautics Board amends part 205 of its economic regulations as follows:

1. In § 205.8, paragraphs (b) and (c) are amended and a new paragraph (d) is added, to read:

§ 205.8 Automatic suspension authority for involuntary postponement of inauguration or involuntary interruption of service.

* * * * *

(b) In the case of delayed inauguration or an interruption of service caused by a strike, the holder shall give immediate notice of such delayed inauguration or interruption to the Board.

(c) If service at a point is interrupted or inauguration delayed for more than 3 consecutive days for reasons beyond the certificate holder's control other than a strike, the holder shall give notice to the Board within 3 days following the date of required inauguration of service or suspension, setting forth the date of suspension and a full and complete statement of the reasons therefor.

(d) When the service is in foreign air transportation only, the notice required by paragraph (b) or (c) above shall be marked for the attention of the Director, Bureau of International Aviation. Otherwise, the notice shall be marked for the attention of the Director, Bureau of Operating Rights.

2. Section 205.11 is amended to read:

§ 205.11 Institution of service after suspension or postponement of inauguration: notice to Board.

When service is inaugurated following postponement of inauguration, or resumed following suspension under either express or automatic authority, immediate notice thereof shall be given to the Board, stating the time when service was inaugurated or resumed. When the service is predominantly in foreign air transportation, the notice shall be marked for the attention of the Director, Bureau of International Aviation. Otherwise, the notice shall be marked for the attention of the Director, Bureau of Operating Rights.

3. Section 205.12 is amended to read:

§ 205.12 Strikes; report to be filed.

Within 15 days following resumption of service after a strike, an air carrier shall file a report with the Board containing a list of all flights that were canceled, the date they were canceled, and the date service was restored. When the service is in foreign air transportation only, the notice shall be marked for the attention of the Director, Bureau of International Aviation. Otherwise, the notice shall be marked for the attention of the Director, Bureau of Operating Rights.

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

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21584 Filed 8-2-78; 8:45 am]

[6320-01]

[Regulation ER-1057; Amdt. No. 24]

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

Transfer of Certain Staff Functions

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

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule amends part 212 of the Board's Economic Regulations to reflect the transfer of certain staff functions from the former Bureau of Operating Rights to the Bureau of International Aviation.

DATES: Effective: July 25, 1978. Adopted: July 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Simon J. Eilenberg, Office of General Counsel, Rules Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., 202-673-5442.

SUPPLEMENTARY INFORMATION: Further information about this rule can be found in OR-128 and OR-129, which are also being adopted today. Since this amendment is administrative in nature, affecting rules of agency organization and procedure, the Board finds that notice and public procedure are unnecessary and that the rule may become effective immediately.

Accordingly, the Civil Aeronautics Board amends Part 212 of its Economic Regulations as follows:

In §§ 212.5(a) and 212.14, "Director, Bureau of Operating Rights" is replaced by "Director, Bureau of International Aviation" wherever it appears.

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

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21586 Filed 8-2-78; 8:45 am]

[6320-01]

[Regulation ER-1058; Amdt. No. 6]

PART 213—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS

Transfer of Certain Staff Functions

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

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule amends part 213 of the Board's Economic Regulations to reflect the transfer of certain staff functions from the former Bureau of Operating Rights to the Bureau of International Aviation.

DATES: Effective: July 25, 1978. Adopted: July 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Simon J. Eilenberg, Office of General Counsel, Rules Division, Civil Aeronautics Board, 1825 Connecticut

Avenue NW., Washington, D.C., 202-673-5442.

SUPPLEMENTARY INFORMATION: Further information about this rule can be found in OR-128 and OR-129, which are also being adopted today. Since this amendment is administrative in nature, affecting rules of agency organization and procedure, the Board finds that notice and public procedure are unnecessary and that the rule may become effective immediately.

Accordingly, the Civil Aeronautics Board amends part 213 of its Economic Regulations as follows:

In appendices A and B, the recommended formats for airport notices and termination of service notices are amended by replacing "To: Director, Bureau of Operating Rights" with "To: Director, Bureau of International Aviation".

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

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21583 Filed 8-2-78; 8:45 am]

[6320-01]

[Reg. ER-1059; Amdt. No. 22]

PART 214—TERMS, CONDITIONS AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY

Transfer of Certain Staff Functions

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

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The rule amends part 214 of the Board's Economic Regulations to reflect the transfer of certain staff functions from the former Bureau of Operating Rights to the Bureau of International Aviation.

DATES: Effective: July 25, 1978. Adopted: July 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Simon J. Eilenberg, Office of General Counsel, Rules Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 202-673-5442.

SUPPLEMENTARY INFORMATION: Further information about this rule can be found in OR-128 and OR-129, which are also being adopted today. Since this amendment is administrative in nature, affecting rules of agency organization and procedure, the Board finds that notice and public procedure are uncecessary and that the rule may become effective immediately.

Accordingly, the Civil Aeronautics Board amends Part 214 of its Economic Regulations as follows:

In § 214.5, "Bureau of Operating Rights" is replaced by "Director, Bureau of International Aviation" wherever it appears, and in § 214.9a(b), "Director, Bureau of Operating Rights" is replaced by "Director, Bureau of International Aviation" wherever it appears.

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

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21588 Filed 8-2-78; 8:45 am]

[6320-01]

[Regulation ER-1060; Amdt. No. 2]

PART 216—COMMINGLING OF BLIND SECTOR TRAFFIC BY FOREIGN AIR CARRIERS

Transfer of Certain Staff Functions

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

AGENCY: Civil Aeronautics Board.

ACTION : Final rule.

SUMMARY: This rule amends Part 216 of the Board's Economic Regulations to reflect the transfer of certain staff functions from the former Bureau of Operating Rights to the Bureau of International Aviation.

DATES: Effective: July 25, 1978. Adopted: July 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Simon J. Eilenberg, Office of General Counsel, Rules Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., 202-673-5442.

SUPPLEMENTARY INFORMATION: Further information about this rule can be found in OR-128 and OR-129, which are also being adopted today. Since this amendment is administrative in nature, affecting rules of agency organization and procedure, the Board finds that notice and public procedure are unnecessary and that the rule may become effective immediately.

Accordingly, the Civil Aeronautics Board amends Part 216 of its Economic Regulations as follows:

In § 216.4(a), "Director, Bureau of Operating Rights" is replaced by "Director, Bureau of International Aviation."

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

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21587 Filed 8-2-78; 8:45 am]

[6320-01]

[Reg. ER-1061; Amdt. 44]

PART 221—CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

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

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule reduces the amount of economic data now required to accompany proposed changes in tariff provisions for most domestic cargo service. The Board proposed this in response to the recent reduction in its statutory authority over such tariffs.

DATES: Adopted: July 25, 1978. Effective: August 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Lawrence Myers, Office of General Counsel, Rates Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5791.

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking EDR-349, dated March 16, 1978, the Board initiated a proposal to reduce the supporting data requirements for tariff publications governing the "interstate air transportation of property," as that term is defined in section 1002(k)(1) of the Federal Aviation Act.[1] The proposed rule would amend part 221 of the economic regulations (14 CFR Part 221) to exempt direct air carriers from the need to file cost of service and revenue impact estimates with each tariff change as required by paragraph 221.165(b) of that part, and from the need to file rate comparison tables as required by paragraph 221.165(c) of that part.

As indicated in EDR-349, the enactment of Pub. L. 95-163, effective November 7, 1977, which significantly reduced its regulatory authority over the "interstate air transportation of property," and prompted this action by the Board. The Board no longer

[1] 49 U.S.C. 1482(b)(1).

has the authority to find rates or other provisions for such services unlawful on the grounds that they are unjust or unreasonable.[2] In addition, it no longer has the power to suspend tariff proposals for such services pending investigation.[3] It was the Board's tentative judgment that these revisions render the economic data required by paragraphs 221.165 (b) and (c) of negligible value as a matter of preliminary tariff justification. Moreover, it concluded that the value of such data for general monitoring purposes was probably outweighed by the burden of reporting and processing them.

Comments on the proposed rule were received from three trunklines, two section 401 all-cargo carriers, two new section 418 all-cargo carriers, two shippers' associations and the Department of Justice (DOJ).[4] The direct carriers and DOJ support the proposed rule for the reasons stated by the Board. However, the Puget Sound Traffic Association (PSTA) contends that, while some reduction in the burden of cargo tariff justification is in order, the Board still has the responsibility to investigate whether tariff proposals are unjustly discriminatory, unduly preferential or prejudicial, or predatory, and that sufficient information must still be required to enable the Board and other interested parties to make these threshold determinations. The Shippers National Freight Claim Council (SNFCC) also agrees that some reduction in required data for proposed tariff changes may be justified for rates, but it urges that a full justification still be required for all changes in cargo rules, regulations, and practices. According to SNFCC, rules such as those governing carrier liability strongly affect the public interest; competition in the marketplace does not protect against unfair rules as it tends to protect against unfair rates; and there is no indication in the legislative history of Pub. L. 95-163 that Congress intended to restrict the Board's authority over rules, regulations, and practices.

We will adopt the rule as proposed in EDR-349. The information requirements of paragraphs 221.165 (b) and (c) were designed primarily to enable the Board to screen the economic "reasonableness" of proposed rates and to determine whether or not a particular proposal should be suspended pending investigation. Both functions have been obviated by the new law. In response to both PSTA and SNFCC, we note that carriers are still required to provide a general description of all proposed changes under paragraph 221.165(a), which should be adequate to alert shippers or competitors to filings that they may wish to object to on the basis of discrimination, preference, prejudice or predation. When complaints are lodged against a filing, the carrier will have the incentive to supply a full economic justification in its answer, and the investigation review process will suffer little, if any, delay.[5]

For quite some time, airfreight forwarders have had the same justification requirements that the proposed rule would impose on direct carriers in the domestic cargo area, and we are not aware of any specific shipper problems resulting from the minimal forwarder requirements.[6] PSTA and SNFCC have indicated only a general concern in their comments and have not referred us to any particular problem areas. Moreover, they have not attempted to outline a less-burdensome economic justification requirement that would be of any real value to them. Rather than burden carrier's preparation of economic justifications for all tariff filings, only a small minority of which will draw shipper complaints, we relieve them of such requirements.

There is no statutory or factual justification for SNFCC's suggestion that we require more justification for rule changes than for rate changes. No such distinction is drawn by the statute. On the contrary, the language of amended section 1002(d)(3) leaves classifications, rules, regulations and practices on the same regulatory footing as rates and charges. Recourse to legislative history or other indirect sources of interpretation is generally not warranted as the statute is clear on its face. Even if it were, however, Congress did not expect rules to be treated differently by the Board. Thus, in establishing public interest criteria to govern the regulation of domestic "all-cargo air service," Congress expressly directed the Board to encourage a substantial reliance of competitive market forces to determine the "quality" as well as the price of such services.[7] Nor can we assume, as SNFCC does, that carrier rules, such as those governing liability and claims, are not responsive to competitive pressures. The domestic air cargo industry is only beginning to become fully competitive as liberalized entry under section 418 comes into effect. SNFCC's conclusion is therefore premature. And in any event, SNFCC has provided no reason to believe that shippers will be unable to determine whether to file complaints challenging changes in major cargo rules if their interests are so strongly affected by them.

Accordingly, 14 CFR Part 221, Construction, Publication, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers is amended as follows:

Amend § 221.165 subparagraph (d)(1)(iii) as follows:

§ 221.165 Explanation and data supporting tariff changes and new matter in tariff publications.

* * * * *

(d) Exceptions:

(1) The requirement for data and/or information in paragraphs (b) and (c) of this section will not apply to tariff publications containing new or changed matter which are filed.

* * * * *

(iii) For the interstate air transportation of property, as defined in § 1002(k)(1) of the Act, or by air freight forwarders or international air freight forwarders, as defined in Part 296 of this subchapter, or

* * * * *

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

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21579 Filed 8-2-78; 8:45 am]

[2] Section 1002(d)(3), as amended (49 U.S.C. 1482(d)(3)).

[3] Section 1002(g), as amended (49 U.S.C. 1482(g)).

[4] American Airlines, United Airlines, Trans World Airlines, Airlift International, the Flying Tiger Line, Federal Express Corporation, Sedalia-Marshall-Boonville Stage Line, the Shippers National Freight Claim Council, Puget Sound Traffic Association, and the Department of Justice.

[5] Our action here does not necessarily mean that we will not consider further amendments to our tariff filing rules in connection with the promulgation of permanent regulations for section 418 all-cargo carriers. We wish to complete this rulemaking proceeding now, however, since it is clear that our present regulations require the filing of information that is no longer useful, and that the burden of preparing it should therefore be eliminated.

[6] Indeed, in EDR-350, dated March 30, 1978, the Board proposed for public comment a rule which would exempt airfreight forwarders from the need to file tariffs under sections 403 (a) and (c) of the Act.

[7] Section 102(b)(2), as amended (49 U.S.C. 1302(b)(2)).

[6320-01]

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Regulation PR-176; Amdt. No. 2]

PART 312—IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT, INCLUDING THE PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

Transfer of Certain Staff Functions

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

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The rule amends part 312 of the Board's procedural regulations to refect the transfer of certain staff functions from the former Bureau of Operating Rights to the Bureau of International Aviation.

DATES: Effective: July 25, 1978; Adopted: July 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Simon J. Eilenberg, Office of General Counsel, Rules Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., 202-673-5442.

SUPPLEMENTARY INFORMATION: Further information about this rule can be found in OR-128 and OR-129, which are also being adopted today. Since this amendment is administrative in nature, affecting rules of agency organization and procedure, the Board finds that notice and public procedure are unnecessary and that the rule may become effective immediately.

Accordingly, the Civil Aeronautics Board amends part 312 of its procedural regulations as follows:

In § 312.8, paragraph (a) is amended to read:

§ 312.8 Designation of responsible officials.

(a) The Director of the Bureau of Fares and Rates, the Director of the Bureau of Operating Rights, and the Director of the Bureau of International Aviation, or their designees, are assigned the responsibility of preparing environmental impact statements and related documents and taking other actions in connection therewith, as set forth in this part. Other staff of the Board may be assignd these responsibilities, as appropriate.

* * * * *

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

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21582 Filed 8-2-78; 8:45 am]

[6320-01]

SUBCHAPTER D—SPECIAL REGULATION

[Regulation SPR-148; Amdt. No. 10 to Part 375]

PART 375—NAVIGATION OF FOREIGN CIVIL AIRCRAFT WITHIN THE UNITED STATES CONFORMING AMENDMENT

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

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule amends Part 375 of the Board's Special Regulations to reflect the transfer of certain staff functions from the former Bureau of Operating Rights to the Bureau of International Aviation.

DATES: Effective: July 25, 1978; Adopted: July 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Simon J. Eilenberg, Office of General Counsel, Rules Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., 202-673-5442.

SUPPLEMENTARY INFORMATION: Further information about this rule can be found in OR-128 and OR-129, which are also being adopted today. Since this amendment is administrative in nature, affecting rules of agency organization and procedure, the Board finds that notice and public procedure are unnecessary and that the rule may become effective immediately.

Accordingly, the Civil Aeronautics Board amends part 375 of its Special Regulations as follows:

In § 375.40(a), "Director, Bureau of Operating Rights" is replaced by "Director, Bureau of International Aviation."

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

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21580 Filed 8-2-78; 8:45 am]

[6320-01]

SUBCHAPTER E—ORGANIZATION REGULATIONS

[Reg. OR-128; Amdt. 10]

PART 384—STATEMENT OF ORGANIZATION, DELEGATION OF AUTHORITY, AND AVAILABILITY OF RECORDS AND INFORMATION

Organizational Changes

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

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule amends the Board's general statement of organization to reflect a transfer of certain staff functions from the former Bureau of Operating Rights to the Bureau of International Aviation. Specific delegations of authority are amended in OR-129, which is being issued simultaneously with this rule.

DATES: Effective: July 25, 1978. Adopted: July 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Simon J. Eilenberg, Office of the General Counsel, Rules Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 202-673-5442.

SUPPLEMENTARY INFORMATION: In order to expand the role of the Bureau of International Aviation (BIA) and strengthen its ability to serve our needs, we transferred certain staff functions to it from the former Bureau of Operating Rights.[1] BIA now has primary responsibility for processing and performing required staff work for the award of international route authority to U.S. and foreign air carriers. It also processes applications under section 416 of the Federal Aviation Act to exempt U.S. certificated and noncertificated direct air carriers from the requirements of section 401, in order to permit operations between U.S. and foreign points.

This rule amends Part 384 of the Organization Regulations to reflect the transfer of functions. It also reflects the change of name from "Bureau of International Affairs" to "Bureau of International Aviation." In OR-129, which is being issued simultaneously with this rule, we are amending the specific delegations of authority that appear in Part 385. Conforming amendments to Parts 202, 205, 212,

[1] Since the transfer, we consolidated the Bureau of Operating Rights and the Bureau of Fares and Rates into a new Bureau of Pricing and Domestic Aviation. Separate amendments reflecting that consolidation will be published in the near future.

213, 214, 216, 312, and 375 are made in ER-1055 through ER-1060, PR-176, and SPR-148, which were also adopted today.

Since these amendments are administrative in nature, affecting rules of agency practice and procedure, we find that notice and public procedure are unnecessary and that the rules may be effective immediately.

Accordingly, the Civil Aeronautics Board amends Part 384 of its Organization Regulations (14 CFR Part 384) as follows:

Paragraphs (c) and (g) of § 384.7 are amended to read:

§ 384.7 Organization and delegation of authority.

* * * Generally speaking, the Board's staff comprises:

* * * * *

(c) The Bureau of Operating Rights, which is the Board component primarily concerned with the licensing and maintenance of proper competitive conditions among air carriers except in matters involving foreign air transportation. This includes matters involving certificates, exemptions and mergers for scheduled, supplemental, helicopter and all-cargo air carriers, air taxi operators and freight forwarders.

* * * * *

(g) The Bureau of International Aviation, which is the Board component primarily concerned with the licensing and maintenance of proper competitive conditions among air carriers and foreign air carriers with respect to foreign air transportation. Matters involving certificates, permits, and exemptions for scheduled, supplemental, and all-cargo air carriers, foreign air carriers, and air taxi operators pertaining to foreign air transportation are handled by the Bureau of International Aviation. This Bureau advises the Board on the formulation of positions to be taken by the United States concerning international air transport matters; serves as liaison between the Board and the Department of State and the Interagency Group on International Aviation; and provides representation in connection with international conferences, consultations and negotiations with foreign countries on air transport matters.

* * * * *

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

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21589 Filed 8-2-78; 8:45 am]

[6320-01]

[Reg. OR-129; Amdt. No. 70]

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

Transfer of Delegated Authority From the Director, Bureau of Operating Rights, to the Director, Bureau of International Aviation

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

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule amends the Board's delegations of authority to reflect a transfer of international functions from the former Bureau of Operating Rights to the Bureau of International Aviation.

DATES: Effective: July 25, 1978. Adopted: July 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Simon J. Eilenberg, Office of the General Counsel, Rules Division, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., 202-673-5442.

SUPPLEMENTARY INFORMATION: For the reasons discussed in OR-128, which is being issued simultaneously with this rule, we are amending the delegations of authority that appear in Part 385 of the Organization Regulations. The delegations to the Director of the Bureau of International Aviation (BIA) will appear in a new section 385.26. Existing delegations to the Director of the Bureau of Operating Rights (BOR) are set out in § 385.13.[1]

In cases involving only international matters, the text of an existing delegation to the Director of BOR is simply removed from § 385.13 and inserted in § 385.26. Some paragraphs of § 385.13, however, address functions that have both domestic and international aspects. Of these delegations, some are being split, with § 385.13 amended to reflect retention of the domestic portion and the international portion added to § 385.26. Some other delegations that have international aspects are unchanged, because not all international functions have been transferred between the Bureaus. Among the functions remaining with the Director of BOR are those pertaining to the special charter regulations and approval of mergers, agreements and interlocking relationships. Finally, authority is being delegated to the Director of BIA to handle Airport Notices filed by foreign air carriers and U.S. air carriers for operations that are predominantly in foreign air transportation.

Conforming amendments to Parts 202, 205, 212, 213, 214, 216, 312, and 375 are made in ER-1055 through ER-1060, PR-176, and SPR-148, respectively. These rules are also being adopted today.

Since these amendments are administrative in nature, affecting rules of agency organization and procedure, we find that notice and public procedure are unnecessary and that the rules may be effective immediately.

Accordingly, the Civil Aeronautics Board amends Part 385 of its Organization Regulations (14 CFR Part 385) as follows:

1. In § 385.13, paragraphs (c), (i), (o), (y), (aa), (bb), (gg), and (mm) are revoked and reserved.

2. Also in § 385.13, paragraphs (a), (b), (h), (k), (l), (n), (s), (t), and (hh) are amended to read.

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

The Board hereby delegates to the Director, Bureau of Operating Rights, the authority to:

(a)(1) Approve or deny applications of certificated route air carriers for exemptions to serve a point certificated on one segment of its route in place of a point certificated on another segment of its route whenever both points are in the United States and no substantial competition to other lines will result, and to perform single flights, except flights in foreign air transportation, outside the authority contained in the certificate. This authority may not be redelegated.

(2) Approve when no person disclosing a substantial interest protests, or deny applications of certificated route air carriers for exemptions to perform any other operation, prohibited by a term, condition or limitation in a certificate, except operations predominantly in foreign air transportation. This authority may not be redelegated.

(3) Approve or disapprove Airport Notices which indicate an intention to serve regularly a point in the United States through any airport not regularly used by a holder of a certificate of public convenience and necessity and grant or deny requests for an effective date earlier than 30 days subse-

[1] Since the transfer of functions to BIA, we consolidated BOR and the Bureau of Fares and Rates into a new Bureau of Pricing and Domestic Aviation. Separate amendments to reflect that consolidation will be published in the near future.

quent to filing such Airport Notices unless that service will be predominantly in foreign air transportation.

(b) Approve or deny applications of direct air carriers for exemptions from section 401 of the act and from applicable regulations under this chapter, except exemptions relating to operations that are predominantly in foreign air transportation, where the course of action is clear under current Board policies.

* * * * *

(h) Approve or disapprove interchange schedules, except those involving points outside the United States. Approvals may be granted when such schedules appear to conform to the service plan contemplated by the Board's orders approving the basic interchange agreements.

* * * * *

(k) Approve or disapprove applications of air carriers for permission to do business in names other than those authorized pursuant to regulation or order of the Board.

(l) Issue revised operating authorizations and Exemption Orders, except authorization and Exemption Orders involving service predominantly in foreign air transportation, when revisions thereof are made necessary due to a change in name of the carrier specified in the document: *Provided*, That no issue of substance concerning the operating authority of a carrier is involved.

* * * * *

(n) With respect to postponement of inauguration of service or temporary suspension of service under Part 205 of this chapter (Economic Regulations):

(1) Approve or disapprove applications for authority to postpone inauguration of new service, except service in foreign air transportation, pursuant to certificate awards; and, upon notice, modify, condition, or terminate orders authorizing postponement; and

(2) Approve or disapprove applications for authority to temporarily suspend service, except service in foreign air transportation; and, upon notice, modify, condition, or terminate orders authorizing the temporary suspension of service.

* * * * *

(s) With respect to air carrier authority to conduct a specific charter operation, other than a MAC operation or an operation predominantly in foreign air transportation:

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

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

(t) Waive the provisions of § 377.10(c) of this chapter (Special Regulations) with respect to the time for filing applications for the renewal of temporary authorizations, except temporary authorizations to perform operations that are predominantly in foreign air transportation, so as to permit their filing within shorter periods than required by that section when, in his judgment, the public interest would be thereby served: *Provided*, That the interim extension provisions of § 377.10(d) of this chapter shall, if otherwise pertinent, apply to authorizations involved in applications filed pursuant to such waivers.

* * * * *

(hh) Approve or deny applications of air carriers for exemptions from the provisions of section 405(b) of the act and § 231.5(b) of Part 231 of the Economic Regulations to the extent necessary to permit the filing of schedules pursuant to section 405(b) on less than ten (10) days' notice to the Postmaster General and to the Board, except when the operations are predominantly in foreign air transportation.

* * * * *

3. A new § 385.26 is added, to read:

§ 385.26 Delegation to the Director, Bureau of International Aviation.

The Board delegates to the Director, Bureau of International Aviation, the authority to:

(a)(1) Approve or deny applications of certificated route air carriers for exemptions to serve a point certificated on one segment of its route in place of a point certificated on another section of its route whenever at least one of these points is outside the United States and no substantial competition to other lines will result, and to perform single flights in foreign air transportation outside the authority contained in the certificate. This authority may not be redelegated.

(2) Approve, when no person disclosing a substantial interest protests, or deny applications of certificated route air carriers for exemptions to perform any other operation predominantly in foreign air transportation that is prohibited by a term, condition, or limitation in a certificate. This authority may not be redelegated.

(3) Approve or disapprove Airport Notices which indicate an intention to serve regularly a point outside the United States or, when the service will be predominantly in foreign air transportation, a point in the United States through any airport not regularly used by a holder of a certificate of public convenience and necessity; and grant or deny requests for an effective date earlier than 30 days subsequent to filing such Airport Notices.

(4) Approve or disapprove Airport Notices which indicate an intention to serve regularly a point through any airport not regularly used by a holder of a foreign air carrier permit; and grant or deny requests for an effective date less than 30 days after the filing of such Airport Notices.

(b) Approve or deny applications of direct air carriers for exemptions from section 401 of the Act and from applicable regulations under this chapter, relating to operations that are predominantly in foreign air transportation, where the course of action is clear under current Board policies.

(c) Approve or deny, with the concurrence of the Chief, Tariffs Section, applications for exemption from section 403 of the act to the extent necessary to permit performance of air carrier operations otherwise authorized by exemption granted under subparagraphs (a)(1), (a)(2), and (b) of this section. This authority may not be redelegated.

(d) Approve or disapprove issuance of foreign aircraft permits provided for in §§ 375.41, 375.42, and 375.70 of this chapter (Special Regulations).

(e) Approve or disapprove interchange schedules involving points outside the United States. Approvals may be granted when such schedules appear to conform to the service plan contemplated by the Board's orders approving the basic interchange agreements.

(f) When filed in accordance with Part 212 of this chapter, approve or deny applications for authorization to conduct off-route charter trips, and approve requests for on-route charter flights for which prior approval is required under an order of the Board, including waivers of the time limitation for advance filing of such requests prescribed in the order.

(g) Approve or disapprove applications of foreign air carriers for permission to do business in names other than those authorized pursuant to regulation or order of the Board.

(h) Issue revised Exemption Orders involving service predominantly in foreign air transportation, when revisions

thereof are made necessary due to a change in name of the carrier specified in the document: *Provided*, That no issue of substance concerning the operating authority of a carrier is involved.

(i) With respect to postponement of inauguration of service or temporary suspension of service under Part 205 of this chapter (Economic Regulations):

(1) Approve or disapprove applications for authority to postpone inauguration of new service in foreign air transportation pursuant to certificate awards; and, upon notice, modify, condition, or terminate orders authorizing postponement; and

(2) Approve or disapprove applications for authority to temporarily suspend service in foreign air transportation; and, upon notice, modify, condition, or terminate orders authorizing the temporary suspension of service.

(j) Approve, when no person disclosing a substantial interest protests, or disapprove applications filed under § 202.15 of this chapter (Economic Regulations) by air carriers certificated to engage in foreign air transportation to a general area, for authority to effect changes in approved service plans.

(k) Waive the provisions of § 377.10(c) of this chapter (Special Regulations) with respect to the time for filing applications for the renewal of temporary authorizations to perform operations that are predominatly in foreign air transportation, so as to permit their filing within shorter periods than required by the section when, in his judgment, the public interest would be thereby served: *Provided*, That the interim extension provisions of § 377.10(d) of this chapter shall, if otherwise pertinent, apply to authorizations involved in applications filed pursuant to such waivers.

(l) Approve issuance, for temporary periods not to exceed 30 days, of Special Authorizations provided for in § 216.4 of this chapter (Economic Regulations), when no person disclosing a substantial interest protests.

(m) Issue orders directing the holders of foreign air carrier permits to show cause why the Board should not adopt provisional findings and conclusions that such permits should be canceled when (1) the government of the permit holder's home country represents that it has no objection to cancellation of the permit and (2) either (i) the permit holder has ceased operations, or (ii) the permit holder no longer holds authority from its own government to operate the routes designated in its permit.

(n) Issue orders approving or disapproving wet leasing arrangements between foreign air carriers, in cases involving foreign air carriers whose foreign air carrier permits specify that they must obtain prior Board approval before entering into certain wet leasing arrangements with specified other foreign air carriers.

(o) Grant or deny requests of foreign charter air carriers for approval of charter flights for which prior approval is required pursuant to an order of the Board, and to waive the time limit prescribed in such order for filing of such requests.

(p) Approve or deny applications of air carriers for exemptions from the provisions of section 405(b) of the act and § 231.5(b) of part 231 of the Economic Regulations to the extent necessary to permit the filing of schedules pursuant to section 405(b) on less than ten (10) days' notice to the Postmaster General and to the Board, when the operations are predominantly in foreign air transportation.

(q) Approve or deny applications of foreign air carriers for waivers of permit limitations or restrictions, in accordance with permit provisions authorizing such waivers, when no person disclosing a substantial interest objects. This authority may not be redelegated.

(r) With respect to air carrier authority to conduct a specific charter operations, other than a MAC operation, when the operation is predominantly in foreign air transportation:

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

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

4. The Table of Contents is amended by adding to subpart 8 a new § 385.26, to read:

* * * * *

Sec.
385.26 Delegation to the Director, Bureau of International Aviation.

* * * * *

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

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-21581 Filed 8-2-78; 8:45 am]

[7510-01]

CHAPTER V—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

PART 1245—PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS

Subpart 1245.5—Authority and Delegations To Take Certain Actions Relating to Patents and Other Intellectual Property Rights.

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This rule makes a technical change to the regulations on patents and other intellectual property rights by deleting the title "Associate General Counsel," which has become obsolete. Also, the title of part 1245 is revised to reflect the broader scope of the regulations. The part is amended by adding a new subpart containing authority delegations regarding actions relating to patents and other intellectual property rights.

EFFECTIVE DATE: July 14, 1978.

ADDRESS: Office of General Counsel, Code GG-1, NASA Headquarters, Washington, D.C. 20546 202-755-3922.

FOR FURTHER INFORMATION CONTACT:

George E. Reese, Office of General Counsel, 202-755-3922.

§ 1204.505 [Amended]

1. Section 1204.505(b) is amended by deleting subparagraph (3).

2. 14 CFR Chapter V is amended as follows:

§ 1204.506 [Deleted]

Delete § 1204.506—Power and authority—to take various actions related to patent and copyright matters and to accept licenses and assignments of inventions and add subpart 1245.5.

Subpart 1245.5—Authority and Delegations To Take Certain Actions Relating to Patents and Other Intellectual Property Rights.

Sec.
1245.500 Scope.
1245.501 General Counsel.

1245.502 Assistant General Counsel for Patent Matters.
1245.503 Patent Counsel of Field Installations.
1245.504 Further redelegation.

AUTHORITY: 42 U.S.C. 2473, 2457; 14 CFR 1204.506.

Subpart 1245.5—Authority and Delegations To Take Certain Actions Relating to Patents and Other Intellectual Property Rights

§ 1245.500 Scope.

This Subpart 1245.5 sets forth the authority and delegations relating to intellectual property rights, and the administration of the NASA patent program.

§ 1245.501 General Counsel.

The General Counsel administers the NASA patent program and is delegated authority to take the following specific actions related to intellectual property, including patent, copyright, trademark, and related matters:

(a) *Determination of rights.* (1) To execute notifications of the Administrator's determinations made pursuant to section 305(a) of the National Aeronautics and Space Act of 1958, as amended;

(2) To make determinations, under Executive Order 10096 of January 23, 1950, as amended, of the respective rights of the Government and of the inventor in and to inventions made by employees under the administrative jurisdiction of the National Aeronautics and Space Administration, and to appoint a liaison officer to deal with the Commissioner of Patents in such matters pursuant to 37 CFR 100.10, "Administration of a Uniform Patent Policy With Respect to the Domestic Rights in Inventions Made by Government Employees";

(b) *Powers of attorney.* To appoint and/or revoke principal attorneys and to execute necessary powers of attorney for the purpose of filing and prosecuting patent applications in which the United States, as represented by the Administrator, has an interest by way of either title or license;

(c) *Application papers and statements.* To receive patent applications, documents, and statements transmitted to the Administrator pursuant to section 305(c) of the National Aeronautics and Space Act of 1958, as amended;

(d) *Acceptance of licenses and assignments.* To accept on behalf of the United States licenses under, assignments of, and other rights in inventions, patents, and applications for patents;

(e) *Secrecy orders.* To exercise all powers of the Administrator with respect to secrecy orders in patent cases and foreign filing under 35 U.S.C. 181 et seq.;

(f) *Certifications.* To exercise the authority of the Administrator with respect to certifications in support of requests for extensions of time under 35 U.S.C. 267;

(g) *Foreign patent program.* To exercise the authority of the Administrator in taking all necessary action to obtain and maintain patents in foreign countries, including the execution of instruments necessary for filing, prosecution, and maintenance of foreign applications and patents;

(h) *Authority under section 305 (d) and (e).* To represent the Administrator and to appoint attorneys to represent the Administrator in the conduct of business under sections 305 (d) and (e) of the National Aeronautics and Space Act of 1958, as amended, including execution of requests pursuant to said sections of the act that patents be issued to the Administrator on behalf of the United States or that title be transferred to the Administrator;

(i) *Acquisition authority.* To exercise the power conferred on the Administrator by the National Aeronautics and Space Act of 1958, as amended, to acquire an interest in patents and patent applications, including the purchase of such interests in settlement of claims for the unauthorized use of patented inventions and to acquire interests in copyrights, trademarks, and trade names;

(j) *Authority to settle copyright claims.* To exercise all powers conferred on the Administrator by 28 U.S.C. 1498(b), including the settlement of claims for copyright infringement;

(k) *Granting of licenses.* To make the determinations and to take any and all actions with respect to the licensing of NASA inventions vested in the Administrator by the NASA Domestic Patent Licensing Regulations, 14 CFR Subpart 1245.2 (NASA Management Instruction 5109.3), and the NASA Foreign Patent Licensing Regulations, 14 CFR Subpart 1245.4 (NASA Management Instruction 5109.5), to sign all FEDERAL REGISTER notice material required by the patent licensing regulations and to otherwise grant licenses on any invention in which the Administrator has reserved the right to grant licenses; and

(l) *Waiver determinations and instruments.* To sign for the Administrator attestations of determinations of grant or denial of waiver of title to inventions and to execute instruments of waiver, when in accordance with the recommendations of the Inventions and Contributions Board, and the NASA Patent Waiver Regulations, 14 CFR Subpart 1245.1 (NASA Management Instruction 5109.2).

§ 1245.502 Assistant General Counsel for Patent Matters.

The Assistant General Counsel for Patent Matters provides functional direction to all Patent Counsel and is redelegated the authority to take the following actions:

(a) *Rights determinations.* (1) to execute notifications of the Administrator's determinations made pursuant to section 305(a) of the National Aeronautics and Space Act of 1958, as amended;

(2) To make determinations, under Executive Order 10096 of January 23, 1950 as amended, of the respective rights of the Government and of the inventor in and to inventions made by employees under the administrative jurisdiction of the National Aeronautics and Space Administration, and to appoint a liaison officer to deal with the Commissioner of Patents in such matters pursuant to 37 CFR 100.10, "Administration of a Uniform Patent Policy With Respect to the Domestic Rights in Inventions Made by Government Employees";

(b) *Powers of attorney.* To appoint and/or revoke principal attorneys and to execute necessary powers of attorney for the purpose of filing and prosecuting patent applications in which the United States, as represented by the Administrator, has an interest by way either of title or license;

(c) *Application papers and statements.* To receive patent applications, documents, and statements transmitted to the Administrator pursuant to section 305(c) of the National Aeronautics and Space Act of 1958, as amended;

(d) *Acceptance of licenses and assignments.* To accept, on behalf of the United States, licenses under, assignments of, and other rights in inventions, patents, and applications for patents; and

(e) *Secrecy orders.* To exercise all powers of the Administrator with respect to secrecy orders in patent cases and foreign filing under 35 U.S.C. 181 et seq.

§ 1245.503 Patent Counsel of Field Installations.

Patent Counsel of Field Installations and Patent Counsel, NASA Resident Legal Office, Pasadena, Calif., are redelegated authority to take the following actions:

(a) *Rights determinations.* To make determinations, under Executive Order 10096 of January 23, 1950, as amended, of the respective rights of the Government and of the inventor in and to inventions made by employees under the administrative jurisdiction of their installations in those instances where the Government is entitled to obtain the entire right, title, and interest, and to make such deter-

minations, with the concurrence of the Assistant General Counsel for Patent Matters, in those instances where the Government acquires less than the entire domestic right, title and interest.

(b) *Acceptance of licenses and assignments.* To accept on behalf of the United States licenses under, assignments of and other rights in inventions, patents, and applications for patents.

§ 1245.504 Further redelegation.

None authorized except by virtue of succession.

ROBERT A. FROSCH,
Administrator.

[FR Doc. 78-21446 Filed 8-2-78; 8:45 am]

[6750-01]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. C-2894]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Lustrasilk Corporation of America, Inc., et al.

AGENCY: Federal Trade Commission.

ACTION: Modification of order to cease and desist.

SUMMARY: This is an order which modifies a cease and desist order issued January 27, 1976, to conform with the product coverage of a consent order issued against a competitive company, by substituting the words "hair straightening products" for the word "cosmetics" in sections I and II of the original order, and "is" for "are" in the *It is Ordered* paragraph in section I; and by deleting the words "as 'cosmetic' is defined in the Federal Trade Commission Act" in the *It is further ordered* paragraph in section II.

DATES: Decision issued January 27, 1976. Modifying order issued July 13, 1978.[1]

FOR FURTHER INFORMATION CONTACT:

William C. Erxleben, Director, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Building, 915 Second Avenue, Seattle, Wash. 98174, 206-442-4655.

SUPPLEMENTARY INFORMATION: In the matter of Lustrasilk Corp. of America, Inc., et al. The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, appears at 41 FR 7744, and remain unchanged.

(Sec. 6, 38 Stat. 721; (15 U.S.C. 46). Interprets or applies sec. 5, 38 Stat. 719, as amended; (15 U.S.C. 45, 52).)

The order modifying order to cease and desist, is as follows:

ORDER MODIFYING ORDER TO CEASE AND DESIST

ORDER

On April 26, 1977, respondents in this matter requested by letter that the Commission order of January 27, 1976, be modified, first by limiting the product coverage of the order to "hair straightening products" which would replace the broader "cosmetics" products description, and second, by excluding the individually named respondents from the order.

Complaint counsel support the limitation on product coverage and oppose the exclusion of the individually named respondents.

We agree that the product coverage should be limited as requested. After entry of its order in this matter the Commission issued a consent order against Revlon, Inc., a competitor of Lustrasilk in the sale of hair relaxers. The Revlon order's product coverage is identical to that recommended by complaint counsel here. For this reason the Commission believes that it is in the public interest to grant the modification of product coverage sought by Lustrasilk.

We reject respondents' request that the individually named respondents be released from the order. Nothing that respondents have cited indicates a change of facts or law that would warrant the exclusion of the two individually named respondents from the reach of the order, nor does it appear that the public interest would be served by their exclusion. To the contrary, because the corporation is run as the proprietorship of the two named individuals, we find it necessary to continue to hold them responsible under the order. Accordingly,

It is ordered, That the proceeding be, and it hereby is, reopened.

It is further ordered, That the order to cease and desist be, and it hereby is, modified by substituting the words "hair straightening products" for the word "cosmetics" in sections I and II of the order, by substituting "is" for "are" in the *It is ordered* paragraph in section I, and by deleting the words "as 'cosmetic' is defined in the Federal Trade Commission Act" in the *It is further ordered* paragraph in section II.

By the Commission; Commissioner Pitofsky not participating.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-21477 Filed 8-2-78; 8:45 am]

[6750-01]

[Docket No. 9057]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Uslife Credit Corp., Et Al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This order, among other things, requires a Schaumburg, Ill. finance company and its parent corporation to cease, in connection with the extension of consumer credit, failing to provide consumers with the material and disclosures required by Federal Reserve System regulations.

DATES: Complaint issued September 26, 1975. Final order issued May 23, 1978.

FOR FURTHER INFORMATION CONTACT:

Albert H. Kramer, Director, Bureau of Consumer Protection, Federal Trade Commission, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580, 202-523-3727.

SUPPLEMENTARY INFORMATION: In the matter of Uslife Credit Corp., a corporation, and Uslife Corp., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows:[1]

Subpart—Corrective actions and/or requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-45 Maintain records. Subpart—Misrepresenting oneself and goods—Goods: § 13.1623 Formal regulatory and statutory requirements; § 13.1623 Formal regulatory and statutory requirements; 13.1623-59 Truth in Lending Act; § 13.1760 Terms and conditions; 13.1760-40 Insurance coverage.—Prices: § 13.1823 Terms and conditions; 13.1823-20 Truth in Lending Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 Formal regulatory and statutory requirements; 13.1852-75 Truth in Lending Act; § 13.1905 Terms and conditions; 13.1905-40 Insurance coverage; 13.1905-60 Truth in Lending Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147 (15 U.S.C. 45, 1601, et seq.))

[1] Copies of the complaint, initial decision, opinion, and final order filed with the original document.

[1] Copies of the modifying order filed with the original document.

The final order to cease and desist, including further order requiring report of compliance therewith, is as follows:

This matter having been heard by the Commission upon the appeals of complaint counsel and respondent Uslife Corp. from the initial decision, and upon briefs and oral argument in support thereof and in opposition thereto, and the Commission, for the reasons stated in the accompanying opinion, having granted the appeal of complaint counsel and denied the appeal of respondent:

It is ordered, That the initial decision and order of the administrative law judge be, and they hereby are, vacated, except to the extent that the initial decision is consistent with the accompanying opinion of the Commission, and the findings of fact and conclusions of law contained in the opinion be, and they hereby are, adopted as the findings and conclusions of the Commission in this matter.

Accordingly, the following cease and desist order is hereby entered.

ORDER

It is ordered, That respondents Uslife Credit Corp., a corporation, and Uslife Corp., a corporation, their successors and assigns, and their officers, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with any extension of consumer credit, as "consumer credit" is defined in regulation Z (12 CFR part 226) of the Truth in Lending Act (Pub. L. 90-321, 15 U.S.C. 1601 et seq.) do forthwith cease and desist from:

1. Failing, when the charges for credit life insurance and/or credit accident and health (disability) insurance are not included in the finance charge, to quote the costs of any credit insurance coverage or to refer in any way to the availability of such coverage, either orally or in writing, without clearly disclosing that:

(a) Credit life insurance and/or credit accident and health (disability) insurance are optional; and

(b) The consumer's choice regarding insurance coverage will not be considered in respondents' decision to approve credit for such consumer.

Respondent's obligation under this paragraph shall end concurrently with the customer's execution of the separate, voluntary insurance election form required by paragraph 2.

2. Failing, when the charges for credit life insurance and/or credit accident and health (disability) insurance are not included in the finance charge:

(a) To present to the borrower as the first document at the time of closing, a separate, voluntary insurance election form which sets forth clearly and conspicuously the following information:

(i) The purchase of credit insurance is not required by Uslife Credit Corp. (or other business extending consumer credit) in connection with this loan (or other extension of consumer credit);

(ii) The borrower's decision with regard to the insurance available through respondents is not considered in granting the credit;

(iii) The amount of the total premium for credit life insurance and/or the total premium for credit accident and health (disability) insurance;

(iv) The borrower authorizes respondents on behalf of the borrower to pay the insurance premiums to the insurance company for such credit insurance as has been chosen;

(v) Each option available to the borrower; and

(vi) A signature and date line for each option set forth in (v) above for the consumer to indicate his/her election.

(b) Failing to make the disclosures required by subparagraph (a) on a separate document which contains no other printed or written material. The disclosures required by subparagraphs (i), (ii), and (iii) shall not be smaller than 12 point type. A form substantially in conformance with attachment A herein will be considered as in compliance with the provisions of subparagraphs (a) and (b). Respondents shall maintain the original form for two years following its execution and provide the customer with an executed copy thereof.

(c) Failing to leave the truth in lending disclosure statement blank as to the cost of credit life insurance and/or credit accident and health (disability) insurance and all other information or amounts which are affected by the election or declination of insurance until the borrower has signed the written disclosure required by subparagraph (a).

(d) Making any marks or otherwise instructing a consumer where to sign or date the separate voluntary insurance election form required by subparagraph (a) in advance of the consumer's free and independent choice for such insurance.

(e) Misrepresenting, orally or otherwise, directly or by implication, that credit life and/or credit accident and health (disability) insurance are required as a condition of obtaining credit from respondents.

(f) Discouraging, by misrepresentation, oral or otherwise, directly or by implication, the declination of credit life and/or credit accident and health (disability) insurance.

(g) Representing, orally or otherwise, directly or indirectly, that the consumer's failure to elect credit insurance will result in a delay in processing the loan or distributing the proceeds.

3. Failing to tell every customer the purpose(s) of each signature requested by respondents on any document directly related to the consummation of the credit transaction.

4. Failing to compute and disclose accurately the finance charge, as required by §§ 226.4(a)(5) and 226.8(d) of regulation Z.

5. Failing to compute and disclose accurately the annual percentage rate to the nearest quarter of 1 percent as required by §§ 226.5(b) and 226.8(b) of regulation Z.

6. Failing, in any consumer loan transaction or advertisement, to make all disclosures, determined in accordance with §§ 226.4 and 226.5 of regulation Z, in the manner, form and amount required by §§ 226.6, 226.8, 226.9 and 226.10 of regulation Z.

It is further ordered: (a) That respondents maintain records on an annual basis for each branch office of the penetration rate of:

(1) Credit life insurance, stating the rate separately for both direct loans and installment sales contracts; and

(2) Credit accident and health (disability) insurance, stating the rate separately for both direct loans and installment sales contracts. Such records shall be submitted to the Commission each year for a period of five years following the effective date of this order and thereafter upon request.

For purposes of this subparagraph, the term "penetration rate" means the percentage of all contracts eligible for credit insurance on which charges for such insurance are made. In reporting penetration rates the respondents must state the total number and dollar amount of loans and installment contracts entered into which were eligible for credit insurance, stated separately for credit life and credit accident and health (disability) insurance.

(b) That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents at their home and regional offices and in each of their subsidiary loan offices which are engaged in the extension of consumer loans, and that respondents secure a signed statement acknowledging receipt of said copy of this order from each such person.

(c) That respondents notify the Commission within thirty (30) days of any change in the corporate respondents which may affect compliance obligations with regard to the extension of consumer loans arising out of this order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation with regard to the extension of consumer loans

which may affect compliance obligations arising out of this order.

(d) Respondents herein shall, within sixty (60) days after service of this order, and annually for five (5) years thereafter, file with the Commission a written report setting forth in detail the manner and form of their compliance with this order. The expiration of the obligation to file such reports shall not affect any other obligation arising under this order.

Attachment A

VOLUNTARY INSURANCE ELECTION

YOU ARE NOT REQUIRED TO PURCHASE CREDIT LIFE OR DISABILITY INSURANCE TO OBTAIN THIS LOAN. YOUR DECISION ABOUT INSURANCE DOES NOT AFFECT THE AMOUNT OF CREDIT APPROVED FOR YOU.

Insurance Premiums
(if desired)

Credit Life	$ _____
Credit Disability (accident & health)	$ _____
Combined Life and Disability	$ _____

YOUR CHOICES ARE SHOWN BELOW. IF YOU ELECT TO PURCHASE CREDIT INSURANCE, THE PREMIUM(S) WILL BE PAID FROM THE PROCEEDS OF THE LOAN ON YOUR BEHALF BY THE LENDER. I/WE HAVE CHOSEN THE FOLLOWING OPTION:

I/We Do NOT Want Credit Insurance	I/We Want Credit Life Only	I/We Want Credit Disability Only	I/We Want Credit Life & Disability
_____ (Borrower)	_____ (Borrower)	_____ (Borrower)	_____ (Borrower)
_____ (Co-Signer)	_____ (Co-Signer)	_____ (Co-Signer)	_____ (Co-Signer)
_____ Date	_____ Date	_____ Date	_____ Date

By the Commission, Commissioner Pitofsky not participating.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-21557 Filed 8-2-78; 8:45 am]

[7040-01]

Title 18—Conservation of Power and Water Resources

CHAPTER 8—SUSQUEHANNA RIVER BASIN COMMISSION

PART 803—REVIEW OF PROJECTS

Establishment of Certain Standards Governing Groundwater Development

ACTION: Final rule.

SUMMARY: This rule amends the Commission's regulations governing review of projects by adding a new section establishing certain requirements of groundwater developers. The regulation requires groundwater developers to meter withdrawals, monitor water table levels, report water quality information, develop a water conservation program, and undertake a program to minimize losses from any distribution system. The present lack of knowledge about groundwater conditions and availability makes current and future users vulnerable to groundwater shortages and contamination.

EFFECTIVE DATE: August 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert J. Bielo, Executive Director, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pa. 17102, 717-238-0422.

SUPPLEMENTARY INFORMATION: On March 27, 1978, the Commission published in the FEDERAL REGISTER a notice of proposed rulemaking and the groundwater development regulation, as proposed, together with information supporting the need for such a regulation. The notice invited interested parties to comment on the proposed regulation in writing by May 31, 1978, or at a public hearing scheduled and held on May 11, 1978.

After consideration of all relevant material presented at the hearings and written submissions, the Commission modified slighty the proposed regulation. It changed the pumping test requirment from a 24-hour test to a 72-hour test to enhance the reliability of the test results. It changed the requirement of groundwater users to meter well production from a daily requirement to a weekly requirement. Two parameters, bicarbonate and chromium, were added to the water quality analyses to be conducted by groundwater developers. A final modification was the addition of section (f) recognizing that the regulation's requirements might impose a hardship, in some cases. Section (f) provides minimal discretionary authority for the Commission to exempt a particular user so long as the regulation's purpose is not jeopardized. With one exception, all the comments received were favorable.

Accordingly, the Commission adopted the following regulation pursuant to its authority in the Susquehanna River Basin Compact, Pub. L. 91-575, 84 Stat. 1509 et. seq. (Dec. 24, 1970).

Subpart D—Standards for Review

§ 803.62 Groundwater withdrawals.

Any project sponsor proposing to withdraw groundwater from a single well or a well field in excess of 100,000 gpd or proposing to increase an existing withdrawal to more than 100,000 gpd shall comply with the following requirements:

(a) *Drilling report.* Upon completion of the production well(s) the project sponsor shall supply the Commission with a report for each production well that includes: Drillers' log, well drilling method, depth to which the casing was set, the inside diameter of the casing, diameter of the well bore, how the well was completed (screen size and length, if any), depth to water yielding zones, approximate yield from each zone, and location on a U.S.G.S. topographic map.

(b) *Pumping test.* The project sponsor shall conduct a minimum 72-hour constant yield or step drawdown pumping test on the production well(s) during a period of time of average or below average seasonal streamflow conditions. In general, water levels in the pumped and one or more properly spaced, hydraulically connected observation well(s) shall be recorded on a prescribed time schedule during the test and for an equal period of time following the test, as prescribed by the Commission or by the appropriate agencies of the Commission's signatory parties. Review and approval by the Susquehanna River Basin Commission of the test procedures to be used by the applicant is necessary before the test is started. The pumping rate, the drawdown and recovery water level data shall be furnished by the project sponsor upon completion of the test.

(c) *Metering.* Groundwater users shall meter and record their weekly well production. The records shall be transmitted to the Commission annually.

(d) *Monitoring.* Groundwater users shall monitor groundwater levels monthly in one or more observation wells (if available) in the area of the production well. This will indicate the range of natural seasonal fluctuation in groundwater levels and trends that may result from droughts, over pumpage of the aquifer and the effects of man's activity in the recharge areas. The observation wells should be in the same aquifer as the production well. Groundwater levels are to be measured to one-tenth of a foot, with actual depth of water related to a land surface datum line. Groundwater levels recorded by the user shall be reported to the Commission annually.

(e) *Water quality.* The groundwater users shall sample and analyze the raw water supply for submittal with the application and every 3 years thereafter. The water quality analyses shall include the following parameters: Conductance (micromhos at 25° C), pH, Arsenic (As), Aluminum (Al), Bicarbonate (HCO_3), Cadmium (Cd), Carbon Chloroform Extract (Cce), Calcium (Ca), Chloride (Cl), Chromium (Cr), Hardness (Total), Iron (Fe), Manganese (Mn), Magnesium (Mg), Nickel (Ni), Nitrate (NO_3), Potassium (K), Sodium (Na), Sulfate (SO_4), Fluoride (F), Dissolved Solids (residue on evaporation at 180° C), and Zinc (Zn). If the groundwater will be used for potable purposes additional sampling and analyses shall be conducted which will conform with the national primary drinking water regulations.

(f) The Commission may, in its discretion, modify the requirements of (a), (b), (c), (d), or (e) of this section if the essential purposes of the groundwater program continue to be served.

(g) *Conservation.* Groundwater users shall develop a conservation program appropriate to their use that includes improved utilization of water through recycling, devices to reduce usage, quantities and frequencies, and other measures to reduce water demand. The proposed conservation program shall be submitted to the Commission for review and approval within 1 year following approval of the groundwater development.

(h) *System losses.* Groundwater users with a distribution system shall undertake a program to continuously monitor for and correct any system leaks to reduce and keep losses from the system to a minimum. This may be accomplished through metering the distribution system and, ideally, customer use. The project sponsor shall submit annual reports to the Commission accounting the measures taken to monitor and correct detected system leaks.

Dated: July 13, 1978.

ROBERT J. BIELO,
Executive Director.

[FR Doc. 78-21554 Filed 8-2-78; 8:45 am]

[4830-01]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7556]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Disposition of Section 306 Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to section 306 stock. The regulations clarify the definition of the term "section 306 stock" and eliminate various other ambiguities in the regulations under section 306. Furthermore, the regulations provide the public with the guidance needed to comply with changes to the applicable tax law made by the Tax Reform Act of 1976.

DATE: The regulations apply to stock received on or after June 22, 1954, in transactions not subject to the provisions of the Internal Revenue Code of 1939.

FOR FURTHER INFORMATION CONTACT:

Jack A. Levine of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224. Attention: CC:LR:T, 202-566-3474, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 15, 1978, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 306 of the Internal Revenue Code of 1954 (43 FR 10705). The amendments were proposed to clarify the definition of the term "section 306 stock," to eliminate other ambiguities in the regulations under section 306 and to conform the regulations to section 1901 of the Tax Reform Act of 1976 (90 Stat. 1764). No comments have been received, and the proposed amendment of the regulations is adopted without change by this Treasury decision.

DRAFTING INFORMATION

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

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, the amendment to 26 CFR Part 1, as proposed, is hereby adopted without change.

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

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: July 17, 1978.

DONALD C. LUBICK,
Assistant Secretary of the Treasury.

§ 1.306 [Deleted]

Paragraph 1. Section 1.306 is deleted.

§ 1.306-1 [Amended]

PAR. 2. Section 1.306-1 is amended as follows:

1. The phrase "gain from the sale of property which is not a capital asset," is deleted from the first sentence of paragraph (a) and the phrase "ordinary income" is inserted in lieu thereof.

2. The phrase "gain from the sale of property not a capital asset" is deleted from the first sentence of paragraph (b)(1) and the phrase "ordinary income" is inserted in lieu thereof.

3. The fourth sentence of paragraph (b)(1) is amended by deleting the phrase "While the amount of earnings and profits at the time of the distribution is one of the measures of the amount to be treated as ordinary income," and by capitalizing the first letter of the word "no".

4. The phrase "gain from the sale of property which is not a capital asset" is deleted from each example of paragraph (b)(2) and the phrase "ordinary income" is inserted in lieu thereof.

5. The second sentence of paragraph (c) is deleted.

PAR. 3. Section 1.306-3 is amended as follows:

1. Paragraph (a) is revised.

2. Paragraph (b) is revised.

3. The phrase "as of" is deleted from paragraph (g)(2) each time it appears and the phrase "by reference to" is inserted in lieu thereof.

4. The phrase "gain from the sale of property which is not a capital asset" is deleted from the first sentence of paragraph (h) and the phrase "ordinary income" is inserted in lieu thereof.

5. The second sentence of paragraph (i) is deleted.

The added and revised provisions read as follows:

§ 1.306-3 Section 306 stock defined.

(a) For the purpose of subchapter C, chapter 1 of the Code, the term "section 306 stock" means stock which meets the requirements of section 306(c)(1). Any class of stock distributed to a shareholder in a transaction in which no amount is includible in the income of the shareholder or no gain or loss is recognized may be section 306 stock, if a distribution of money by the distributing corporation in lieu of such stock would have been a dividend in whole or in part. However, except as provided in section 306(g), if no part of a distribution of money by the distributing corporation in lieu of such stock would have been a dividend, the stock distributed will not constitute section 306 stock.

(b) For the purpose of section 306, rights to acquire stock shall be treated as stock. Such rights shall not be section 306 stock if no part of the distribution would have been a dividend if money had been distributed in lieu of the rights. When stock is acquired by the exercise of rights which are treated as section 306 stock, the stock acquired is section 306 stock. Upon the disposition of such stock (other than by redemption or within the exceptions listed in section 306(b)), the proceeds received from the disposition shall be treated as ordinary income to the extent that the fair market value of the stock rights, on the date distributed to the shareholder, would have been a dividend to the shareholder had the distributing corporation distributed cash in lieu of stock rights. Any excess of the amount realized over the sum of the amount treated as ordinary income plus the adjusted basis of the stock, shall be treated as gain from the sale of the stock.

* * * * *

§§ 1.391 and 1.391-1 [Deleted]

PAR. 4. Sections 1.391 and 1.391-1 are deleted.

§§ 1.392 and 1.392-1 [Deleted]

PAR. 5. Sections 1.392 and 1.392-1 are deleted.

§§ 1.393 and 1.393-3 [Deleted]

PAR. 6. Sections 1.393 through 1.393-3 are deleted.

§§ 1.394 and 1.394-1 [Deleted]

PAR. 7. Sections 1.394 and 1.394-1 are deleted.

§§ 1.395 and 1.395–1 [Deleted]

PAR. 8. Sections 1.395 and 1.395–1 are deleted.

[FR Doc. 78-21610 Filed 8-2-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 931-8]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Approval of Revision to the Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This notice announces the Administrator's approval of amendments to the Commonwealth of Virginia's regulation for the control and abatement of air pollution for State region 7 as a revision of the Commonwealth's State implementation plan (SIP). The revision consists of changes to the State's regulations to control hydrocarbon emissions from stationary sources and changes to associated definitions.

EFFECTIVE DATE: September 5, 1978.

ADDRESSES: Copies of the approved SIP revision, including related supplemental information provided by the Commonwealth are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, 10th Floor, 6th and Walnut Streets, Philadelphia, Pa. 19106, Attention: Mr. Harold Frankford.

Virginia State Air Pollution Control Board, Room 1106—Ninth Street Office Building, Richmond, Va. 23219. Attention: Mr. William Meyer.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Harold A. Frankford (3AH11) U.S. Environmental Protection Agency, Region III, Curtis Building, 10th Floor, 6th and Walnut Streets, Philadelphia, Pa. 19106, phone 215-597-8392.

SUPPLEMENTARY INFORMATION: On April 16, 1974, the Commonwealth of Virginia submitted to the administrator a proposed revision of the Virginia State implementation plan for the attainment and maintenance of national ambient air quality standards. The submittal consisted of amendments to sections I and IV of the Virginia regulations for the control and abatement of air pollution for State region 7 (the Virginia portion of the National Capital interstate air quality control region).

Section I of the Virginia regulations is the definition section; Virginia has made several changes to definitions pertaining to hydrocarbon and oxidant control. Section IV is the emission limitation section for existing sources; the Commonwealth amended rule 4.705.03, the rule on stationary sources of hydrocarbons in State region 7. Other amendments submitted pertain to regulations to control carbon monoxide and nitrogen dioxide emissions from stationary sources.

On August 28, 1974, Virginia provided certification that hearings has been held as required by 40 CFR Section 51.4. On October 1, 1974 (39 FR 35386), the Regional Administrator acknowledged receiving these amendments, proposed them as a revision of the Virginia SIP, and provided for a 30-day public comment period.

During the comment period, comments were received from the Virginia Petroleum Industries and the Virginia Farm Bureau Federation. Both parties favored the vapor control regulations proposed by Virginia. However, EPA decided later that the amendments to vapor recovery regulations, 4.705.03 (e) and (f), as well as revisions of regulations to control carbon monoxide and nitrogen dioxide from stationary sources, 4.705.04(a) and 4.705.05(b) respectively, should be handled separate from the other hydrocarbon control regulations. This decision was taken because certain elements of a more recent Virginia SIP revision submittal had substantially affected EPA's evaluation of the vapor recovery, carbon monoxide and nitrogen dioxide control regulations.

EPA evaluated this proposed SIP revision affecting control of hydrocarbon emissions in relation to the latest information available concerning reactivity levels of volatile organic compounds (VOC). It is now evident that organic compounds other than those previously thought to be "photochemically reactive" may be significantly contributing to the formation of photochemical oxidants. As such there was some concern, because the Commonwealth had made a distinction between photochemically reactive and photochemically non-reactive organic compounds. However, as is consistent with the Administrator's most recent guidance (42 FR 35314) concerning the control of volatile organic compounds, using "rule 66" type control measures, the EPA has determined that the Commonwealth's amended regulations are effective interim control measures and acceptable as a revision of the Commonwealth's SIP.

Nevertheless, State region 7 has been designated by EPA as a non-attainment area for photochemical oxidants (43 FR 8962) under section 107 of the amended Clean Air Act. Accordingly, the Commonwealth of Virginia is required to submit a control plan designed to attain and maintain the national ambient air quality standards (NAAQS) for photochemical oxidants in accordance with the requirements of part D of the amended Clean Air Act. These control plans must be submitted to EPA no later than January 1, 1979. Until that time, those portions of the SIP revision pertaining to the concept of reactivity constitute interim measures and cannot be considered as reductions of organic emissions for purposes of estimating attainment of the NAAQS for photochemical oxidants.

In view of EPA's evaluation, the Administrator hereby approves the amendments to Section I, Subpart 1.01, "Certain Terms Defined" as follows: "hydrocarbon", "liquid organic compound", "loading facility", "organic compound", "photochemically reactive organic compound", "vapor pressure", "gasoline", "submerged fill pipe", "volatile organic compound", and changes to Section IV, Subparts 4.705.03(b) Effluent Water Separators; 4.705.03(c) Storage of Volatile Organic Compounds; 4.705.03(d) Bulk Loading of Volatile Organic Compounds; 4.705.03(g) Submerged Fill-Storage Vessel; 4.705.03(h) Pumps and Compressors; 4.705.03(i) Waste Gas Disposal; 4.705.03(j) Liquid Organic Compounds; 4.705.03(k) Architectural Coatings; 4.705.03(l) Disposal and Evaporation of Liquid Organic Compounds, as a revision of Virginia's State implementation plan.

TABLE I.—*Amendments to Virginia Regulations for the Control and Abatement of Air Pollution for State Region 7*

Section I, subpart 1.01, Certain Terms Defined:
Additions: Architectural Coating, Hydrocarbon, Liquid Organic Compound, Loading Facility, Organic Compound, Photochemically Reactive Organic Compound, Vapor Pressure.
Amendments: Gasoline, Submerged Fill Pipe, Volatile Organic Compound.
Deletions: 4.705.03(g)(10-12), Organic Solvents.
Section IV, Control of Hydrocarbon Emissions from *Stationary Sources.*

Original rule 705, sec. .03	Amended, rule 705, sec. .03
(d) Volatile Organic Compound Water Separation	(b) Effluent Water Separators (the words, "volatile organic compounds" changed to "photochemically reactive volatile organic compounds").
(b) Storage of Volatile Organic Compounds	(c) Storage of Volatile Organic Compounds (deletion of para. (4) of original which pertains to vapor recovery).
(c) Volatile Organic Compounds Loading Facilities	(d) Bulk Loading of Volatile Organic Compounds (addition of par. (4) which pertains to loading facilities which load more than 20,000 gals/day).
	(g) Submerged Fill-Storage Vessel (addition).
(e) Pumps and Compressors	(h) Pumps and Compressors (the words, "may be" are deleted).
(f) Waste Gas Disposal	(i) Waste Gas Disposal (the words, "waste gas stream" are replaced with the words, "photochemically reactive organic compound").
(g) (1-10) Organic Solvents	(j) (1-10) Liquid Organic Compounds (various minor word changes indicating photochemical reactivity).
(h) Architectural Coatings	(k) Architectural Coatings (minor word changes to insure consistency with new definition).
(i) Disposal and Evaporation of Solvents	(l) Disposal and Evaporation of Liquid Organic Compounds (the words, "photochemically reactive solvent" changed to "photochemically reactive liquid organic compound").

The proposed SIP revision meets the requirements of section 110 of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of State Implementation Plans. Accordingly, the Administrator hereby amends 40 CFR 52.2420(c) to incorporate the above-cited amendments as part of the Virginia State implementation plan.

(42 U.S.C. 7401.)

Dated: July 21, 1978.

BARBARA BLUM,
Acting Administrator.

Part 52 of title 40, Code of Federal Regulations is amended as follows:

Subpart VV—Virginia

1. In § 52.2420, paragraph (c)(15) is added as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified
* * *

(15) Amendments to section I, subpart 1.01, Certain Terms Defined and to section IV, Control of Hydrocarbon Emissions from Stationary Sources, of the Commonwealth of Virginia Regulations for the Control and Abatement of Air Pollution submitted on April 16, 1974, by the Commonwealth Secretary of Commerce and Resources.

[FR Doc. 78-21332 Filed 8-2-78; 8:45 am]

[6560-01]

[FRL 923-1]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces approval of a request from the State of New Jersey to revise its State implementation plan (SIP). This revision will have the effect of continuing a current temporary relaxation for 17 sources in southern New Jersey of a State regulation limiting the sulfur content of fuel oil. The current regulatory sulfur-in-fuel-oil limitation is 0.3 percent sulfur, by weight, for eight of these sources and 1.0 percent sulfur, by weight, for the other nine. Under provisions of the SIP revision, the relaxations will allow, until July 12, 1978, the burning of fuel oil containing up to 2.5 percent sulfur, by weight. Receipt of the revision request from New Jersey was announced in the FEDERAL REGISTER on April 28, 1978 at 43 FR 18216 where a full description of the proposed revision is contained.

DATES: This action becomes effective August 3, 1978.

FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, N.Y. 10007, 212-264-2517.

SUPPLEMENTAL INFORMATION: On January 10, 1978 the Environmental Protection Agency (EPA) received a proposed revision to the New Jersey State implementation plan (SIP). The State's SIP revision submittal consisted of 17 administrative orders and a notice of public hearing, including a recent summary of air quality data for the southern New Jersey area. Each administrative order advised a source that the State had granted it a further relaxation, until July 12, 1978, from the existing sulfur-in-fuel limitation for that source and that this action was pending EPA approval.

Sulfur content of fuel oil is normally regulated under title 7, chapter 27, subchapter 9 of the New Jersey Administrative Code (N.J.A.C. 7:27-9.1 et seq.), "Sulfur in Fuel." A public hearing on the proposed revision was held on January 9, 1978. A complete list of the affected sources and the limitations imposed under the approved orders and the previously existing regulation are provided in table 1.

TABLE 1.—*New and prior sulfur in fuel oil limitations*

Source	Location	Percent sulfur, by weight	
		Prior limitation	New limitation
National Bottle Corp	Salem City, Salem County	0.3	2.0
E.I. du Pont de Nemours & Co	Deepwater, Salem County	.3	1.5

TABLE 1.—*New and prior sulfur in fuel oil limitations* —Continued

Source	Location	Percent sulfur, by weight	
		Prior limitation	New limitation
Heinz-U.S.A	Salem City, Salem County	.3	2.0
B. F. Goodrich Chemical Co	Pedricktown, Salem County	.3	1.5
Anchor Hocking Corp	Salem City, Salem County	.3	2.0
Atlantic City Electric, Deepwater Station	Penns Grove, Salem County	.3	1.5
E.I. du Pont de Nemours & Co	Carney's Point, Salem County	.3	1.5
Mannington Mills, Inc	Salem City, Salem County	.3	2.0
Atlantic City Electric, B. L. England Station	Beesley Point, Cape May County	1.0	2.0
Kerr Glass Manufacturing Corp	Millville City, Cumberland County	1.0	2.5
Owens Illinois, Inc., Kimble Products Division	Vineland City, Cumberland County	1.0	2.5
Leone Industries	Bridgeton, Cumberland County	1.0	2.5
Progresso Food Corp	Vineland City, Cumberland County	1.0	2.5
Bridgeton Dyeing & Finishing Corp	Bridgeton City, Cumberland County	1.0	2.5
Vineland Chemical Co	Vineland City, Cumberland County	1.0	2.5
Hunt-Wesson Foods, Inc	Bridgeton, Cumberland County	1.0	2.5
Owens Illinois, Inc	do	1.0	1.5

The proposal for revision to the SIP was announced in the FEDERAL REGISTER on April 28, 1978 at 43 FR 18216, where a detailed description of the revision is provided. In this notice EPA advised the public that comments would be accepted as to whether the proposed revision to the New Jersey State implementation plan should be approved or disapproved. Two comments in support of the revision were received.

Based upon the air quality data accompanying the proposed revision and previously submitted analyses of air quality impact, EPA has found this revision to the New Jersey implementation plan consistent with the requirements of section 110(a) of the Clean Air Act and EPA regulations found at 40 CFR Part 51. Accordingly, EPA approves this revision. Furthermore, this action is being made effective immediately because the revision expires July 12, 1978 and imposes no hardship on the affected sources.

Dated: July 27, 1978.

DOUGLAS M. COSTLE,
Administrator,
Environmental Protection Agency.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart FF—New Jersey

1. Section 52.1570 paragraph (c) is amended by adding a new subparagraph (17) as follows:

§ 52.1570 **Identification of plan.**

* * * * *

(c) Supplemental information was submitted on:

* * * * *

(17) A revision submitted by the New Jersey Department of Environmental Protection consisting of a January 10, 1978 letter indicating the extension, to July 12, 1978, of "variances" to the provisions of the New Jersey Administrative Code (N.J.A.C.) 7:27—9.1 et seq., Sulfur in Fuel, for 17 facilities and accompanying supplemental information. The extended "variances" including all their terms and conditions are made a part of the New Jersey State implementation plan. The facilities affected by these "variances," their locations, and applicable sulfur-in-fuel-oil limitations until July 12, 1978 are as follows:

Source	Location	Sulfur in fuel oil limitation (percent by weight)
National Bottle Corp	Salem City, Salem County	2.0
E. I. du Pont de Nemours & Co	Deepwater, Salem County	1.5
Heinz-U.S.A	Salem City, Salem County	2.0
B. F. Goodrich Chemical Co	Pedricktown, Salem County	1.5
Anchor Hocking Corp	Salem City, Salem County	2.0
Atlantic City Electric, Deepwater Station	Penns Grove, Salem County	1.5
E. I. du Pont de Nemours & Co	Carney's Point, Salem County	1.5
Mannington Mills, Inc	Salem City, Salem County	2.0
Atlantic City Electric, B. L. England Station	Beesley Point, Cape May County	2.0
Kerr Glass Manufacturing Corp	Millville City, Cumberland County	2.5
Owens Illinois, Inc., Kimble Products Division	Vineland City, Cumberland County	2.5
Leone Industries	Bridgeton, Cumberland County	2.5
Progresso Food Corp	Vineland City, Cumberland County	2.5
Bridgeton Dyeing & Finishing Corp	Bridgeton City, Cumberland County.	2.5
Vineland Chemical Co	Vineland City, Cumberland County	2.5
Hunt-Wesson Foods, Inc	Bridgeton, Cumberland County	2.5
Owens Illinois, Inc	do	1.5

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

[FR Doc. 78-21441 Filed 8-2-78; 8:45 am]

[6560-01]

[FRL 932-8]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Arizona Plan Revision: Maricopa County Air Pollution Control District

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on revisions to the Maricopa County Air Pollution Control District portion of the Arizona State Implementation Plan (SIP) submitted by the Governor. The intended effect of this action is to update rules and regulations, and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: September 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air & Hazardous Materials Division, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, Calif. 94105. Attn: Erik Hauge, 415-556-7595.

SUPPLEMENTARY INFORMATION: On October 17, 1977 (42 FR 55481), EPA published a notice of proposed rulemaking for revisions to the rules and regulations of the Maricopa County Air Pollution Control District submitted by the Arizona Department of Health Services on July 29, 1977, for inclusion in the Arizona SIP.

The above mentioned submittal, acted upon by this notice, contains all of Maricopa County's continuous monitoring requirements.

The proposed rulemaking provided 30 days for public comments. No comments were received.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the submitted regulations as SIP revisions. It is the purpose of this notice to approve all the revisions contained in the July 29, 1977, submittal and incorporate them into the Arizona SIP, with the exception of those rules discussed below.

No action is being taken on regulation III, rules 36, "Standards of Performance for New Stationary Sources," (NSPS) and 37, "Emission Standards for Hazardous Air Pollutants," (NESHAPS). These two rules implement sections 111 and 112 of the

Clean Air Act, and are not appropriate for inclusion in a State Implementation Plan under section 110 of the Act. However, the two rules were reviewed under the appropriate provisions of sections 111 and 112 and authority to implement and enforce NSPS and NESHAPS was delegated to Maricopa County on August 24, 1977. The delegation will appear in the FEDERAL REGISTER in the near future.

Regulation IV, rule 41, paragaraph B, sections 6.0-6.4, *Special Consideration;* is disapproved as it does not contain the specific criteria for determining those physical limitations or extreme economic situations where alternative monitoring requirements would be applicable. Therefore this section does not meet the minimum requirements of 40 CFR 51.19(e).

Although the remaining continuous monitoring regulations are approved, the continous monitoring portion of the plan is disapproved as it does not meet all the requirements of 40 CFR 51.19(e), specifically, appendix P, sections 3.3 to 3.9.5.

Certification has been received from the Arizona Department of Health Services that the public hearing requirements of 40 CFR 51.4 have been satisfied.

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

Dated: July 28, 1978.

BARBARA BLUM,
Acting Administrator.

Subpart D of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart D—Arizona

1. Section 52.120, paragraph (c) is amended by the addition of subparagraph (26) as follows:

§ 52.120 Identification of plan.

* * * * * * *

(c) * * *

(26) Maricopa County Air Pollution Control District Regulation IV, rule 41, paragraph B (Continuously Monitoring and Recording Emissions) submitted on July 29, 1977.

2. Section 52.130 is amended by the addition of paragraph (e) as follows:

§ 52.130 Source surveillance.

* * * * * * *

(e) The requirements of § 51.19(e) of this chapter are not met since the plan does not provide sufficient regulations to meet the minimum specifications of appendix P in Maricopa County in the Phoenix-Tucson Intrastate Region. Additionally, Maricopa County Air Pollution Control Regulation IV, rule 41, paragraph B, §§ 6.0-6.4 (Special Consideration) is disapproved since it does not contain the specific criteria for determining those physical limitations or extreme economic situations where alternative monitoring requirements would be applicable.

[FR Doc. 78-21512 Filed 8-2-78; 8:45 am]

[6560-01]

[FRL 918-7]

PART 209—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE NOISE CONTROL ACT OF 1972

Promulgation of Interim Rules

AGENCY: Environmental Protection Agency.

ACTION: Promulgation of interim rules of practice.

SUMMARY: This notice promulgates interim rules of practice to govern administrative proceedings for orders issued pursuant to section 11(d) of the Noise Control Act of 1972. The rules address the procedures to be followed by the parties to these proceedings. They also provide procedural guidelines for the administrative law judge, who presides over those proceedings involving hearings. Without adequate procedures, the effect of any order issued under section 11(d) will be diminished by the delays which accompany ad hoc decision and policy making. These delays are contrary to the interest of the public, the environment, and the Agency. Thus, the Agency is implementing the statutory requirements of the Noise Control Act by promulgating the following interim rules of practice.

DATE: Comments must be submitted on or before October 2, 1978.

ADDRESS: Director, Noise Enforcement Division (EN-387), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Richard G. Kozlowski, Director, Noise Enforcement Division (EN-387), U.S. Environmental Protection Agency, Washington, D.C. 20460, 703-557-7470.

SUPPLEMENTARY INFORMATION:

1. INTRODUCTION

Section 11(d) of the Noise control Act of 1972, 42 U.S.C. 4910 (the Act), provides that the Administrator of the Environmental Protection Agency may issue orders to remedy violations of section 10(a) of the Act. These orders will be issued only after notice and opportunity for an adjudicatory hearing under the Administrative Procedure Act. A notice of intent to develop these procedures was published in the FEDERAL REGISTER on September 16, 1977 (42 FR 46558).

Without adequate procedures, the effect of any order issued under section 11(d) will be diminished by the delays which accompany ad hoc decision and policymaking. These delays are contrary to the interest of the public, the environment and the Agency. Thus, the Agency is implementing the statutory requirements of the Noise Control Act by promulgating the following interim rules of practice.

These rules of practice are promulgated in interim form to take effect August 3, 1978, so that they will be available for enforcement actions on new product noise standards promulgated under § 6 of the Act, the first of which took effect January 1, 1978. Final procedures will be promulgated after consideration of public comments to these procedures, as set forth below.

2. SUMMARY OF THE PROCEDURES

All proceedings under this subpart are initiated by a complaint under § 209.5, which contains a proposed remedial order and notice of the respondent's right to request a hearing. In the complaint, the Agency may require the respondent to submit a proposed remedial plan describing how the order may be effectively implemented. The Administrator may approve the respondent's proposed remedial plan under § 209.10, require revisions to it, or prepare the plan him/herself.

If the respondent does not request a hearing within 20 days, the proposed remedial order becomes effective. This is a final order, although the respondent may move to reopen the proceedings upon a proper showing, as provided in § 209.7.

Hearings will be granted as a matter of right when requested in the respondent's answer within 20 days of service of the complaint upon the respondent. Section 209.6 sets out the requirements for the answer and provisions for amending the answer.

If a hearing is requested, an administrative law judge will be assigned to the case, as set forth in § 209.18. The administrative law judge will preside over any § 209.20 prehearing conferences. He or she will also rule on petitions to intervene and the scope of intervention, as provided by §§ 209.15 and 209.16.

The procedures for and scope of discovery, including procedures for the protection of trade secrets and privileged information, are set forth in §§ 209.21-209.23.

After the transcript of the hearing and the rest of the record have been

made available to the parties, any party has the option under § 209.29, to submit proposed findings of fact, conclusions of law and a proposed rule or order to the administrative law judge. The administative law judge will consider these submissions, and then issue his or her decision in the hearing under § 209.30. The administrative law judge's decision may be appealed to the Administrator under § 209.31, which also sets forth time limits for the filing of briefs. If no appeal is taken, the administrative law judge's opinion becomes the decision of the Agency. Even if no party appeals to the Administrator, the Administrator may review the administrative law judge's decision, as provided by § 209.32. Any party may petition the Administrator for reconsideration of the Administrator's decision under § 209.34, and may appeal the final decision to the courts, as set forth in § 209.36.

All cases may not go through a full hearing. Default orders may be issued under § 209.24 if the respondent fails to comply with a prehearing or hearing order. An accelerated decision may be rendered under § 209.25, where, for example, the administrative law judge rules that a party has failed to state a claim upon which relief can be granted, or where there is no genuine issue of material fact and a party is entitled to judgment as a matter of law. The administrative law judge may use the accelerated decision to rule upon one or more of the issues in the proceeding, while reserving the remaining issues for disposition after the full hearing.

Non-adjudicatory resolution is encouraged by the settlement process guidelines. Under § 209.19, consent decrees will embody settlements consistent with the provisions and objectives of the Act and regulations. Consent agreements are effective only after final order of the Administrator.

3. Drafting Information

The principal author of this document is Mr. James J. Kerr, Attorney Advisor with the Noise Enforcement Division.

4. Future Intent

Interested persons may submit written comments to these procedures to: Director, Noise Enforcement Division (EN-387), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

All comments received on or before October 2, 1978, will be considered. Comments received after publication of these interim rules of practice will be available for public inspection during normal working hours (8 a.m. to 4:30 p.m.) at the Public Information Center, 401 M Street SW., Washington, D.C. 20460.

Final rules of practice will be promulgated as soon as possible, pending the Administrator's consideration of the comments.

These interim rules of practice are promulgated under the authority of sections 11, 13, and 16 of the Noise Control Act of 1972 (42 U.S.C. 4910, 4912, 4915).

Dated: July 21, 1978.

Barbara Blum,
Acting Administrator.

In consideration of the foregoing, a new subpart A is added to part 209 on an interim basis, as follows:

Subpart A—Rules of Practice Governing Hearings for Orders Issued Under Section 11(d) of the Noise Control Act

Sec.

209.1 Scope.
209.2 Use of number and gender.
209.3 Definitions.
209.4 Issuance of complaint.
209.5 Complaint.
209.6 Answer.
209.7 Effective date of order in complaint.
209.8 Submission of a remedial plan.
209.9 Contents of a remedial plan.
209.10 Approval of plan, implementation.
209.11 Filing and service.
209.12 Time.
209.13 Consolidation.
209.14 Motions.
209.15 Intervention.
209.16 Late intervention.
209.17 Amicus curiae.
209.18 Administrative law judge.
209.19 Informal settlement and consent agreement.
209.20 Conferences.
209.21 Primary discovery (exchange of witness lists and documents).
209.22 Other discovery.
209.23 Trade secrets and privileged information.
209.24 Default order.
209.25 Accelerated decision; dismissal.
209.26 Evidence.
209.27 Interlocutory appeal.
209.28 Record.
209.29 Proposed findings, conclusions.
209.30 Decision of the administrative law judge.
209.31 Appeal from the decision of the administrative law judge.
209.32 Review of the administrative law judge's decision in absence of appeal.
209.33 Decision on appeal or review.
209.34 Reconsideration.
209.35 Conclusion of hearing.
209.36 Judicial review.

Authority: Sec. 11, Noise Control Act of 1972 (42 U.S.C. 4910) and additional authority as specified.

Subpart A—Rules of Practice Governing Hearings for Orders Issued Under Section 11(d) of the Noise Control Act

§ 209.1 Scope.

These rules of practice govern all proceedings conducted in the issuance of an order under section 11(d) of the Noise Control Act of 1972, 42 U.S.C. 4910.

§ 209.2 Use of number and gender.

In these rules of practice, words in the singular number apply to the plural and words in the masculine gender apply to the feminine and vice versa.

§ 209.3 Definitions.

All terms not defined in this section shall have the meaning given them in the Act.

(a) "Act" means the Noise Control Act of 1972 (42 U.S.C. 4901, et seq.).

(b) "Administrative law judge" means an administrative law judge appointed under 5 U.S.C. 3105 (see also 5 CFR Part 930, as amended by 37 FR 16787). "Administrative law judge" is synonymous with "hearing examiner" as used in title 5 of the United States Code.

(c) "Administrator" means the Administrator of the Environmental Protection Agency or his or her delegate.

(d) "Agency" means the U.S. Environmental Protection Agency.

(e) "Complainant" means the Agency acting through any person authorized by the Administrator to issue a complaint to alleged violators of the Act. The complainant shall not be the judicial officer or the Administrator.

(f) "Hearing clerk" means the hearing clerk of the Environmental Protection Agency.

(g) "Intervener" means a person who files a motion to be made a party under § 209.15 or § 209.16, and whose motion is approved.

(h) "Party" means the Environmental Protection Agency, the respondent(s) and any interveners.

(i) "Person" means any individual, corporation, partnership, or association, and includes any officer, employee, department, agency or instrumentality of the United States, a State, or any political subdivision of a State.

(j) "Respondent" means any person against whom a complaint has been issued under this subpart.

(k) "Judicial officer" means an officer or employee of the Agency appointed as a judicial officer by the Administrator under this section who shall meet the qualifications and perform functions as follows:

(1) *Position.* There may be designated for the purposes of this section one

or more judicial officers. As work requires, there may be a judicial officer designated to act for a particular case.

(2) *Qualifications.* A judicial officer shall be a permanent or temporary employee of the Agency, and may perform other duties for the Agency. The judicial officer shall not be employed by the Office of Enforcement or have any connection with the preparation or presentation of evidence for a hearing held under this subpart in which he or she participates as judicial officer.

(3) *Functions.* The Administrator may consult with a judicial officer or delegate all or part of his or her authority to act under these rules of practice to a judicial officer in a given case. The judicial officer may refer any motion or case to the Administrator, even after this delegation.

§ 209.4 Issuance of complaint.

If the complainant has reason to believe that a person has violated any provision of the Act or the regulations, he or she may institute a proceeding for the issuance of a remedial order by issuing a complaint.

§ 209.5 Complaint.

(a) *Contents.* The complaint shall include (1) specific reference to each provision of the Act or regulations which respondent is alleged to have violated; (2) a brief statement of the factual basis for alleging each violation; (3) the proposed order issued under section 11(d) of the Act to remedy the violation, signed by the Assistant Administrator for Enforcement, with notice that the order shall be effective 20 days after service of the complaint unless respondent requests a hearing under § 209.6; (4) notice of respondent's right to request a hearing on any material fact or issue of law contained in the complaint, or on the appropriateness of the proposed order; and (5) a statement of whether the respondent must submit a remedial plan pursuant to § 209.8.

(b) *Amendment of the complaint.* At any time prior to the filing of an answer, the complainant may amend the complaint as a matter of right. Respondent shall have twenty (20) additional days from the date of service of the amended complaint to file an answer. At any time after the filing of an answer, the complaint may be amended upon motion granted by the administrative law judge.

(c) *Withdrawal of the complaint.* Where, on the basis of new information or evidence, the complainant concludes that no violation of the Act or the regulations has been committed by the respondent or that the issuance of the complaint was otherwise inappropriate, the complainant may withdraw the complaint without prejudice at any stage in the proceeding.

(d) *Service of complaint.* (1) Service of the complaint shall be made on the respondent personally (or on his or her representative), or by certified mail, return receipt requested.

(2) Service upon a domestic or foreign corporation or upon a partnership or another unincorporated association which is subject to suit under a common name shall be made by personal service or certified mail, return receipt requested, directed to an officer or partner, a managing or general agent, or any other agent authorized by appointment or by Federal or State law to receive service of process.

(3) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed return receipt.

§ 209.6 Answer.

(a) *General.* Where respondent (1) contests any material fact alleged in the complaint to constitute a violation of the Act or regulations; or (2) contends that the remedial order proposed in the complaint is inappropriate to the violation; or (3) contends that he or she is entitled to judgment as a matter of law, he or she shall file a written answer with the complainant. Any answer must be filed with the complainant within twenty (20) days after service of the complaint. Initiation of informal conferences with the Agency under § 209.19 does not add to the twenty (20) day period. The time period in which to file an answer may be extended by the Administrator upon motion.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Whenever an allegation is denied, the answer shall state briefly the facts upon which the denial is based. The answer shall also state (1) whether a hearing is requested, (2) the facts respondent intends to place at issue, and (3) the circumstances or arguments which are alleged to constitute the grounds of defense.

(c) *Hearing upon the issues.* A hearing upon the issues raised by the complaint and answer shall be held upon written demand of respondent.

(d) *Failure to plead specifically.* A respondent's failure to plead specifically to any material factual allegation contained in the complaint shall constitute an admission of such allegation.

(e) *Amendment of the answer.* The respondent may amend the answer upon motion granted by the administrative law judge.

§ 209.7 Effective date of order in complaint.

(a) The order in the complaint is effective and binding on respondent 20 days after service of the complaint, unless respondent requests a hearing pursuant to § 209.6. If the respondent does not request a hearing, the order is then a final order of the Agency.

(b) Respondent may file a motion with the complainant to vacate the final order, reopen the proceedings and request a hearing after the order is effective. This motion must be filed within twenty (20) days after the effective date of the order. The motion shall state the reasons respondent failed to file a timely answer, and provide the information required by § 209.6(b). The Administrator may, in his or her discretion and for good cause shown, grant the motion.

§ 209.8 Submission of a remedial plan.

(a) The Administrator may require the respondent to submit a remedial plan. Notice of this requirement and the due date will be given in the complaint. If the respondent requests a hearing, the remedial plan required by the complaint need not be submitted. The final order may include a requirement that the respondent submit a remedial plan.

(b) A respondent may always submit a remedial plan voluntarily in pursuit of informal settlement.

(Sec. 13, Noise Control Act (42 U.S.C. 4912).)

§ 209.9 Contents of a remedial plan.

(a) The Administrator will specify the requirements of the remedial plan. This may include, but is not limited to, the following information:

(1) A detailed description of the products covered by the remedial order, including the category and/or configuration if applicable, and the make, model year and model number, if applicable.

(2) A detailed description of the present location of the products, including a list of those in possession of the products and, if necessary, how the respondent intends to contact the persons in possession and retrieve the products.

(3) Any appropriate remedies the respondent would propose as an alternative to the specific remedies proposed by the Administrator.

(4) A detailed plan for implementing the remedies, both those proposed by the Administrator and those proposed by the respondent.

(5) A detailed account of the costs of implementing each of the proposed plans.

(b) Remedial plans shall be submitted to Director, Noise Enforcement Division (EN-387), Environmental Pro-

tection Agency, 401 M Street SW., Washington, D.C. 20460.

(Sec. 13, Noise Control Act (42 U.S.C. 4912).)

§ 209.10 Approval of plan, implementation.

(a) If the Administrator finds that the remedial plan is designed to remedy the noncompliance effectively, he or she will so notify the respondent in writing. If the remedial plan is not approved, the Administrator will provide the respondent with written notice of the disapproval and the reasons for the disapproval. The Administrator may give the respondent an opportunity to revise the plan, or the Administrator may revise the plan.

(b) The respondent shall commence implementation of the approved plan upon receipt of notice from the Administrator that the remedial plan has been approved, or revised by the Administrator and then approved.

(Sec. 13, Noise Control Act (42 U.S.C. 4912).)

§ 209.11 Filing and service.

(a) After an answer containing a written demand for a hearing has been filed, an original and two copies of all documents or papers required or permitted to be filed under these rules of practice shall be filed with the hearing clerk.

(b) When a party files with the hearing clerk any pleadings, any additional issues for consideration at the hearing, or any written testimony, documents, papers, exhibits, or materials, proposed to be introduced into evidence or papers filed in connection with any appeal, it shall serve copies upon all other parties. A certificate of service shall be provided on or accompany each document or paper filed with the hearing clerk. Documents to be served upon the Director of the Noise Enforcement Division shall be mailed to: Director, Noise Enforcement Division, U.S. Environmental Protection Agency (EN-387), 401 M Street SW., Washington, D.C. 20460.

(c) Service by mail is complete upon mailing. Filing is completed when the document reaches the hearing clerk. It shall be timely if mailed within the time allowed for filing as determined by the postmark.

§ 209.12 Time.

(a) In computing any period of time prescribed or allowed by these rules of practice, the day of the act or event from which the designated period of time begins to run shall not be included, except as otherwise provided. Saturdays, Sundays, and Federal legal holidays shall be included in computing any period allowed for the filing of any document or paper, except that when a period expires on a Saturday, Sunday, or Federal legal holiday, the period shall be extended to include the next following business day.

(b) A prescribed period of time within which a party is required or permitted to do an act shall be computed from the time of service, except that when service is accomplished by mail, 3 days shall be added.

§ 209.13 Consolidation.

The Administrator or the administrative law judge may consolidate two or more proceedings to be held under this section for resolving one or more issues whenever it appears that such consolidation will expedite or simplify consideration of such issues. Consolidation shall not affect the right of any party to raise any issues that could otherwise have been raised.

§ 209.14 Motions.

(a) All motions, except those made orally during the course of the hearing, shall be in writing, shall state the grounds with particularity, and shall set forth the relief or order sought.

(b) Within 10 days after service of any motion filed under this section or within such other time as may be fixed by the Administrator or the administrative law judge, as appropriate, any party may serve and file an answer to the motion. The movant shall, by leave of the Administrator or the administrative law judge, as appropriate, serve and file reply papers within the time set by the request.

(c) The administrative law judge shall rule upon all motions filed or made subsequent to his or her appointment and prior to the filing of his or her decision or accelerated decision, as appropriate. The Administrator shall rule upon all motions filed before the appointment of the administrative law judge and all motions filed after the filing of the decision of the administrative law judge or accelerated decision. Oral argument of motions will be permitted only if the administrative law judge or the Administrator, as appropriate, deems it necessary.

§ 209.15 Intervention.

(a) Persons desiring to intervene in a hearing to be held under section 11(d) of the act shall file a motion setting forth the facts and reasons why they should be permitted to intervene.

(b) In passing on a motion to intervene, the following factors, among other things, shall be considered by the administrative law judge:

(1) The nature of the movant's interest including the nature and the extent of the property, financial, environmental protection, or other interest of the movant;

(2) The effect the order which may be entered in the proceeding may have on the movant's interest;

(3) The extent to which the movant's interest will be represented by existing parties or may be protected by other means;

(4) The extent to which the movant's participation may reasonably be expected to assist materially in the development of a complete record;

(5) The extent to which one movant's participation may reasonably be expected to delay the proceedings.

(c) A motion to intervene should be filed before the first prehearing conference, the initiation of correspondence under § 209.20, or the setting of the time and place for the hearing, whichever occurs earliest. Motions shall be served on all parties. Any opposition to such motion must be filed within 10 days of service.

(d) All motions to be made an intervener shall be reviewed by the administrative law judge using the criteria set forth in paragraph (b) of this section and considering any opposition to such motion. The administrative law judge may, in granting such motion, limit a movant's participation to certain issues only.

(e) If the administrative law judge grants the motion with respect to any or all issues, he or she shall notify, or direct the hearing clerk to notify, the petitioner and all parties. If the administrative law judge denies the motion he or she shall notify, or direct the hearing clerk to notify, the petitioner and all parties and shall briefly state the reasons why the motion was denied.

(f) All motions to be made an intervener shall include the movant's agreement that the movant and any person he or she represents will be subject to examination and cross-examination, and will also include an agreement to make any supporting and relevant records available at the movant's own expense upon the request of the administrative law judge, on his or her own motion or the motion of any party or other intervener. If the intervener fails to comply with any of these requests, the administrative law judge may, in his or her discretion, terminate his or her status as an intervener.

§ 209.16 Late intervention.

Following the expiration of the time prescribed in § 209.15 for the submission of motions to intervene in a hearing, any person may file a motion with the administrative law judge to intervene in a hearing. Such a motion must contain the information and commitments required by subsection (b) and (f) of § 209.15, and, in addition, must show that there is good cause for granting the motion and must contain a statement that the movant shall be bound by agreements, arrangements,

and other determinations which may have been made in the proceeding.

§ 209.17 Amicus curiae.

Persons not parties to the proceedings who wish to file briefs may do so by leave of the Administrator or the administrative law judge, as appropriate, granted on motion. This motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. An amicus curiae shall be eligible to participate in any briefing following the granting of his or her motion, and shall be served with all briefs, reply briefs, motions and orders relating to issues to be briefed.

§ 209.18 Administrative law judge.

(a) *General.* The administrative law judge shall conduct a fair and impartial hearing in accordance with 5 U.S.C. 554, and shall take all necessary action to avoid delay and maintain order. He or she shall have all power consistent with Agency rule and with the Administrative Procedure Act, 5 U.S.C. 551, et seq., necessary to this end, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and receive relevant evidence;

(3) To regulate the course of the hearings and the conduct of the parties and their counsel;

(4) To hold conferences for simplification of the issues or any other proper purpose;

(5) To consider and rule upon all appropriate procedural and other motions, and to issue all necessary orders;

(6) To require the submission of testimony in written form whenever in the opinion of the administrative law judge oral testimony is not necessary for full and true disclosure of the facts.

(7) To require the filing of briefs on any matter on which he or she is required to rule;

(8) To require any party or any witness, during the course of the hearing, to state his or her position on any relevant issue;

(9) To take depositions or cause depositions to be taken in accordance with § 209.22.

(10) To render judgments upon issues of law during the course of the hearing.

(11) To issue subpenas authorized by law.

(b) *Assignment of administrative law judge.* When an answer which contains a written demand for a hearing is filed, the administrator shall refer the proceeding to the chief administrative law judge, who shall conduct the proceeding, or assign another administrative law judge to conduct the proceeding.

(Sec. 16, Noise Control Act (42 U.S.C. 4915).)

§ 209.19 Informal settlement and consent agreement.

(a) *Settlement policy.* The Agency encourages settlement of the proceeding at any time after the issuance of a complaint if settlement is consistent with the provisions and the objectives of the act and the regulations. Whether or not respondent requests a hearing, he or she may confer with complainant concerning the facts stated in the complaint or concerning the appropriateness of the proposed remedial order. The terms of any settlement agreement shall be expressed in a written consent agreement. Conferences with complainant concerning possible settlement shall not affect the 20 day time limit for filing an answer under § 209.6.

(b) *Consent agreement.* A written consent agreement signed by the complainant and respondent shall be prepared by the complainant and forwarded to the Administrator whenever settlement or compromise is proposed. A copy shall be served on all other parties to the proceeding, no later than the date the consent agreement is forwarded to the Administrator. The consent agreement shall state that, for the purpose of this proceeding, respondent (i) admits the jurisdictional allegations of the complaint; (2) admits the facts as stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; and (3) consents to the issuance of a given remedial order. The consent agreement shall include (i) the terms of the agreement; (ii) any appropriate conclusions regarding material issues of law, fact and/or discretion as well as reasons therefor; and (iii) the Administrator's proposed final order. The administrative law judge does not have jurisdiction over a consent agreement.

(c) *Final order.* No settlement or consent agreement shall be dispositive of any action pending under section 11(d) of the act without a final order of the Administrator. In preparing a final order, the Administrator may require that any or all of the parties to the settlement or other parties appear before him or her to answer inquiries relating to the proposed consent agreement. The hearing is terminated without further proceedings upon the filing of the final order with the hearing clerk.

§ 209.20 Conferences.

(a) At the discretion of the administrative law judge, conferences may be held prior to or during any hearing. The administrative law judge shall direct the hearing clerk to notify all parties of the time and location of any such conferences. At the discretion of the administrative law judge, persons other than parties may attend. At a conference the administrative law judge may:

(1) Obtain stipulations and admissions, receive requests and order depositions to be taken, identify disputed issues of fact and law, and require or allow the submission of written testimony from any witness or party.

(2) Set a hearing schedule for as many of the following as are deemed necessary by the administrative law judge:

(i) Oral and written statements;

(ii) Submission of written testimony as required or authorized by the administrative law judge;

(iii) Oral direct and cross-examination of a witness;

(iv) Oral argument, if appropriate;

(3) Identify matters of which official notice may be taken;

(4) Consider limitation of the number of expert and other witnesses;

(5) Consider the procedure to be followed at the hearing; and

(6) Consider any other matter that may expedite the hearing or aid in the disposition of the issue.

(b) The results of any conference including all stipulations shall, if not transcribed, be summarized in writing by the administrative law judge and made part of the record.

(c) The administrative law judge, on motion or sua sponte, may request correspondence from the parties for any of the objectives set forth in this section. Copies of the administrative law judge's request and the parties' correspondence shall be served upon all parties. The administrative law judge shall include such correspondence in the record and a written summary of any stipulation or agreement reached by means of such correspondence as provided in paragraph (b) of this section.

§ 209.21 Primary discovery (exchange of witness lists and documents).

(a) At a prehearing conference or within some reasonable time set by the administrative law judge prior to the hearing, each party shall make available to the other parties the names of the expert and other witnesses the party expects to call, together with a brief summary of their expected testimony and copies of all documents and exhibits which the party expects to introduce into evidence. Thereafter, witnesses, documents, or exhibits may be added and summaries of expected testimony amended upon motion by a party.

(b) The administrative law judge, may, upon motion by a party or other person, and for good cause shown, by order (1) restrict or defer disclosure by a party of the name of a witness or a narrative summary of the expected

testimony of a witness, and (2) prescribe other appropriate measures to protect a witness. Any party affected by any such action shall have an adequate opportunity, once he or she learns the name of a witness and obtains the narrative summary of the witness' expected testimony, to prepare for the presentation of his or her case.

§ 209.22 Other discovery.

(a) Further discovery under this section shall be undertaken only upon order of the administrative law judge or upon agreement of the parties, except as provided in § 209.21. The administrative law judge shall order further discovery only after determining:

(1) That such discovery will not delay the proceeding unreasonably;

(2) That the information to be obtained is not obtainable voluntarily; and

(3) That such information is relevant to the subject matter of the hearing.

(b) The administrative law judge shall order depositions upon oral questions only upon a showing of good cause and a finding that:

(1) The information sought cannot be obtained by alternative methods; or

(2) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(c) Any party to the proceeding may make a motion or motions for an order of discovery. The motion shall set forth:

(1) The circumstances which require the discovery;

(2) The nature of the information expected to be discovered; and

(3) The proposed time and place where it will be taken. If the administrative law judge determines the motion should be granted, he or she shall issue an order for the taking of such discovery together with the conditions and terms thereof.

(d) A person's or party's failure to comply with a discovery order may lead to the inference that the information to be discovered is adverse to the person or party who failed to provide it.

§ 209.23 Trade secrets and privileged information.

In the presentation, admission, disposition, and use of evidence, the administrative law judge shall preserve the confidentiality of trade secrets and other privileged commercial and financial information. The confidential or trade secret status of any information shall not, however, preclude its being introduced into evidence. The administrative law judge may make such orders as may be necessary to consider such evidence in camera. This may include a supplemental initial decision to consider questions of fact and conclusions regarding material issues of law, fact or discretion which arise out of that portion of the evidence which is confidential or which includes trade secrets.

§ 209.24 Default order.

(a) *Default.* Respondent may be found to be in default upon failure to comply with a prehearing or hearing ruling of the Administrator or the administrative law judge. A respondent's default shall constitute an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. The remedial order proposed is binding on respondent without further proceedings upon the issuance by the Administrator of a final order issued upon default.

(b) *Proposed default order.* Where the administrative law judge finds a default has occurred after a request for a hearing has been filed, the administrative law judge may render a proposed default order to be issued against the defaulting party. For the purpose of appeal pursuant to § 209.31 this order shall be deemed to be the initial decision of the administrative law judge.

(c) *Contents of a final order issued upon default.* A final order issued upon default shall include findings of fact, conclusions regarding all material issues of law, fact, or discretion, and the remedial order which is issued. An order issued by the Administrator upon the default of respondent shall constitute a final order in accordance with the terms of § 209.33.

§ 209.25 Accelerated decision; dismissal.

(a) The administrative law judge, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the Agency or the respondent as to all or any part of the proceeding, without further hearing or upon such limited additional evidence such as affidavits as he or she may require, or dismiss any party with prejudice, under any of the following conditions:

(1) Failure to state a claim upon which relief can be granted, or direct or collateral estoppel;

(2) No genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of a proceeding; or

(3) Such other reasons as are just, including failure to obey a procedural order of the administrative law judge.

(b) If under this section an accelerated decision is issued as to all the issues and claims joined in the proceedings, the decision shall be treated as the decision of the administrative law judge as provided in § 209.30.

(c) If under this section, judgment is rendered on less than all issues or claims in the proceeding, the administrative law judge shall determine what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The administrative law judge shall thereupon issue an order specifying the facts which appear without substantial controversy, and the issues and claims upon which the hearing will proceed.

§ 209.26 Evidence.

(a) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. Evidence may be received at the hearing even though inadmissible under the rules of evidence applicable to judicial proceedings, provided it is relevant, competent and material and not unduly repetitious. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as practicable. The weight to be given evidence shall be determined by its reliability and probative value.

(b) Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in these rules of practice or by the administrative law judge. Parties shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) Rulings of the administrative law judge on the admissibility of evidence, the propriety of examination and cross-examination and other procedural matters shall appear in the record.

(d) Parties shall automatically be presumed to have taken exception to an adverse ruling.

§ 209.27 Interlocutory appeal.

(a) An interlocutory appeal may be taken to the Administrator either (1) with the consent of the administrative law judge where he or she certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense or prejudice to any party or substantial detriment to the public interest, or (2) absent the consent of the administrative law judge, by permission of the Administrator.

(b) Applications for interlocutory appeal of any ruling or order of the administrative law judge may be filed with the administrative law judge within 5 days of the issuance of the ruling or order being appealed. Answers by other parties may be filed within 5 days of the service of such applications.

(c) Applications to file such appeals absent consent of the administrative law judge shall be filed with the Administrator within 5 days of the denial of any appeal by the administrative law judge.

(d) The Administrator will consider the merits of the appeal on the application and answers. No oral argument will be heard nor other briefs filed unless the Administrator directs otherwise.

(e) Except under extraordinary circumstances as determined by the administrative law judge, the taking of an interlocutory appeal will not stay the hearing.

§ 209.28 Record.

(a) Hearings shall be reported and transcribed verbatim, stenographically or otherwise, and the original transcript shall be part of the record and the sole official transcript. Copies of the record shall be filed with the hearing clerk and made available during Agency business hours for public inspection. Any person who desires a copy of the record of the hearing or any part of it shall be entitled to it upon payment of the cost.

(b) The official transcripts and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record.

§ 209.29 Proposed findings, conclusions.

(a) Within 20 days of the filing of the record with the hearing clerk as provided in § 209.28, or within such longer time as may be fixed by the administrative law judge, any party may submit for the consideration of the administrative law judge proposed findings of fact, conclusions of law, and a proposed rule or order, together with briefs in support of it. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

(b) The record shall show the administrative law judge's ruling on the proposed findings and conclusions except when the administrative law judge's order disposing of the proceedings otherwise informs the parties of the action taken by him or her thereon.

§ 209.30 Decision of the administrative law judge.

(a) The administrative law judge shall issue and file with the hearing clerk his or her decision as soon as practicable after the period for filing proposed findings as provided for in § 209.29 has expired.

(b) The administrative law judge's decision shall become the decision of the Administrator (1) when no notice of intention to appeal as described in § 209.31 is filed, 30 days after its issuance, unless in the interim the Administrator shall have taken action to review or stay the effective date of the decision; or (2), when a notice of intention to appeal is filed but the appeal is not perfected as required by § 209.31, 5 days after the period allowed for perfection of an appeal has expired unless within that 5 day period, the Administrator has taken action to review or stay the effective date of the decision.

(c) The administrative law judge's decision shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact or law presented on the record and an appropriate rule or order. The decision shall be supported by a preponderance of the evidence and based upon a consideration of the whole record.

(d) At any time prior to issuing his or her decision, the administrative law judge may reopen the proceeding for the reception of further evidence.

§ 209.31 Appeal from the decision of the administrative law judge.

(a) Any party to a proceeding may appeal the administrative law judge's decision to the Administrator: Provided, That within 10 days after the administrative law judge's decision is issued, the party files a notice of intention to appeal, and within 30 days of the decision the party files an appeal brief.

(b) When an appeal is taken from the decision of the administrative law judge, any party may file a brief with respect to such appeal. The brief shall be filed within 20 days of the date of the filing of the appellant's brief.

(c) Any brief filed under this section shall contain, in the order indicated:

(1) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(2) A specification of the issues which will be argued;

(3) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each issue, with specific page references to the record and the legal or other material relied upon; and

(4) A proposed form of rule or order for the Administrator's consideration if different from the rule or order contained in the administrative law judge's decision.

(d) Briefs shall not exceed 40 pages without leave of the Administrator.

(e) The Administrator may allow oral argument in his or her discretion.

§ 209.32 Review of the administrative law judge's decision in absence of appeal.

(a) If, after the expiration of the period for taking an appeal under § 209.31, no notice of intention to appeal the decision of the administrative law judge has been filed, or if filed, not perfected, the hearing clerk shall so notify the Administrator.

(b) The Administrator, upon receipt of notice from the hearing clerk that no notice of intention to appeal has been filed, or if filed, not perfected pursuant to § 209.31, may, on his or her own motion, within the time limits specified in § 209.30(b), review the decision of the administrative law judge. Notice of the Administrator's intention to review the decision of the administrative law judge shall be given to all parties and shall set forth the scope of such review and the issues which shall be considered and shall make provision for filing of briefs.

§ 209.33 Decision on appeal or review.

(a) Upon appeal from or review of the administrative law judge's decision, the Administrator shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and, in addition shall to the extent necessary or desirable exercise all the powers which the Administrator could have exercised if he or she had presided at the hearing.

(b) The Administrator shall render a decision as expeditiously as possible. The Administrator shall adopt, modify or set aside the findings, conclusions, and rule or order contained in the decision of the administrative law judge and shall set forth in his or her decision a statement of the reasons or bases for his action. The Administrator's decision shall be the final order in the proceeding.

(c) In those cases where the Administrator believes that he or she should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Administrator, in his or her discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the administrative law judge.

§ 209.34 Reconsideration.

Within five (5) days after service of the Administrator's decision, any party may file with the Administrator a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the administrative law judge or the Administrator. Any party desiring to oppose a petition shall file an answer thereto within five (5) days after service of the petition. The filing of a petition for reconsideration shall

not operate to stay the effective date of the decision or order.

§ 209.35 Conclusion of hearing.

(a) If no appeal has been taken from the administrative law judge's decision before the period for taking an appeal under § 209.31 has expired, and, the period for review by the Administrator on his or her own motion under § 209.30 has expired, and the Administrator does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(b) If an appeal of administrative law judge's decision in taken under § 209.31, or if, in the absence of such appeal, the Administrator moves to review the decision of the administrative law judge under § 209.32, the hearing will be deemed to have ended upon the rendering of a final decision by the Administrator.

§ 209.36 Judicial review.

(a) The Administrator hereby designates the general counsel, Environmental Protection Agency as the officer upon whom copy of any petition for judicial review shall be served. That officer shall be responsible for filing in the court the record on which the order of the Administrator is based.

(b) Before forwarding the record to the court, the Agency shall advise the petitioner of the costs of preparing it and as soon as payment to cover fees is made shall forward the record to the court.

[FR Doc. 78-21514 Filed 8-2-78; 8:45 am]

[6820-22]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER D—PUBLIC BUILDINGS AND SPACE

[FPMR Amdt. D-68]

PART 101-17—ASSIGNMENT AND UTILIZATION OF SPACE

Space Standards for Executive Schedule and Supergrade Personnel

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation establishes standards for use in assigning space to executive schedule and supergrade personnel. In the absence of published standards, widely disparate decisions have been made in the past regarding the assignment of space and provision of amenities for executive schedule personnel (levels I through V) and supergrade employees (GS-16, 17, and 18). In the interest of using the public dollar judiciously, this regulation is intended to clarify the entitlements of Government executives and reduce differences in the provision of space and amenities.

EFFECTIVE DATE: August 3, 1978.

FOR FURTHER INFORMATION CONTACT:

James G. Whitlock, Director, Space Management Division, Office of Space Planning and Management, Public Buildings Service, General Services Administration, Washington, D.C. 20405, 202-566-1875.

The table of contents for part 101-17 is amended by adding the following entries:

Sec.
101-17.308 Supplemental space standards for Government executives.
101-17.308-1 Standards for executive schedule personnel.
101-17.308-2 Supplemental standards for supergrade personnel.

Supbart 101-17.3—Space Standards, Criteria, and Guidelines

1. Section 101-17.304-1 is revised as follows:

§ 101-17.304-1 Work station space allowances for general schedule personnel.

Grade	Type of assignment [1]	Office space [2]
GS 1 to 6		60
GS 7 to 11	Nonsupervisory	75
GS 7 to 11	Supervisory	100
GS 12 to 13	Nonsupervisory	100
GS 12 to 13	Supervisory	150
GS 14 to 15	Nonsupervisory	150
GS 14 to 15	Supervisory	225
GS 16, 17, and 18	Nonsupervisory	225
GS 16	Supervisory	300
GS 17	Supervisory	350
GS 18	Supervisory	400

[1] Supervisory means supervision of or frequent meetings with 3 or more employees within the office's confines.

[2] Allowance in square feet per person.

2. Sections 101-17.308, 101-17.308-1, and 101-17.308-2 are added as follows:

§ 101-17.308 Supplemental space standards for Government executives.

The standards in §§ 101-17.308-1 and 101-17.308-2 are prescribed for use in the assignment of space to executive schedule personnel (levels I through V) and supergrade employees (GS 16, GS 17, and GS 18). In implementing and using these standards, the following criteria apply:

(a) These standards are used in estimating that portion of the total office space required for executive work stations, and as such are considered neither maximums nor minimums except where so noted. A degree of latitude is necessary, depending on building configuration, functional and operational needs, and the best interests of the Government.

(b) These standards shall not be retroactively applied to justify additional space or improvements for existing offices, nor shall they be used to reduce current assignments which exceed the allotments. Compliance with the standards shall be achieved through new assignments and reassignments which take place as a result of normal turnover of office space and facilities.

(c) Alterations and amenities allowed by these standards, but which exceed GSA standard levels of alteration, shall be reimbursable to GSA by the Agency involved.

(d) If they so desire, individual Agencies may adopt more stringent standards for their executives and apply such in-house allocations to their requests for space.

(e) High-level military personnel housed in GSA-controlled space shall be subject to application of these standards at the civilian level to which their rank is equivalent.

(f) In the interest of using the public dollar judiciously, Government executives are expected to exercise restraint in furnishing and equipping their offices. Since much can be accomplished by the use of currently available furnishings, "built-ins" and other unusual alterations should be kept to a minimum. All alterations and amenities not detailed herein should meet the test of reasonable cost.

(g) As long as an office is in good repair and suitable to the function of the executive position to which it is assigned, it is GSA's policy to discourage personal preferential modifications with a change in occupant.

§ 101-17.308-1 Standards for executive schedule personnel.

The following standards shall be applied in the assignment of space to executive schedule personnel, levels I through V, as indicated.

(a) Square foot allowances for private offices and conference rooms for executive schedule personnel shall be as follows (any official entitled to a private conference room, when in proximity to another, may be reason-

ably expected to share conference facilities. Where private conference rooms are not authorized, officials shall use "conference-rooms-in-common" or their own offices. Common conference rooms must be justified in accordance with the provisions of § 101-17.304-2, table II.):

(1) Level I: 750 square foot private office; 500 square foot proximate conference room.

(2) Level II: 600 square foot private office; 400 square foot proximate conference room.

(3) Level III:

(i) "Directors," "Administrators," "Chairmen," "Governors," "Comptrollers," "Commissioners," "Presidents," and "Solicitors General"—500 square foot private office; 300 square foot proximate conference room.

(ii) "Deputy Administrators," "Deputy Directors," and "Under Secretaries"—500 square foot private office; private conference rooms not authorized.

(iii) "Members" of various Commissions and Boards—private office allowances variable at the determination of the GSA Regional Space Management Division but shall not exceed 400 square feet; private conference rooms not authorized.

(4) Level IV:

(i) All officials except "Members"—450 square foot private office; private conference rooms not authorized.

(ii) "Members" of various Commissions, Boards, Councils, and Authorities—private office allowances variable at the determination of the GSA Regional Space Management Division, but shall not exceed 400 square feet; private conference rooms not authorized.

(5) Level V:

(i) All officials except "Members"—400 square foot private office; private conference rooms not authorized.

(ii) "Members" of various Commissions and Boards—private office allowances variable at the determination of the GSA Regional Space Management Division, but shall not exceed 400 square feet; private conference rooms not authorized.

(b) The use of wood paneling is strongly discouraged because of its expense and the fire hazard it presents unless it is chemically treated. All requests for wood paneling must be approved by GSA.

(c) The use of vinyl wall covering is authorized for all executive schedule personnel.

(d) Allowances for toilets, sinks, and showers for executive schedule personnel shall be as follows (toilets, sinks, or showers for "Members" of various Commissions, Boards, Councils, and Authorities are not authorized, regardless of level.):

(1) Level I: Toilet, sink, vanity, and shower; 45 square feet.

(2) Level II: Toilet, sink, and shower; 35 square feet.

(3) Level III: Toilet and sink; 30 square feet.

(4) Level IV: Toilet and sink; 25 square feet.

(5) Level V: Toilet and sink; 25 square feet.

(e) Allowances for kitchens and dining rooms for executive schedule personnel shall be as follows (kitchen and dining facilities for "Deputies," "Under Secretaries," "Assistant Secretaries," and "Members" of various Commissions, Boards, Councils, and Authorities are not authorized, regardless of level. These officials may share the facilities of their Secretaries and/or Chairmen.):

(1) Level I: 50 square foot kitchen area consisting of electric four-burner range, double oven, refrigerator, dishwasher, sink, and cabinets as necessary; 300 square foot dining area.

(2) Level II (for official serving as head of Agency): 40 square foot kitchen area consisting of electric four-burner range, single oven, refrigerator, sink, and cabinets as necessary; 250 square foot dining area.

(3) Level III (for official serving as head of Agency): 30 square foot kitchen area consisting of electric four-burner range, single oven, refrigerator, sink, and cabinets as necessary; 200 square foot dining area.

(4) Level IV: Kitchen and/or dining area not authorized.

(5) Level V: Kitchen and/or dining area not authorized.

§ 101-17.308-2 Supplemental standards for supergrade personnel.

The following standards shall be applied in the assignment of space to supergrade personnel (GS-16, GS-17, and GS-18) as indicated.

(a) Private conference rooms for supergrade personnel are not authorized. Officials shall use "conference-rooms-in-common" or their own offices. Common conference facilities must be justified in accordance with the provisions of § 101-17.304-2, table II.

(b) Use of wood paneling is not authorized for supergrade personnel.

(c) Use of vinyl wall covering is authorized for supergrade personnel.

(d) Toilets, sinks, or showers for supergrade personnel are not authorized.

(e) Kitchen and dining areas for supergrade personnel are not authorized.

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

Dated: July 18, 1978.

JAY SOLOMON,
Administrator of General Services.

[FR Doc. 78-21473 Filed 8-2-78; 8:45 am]

[6820-25]

SUBCHAPTER F—ADP AND TELECOMMUNICATIONS

[FPMR Amdt. F-32]

PART 101-36—ADP MANAGEMENT

Data and Telecommunications Standards

AGENCY: General Services Administration, Automated Data and Telecommunications Service.

ACTION: Final rule.

SUMMARY: This regulation consolidates standards concerned with automatic data processing (ADP) and telecommunications in one regulation. This action will promote consistency and reduce confusion when Agencies cite requirements for equipment and services that comply with Federal ADP and telecommunications standards. This action also will enable the ADP and communications managers and vendors to have both ADP and telecommunication standards in the same regulation for easy reference. This regulation also updates existing standards and adds new Federal standards information that has been issued subsequent to the proposed rule.

EFFECTIVE DATE: August 3, 1978.

FOR FURTHER INFORMATION CONTACT:

L. Perlman, Office of Management Policy and Planning, Automated Data and Telecommunications Service, General Services Administration, Washington, D.C. 20405, 202-566-0834.

SUPPLEMENTARY INFORMATION: On December 28, 1977, the Automated Data and Telecommunications Service issued a proposed rule that combined standards relating to ADP and telecommunications in subpart 101-32.13. Only one response was received that objected to this action. The objection was reconciled by deleting Federal Telecommunication Standard 1003.

NOTE.—Policies on ADP and telecommunications formerly in subchapter E and F have been transferred into the redesignated subchapter F, ADP and telecommunications. Therefore, part 101-32 has been redesignated as part 101-36, and former subpart 101-32.13, to which this amendment refers, is renumbered accordingly as 101-36.13.

The table of contents for part 101-36 is amended to add or revise the following entries:

Subpart 101-36.13—Implementation of Federal Information Processing and Federal Telecommunication Standards into Solicitation Documents

Sec.
101-36.1302 Federal standards.
101-36.1302-1 Federal Information Processing Standards Publications (FIPS PUBS).
101-36.1302-2 Federal Telecommunication Standards (FED-STD)
101-36.1302-3 Joint Federal Information Processing Standards (FIPS) and Federal Telecommunication Standards (FED-STD).
101-36.1304-8 FIPS PUB 25, Recorded Magnetic Tape for Information Interchange (1600 CPI, Phase Encoded).
101-36.1304-9 FIPS PUB 26, One-Inch Perforated Paper Tape for Information Interchange.
101-36.1304-10 FIPS PUB 27, Take-up Reels for One-Inch Perforated Tape for Information Interchange.
101-36.1304-11 FIPS PUB 32, Optical Character Recognition Character Sets.
101-36.1304-12 FIPS PUB 33, Character Set for Handprinting.
101-36.1304-13 FIPS PUB 35, Code Extension Techniques in 7 or 8 Bits.
101-36.1304-14 FIPS PUB 36, Graphic Representation of the Control Characters of ASCII (FIPS 1).
101-36.1304-15 FIPS PUB 46, Data Encryption Standard (DES).
101-36.1304-16 FIPS PUB 50, Recorded Magnetic Tape for Information Interchange, 6250 CPI (246 CPMM), Group Coded Recording.
101-36.1304-17 FIPS PUB 51, Magnetic Tape Cassettes for Information Interchange (3.810 mm [0.150 in] Tape at 32 BPMM (800 BPI), PE).
101-36.1304-18 (Deleted).
101-36.1304-19 (Deleted).
101-36.1305-1a (Deleted).
101-36.1308 Federal Telecommunication Standards (FED-STD).
101-36.1308-1 FED-STD 1002, Time and Frequency Reference Information in Telecommunications Systems.
101-36.1308-2 FED-STD 1005, Coding and Modulation Requirements for Nondiversity 2400 Bit/Second Modems.
101-36.1308-3 FED-STD 1006, Coding and Modulation Requirements for 4800 Bit/Second Modems.
101-36.1309 Joint FIPS/FED-STD.
101-36.1309-1 FIPS PUB 37/FED-STD 1001, Synchronous High Speed Data Signaling Rates Between Data Terminal Equipment and Data Communication.
101-36.1309-2 FIPS PUB 16-1/FED-STD 1010, Bit Sequencing of the Code for Information Interchange in Serial-By-Bit Data Transmission.
101-36.1309-3 FIPS PUB 17-1/FED-STD 1011, Character Structure and Character Parity Sense for Serial-By-Bit Data Communication in the Code for Information Interchange.
101-36.1309-4 FIPS PUB 18-1/FED-STD 1012, Character Structure and Character Parity Sense for Parallel-By-Bit Date Communication in the Code for Information Interchange.
101-36.1309-5 FIPS PUB 22-1/FED-STD 1013, Synchronous Signaling Rates Between Data Terminal and Data Communication Equipment.

Subpart 101-36.13 is recaptioned and amended to read as follows:

Subpart 101-36.13—Implementation of Federal Information Processing and Federal Telecommunication Standards into Solicitation Documents

1. Sections 101-36.1300, 101-36.1301, and 101-36.1302 are revised to read as follows:

§ 101-36.1300 Scope of subpart.

This subpart provides standard terminology for use in solicitation documents for the acquisition of ADP and telecommunication equipment, services, and related software. This subpart supplements the provisions of part 101-36 and is applicable, where particular standards apply, to equipment and services acquired under part 101-37 of the FPMR and subpart 1-4.11 of the FPR.

§ 101-36.1301 Applicability.

The provisions of this subpart are applicable to all Federal agencies unless the agencies are otherwise excepted. Waiver procedures are prescribed in the applicable standards.

§ 101-36.1302 Federal standards.

Federal standards discussed in this subpart are categorized as Federal Information Processing Standards (FIPS), Federal Telecommunication Standards (FED-STD), or as Joint Federal Information Processing and Federal Telecommunication Standards (FIPS/FED-STD). Each of these standards categories is described in detail below.

2. Sections 101-36.1302-1 through 101-36.1302-3 are added as follows:

§ 101-36.1302-1 Federal Information Processing Standards Publications (FIPS PUBS).

Federal Information Processing Standards Publications (FIPS PUBS) are official Federal Government publications relating to standards adopted and issued under the provisions of section 111 of the Federal Property and Administrative Services Act of 1949, 63 Stat. 383, as amended, 40 U.S.C. 759 and Executive Order 11717 (3 CFR). These publications are issued by the National Bureau of Standards (NBS) and collectively constitute the Federal Information Processing Standards Register. As an aid in implementing this subpart 101-36.13, all agencies should establish and maintain a register in accordance with FIPS PUB O, General Description of the Federal Information Processing Standards Register, November 1, 1968. Requests for FIPS PUBS should be sent to:

National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22161, telephone 703-557-4650; FTS 557-4650.

Requests for discount prices on quantity orders should also be referred to the above address and telephone number. Requests for FIPS PUBS subscriptions should be sent to:

Subscriptions, National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22161, telephone 703-557-4630; FTS 557-4630.

§ 101-36.1302-2 Federal Telecommunication Standards (FED-STD).

Federal Telecommunication Standards (FED-STD) are official Federal Government publications relating to standards adopted and issued under the provisions of section 206 of the Federal Property and Administrative Services Act of 1949, 63 Stat. 390, as amended, 40 U.S.C. 487. These Federal publications are issued by the General Services Administration and collectively constitute the Federal Supply Class (FSC) of "Telecommunications" in the Federal Standards Index. These publications are available from the General Services Administration (3FRI), Specification Branch, Building 197, Washington Navy Yard, Washington, D.C. 20407, telephone 202-472-2205; FTS 472-2205. Requests for standards must include the appropriate FED-STD number.

NOTE.—Most Federal Telecommunication Standards (FED-STD) implement specifications contained in American National Standards Institute (ANSI) standards or Electronic Industry Association (EIA) standards. Addresses are referenced in the appropriate FED-STD. Federal agencies may secure one copy of each FED-STD free of charge.

§ 101-36.1302-3 Joint Federal Information Processing Standards (FIPS) and Federal Telecommunication Standards (FED-STD).

Joint Federal Information Processing Standards and Federal Telecommunication Standards (FIPS/FED-STD) are standards which are published as both FIPS and FED-STD within the authorities cited in §§ 101-36.1302-1 and 101-36.1302-2. Either the FIPS or the FED-STD adequately addresses the joint applicability, and these standards are available as discussed in §§ 101-36.1302-1 and 101-36.1302-2.

3. Sections 101-36.1303 and 101-36.1303-1 are revised to read as follows:

§ 101-36.1303 Definitions.

The following definitions are applicable to subpart 101-36.13. For terms not defined, see the FIPS PUB 11-1, American National Standard Vocabu-

lary for Information Processing, available as discussed in § 101-36.1302-1, and the Military Communications System Standards, Terms, and Definitions (MIL-STD-188-120), available as discussed in § 101-36.1302-2.

§ 101-36.1303-1 Standard terminology.

"Standard terminology" means that language which is used in purchase agreements, solicitations, and offers for acquisitions of ADP and telecommunication equipment, services, and related software to ensure conformance with Federal Information Processing and Federal Telecommunication Standards.

4. Sections 101-36.1304-8 through 101-36.1304-17 are revised to read as follows and §§ 101-36.1304-18 and 101-36.1304-19 are deleted:

§ 101-36.1304-8 FIPS PUB 25, Recorded Magnetic Tape for Information Interchange (1600 CPI, Phase Encoded).

(a) FIPS PUB 25 specifies the recorded characteristics of 9-track digital ½-inch-wide magnetic computer tape, including the data format for implementing the Federal Standard Code for Information Interchange at the recording density of 1,600 characters per inch (CPI). (With one exception that is cited in FIPS PUB 25, technical specifications of the standard are contained in American National Standard X3.39-1973, Recorded Magnetic Tape for Information Interchange (1600 CPI, P.E.).)

(b) The standard terminology for use in solicitation documents is:

All 9-track digital magnetic tape recording and reproducing equipment resulting from this solicitation and employing ½-inch-wide tape at the recording density of 1,600 characters per inch (CPI, phase encoded), including associated programs, shall provide the capability to accept and generate recorded tapes in compliance with the requirements set forth in FIPS PUB 25.

§ 101-36.1304-9 FIPS PUB 26, One-Inch Perforated Paper Tape for Information Interchange.

(a) FIPS PUB 26 specifies the physical dimensions and tolerances of 1-inch-wide paper tape, including the size and location of the perforations used for recording information. (Technical specifications of the standard are contained in American National Standard X3.18-1974, One-Inch Perforated Paper Tape for Information Interchange.)

(b) The standard terminology for use in solicitation documents is:

All 1-inch-wide perforated paper tape and related 8-channel paper tape punch and reading equipment which result from this solicitation and are utilized in Federal information processing systems, communication systems, and associated terminals employing perforated paper tape equipment shall provide the capability to accept and generate tapes in compliance with the requirements set forth in FIPS PUB 26.

§ 101-36.1304-10 FIPS PUB 27, Take-up Reels for One-Inch Perforated Tape for Information Interchange.

(a) FIPS PUB 27 specifies the physical dimensions of paper tape takeup (or storage) reels with either fixed or separate flanges. The two types of reels specified differ in the size and shape of the drive hub, but both are intended for use with 1-inch perforated paper tape devices. (Technical specifications of the standard are included in FIPS PUB 27.)

(b) The standard terminology for use in solicitation documents is:

All 1-inch perforated tape takeup reels and related devices employing such reels, including paper tape readers, punches, and related tape handling equipment, which result from this solicitation and are used in Federal information processing systems and associated equipment employing such devices, shall provide the capability to accept one of the two types of reels specified in FIPS PUB 27.

§ 101-36.1304-11 FIPS PUB 32, Optical Character Recognition Character Sets.

(a) FIPS PUB 32 provides the description, scope, and identification for different character sets (OCR-A and OCR-B) to be used in the application of Optical Character Recognition (OCR) systems. (Technical specifications of the standard are contained in American National Standard X3.49-1975, Character Set for Optional Character Recognition (OCR-B).)

(b) The standard terminology for use in solicitation documents is:

All applicable Optical Character Recognition (OCR) equipment or services resulting from this solicitation must comply with the provisions of FIPS PUB 32. Applicable OCR equipment also includes data input devices such as typewriters, line printers, and CRT displays. Applicable services include data preparation and processing of information represented in OCR form.

§ 101-36.1304-12 FIPS PUB 33, Character Set for Handprinting.

(a) FIPS PUB 33 announces the adoption of the American National Standard X3.45-1974, Character Set for Handprinting, as a Federal standard. The standard provides the description, scope, and application rules for a character set for handprinting. (Technical specifications of the standard are contained in American National Standard X3.45-1974, Character Set for Handprinting.)

(b) The standard terminology for use in solicitation documents is:

All applicable Optical Character Recognition (OCR) equipment or services which result from this solicitation and which are capable of reading handprinted material must comply with FIPS PUB 33. The applicable services include data preparation and processing of information represented in OCR form.

§ 101-36.1304-13 FIPS PUB 35, Code Extension Techniques in 7 or 8 Bits.

(a) FIPS PUB 35 specifies methods of extending the 7-bit code of the Standard Code for Information Interchange (FIPS PUB 1/ASCII), remaining in a 7-bit environment or increasing to an 8-bit environment, building upon the structure of ASCII to describe various means of extending the control and graphic sets of code. FIPS PUB 35 describes techniques for constructing codes related to ASCII to allow application-dependent usage without preventing the interchangeability of the data, and also describes 8-bit codes for general information interchange in which ASCII is a subset. (Technical specifications are contained in American National Standard X3.41-1974, Code Extension Techniques for Use with the 7-Bit Coded Character Set of the American National Standard Code for Information Interchange.)

(b) The standard terminology for use in solicitation documents is:

All coded character sets offered as a result of this solicitation which require control function and/or graphic symbols that are not included in the 128 characters of ASCII will be implemented through the use of the code extension methods and techniques as described in FIPS PUB 35.

§ 101-36.1304-14 FIPS PUB 36, Graphic Representation of the Control Characters of ASCII (FIPS 1).

(a) FIPS PUB 36 specifies graphical representation for the 34 characters of ASCII (FIPS PUB 1) for which a graphic representation is not indicated in FIPS PUB 1. Graphic representations are given for the 32 control functions of column 0 and 1 and for the characters "space" and "delete." Two forms of graphical representation for each of the 34 characters are provided: a pictorial symbol and a 2-letter alphanumeric code. (Technical specifications are contained in American National Standard X3.32-1973, Graphic Representation of the Control Characters of American National Standard Code for Information Interchange.)

(b) The standard terminology for use in solicitation documents is:

All applicable equipment that may result from this solicitation that prints or displays graphic representations of any or all of the control characters of ASCII (FIPS PUB 1) or of the characters "space" or "delete" must comply with the requirements set forth in FIPS PUB 36. This standard also applies to equipment that prints these graphic representations on media such as perforated tape, punched cards, or listing.

§ 101-36.1304-15 FIPS PUB 46, Data Encryption Standard (DES).

(a) FIPS PUB 46 specifies an algorithm to be implemented in computer or related data communication devices using hardware (not software) technology. This standard shall be used by Federal agencies for the cryptographic protection of computer data when:

(1) A department or agency decides that cryptographic protection is required; and

(2) The data are not classified according to the National Security Act 1947, as amended; or the Atomic Energy Act of 1954, as amended.

(b) Federal agencies using cryptographic devices for protecting data classified according to either the National Security Act or the Atomic Energy Act can use these devices for protecting unclassified data in lieu of the standard.

(c) Technical specifications are included with FIPS PUB 46.

(d) The standard terminology for use in solicitation documents is:

In the event that a data encryption requirement is specified elsewhere in this solicitation, such encryption will be accomplished in accordance with FIPS PUB 46. Implementations of the standard embodied in products or services offered as a result of this solicitation that are asserted to have an encryption capability in conformance with FIPS PUB 46 must have the capability validated by the National Bureau of Standards prior to being proposed. Arrangements for validation may be made with the Systems and Software Division, National Bureau of Standards, Washington, DC 20234.

§ 101-36.1304-16 FIPS PUB 50, Recorded Magnetic Tape for Information Interchange, 6250 CPI (246 CPMM), Group Coded Recording.

(a) FIPS PUB 50 specifies the recording characteristics of 9-track, ½-inch-wide (12.7 mm) magnetic computer tape, including the format for implementing the Standard Code for Information Interchange (FIPS PUB 1/ASCII) at the recording density of 6250 characters per inch (246 characters per millimeter). (FIPS PUB 50 adopts American National Standard X3.54-1976, Recorded Magnetic Tape for Information Interchange (6250 CPI, Group Coded Recording), with one exception—paragraph 5.4.3. of X3.54-1976 should read: "Bit Z shall be zero or treated as a bit of higher order than the ASCII bits.")

(b) The standard terminology to be used in solicitation documents is:

All applicable digital magnetic tape recording and reproducing equipment which results from this solicitation and employs ½-inch-wide (12.7 mm) magnetic computer tape at the recording density of 6250 characters per inch (246 characters per millimeter) group-coded recording, including associated programs, shall provide the capability to accept and generate recorded tape in compliance with the requirements set forth in FIPS PUB 50.

§ 101-36.1304-17 FIPS PUB 51, Magnetic Tape Cassettes for Information Interchange (3.810 mm [0.150 in] Tape at 32 BPMM [800 BPI], PE).

(a) FIPS PUB 51 specifies the physical, magnetic, and recording characteristics of a 3.810 mm (0.150 inch) magnetic tape cassette in order to provide for data interchange between information processing systems at a recording density of 32 bits per millimeter (800 bits per inch) using phase encoding techniques. (FIPS PUB 51 adopts technical specifications contained in American National Standard X3.48-1977, Magnetic Tape Cassettes for Information Interchange (3.810 mm [0.150 in] Tape at 32 BPMM [800 BPI], PE).

(b) The standard terminology to be used in solicitation documents is:

All magnetic tape cassette recording and reproducing equipment which results from this solicitation and employs 3.810 mm (0.150 inch) wide magnetic tape at the recording density of 32 bits per millimeter (800 bits per inch) using phase encoding techniques, including associated programs, shall provide the capability to accept and generate recorded tapes in compliance with the requirements set forth in FIPS PUB 51.

§ 101-36.1304-18 [Deleted]

§ 101-36.1304-19 [Deleted]

5. Section 101-36.1305-1 is revised to combine information contained in § 101-36.1305-1a as follows:

§ 101-36.1305-1 FIPS PUB 21-1, Federal Standard COBOL.

(a) FIPS PUB 21-1 specifies the use of the American National Standard COBOL X3.23-1974 as the Federal Standard COBOL. FIPS PUB 21-1 revises and supersedes FIPS PUB 21 and reflects major changes and improvements to COBOL specifications. The revision defines the elements of the COBOL programing language and the rules for its use. The primary purpose of the standard is to promote a high degree of interchangeability of programs for use on a wide variety of information processing systems. All COBOL compliers brought into the Federal Government inventory must be validated in accordance with paragraph (c). (Technical specifications of the standard are contained in American National Standard X3.23-1974, COBOL.)

(b) The standard terminology for use in solicitation documents is:

ACQUISITION OF COBOL COMPILERS

COBOL compilers offered as a result of the requirements set forth in this solicitation will be identified as implementing all of the language elements of at least one of the levels of Federal Standard COBOL as specified in FIPS PUB 21-1. Implementation must provide a facility for the user to optionally specify a level of Federal Standard COBOL for monitoring the source program at compile time. Monitoring may be specified for any level at or below the highest level for which a compiler is implemented and will consist of an analysis of the syntax used in a source program against the syntax included in the level specified for monitoring. Any syntax not conforming to the specified level will be identified through a diagnostic message in the source program listing. The diagnostic message will contain at least the identification of the source program line number for each nonconforming syntax and iden fy the level of Federal Standard COBOL that supports the syntax or indicate that the syntax is nonstandard COBOL.

ACQUISITION OF COBAL PROGRAMS AND/OR PROGRAMING SERVICES

Business-oriented computer application programs (i.e., those applications or programs that emphasize the manipulation of characters, files, and input/output as contrasted with those concerned primarily with computation of numeric values) offered or prepared as a result of the requirements set forth in this solicitation will be written using one of the levels of Federal Standard COBOL as defined in FIPS PUB 21-1 including optional language elements, if any, as specified herein.

(c) COBOL compilers that are asserted to conform with one or more levels specified in FIPS PUB 21-1 and are offered to the Federal Government for purchase or lease shall be validated. The term "validation" as used in this section is the process of testing a given COBOL compiler against predetermined conditions and specifying which, if any, conditions are not met.

(1) COBOL compilers offered by vendors as a result of requirements set forth by Federal agencies in solicitations must implement the language elements of a designated level of the Federal Standard COBOL. To confirm that an implementation meets the specifications of a designated level of the Federal Standard COBOL, test routines have been developed and approved for use in testing COBOL compilers. These routines are known as the COBOL Compiler Validation System (CCVS). A Federal COBOL Compiler Testing Service (FCCTS) also has been established to provide a validating service for the Federal agencies. The FCCTS is sponsored by the Department of Defense (DOD) under delegation of authority from the National Bureau of Standards (NBS).

(2) The test results for a COBOL compiler shall be used by a Federal agency to confirm that, insofar as the CCVS tests the language elements included in a designated level of Federal Standard COBOL, the compiler meets the specifications of that level of standard. When an agency has indicat-

ed a waiver to a Federal Standard COBOL specification in a solicitation, only the portions of the language that have been waived are excluded from the validation requirements.

(3) Requests for validations and questions pertaining thereto should be sent to:

Director, Federal COBOL Compiler Testing Service, Department of the Navy, ADP Selection Office, Washington, D.C. 20376.

(4) When a request for validation service requires that compiler testing be performed, the requestor is responsible for providing the necessary test facilities.

(5) In response to a request for validation service, the FCCTS will provide a Validation Summary Report (VSR) reflecting a summarization of the test results.

(6) Validation is performed on a cost-reimbursable basis. The FCCTS will send the requestor an estimate of validation costs, reimbursable to the FCCTS, which is to be approved before beginning the validation process.

(7) Unresolved questions and/or any ambiguities that are identified by the FCCTS or by the requestor shall be referred to the NBS in accordance with FIPS PUB 29.

(d) The standard terminology for use in solicitation documents is:

VALIDATION OF COBOL COMPILERS

In addition to the specified mandatory COBOL compiler requirements stated in the specification portion of this solicitation, all COBOL compilers brought into the Federal inventory as a result of this solicitation, the most recent release of which has not been previously tested, must be tested using the official COBOL Compiler Validation System (CCVS). Validation shall be in accordance with Federal Property Management Regulation (FPMR) 101-36.1305-1(c). The results of the validation shall be used to confirm that the compiler meets the specified requirements of the designated level of FIPS PUB 21-1, Federal Standard COBOL. To be considered responsive, the vendor shall:

(i) Certify in the proposal that all COBOL compilers offered in response to this solicitation have been submitted for validation as set forth in FPMR 101-36.1305-1(c).

(ii) Agree to correct all deviations from the standard reflected in the Validation Summary Report (VSR) not previously covered by a waiver. All deviations must be corrected within 12 months from the date of contract award unless a shorter period is specified elsewhere in this solicitation. If an interpretation of the standard is required that will invoke the procedures set forth in FIPS PUB 29, such requests for interpretations will be made within 30 calendar days after contract award.

Any corrections that are required as a result of decisions made under the procedures of FIPS PUB 29 will be completed within 12 months of the date of formal notification of the interpretation to the contractor. Failure to make required corrections within the time provisions set forth above shall be deemed a failure to deliver required software. The liquidated damages as specified for failure to deliver either operating system or other software shall apply. In addition, such failure falls within the purview of the default clause. If the required corrections are not made within the time provisions specified above, subsequent proposals submitted to the Government offering the deficient COBOL compilers or subsequent uncorrected versions thereto shall be considered nonresponsive.

§ 101-36.1305-1a [Deleted]

6. Sections 101-36.1308 through 101-36.1309-5 are added as follows:

§ 101-36.1308 Federal Telecommunication Standards (FED-STD).

This section provides the standard terminology for use in solicitation documents applicable to Federal Telecommunication Standards.

§ 101-36.1308-1 FED-STD 1002, Time and Frequency Reference Information in Telecommunication Systems.

(a) FED-STD 1002 requires that telecommunication facilities and systems of the Federal Government use time and frequency reference information based upon coordinated universal time (UTC).

(b) The standard terminology for use in solicitation documents is:

All applicable telecommunication facilities and systems that are offered or used as a result of this solicitation shall be referenced to the time and frequency standard specified in FED-STD 1002.

§ 101-36.1308-2 FED-STD 1005, Coding and Modulation Requirements for Nondiversity 2400 Bit/Second Modems.

(a) FED-STD 1005 establishes the coding and modulation requirements for 2400 bit per second modems owned or leased by the Federal Government for use over analog transmission channels other than those derived from high-frequency radio facilities.

(b) The standard terminology for use in solicitation documents is:

All nondiversity 2400 bit per second modems that are offered or used as a result of this solicitation and are to be used on 4kHz channels derived from either switched networks or dedicated lines must comply with FED-STD 1005.

§ 101-36.1308-3 FED-STD 1006, Coding and Modulation Requirements for 4800 Bit/Second Modems.

(a) FED-STD 1006 requires that all Federal departments and agencies shall comply with the standard in the design and procurement of telecommunication systems and equipment having a requirement for 4800 bit per second modems used with nominal 4kHz analog channels.

(b) The standard terminology for use in solicitation documents is:

All 4800 bit per second modems (and equipment containing 4800 bit per second modems) that may be proposed as a result of this solicitation for use with nominal 4kHz analog channels must comply with FED-STD 1006.

§ 101-36.1309 Joint FIPS/FED-STD.

This section provides standard terminology for use in solicitation documents applicable to Joint Federal Information Processing Standards and Federal Telecommunication Standards.

§ 101-36.1309-1 FIPS PUB 37/FED-STD 1001, Synchronous High Speed Data Signaling Rates Between Data Terminal Equipment and Data Communication Equipment.

(a) FIPS PUB 37/FED-STD 1001 establishes signaling rate requirements for data terminal and data processing equipment which is (1) employed with synchronous data communication equipment and (2) designed to operate on binary encoded information over wideband communication channels having greater bandwidth than the normal 4KHz bandwidth commonly used in analog voice transmission. (Technical specifications of the standard are contained in American National Standard X3.36-1975, Synchronous High Speed Data Signaling Rates Between Data Terminal Equipment and Data Communication Equipment.)

(b) The standard terminology for use in solicitation documents is:

All applicable equipment or services resulting from this solicitation that are employed with synchronous data communication equipment designed to operate on binary coded information over wideband communication channels must comply with FIPS PUB 37/FED-STD 1001.

§ 101-36.1309-2 FIPS PUB 16-1/FED-STD 1010, Bit Sequencing of the Code for Information Interchange in Serial-By-Bit Data Transmission.

(a) FIPS PUB 16-1/FED-STD 1010 specifies the method of transmitting the Standard Code for Information Interchange, FIPS PUB 1, in serial-by-bit, serial-by-character data transmission. FIPS PUB 16-1 supersedes FIPS PUB 16 and reflects changes necessary to accommodate FIPS PUB 1 when operating in either 7- or 8-bit coded environments. The standard is applicable to the transmission of the standard code in a serial bit stream form at the interface between data terminal equipment and data communication equipment. Data terminal equipment transmitting an approved Federal subset or superset of FIPS PUB 1 must comply with FIPS PUB 16-1/FED-STD 1010. (Technical specifications of the standard are contained in American National Standard X3.15-1976, Bit Sequencing of the American National Standard Code for Information Interchange in Serial-By-Bit Data Transmission.)

(b) The standard terminology for use in solicitation documents is:

All applicable equipment or services that may result from this solicitation, transmitting in a serial-by-bit, serial-by-character mode, must be capable of bit sequencing as prescribed in FIPS PUB 16-1/FED-STD 1010 for the transmission of the Standard Code for Information Interchange, FIPS PUB 1, at the interface between data terminal equipment and data communication equipment.

§ 101-36.1309-3 FIPS PUB 17-1/FED-STD 1011, Character Structure and Character Parity Sense for Serial-By-Bit Data Communication in the Code for Information Interchange.

(a) FIPS PUB 17-1/FED-STD 1011 specifies the method of transmitting the Standard Code for Information Interchange, FIPS PUB 1, in the serial-by-bit, serial-by-character data transmission. FIPS PUB 17-1 supersedes FIPS PUB 17 and reflects changes necessary to accommodate revisions prescribed in FIPS PUB 1 when operating in either 7- or 8-bit coded environments. The standard is applicable at the interface between data terminal equipment and data communication equipment. Data terminal equipment transmitting an approved Federal subset or superset of FIPS PUB 1 must comply with FIPS PUB 17-1/FED-STD 1011. (Technical specifications of the standard are contained in American National Standard X3.16-1976, Character Structure and Character Parity Sense for Serial-By-Bit Data Communication in the American National Standard Code for Information Interchange.)

(b) The standard terminology for use in solicitation documents is:

All applicable equipment that may result from this solicitation, transmitting in a serial-by-bit, serial-by-character synchronous or asynchronous mode, must be capable of transmitting the character structure and sense of character parity prescribed in FIPS PUB 17-1/FED-STD 1011 for the transmission of the Standard Code for Information Interchange, FIPS PUB 1, at the interface between data terminal equipment and data communication equipment.

§ 101-36.1309-4 FIPS PUB 18-1/FED-STD 1012, Character Structure and Character Parity Sense for Parallel-By-Bit Data Communication in the Code for Information Interchange.

(a) FIPS PUB 18-1/FED-STD 1012 specifies the channel assignment for transmitting the Standard Code for Information Interchange, FIPS PUB 1, in parallel-by-bit, serial-by-character data transmission. FIPS PUB 18-1 supersedes FIPS PUB 18 and reflects changes necessary to accommodate revisions prescribed by FIPS PUB 1 when operating in either 7- or 8-bit coded environments. The standard is applicable at the interface between data terminal equipment and data communication equipment. Data terminal equipment transmitting an approved Federal subset or superset of FIPS PUB 1 must comply with FIPS PUB 18-1/FED-STD 1012. (Technical specifications of the standard are contained in American National Standard X3.25-1976, Character Structure and Character Parity Sense for Parallel-By-Bit Data Communication in the American National Standard Code for Information Interchange.)

(b) The standard terminology for use in solicitation documents is:

All applicable equipment or services that may result from this solicitation, transmitting in a parallel-by-bit, serial-by-character mode, must be capable of transmitting the character structure and sense of character parity prescribed in FIPS PUB 18-1/FED-STD 1012, when transmitting the Standard Code for Information Interchange, FIPS PUB 1, or an approved Federal subset (FIPS PUB 15) at the interface between data terminal equipment and data communication equipment.

§ 101-36.1309-5 FIPS PUB 22-1/FED-STD 1013, Synchronous Signaling Rates Between Data Terminal and Data Communication Equipment.

(a) FIPS PUB 22-1/FED-STD 1013 specifies the rates of transferring binary encoded information in synchronous serial or parallel form between data processing terminal and data communication equipment that employ voice band communication facilities. FIPS PUB 22-1 supersedes FIPS PUB 22 and reflects changes made to the corresponding American National Standard X3.1-1976. (Technical specifications of the standard are contained in American National Standard X3.1-1976, Synchronous Signaling Rates for Data Transmission.)

(b) The standard terminology for use in solicitation documents is:

All applicable equipment or services resulting from this solicitation that are employed in conjunction with synchronous data communication equipment designed to operate on binary encoded information in either serial or parallel fashion over voice grade communication channels of nominal 4KHz bandwidth must comply with FIPS PUB 22-1/FED-STD 1013.

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

Dated: July 18, 1978.

JAY SOLOMON,
Administrator of General Services.

[FR Doc. 78-21472 Filed 8-2-78; 8:45 am]

[4110-89]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

NATIONAL DIRECT STUDENT LOAN, COLLEGE WORK-STUDY AND SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT

Annual Revision of Sample Cases and Benchmark Figures

AGENCY: Office of Education, HEW.

ACTION: Notice of publication of Annual Revision of Sample Cases and Benchmark Figures.

SUMMARY: The Office of Education announces the annual revision of sample cases and benchmark figures for approval of need analysis systems for academic year 1979-80 for use with the national direct student loan, college work-study, and supplemental educational opportunity grant programs.

ADDRESS: Direct descriptions of systems, the family contribution figures and requests for information to Mr. Hubert S. Shaw, chief, campus-based and State Grant Branch, Division of Policy and Program Development, Bureau of Student Financial Assistance, Room 4004, ROB-No. 3, 400 Maryland Avenue SW., Washington, D.C. 20202, 202-245-9717.

FOR FURTHER INFORMATION CONTACT:

202-245-9717.

SUPPLEMENTARY INFORMATION:

General

The Commissioner of Education is revising appendix A to § 144.13 of the national direct student loan program regulations (45 CFR 144.13), § 175.13 of the college work-study program regulations (45 CFR 175.13) and § 176.13 of the supplemental educational opportunity grant program regulations (45 CFR 176.13) to establish sample cases and benchmark figures for academic year 1979-80. These sections set forth procedures for an annual review and approval by the Commissioner of need analysis systems for dependent students for use in the programs. As a part of this review the Commissioner must publish a set of sample cases and benchmark figures. In order to be approved, a system must generate expected parental contributions for at least 75 percent of the sample cases which are within $50 of the benchmark figures published by the Commissioner for those cases.

Paragraph (b)(2)(v) of each of such sections requires the Commissioner to revise the set of sample cases annually for inflation, in such a way as to maintain, over time, a constant expected parental contribution for families with equal income and asset positions, measured in constant dollars. The original set of sample cases and benchmark figures was published in the FEDERAL REGISTER on October 21, 1975, as appendix A at page 49273, and was used to approve need analysis systems for dependent students for academic year 1979–80.

Appendix A for 1979–80 has been computed by assuming the rate of inflation for 1978 to be 7 percent. The uniform methodology was modified with the concurrence of the Office of Education to treat the asset protection allowance as a retirement allowance. This calculation utilized data, which are revised annually, from the Social Security Administration, Department of Labor, and U.S. National Center for Health Statistics. The standard deduction from assets derived by this modification is $14,360.

Appendix A, as set forth below, shall be effective immediately with respect to the approval of need analysis systems for dependent students. Such systems shall be used for making awards to students for academic year 1979–80 and with respect to the filing of institutional applications for Federal funds for that year pursuant to §§ 144.13, 175.13, and 176.13 of title 45 of the Code of Federal Regulations.

(20 U.S.C. 1087dd, 42 U.S.C. 2754, and 20 U.S.C. 1070b-1 and 1070b-2.)

(Catalog of Federal Domestic Assistance No. 13.418, supplemental educational opportunity grant programs; 13.463, college work-study program, and 13.471, national direct student loan program.)

Dated: July 27, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

PART 144—NATIONAL DIRECT STUDENT LOAN

PART 175—COLLEGE WORK-STUDY

PART 176—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT

Appendix A to §§ 144.13, 175.13, and 176.13 is revised to read as set forth below:

APPENDIX A

Net assets:	$10,000				$20,000				$30,000				$40,000			
Family size:	3	4	5	6	3	4	5	6	3	4	5	6	3	4	5	6
Income before taxes:																
$ 8,000	$0	$0	$0	$0	$130	$0	$0	$0	$390	$80	$0	$0	$660	$350	$50	$0
12000	470	160	0	0	730	420	130	0	1000	680	400	70	1290	950	660	340
16,000	1050	740	450	130	1350	1010	720	400	1700	1300	980	660	2110	1640	1270	930
20,000	1780	1360	1040	730	2200	1720	1340	990	2700	2130	1690	1280	3260	2610	2090	1620
24,000	2790	2220	1770	1350	3360	2720	2190	1700	3920	3280	2680	2110	4480	3850	3250	2590

NOTE: The figures above are parental contribution figures which assume:

1. two parents, one with income
2. one dependent in postsecondary undergraduate education
3. no business and/or farm assets
4. age of main wage earner is equal to 45 years
5. 1977 U.S. income tax schedules; joint return, standard deduction
6. no social security benefits for education
7. no unusual medical, dental, casualty, theft expenses
8. no other unusual circumstances

[FR Doc. 78-21483 Filed 8-2-78; 8:45 am]

[7035-01]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 1033—CAR SERVICE

[Amdt. No. 13 to S.O. No. 1084]

Chicago, Rock Island & Pacific Railroad Co., W. M. Gibbons, Trustee, Authorized To Operate over Tracks of Chicago & North Western Transportation Co.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Amdt. No. 13 to Service Order No. 1084).

SUMMARY: Service Order No. 1084 authorized the Chicago, Rock Island & Pacific to operate over a track abandoned by the Chicago & North Western Transportation Co. at McClelland, Iowa, for the purpose of continuing railroad service to a shipper located adjacent to that track. The order is printed in full in FEDERAL REGISTER volume 36 at page 22063. Amendment No. 13 extends Service Order No. 1084 for 6 months.

DATES: Effective 11:59 p.m., July 31, 1978. Expires 11:59 p.m., January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

Upon further consideration of Service Order No. 1084 (36 FR 22063; 37 FR 12726, 28059; 38 FR 20840; 39 FR 3827, 27672; 40 FR 5162, 31939; 41 FR 4929, 31381; 42 FR 6371, 38572; and 43 FR 4431), and good cause appearing therefor:

It is ordered, Service Order No. 1084 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

§ 1033.1084 Service Order No. 1084.

(a) Chicago, Rock Island & Pacific Railroad Co., W. M. Gibbons, Trustee, authorized to operate over tracks of Chicago & North Western Transportation Co. * * *.

* * * * *

(e) *Expiration date.* This order shall expire at 11:59 p.m., January 31, 1979, unless otherwise modified, changed, or suspended by order of this Commission.

Effective Date. This amendment shall become effective at 11:59 p.m., July 31, 1978.

(49 U.S.C. 1(10-17))

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Divison, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel, E. Burns, Robert S. Turkington, and John R. Michael, Member John R. Michael not participating.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21593 Filed 8-2-78; 8:45 am]

[7035-01]

[Amdt. No. 8 to Rev. S.O. No. 1210]

PART 1033—CAR SERVICE

Providence & Worcester Co. Authorized To Operate Over Tracks of Consolidated Rail Corporation and Consolidated Rail Corporation Authorized To Operate Over Tracks of Providence and Worcester Co.

JULY 27, 1978.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Amdt. No. 8 to Revised Service Order No. 1210).

SUMMARY: Abandonments by the former Penn Central have isolated two segments of the Consolidated Rail Corporation's lines in Rhode Island, known as the Slatersville and Wrenthem branches, from the remainder of the system. The Providence & Worcester Co. has the sole rail connections with these two ConRail branches. Revised Service Order No. 1210 authorizes the Providence & Worcester to operate these branches for the account of ConRail pending the Commission's approval of a joint operating contract. The Order is published in full in FEDERAL REGISTER volume 40 at page 7452. Amendment No. 8 extends Revised Service Order No. 1210 for 6 months.

DATES: Effective 11:59 p.m., July 31, 1978. Expires 11:59 p.m., January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

Upon further consideration of Revised Service Order No. 1210 (40 FR 7452, 19478; 41 FR 4929, 15414, 32430; 42 FR 6817, 39221; and 43 FR 4433), and good cause appearing therefor:

It is ordered, Revised Service Order No. 1210 is amended by substituting the following paragraph (h) for paragraph (h) thereof:

§ 1033.1210 Revised Service Order No. 1210.

(a) Providence & Worcester Co. authorized to operate over tracks of Consolidated Rail Corporation and Consolidated Rail Corporation authorized to operate over tracks of Providence & Worcester Co. * * *

* * * * *

(h) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., January 31, 1979, unless otherwise modified, changed, or suspended by order of this Commission.

Effective Date. This amendment shall become effective at 11:59 p.m., July 31, 1978.

(49 U.S.C. 1(10-17))

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Tuckington, and John R. Michael. Member John R. Michael not participating.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21592 Filed 8-3-78; 8:45 am]

[7035-01]

[Amdt. No. 6 to S.O. No. 1242]

PART 1033—CAR SERVICE

The Kansas City Southern Railway Co. Authorized To Operate Over Certain Tracks of Southern Pacific Transportation Co.

Decided JULY 27, 1978.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Amdt. No. 6 to Service Order No. 1242).

SUMMARY: Service Order No. 1242 authorizes the Kansas City Southern to operate over tracks of the Southern Pacific Transportation Co. at Lake Charles, La. The Kansas City Southern Railway's drawbridge over the Calcasieu River at Lake Charles is unserviceable because of failure of the machinery used to open and close the span, isolating a major industrial district served by the Kansas City Southern from the remainder of the system. Operation of Kansas City Southern trains over the parallel bridge of the Southern Pacific enables the Kansas City Southern to continue service to shippers served by the tracks disconnected from the remainder of the system by failure of the bridge operating mechanism. Service Order No. 1242 is published in full in FEDERAL REGISTER Volume 41 at page 18053. Amendment No. 6 extends the order for one month only.

DATES: Effective 11:59 p.m., July 31, 1978. Expires 11:59 p.m., August 31, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

Upon further consideration of Service Order No. 1242 (41 FR 18053, 31824, 48344; 42 FR 6584, 39221; and 43 FR 4432), and good cause appearing therefor:

It is ordered, Service Order No. 1242 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

§ 1033.1242 Service Order No. 1242.

(a) The Kansas City Southern Railway Co. authorized to operate over tracks of Southern Pacific Transportation Co. * * *

* * * * *

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., August 31, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., July 31, 1978.

(49 U.S.C. 1(10-17).)

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member John R. Michael not participating.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21590 Filed 8-2-78; 8:45 am]

[7035-01]

[Amdt. No. 4 to S.O. No. 1247]

PART 1033—CAR SERVICE

Bath & Hammondsport RR. Co. Authorized To Operate Over Tracks of Consolidated Rail Corporation

JULY 27, 1978.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Amdt. No. 4 to Service Order No. 1247).

SUMMARY: As the designated operator for the State of New York, the Bath & Hammondsport RR. operates the Wayland branch of the former Erie-Lackawanna RR. between Kanona, N.Y., and Wayland, N.Y. This line is separated from the Bath & Hammondsport's own line by 3 miles of Consolidated Rail Corp. trackage Service Order No. 1247 authorizes the Bath & Hammondsport to operate over this Consolidated Rail Corp. trackage in order to transfer locomotives, cars, and crews between its own line and the Wayland Branch. Service Order No. 1247 is published in full in FEDERAL REGISTER Volume 41 at page 29819. Amendment No. 4 extends the order for 6 months.

DATES: Effective 11:59 p.m., July 31, 1978. Expires 11:59 p.m., January 31, 1979.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

Upon further consideration of Service Order No. 1247 (41 FR 29819; 42 FR 6370, 39389; and 43 FR 4617), and good cause appearing therefor:

It is ordered, Service Order No. 1247 is amended by substituting the following paragraph (d) for paragraph (d) thereof:

* * * * *

§ 1033.1247 Service Order No. 1247.

Bath & Hammondsport RR. Co. authorized to operate over tracks of Consolidated Rail Corp. * * *

* * * * *

(d) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., January 31, 1979, unless otherwise modified, changed or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., July 31, 1978.

(49 U.S.C. 1(10-17).)

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member John R. Michael not participating.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21595 Filed 8-2-78; 8:45 am]

[7035-01]

[Amdt. No. 2 to S.O. No. 1276]

PART 1033—CAR SERVICE

Michigan Interstate Railway Co. Authorized To Operate Portions of Former Ann Arbor Line

JULY 27, 1978.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Amdt. No. 2 to Service Order No. 1276).

SUMMARY: Service Order No. 1276 authorizes the Michigan Interstate Railway Co. (MI) to operate over the former Ann Arbor (AA) line between Ann Arbor, Mich., and Toledo, Ohio. The portion of the railroad west of Ann Arbor will continue to be operated by the MI as designated operator for the State of Michigan. Operation by the MI over these tracks of the former AA between Ann Arbor and Toledo is necessary to continue essential rail service to shippers served by the line, and to maintain through connections with that portion between Ann Arbor and Frankfort. Service

Order No. 1276 is published in full in FEDERAL REGISTER Volume 42 at page 53601. Amendment No. 2 extends the order for 3 months.

DATES: Effective 11:59 p.m., July 31, 1978. Expires 11:59 p.m., October 31, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

Upon further consideration of Service Order No. 1276 (42 FR 53601, and 43 FR 4432), and good cause appearing therefor:

It is ordered, Service Order No. 1276 is amended by substituting the following paragraph (f) for paragraph (f) thereof:

§ 1033.1276 Service Order No. 1276.

(a) Michigan Interstate Railway Co. authorized to operate portions of Former Ann Arbor. * * *

* * * * *

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., October 31, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., July 31, 1978.

(49 U.S.C. 1(10-17).)

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member John R. Michael not participating.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21594 Filed 8-2-78; 8:45 am]

[7035-01]

[Amdt. No. 2 to S.O. No. 1312]

PART 1033—CAR SERVICE

Railroads Authorized To Transport Unit-Grain-Trains of Less Than Number of Cars Required by Tariffs

JULY 27, 1978.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Amdt. No. 2 to Service Order No. 1312).

SUMMARY: Because of a severe shortage of covered hopper cars, railroads are unable promptly to substitute other cars for cars which must be removed from unit-grain-trains because of mechanical defects resulting in delays to the remainder of the cars used in the unit-grain-trains awaiting the reassembly of sufficient cars to fulfill tariff requirements. Service Order No. 1312 authorizes the carriers to transport unit-grain-trains with fewer cars than the number required by the applicable tariffs, subject to specified restrictions. Service Order No. 1312 is published in full in volume 43 of the FEDERAL REGISTER at page 13064. Amendment No. 2 extends this order for 4 months.

DATES: Effective 11:59 p.m., July 31, 1978. Expires 11:59 p.m., November 30, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

Upon further consideration of Service Order No. 1312 (43 FR 13064 and 24695), and good cause appearing therefor:

It is ordered, Service Order No. 1312 is amended by substituting the following paragraph (i) for paragraph (i) thereof:

§ 1033.1312 Service Order No. 1312.

(a) Railroads authorized to transport unit-grain-trains of less than number of cars required by tariffs. * * *

* * * * *

(i) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 30, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., July 31, 1978.

(49 U.S.C. 1(10-17))

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member John R. Michael not participating.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21596 Filed 8-2-78; 8:45 am]

[7035-01]

[Amdt. No. 2 to Rev. S.O. No. 1315]

PART 1033—CAR SERVICE

Demurrage and Free Time on Freight Cars

JULY 27, 1978.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Amdt. No. 2 to Revised Service Order No. 1315).

SUMMARY: Revised Service Order No. 1315 establishes minimum periods for the detention of cars by shippers and receivers free of demurrage and increases demurrage charges for cars held beyond the free time. The order is printed in full in the FEDERAL REGISTER dated May 3, 1978, at page 19050. Amendment No. 2 extends this order for an additional period of two months.

DATES: Effective 6:59 a.m., August 1, 1978; expires 6:59 a.m., October 1, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

Upon further consideration of Revised Service Order No. 1315 (43 FR 19050 and 23722), and good cause appearing therefor:

It is ordered, That Revised Service Order No. 1315 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

§ 1033.1315 Revised Service Order No. 1315.

(a) Demurrage and free time on freight cars. * * *

* * * * *

(e) *Expiration date.* The provisions of this order shall expire at 6:59 a.m., October 1, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective Date. This amendment shall become effective at 6:59 a.m., August 1, 1978.

(49 U.S.C. 1(10-17).)

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Divison, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel, E. Burns, Robert S. Turkington, and John R. Michael. Member John R. Michael not participating.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21597 Filed 8-2-78; 8:45 am]

[7035-01]

[Amdt. No. 1 to S.O. No. 1321]

PART 1033—CAR SERVICE

Lenawee County Railroad Co., Inc., Authorized To Operate Over Tracks of Consolidated Rail Corp.

JULY 27, 1978.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amdt. No. 1 to Service Order No. 1321).

SUMMARY: The Lenawee County Railroad operates two separate lines of railroad in the vicinity of Grosvenor, Mich. Service Order No. 1321 authorizes the Lenawee County Railroad to operate over 3.6 miles of a line of the Consolidated Rail Corp. between Lenawee Junction, Mich., and Gorsvenor, Mich., which permits their single locomotive to serve both line segments. The order is printed in full in FEDERAL REGISTER volume 43 at page 16341. The amendment extends the order for 3 months.

DATES: Effective 11:59 p.m., July 31, 1978. Expires 11:59 p.m., September 30, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

Upon further consideration of Service Order No. 1321 (43 FR 16341), and good cause appearing therefor:

It is ordered, Service Order No. 1321 is amended by substituting the following paragraph (d) for paragraph (d) thereof:

§ 1033.1321 Service Order No. 1321.

(a) Lenawee County RR. Co., Inc., authorized to operate over tracks of Consolidated Rail Corp. * * *

* * * * *

(d) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., September 30, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., July 31, 1978.

(49 U.S.C. 1(10-17).)

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member John R. Michael not participating.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21591 Filed 8-2-78; 8:45 am]

[4310-55]

Title 50—Wildlife and Fisheries

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

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, BARTER, PURCHASE, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 21—MIGRATORY BIRD PERMITS

States Meeting Federal Falconry Standards

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service adds Alabama and Tennessee to the list of States where falconry laws have been determined by the Director to meet or exceed the minimum Federal standards. Falconry may be practiced in the States listed in 50 CFR 21.29.

EFFECTIVE DATE: August 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Danny M. Searcy, Special Agent, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, telephone 202-343-9242.

SUPPLEMENTARY INFORMATION: On January 15, 1976 (41 FR 2237), the Service issued regulations which provided for the review and approval of State falconry laws. If a given State's laws were approved, the State would be listed in 50 CFR 21.29(k), and falconry permitted pursuant to a system of joint Federal-State permits. Using criteria established in 50 CFR 21.29, the Director reviewed and approved falconry laws of 37 States, and published lists of these States in the FEDERAL REGISTER (42 FR 42353, 43 FR 968, and 43 FR 10565).

The Director has now reviewed and approved the falconry laws of the States of Alabama and Tennessee.

Upon publication of this amended § 21.29(k) in the FEDERAL REGISTER, the practice of falconry in Alabama and Tennessee shall be governed by 50 CFR 21.28 and 21.29.

The primary author of this document is Margaret Cash, Regulations Coordinator, Division of Law Enforcement, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

§ 21.29 [Amended]

Accordingly, § 21.29(k) of part 21 of chapter I of title 50 of the Code of Federal Regulations is amended by adding Alabama and Tennessee, alphabetically and preceded by an asterisk, to the list of States.

NOTE.—The Service has determined that this document does not contain a major action requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 27, 1978.

F. EUGENE HESTER,
Acting Director,
Fish and Wildlife Service.

[FR Doc. 78-21542 Filed 8-2-78; 8:45 am]

[4310-55]

PART 26—PUBLIC ENTRY AND USE

Opening of Cibola, Havasu, and Imperial National Wildlife Refuges, Ariz./Calif., to Public Access, Use, and Recreation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to public access, use, and recreation of Cibola, Havasu, and Imperial National Wildlife Refuges is compatible with the objectives for which each area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: August 1, 1978, to December 31, 1978.

FOR FURTHER INFORMATION CONTACT REFUGE MANAGERS LISTED BELOW:

George M. Constantino, Refuge Manager, Cibola National Wildlife Refuge, Box AP, Blythe, Calif. 92225, 714-922-4433.

Tyrus W. Berry, Refuge Manager, Havasu National Wildlife Refuge, P.O. Box A, Needles, Calif. 92362, 714-326-3853.

Gerald E. Duncan, Refuge Manager, Imperial National Wildlife Refuge, P.O. Box 2217, Martinez Lake, Ariz. 85362, 602-783-3400.

SUPPLEMENTARY INFORMATION: Cibola, Havasu, and Imperial National Wildlife Refuges, Ariz. and Calif., are open to public access, use, and recreation, subject to the provisions of title 50, Code of Federal Regulations, part 26, regulatory leaflets and signs, and the following special condition:

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

The minimum altitude for aircraft flying over the Cibola, Havasu, or Imperial National Wildlife Refuge shall be 2,000 feet above ground elevation. This regulation is meant to prevent harassment of wildlife and to promote quality recreational experiences for the visiting public.

The provisions of this special regulation supplement the regulations which govern public access, use, and recreation for national wildlife refuge areas generally which are set forth in title 50, Code of Federal Regulations, part 26. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring the preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

JERRY L. STEGMAN,
Acting Regional Director.

JULY 17, 1978.

[FR Doc. 78-21470 Filed 8-2-78; 8:45 am]

[4310-55]

PART 32—HUNTING

Opening of J. Clark Salyer National Wildlife Refuge, N. Dak., to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of J. Clark Salyer National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: September 1, 1978, through November 12, 1978; November 27, 1978, through December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Jon M. Malcolm, J. Clark Salyer National Wildlife Refuge, Upham, N. Dak. 58789, telephone 701-768-3223.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Hunting of deer with bow and arrow is permitted on the J. Clark Salyer National Wildlife Refuge, N. Dak., from 12 n. to sunset September 1, 1978, and from sunrise to sunset September 2, 1978, through November 12, 1978, and November 27, 1978, through December 31, 1978, on the entire refuge except the headquarters area posted as closed to hunting. This open area is delineated on a map available at the refuge headquarters and from the office of the Regional Director, P.O. Box 25486, Denver Federal Center, Denver, Colo. 80225. Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. Hunting is by foot only. Vehicles are to remain on established refuge roads only.

2. All hunters must exhibit their hunting license, deer tag, game, and vehicle contents to Federal and State officers upon request.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at anytime.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

JON M. MALCOLM,
Refuge Manager.

JULY 27, 1978.

[FR Doc. 78-21475 Filed 8-2-78; 8:45 am]

[4310-55]

PART 32—HUNTING

Opening of J. Clark Salyer National Wildlife Refuge, N. Dak., to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to hunting of J. Clark Salyer National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: November 17, 1978, through November 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Jon M. Malcolm, J. Clark Salyer National Wildlife Refuge, Upham, N. Dak. 58789, telephone 701-768-3223.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Hunting of deer by gun is permitted on the J. Clark Salyer National Wildlife Refuge, N. Dak., from 12 a.m. to sunset November 17, 1978, and from sunrise to sunset November 18, 1978, through November 26, 1978, on the entire refuge except the headquarters area posted as closed to hunting. This open area is delineated on maps available at the refuge headquarters and from the office of the Regional Director, P.O. Box 25486, Denver Federal Center, Denver, Colo. 80225.

Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. A special Federal refuge permit for antlered deer only is required from November 17 through 19, 1978, and may be obtained by applying to the North Dakota Game and Fish Department, 2121 Lovett Avenue, Bismarck, N. Dak. 58505.

2. After November 19, 1978, any person, other than those with gratis landowner licenses, having a license and permit for State Unit IIIA, to hunt deer may do so without a special refuge permit.

3. All hunters must exhibit their special Federal refuge permit, hunting license, deer tag, game, and vehicle contents to Federal and State officers upon request.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

JON M. MALCOLM,
Refuge Manager.

JULY 27, 1978.

[FR Doc. 78-21476 Filed 8-2-78; 8:45 am]

[4310-55]

PART 32—HUNTING

National Wildlife Refuges in Florida, Georgia, South Carolina

AGENCY: Fish and Wildlife Service.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to hunting of certain national wildlife refuges in Florida, Georgia, and South Carolina is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. This document establishes special regulations effective for the upcoming hunting seasons for certain migratory game bird, upland game, and big game species.

DATES: September 1, 1978 to June 30, 1979. See State regulations for waterfowl seasons in Georgia and Florida.

FOR FURTHER INFORMATION CONTACT: The Area manager or appropriate refuge manager at the address or telephone number listed below:

Donald J. Hankla, Area Manager, U.S. Fish and Wildlife Service, 900 San Marco Boulevard, Jacksonville, Fla. 32207, telephone 904-791-2267.

Refuge Manager, Chassahowitzka National Wildlife Refuge, Route 2, Box 44, Homosassa, Fla. 32646, telephone 904-628-2201.

Refuge Manager, Lake Woodruff National Wildlife Refuge, P.O. Box 488, DeLeon Springs, Fla. 32028, telephone 904-985-4673.

Refuge Manager, Loxahatchee National Wildlife Refuge, Route 1, Box 278, Boynton Beach, Fla. 33437, telephone 305-732-3684.

Refuge Manager, Merritt Island National Wildlife Refuge, P.O. Box 6504, Titusville, Fla. 32780, telephone 305-867-4820.

Refuge Manager, Piedmont National Wildlife Refuge, Round Oak, Ga. 31080, telephone 912-986-3651.

Refuge Manager, Savannah (and Blackbeard Island and Wassaw Island) National Wildlife Refuge, P.O. Box 8487, Savannah, Ga. 31402, telephone 912-232-4321, extension 415.

Refuge Manager, St. Marks National Wildlife Refuge, P.O. Box 68, St. Marks, Fla. 32355, telephone 904-925-6280.

Refuge Manager, St. Vincent National Wildlife Refuge, P.O. Box 447, Apalachicola, Fla. 32320, telephone 904-653-8808.

SUPPLEMENTARY INFORMATION:

GENERAL CONDITIONS

(1) Hunting is permitted on the national wildlife refuges indicated below in accordance with 50 CFR Part 32, State regulations, applicable general conditions and the following special regulations.

(2) All hunters must possess a refuge permit to hunt on a national wildlife refuge. The permits are available from the refuge headquarters and/or check station. Permits are nontransferable and must be carried on the person while hunting. Apprehension of a participant for any infraction of regulations shall be cause for immediate revocation of his hunting permit for one year. All hunters must complete and return to the refuge manager the permit questionnaires. This should be done prior to check-out time for daily permits and within 30 days following the end of the season for season permits.

(3) A list of special conditions applying to individual refuge hunts and a map of the hunt area are available at refuge headquarters. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps.

(4) Ingress and egress points for motor vehicles and/or boats are limited to designated check stations or other specified areas. No off-road use of motorized vehicles or equipment will be permitted during the hunts.

(5) Only steel shot ammunition may be used during refuge migratory bird hunts. Possession of lead or other toxic shot in any gage is prohibited.

(6) When hunters under age 18 are permitted, they must be under the close supervision of an adult. For safety reasons, the ratio should be one adult to one juvenile but in no case should an adult have more than two juveniles under his/her supervision.

(7) Deer, hogs, and turkeys harvested during scheduled hunts for these species must be checked by refuge personnel before leaving the refuge.

(8) Unless specified, dogs are not permitted on refuge areas during upland and big game hunts. The use of dogs is encouraged during migratory game bird hunts to retrieve dead and wounded birds. Dogs must be under control at all times.

(9) Only temporary blinds constructed of native materials are permitted. Hunters must build their blinds and furnish boats and decoys.

(10) Decoys must be retrieved by owner and removed from the refuge daily.

(11) All boats shall comply with Coast Guard, State, and refuge safety rules and regulations. Life jackets shall be worn at all times when boats are in motion and shotguns must be unloaded and disassembled or cased while boats are in motion. All boats must display a light when traveling in darkness.

(12) It is unlawful to drive a nail, spike, or other metal object, including climbing or screw-type spikes, into any tree or to hunt from any tree in which a nail, spike, or other metal object has been driven.

(13) Archery hunters should wear a daylight fluorescent orange outer garment while hunting on the ground or walking to and from the stands. Refuge gun hunters are required to wear outer garment above the waist which contains a minimum of 500 square inches of daylight fluorescent orange materials (except quail and squirrel hunters at Piedmont National Wildlife Refuge).

(14) Muzzleloading weapons used for deer and hog hunting on national wildlife refuges in Florida must be a percussion cap or flintlock rifle with a single or double rifled barrel at least .40 caliber but not larger than .58 caliber and weapons must have iron sights. Muzzleloading weapons used during primitive weapon hunts on national wildlife refuges in Georgia must be 20 gage or larger loaded with single shot for smoothbores or .44 caliber or larger if rifled bores, minimum barrel length is 20 inches.

§ 32.12 Special regulations; migratory bird hunting; for individual wildlife refuge areas.

FLORIDA

Migratory bird hunting is permitted on the following refuges within those areas posted with signs and/or designated on a map. Migratory bird hunting shall be in accordance with all applicable State regulations subject to the aforementioned general conditions and the following special conditions:

CHASSAHOWITZKA NATIONAL WILDLIFE REFUGE (2,500 ACRES)

(1) Only ducks and coots may be hunted on the designated refuge areas and the daily bag limits are the same as State regulations.

(2) Hunting will be permitted on approximately 2,500 acres during the State waterfowl season on Sunday, Wednesday, Thursday, Friday, and Saturday weekly.

(3) All air-thrust boat operators must possess a valid refuge permit for operation which is available at refuge headquarters.

(4) Airboats must be equipped with a spotlight capable of producing an effective beam a minimum of 300 feet when operating in darkness.

(5) Hunters must follow the routes of travel within the refuge that are posted. The routes of travel for airboats to and from the public hunting area are shown on a map available at the refuge headquarters.

LOXAHATCHEE NATIONAL WILDLIFE REFUGE (29,000 ACRES)

(1) Only ducks and coots may be hunted on the approximately 29,000 acres which have been designated as being open to public hunting of waterfowl. The public hunting area has been posted by red signs with black lettering and is delineated on a map. Other signs are posted which designate closed areas.

(2) Hunting is permitted on Sunday, Wednesday, Thursday, Friday, and Saturday weekly during the State waterfowl season and shooting hours are from one-half hour before sunrise until 11 a.m.

(3) The refuge manager has the authority to close a portion or all of the refuge to public hunting at any time. It is possible that the hunt may have to be terminated early or a portion of the hunt area closed should unusual climatic conditions result in utilization of the refuge by a concentration of the endangered everglade kite.

(4) Hunters are required to enter and leave the refuge from the headquarters landing or the Loxahatchee Refuge concession. Air-thrust boats may be launched at the headquarters landing only. Hunters must use the designated routes of travel to and from the hunting area. These routes are those portions of Canal 40 and Canal 39 (Hillsboro Canal) within the hunting area, and a clearly posted access trail through the headquarters closed area. No hunting is permitted in these canals or in the posted closed areas near headquarters and the concession.

(5) All air-thrust boat operators must possess a refuge permit for operation on the refuge. This permit will be revoked for one year upon apprehension for a violation of any hunt regulation.

(6) All boats operating within the public hunting area are required to fly a flag 12" x 12", 10 feet above the bottom of the boat as a safety precaution.

MERRITT ISLAND NATIONAL WILDLIFE REFUGE (38,500 ACRES)

(1) Migratory waterfowl hunting is permitted on approximately 38,500 acres and areas open to hunting are designated on a map available at refuge headquarters.

(2) Hunting is permitted only on Sunday, Wednesday, Thursday, Friday, and Saturday weekly. Shooting is prohibited at all times except from one-half hour before sunrise until 1 p.m. daily.

(3) A Merritt Island NWR annual hunting permit must be obtained and carried on the person to whom it is issued when he is on the refuge. The permit is free and seasonal permits are available and must be obtained in person at the refuge headquarters. A daily permit for areas 1, 2, and 4 is required for all hunters only through the first Sunday of the season and may be obtained at the south check station on Highway 402. A season permit will cover hunting in areas 1, 2, and 4 after the first Sunday of the season. There will be no north check station operated this year. Proof of completion of a certified hunter safety course is required to hunt areas 1, 2, and 4 during the entire season. The Highway 402 (south) check station opens at 4 a.m. for check-in and permits will be issued on first-come, first-serve basis daily through the first Sunday. The following maximum number of permits will be available each day: 75 for area 1; 200 for area 2; and 100 for area 4. Overnight camping is not permitted. Hunters must turn in daily permits and check out before 2 p.m. check-station closing time, daily through the first Sunday.

(4) Air-thrust boats are prohibited.

(5) Life jackets shall be worn at all times when boats are in motion while in the Indian River, Banana River, and Mosquito Lagoon within the refuge.

(6) Ducks and coots only may be taken in accordance with State regulations.

(7) The refuge will be closed to hunting at certain times during space shuttle operations. Consult local news sources for the shuttle security schedule.

GEORGIA

SAVANNAH NATIONAL WILDLIFE REFUGE (3,500 ACRES)

Migratory bird hunting is permitted only on the areas designated as being open to hunting. These areas comprising 3,500 acres are delineated on maps available at the refuge headquarters. Savannah Refuge is located near the coast and the hunting area is subject to tidal fluctuations of 6 to 8 feet. Hunters are urged to be familiar with the tide tables, carry adequate safety equipment, and exercise extreme caution in all boating and hunting activities.

(1) Hunting will not be permitted in or on Front, Middle, and Back Rivers, nor closer than 50 yards to the shoreline of these rivers.

(2) Season permits must be carried on person while hunting. Request for hunt permits may be made through the mail and must be accompanied by a stamped, self-addressed envelope.

(3) Hunting will be permitted only on Thursday, Friday, and Saturday, from one-half hour before sunrise to 12 o'clock noon during the season set by State regulation. Hunters will not be permitted to enter the hunting area sooner than one and one-half hours before sunrise. Snipe season opens at different dates than ducks and coots but will close on the refuge on the same date.

(4) Daily bag limits are the same as State regulations for ducks, coots, and snipe. Hunters are cautioned against killing, shooting at, or molesting any species of wildlife other than those listed.

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

FLORIDA

ST. MARKS NATIONAL WILDLIFE REFUGE—ST. MARKS UNIT (600 ACRES)

Special conditions: The hunt area is 600 acres which is cooperatively administered as part of the Aucilla Wildlife Management Area according to all applicable State rules and regulations.

ST. VINCENT NATIONAL WILDLIFE REFUGE—(10,000 ACRES)

Special conditions: (1) Species permitted: Turkey (spring gobbler) only.

(2) Permitted method of hunting: Primitive gun: muzzleloading weapons used for turkey must be at least 20 gauge but not larger than 10 gauge for

smoothbores and rifled bores not larger than .58 caliber.

(3) Season: March 31-April 1, 1979.

(4) Bag limit: State regulations.

(5) Sex: Bearded turkey.

(6) Permits: 125 permits issued, first-come, first-served.

(7) Camping and fires are permitted in two designated camping areas. Camping is permitted 1 day prior to the opening of hunting season. All camping equipment must be removed by 3 p.m., the day following the last day of the hunt season.

(8) Prehunt scouting and stand placement will be permitted from 12 noon until sunset on the day immediately prior to the hunt season. Weapons are not permitted in the woods during scouting period.

GEORGIA

PIEDMONT NATIONAL WILDLIFE REFUGE (33,000 ACRES)

Special conditions: (1) species permitted: Quail and gray squirrel.

(2) Permitted method of hunting: Gun hunt.

(3) Season: Tuesdays, Saturdays, and National holidays from November 21, 1978—February 27, 1979.

(4) Bag limit: State regulations.

(5) Permits: No quota. Permit required and will be available at refuge headquarters prior to the hunts.

(6) Dogs are allowed for quail hunting and one dog per hunting party is allowed for squirrel hunting.

(7) Handguns and buckshot are prohibited on the refuge. Shotguns and .22 rimfire rifles are the only legal weapons for the squirrel hunt.

§ 32.32 Special regulations: Big game for individual wildlife refuges.

FLORIDA

White-tailed deer and feral hogs may be hunted on the following refuge areas:

LAKE WOODRUFF NATIONAL WILDLIFE REFUGE (2,250 ACRES)

(1) Archery hunts: (a) Season: September 8-10 and September 22-24, 1978; (b) bag limit: Deer—State regulations, hogs—no limit; (c) sex: Either sex; and (d) permits: 50 each hunt on Tick and Dexter Islands and 20 for each hunt on Jones Island. Permit applications must be received prior to the public drawing at 2 p.m. on August 11, 1978.

(2) Primitive gun hunts: (a) Season: October 6-8 and October 27-29, 1978; (b) bag limit: Deer—State regulations, hogs—no limit; (c) sex: Either sex on Dexter and Tick Island, trophy buck (3 point antlers on one side or better) on Jones Island; and (d) permits: 40 each hunt on Dexter and Tick Island and 20 each hunt on Jones Island. Permit applications must be received prior to the public drawing at 2 p.m. on August 11, 1978.

(3) Access to hunting area is by boat. Hunters must furnish their own transportation. Airboats are prohibited.

(4) No one may enter the hunt area prior to 2 hours before sunrise and all hunters must clear the area by 2 hours after sunset.

(5) Stand hours: One-half hour before sunrise to one and one-half hours after sunrise. No stalking or movement through the hunt area is permitted during stand hours. There will be no required evening stand period, although still hunting is encouraged from 4 p.m. until sunset.

ST. MARKS NATIONAL WILDLIFE REFUGE—ST. MARKS UNIT (600 ACRES)

Special conditions: (1) Hunt area is 600 acres cooperatively administered as part of the Aucilla Wildlife Management Area according to all applicable State rules and regulations.

ST. MARKS NATIONAL WILDLIFE REFUGE—WAKULLA UNIT (12,000 ACRES)

Special conditions: (1) Archery hunts: (a) Season: October 27-29, 1978; (b) bag limit: Deer—State regulations, hogs—no limit; (c) sex: Either sex; and (d) permits: 800 permits issued by drawing on August 1, 1978 and applications must be received by 4:30 p.m. on July 31, 1978.

(2) Primitive gun hunts: (a) Season: November 17-19, 1978; (b) bag limit: Deer—State regulations, hogs—no limit; (c) sex: deer buck only minimum of 5" antler, hogs—either sex; and (d) permits: 400 permits issued by drawing on August 1, 1978 and applications must be received by 4:30 p.m., on July 31, 1978.

(3) Prohibited hunting areas: No discharging of firearms is permitted within 100 yards of the Abe Trull Field or the Wakulla Beach Road. No shooting of arrows is permitted within 100 yards of the Wakulla Beach Road. The West Goose Creek Seineyard and the area south of the fence line near the south terminus of the Wakulla Beach Road are closed to hunting during both hunts.

ST. VINCENT NATIONAL WILDLIFE REFUGE (12,350 ACRES)

Special conditions: (1) Archery Hunts: (a) Season: October 19-22, 1978; (b) bag limit: Deer—State regulations, hogs—no limit; (c) sex: Either sex; and (d) permits: 650 permits issued, first come, first served basis.

(2) Primitive gun hunt: (a) Season: Deer—December 7-10, 1978, hogs—December 7-10, 1978 and March 31-April 1, 1979; (b) bag limit: Deer—State regulations, hogs—no limit; (c) sex: Either sex; and (d) permits: Deer and hogs (winter)—300 permits issued, first come, first served basis, hogs (spring)—125 permits issued (along with turkey hunting), first come, first served basis.

(3) Archery stand hours: One-half hour before sunrise to one and one-half hours after sunrise.

(4) Camping and fires are permitted in two designated camping areas. Camping is permitted one day prior to the opening of hunt season. All camping equipment must be removed by 3 p.m., the day following the last day of the hunt season.

GEORGIA AND SOUTH CAROLINA

SAVANNAH NATIONAL WILDLIFE REFUGE (11,500 ACRES)

Special conditions: (1) Species permitted: Feral hogs.

(2) Permitted method of hunting: Shotguns using "00" buckshot.

(3) Season: October 4 and October 14, 1978.

(4) Bag limit: No limit.

(5) Permits: 150 permits issued for each hunt by public drawing. Permit application must be returned by September 5.

(6) Participants must check in at headquarters no earlier than 5:30 a.m., and park in designated area prior to hunting. Entry by boat is permitted at Middle River Landing after check in.

(7) No hunters under age 18 are permitted to hunt.

(8) Prohibited hunting areas: (a) Within 100 yards of U.S. Highway 17; (b) refuge headquarters area; and (c) Onslow Island Spoil Area.

(9) Movement within the refuge is by foot or private boat.

(10) The Savannah National Wildlife Refuge (except for the headquarters area) will be closed to the general public on October 4 and 14, 1978.

White tailed deer may be hunted on the following refuge areas:

GEORGIA

BLACKBEARD ISLAND NATIONAL WILDLIFE REFUGE (4,500 ACRES)

Special conditions: (1) Permitted method of hunting: Archery.

(2) Season: October 30-November 2, 1978; and December 28-December 30, 1978.

(3) Bag limit: Two deer.

(4) Sex: Either sex.

(5) Permits: No limit. Permit required. Application forms must be postmarked by September 30 for the hunt beginning October 30 and by November 28 for the hunt beginning December 28.

(6) Camping and fires are permitted at designated camping areas only. Entry on the island will not be permitted more than two days in advance of the opening date of each hunt period. Participants will be confined to the camping area until the morning of the

first day of each hunt period, and must be off the island the day following the last day of the hunt period.

(7) Hunters must be on their stands during morning and evening hunt periods, to be announced prior to each hunt. No movements during these hours will be tolerated.

(8) Access to island is by boat. Hunters must furnish their own transportation. After reaching the island, travel is by foot only.

(9) The Blackbeard Island National Wildlife Refuge will be closed to the general public October 28—November 3, 1978; and December 26-31, 1978.

PIEDMONT NATIONAL WILDLIFE REFUGE (33,000 ACRES)

Special conditions: (1) Archery hunt: (a) Season: October 7-15, 1978; (b) bag limit: Two deer, one per day; (c) sex: Either sex; and (d) permits: no limit. Permits will be available at refuge headquarters.

(2) Primitive gun hunt: (a) Season: October 21, 1978; (b) bag limit: One deer; (c) sex: Trophy buck (3 or more points on one side); and (d) permits: 1,200 permits issued by public drawing on August 28, 1978 and permit applications must be received by August 23, 1978.

(3) Bucks only hunt (a) Season: October 26-28, 1978; (b) limit: two bucks (one daily) with visible antlers; (c) permits: 1,500 permits issued by public drawing on August 28, 1978 and permit applications must be received by August 23, 1978.

(4) Either sex gun hunt: (a) Season: November 4 and November 18, 1978; (b) bag limit: One deer; (c) sex: Either sex; and (d) permits: 2,500 permits for each hunt issued by public drawing on August 28, 1978 and permit applications must be received by August 23, 1978.

(5) Children under age 12 are not permitted on the deer hunts.

(6) Camping is permitted only in the Pippins Lake campground, compartment 19. The campground will open at 8 a.m., the day before each deer hunt and close at 11 a.m., the day after each deer hunt.

(7) If weather and conditions permit, gates blocking hunt access roads will be opened one hour prior to official sunrise and closed one hour after sunset. Off-road vehicle use and travel around or through any closed gates is prohibited. Parked vehicles must not block entrances to roads.

(8) Hunters are not required to check in prior to hunting.

(9) Prehunt scouting and stand placement will be permitted from 8 a.m. until sunset on the day imediately prior to each deer hunt. Weapons are not permitted in the woods during scouting periods.

(10) Handguns and buckshot are not permitted on the refuge.

WASSAW ISLAND NATIONAL WILDLIFE REFUGE (2,000 ACRES)

Special conditions: (1) Archery: (a) Season: November 30-December 2, 1978; (b) bag limit: Two deer; (c) sex: Either sex; and (d) permits: 200 permits issued by public drawing and permit applications must be postmarked by October 31, 1978.

(2) Gun hunt: (a) Weapons permitted: Rifles or shotguns 20 gauge or larger using slugs; (b) season: December 15 and 16, 1978; (c) bag limit: Two deer; (d) sex: Antlerless deer on December 15, 1978, either sex on December 16, 1978; and (e) permits: 75 permits will be issued for each hunt by public drawing and permit applications must be postmarked by November 15.

(3) Camping and fires are permitted at designated camping areas only. Entry on the refuge will not be permitted more than one day in advance of the opening date of the hunt period. Participants will be confined to the camping area until the morning of the first day of the hunt period and must be off the island the day following the last day of the hunt period.

(4) Stand Hours: (a) Archery: One-half hour before sunrise until 9:30 a.m. and from 3:30 p.m. until sunset; (b) gun: Sunrise until 9:30 a.m. and from 3 p.m. until sunset each day. No movement during these hours will be tolerated.

(5) Access to the island is by boat. Hunters must check in at refuge headquarters and leave their boats in designated area. Travel on the island is by foot only.

(6) The Wassaw Island National Wildlife Refuge will be closed to the general public November 29—December 3, 1978 and December 14-16, 1978.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally and which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 26, 1978.

DONALD J. HANKLA,
Area Manager.

[FR Doc. 78-21462 Filed 8-2-78; 8:45 am]

[4310-55]

PART 32—HUNTING

Opening of Seney National Wildlife Refuge, Mich., to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to upland game hunting of Seney National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural reosurce, and will provide additional recreational opportunity to the public.

DATES: September 15, 1978, through February 28, 1979.

FOR FURTHER INFORMATION CONTACT:

John R. Frye, Refuge Manager, Seney National Wildlife Refuge, Seney, Mich. 49883, 906-586-9851.

SUPPLEMENTARY INFORMATION:

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

Upland game hunting is permitted on the Seney National Wildlife Refuge, Mich., only on the areas designated by signs as being open to hunting. These areas comprising 33,525 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

(a) That portion of the refuge designated as area A is closed to all hunting until November 15.

(b) All motorized conveyances are prohibited from traveling on dikes or off established roads and trails. Motorized bikes, all-terrain vehicles, and snowmobiles are not permitted on the refuge.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 28, 1978.

JOHN R. FRYE,
Refuge Manager.

[FR Doc. 78-21556 Filed 8-2-78; 8:45 am]

[4310-55]

PART 32—HUNTING

Opening of Seney National Wildlife Refuge, Mich., to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to big game hunting of Seney National Wildlife Refuge, Mich., is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: October 1, 1978, through December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

John R. Frye, Refuge Manager, Seney National Wildlife Refuge, Seney, Mich. 49883, 906-586-9851.

SUPPLEMENTARY INFORMATION:

§ 32.32 Special regulations; big game hunting; for individual wildlife refuge areas.

Big game hunting is permitted on the Seney National Wildlife Refuge, Mich., only on the areas designated by signs as being open to hunting. These areas comprising 85,200 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. Bow and arrow hunting is permitted only on 33,525 acres of the refuge designated as area B, from October 1 through November 14; and on the 85,200 acres of the refuge designated as area A and area B, from December 1 through December 31.

2. Bear may be taken by archers only from October 1 through November 14 and by gun hunters only from November 15 through November 30. Bear may not be taken with the aid of dogs.

3. Camping is permitted only west of the Driggs River except in designated wilderness area during the gun season. A camp registration permit, obtainable at refuge headquarters, is required.

4. All motorized conveyances are prohibited from traveling on dikes or off established roads and trails. Motorized bikes, all-terrain vehicles, and snowmobiles are not permitted on the refuge.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 28, 1978.

JOHN R. FRYE,
Refuge Manager.

[FR Doc. 78-21555 Filed 8-2-78; 8:45 am]

[4310-55]

PART 32—HUNTING

Big Game Hunting, Ravalli National Wildlife Refuge, Montana

AGENCY: Ravalli National Wildlife Refuge, U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Special regulations.

SUMMARY: This document describes the regulations governing big game hunting on the Ravalli National Wildlife Refuge, North of Stevensville, Mont.

EFFECTIVE DATE: September 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert C. Twist, Refuge Manager, No. 5 Third Street, P.O. Box 257, Stevensville, Mont. 59870, 406-777-5552.

§ 32.32 Special regulations: Big Game Hunting for Individual Wildlife Refuge Areas.

MONTANA

RAVALLI NATIONAL WILDLIFE REFUGE

The taking of white-tailed and/or mule deer by bow and arrow will be permitted on designated areas of Ravalli National Wildlife Refuge by means of archery only from September 9 through October 15, either sex deer, and from October 22 through November 26, antlered bucks only, in accordance with State regulations and with the following additional special conditions:

1. All hunters must check in and out at checking stations.

2. No firearms may be carried in this area.

3. The public hunting area will be closed to entry from one hour after sunset until one and one-half hours before sunrise.

This hunting area will be designated by signs and delineated on maps available at Refuge Headquarters, No. 5 Third Street, Stevensville, Mont., and from the Area Manager, U.S. Fish and Wildlife Service, Room 3035, Federal Building, 316 North 26th Street, Billings, Mont.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally and which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through June 30, 1979.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and on OMB Circular A-107.

Dated: July 26, 1978.

ROBERT C. TWIST,
Refuge Manager.

[FR Doc. 78-21510 Filed 8-2-78; 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.

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 78-ASW-33]

TRANSITION AREA

Proposed Alteration: Taos, N. Mex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of the action being taken is to propose alteration of the transition area at Taos, N. Mex. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Taos Municipal Airport. The circumstance which created the need for the action was the development of a new nondirectional radio beacon (NDB) instrument approach procedure to the airport.

DATES: Comments must be received on or before September 5, 1978.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Tex.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Subpart G § 71.181 (43 FR 440) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting IFR activity. Alteration of the transition area at Taos, N. Mex., will necessitate an amendment to this subpart.

Comments Invited

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received on or before September 5, 1978, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administraton, P.O. Box 1689, Fort Worth, Tex. 76101, or by calling 817-624-4911, ext. 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Taos, N. Mex. The FAA believes this action will enhance IFR operations at the Taos Municipal Airport by providing additional controlled airspace for aircraft executing the new instrument approach procedure to the airport. Subpart G of Part 71 was republished in the Federal Register on January 3, 1978 (43 FR 440).

Drafing Information

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 440) by altering the Taos, N. Mex., transition area to read as follows:

Taos, N. Mex.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Taos Municipal Airport (latitude 36°27'28" N., longitude 105°40'21" W.); within 9.5 miles on the northwest side and within 4.5 miles on the southeast side of the 203° bearing from the Ski NDB (latitude 36°27'40" N., longitude 105°40'10" W.) extending from the NDB to 18.5 miles southwest of the NDB excluding that airspace within the 6.5-mile airport radius area; and that airspace extending upward from 1,200 feet above the surface beginning at latitude 36°07'00" N., longitude 105°50'00" W., thence via a 25-mile arc centered on the Taos Municipal Airport coordinates (latitude 36°27'28" N., longitude 105°40'21" W.) clockwise to latitude 36°48'00" N., longitude 105°49'15" W., thence direct to latitude 36°30'00" N., longitude 105°30'00" W., thence direct to point of beginning.

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

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

Issued in Fort Worth, Tex., July 24, 1978.

PAUL J. BAKER,
Director,
Southwest Region.

[FR Doc. 78-21501 Filed 8-2-78; 8:45 am]

[4910-13]

[14 CFR Part 71]

[Airspace Docket No. 78-ASW-34]

TRANSITION AREA

Proposed Alteration: Sherman, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposal rulemaking.

SUMMARY: The nature of the action being taken is to proposed alteration of a transition area at Sherman, Tex. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing instrument approach procedures to the Grayson County Airport. The circumstance which created the need for the action is that higher performance aircraft are utilizing the airport requiring additional controlled airspace for their protection.

DATES: Comments must be received on or before September 5, 1978.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Tex. 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, Tex.

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

FOR FURTHER INFORMATION CONTACT:

David Gonzalez, Airspace and Procedures Branch (ASW-536), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Tex. 76101; 817-624-4911, ext. 302.

SUPPLEMENTARY INFORMATION: In Subpart G § 71.181 (43 FR 440) of FAR Part 71, the description of the Sherman, Tex., transition area reflects the controlled airspace designed for aircraft executing instrument approach procedures within a 7-mile radius of the Grayson County Airport. Criteria III (turbojets) aircraft are utilizing the airport and require expansion of the transition area to an 8.5-mile radius to provide the necessary additional controlled airspace for their protection.

Comments Invited

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Tex. 76101. All communications received on or before September 5, 1978 will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interest persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Tex. 76101, or by calling 817-624-4911, ext. 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Sherman, Tex., transition area. The FAA believes this action will enhance IFR operations at the Grayson County Airport by providing additional controlled airspace for aircraft executing instrument approach established for the airport. Subpart G of Part 71 was republished in the Federal Register on January 3, 1978 (43 FR 440).

Drafting Information

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (43 FR 440) by altering the Sherman, Tex., transition area as follows:

That airspace extending from 700 feet above the surface within a 6-mile radius of Sherman Municipal Airport (latitude 33°37'30" N., longitude 96°35'00" W.) and within an 8.5-mile radius of Grayson County Airport (latitude 33°42'55" N., longitude 96°40'25" W.).

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

Issued in Forth Worth, Tex., on July 25, 1978.

Paul J. Baker,
Acting Director,
Southwest Region.

[FR Doc 78-21502 Filed 8-2-78; 8:45 am]

[4910-13]

[14 CFR Part 75]

[Airspace Docket No. 78-SO-31]

PROPOSED ALTERATION OF JET ROUTES

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign five jet routes (J-43, J-58, J-75, J-86 and J-89) and to rescind a segment of J-119 in an area southeast of St. Petersburg, Fla. The number of uninterrupted descents into the Miami, Fla., terminal airspace would be increased and aeronautical fuel consumption would be decreased by the proposed action.

DATES: Comments must be received on or before August 30, 1978.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Southern Region, Attention: Chief, Air Traffic Division, Docket No. 78-SO-31, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga. 30320.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone 202-426-3715.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Attention: Chief, Air Traffic

Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Ga., 30320. All communications received on or before August 30, 1978 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons.

AVAILABILITY OF NPRM

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

THE PROPOSAL

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) that would make the following changes:

1. Realign a segment of J-43 from Miami, Fla., direct to St. Petersburg, Fla.

2. Realign a segment of J-58 between Sarasota, Fla., and Biscayne Bay, Fla., via the INT of Sarasota 138° T (137° M) and Biscayne Bay 301° T (301° M) radials.

3. Realign a segment of J-75 from Biscayne Bay, Fla., to Lakeland, Fla., via the INT OF Biscayne bay 301° T (301° M) and Lakeland 175° T (174° M) radials.

4. Realign a segment of J-86 from Sarasota, Fla., to Miami, Fla., via the INT of Sarasota 103° T (102° M) and Miami 315° T (315° M) radials.

5. Realign a segment of J-89 from Biscayne Bay, Fla,, to Lakeland, Fla., via the INT of Biscayne Bay 301° T (301° M) and Lakeland 166° T (165° M) radials.

6. Rescind a segment of J-119 from Miami, Fla., to St. Petersburg, Fla.

The proposed action would increase the number of uninterrupted transitions from jet routes into the terminal airspace.

DRAFTING INFORMATION

The principal authors of this document are Mr. Everett L. McKisson, Air Traffic Service, and Mr. Richard W. Danforth, Office of the Chief Counsel.

THE PROPOSED AMENDMENT

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 75.100 of part 75 of the Federal Aviation Regualtions (14 CFR part 75), as republished (43 FR 714) and amended (43 FR 19212), as follows:

1. Under Jet Route No. 43 all text before "Tallahassee, Fla.;" is deleted and "From Miami, Fla., via St. Petersburg, Fla.;" is substituted therefor.

2. Under Jet Route No. 58 "INT Sarasota 133°" is deleted and "INT Sarasota 138°" is substituted therefor.

3. Under Jet Route No. 75 "From Miami, Fla., via the INT of the Miami 297°" is deleted and "From Biscayne Bay, Fla., via the Biscayne Bay 301°" is substituted therefor.

4. Under Jet Route No. 86 all after "Sarasota, Fla., 286° radials;" is deleted and "Sarasota; INT of Sarasota 103° and Miami, Fla., 315° radials; to Miami." is substituted therefor.

5. Under Jet Route No. 89 "Biscayne Bay 288°" is deleted and "Biscayne Bay 301°" is subsituted therefor.

6. Under Jet Route No. 119 all before "Taylor, Fla." is deleted and "From St. Petersburg, Fla., to" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

NOTE.—The FAA has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C., on July 25, 1978.

WILLIAM E. BROADWATER
Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 78-21367 Filed 8-2-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[19 CFR Parts 200 and 201]

EMPLOYEE RESPONSIBILITIES AND CONDUCT; RULES OF GENERAL APPLICATION

Proposed Canons of Ethics for Commissioners; Proposed Changes Regarding Practice Before the Commission by Former Commissioners and Staff Members

AGENCY: United States International Trade Commission.

ACTION: Notice of proposed rules.

SUMMARY: This notice (1) proposes Canons of Ethics specifically applicable to Commissioners of the United States International Trade Commission, and (2) proposes to change the rules governing practice before the Commission by its former Commissioners and staff members. This notice is issued in further response to a request of the House Committee on Ways and Means that the Commission adopt a code of personal conduct on ethical issues. This notice revises an earlier proposal of December 7, 1977 (42 FR 61871) through simplification of language and modification of the earlier proposal respecting practice before the Commission by its former Commissioners and former staff members.

DATE: Comments must be received on or before September 5, 1978.

ADDRESS: Interested persons may submit comments in writing to the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT:

The Honorable George M. Moore, Counselor for Employee Responsibilities and Conduct, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0144.

SUPPLEMENTARY INFORMATION: The Commission, desiring to foster and to maintain the highest standards of ethical conduct among Commissioners and to avoid even the appearance of impropriety in each and every action of Commissioners, and seeking to enhance the public perception of the Commission as an objective, fact-finding agency with a quasi-judicial role in assisting the Congress and the President in the formulation and implementation of the trade policy of the United States, is hereby proposing Canons of Ethics containing policies, standards, and proscriptions to govern the conduct of Commissioners. The Canons of Ethics not only are to be promulgated as part of the Commission's ethical regulations but also are to be included in the Commission's Policy Manual. In addition, changes to the rules with respect to appearances before the Commission by former Commissioners and staff members are contemplated.

During the course of legislative oversight concerning the administration of, and authorization of appropriations to, the Commission, the Committee on Ways and Means of the House of Representatives encouraged the Commission to "adopt a code of personal conduct with respect to employment of staff, travel, speaking engagements, prohibition on political speeches and partisan political activity, and other matters concerning personal conduct of Commissioners and staff." (H. Rept. No. 95-217, 95th Cong. 1st Sess., at 13 (April 1977)). The proposed Canons of Ethics, spe-

cifically applicable to Commissioners, are in partial response to Committee's request and will comprise a new Subpart D of Part 200, Title 19, Code of Federal Regulations (19 CFR 200.735-124 through 200.735-141). Standards of conduct specifically applicable to both Commissioners and staff presently inhere in Subpart B of Part 200, Title 19, Code of Federal Regulations (19 CFR 200.735-104a through 200.735-113).

An earlier version of this proposal was published in the FEDERAL REGISTER of December 7, 1977. (42 F.R. 61871-61873). This proposal has been simplified in language and modified in certain substantive respects. In particular, the proposed section concerning postemployment responsibilities of Commissioners has been modified. As a consequence, it is proposed that the Commission's rule governing practice before the Commission by former Commissioners and staff members be amended.

Title 19, Part 200 of the Code of Federal Regulations is proposed to be amended by the addition of a new subpart D, to be comprised of §§ 200.735-124 through 200.735-141, as follows:

Subpart D—Canons of Ethics for Commissioners

Sec.

200.735-124 Purpose.
200.735-125 Standards of conduct for Commissioners, generally.
200.735-126 Constitutional obligations.
200.735-127 Statutory obligations.
200.735-128 Maintenance of independence.
200.735-129 Political activity.
200.735-130 Public statements.
200.735-131 Funds and travel.
200.735-132 Relations with other Commissioners.
200.735-133 Relationships with persons who may have interests before the Commission.
200.735-134 Qualification to participate in particular matters.
200.735-135 Impressions of influence.
200.735-136 Ex parte communications.
200.735-137 Investigations.
200.735-138 Conduct toward parties and their counsel.
200.735-139 Business interests.
200.735-140 Supervision of internal organization.
200.735-141 Postemployment responsibilities.

AUTHORITY: E.O. 11222, 3 CFR 306, 311 (1964-1965 Comp.); (19 U.S.C. 1330(c)(5); 19 U.S.C. 1331(a)(3); 19 U.S.C. 1335).

Subpart D—Canons of Ethics for Commissioners

§ 200.735-124 Purpose.

(a) Desiring to maintain and increase high standards of ethical conduct among its Commissioners;

(b) Seeking to improve the public impression of the Commission as an impartial, fact-finding agency with a role in helping the Congress and the President in creating and carrying out the trade policy of the United States;

(c) Considering the oath of office of the Commissioners and their duty to perform their functions efficiently, without malfeasance or neglect of duty; and

(d) The Commissioners of the United States International Trade Commission declare that the policies, standards and rules set out in this subpart shall govern the conduct of the Commissioners.

§ 200.735-125 Standards of conduct for Commissioners, generally.

In the discharge of their duties, the Commissioners shall conduct themselves in a manner which gains the respect and confidence of others. Commissioners shall familiarize themselves with, and abide by, the standards of ethical conduct set out in (a) Executive Order 11222 (May 8, 1965); (b) House Concurrent Resolution 175 (85th Cong., 2d sess., July 11, 1958); and (c) Subpart B of this part. Commissioners shall avoid conduct which results in a conflict of interest or even the appearance of conflict of interest. Commissioners shall perform thier functions impartially.

§ 200.735-126 Constitutional obligations.

The members of the Commission shall fully and faithfully abide by their oaths of office.

§ 200.735-127 Statutory obligations.

Members of the Commission should enforce compliance with the law with respect to all persons. When exercising their investigative power, the Commission should exercise that power impartially and within the proper limits of the law.

§ 200.735-128 Maintenance of independence.

The Commission is an independent, nonpartisan body. One of its most important functions is to engage in factual inquiries in order to assist the President and Congress in developing foreign trade and and tariff policy. In performing their duties, Commissioners shall display independence and reject all efforts by the executive or legislative branches designed to influence their determinations in any matter. A Commissioner shall not be affected by the demands of any group, or considerations of personal popularity. A Commissioner should also be above fear of unjust criticism.

§ 200.735-129 Political activity.

(a) Active participation by Commissioners in a political campaign of any candidate for State or National office may tend to reduce the confidence of the public in the impartiality of the decisions of the Commission. Therefore, Commissioners should refrain from actively participating in any such political campaign, including making political speeches or issuing partisan political statements to the media on behalf of any candidate. This provision, however, shall not be interpreted to prohibit a member of the Commission from lawfully contributing to a party or candidate of the member's choice.

(b) The official authority or influence of Commissioners shall not be used for the purpose of interfering with an election.

(c) No member of the Commission shall use money or facilities of the Commission to campaign for any candidate.

(d) If a member of a Commissioner's immediate household runs for political office during a Commissioner's term of employment, the Commissioner must file a report listing the extent of the Commissioner's participation in the campaign with the Office of Secretary within 30 days after the election. The report shall be subject to public inspection.

§ 200.735-130 Public statements.

Unless the Commission has adopted the policy being expressed, no commissioner shall speak on a policy matter for which the Commission has responsibility and represent that expression as the view of the Commission.

§ 200.735-131 Funds and travel.

A Commissioner shall only spend public funds for purposes which that Commissioner decides are necessary and authorized in order to carry out properly the responsibilities of that Commissioner.

§ 200.735-132 Relationships with other Commissioners.

Each Commissioner has a right to voice an opinion, and, in doing so, honest differences of opinion are to be expected. However, statement of these differences should not be in an unfriendly manner, and, in all cases, every effort should be made to promote harmony at the Commission.

§ 200.735-133 Relationships with persons who may have interests before the Commission.

Members of the Commission should administer the law impartially and without regard to the people involved. Members of the Commission shall not accept gifts, entertainment, or favors from persons who are, or may in the future become, subject to their jurisdiction, except in accordance with the provisions of subpart B of this Part 200.

§ 200.735–134 Qualification to participate in particular matters.

Each Commissioner shall individually determine whether or not to participate in a particular matter. If any interested person suggests that a Commissioner should be disqualified because of bias, or prejudice, the Commissioner should consult with the Commission's ethics counselor and then shall individually decide whether or not to participate in the matter.

§ 200.735–135 Impressions of influence.

A Commissioner should not engage in conduct that creates the impression that the Commissioner can be influenced, or in any way affected by the rank, position, prestige, or wealth of any person.

§ 200.735–136 Ex Parte communications.

Whenever a proceeding is conducted under section 8 of the Administrative Procedure Act, the members of the Commission shall comply with the provisions of subsection (d) of section 8 and the provisions of this Chapter governing ex parte communications.

§ 200.735–137 Investigations.

When conducting investigations, Commissioners shall concern themselves only with the facts known to them. A Commissioner should never suggest, vote in favor of, or participate in any investigation for reasons of personal anger, prejudice, vindictiveness, publicity, or personal interest. The facts alone should cause the Commissioners to exercise their investigatory power.

§ 200.735–138 Conduct towards parties and their counsel.

Commissioners should be calm, attentive, patient and impartial when listening to the arguments of parties or their counsel. Commissioners should not approve of unprofessional conduct by the attorneys of the parties. The Commission should make sure that its own staff follows the same principles.

§ 200.735–139 Business interests.

A Commissioner shall not actively engage in any other business, vocation, or employment while serving as a Commissioner.

200.735–140 Supervision of internal organization

The Chairman, unless a majority of all the Commissioners in office vote to disapprove, from time to time shall review the internal organization of the Commission in order to make sure that all matters before it are handled in an efficient and timely manner, and that the policies and delegations described in the Commission's policy manual are faithfully and efficiently put into effect. All the Commissioners, and particularly the Chairman, are responsible for developing and maintaining a responsible Commission staff capable of supervising the agency's staff work.

§ 200.735–141 Post-Employment responsibilities.

(a) A former Commissioner shall not appear before the Commission as an attorney or agent for anyone other than the United States in connection with any matter the former Commissioner personally and substantially participated in during that Commissioner's employment as a Commissioner.

(b) For 1 year after a Commissioner's employment at the Commission has ceased, a former Commissioner shall not appear before the Commission as attorney or agent for anyone other than the United States in connection with any matter which was under the former Commissioner's official responsibility as a Commissioner during the year prior to the end of his or her service as a Commissioner.

(c) A former Commissioner desiring to appear before the Commission as attorney or agent for anyone other than the United States in connection with any matter shall file a statement with the secretary to the Commission setting forth the basis of his or her eligibility to appear before the Commission under paragraphs (a) and (b) of this section. Such statement shall be signed by the former Commissioner and shall contain a certification in writing under oath that the statement is true, complete, and correct.

(d) The Commission, upon request of a former Commissioner or interested person, or on its own motion, may rule on the eligibility of a former Commissioner to appear before the Commission as attorney or agent for anyone other than the United States in connection with a particular matter. The Commission shall rule promptly on such requests or motions.

(e) For the purpose of the section, the term "appear" includes (1) actual physical appearances before the Commission, or (2) the submission of written documents in the name of the former Commissioner.

§ 201.15 [Amended]

Title 19, Part 201 of the Code of Federal Regulations is proposed to be amended by deleting the language of present § 201.15(b) and by substituting the following language therefor:

* * * * *

(b)(1) *Former officers or employees.* A former officer or employee shall not appear before the Commission as an attorney or agent for anyone other than the United States in connection with any matter the former officer or employee personally and substantially participated in during that officer's or employee's employment at the Commission.

(2) For 1 year after an officer's or employee's employment at the Commission has ceased, a former officer or employee shall not appear before the Commission as attorney or agent for anyone other than the United States in connection with any matter which was under the former officer's or employee's official responsibility as an officer or employee of the Commission during the year prior to the end of his or her service as an officer or employee of the Commission.

(3) A former officer or employee desiring to appear before the Commission as attorney or agent for anyone other than the United States in connection with any matter shall file a statement with the Secretary to the Commission setting forth the basis of his or her eligibility to appear before the Commission under paragraphs (b)(1) and (b)(2) of this section. Such statement shall be signed by the former officer or employee and shall contain a certification in writing under oath that the statement is true, complete, and correct.

(4) The Commission, upon request of a former officer or employee of the Commission or interested person, or upon its own motion, may rule on the eligibility of a former officer or employee of the Commission to appear before the Commission in connection with a particular matter. The Commission shall rule promptly on such requests or motions.

(5) For the purpose of this subsection, the term "appear" includes (i) actual physical appearances before the Commission, or (ii) the submission of written documents in the name of the former officer or employee.

Issued: July 28, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-21479 Filed 8-2-78; 8:45 am]

[4810-25]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[31 CFR Part 10]

PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

Proposed Revision of the Provisions Governing Those Individuals Elgible To Practice Before the Internal Revenue Service

AGENCY: Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The proposed rule amends and revises the provision of Treasury Department Circular No. 230 which defines those individuals who are eigible to practice before the Internal Revenue Service. Currently, the regulations permit attorneys, certified public accountants, and enrolled agents to practice before the Service. The purpose of this proposed rule would permit enrolled actuaries to engage in limited practice before the Internal revenue Service.

DATE: Comments must be in writing and must be received on or before October 2, 1978. The effective date will be the date of publication of the anticipated final rule in the FEDERAL REGISTER. No hearing is comtemplated, but one may be held at a time and place set in a later notice in the FEDERAL REGISTER if requested by an interested person desiring an opportunity to comment orally and raising a genuine issue.

FOR FURTHER INFORMATION, CONTACT:

Mr. Leslie S. Shapiro, Director of Practice, 202-376-0767.

SUPPLEMENTARY INFORMATION: An enrolled actuary, as defined in the Internal Revenue Code, is an individual who is enrolled under authority of section 3042 of the Employee Retirement Income Security Act of 974 (ERISA), 29 U.S.C. 1242, to perform actuarial services under the Act. Those individuals are enrolled by the Joint Board for the Enrollment of Actuaries, established under subtitle C of title III of ERISA. The joint board has established a certification and examination procedure for enrollment. Like enrolled agents (those enrolled by the Internal Revenue Service to practice before it), an enrolled actuary must have satisfied professional competence and other standards before being enrolled.

Enrolled actuaries possess expertise in the area of pension plans. That expertise is derived from their traditional involvement in determining pension plan costs, which requires the consideration of pension plan funding, the deductibility of pension plan contributions, and overall pension plan design. This demands that enrolled actuaries have a close familiarity with those provisions of the Internal Revenue Code which govern minimum funding, deductions, and pension plan qualifications. In addition, the periodic actuarial reports that the administrator of a defined benefit pension plan is required to file by section 6059 of the Internal Revenue Code must be prepared by an enrolled actuary. Because of this expertise, it is believed that the public and Government will benefit by enrolled actuaries engaging in practice before the Internal Revenue Service with regard to the qualification of employee pension plans and certain other related areas.

In addition, it is proposed that the regulations be amended to include actuaries within the ambit of those subject to disbarment or suspension from practice before the Internal Revenue Service because of disbarment or suspension from practice by a duly constituted authority of another governmental unit or Federal court of record.

The authority for this proposed amendment is section 3, 23 Stat. 258, sections 2-12, 60 Stat. 237, et seq., 5 U.S.C. 301, 500, 551-59, 31 U.S.C. 1026, Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949-1953 Comp.

DRAFTING INFORMATION

The principal author of this amendment is Mr. Leslie S. Shapiro, Director of Practice, Office of the General Counsel, Department of the Treasury. Personnel of the Internal Revenue Service also participated in developing this amendment.

PROPOSED AMENDMENTS TO THE REGULATIONS

In consideration of the foregoing, it is proposed to amend 31 CFR Part 10 as follows:

§ 10.3 [Amended]

1. Section 10.3 is amended as follows:

(a) By redesignating present paragraphs (d), (e) and (f) as paragraphs (e), (f) and (g) respectively;

(b) By adding a new paragraph (d), as follows:

* * * * *

(d) *Enrolled Actuaries.* (1) Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 may practice before the Internal Revenue Service upon filing with the Service a written declaration that he/she is currently qualified as an enrolled actuary and is authorized to represent the particular party on whose behalf he/she acts. Practice as an enrolled actuary is limited to representation with respect to issues involving the following statutory provisions:

Internal Revenue Code (Title 26, U.S.C.) sections: 401 (qualification of employee plans), 403(a) (relating to whether an annuity plan meets the requirements of section 404(a)(2)), 404 (deductibility of employer contributions), 405 (qualification of bond purchase plans), 412 (funding requirements for certain employee plans), 413 (application of qualification requirements to collectively bargained plans and to plans maintained by more than one employer), 414 (containing definitions and special rules relating to the employee plan area), 4971 (relating to excise taxes payable as a result of an accumulated funding deficiency under section 412), 7805(b) (relating to the extent, if any, to which an Internal Revenue Service ruling or determination letter coming under the herein listed statutory provisions shall be applied without retroactive effect); and, 29 U.S.C. 1083 (relating to waiver of funding for qualified plans).

(2) An individual who practices before the Internal Revenue Service pursuant to this subsection shall be subject to the provisions of this part in the same manner as attorneys, certified public accountants and enrolled agents.

2. Section 10.51(g) is amended to include an actuary within the ambit of those covered, as follows:

§ 10.51 Disreputable conduct.

* * * * *

(g) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any State, possession, territory, Commonwealth, the District of Columbia, any Federal court of record, or any Federal agency, body or board.

* * * * *

Dated: July 26, 1978.

ROBERT H. MUNDHEIM,
General Counsel,
U.S. Department of the Treasury.

[FR Doc. 78-21445 Filed 8-2-78; 8:45 am]

[3710-92]

DEPARTMENT OF DEFENSE

[33 CFR Part 209]

ADMINISTRATIVE PROCEDURES

Port Access Routes in the North Atlantic Ocean; correction

AGENCY: U.S. Army Corps of Engineers.

ACTION: Proposed rule; corrections.

SUMMARY: This notice announces corrections to the proposed port access routes which appeared in the FEDERAL REGISTER on June 30, 1978 (43 FR 28523).

DATE: Comments on the proposed rule must be received on or before August 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Gerard Savage, North Atlantic Division, Corps of Engineers, 90 Church Street, New York, N.Y. 10007, Attn: NADCO-OP, telephone 212-264-7536.

SUPPLEMENTARY INFORMATION: On June 30, 1978, the proposal to establish part access routes in the North Atlantic Ocean was published in the FEDERAL REGISTER (43 FR 28523). There were several errors made in the coordinates listed in paragraph (d)(1)(ii) New York—southeast par and paragraph (d)(2)(i) Delaware Bay—east approach par which is hereby corrected and renumbered as follows: For clarity the entire paragraph (d) the port access routes (pars) is being republished.

§ 209.131 Port access routes in the North Atlantic Ocean.

* * * * *

(d) *The port access routes (pars)*—(1) *New York Harbor—(i) New York—Nantucket.* Four lanes (each lane 3.25 miles wide) beginning as a transition zone extending 10 miles seaward from the easternmost terminus of the eastern approach of the New York traffic separation schemes (points 1 and 2). The transition zone consists of four lanes that expand in width from 2.5 to 3.25 nautical miles (NM). The par then continues eastward to the 1,000-fathom curve (points 3 and 4). Where the par overlays the TSS eastern approach off Nantucket each lane is 2.5 miles in width in order to exclude the separation zone.

Point, Latitude, and Longitude

1—40°32.3′ N—73°04.9′ W
2—40°19.3′ N—73°05.0′ W
3—40°39.8′ N—66°36.7′ W
4—40°26.6′ N—66°55.0′ W

(ii) *New York-southeast.* Four lanes, each lane 3.25 miles wide beginning as a transition zone extending 10 miles seaward from the easternmost terminus of the southeastern approach of the New York traffic separation scheme (points 5 and 6). The transition zone consists of four lanes that expand in width from 2.5 to 3.25 nautical miles (NM). The par than continues eastward to the 1,000-fathom curve (points 7 and 8).

Point, Latitude and Longitude

5—40°09.0′ N—73°10.9′ W
6—39°59.4′ N—73°22.3′ W
7—39°15.5′ N—71°55.2′ W
8—39°05.8′ N—72°06.5′ W

(2) *Delaware bay*—(i) *East Approach.* Two lanes (each lane 5 miles wide) beginning as a transition zone extending from the easternmost terminus of the eastern approach of the Delaware Bay traffic separation scheme (points 9 and 10 to points 11 and 12, which are joined by an arc with a 10-mile radius from Five Fathom Bank Lighted Horn Buoy F (LLNR 118)). Two 5 mile-wide lanes extend eastward to the 1,000-fathom curve (points 13 and 14).

Point, Latitude, and Longitude

9—38°49.8′ N—74°34.6′ W
10—38°44.8′ N—74°34.6′ W
11—38°50.2′ N—74°22.7′ W
12—38°40.4′ N—74°25.5′ W
13—38°25.6′ N—73°11.0′ W
14—38°18.0′ N—73°21.2′ W

(ii) *Southeast Approach.* Two lanes (each lane 5 miles wide) beginning as a similar transition zone (with an arc having a 10-mile radius from Delaware Lighted Horn Buoy D (LLNR 124.01)) extending from the easternmost terminus of the southeastern approach of the Delaware Bay traffic separation scheme (points 15 and 16). The par would then continue seaward from points 17 and 18 to the 1,000-fathom curve (points 19 and 20).

Point, Latitude, and Longitude

15—38°28.8′ N—74°39.3′ W
16—38°25.8′ N—74°44.3′ W
17—38°23.4′ N—74°30.0′ W
18—38°17.4′ N—74°40.4′ W
19—37°38.2′ N—73°47.5′ W
20—37°26.1′ N—73°52.0′ W

(67 Stat. 462; (U.S.C. 1333(f)).)

Dated: July 26, 1978.

THORWALD R. PETERSON,
Colonel, Corps of Engineers, Executive Director, Engineer Staff.

[FR Doc. 78-21466 Filed 8-2-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 180]

[FRL 938-5; PP 6E1848/P69]

PESTICIDE PROGRAMS

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

Tolerances for the Pesticide Chemical Carbaryl

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

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for residues of the insecticide carbaryl on sweet potatoes. The proposal was submitted by the interregional research project No. 4. This amendment to the regulations would establish a maximum permissible level for residues of carbaryl on sweet potatoes.

DATE: Comments must be received on or before September 5, 1978.

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

FOR FURTHER INFORMATION:

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

SUPPLEMENTARY INFORMATION: Dr. C. C. Compton, interregional research project No. 4, New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, on behalf of the IR-4 Technical Committee and the agricultural experiment stations of California, Florida, Louisiana, and North Carolina has submitted a pesticide petition (PP 6E1348) to the EPA. This petiton requests that the Administrator propose that 40 CFR 180.169 be amended by the establishment of a tolerance for residues of the insecticide carbaryl in or on the raw agricultural commodity sweet potatoes at 0.2 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the tolerance of 0.2 ppm established by amending 40 CFR 180.169 will protect the public health.

The toxicological data considered in support of the proposed tolerance included a 2-year rate teratology study with a no-observable-effect level (NOEL) of 200 ppm, the highest level fed; a 1-year dog subchronic feeding study with an NOEL of 400 ppm; a Rhesus monkey teratology study which was negative at 20 milligrams (mg)/kilogram (kg) of body weight (bw)/day, the highest level fed; an 18-month mouse oncogenicity study (negative at 400 ppm); a three-generation rat reproduction study with an NOEL of 200 mg/kg bw/day; and a dog teratology study with an NOEL of 3 mg/kg bw/day. The acceptable daily intake (ADI) in man is calculated to be 0.1 mg/kg bw/day.

Carbaryl is a candidate for a rebuttable presumption against registration (RPAR) since it may exceed the risk criteria described in 40 CFR 162.11(a)(3)(ii)(B) for some registered uses. However, the amount of carbaryl added to the diet from the proposed use, calculated to be 0.00120 mg/day for a 1.5 kg daily diet, is too small to substantially increase the risk for man since it is less than 0.03 percent of the theoretical maximal residue contribution (TMRC) from the established tolerances. Thus, the proposed tolerance is considered to pose a negligible increment in risk.

An adequate analytical method (colorimetry) is available. Tolerances have previously been established (40 CFR 180.169) for residues of carbaryl on a variety of commodities ranging

from 0.2 ppm to 100 ppm. The metabolism of carbaryl is adequately delineated, and the additonal burden of carbaryl residues in livestock diets from the ingestion of treated sweet potatoes will be insignificant compared to the burden already present. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered, or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act which contains any of the ingredients listed herein may request, on or before September 5, 1978, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "PP6E1848/P69." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of the Federal Register from 8:30 a.m. to 4 p.m. Monday through Friday.

(Sec. 408(e), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e).)

Dated: May 31, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

It is proposed that part 180, subpart C, section 180.169, be revised by reformatting the section into an alphabetized columnar listing and alphabetically inserting the new tolerance of 0.2 ppm in or on sweet potatoes, as follows:

§ 180.169 Carbaryl; tolerances for residues.

Tolerances are established for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate), including its hydrolysis product 1-naphthol, calculated as 1-naphthyl *N*-methylcarbamate, in or on the following raw agricultural commodities:

Commodity:	*Parts per million*
Alfalfa	100
Alfalfa, hay	100
Almonds	1
Almonds, hulls	40
Apples	10
Apricots	10
Asparagus	10
Bananas	10
Barley, grain	0
Barley, green fodder	100
Barley, straw	100
Beans	10
Beans, forage	100
Beans, hay	100
Beets, garden (roots)	5
Beets, garden (tops)	12
Blackberries	12
Blueberries	10
Boysenberries	12
Broccoli	10
Brussels sprouts	10
Cabbage	10
Carrots	10
Cauliflower	10
Cherries	10
Chinese cabbage	10
Citrus fruits	10
Clover	100
Clover, hay	100
Collards	12
Corn, fresh (including sweet) K+ CWHR	5
Corn, fodder	100
Corn, forage	100
Cotton, forage	100
Cottonseed	5
Cowpeas	5
Cowpeas, forage	100
Cowpeas, hay	100
Cranberries	10
Cucumbers	10
Dandelions	12
Dewberries	12
Eggplants	10
Endive (escarole)	10
Filberts (hazelnuts)	1
Grapes	10
Grass	100
Grass, hay	100
Horseradish	5
Kale	12
Kohlrabi	10
Lettuce	10
Loganberries	12
Melons	10
Mustard greens	12
Nectarines	10
Oats, fodder, green	100
Oats, grain	0
Oats, straw	100
Okra	10
Olives	10
Parsley	12
Parsnips	5
Peaches	10
Peanuts	5
Peanuts, hay	100
Pears	10
Peas (with pods)	10
Peavines	100
Pecans	1
Peppers	10
Plums (fresh prunes)	10
Poultry, fat	5
Poultry, meat	5
Potatoes	0.2(N)
Pumpkins	10
Radishes	5
Raspberries	12
Rice	5
Rice, straw	100
Rutabagas	5
Rye, fodder, green	100
Rye, grain	0
Rye, straw	100
Salsify (roots)	5
Salsify (tops)	10
Sorghum, forage	100
Sorghum, grain	10
Soybeans	5
Soybeans, forage	100
Soybeans, hay	100
Spinach	12
Squash, summer	10
Squash, winter	10
Strawberries	10
Sugar beets, tops	100
Sweet potatoes	0.2
Swiss chard	12
Tomatoes	10
Turnips, roots	5
Turnips, tops	12
Walnuts	1
Wheat, fodder, green	100
Wheat, grain	0
Wheat, straw	100

[FR Doc. 78-21438 Filed 8-2-78; 8:45 am]

[4110-07]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Child Support Enforcement

[45 CFR Parts 232, 301, 302, 303, and 304]

CHILD SUPPORT ENFORCEMENT PROGRAM

Notice of Intent

AGENCY: Office of Child Support Enforcement, HEW.

ACTION: Notice of intent to propose regulations.

SUMMARY: Notice is hereby given that the Director, Office of Child Support Enforcement (OCSE) intends to review and propose amendments to regulations for the child support enforcement program. This review is being undertaken in order to reconsider the content of these regulations and to redraft and reorganize them in order to improve their clarity. This notice presents a summary of the current requirements, discusses potential problem areas and possible approaches to improving the regulations, and invites written comments and suggestions from all interested States, localities, organizations, and individuals on the need for amendment and ways to improve the regulatory requirements. Notice is also given that a series of five workshops will be conducted to discuss the regulations and receive additional coment from interested parties.

DATES: Comments must be received by October 2, 1978. Regional workshops to be held during the month of September. For the locations, times, and contact persons for the workshops; see supplementary information.

ADDRESSES: Address comments to: Director, Office of Child Support Enforcement, Department of Health, Education, and Welfare, P.O. Box 23526, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Suzanne M. Duval, 202-472-4510.

SUPPLEMENTARY INFORMATION: OCSE has identified the following sections for which substantive revision will be considered. Based on responses to this .NOI, consideration will be given to amending other sections which may warrant revision with the exception of part 305.

- *§ 232.20 Treatment of child support collections made in the child support enforcement program as income and resources in the title IV-A program.*
- *§ 302.12 Single and separate organizational unit.*
- *§ 302.32 Child support payments to the IV-D agency.*

§ 302.33 *Individuals not otherwise eligible for paternity and child support services.*
§ 302.34 *Cooperative agreements.*
§ 302.36 *Cooperation with other States.*
§ 302.50 *Support obligations.*
§ 302.51 *Distribution of child support collections.*
§ 302.52 *Incentive payments to political subdivisions and other States.*
§ 302.53 *Formula for determining the amount of the obligation.*
§ 303.7 *Cooperation with other States.*
§ 303.20 *Minimum organizational and staffing requirements.*
§ 303.20 *Availability and rate of Federal financial participations.*
§ 304.21 *Federal financial participation in the costs of cooperative agreements with courts and law enforcement officials.*
§ 304.22 *Federal financial participation in purchased child support enforcement services.*

TREATMENT AND DISTRIBUTION OF CHILD SUPPORT COLLECTIONS (SECTIONS 232.20, 302.32, AND 302.51)

Three sections of the regulations are concerned with the treatment and distribution of child support collections. Section 302.51 prescribes the distribution procedures when the family remains eligible for aid to families with dependent children (AFDC); section 302.32 defines the relationship between the agency administering the State's AFDC program (the IV-A agency) and the agency administering the child support enforcement program (the IV-D agency) and prescribes the distribution procedures when collections are sufficient to make the family ineligible for AFDC. Section 232.20 describes actions to be taken by the IV-A agency subsequent to notification by the IV-D agency of the amount of a child support collection and further defines the relationship between IV-A and IV-D agencies. These requirements are explained in greater detail in action transmittal OCSE-AT-76-5, dated March 11, 1976.

OCSE solicits suggestions with regard to the reorganization of sections 302.32 and 302.51 so that they will reflect the step-by-step processing of child support collections. Experience has shown that current regulations do not provide complete guidance to the States for the handling of support collections made by the IV-D agencies. For example, States report difficulties in distributing amounts collected prior to the establishment of the support obligation. Also, some States have requested clarification of the treatment to be accorded to arrearage collections made on behalf of a non-AFDC family when there are arrearages outstanding with respect to periods when the family was eligible and for periods when the family was ineligible for AFDC. If response to this NOI warrants, OCSE will consider clarifying these and other suggested areas.

An essential element in the IV-D distribution process is the treatment of child support collections by the IV-A agency in determining continued eligibility for the AFDC grant. The policy prescribing the appropriate treatment for these payments is contained in sections 232.20 and 302.32. These sections provide that, so long as the current month's child support payment is not sufficient to meet the family's needs and so long as this amount is paid to the IV-D agency, it is not income to the family and is distributed by the IV-D agency. If the current month's collection would be sufficient to make the family ineligible for AFDC, then this amount will be income to the family in the month that the IV-A agency determines that the family will be ineligible (i.e., the first month in which the family does not receive an assistance payment) and the collection will be paid to the family in that month.

Some States have encountered significant difficulties in meeting these requirements. Other States have expressed the opinion that this portion of the distribution process could be implemented differently and still meet applicable legal requirements. OCSE is interested in proposals that will simplify this process and still follow basic IV-A policies related to the availability of income and the determination of continued eligibility for AFDC.

Specific comments on any of the policies discussed above and proposals for improvement will be considered by OCSE in developing proposed regulations.

SINGLE AND SEPARATE ORGANIZATIONAL UNIT (SECTIONS 302.12 AND 303.20)

It appears to be desirable to define more precisely the single and separate organizational unit requirement contained in sections 302.12 and 303.20 and resolve questions about these regulations. Before considering changes to these sections, OCSE invites comments and recommended solutions on problems experienced in the following areas:

1. Requirement for single and separate unit at the local level in a State supervised, locally administered program.
2. Appropriate degree of autonomy for the IV-D agency in State government.
3. Organizational location of IV-D agency.
4. Minimal responsibilities for IV-D Director and IV-D agency.
5. Acceptable lines of supervision between headquarters and outstationed staff in a State administered program.

INDIVIDUALS NOT OTHERWISE ELIGIBLE FOR CHILD SUPPORT SERVICES (SECTION 302.33)

Under the IV-D program, States are required to provide child support enforcement services, including the establishment of paternity, to all individuals who apply for such services, as well as to AFDC applicants and recipients. The current regulations (45 CFR 302.33) have given rise to issues that may be clarified by revised regulations.

The statute requires individuals who do not receive AFDC, but who want child support services, to file an application for such services. Some confusion has arisen about this requirement. OCSE invites recommendations for ways to clarify this provision. OCSE also invites suggestions with regard to the guidance needed in regulation on the content of an application for non-AFDC child support services.

As the regulations are now worded there is some question that a State may recover its excess cost from collections without first charging an application fee. Further, the regulations could be interpreted to require that actual cost in excess of the application fee be recovered only for the particular case for which the costs were incurred. Such an interpretation would necessitate substantial recordkeeping in order to identify the cost incurred in a particular case. An alternative would be to use some form of reasonable cost averaging. OCSE will explore the possibility of clarifying these and any other related issues raised by interested parties.

Suggestions are also solicited for a mechanism which would facilitate transfer of records among States when non-AFDC recipients of IV-D services move from one State to another.

INTERSTATE COOPERATION (SECTIONS 302.36, 302.52(c) AND 303.7)

The statute and existing regulations (45 CFR 302.36 and 303.7) require that each State cooperate with other States in establishing paternity, locating absent parents and securing compliance with court orders for support. Some States have experienced difficulties in transferring collections and incentives. Regulations at 45 CFR 303.7 specify data elements that the initiating jurisdiction must provide upon referral of the case to another State. Further, action transmittal, OCSE-AT-77-1, dated January 3, 1977, proposed additional data elements and standardized formats and procedures to be used in making requests for enforcement and collection, transferring child support collections and paying incentives. OCSE solicits comments on the need for incorporating these requirements in regulation and the ade-

quacy and desirability of the proposed data elements and formats.

INCENTIVE PAYMENTS (SECTION 302.52)

The incentive payment policy has been the source of some confusion and uncertainty on the part of many States and local jurisdictions. To date, OCSE has issued two action transmittals (AT-75-5 and AT-76-22) as well as a policy interpretation question (PIQ-75C-2 (OCSE)) to provide examples of the application of the incentive policy and to respond to specific questions posed by States.

The following issues have been reported as particularly troublesome to States:

(1) The requirements for a political subdivision to be eligible to receive incentive payments;
(2) The level of activity necessary in a particular case to result in incentive payments on collections from that case;
(3) The length of time after the enforcement action during which the State or political subdivision is entitled to receive incentive payments;
(4) Allocation of incentive payments when more than one jurisdiction is involved in the enforcement and collection.

Specific suggestions are invited on ways to resolve these problems.

FORMULA FOR DETERMINING THE AMOUNT OF THE OBLIGATION (SECTION 302.53)

OCSE will give consideration to recommendations to revise the criteria for the formula to be utilized by the IV-D agency in determining the amount of the support obligation when there is no court order covering the obligation as provided in 45 CFR 302.53. Such a change is being considered because of suggestions by State and local IV-D agencies that additional factors be included.

FEDERAL FINANCIAL PARTICIPATION (PART 304)

OCSE will consider suggested changes to the Federal financial participation (FFP) regulations, particularly sections 304.20 and 304.21 and improvements in cost allocation procedures.

We will consider reorganizing section 304.21 into two sections. One would define the requirements and limitations on FFP in costs incurred by law enforcement officials. The other would define the requirements and limitations on FFP in costs incurred by courts.

Since the regulation which established a deadline for submission of claims (45 CFR 304.25(c)) has been revoked, no comments need be submitted on this section

In commenting on policy related to Federal financial participation, inclusion of cost information on any proposals made is essential if OCSE is to justify changes from current policy. Projections of the impact of the policy change on collection levels should also be provided. Submissions of cost and collection estimates should specify the time period covered (preferably the year beginning October 1, 1977) and whether the estimates are for the total amounts or only the Federal share.

AVAILABILTY OF DOCUMENTS

Any document referred to in this notice of intent may be obtained by sending a request for the document(s) that are required to the Office of Child Support Enforcement, 330 C Street SW., Washington, D.C. 20201.

WORKSHOPS

OCSE will hold a series of workshops to explain and discuss problems with, and approaches to improving the regulations and to receive comments and recommendations from representatives of States, counties, cities and other interested groups or individuals. Those who wish to participate are requested to register with the appropriate OCSE Regional Office at least 3 days prior to the meeting date by either writing or telephoning the contact person listed below.

The workshops are scheduled as follows:

Date and time	Location of workshops	Contact person
Sept. 6, 1978, 9 a.m. to 4 p.m.	William J. Green Federal Bldg., Room 3306, 600 Arch St., Philadelphia, Pa.	Mr. Daniel Fascione, telephone: 215-596-1396, P.O. Box 8409 (3535 Market St.), Philadelphia, Pa. 19101.
Sept. 13, 1978, 9 a.m. to 4 p.m.	Howard Johnson Motor Inn, 2d floor, 600 Lake Shore Dr., Chicago, Ill.	Mr. William Kelsay, telephone: 312-353-5415, 18th floor, 300 South Wacker Dr., Chicago, Ill. 60606.
Sept. 15, 1978, 9 a.m. to 4 p.m.	Main Post Office, Room 269 (Auditorium), 1823 Stout St., Denver, Colo.	Mr. Garth Youngberg, telephone: 303-837-5661, Room 11037, Federal Office Bldg., 19th and Stout Sts., Denver, Colo. 80202.
Sept. 18, 1978, 9 a.m. to 4 p.m.	Federal Bldg., Room 15018 (15th floor), 450 Golden Gate Ave., San Francisco, Calif.	Mr. Richard Lewis, telephone: 415-556-5176, 50 United Nations Plaza, Federal Office Bldg., Room 557, San Francisco, Calif. 94102.
Sept. 25, 1978, 9 a.m. to 4 p.m.	Social Security Administration, Conference Room, Suite 1904 A and B, 101 Marietta Tower, Atlanta, Ga.	Mr. Charles Post, telephone: 404-242-2180, Suite 1801, 101 Marietta Tower, Atlanta, Ga. 30323.

SUBMITTAL OF COMMENTS

OCSE is particularly interested in the written comments of child support enforcement program administrators and other interested individuals who have identified specific sections of the regulations that hinder or prevent effective program operations. These comments may also be made on sections of the regulations not discussed in this notice. Comments should include, where possible, an analysis of existing policy, problems caused by this policy, specific recommendations for change, and a rationale for making these changes within the legal constraints established by the Social Security Act.

These comments must be received on or before October 2, 1978. Organizations and agencies are requested to submit comments in duplicate.

Comments will not be acknowledged, but written comments will be available for public inspection in room 2323 of the Department's offices at 330 C Street SW., Washington, D.C., beginning approximately 2 weeks after publication of this notice in the FEDERAL REGISTER, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (telephone 202-472-4510).

In preparing proposed amended regulations, the OCSE will give consideration to comments and recommendations received at the workshops and to written comments, suggestions, and recommendations on the revisions of the regulations. This invitation to submit suggestions is being issued for the purpose of obtaining the broadest possible participation prior to drafting proposed amended regulations. Proposed regulations developed by OCSE will be published in the regular manner as a notice of proposed rulemaking with a period for comment by all interested parties.

Dated: July 14, 1978.

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

Approved: July 19, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-21447 Filed 8-2-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Docket No. 19660; RM-690; FCC 78-511]

INTERNATIONAL RECORD CARRIER'S SCOPE OF OPERATIONS IN UNITED STATES, INCLUDING POSSIBLE REVISIONS TO THE FORMULA PRESCRIBED UNDER SECTION 222 OF THE COMMUNICATIONS ACT

Inquiry and Further Notice of Proposed Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry and further notice of proposed rulemaking.

SUMMARY: This item calls for the updating of applications for additional gateways, including specific city by city data and for the filing of comments as requested in the earlier notice of proposed rulemaking in Docket No. 19660. It also opens an inquiry into free direct access, and incorporates that inquiry in Docket No. 19660.

DATES: Updated applications and first round of comments are due by September 29, 1978. Oppositions are due by November 13, 1978, and replies by December 4, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Helene Bauman, Common Carrier Bureau, 202-632-7834.

SUPPLEMENTARY INFORMATION:

Adopted: July 13, 1978.

Released: July 28, 1978.

In the matter of International Record Carrier's scope of operations in the continental United States, including possible revisions to the formula prescribed under section 222 of the Communications Act, Docket No. 19660, RM-690.

INTRODUCTION

1. We have before us three petitions relating to the domestic handling of international record traffic. First, on January 19, 1976, the Western Union Telegraph Co. (WU) filed an application for review of the Chief, Common Carrier Bureau's denial of WU's motion to defer the filing of comments concerning the new gateway aspect of our broad examination of the relationship between WU and the Internation Record Carriers (IRC's) initiated in Docket No. 19660. See "Notice of Inquiry and Proposed Rulemaking in Docket No. 19660," 38 FCC 2d 543 (1972) 43 FR 2930, January 20, 1978. WU's application is opposed by ITT World Communications Inc. (ITT Worldcom) and RCA Global Communications, Inc. (RCA Globcom).[1] TRT Telecommunications Corp. (TRT) and Western Union International, Inc. (WUI) have filed comments. Second, WU has filed a motion to compel the production of evidence. ITT Worldcom, RCA Globcom, and WUI have filed oppositions to that motion and TRT has submitted comments. WU has replied. Finally, RCA Globcom filed a petition on August 19, 1977, requesting, *inter alia*, that we revisit our free direct access decision, and asking that said petition be viewed as an application under section 222(a)(5) for authorization to file tariff revisions offering free direct access.[2]

2. Under the provisions of section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222, and various Commission rulings thereunder, the International Record Carriers (IRC's) are only permitted to pickup and deliver incoming or outgoing international message telegrams in certain "gateway" cities within the continental United States. International messages to or from the "hinterland"[3] are delivered by Western Union with the sender paying a single international message telegraph charge which is divided between the IRC and Western Union in accordance with a predetermined agreement. If the sender or recipient elects not to utilize Western Union's services, it must bear the transmission cost between the gateway city and the hinterland point in addition to the regular charges applicable to international message telegraph service.

ADDITIONAL GATEWAYS

3. By "Further Notice of Inquiry and Proposed Rulemaking in Docket No. 19660," 54 FCC 2d 532 (1975), we invited interested parties to file comments with respect to requests by the IRC's that we approve, pursuant to section 222 of the act, additional specified points as international gateways, and that we find, pursuant to section 214 of the act, that provision by the IRC's of their record services at the proposed gateways would serve the public interest, convenience and necessity. We recognized therein that technological and service advances and the historical development of the international record industry combined to constitute strong evidence that additional gateway cities would serve the public interest. Nevertheless, we expressed our concern that the authorization of operations by the IRC's in new gateways might have a substantial adverse impact on WU's ability to provide its services to the public.[4] Accordingly, before taking final action concerning the pending applications for operations of new gateways, we called upon interested parties, particularly WU and the IRC's, to provide us with information to measure the impact of additional gateways upon WU's provision of services to the public.[5]

4. Following the release of our further notice, WU filed a motion to defer the scheduled comment period until the IRC's updated the pending gateway applications and came forward with customer and city traffic and revenue data relating to potential diversion of WU's traffic. WU also asked that we defer the filing of comments until disposition of a complaint and petition for investigation it had filed concerning the IRC's rate structure. See "Interface of International Telex Service with the Domestic Telex and TWX Services in Docket No. 21005," 62 FCC 2d 414 (1976). In addition, WU in its motion to compel the production of evidence requested us to require the IRC's to produce the same traffic and revenue information at issue in its motion to defer. In each instance, WU argued that this data should be made available to it since it maintained no precise records of inter-

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[1] ITT Worldcom, RCA Globcom and WUI filed late pleadings. Since WU has stated that it would not oppose consideration of these pleadings and we find that the public interest will be served by considering them, they shall be included in our consideration of this matter.

[2] We have disposed of the remainder of RCA's petition in our Memorandum Opinion and Order, adopted ———, 1978, in file No. RM-2960.

[3] The "hinterland" is that territory in the contiguous 48 States beyond the limits of the gateways of an IRC.

[4] We note that a similar question is also before us in Graphnet Systems, Inc.'s (Graphnet) application for authority to provide communications services between the gateway locations of IRC's and Graphnet subscribers located in the hinterland. See "Memorandum Opinion and Order and Notice of Inquiry and Proposed Rulemaking," in CC Docket No. 78-96, adopted Mar. 9, 1978. Thus, any decision reached in Docket No. 19660 may have an effect on CC Docket No. 78-96.

[5] At present, the IRC's through the various applications are requesting to establish operations at: Atlanta, Ga., Baltimore, Md., Boston, Mass., Chicago, Ill., Cincinnati, Ohio, Cleveland, Ohio, Dallas, Tex., Denver, Colo., Detroit, Mich., Hicksville, N.Y., Houston, Tex., Los Angeles, Calif., Memphis, Tenn., Miami, Fla., Milwaukee, Wis., Minneapolis, Minn., Newark, N.J., New Orleans, La., New York, N.Y., Philadelphia, Pa., Pittsburgh, Pa., San Francisco, Calif., Seattle, Wash., Stamford, Conn., St. Louis, Mo., Washington, D.C.

These applications and opposition pleadings are described in "International Record Carriers' Communications," 54 FCC 2d 909 (1975). We also have pending applications, file No. 2209-C4-P-72 and 164-C4-P-72 filed by Radiocall, Inc. for proposed radio services between Los Angeles and Honolulu, Hawaii.

national traffic sent by way of its network. Without evaluating billing information held by the IRC's, WU argued that it could provide no useful estimate of potential city by city and customer by customer traffic and revenue diversion. With respect to the pending applications, filed between 1971 and 1975, WU stated that information supporting the applications was stale and might no longer reflect the intentions of the IRC's. Moreover, WU argued the applications did not contain the complete information required by § 63.01 of the Commission's rules, 47 CFR 63.01. Without complete and updated applications, WU contended that it had no realistic basis to determine the scope of the IRC's proposed operations. With respect to its pending complaint concerning the alleged unlawfulness of IRC's rate structure, WU contended that until resolution of that issue, it could not fashion a competitive response to the new gateway operations nor could it make a determination in this proceeding of the revenues it might lose to the IRC's.

5. After considering WU's arguments, the Common Carrier Bureau denied to the motion to defer. It found (1) that no useful purpose would be served by requiring the updating and completion of the applications for new gateways until we determined the threshold question of whether approval of any new gateway cities would serve the public interest; (2) that the data WU requested would be more appropriately considered with the supplemental applications; (3) that delaying the new gateway inquiring to await resolution of WU's complaint was inappropriate. While the Bureau stated that it expected the IRC's to file complete factual information concerning traffic and revenue diversion, it cautioned that the various interested parties might later be called upon to provide additional information.

6. In its application for review, WU reiterates its contentions that the filing of comments should be deferred and, in addition, asks that we specify the precise issues the parties are to address. WU states that in determining whether the public interest will be served by approval of new gateway cities, we must consider whether approval of the proposed new gateways would (1) result in improved communications services to the public; (2) be economically viable; (3) result in significant diversion of revenues from existing carriers and, if so, the extent of the impact of such diversion upon existing services; and, finally (4) burden the public with higher costs of service. According to WU, approval of new gateway cities cannot properly be considered apart from the specific applications requesting operational authority at those points. WU points out that no reason exists to separate questions concerning impact on its services from our review of the pending applications. By not requiring the completion and updating of the applications now, WU contends that we would deprive it of information essential to the record in this proceeding and unnecessarily prolong disposition of the applications. Similarly, WU takes issue with the Bureau's decision not to call upon the IRC's to provide revenue and traffic information of the proposed gateways, but, instead, to reserve judgment and, if necessary, later call upon the parties to provide supplemental information. WU states that it can determine the precise extent of diversion only by combining its own and the IRC's information concerning international and domestic telex and record traffic. Finally, WU asks that we reverse the Bureau's decision to go forward with this proceeding without awaiting resolution of its complaint. WU again states that it cannot determine the impact of expanded gateway operations until we determine whether and to what extent the IRC's rate structure should be modified.

7. ITT Worldcom and RCA Globcom argue that general rulemaking procedures are sufficient in the instant proceeding. Moreover, each points out that the IRC's would be willing, subject to certain conditions, to respond voluntarily to WU's request for traffic and billing data. With respect to the pending applications, RCA Globcom recognizes that each IRC has the burden to support its applications and for its part states that complete information will be forthcoming with its gateway comments. Both ITT Worldcom and RCA Globcom contend, however, that additional information, if necessary to the disposition of this proceeding, may be more efficiently and effectively acquired by specific Commission action after comments are exchanged rather than through the procedures WU requests. These parties also agree that to await the outcome of WU's complaint would delay resolution of the issues surrounding the approval of new gateways.

Free Direct Access

8. "In All America Cable and Radio, Inc.", 15 FCC 2d 293 (1950), we held that it was permissible for hinterland customers to gain access to the IRC's directly by means of various domestic communications networks where the use of such media was at the option and expense of the customer. Subsequently, in our "International Record Carriers" decision, 40 FCC 2d 1082 (1973) (free direct access decision) we rejected revisions to IRC tariffs which would have allowed the IRC's to absorb the cost of this direct access. We observed that this would render the statutory differentiation between gateway and hinterland meaningless, and could have an economic impact on Western Union. We held that such a change could not be adequately evaluated in the tariff proceeding before us, and that if the IRC's wanted to pursue the free direct access question, they would have to file applications for authorization under section 222(a)(5). Since such an application is interrelated with the issues under consideration in Docket No. 19660, we indicated that they would be incorporated into that docket.[6] Therefore, we are considering RCA Globcom's request in this docket.

9. The RCA Globcom petition notes that in 1975 WU received a major increase in domestic landline haul charges from the IRC's, which was absorbed by the carriers rather than passed through to the public. As a result of these increased payments to WU, RCA Globcom claims it has had to absorb over $2 million a year. RCA Globcom further alleges that in 1976 it suffered losses of approximately $4 million in the provision of international message telegram service. It would like to alleviate a portion of this loss by the initiation of free direct access, which would relieve RCA Globcom from continued exclusive reliance upon Western Union for the provision of international message telegram service to and from points in the hinterland, and allow hinterland customers access to RCA Globcom at no additional cost to the customers.

10. RCA Globcom asks that we revisit our free direct access decision and enable the IRC's to provide free direct access to the hinterland at the earliest opportunity. Such an action, RCA Globcom claims, would give it the opportunity to utilize cost-effective and efficient means to provide international telegram service to its customers. RCA Globcom also claims that continued restraints imposed on its ability to provide free direct access are unjust and unreasonable, and restrict the public in the use of a readily available operational alternative to transmit to or receive international message telegrams from the hinterland. This unreasonable restriction, according to RCA Globcom, effectively forecloses the public user in the hinterland from the option of dealing directly with an international carrier, and forces the customer to involve a third party, Western Union, in the transaction.

Discussion

11. Initially, with respect to WU's motion to compel, § 1.311(a) of our rules, 47 CFR 1.311(a) states that dis-

[6] 40 FCC 2d at 1088. At the present time, the IRC's provide, in addition to other services, pickup and delivery of international telegraph messages, at their expense, within gateway cities.

covery procedures, including a motion to compel the production of evidence, are available to a party only in a "case of adjudication which has been designated for hearing." In rulemakings, such as the instant proceeding, designated pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553, discovery is not a matter of right. Instead, the use of discovery procedures is a matter within our discretion. Since we are disposing of the issues raised in WU's motion to compel in our action on its application for review, we find no reason to order discovery procedures at the present time. Accordingly, we will dismiss WU's motion to compel.

12. While we tentatively are of the view that an expeditious authorization of additional gateways could result in improving the responsiveness of the IRC's to specific customer needs and lead to more cost effective and efficient services, we find that WU's arguments concerning the adequacy of the pending applications are valid. Our review shows that, in some cases, information necessary for reviewing the subject applications has not been provided. Similarly, due to the lapse of time since ITT Worldcom's and RCA Globcom's applications were filed, the cost of the proposed operations and other data may differ significantly from that originally projected. We believe it is necessary to coordinate review of the potential impact of specific applications with possible action in this proceeding in order to establish an adequate record upon which to base our determination in both proceedings. In addition, considering the broad scope of the IRC's request, we are of the opinion that certain traffic and revenue information requested by WU should be specifically included in the applications. We believe that this approach will result in the most expeditious processing of both Docket No. 19660 and the applications for specific gateways.

13. Therefore, we hereby grant WU's application for review to the extent that we shall require the IRC's to (1) file supplementary data including a city by city showing of outbound traffic and revenue data as set forth below, and (2) to complete their pending applications pursuant to § 63.01 of the rules. However, we deny WU's request to defer this proceeding pending the outcome of the proceedings looking toward a revision of the IRC's rate structure. With the information we are now calling for, we believe we can sufficiently estimate the extent of potential diversion of traffic from WU's network. While modification of the IRC's rate structure might have some further effect on WU's revenues, we can later make any adjustment to preserve WU's ability to provide its basic services to the public if such adjustment is determined to be necessary and in the public interest.

14. Since the above revised procedures permit us to consolidate our actions relating to the proposed new gateways, we shall require those IRC's who have filed applications for new gateways to submit the following information concerning possible diversion of WU's traffic and revenues and the consequent possible impact on the public.

(a) The location and boundary of each proposed gateway, i.e. whether authorization is sought to serve the public directly only within a particular city, within designated suburban points and within a particular city, within designated suburban points, or within a specified radius extending outside the city. Each radius is to be measured from the Central Post Office of the proposed gateway city.

(b) The location of each proposed international switch, and an estimate of the number of channels for each service to be provided between each proposed gateway and each proposed international switching center.

(c) A 5-year forecast of channel requirements for each service from each gateway and which also shows the number of forecasted messages and minutes respectivley for message telegram and telex.

(d) An economic justification for the proposed operations including a showing of estimated added revenues, costs and expenses, and the basis thereof. Detailed tables should set forth estimated revenue, investment and expenses separately at each proposed gateway for each proposed service. Revenue tables should include and set forth separately circuit, equipment and installation revenues. Investment tables should set forth multiplex equipment, IRU's, subscriber terminals, leased channel operating equipment and technical control equipment. Expense tables should set forth separately charges for supervision, maintenance and installation, technicians, clerks and operators, messengers, office rental, telephone, utilities, sales, satellite tails, local loops and interoffice circuitry, depreciation, IRU maintenance and miscellaneous expenses.

(e) Present total outbound international telex revenue from each gateway including any store and forward international telex revenue originated via telex or TWX.

(f) Present total outbound revenues from cablegrams from each gateway automatically sent per customer agreements after unsuccessful attempts to complete an international telex connection originated via telex or TWX.

(g) Present total outbound landline haul coefficient minutes associated with (e) and (f).

(h) Present total outbound cablegram revenue originated via WU telex and TWX and billed but not included in (f).

(i) Present total outbound minutes used in the WU telex network in connection with acceptance of traffic in (h).

15. It should be emphasized that the IRC's should include a description of both the methodology used and the supporting data from which their forecasts and estimates were derived. We are not requiring the filing of data by the IRC's on an individual customer basis since review of city by city information will provide a sufficient record for our purposes. Moreover, we are not requiring specific information of WU since WU has a responsibility to provide whatever relevant data it has in its possession showing the extent of adverse impact it may incur by the advent of proposed operations in the proposed new gateways in response to the information supplied by the IRC's.

16. We shall also deny WU's request that we adopt its statement of issues, as described in paragraph 6 above. We believe that the comments solicited by our "Further Notice", in conjunction with the specific traffic and revenue data requested in paragraph 14 above, will provide us with the proper foundation upon which to rest our decision in this matter. We believe our present framing of the issues is broad enough to compel the parties to address the issues proposed by WU. However, we do not want to limit the parties to those specific issues. It is therefore unnecessary to specify any issues for comment in the additional gateways aspect of this docket, other than the general question raised in the "Further Notice", 54 FCC 2d at 534.

17. In regard to RCA Globcom's request that we revisit the free direct access decision and give it authority under section 222(a)(5) to revise its tariff accordingly, we think it is necessary and timely to reevaluate the existing institutionalized methods and practices involved in the pickup and delivery of international traffic originating at or delivered to hinterland points outside of the established gateway cities, so that the public will be assured of efficient and economic international record communications. In our original decision, 40 FCC 2d 1082 (1973), we did not make a determination on the merits of the free direct access proposal, but only found that the IRCs could not institute such a procedure through the simple filing of a tariff revision without first obtaining authority to do so under section 222(a)(5). We are therefore asking all interested parties to comment upon

the merits of allowing an IRC to institute free direct access. It is possible that any offering of this type by the IRC's may have substantial adverse impact on Western Union's ability to serve the public. Accordingly, we expect the parties to address this issue directly, as well as the issue of what benefits will accrue to the public. Since section 222 restricts the operation of the IRC's outside their established gateways we also expect the parties to address the question of whether the free direct access proposals are within the scope of legally permissible activities for IRC's under section 222.

18. In this "Notice of Inquiry and Further Notice of Proposed Ruelmaking," we are calling for the IRC's to gather and submit a substantial amount of information, in order that we may go forward with the exiting and proposed, rulemaking in Docket 19660. In addition, we note that the IRC's must also amend their pending applications for additional gateways to include the data required to be filed by § 63.01 of the Commission's rules and regulations. Further, we expect that the IRC's may also wish to amend these applications in light of new economic developments since their original filing and the proposal to revisit free direct access. We believe that such a dual course of action will speed the entire process by enabling us to act on the applications in conjunction with this rulemaking in Docket 19660. We recognize that the information required in the rulemaking may, in some cases, be the same as that necessary to update and complete the carriers' pending applications. Accordingly, we will allow the inclusion of any such duplicative material by cross reference.

19. Since we are calling for a considerable amount of information, we believe it appropriate to adjust the comment period to afford the parties a fair opportunity to provide the information we have requested. Accordingly, the IRC's are to file the information requested in paragraphs 14 and 17 above, as well as any comments and appropriate amendments to their applications by September 29, 1978. Western Union and other interested parties may then file petitions to deny or other comments by November 13, 1978. Oppositions to these further pleadings will be due by December 4, 1978.

20. We recognize that there are other unresolved issues in Docket 19660 which are not included in this "Notice of Inquiry and Further Notice of Proposed Rulemaking." Particularly, we have not addressed the issue of the interconnection of Western Union with the IRC's within the designated gateways. This, and any other issue not addressed herein will be discussed in further orders. We note, however, that the "Further Notice" at paragraph 8, specifically brought into issue in this proceeding the question of interconnection of the IRC's with their domestic subsidiaries. Accordingly, we expect all parties to comment on this issue in the pleadings relating to this aspect of Docket No. 19660.

21. Accordingly, *It is ordered*, That the Application for Review filed by Western Union Telegraph Co. on January 19, 1976, is granted to extent indicated herein and is otherwise denied.

22. *It is further ordered*, That the motion to compel the production of evidence filed on October 7, 1975 is dismissed.

23. *It is further ordered*, That the Petition filed by RCA Global Communications, Inc., on August 19, 1977, is granted to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-21558 Filed 8-2-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[BC Docket No. 78-224; RM-3078]

FM BROADCAST STATION IN HOMER, ALASKA

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of a class C FM channel to Homer, Alaska. Petitioner, Alaska Village Missions, Inc., states the proposed channel would provide for a station which could render a first local aural broadcast service to Homer and outlying areas.

DATES: Comments must be received on or before September 22, 1978. Reply comments must be received on or before October 12, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: July 24, 1978.

Released: July 28, 1978.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Homer, Alaska), BC Docket No. 78-224, RM-3078.

By the Chief, Broadcast Bureau:

1. The Commission here considers a petition for rulemaking[1], filed on behalf of Alaska Village Missions, Inc. ("petitioner"), which requests the assignment of class C FM channel 278 to Homer, Alaska, as that community's first FM assignment.

2. The channel could be assigned without affecting any existing FM assignments. Petitioner states it will apply for authority to construct an FM station on the channel, if assigned.

3. Homer (population 1,083)[2] is located on the Kenai Peninsula on the south shore of Alaska, 185 kilometers (115 miles) southeast of Anchorage. It has no local aural broadcast service.

4. Petitioner asserts that the Homer area has experienced steady population and economic growth in recent years. It states that, according to the Homer area analysis by the Hillas Appraisal Co., the 1977 population of Homer is estimated at 1,800 with an estimated 6,000 within the general area. We are told that commercial fishing and tourism have been the mainstays of the area's economy. Petitioner notes that over 100 area businesses reported a volume of $16.9 million in 1974. In support of its petition, petitioner has submitted information with respect to education, churches, transportation, and medical and recreational facilities.

5. The assignment of channel 278 to Homer would create preclusion on one or more channels to three communities of over 1,000 population. These communities are Soldotna (population 1,202), Kodiak (population 3,798) and Kenai (population 3,533). Kodiak and Kenai have FM assignments and AM stations. Soldotna has no FM assignment, but it does have an AM station. Petitioner should indicate in comments whether an alternate Fm channel is available for assignment to Soldotna.

6. Although it has been usual Commission policy to assign class C channels only to large communities, exceptions have been made when the assignment would result in providing a first or second FM service to large areas and populations or when the assignment of a class C channel is the only feasible means of enabling a large sparsely populated area to be served. A study shows the proposed assignment would provide a first FM service to 2,700 persons in a 7,000 square-kilometer (2,700-square mile) area.

7. Based on our examination of petitioner's proposal, there appears to be a basis for considering whether this proposal warrants an exception to our

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[1] Public Notice of the petition was given on March 29, 1978, Report No. 1111.

[2] Population figures are taken from the 1970 U.S. Census.

general policy regarding the assignment of class C channels because it would provide aural broadcast service to people residing in outlying areas.

8. Accordingly, the Commission proposes to amend the FM table of Assignments, §73.202(b) of the Rules, with regard to Homer, Alaska, as follows:

City	Channel No.	
	Present	Proposed
Homer, Alaska	.....	278

9. The Commission's authority to institute rulemaking proceedings; showings required; cut-off procedures; and filing requirements are contained in the attached Appendix and are incorporated herein.

NOTE.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

10. Interested parties may file comments on or before September 22, 1978, and reply comments on or before October 12, 1978.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g), and (r), and 307(b) of the Communications Act of 1934, as amended, and §0.281(b)(8) of the Commission's rules, it is proposed to amend the FM Table of Assignments, §73.202(b) of the Commission's rules and regulations, as set forth in the Notice of Proposed Rulemaking to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rulemaking to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comment. (See §1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §1.420 (a), (b), and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of §1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 78-21560 Filed 8-2-78; 8:45 am]

[4910-62]

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[49 CFR Part 27]

[OST Docket No. 56; Notice No. 78-7]

NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Public Hearings

AGENCY: Department of Transportation.

ACTION: Notice of dates, locations, and scheduling information for public hearings.

SUMMARY: This notice establishes the dates and sites for the previously announced public hearings to be held by the Department of Transportation on its Notice of Proposed Rulemaking implementing section 504 of the Rehabilitation Act of 1973. It also describes the facilities that will be available for the handicapped at the hearing sites. In addition, the dates by which applications to speak and for travel and per diem funds must be submitted are established.

DATES AND ADDRESSES: See Supplementary Information.

FOR FUTHER INFOMATION CONTACT:

Richard R. Clark, Office of General Counsel, Regulation and Enforcement, U.S. Department of Transportation, Washington, D.C. 20590, 202-426-4723.

SUPPLEMENTARY INFORMATION: On Thursday, June 8, 1978, the Department of Transportation (DOT) published in the FEDERAL REGISTER (43 FR 25016) a Notice of Proposed Rulemaking (NPRM) to implement section 504 of the Rehabilitation Act of 1973. On Friday, July 14, 1978, DOT announced in the FEDERAL REGISTER (43 FR 30316) that five public hearings would be scheduled on the section 504 NPRM.

The DOT public hearings on the section 504 NPRM will be held on the following dates at the designated locations:

NEW YORK, N.Y.

Date: September 7, 1978 (a second day of public hearings will be held on Sept. 8, 1978, if necessary).
Location: Police Headquarters, Police Plaza (Chamber and Center Streets), New York, N.Y.

CHICAGO, ILL.

Date: September 11, 1978.
Location: McCormick Inn (Room 7), 2300 South Lake Shore Drive, Chicago, Ill.

DENVER, COLO.

Date: September 13, 1978.
Location: Executive Tower Inn (Forum Room), 1405 Curtis, Denver, Colo.

SAN FRANCISCO/OAKLAND, CALIF.

Date: September 15, 1978.
Location: Claremont Hotel (Empire Room), Ashby and Domingo Avenues, Oakland, Calif.

WASHINGTON, D.C.

Date: September 19, 1978 (a second day of public hearings will be held on September 20, 1978, if necessary).
Location: Health, Education, and Welfare (HEW), North Building Auditorium, 330 Independence Avenue S.W., Washington, D.C.

All of the above listed facilitites are accessible to wheelchairs and interpreters for the deaf will be present. All hearing sessions will begin at 9 a.m. local time. They will last as long as necessary but no session will extend past 10 p.m. local time. There will be a 1-hour recess for lunch and a 1-hour recess for dinner. Accessible eating facilities exist in or near each building. The hearings will be informal.

All interested persons are invited to attend the hearings. Persons interested in testifying, who have not already submitted their applications, should submit their applications, postmarked by August 18, 1978, to the Docket Clerk (56A), Room 10100, U.S. Department of Transportation, 400 Seventh Street S.W., Washington, D.C. 20590. The request to testify must include: (1) The name of the individual testifying; (2) what organization, if any, the individual represents; (3) a telephone number where the individual can be reached during the day; (4) the hear-

ing location the individual wishes to testify at; (5) a summary of the testimony expected to be given; and (6) the length of time required (if more than 10 minutes is requested, the applicant should justify the request).

Those persons who have already submitted applications to testify need not submit another request. All previously received applications will be considered for the nearest hearing site to the return address of the applicant unless a new application is submitted in accordance with the instructions in the previous paragraphs.

In order to increase the opportunity for the DOT to hear as many views as possible, the DOT reserves the right to limit the time for testimony by witnesses and to restrict repetitive testimony or witnesses.

As previously announced in the FEDERAL REGISTER (43 FR 25022), some funds are available to provide travel and per diem to a limited number of persons who will be testifying at the hearing. Applications for those funds not already submitted should provide the following information:

(1) Name and address of individual testifying;
(2) Hearing location the individual desires to testify at (if not the nearest city to home of applicant, justification for the extra travel must be included);
(3) Name and address of organization being represented, if any;
(4) A short statement of the purpose of the organization and of its tax status;
(5) The interest of the individual, or the organization being represented, in the matters being discussed at the hearing;
(6) The subject area or areas to be discussed and a general summary of the testimony to be given;
(7) The competency of the individual to testify on this matter;
(8) An itemization of the amount of funds requested; and
(9) The reason why funding is needed.

Factors that will be considered in evaluating applications for travel and per diem expenses shall include, but not limited to: (1) Likelihood that the applicant would not participate in the absence of the requested funding; (2) the size of the constituency or organization represented by the applicant; (3) the type of disability represented (i.e., deaf, blind, mobility-impaired); (4) applicant's familiarity with the issues at hand; and (5) the likelihood that the applicant will contribute significantly to a full and fair disposition of the issues.

Applications must be submitted by mail, postmarked by August 18, 1978, to the Docket Clerk (56A), Room 10100, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Applicants will be notified of approval or disapproval of travel and per diem funds by August 31, 1978.

Those persons who have already submitted applications for funding need not resubmit. All previously received applications will be considered as requests for travel to the nearest hearing location to the home address of the applicant unless a new application is submitted in accordance with the above instructions, including justification for requesting travel funds beyond the nearest hearing location.

Issued in Washington, D.C., on August 1, 1978.

BROCK ADAMS,
Secretary of Transportation.

[FR Doc. 78-21709 Filed 8-2-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[49 CFR Parts 1047, 1082]

[MC-C-3437]

MOTOR TRANSPORTATION OF PROPERTY INCIDENTAL TO TRANSPORTATION BY AIRCRAFT

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time for filing of public comments in this proceeding.

SUMMARY: A notice appeared in the FEDERAL REGISTER on July 20, 1978, at 43 FR 31182 indicating (1) that the Commission's Bureau of Economics had prepared a report entitled "Air Terminal Areas and Intermodal Movement of Air Cargo" and (2) that public comments addressing the report's findings should be submitted to this Commission within 30 days of the publication of that notice. Both the report and the comments received will be made part of the record in this proceeding.

Due to a slight delay in the issuance of the report, the period for filing comments will be extended to insure that interested parties have ample opportunity to prepare their comments.

Copies of this report can be obtained from the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

DATES: Comments on the report should be submitted to the Commission on or before September 1, 1978.

ADDRESS: Send comments to the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Robert G. Rhodes, 202-275-7684; Michael Erenberg, 202-275-7291.

SUPPLEMENTARY INFORMATION: This proceeding was instituted by a notice of proposed rulemaking published in the FEDERAL REGISTER on May 25, 1977, at 42 FR 26667. The Commission is exploring the feasibility of redefining the term "air terminal area" and expanding existing air terminal areas. A subsequent notice appeared in the FEDERAL REGISTER at 43 FR 8817 indicating that the Bureau of Economics would prepare a report based on available economic data concerning this matter and that the public would be invited to comment on the report.

By the Commission, Chairman O'Neal.

Decided July 28, 1978.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc. 78-21618 Filed 8-2-78; 8:45 am]

[7035-01]

[49 CFR Part 1201]

[No. 36873]

RAILROAD COMPANIES

Definition of Railroad Transportation Property

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 306 of the Railroad Revitalization and Regulatory Reform Act (4R Act) makes it unlawful for States to levy an ad valorem property tax on railroad transportation (RT) property at a rate different than that levied to other commercial property of a similar nature. Paragraph (3)(d) of section 306 further explains that the term "transportation property" shall be interpreted in accordance with the regulations of the Interstate Commerce Commission (Commission).

Presently, the Commission is interpreting transportation property to be property owned, used, or held for use in transportation services. However, this interpretation fails to consider cash, accounts receivable, materials, and supplies and the franchise or "going concern" value which are considered a part of the operating unit providing transportation service by some States for ad valorem property tax purposes.

The present interpretation makes it possible for some States to circumvent the intent of section 306 of the 4R Act. In order to prevent the circumvention of the intent of section 306 of the 4R Act and provide a uniform definition of RT property for use by States in determining ad valorem property taxes, the Commission has decided to include all assets comprising the entire operating unit devoted

to transportation service in the definition of RT property.

DATES: Written comments must be received on or before September 15, 1978.

ADDRESS: Send comments to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Brown, Jr., Chief, Section of Accounting, Bureau of Accounts, Interstate Commerce Commission, phone No. 202-275-7448.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-21442 Filed 8-2-78; 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.

[3410-16]

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

COLUMBIA COUNTRY HIGH SCHOOL CRITICAL AREA TREATMENT AND LAND DRAINAGE R.C. & D. MEASURE, FLORIDA

Intent Not To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Columbia County High School Critical Area Treatment and Land Drainage R.C. & D. Measure, Columbia County, Fla.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts of the environment. As a result of these findings, Mr. William E. Austin, State conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for critical area treatment and drainage. The planned works of improvement include paved walkways and steps, traffic control planting, critical area plantings, lined waterways, vegetated ditches, and a closed conduit.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. William E. Austin, State conservationist, Soil Conservation Service, 401 Southeast Second Avenue, Gainesville, Fla. 32601, telephone 904-377-8732. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until September 5, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

Dated: July 26, 1978.

EDWARD E. THOMAS,
Assistant Adminstrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-21458 Filed 8-2-78; 8:45 pm]

[3410-16]

GEORGE MUNROE ELEMENTARY SCHOOL CRITICAL AREA TREATMENT R.C. & D. MEASURE, FLORIDA.

Intent Not To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the George Munroe Elementary School Critical Area Treatment R.C. & D. Measure, Gadsden County, Fla.

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. William E. Austin, State conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for stabilizing critically eroding areas. The planned works of improvement include a network of waterways, diversions, a pipe drop structure, a corrugated metal pipe system with timber bent support, and a plunge basin for energy dissipation.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. William E. Austin, State conservationist, Soil Conservation Service, 401 SE. Second Avenue, Gainesville, Fla. 32601, telephone 904-377-8732. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until September 5, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

Dated: July 26, 1978.

EDWARD E. THOMAS,
Assistant Administrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-21460 Filed 8-2-78; 8:45 am]

[3410-16]

OKALOOSA ROADSIDE CRITICAL AREA TREATMENT R.C. & D. MEASURE, FLORIDA

Intent Not To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality guidelines (40 CFR Part 1500); and the Soil Conservation Service guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Okaloosa Roadside Critical Area Treatment R. C. & D. Measure, Okaloosa County, Fla.

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. William E. Austin, State conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for stabilizing critically eroding areas. The planned works of improvement include concrete flumes, concrete road ditches, concrete terrace outlets, diversions, sodding, and reshaping and seeding of

existing denuded areas and those areas disturbed during construction.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. William E. Austin, State Conservationist, Soil Conservation Service, 401 Southeast 2d Avenue, Gainesville, Fla. 32601, telephone 904-377-8732. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until September 5, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590a-f, q.)

Dated: July 26, 1978.

EDWARD E. THOMAS,
Assistant Administrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-21461 Filed 8-2-78; 8:45 am]

[3410-16]

RATHBUN WETLANDS WATER-BASED FISH AND WILDLIFE DEVELOPMENT R.C. & D. MEASURE, IOWA

Intent Not To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality guidelines (40 CFR Part 1500); and the Soil Conservation Service guidelines (7 CFR Part 6540); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Rathbun Wetlands Water-Based Fish and Wildlife Development R.C. & D. Measure in Lucas, Wayne, and Appanoose Counties, Iowa.

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. William J. Brune, State conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for water-based fish and wildlife development. The planned works of improvement include constructing dikes to confine water which will be controlled by stop-log structures. Parking areas and access roads will also be provided.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. William J. Brune, State Conservationist, Soil Conservation Service, 693 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, telephone 515-284-4260. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until September 5, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

Dated: July 26, 1978.

EDWARD E. THOMAS,
Assistant Administrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-21457 Filed 8-2-78; 8:45 am]

[3410-16]

WARRINGTON MIDDLE SCHOOL CRITICAL AREA TREATMENT R.C. & D. MEASURE, FLORIDA

Intent Not To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Counsel 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 Warrington Middle School Critical Area Treatment R.C. & D. Measure, Escambia County, Fla.

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. William E. Austin, State conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for stabilizing critically eroding areas. The planned works of improvement include land shaping, estabishment of erosion and traffic control vegetation, appropriate landscaping, establishing concrete ditches along with paved and grassed waterways, diversions, sidewalks, fencing, curbing, gutter splash blocks, and an underground conduit with inlets and manholes.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. William E. Austin, State Conservationist, Soil Conservation Service, 401 Southeast 2d Avenue, Gainesville, Fla. 32601, telephone 904-377-8732. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until September 5, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Pub. L. 87-703, 16 U.S.C. 590 a-f, q.)

Dated: July 26, 1978.

EDWARD E. THOMAS,
Assistant Administrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-21459 Filed 8-2-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket 30777; Agreement C.A.B. 27250; Agreement C.A.B. 27252; R-1 through R-17; Order 78-7-112]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of July 1978.

By Order 78-5-39, May 8, 1978, the Board established procedural dates for the receipt of carrier justification, comments and replies regarding two agreements among member air carriers of the International Air Transport Association (IATA).[1] The agreements were adopted at the reconvened meeting of Joint Traffic Conferences 1 and 2 in Geneva in March 1978, and would establish North Atlantic-Africa air fares for the period June 1, 1978, through March 31, 1979.

[1] Pan American subsequently requested and received a 2-week extension from May 18 to June 2, for the submission of its justification.

These agreements involve fares between the United States and Africa and thus have direct application in air transportation as defined by the act. They would: Increase first-class fares by 4 percent; increase round-trip economy and excursion fares by approximately $22 and $27, respectively, for points south of Lagos; introduce new APEX fares in several markets;[2] reduce existing APEX fare levels; maintain most GIT fares at present levels but increase the minimum tour price from $120 to $200[3] for the 13-day minimum-stay period; and introduce a special 14/30-day GIT from New York to Nairobi at $795.[4]

In support of the agreements, Pan American World Airways, Inc. (Pan American), the only U.S. carrier serving the area, states that the proposed fare increases are modest, would only slightly offset cost escalations, and would not result in an excessive rate of return on investment (ROI). In its North Atlantic-Africa operations, the carrier reports an ROI of 5.06 percent for the year ended March 31, 1978, and estimates its ROI for the year ending May 31, 1979, at 8.24 and 6.76 percent, with and without the proposed fare increases, respectively. Furthermore, Pan American argues, the agreements incorporate a number of features that will directly benefit the traveling public: The introduction of APEX fares to West Africa; a 13.1 percent reduction in the current New York-Johannesburg APEX level; an attractive new GIT fare to Nairobi; and no increases in normal economy and excursion fares to West Africa.

Donald L. Pevsner, Esq., filed comments opposing any increase in North Atlantic-Africa first-class fare as long as the carriers fail to comply with the Board's findings and orders on free-baggage allowances and excess-baggage charges.[5] Mr. Pevsner states that a number of African governments refuse to permit use of a piece-based baggage system westbound from their countries to the United States, in violation of Order 76-3-81 and the Federal Aviation Act of 1958; these government actions apply to Pan American as well as the African carriers; and Nigerian Airways, the chief African-flag carrier now serving a U.S. gateway, does not allow use of a piece system in either direction.

In reply to Mr. Pevsner's comments, Pan American contends that it has cooperated fully with the Board's order on baggage allowances and charges; the fact that some African governments require excess-baggage charges to be set at a percentage of first-class (rather than economy) fares and refuse to accept certain piece-related restrictions has no bearing on the reasonableness or lawfulness of its first-class fares; it should not be denied badly needed revenue simply because certain foreign governments have raised obstacles to the implementation of a lawful baggage system; and, rather than disapprove the proposed first-class fare increases, the Board should take enforcement action against the offending carriers or hold excess-baggage charges at existing levels by conditioning its approval of the agreements to provide that such charges will be based on the current first-class fares, not the proposed fares.

We will approve the agreements with the exception of the increases in first-class fares, on which we will defer action.

We welcome the carriers' initiative in proposing the new low New York-Nairobi GIT and West Africa APEX fares, along with the sizable reductions in present APEX levels. These fares will significantly broaden the range of low-cost travel options available to United States-Africa passengers. The West Africa APEX fares, for example, represent discounts of 40 to 44 percent from the normal economy fares, and the new GIT to Nairobi is 51 percent below the economy fare. They should have strong generative potential, and should benefit both the carriers and the traveling public.

The proposed fare increases are moderate: 4 percent for first-class fares; 1.4-2.5 percent for economy and excursion fares south of Lagos; and 1 percent for the winter GIT to Abidjan. In large part, these are adjustments to bring eastern and southern Africa fares per mile more closely into line with North Atlantic-West Africa fares, and to raise the round-trip Abidjan GIT to the level of the one-way normal economy fare, in conformance with other GIT levels. The data submitted by Pan American in its justification of this agreement indicate a need for some revenue improvement as well.[6]

In light of the reductions and attractive new low fares incorporated in these agreements, the limited increases proposed, and the need for revenue improvement, we find that the agreements warrant approval.

We must, however, defer action on the proposed first-class fare increases, because certain IATA carriers in various United States-Africa markets continue to apply unlawful weight-based free baggage allowances and excess-baggage charges tied to first-class rather than economy fares. The entire matter is now the subject of an enforcement complaint in docket 31407, and until the issue is resolved in that context, or all the carriers involved revise their baggage rules in an acceptable manner (individually or by IATA agreement), the least we can do is to hold first-class fares at present levels to prevent any further overcharge to passengers carrying excess baggage.[7] We cannot accept Pan American's suggestion that we permit the proposed increases but condition our approval so that excess-baggage charges are assessed on the basis of the previous fare levels. Such an action would in fact constitute Board approval of excess-baggage charges based solely on weight and tied to first-class fares, in direct contradiction to our findings in Order 76-3-81 that these charges are unlawful under section 404(a) of the act. We will not disapprove the proposed increases in first-class fares, however, but merely defer action until the matter is resolved.

Pursuant to sections 102, 204(a), and 412 of the act, we do find that the following resolutions, which have direct application in air transportation as defined by the act, are not adverse to the public interest or in violation of the act:

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[2] Effective October 1, 1978.

[3] Effective November 1, 1978.

[4] A comparision of present and proposed fares in selected United States-Africa markets is shown in the appendixes.

[5] In order 76-3-81, March 12, 1976, in the *Baggage Allowance Tariff Rules in Overseas and Foreigh Air Transportation Case*, docket 24869, the Board found the weight-based IATA free baggage allowances and excess-baggage charges (assessed at 1 percent of the one-way first-class fare per kilogram) to be unjust, unreasonable, and in violation of section 404(a) of the act. The Board has reaffirmed its position repeatedly in subsequent orders.

[6] The carrier's historical ROI in North Atlantic-Africa operations is relatively low, and, at 8.24 percent, its ROI for the forecast period would remain well within the Board's 12-percent guideline with the proposed increases in place. The 8.24 percent figure includes increased revenue from the first-class fare increases on which we are deferring action.

[7] Under similar circumstances, we deferred action on proposed increases in United States-South/Central America long-haul first-class fares (Order 78-2-106, February 23, 1978), and suspended tariff filings proposing increases in North Atlantic first-class fares (Order 76-10-108, October 15, 1976).

Agreement CAB	IATA No.	Title	Application
27250	002	Standard Revalidation Resolution	½
27252:			
R-1	SA1	North Atlantic-Africa Sub Area Agreement (New).	½
R-2	001b	North Atlantic Special Effectiveness Resolution (Tie-in).	½
R-3	001dd	North Atlantic Escape for Normal and Special Fares.	½
R-4	001ee	Special Effectiveness Resolution	½
R-5	001qq	Special Escape for JT12 North Atlantic Agreement.	½
R-6	001vv	JT12 (North Atlantic) Special Escape Resolution.	½
R-7	002ff	Standard Revalidation Resolution	½
R-8	015	North Atlantic Proportional Fares North American (Revalidating and Amending).	½
R-9	022k	JT12 (North Atlantic) Adjustment Factors for Sales of Passenger Air Transportation—Africa (New).	½
R-11	064a	North Atlantic Economy Class Fares	½
R-12	070d	North Atlantic 14/21 and 14/45 Day Excursion Fares (Revalidating and Amending).	½
R-13	071r	North Atlantic-Africa Advance Purchase Excursion Fares (Revalidating and Amending).	½
R-14	071tt	North Atlantic-Africa Advance Purchase Excursion Fares (New) (1 October 1978).	½
R-15	084a	North Atlantic 21 and 28 Day Group Inclusive Tour Fares (Revalidating and Amending) (Paragraph 8=1 November 1978).	½
R-16	084j	North Atlantic 14/30 Day Group Inclusive Tour Fares from New York to Nairobi (New).	½
R-17	084pp	North Atlantic 6/16 Day Winter Group Inclusive Tour Fares—Africa (Revalidating and Amending).	½

Accordingly, *It is ordered*, That: 1. Agreements C.A.B. 27250 and C.A.B. 27252, R-1 through R-9 and R-11 through R-17, be approved;

2. Action be deferred on agreement C.A.B. 27252, R-10; and

3. Tariffs implementing agreements C.A.B. 27250 and C.A.B. 27252, R-1 through R-9 and R-11 through R-17, shall be marked to expire not later than March 31, 1979.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.[8]

[8] All members concurred.

APPENDIX I

North Atlantic - Africa
Present and Proposed Fares in Selected Markets-- U.S.-Originating Passengers

	New York - Abidjan			New York - Dakar			New York - Johannesburg			New York - Kinshasa			New York - Nairobi		
	Present	Proposed	% Change	Present	Proposed	% Change	Present	Proposed	% Change	Present	Proposed	% Change	Present	Proposed	% Change
First Class	$1,932	$2,008	3.93%	$1,664	$1,730	3.97%	$2,426	$2,522	3.96%	$2,168	$2,256	4.06%	$2,426	$2,523	3.96%
Economy -- Basic	1,192	1,192	0	1,022	1,022	0	1,604	1,626	1.37	1,378	1,398	1.60	1,604	1,626	1.37
Peak	1,316	1,316	0	1,144	1,144	0	1,604	1,626	1.37	1,462	1,484	1.50	1,604	1,626	1.37
14/21 and 14/45-Day Excursion--Basic	849	849	0	720	720	0	1,176	1,202	2.22	1,067	1,094	2.53	1,176	1,202	2.22
Peak	978	978	0	848	848	0	1,176	1,202	2.22	1,123	1,149	2.32	1,176	1,202	2.22
APEX 1/	-	-	-	-	-	-	1,007	875	(13.11)	-	-	-	-	-	-
APEX (New) 1/--Basic	-	678	-	-	583	-	-	-	-	-	-	-	-	-	-
Peak	-	742	-	-	647	-	-	-	-	-	-	-	-	-	-
13/30-Day GIT--Basic	638	638	0	534	534	0	1,021	1,021	0	891	891	0	948	948	0
Peak	708	708	0	607	607	0	1,021	1,021	0	957	957	0	948	948	0
14/40-Day GIT (New)	-	-	-	-	-	-	-	-	-	-	-	-	-	795	-
6/16-Day Winter GIT	590	596	1.02	511	511	0	-	-	-	-	-	-	-	-	-

1/ IATA Resolution 071r; for conditions, see Appendix II.
2/ IATA Resolution 071tt; for conditions, see Appendix II.

APPENDIX II

Comparison of Present and Proposed APEX Fares
From New York to Africa

	Present APEX (Resolution 071r)	Proposed APEX (Resolution 071tt)
Markets	Beira, Johannesburg, Maputo	Abidjan, Accra, Dakar, Lagos, Monrovia
Fare Levels	NYC-BEW Present $ 1087, Proposed $ 954 NYC-JNB 1007, 875 NYC-MPM 1087, 954	NYC-ABJ Basic $ 678, Peak $ 742 NYC-ACC 705, 769 NYC-DKR 583, 647 NYC-LOS 726, 790 NYC-MLW 657, 721
Validity	All year	Basic: September 15 - May 14 Peak: May 15 - September 14
Min./Max. Stay	14/45 days	13/45 days
Stopovers	One inbound or outbound; one additional stopover permitted at $20, for a maximum of one inbound and one outbound	No stopovers permitted
Ticketing	Not later than 45 days before outbound departure	Same
Cancellation Penalty	10% or $50, whichever is higher	Same
Combinations	Combinable with domestic and international normal fares	Combinable with domestic fares

[FR Doc. 78-21418 Filed 8-2-78; 8:45 am]

[3510-24]

DEPARTMENT OF COMMERCE

Economic Development Administration

ANTENNA INC., ET AL.

Notice of Petitions for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions were accepted for filing from three firms: (1) Antenna Inc., 26301 Richmond Road, Bedford Heights, Ohio 44146, a producer of citizens' band and land mobile antennas (accepted July 24, 1978); (2) Eastside Sportswear, Inc., 201 Godwin Avenue, Paterson, N.J. 07501, a producer of women's and children's coats (accepted July 25, 1978); and (3) Highlander, Ltd. (a subsidiary of Tiffany Textiles, Inc.), 45 West 36th Street, New York, N.Y. 10018, a producer of women's sportswear, including jackets, shirts, pants, skirts and shorts (accepted July 26, 1978). The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the U.S. Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

JACK W. OSBURN, Jr.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc. 78-21487 Filed 8-2-78; 8:45 am]

[3510-25]

Foreign-Trade Zones Board

[Docket No. 9-78]

FOREIGN-TRADE ZONE NO. 1, NEW YORK CITY

Application To Extend Operational Period

Notice is hereby given that the city of New York, Grantee of Foreign-Trade Zone No. 1, through its Department of Ports and Terminals, has requested authority from the Foreign-Trade Zones Board to extend indefinitely the operational period for the grant of authority of the city-sponsored zone site at Building 77, Brooklyn Navy Yard, New York City. When the zone was moved to the Navy Yard 6 years ago, the city had not decided that it would be a permanent facility and requested only temporary authorization for the site. This authorization was extended to September 26, 1978 by Board Order No. 99 (June 27, 1974) at the Grantee's request. The city has now decided that the zone, which during fiscal year 1977 expanded its activity by handling over $110 million in goods with 75 percent being reexported, should become a permanent facility, and has accordingly requested that the grant's time restriction be rescinded.

Any interested person wishing to comment on this request should submit their comments by August 18, 1978, to the Executive Secretary, Foreign-Trade Zones Board, Room 6886-B, U.S. Department of Commerce, 14th and E Streets NW., Washington, D.C. 20230.

Dated: July 31, 1978.

HAROLD E. STRAUSBAUGH,
Acting Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 78-21564 Filed 8-2-78; 8:45 am]

[3510-25]

Industry and Trade Administration

IDAHO STATE UNIVERSITY, ET AL.

Applications for Duty Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educatipnal, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before August 23, 1978.

Regulations (15 CFR 301.9) issued under the cited act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5 p.m., Monday through Friday, in Room 6886C of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 78-00257. Applicant: Idaho State University, 921 South Eighth Avenue, Attention: Purchasing Box 8219, Pocatello, Idaho 83209. Article: 200 (each) Longworth small mammal traps, complete units with trap and nest box and accessories. Manufacturer: Penlon Ltd., United Kingdom. Intended use of article: The article is intended to be used to capture and release rodents to obtain a description of the seasonal and yearly changes in population size, birth and death rates in natural populations of the rodents in high desert habitat. Application received by Commissioner of Customs: June 6, 1978.

Docket No. 78-00258. Applicant: Department of Commerce, National Bureau of Standards, 325 South Broadway, Boulder, Colo. 80303. Article: Model A7 Automatically Balanced Precision Resistance Bridge and accessories. Manufacturer: Automatic Systems Lab., United Kingdom. Intended use of article: The article is intended to be used for the investigation of thermodynamic properties of pure fluid and fluid mixtures. The bridge will automatically balance itself to provide very accurate temperature readings of a platinum resistance thermometer thermally attached to the cell of a pressure-volume-temperature apparatus. The readings will be used as input to a computerized data taking system and will also allow the computer to very accurately stabilize and control the temperature of the sample cells. Application received by Commissioner of Customs: June 6, 1978.

Docket No. 78-00260. Applicant: University of Utah, Salt Lake City, Utah 84112. Article: H-33 Centrifuge with pneumatic motor, Model C5-33, Mix-1-2L Mixer Unit and accessories. Manufacturer: MEAB Metallextraktion AB, Sweden. Intended use of article: The article is intended to be used to investigate the recovery of metal values (such as copper, nickel, uranium, and other important metals) from electrolyte solutions using liquid-liquid (solvent) extraction. The article will also be used to expand the already well-recognized hydrometallurgy program at the university. Laboratory experiments involving the use of the article will be incorporated into regular undergraduate and graduate level courses Met. E. 570L: Hydrometallurgical Laboratory and Met. E. 674: Advanced mineral processing. Application received by Commissioner of Customs: June 6, 1978.

Docket No. 78-00264. Applicant: Colgate University, Hamilton, New York 13346. Article: Scanning Microdensitometer, Model M85 and accessories. Manufacturer: Vickers Ltd., United Kingdom. Intended use of article: The

article is intended to be used for measurements of the biologically active concentrations of hormones. The primary field of interest is the circadian rhythms of hormones involved with reproductive cycles especially as they are affected by photoperiods, temperature, and pineal gland. These studies normally culminate in research papers published in the field. In addition, the article will be used for educational purposes in the courses Biology of Reproduction (Biol. 365), Experimental Endocrinology (Biol. 361-362), and Chronobiology (Biol. 364). Application received by Commissioner of Customs: June 7, 1978.

Docket No. 78-00266. Applicant: Cold Spring Harbor Laboratory, PO Box 100, Cold Spring Harbor, N.Y. 11724. Article: Electron Microscope, Model EM 10A and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used as the primary tool in the examination of the organization of chromosomes and viruses. Primary focus will be on the patterns of RNA transcription, processing, and splicing of the DNA tumor viruses: adenovirus, simian virus 40, and their hybrids. Application received by Commissioner of Customs: June 8, 1978.

Docket No. 78-00268. Applicant: The University of Texas Health Science Center, Department of Cell Biology, 5323 Harry Hines Boulevard, Dallas, Tex. 75235. Article: Electron Microscope, Model JEM 100CX and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used in high resolution biological studies of cell membranes and other cellular organelles. In addition, freeze etch replicas will be studied as well as critical point dried whole cells. Most of the materials studied will be mammalian tissue associated with the nervous system, including nerve and muscle cell cultures. Also, studied will be the distribution of proteins which reside within the cell membranes. Various antibody and protein tagging techniques will also be investigated. Experiments will be conducted to (1) resolve the relationship of microtubules and microfilaments in nerve and muscle cell cultures, (2) to study changes in the functional activity states of membranes, and (3) to study membrane changes during induced cell and tissue transformation. The article will also be used by graduate students, post-doctoral fellows and faculty members in Graduate School of Biomedical Sciences. Application received by Commissioner of Customs: June 9, 1978.

Docket No. 78-00269. Applicant: University of South Carolina, Department of Geology, Columbia, S.C. 29208. Article: Isotope Ratio Mass Spectrometer, Model 602D and accessories. Manufacturer: V.G. Micromass, United Kingdom. Intended use of article: The article is intended to be used for studies carried out to investigate the history of Anatarctic circulation as recorded in biogenic sediments on the sea floor. Microscopic fossils composed of calcium carbonate will be isotopically analyzed for their $^{18}O/^{16}O$ and $^{13}C/^{12}C$ ratios. The $^{18}O/^{16}C$ and $^{13}C/^{12}C$ ratios of the tests of living foraminifera from plankton tows, fossil foraminifera from deep-sea sediments, as well as coccoliths and benthonic foraminifera from laboratory cultures will be determined to ascertain the magnitude of non-equilibrium fractionation in these forms and its relationship to various environmental parameters. In addition, an investigation will be made of the paleo-hydrographic potential of $S^{18}O/S^{13}C$ ratios of fossil foraminifera. It is also proposed to derive an emperical relationship between temperature and $^{18}O/^{16}O$ fractionation in pteropods (aragnite) and foraminifera (calcite). Routine analyses of extremely minute quantities of gas for S and N isotopes as well as C and O will be conducted. The article will also serve as an education tool for courses "Geochemistry", "Isotope Geology and Geochronology", "Geochemistry of Salt Marshes" and "Hydrogeology". Application received by Commissioner of Customs: June 9, 1978.

Docket No. 78-00270. Applicant: The University of Texas Health Science Center at San Antonio, 7703 Floyd Curl Drive, San Antonio, Tex. 78284. Article: Scanning Electron Microscope, Model PSEM 500A and accessories. Manufacturer: Philips Electronics Instruments, NVD the Netherlands. Intended use of article: The article is intended to be used for studies of biologic tissues from the heart, blood vessels, kidney, lung, red cells, bone marrow cells and blood cells. Some nonbiologic materials which are used biologically in prosthesis—artificial joints, artificial heart valves, artificial skin—will also be studied with the article. Investigations will be conducted to study the morphologic and elemental pertubations of biologic specimens encountered in various rigorously controlled experimental models. Experiments to be conducted will include the following:

(1) Tissue culture of primate vascular endothelium and smooth muscle cells,

(2) Immunologic localization of complement (C_9) on infarcted myocardial muscle cells and the morphology of infarcted myocardium,

(3) Study of host-cell-bacterial interactions,

(4) Monitoring of a quality control of biochemical fractionation studies in general.

(5) Morphology of microcytic anemia,

(6) Diagnosis and classification of renal disease,

(7) Diagnosis and classification of rare tumors and diagnosis of poorly differentiated tumors, and

(8) Identification and localization of specific elements in sections of tissue utilizing the scanning-transmission mode of operation coupled with x-ray analysis.

In addition, the article will be used in course on electron microscopy for pathology residents, medical and dental students, and histology students in the school of Allied Health Sciences. Application received by Commissioner of Customs: June 9 1978.

Docket No. 78-00271. Applicant: Louisiana State University and Agriculture and Mechanical College, Baton Rouge, La. 70803. Article: LKB 2128-010/Ultrotome ▲✓ Utramicrotome and accessories. Manufacturer: LKB Produckter AB, Sweden. Intended use of article: The article is intended to be used to section biological materials (including animal, bacteria, virus, parasite, and fungal specimens) for ultrastructural study to reveal the pathogenics and pathology involved in animal cells during infectious or metabolic disorders. Investigation of the ultrastructure of infectious agents for identification of viral agents and for determining virulence or replication properties will be conducted. In addition, the article will be used in graduate courses entitled, "Ultrastructure" and "Cytochemistry" to train graduate students in the use and application of electron microscopy and train various faculty researchers to use the electron microscope in solving individual research problems. Application received by Commissioner of Customs: June 12, 1978.

Docket No. 78-00272. Applicant: U.S. Merchant Marine Academy, Maritime Administration, U.S. Department of Commerce, Steamboat Road, Kings Point, N.Y. 11024. Article: Digital Marine Radar Simulator, Model SY2080. Manufacturer: Solatron Electronic Group Ltd., United Kingdom. Intended use of article: The article is intended to be used for realistic training of students in the techniques of rapid evaluation of possible danger situations involving large vessels without having to actually board a vessel and get underway. A large number of students will be instructed simultaneously by the use of simulator and radar displays. Application received by Commissioner of Customs: June 12, 1978.

Docket No. 78-00273. Applicant: University of Maryland School of Medicine, 655 West Baltimore Street, Baltimore, Md. 21201. Article: LKB 8800A Ultrotome III Utramicrotome and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to prepare specimens of neural tissues in several nonmammalian and mammalian vertebrate species for ex-

amination at the ultrastructural level. These ultrastructural studies will entail analyses of CNS tissue following experimental neuronal injury in amphibians and mammals, using conventional thin section and specialized cytochemical and autoradiographic techniques. Emphasis will be focused upon pathological changes in the spinal cord following transection in mammals and a comparative examination of cellular dynamics during successful regeneration following cord interruption in lower vertebrates. The article will also be used in the training of graduate students involved in the above research. Application received by Commissioner of Customs: June 13, 1978.

Docket No. 78-00274. Applicant: Cornell University, Department of Chemistry, Baker Laboratory, Ithaca, N.Y. 14853. Article: LKB 14800-1 CryoKit and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for preparing thin sections of (a) intestinal mucosa of human, rat, rabbit, and chick speices; (b) developing teeth of young rodent; (c) adeno carcinomas and sarcomas from humans and rodents; (d) long bones of rodents including organ cultured explants; (e) mimosa leaves. These preparations will be studied in the ion microscope, and transmission and scanning electron microscopes with particular attention being given to the existence and location of diffusable ions (Na^+, K^+, Mg^{++}, Mn^{++}, Cl^-, P^-). The general goal of the investigation is to further elucidate the specific location and the nature of the cellular involvement of diffusable ions in biological material. Application received by Commissioner of Customs: June 13, 1978.

Docket No. 78-00275. Applicant: Duke University Medical Center, Department of Anatomy, Box 3011, Durham, N.C. 27710. Article: Cryostat and accessories. Manufacturer: Meric, France. Indended use of article: The article is intended to be used to freeze and maintain at low temperature biological membrane specimens for x-ray diffraction studies. Experiments will be conducted to evaluate the structural effects of freezing biological tissue by comparing x-ray structure before freezing to that after freezing. Application received by Commissioner of Customs: June 13, 1978.

Docket No. 78-00276. Applicant: North Carolina State University/Raleigh, N.C., School of Agriculture and Life Sciences, Department of Crop Science, Box 5155, Raleigh, N.C. 27650. Article: Particulate Matter Prediction Metering Equipment. Manufacturer: WD & HO Wills, United Kingdom. Intended use of article: The article is intended to be used for studies of the tar content of tobacco. Experiments will be conducted to reduce tar levels in flue-cured tobacco with the objective of reducing health hazards associated with tobacco. The article paralyzes ground tobacco so that rapid determination can be made on a large number of samples. Application received by Commissioner of Customs: June 16, 1978.

Docket No. 78-00277. Applicant: Midwest Research Institute/Solar Energy Research Institute Division, 1536 Cole Boulevard, Golden, Colo. 80401. Article: Electron Microscope, Model JEM 100CX/SEG/SQH and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used to examine and chemically analyze materials of all kinds—metals, polymers, ceramics, semiconductors, composites, and biological specimens—using magnifications from 10 to more than 300,000 times. Specific uses will involve failure analyses of solar devices, characterization of solar materials under development and support of basic studies by correlating material microstructure with performance. Application received by Commissioner of Customs: June 19, 1978.

Docket No. 78-00278. Applicant: National Radio Astronomy Observatory Associated Universities, Inc., 2010 North Forbes Boulevard, Suite 100, Tucson, Ariz. 85705. Article: Klystron, Model VRB2113A30. Manufacturer: Varian Associates of Canada Ltd., Canada. Intended use of article: The article is intended to be used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver used in conjunction with a microwave antenna to measure the intensity, polarization, frequency and direction of cosmic radiation. Application received by Commissioner of Customs: June 19, 1978.

Docket No. 78-00279. Applicant: Pacific Northwest Laboratories, Department of Energy, P.O. Box 999, Richland, Wash. 99352. Article: COSPEC Model IVB including Single Gas IVB High Sensitivity Correlation Spectrometer with accessories. Manufacturer: Barringer Research, Canada. Intended use of article: The article is intended to be used for the study of sulfur dioxide and nitrogen dioxide emissions from power plants or any other source. Dispersion and conversion from gas to particular tracking flume over long distances will be investigated. Application received by Commissioner of Customs: June 19, 1978.

Docket No. 78-00280. Applicant: University of California, San Diego, Department of Biology, B-022, La Jolla, Calif. 92093. Article: Electron Microscope, Model H-300 and Accessories. Manufacturer: Hitachi Ltd., Japan. Intended use of article: The article is intended to be used to study bioligical structures at molecular, cellular and tissue levels.

Considerable effort will be focused on the analysis at many levels of the structure of nucleic acids. A detailed base sequence analysis will be carried out on transfer RNA molecules and the genetic regulatory regions of DNA of both prokaryotic and eukaryotic organisms. The structure of covalently-closed circular DNA form and replicating forms of bacterial plasmids (extrachromosomal genetic element) that are naturally occurring and have been constructed in vitro will be carried out with electron microscopy techniques. Another major project involves the fine structure of the RNA genome in defective animal viral particles and the mechanism of assembly of the bacterial virus θX174. In addition, the article will be used for educational purposes in the course Bio 204—Electron Microscopy course for students in biology. Application received by Commissioner of Customs: June 19, 1978.

Docket No. 78-00281. Applicant: University of California, San Diego, Department of Biology, B-022, La Jolla, Calif. 92093. Article: Electron Microscope, Model H-300 and Accessories. Manufacturer: Hitachi Ltd., Japan. Intended use of article: The article is intended to be used to study biological structures at molecular, cellular and tissue levels. Considerable effort will be focused on the analysis at many levels of the structure of nucleic acids. A detailed base sequence analysis will be carried out on transfer RNA molecules and the genetic regulatory regions of DNA of both prokaryotic and eukaryotic organisms. The structure of covalently-closed circular DNA form and replicating forms of bacterial plasmids (extrachromosomal genetic element) that are naturally occurring and have been constructed in vitro will be carried out with electron microscopy techniques. Another major project involves the fine structure of the RNA genome in defective animal viral particles and the mechanism of assembly of the bacterial virus θX174. In addition, the article will be used for educational purposes in the course Bio 204—Electron Microscopy course for students in biology. Application received by Commissioner of Customs: June 19, 1978.

RICHARD M. SEPPA,
Director,
Statutory Import Programs Staff.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc. 78-21421 Filed 8-2-78; 8:45 am]

[3510-04]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possible foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $0.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield, Va. 22161 for $4 ($8 outside North American continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE AF/JACP, 1900 Half Street SW., Washington, D.C. 20324

Patent application 880,748: A method for increasing the dispersibility of aluminum metal powders; filed February 23, 1978.

Patent application 880,812: Planar liquid crystal matrix array chip; filed February 23, 1978.

Patent application 880,910: Switch debounce circuit; filed February 23, 1978.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent 4,045,673: Test chamber for alpha spectrometry; filed May 12, 1976, patented August 30, 1977, not available NTIS.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217

Patent application 838,598: Gas generating system; filed October 3, 1977.

Patent application 841,240: Electro-optical radio system; filed October 7, 1977.

Patent application 857,720: Variable volume depth control; filed December 5, 1977.

Patent application 864,403: Controlled radius tether/termination assembly; filed December 27, 1977.

Patent application 864,964: Undersea tether/termination assembly; filed December 27, 1977.

Patent application 871,562: Safe high energy density battery; filed January 23, 1978.

Patent application 871,877: Super high energy density battery; filed January 24, 1978.

Patent application 875,254: Tunable infrared detector with narrow bandwidth; filed February 6, 1978.

Patent application 877,633: Serriform strip crosstie memory; filed February 14, 1978.

Patent application 881,927: Failure-resistant pseudo nonvolatile memory; filed February 28, 1978.

Patent application 882,500: Vector measuring current meter; filed March 1, 1978.

Patent application 889,072: Method of producing population inversion and lasing at short wavelengths by charge transfer; filed March 22, 1978.

Patent application 889,666: polarization-independent optical switches/modulators; filed March 24, 1978.

Patent application 893,545: Laser scan converter; filed April 5, 1978.

Patent 4,023,118: Superheterojunction laser; filed March 24, 1975; patented May, 1977; not available NTIS.

Patent 4,024,067: Processes for the preparation of bisbenzoins and bix-benzils; filed January 7, 1976; patented May 17, 1977; not available NTIS.

[6330-01]

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will meet in open session on Tuesday, August 22, 1978, at 10 a.m. in the Commission offices at 708 Jackson Place NW, Washington, D.C. 20006, to discuss various projects affecting the appearance of Washington, D.C.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

This notice confirms notice of December 27, 1977, published at 42 FR 64651.

Dated in Washington, D.C., 27 July, 1978.

CHARLES H. ATHERTON,
Secretary.

[FR Doc. 78-21488 Filed 8-2-78; 8:45 am]

[3510-25]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON TEXTILE PRODUCTS FROM INDIA

Increasing Import Level

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the consultation level for cotton apparel products in category 359 during the 12-month period which began on January 1, 1978. (A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421) and March 3, 1978 (43 FR 8828).)

SUMMARY: Under the terms of paragraph 6 of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the United States and India, the Government of India has requested permission to exceed the consultation level for category 359 during the agreement year which began on January 1, 1978. The U.S. Government has agreed to increase the level to 1.5 million square yards equivalent (326,087 pounds), and will control imports at that level for the year which began on January 1, 1978.

EFFECTIVE DATE: July 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald R. Foote, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-5423.

SUPPLEMENTARY INFORMATION: On February 2, 1978, a letter dated January 27, 1978, was published in the FEDERAL REGISTER (43 FR 4451) from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established the levels of restraint applicable to certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in India and exported to the United States during the 12-month period which began on January 1, 1978, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended. The bilateral agreement also provides consultation levels for categories not subject to designated consultation limits, such as catefory 359. The U.S. Government has agreed, at the request of the Government of India, to increase the consultation level for category 359 for the year which began on January 1, 1978, and will control imports in that category at the increased level during the 12-month period which began on January 1, 1978.

In the letter of July 28, 1978, published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in category 359, produced or

manufactured in India, in excess of the designated level of restraint.

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

JULY 28, 1978.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive issued to you on January 27, 1978 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in India.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on July 31, 1978 and for the twelve-month period beginning on January 1, 1978 and extending through December 31, 1978, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 359 (visaed), produced or manufactured in India, in excess of the following level of restraint:

Category, 359.—12-month level of restraint,[1] 326,087 pounds.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421) and March 3, 1978 (43 FR 8828).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of India and with respect to imports of cotton textile products from India has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 78-21422 Filed 8-2-78; 8:45 am]

[1] The level of restraint has not been adjusted to reflect any imports after Dec. 31, 1977.

[6315-01]

COMMUNITY SERVICES ADMINISTRATION

RURAL CAPACITY FOR ASSISTANCE AND PLANNING PROJECT

Waiver of Non-Federal Share Requirement

1. *Purpose.* This notice is issued to inform the public of a waiver of the non-Federal share requirement for the rural capacity for assistance and planning project (RCAP) and the criteria on which that waiver is based.

2. *Background.* Rural capacity for assistance and planning project is a support program to provide CAA's serving rural communities with assistance and support in solving water and sewer related problems.

3. *Waiver criteria.* Under the authority provided in section 225(c) of the Economic Opportunity Act of 1964, as amended, the Director is waiving the non-Federal share requirement since it is not the type of project that can generate non-Federal share as it is process-oriented and not designed to deliver services.

Dated: July 28, 1978.

FRANK N. JONES,
Acting Director.

[FR Doc. 78-21451 Filed 8-2-78; 8:45 am]

[3810-70]

DEPARTMENT OF DEFENSE

[DOD Directive 5129.22, June 26, 1978]

DEFENSE SCIENCE BOARD

The Deputy Secretary of Defense approved the following organizational statement:

REFERENCES

(a) DOD Directive 5129.22, "Defense Science Board Charter," February 17, 1971 (hereby canceled).

(b) DOD Directive 5129.1, "Director of Defense Research and Engineering," April 20, 1977 (under revision).[1]

(c) DOD Directive 5105.18, "Department of Defense Committee Management Program," April 25, 1975.[1]

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to continue the Defense Science Board (DSB) in accordance with the provisions of references (b) and (c).

B. APPLICABILITY

The provisions of this Directive apply to the Office of the Secretary of Defense and the Military Departments.

[1] Filed as part of original. Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120 Attention Code 301.

C. MEMBERSHIP

1. The Defense Science Board, as the senior advisory group in the Department of Defense, is composed of members appointed from the public sector by the Secretary of Defense upon the recommendation of the Under Secretary of Defense for Research and Engineering (USDR&E). The DSB, through the USDR&E, advises the Secretary of Defense on scientific and technical matters of interest to the Department of Defense.

2. Membership will include the Chairperson of each of the following advisory committees:

a. Army Science Board.

b. Naval Research Advisory Committee.

c. Air Force Scientific Advisory Board.

3. Membership may also include officials of other agencies or departments of the Government with expertise, as approved by the Under Secretary of Defense for Research and Engineering.

4. The Secretary of Defense shall designate the Chairperson and Vice Chairperson of the Board from the membership upon the recommendation of the Under Secretary of Defense for Research and Engineering.

D. RESPONSIBILITIES

1. The Under Secretary of Defense for Research and Engineering shall provide for such technical and administrative assistance as is needed by the Board or ad hoc task forces.

2. An Executive Secretary, under the direction of the Under Secretary of Defense for Research and Engineering shall be responsible for the proper functioning of the Board in accordance with DOD Directive 5105.18 (reference (c)), and under the direction of the Chairperson, for the planning, operation and coordination of the work of the Board.

E. EFFECTIVE DATE

This Directive is effective immediately.

C. W. DUNCAN,
Deputy Secretary of Defense.

JULY 31, 1978.

[FR Doc. 78-21568 Filed 8-2-78; 8:45 am]

[3810-70]

Office of the Secretary

DEFENSE SCIENCE BOARD

Addition of Member

Notice is hereby given that pursuant to 18 U.S.C. 205, the following certificate was issued:

Dr. Donald B. Rice, Jr., president of The Rand Corporation, has been retained as a special Government em-

ployee to serve in an advisory capacity as a member of the Defense Science Board and as a consultant conducting the Resource Management Study for the Office of the Secretary of Defense. The Rand Corporation, which Dr. Rice heads, is a nonprofit research organization conducting a wide range of research on national security issues for Government sponsors including the Department of Defense.

I have determined that there is no conflict of interest between (i) Dr. Rice's performance of services for the Department of Defense in connection with the Resource Management Study and the Defense Science Board and (ii) Dr. Rice's continuing service as the president of The Rand Corporation where he assists in the performance of contracts for the Department of Defense, represents The Rand Corporation before the Department of Defense, and receives compensation from The Rand Corporation for his services. Both types of activities have been requested by the Government and are important to the national security of the United States and the performance of the mission of the Department of Defense.

In view of the foregoing, I hereby certify pursuant to the provisions of 18 U.S.C. § 205 that the national interest requires that Dr. Rice, while acting as a special Government employee pursuant to the appointments described above, continue to act as agent for The Rand Corporation in his capacity as president in the performance of work under a grant by a contract with or for the benefit of the United States.

Dated: July 28, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

July 31, 1978.

[FR Doc. 78-21569 Filed 8-2-78; 8:45 am]

[3810-70]

Office of the Secretary

DEFENSE ADVISORY COMMITTEE ON WOMEN IN THE SERVICES (DACOWITS)

Tentative Notification of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS) is tentatively scheduled to be held from 9 a.m. to 4 p.m., August 25, 1978, at the Pentagon, Room 1E801. If necessary, the meeting will continue through August 26, 1978 at the Hotel Washington, 15th and Pennsylvania Avenue NW., Washington, D.C. Meeting sessions will be open to the public.

The purpose of the meeting is to review responses to earlier recommendations made by the committee, discuss current issues relevant to women in the Services, and to plan the program for the next semiannual meeting scheduled for October 29 to November 1, 1978, in New York, N.Y.

Persons desiring to make oral presentations or submit written statements for consideration at the Executive Committee Meeting must contact Lt. Col. Barbara J. Roy, Executive Secretary, DACOWITS, OASD (Manpower, Reserve Affairs and Logistics), Room 3D322, the Pentagon, Washington, D.C. 20301, telephone 202-697-5655 no later than August 17, 1978.

Dated: July 28, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Service, Department of Defense.

[FR Doc. 78-21484 Filed 8-2-78; 8:45 am]

[3810-70]

DEFENSE SCIENCE BOARD TASK FORCE ON U.S. BALLISTIC MISSILE DEFENSE

Advisory Committee Meeting

The Defense Science Board Task Force on U.S. Ballistic Missile Defense will meet in closed session 8 and 9 September 1978 at the Ballistic Missile Defense Systems Command Headquarters in Huntsville, Ala.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The Task Force will review and evaluate the ballistic missile threat to the United States and the U.S. ballistic missile defense program and will provide recommendations for the appropriate objectives and structure of the U.S. program.

In accordance with section 10(d) of appendix I, title 5, United States Code, it has been determined that this Task Force meeting concerns matters listed in section 552b(c) of title 5, of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

Dated: July 28, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Department of Defense, Washington Headquarters Service.

[FR Doc. 78-21485 Filed 8-2-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. EC 78-5]

CITY OF RENSSELAER, IND.

Order Denying Request for Reconsideration of Denial

By petition dated June 30, 1978, the city of Rensselaer, Ind. (City) requested the Economic Regulatory Administration (ERA) to reconsider and modify its "Order denying petition seeking relief under section 202(c) of the Federal Power Act" (Order) [1] and to order that a temporary connection be established between the City's electrical system and the electrical system of the Northern Indiana Public Service Co. (NIPSCO). On July 14, 1978, NIPSCO filed an answer to the City's petition for reconsideration and asked that the petition be dismissed. The Order denied a petition that was filed by the City on May 22, 1978, pursuant to section 202(c) of the Federal Power Act for the temporary connection of the City's and NIPSCO's utility systems.

In its petition for reconsideration the City contends that section 202(c) is intended to provide a response to emergency situations in order to avoid the necessity for a utility system to curtail service to its ultimate consumers. The City states that load curtailment measures should only be instituted when it is unable to obtain emergency relief for neighboring systems.

The City maintains that the requirement that an electrical system first apply "self help" measures before seeking emergency relief pursuant to section 202(c) "does not include the requirement that an electrical system facing an emergency situation first drop load to ultimate customers prior to seeking an emergency interconnection." The City contends that the Order is in error because it requires the City to reduce its load "even though neighboring systems, such as NIPSCO, may have the necessary energy available to avoid such draconian measures."

The regulations implementing section 202(c) state at 18 CFR 32.61(e) that a petition filed pursuant to section 202(c) shall set forth the following information:

[1] The Order was issued June 28, 1978 and is published at 43 FR 29027 (July 5, 1978).

Reasons why the proposed transfer of power and/or energy will be in the public interest, to include: * * * a showing that without additional power or energy transfers the applicant will be unable to maintain electric utility service required in the public interest after allowing for reductions by the receiving applicant of electric load and energy demand that can be practicably accomplished consistent with public health, welfare, and safety considerations * * *.

These regulatory provisions clearly provide that an electric utility is eligible for a temporary emergency connection only if it can make a showing that it will be unable to maintain electric utility service after resonable load curtailment measures have been taken. The City has failed to make the required showing in this proceeding. The City has sufficient generating capacity to supply its anticipated summer peak load with all of its generators in operation.[2] The City's load curtailment plan indicates that the City's utility system can reduce its load during the summer peak periods and make up for any capacity shortfall caused by a breakdown of its largest generating unit by instituting a 5 percent voltage reduction and by asking the public to reduce the use of air conditioning.[3]

Neither of these peak load reduction measures appear to be "draconian," nor do they constitute a hazard to the public health, welfare, or safety. Voltage reductions are commonly used by utilities as a load management tool for reducing peaks, and public appeals to reduce the use of air conditioning during summer peaks are not uncommon.

The City further argues that the effect of ERA's Order is to negate section 202(c) since under the Order's criteria, "there can never be an emergency because service can always be cut back." The Order's requirement that the City rely on the early steps of its load curtailment plan, described above, as a means of accommodating supply-demand imbalances under contingency conditions does not negate section 202(c).

ERA cannot order emergency interconnections in lieu of a utility taking all available practicable, necessary, and prudent measures to reduce its electric load and energy demand consistent with the statutory purpose. Section 202(c) is intended to provide a mechanism for dealing with unavoidable emergency situations. The City has failed to show that its capacity problem constitutes an unavoidable emergency.

In its petition for reconsideration the City states that "to the City's knowledge, it is unlikely that portable generation equipment could be obtained in any reasonable time frame so as to be useful to avoid curtailment of load * * *". In the absence of supporting documents describing the steps taken by the City to verify the nonavailability of such equipment, the City has failed to show that it will be unable to obtain adequate temporary capacity by leasing portable generating equipment. ERA concludes, therefore, than an unavoidable emergency cannot be deemed to exist where the City has failed to show that all available measures have been diligently employed to avoid a capacity shortfall as required under section 202(c).

No Federal Government order or other action is required for the City to construct the required 3,300 feet of 69 kV transmission line. ERA anticipates, and indeed expects the City to undertake the necessary construction on an expeditious basis in order to make possible the rapid establishment of an interconnection should an actual emergency arise in the future. By this order denying the City's request for reconsideration, ERA also urges the City and NIPSCO to resolve their differences such that a permanent interconnection can be established. Such action will serve to benefit the customers of the City's utility system and would make the further submission of emergency requests for a temporary connection unnecessary.

ERA has determined that it is in the public interest for the City and NIPSCO to initiate the necessary steps to minimize the likelihood of an actual emergency situation in the future. ERA has further determined that as an appropriate means of insuring that such future emergency situation is avoided, NIPSCO be required, pursuant to the provisions of sections 206(b) and 311 of the Federal Power Act, to report to the Assistant Administrator for Utility Systems, ERA, within 60 days of the issuance of this Order the results of technical studies undertaken in consultation with the City, to determine the feasibility, equipment requirements and costs to establish a synchronous interconnection between the City and NIPSCO. Such an arrangement would assure a more reliable supply of electric power for the citizens of Rensselaer in the future.

In the event that an agreement on a permanent interconnection cannot be reached by the City and NIPSCO, the City should file an application with the Federal Energy Regulatory Commission under section 202(b) of the Federal Power Act, for an order requiring the establishment of a physical connection of transmission facilities between the City and NIPSCO.

ERA concludes that an emergency within the meaning of section 202(c) of the Federal Power Act does not presently exist for the reasons expressed above and in ERA's Order issued June 28, 1978. For the foregoing reasons, and in the absence of compelling new information, the City's request for reconsideration and modification of the Order denying petition seeking relief under section 202(c) of the Federal Power Act issued June 30, 1978, is denied.

Issued in Washington, D.C., this 28th day of July 1978.

JERRY L. PFEFFER,
Acting Assistant Administrator for Utility Systems, Economic Regulatory Administration, U.S. Department of Energy.

[FR Doc. 78-21503 Filed 8-2-78; 8:45 am]

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[2]The City states that its summer peak demand will be about 12,500 kW and that the net dependable capacity of its utility system is about 17,200 kW if all of its generators are in operation.

[3]The City states that its net dependable capacity is about 11,700 kW when its largest generating unit fails. The City's load curtailment plan indicates that it can reduce its load by 585 kW within 5 minutes through a 5-percent voltage reduction. An additional 1,000 kW load curtailment can be achieved within 4 hours by making public appeals for conservation through reduced use of air conditioners. An additional 1,200 kW load curtailment can be achieved within 4 hours by asking industrial customers to reduce their loads or temporarily closing their plants.

[3128-01]

Office of Special Counsel for Compliance

GULF OIL CORP.

Consent Order

AGENCY: Department of Energy.

ACTION: Notice of Proposed Consent Order and Opportunity for Public Comment.

SUMMARY: Pursuant to 10 CFR 205.199J, the Office of Special Counsel for the Department of Energy hereby gives Notice of a Consent Order which was executed between Gulf Oil Corp. (Gulf) and the Office of Special Counsel for Compliance on July 26, 1978. In accordance with that section, the Office of Special Counsel (OSC) will receive comments with respect to this Consent Order. Although the Consent Order has been signed and conditionally accepted by the OSC, the OSC may, after consideration of comments received, withdraw its acceptance of the Consent Order and, if appropriate, attempt to negotiate an alternative Consent Order.

THE CONSENT ORDER

Gulf is a refiner subject to the cost calculations and transfer pricing rules of 10 CFR 212.83 and 212.84. These rules are used to determine, among other things, the proper measurement

of costs of crude oil imported by a firm through its foreign affiliates.

In April 1977, the Federal Energy Administration (FEA) issued a Notice of Proposed Disallowance to Gulf alleging that the firm had overstated its costs with respect to interaffiliate imported crude oil transactions by $79.6 million for the period October 1973 through May 1975. Subsequently, Gulf was informed by OSC that the amount of disallowance was reduced by approximately $5.7 million based on corrections of misreported information and adjustments to the maximum and representative prices.

In December 1977, the Office of Special Counsel for Compliance was created within the Department of Energy. In February 1978, the responsibility for the transfer pricing program was transferred from the Office of Enforcement, Economic Regulatory Administration, to the OSC. In the Consent Order, the OSC and Gulf have reached agreement to settle the amount of disallowance and any resulting overrecoveries for $42,240,000. This settlement also resolves the issue of appropriate landed costs for Indonesian Katapa crude oil purchased by Gulf through a foreign affiliate from August 1973 through January 1976.

Following examination of the arguments raised by Gulf, and due to the time and expense which could be involved in the litigation of the issues raised, the Office of Special Counsel believes it to be fair, reasonable and in the best interest of the United States to conclude these proceedings through a Consent Order as negotiated and described herein.

In resolution of the issues raised by application of the transfer pricing regulations to Gulf, and by Gulf in its responses to the Notice of Proposed Disallowance, the Office of Special Counsel and Gulf executed a Consent Order on July 26, 1978, the significant terms of which are as follows:

1. Gulf will tender to the United States, on demand, a certified check in the amount of $42,240,000 within 15 days of notice that the Consent Order has been made final. Payment by check is in lieu of any other remedial action, including a redetermination of increased costs of crude oil, and any resulting overrecoveries of costs, attributable to disallowed landed costs. In recognition that the time periods involved and the determination of proper costs allowable make it most difficult to determine whether any persons sustained an overcharge in the purchase of covered products from Gulf, Gulf and OSC have agreed that such payment to the United States represents the most effective method of achieving payment to those who may have been overcharged by Gulf.

2. Gulf will assist the Department of Energy in evaluating claims filed by persons asserting any right to any portion of the payment. Such evaluation will be made prior to disposition of the funds to the Treasury of the United States. The Department of Energy will give notice of the establishment of an administrative procedure by which such claims can be considered.

3. The provisions of 10 CFR 205.199J, including the publication of this notice, are applicable to the Consent Order.

SUBMISSION OF WRITTEN COMMENTS

Interested persons are invited to comment on this Consent Order by submitting such comments in writing to:

Leslie Wm. Adams, Esq., Office of Special Counsel, Department of Energy, 12th and Pennsylvania Avenue NW., Room 3405, Washington, D.C. 20461.

Copies of the Consent Order may be received free of charge by written request to the same address or by calling 202-566-9410.

Comments should be identified on the outside of the envelope and on documents submitted with the designation "Comments on Gulf Transfer Pricing Consent Order." All comments received by 4:30 p.m. e.d.t., on the 30th calendar day following publication of this notice will be considered by the Office of Special Counsel in evaluating the Consent Order.

Any information or data which, in the opinion of the person furnishing it, is confidential, must be identified as such and submitted in accordance with the procedures of 10 CFR 205.9(f).

Issued in Washington, D.C., July 28, 1978.

PAUL L. BLOOM,
Special Counsel for Compliance.

[FR Doc. 78-21615 Filed 8-2-78; 8:45 am]

[3128-01]

IMPORTED CRUDE OIL

Revisions to Maximum and Representative Prices

AGENCY: Department of Energy.

ACTION: Notice of revisions to the maximum and representative prices of certain imported crude oils.

SUMMARY: Notice is hereby given of revisions to the maximum and representative prices established for certain crude oils. These prices were published in 42 FR 22190 (May 2, 1977), for certain reference crude oils imported in transactions between affiliated entities. In the course of conferences held with recipients of Notices of Proposed Disallowance issued by the Federal Energy Administration (FEA) on April 27, 1977, discrepancies in the prices established pursuant to 10 CFR section 212.84 were discovered. The reference crude oils affected by the Notice are as follows:

Crude oil and code	*Months affected*
Iranian Light, IR-080	1974—December.
Oriente (Ecuador), EC-050.	1974—July, August, September. 1975—April.
Venezuela, VE-235.6	1973—October-December. 1974—January, July-October; December. 1975—February-May.
Onto (Colombia), CO-040.	1973—December.
Trinidad, TD-190	1973—October-December. 1974—January, July-September.

The revised prices have been incorporated into the list of maximum and representative prices, which for convenience of reference, is republished in the appendix below.

FOR FURTHER INFORMATION CONTACT:

Elliott Cohn, Acting Manager, Transfer Pricing, Office of Special Counsel, Department of Energy, 2000 M Street NW., Room B110, Washington, D.C. 20461, 202-634-2158.

Leslie Wm. Adams, Assistant Solicitor, Office of Special Counsel, Department of Energy, 12th Street and Pennsylvania Avenue NW., Room 3405, Washington, D.C. 20461, 202-566-9410.

SUPPLEMENTARY INFORMATION: On May 2, 1977, a list of maximum and representative prices for certain reference crude oils, determined in accordance with 10 CFR section 212.84 (e) and (f), were published in the FEDERAL REGISTER, 42 FR 22190. That notice superseded prices previously announced for the same period, October 1973 through May 1975. See 40 FR 39934 (August 29, 1975); 40 FR 27059 and 27058 (June 26, 1975). Republication was necessitated by reporting company resubmission of data used to calculate the maximum and representative prices. All previous adjustments were incorporated in the determination of the maximum and representative prices announced in that notice. See the notices cited above.

Subsequent to the issuance of Notices of Proposed Disallowance (Notices) to 20 refiners on April 27, 1977, responsibility for the Transfer Pricing Program was assigned to the Office of Special Counsel for Compliance (OSC) of the Department of Energy. The OSC has been holding conferences with the recipients of the Notices, and concurrently reviewing the data base on which the disallowances were computed. In the course of the conferences and the review, additional information was considered and clerical errors in the computer operation were

detected. This republication of maximum and representative prices incorporates the revisions noted below.

Some prices for Ecuador's Oriente crude oil, EC-050, were previously determined by comparing Oriente to the characteristics of a Venezuelan crude oil for which a price had been determined in accordance with § 212.84(e)(6). The prices have been changed based on information allowing the computation of prices from an array of reported transactions, pursuant to § 212.84(f)(1). Previously, the prices in arm's-length transactions for crude oils from Ecuador could not be used to establish the maximum and representative prices due to the limitations of § 212.84(f)(1) which places certain requirements on the transactions in a crude oil before it may be designated as a reference crude oil. Therefore, the procedures of § 212.84(e)(6) were used to determine a parity price. A new price has been computed from Ecuadorian transactions following a determination based on new information that the limitations of § 212.84(f) were not exceeded. The new price is not being published because the data was received from less than three sellers and is therefore treated as proprietary information. See 42 F.R. at 22191 (May 2, 1977) and 39 F.R. at 32313 (September 1974).

The adjustment to Iranian Light crude oil, IR-080, arises from the discovery of an error in the recording of a single transaction in the computer for December 1974. The error had the effect of overstating the importance of that transaction in the determination of the fiftieth and sixty-fifth percentiles for setting the representative and maximum prices, respectively. The Appendix contains the prices determined when the error was corrected.

The prices for VE-235 have been altered following the discovery of a transcription error concerning a sulphur adjustment for a single Venezuelan crude oil. The error occurred in a report on the characteristics of imported crude oils prepared for FEA by a contractor. These characteristics are necessary to determine the value relationships of the oils. Utilization of the misreported sulphur content resulted in attributing a sulphur premium to the crude oil. When that crude oil was adjusted to standard gravity and sulphur for the purpose of constituting an array pursuant to § 212.84(e), its price exerted a downward influence on the representative and maximum prices. As a result, the price for the reference crude oil, VE-235, was depressed. Elimination of this error produced different maximum and/or representative prices for VE-235 in a number of months. Reference crude oil prices for other countries that are determined by comparing their characteristics to VE-235 were also adjusted. This applies to Colombia, Ecuador and Trinidad. It also applies to VE-236 for March 1975 when insufficient Venezuelan Heavy crude oil transactions were reported.

The prices found in the Appendix constitute prices representative of the transactions reported to the FEA, determined in accordance with §§ 212.84(e)(1)-(3) and 212.84(f)(1), or have been determined in accordance with the criteria found in § 212.84(e)(6) and additional guidelines announced in the earlier Notices of Maximum and Representative Prices, cited above.

Recipients of Notices of Proposed Disallowance not previously notified will be advised of any modification to their disallowance resulting from these corrections. Questions may be directed to the contacts listed above.

Issued in Washington, D.C., July 31, 1978.

PAUL L. BLOOM,
Special Counsel
for Compliance.

Maximum Prices

Reference Crude	Oct. 1973	Nov. 1973	Dec. 1973	Jan. 1974	Feb. 1974	Mar. 1974	Apr. 1974
Abu Dhabi (TC-010)	4.77	4.77	4.74	11.85	11.83	11.99	12.24
Algeria (AG-020)	8.59	8.59	8.19	14.13	14.16	14.22	14.09
Angola (AO-030)**	7.53	7.53	7.57	17.39	16.92	12.99	15.05
Colombia (CO-040)*			6.60**				
Dubai (TC-015)*							
Ecuador (EC-050)*					10.21**	10.47**	10.17**
Indonesia (ID-070)***	6.00	6.00	6.00	10.80	10.80	10.80	11.70
Iran (IR-080)	4.38	4.38	4.33	10.67	11.72	10.72	11.19
Kuwait (KU-110)	3.88	3.88	3.80	9.65	9.80	9.80	9.85
Libya (LY-120)	7.55	7.55	9.05	14.33	14.68	14.01	13.54
Neutral Zone (IY-138)*						9.40**	9.40**
Nigeria (NI-140)	7.17	7.17	7.20	17.04	16.57	12.64	14.69
Norway (NO-158)*					14.73**	14.06**	13.59**
Saudi Arabia (SA-180)	3.94	3.94	3.91	9.74	9.75	9.80	9.80
Trinidad (TD-190)**	7.09	7.09	7.28	11.08	11.43	11.68	11.38
Venezuela (VE-235)	5.31	5.31	5.50	9.31	9.66	9.91	9.61

* Less than three sellers. Data treated as proprietary.
** Does not meet requirements of 212.84(f)(1). Figures are based on comparison to most similar crude in same geographic region.
*** Price set by regulation at official selling price.

Maximum Prices

Reference Crude	May 1974	June 1974	July 1974	Aug. 1974	Sept. 1974
Abu Dhabi (TC-010)	11.88	11.41	11.55	11.28	11.27
Algeria (AG-020)	14.08	14.09	13.28	13.26	13.23
Angola (AO-030)**	13.98	13.72	13.26	12.96	12.64
Dubai (TC-015) *		11.03**	10.81**	10.59**	
Ecuador (EC-050)*			10.58**		10.87**
Egypt (EG-056)*	10.59**	10.55**	10.33**	10.11**	9.95**
Indonesia (ID-070)***	11.70	11.70	12.60	12.60	12.60
Iran (IR-080)	11.04	11.00	10.78	10.56	10.39
Kuwait (KU-110)	10.10	10.10	9.85	10.04	10.05
Libya (LY-120)	12.65	12.57	12.38	12.44	12.68
Nigeria (NI-140)	13.62	13.36	12.90	12.60	12.28
Norway (NO-158)*	12.69**	12.62**	12.42**	12.48**	12.72**
Saudi Arabia (SA-180)	9.85	9.85	10.10	9.98	10.00
Trinidad (TD-190)**	11.39	11.39	11.79	11.86	12.06
Venezuela (VE-235)	9.62	9.62	10.02	10.09	10.29

* Less than three sellers. Data treated as proprietary.
** Does not meet requirements of 212.84(f)(1). Figures are based on comparison to most similar crude in same geographic region.
*** Price set by regulation at official selling price.

Maximum Prices

Reference Crude	Oct. 1974	Nov. 1974	Dec. 1974	Jan. 1975	Feb. 1975	Mar. 1975	Apr. 1975	May 1975
Abu Dhabi (TC-010)	11.51	11.40	11.46	11.62	11.10	11.37	10.96	10.86
Algeria (AG-020)	12.52	12.39	12.35	12.17	12.17	12.15	11.80	11.78
Angola (AO-030)**	12.21	12.39	12.32	12.21	12.22	12.28	12.09	12.10
Dubai (TC-015)*				10.80**			10.73**	
Ecuador (EC-050)*	11.05**	11.40**	11.33**	12.27**	11.85**	11.42**		11.43**
Indonesia (ID-070)***	12.60	12.60	12.60	12.60	12.60	12.60	12.60	12.60
Iran (IR-080)	10.63	10.74	10.85	10.78	10.77	10.78	10.70	10.75
(IR-082)	10.47	10.60	10.64	10.56	10.56	10.55	10.55	10.54
Kuwait (KU-110)	10.26	10.56	10.56	10.43	10.44	10.44	10.47	10.47
Libya (LY-120)	12.58	12.36	12.35	12.05	12.07	12.06	11.62	11.52
Nigeria (NI-140)	11.85	12.03	11.95	11.84	11.85	11.91	11.72	11.73
Saudi Arabia (SA-180)	10.40	10.56	10.56	10.57	10.56	10.56	10.56	10.56
(SA-181)	10.10	10.37	10.35	10.37	10.37	10.37	10.37	10.37
(SA-182)	10.31	10.47	10.49	10.48	10.49	10.64	10.48	10.58
Trinidad (TD-190)**	12.17	12.49	12.40	13.36	12.94	12.51	12.46	12.52
Venezuela (VE-234)	10.90	11.22	11.13	12.10	11.68	11.25	11.20	11.26
(VE-235)	10.48	10.74	10.48	11.62	11.27	10.92	10.92	10.90
(VE-236)	9.86	9.90	9.86	11.26	10.91	10.56	10.46	10.34

* Less than three sellers. Data treated as proprietary.
** Does not meet requirements of 212.84(f)(1). Figures are bases on comparison to most similar crude in same geographic region.
*** Price set by regulation at official selling price.

Representative Prices

Reference Crude	Oct. 1974	Nov. 1974	Dec. 1974	Jan. 1975	Feb. 1975	Mar. 1975	Apr. 1975	May 1975
Abu Dhabi (TC-010)	11.39	11.30	11.36	11.43	10.91	11.00	10.86	10.75
Algeria (AG-020)	12.42	12.26	12.22	12.07	12.07	12.05	11.70	11.68
Angola (AO-030)**	12.06	12.29	12.22	12.11	12.12	12.18	11.99	12.00
Dubai (TC-015) *				10.70**			10.63**	
Ecuador (EC-050)*	10.79**	10.85**	10.81**	11.92**	11.62**	11.32**	11.27**	11.33**
Indonesia (ID-070)***	12.60	12.60	12.60	12.60	12.60	12.60	12.60	12.60
Iran (IR-080)	10/50	10.64	10.70	10.68	10.67	10.68	10.60	10.65
(IR-082)	10.33	10.50	10.54	10.46	10.46	10.45	10.45	10.44
Kuwait (KU-110)	10.16	10.46	10.46	10.33	10.34	10.34	10.37	10.37
Libya (LY-120)	12.36	12.25	12.25	11.95	11.97	11.96	11.50	10.92
Nigeria (NI-140)	11.70	11.93	11.85	11.74	11.75	11.81	11.62	11.63
Saudi Arabia (SA-180)	10.28	10.46	10.46	10.47	10.46	10.46	10.46	10.46
(SA-181)	10.00	10.27	10.25	10.27	10.27	10.27	10.27	10.27
(SA-182)	10.19	10.37	10.39	10.38	10.39	10.45	10.38	10.44
Trinidad (TD-190)**	11.91	11.94	11.88	13.01	12.71	12.41	12.36	12.42
Venezuela (VE-234)	10.64	10.67	10.61	11.75	11.45	11.15	11.10	11.16
(VE-235)	10.38	10.19	10.38	11.27	11.05	10.82	10.82	10.80
(VE-236)	9.76	9.80	9.76	10.91	10.69	10.46	10.36	10.24

* Less than three sellers. Data treated as proprietary.
** Does not meet requirements of 212.84(f)(1). Figures are based on comparison to most similar crude in same geographic region.
*** Price set by regulation at official selling price.

[FR Doc. 78-21616 Filed 8-2-78; 8:45 am]

[3128-01]

NATIONAL ENERGY EXTENSION SERVICE ADVISORY BOARD

Change In Meeting Date

This notice is given to advise of a change in date of the meeting of the National Energy Extension Service Advisory Board. The Committee will meet September 7, 1978, from 9:30 a.m. to 4:30 p.m., and September 8, 1978, from 9:30 a.m. to 12:30 p.m., in Room 4222C, 20 Massachusetts Avenue NW., Washington, D.C., rather than Thursday, August 10 and Friday, August 11, 1978, as previously announced. The agenda has been changed to delete the Proposed National EES Program; instead there will be a discussion on the Proposed Program Planning Manual. A Notice of Meeting was published in the issue of July 25, 1978 (43 FR 32164).

Issued at Washington, D.C., on July 31, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-21617 Filed 8-2-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. ER76-709]

CINCINNATI GAS & ELECTRIC CO.

Further Extension of Time

JULY 26, 1978.

On July 17, 1978, the Village of Georgetown, Ohio, filed a motion for a further extension of time within which to initiate review to determine whether Cincinnati Gas & Electric Co. is legally required to pay the Ohio excise tax on revenue derived from the sales to Georgetown, as set forth in Ordering Paragraph (E) of the Order issued November 23, 1977, in the captioned proceeding. By this motion Georgetown seeks a further extension of time for compliance with Ordering Paragraph (E). A previous extension of time was granted by Notice issued June 16, 1978.

Upon consideration, notice is hereby given that a further extension of time is granted to and including August 14, 1978, for compliance with Ordering Paragraph (E). Any further requests for additional time will be referred to the Commission for action.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21526 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. ES78-48]

COMMONWEALTH EDISON CO.

Application

JULY 27, 1978.

Take notice that on July 20, 1978, Commonwealth Edison Co. (Applicant) of Chicago, Ill., filed an application seeking authority pursuant to section 204 of the Federal Power Act to extend to December 31, 1979, the latest issue date and extend to December 31, 1980, the final maturity date, of $400 million of short-term promissory notes authorized to be issued, under the Commission's order of April 2, 1968, and supplemental order of August 29, 1969, Septem- ber 20, 1971, September 22, 1972, November 8, 1973, and December 11, 1974, in Docket No. E-7396, and its supplemental orders of August 5, 1975, August 3, 1976, and September 7, 1977, in Docket No. ES76-1.

Applicant is incorporated under the laws of the State of Illinois, with its principal business office at Chicago, Ill., and is principally engaged in the electric utility business in a service area of approximately 11,525 square miles in northern Illinois, including the city of Chicago.

The notes, including primarily bank notes and commercial paper, are to have maturities of 12 months or less from the dates of issuance, and in any event are to be payable on or before December 31, 1980. The interest rate for notes issued to commercial banks with which the Applicant has lines of credit is to be generally the prime rate as from day to day in effect and for commercial paper is to be the prevailing rate at time of issuance for paper of comparable quality and maturity.

The proceeds from the issuance of any notes will be added to working capital primarily for ultimate application toward the cost of gross additions to utility properties and to reimburse the Applicant's treasury for construction expenditures. Applicant's construction program, as now scheduled, calls for plant expenditures of approximately $4,400,000,000 for the 5-year period 1978-82. The extension of 1 year is necessary to provide flexibility needed to meet financing requirements.

Any person desiring to be heard or to make protest with reference to the application should, on or before August 18, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21527 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. ER78-504]

DETROIT EDISON CO.

Proposed Tariff Change

JULY 27, 1978.

Take notice that the Detroit Edison Co. (Detroit Edison) on July 24, 1978, tendered for filing a letter agreement dated May 8, 1978, between Detroit Edison and Commonwealth Edison Co. (Commonwealth) which constitutes a redetermination of the fixed charge factor applicable to transactions under the "Agreement for Sale of Portion of Generating Capability of Ludington Pumped Storage Plant by the Detroit Edison Co. to Commonwealth Edison Co.," dated June 1, 1971, as amended by an agreement dated August 15, 1971 (hereinafter termed "Agreement as amended"). Detroit Edison states that the redetermination of the fixed charge factor was made pursuant to the terms of the Agreement as amended and does not constitute an amendment to the agreement.

Detroit Edison states that the letter agreement reduces the fixed charge factor from 15.351 to 15.017 percent for calendar year 1976, and to 14.867 percent on and after January 1, 1977. Detroit Edison states that the reductions reflect the elimination of January 1, 1976, of the Michigan Single Business Tax, the increase from 6 to 10 percent in the investment tax credit, and the elimination on January 1, 1977, of the Michigan corporate franchise tax. Detroit Edison states that the effect of the reduction in the fixed charge factor on billings from Detroit Edison to Commonwealth in 1976 was a reduction of $178,064.

Detroit Edison requests waiver of the notice requirements to permit an effective date of January 1, 1976, for the 15.017 percent rate and of January 1, 1977 for the 14.867 percent rate.

Detroit Edison states that copies of the filing were served on Commonwealth, Consumers Power Co. and on the Michigan Public Service Commission.

Any person desiring to be heard or to protest said letter agreement should file a petition to intervene or protest

with the Federal Energy Regulatory Commission, 825 North Capitol Street, 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 August 11, 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 the letter agreement are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21517 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. RP77-113]

EL PASO NATURAL GAS CO.

Second Supplement to Petition

JULY 27, 1978.

Take notice that on June 16, 1978, El Paso Natural Gas Co., (El Paso) P.O. Box 1492, El Paso, Tex. 79978, filed at Docket No RP77-113, pursuant to § 1.11(a) of the Commission's Rules of Practice and Procedure, a second supplement to its petition for emergency relief pending disposition in said docket, so as to include as a part thereof further additional information, all as more fully set forth in said second supplement on file with the Commission and open to public inspection.

The second supplement to petition states that on July 21, 1977, El Paso filed with the Commission on behalf of 16 customers served by the El Paso pipeline system, a petition for emergency relief from the operation of certain provisions of El Paso's currently effective tariff during the 1977-78 winter season.[1] Subsequently, on September 28, 1977, El Paso filed its first supplement to said petition deleting certain customers from and adding a customer to the list of those on whose behalf El Paso sought emergency relief and providing certain additional data.[2] Thereafter, on March 15, 1978, El Paso sent a telegram to the Commission requesting that the Commission expeditiously act to grant the emergency relief sought by El Paso. El Paso claimed that actual experience through the first 4 months of the 1977-78 winter season indicated that certain of El Paso's customers would either be forced to curtail Priority 1 end-use requirements during the remainder of the winter season or else serve said requirements by taking unauthorized overrun gas in excess of their respective winter season base volumes and thereby incur seasonal unauthorized overrun penalties at the rate of $5 for each Mcf of unauthorized overrun gas so taken.

The second supplement to petition states further that the Commission's final action with respect to either (i) El Paso's pending petition in this docket[3] or (ii) the adjusted seasonal base volumes reflected in the proposed tariff sheets pending at Docket No. RP72-6 could substantially affect the amount of the seasonal unauthorized overrun penalty, if any, to be paid by each of the five identified customers. El Paso notes that, by statement included on the invoices sent to each of the five respective customers, it has advised that each of said customers may defer payment of the invoiced penalty amount until notified by El Paso that the Commission has taken final action with respect to both of said matters.

The second supplement to petition claims that each of the five customers serves only residential and small commercial consumers classified in Priority 1 and that, by definition, such consumers are effectively non-curtailable. Further, El Paso claims each of the five customers has taken and is currently taking necessary steps, consistent with the limited resources available, to reduce or eliminate the causes of their overruns. El Paso concludes that, the financial detriment to each of the five enumerated customers from the imposition of 1977-78 winter season unauthorized overrun penalties is out of proportion to such "injury" as their takes of overrun gas may be said to have visited on other customers served from the El Paso system. In this regard, the larger customers have the capability even within such limits to take advantage of normal attrition, conservation and fuel switching among lower priority end users to accommodate new high priority load, but smaller customers serving only priority 1 and 2 requirements have absolutely no flexibility even to meet increased demand resulting from weather which is colder than the base period, let alone to permit high priority load growth. In El Paso's view, this situation is discriminatory against the small customers.

Accordingly, El Paso requests that its pending petition at Docket No. RP77-113 be further supplemented to the extent of including as a part thereof the information submitted therein and requests that the Commission expeditiously grant the requested waiver of the winter season base volumes, for the period November 1, 1977, through April 30, 1978, and the overrun penalty otherwise applicable to each Mcf of unauthorized seasonal overrun gas taken during such winter season by the identified five customers.

Any person desiring to be heard or to make any protest with reference to said second supplement should, on or before August 18, 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. Persons which have heretofore filed petitions to intervene in this consolidated proceeding need not do so again.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21528 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. RP73-97 & RP76-93 (PGA78-3)]

KENTUCKY WEST VIRGINIA GAS CO.

Proposed PGA Rate Increase

JULY 28, 1978.

Take notice that Kentucky West Virginia Gas Co. (Kentucky West) on July 24, 1978, tendered for filing with the Commission Seventh Revised Sheet No. 27 to its FERC Gas Tariff, First Revised Volume No. 1, to become effective September 1, 1978. Kentucky West states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in section 9, General Terms and Conditions of FERC Gas Tariff, Original Volume No. 1, approved by the Commission in Docket No. RP73-97 and the Purchase Gas Cost Adjustment provision in section 18, General

[1] Notice of El Paso's petition for extraordinary relief in Docket No. RP77-113 was issued on Aug. 3, 1977 (42 FR 40239). By notice issued Sept. 30, 1977 (42 FR 54862), petitions for extraordinary relief filed in Docket Nos. RP77-135-1 and RP77-135-2 were consolidated with the proceeding in Docket No. RP77-113.

[2] Notice of El Paso's First Supplement to Petition in Docket No. RP77-113 was issued on Oct. 17, 1977 (42 FR 56525).

[3] El Paso now intends that the relief it requests in this docket from 1977-78 winter season unauthorized overrun penalties be limited to the following five customers who actually experienced such overruns; namely, (1) Community Public Service Co., (2) the city of Goldsmith, (3) the town of Grandfalls, (4) Ramgas, Inc., and (5) the city of Rankin.

Terms and Conditions of FERC Gas Tariff, First Revised Volume No. 1, approved by the Commission in Docket No. RP76-93.

Kentucky West states that a copy of its filing has been served upon the purchasers and interested State commissions and upon each party on the service list of Docket No. RP76-93.

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 August 10, 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. 78-21529 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. E-8615]

LOUISIANA POWER & LIGHT CO.

Compliance Filing

JULY 28, 1978.

Take notice that Louisiana Power & Light Co. (LP&L) on June 30, 1978, tendered for filing, pursuant to Commission Opinion No. 813-A:

(a) LP&L's Rate Schedule REA-8A, applicable to wholesale service by LP&L to rural electric cooperatives.

(b) Report on the Application of Federal Power Commission Opinion No. 813 and FERC Opinion No. 813-A to the Louisiana Power & Light Company's FPC Filing for Test Year 1974, Docket No. E-8615, which reflects the cost of service to rural electric cooperatives determined in the manner prescribed by Opinion Nos. 813 and 813-A.

(c) Billing summaries showing the revenues which would have been collected during the test year ending December 31, 1974, if Rate Schedule REA-8A had been in effect throughout the year.

(d) Riders to Agreements for Electric Service, pursuant to which Article IX of LP&L's Rate Schedules FPC Nos. 34, 35, 37, and 42 shall no longer be of any force and effect.

Any person desiring to be heard or to protest said filing should file a 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 August 14, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21530 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. CP74-147]

MICHIGAN WISCONSIN PIPE LINE CO. AND MIDWESTERN GAS TRANSMISSION CO.

Petition To Amend

JULY 27, 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 Fed. Reg. 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 10, 1978, Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin), 1 Woodward Avenue, Detroit, Mich. 48226, and Midwestern Gas Transmission Co. (Midwestern), 1100 Milam Building, Houston, Tex. 77002, jointly referred to as Petitioners, filed in Docket No. CP74-147 a petition pursuant to section 7(c) of the Natural Gas Act to amend the order issued by the FPC on September 24, 1974, in Docket No. CP74-147 (52 FPC 819), so as to reflect a 5-year extension of the exchange service authorized by said order, 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 Petitioners were authorized to exchange natural gas through March 31, 1978, pursuant to the terms of an agreement dated August 30, 1973, between Petitioners and Wisconsin Gas Co. (Wisconsin Gas). Said agreement, the petition continues, provided for a reduction in Wisconsin Gas' gas receipts from Michigan Wisconsin and an equivalent reduction in Michigan Wisconsin's gas receipts from Midwestern at Midwestern's existing point of delivery at Marshfield, Wis. Petitioners further state that Midwestern, in turn, would deliver to Northern States Power Co. (NSP) on its Fargo Sales Lateral in Cass County, N. Dak., for the account of Michigan Wisconsin, a volume of gas equivalent to that volume by which Michigan Wisconsin reduced its receipts from Midwestern, by the terms of the August 30, 1973, agreement.

By this petition, it is stated that the exchange arrangement above delineated was entered into to effectuate a gas sale and exchange agreement dated July 16, 1973, between Wisconsin Gas and NSP. The agreement was to have expired March 31, 1978, it is asserted, but is now scheduled to expire on March 31, 1983, Petitioners have been advised, pursuant to an amendatory agreement between Wisconsin Gas and NSP dated February 28, 1974. Therefore, Petitioners request an equivalent extension of 5 years of the term of the authorized exchange and delivery service according to the following schedule:

Period	Mcf [1]	Mcf [2]
	Up to	
Nov. 15, 1978-Mar. 31, 1979	150,000	5,000
Nov. 15, 1979-Mar. 31, 1980	150,000	5,000
Nov. 15, 1980-Mar. 31, 1981	150,000	5,000
Nov. 15, 1981-Mar. 31, 1982	150,000	5,000
Nov. 15, 1982-Mar. 31, 1983	150,000	5,000

[1] Seasonal volume.
[2] Minimum daily volume.

The petition draws attention to the fact that Midwestern would participate in the delivery of this exchange gas on a best efforts basis pursuant to the exchange agreement dated August 30, 1973.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 18, 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 inter-

vene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21531 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. RP71-125 (PGA78-2)]

NATURAL GAS PIPELINE CO. OF AMERICA

Purchased Gas Cost Adjustment to Rates and Charges

JULY 27,1978.

Take notice that on July 19, 1978, Natural Gas Pipeline Co. of America (Natural) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheet, to be effective September 1, 1978: "Substitute Thirty-fourth Revised Sheet No. 5."

The tariff sheet reflects base rates in effect subject to refund in Docket No. RP77-98.

Natural states the purpose of the filing is to track producer and pipeline supplier price changes and to recover the accumulated deferred purchased gas costs as of May 31, 1978, through unit rate adjustments computed pursuant to provisions of Natural's Purchased Gas Cost Adjustment Clause. The combined effect of these unit adjustments results in an increase in Natural's cumulative PGA Adjustments of 13.75 cents per Mcf. This filing also reflects the elimination of the ENGA surcharge which was additive to the currently effective rates during the period October 1, 1977, through August 31, 1978.

Copies of the filing have been mailed to Natural's jurisdictional customers and to interested State regulatory agencies.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, in accordance with §§ 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 August 18, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21532 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. ER78-492]

NEW ENGLAND POWER CO.

Notice of Cancellation

JULY 27, 1978.

Take notice that New England Power Co. (NEP) on July 17, 1978, tendered for filing a Notice of Cancellation of Schedule III-E to its FERC Electric Tariff, Original Volume Number 1.

NEP states that Schedule III-E to the tariff contains the terms and conditions under which NEP will provide contract demand service on and after November 1, 1981. NEP further states that its customers have elected to terminate this form of service on October 31, 1981, and will thereafter purchase various types of nonfirm power. NEP proposes an effective date of September 15, 1978.

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 August 21, 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. 78-21533 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. CP78-416]

NORTHERN NATURAL GAS CO. ET AL.

Joint Pipeline Application

JULY 28, 1978.

Take notice that on July 10, 1978, Northern Natural Gas Co. (Northern), 2223 Dodge Street, Omaha, Nebr. 68102, Southern Natural Gas Co. (Southern), P.O. Box 2563, Birmingham, Ala. 35202 and United Gas Pipe Line Co. (United), P.O. Box 1479, Houston, Tex. 77001, filed in Docket No. CP78-416 a joint application pursuant to section 7(c) of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorizing the construction, ownership, and operation of pipeline and related facilities necessary to connect gas supplies located in West Cameron Blocks 352 and 343, Offshore Louisiana, to the certificated pipeline system of High Island Offshore System (HIOS), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

By Commission orders issued June 4, 1976 and July 30, 1976, in Docket Nos. CP75-16, CP75-81, and CP75-104, HIOS was authorized, inter alia, to construct and operate 67 miles of 42-inch pipeline between High Island Block A-264 and West Cameron Block 167, and to render transportation service for United and others. The purpose of the instant application is to obtain authorization to construct, own, and operate approximately 3.79 miles of 16-inch pipeline and related facilities to effectuate deliveries to HIOS of gas supplies to be purchased by Northern, Southern, and United herein from producers having interests in West Cameron Blocks 352 and 343, Offshore Louisiana. The total cost of facilities proposed herein is estimated to be $3,431,128.

Any person desiring to be heard or to make any protest with reference to said application, on or before August 21, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to

appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21534 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. CP78-428]

NORTHERN NATURAL GAS CO., ET AL.

Joint Pipeline Application

JULY 28, 1978.

Take notice that on July 17, 1978, Northern Natural Gas Co., 2223 Dodge Street, Omaha, Nebr. 68102, Texas Eastern Transmission Corp., One Houston Center Building, Houston, Tex. 77002, Transcontinental Gas Pipe Line Corp., Post Office Box 1396, Houston, Tex. 77001, United Gas Pipe Line Co., Post Office Box 1478, Houston, Tex. 77001 (Applicants) filed in Docket No. CP78-428 a joint 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 certain offshore facilities necessary for the purchase and transportation of natural gas from West Cameron Block 222, Offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants propose to construct in 1978 13.2 miles of 16-inch pipeline extending from the producer platform located in Block 222 to a tap to be constructed on Tennessee Gas Pipeline Co.'s central gathering platform in West Cameron Block 192. Applicants estimate that the total cost of such facilities will be approximately $7,086,240. Applicants will reimburse Tennessee for its costs resulting from the connection to its pipeline.

Any person desiring to be heard or to make any protest with reference to said application, on or before August 21, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21535 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket Nos. RP71-107 (Phase II) and RP72-127]

NORTHERN NATURAL GAS CO.

Granting Extension of Time

JULY 26, 1978.

On July 18, 1978, Northern Natural Gas Co. filed a motion requesting a 30-day extension of time in which to comply with Ordering Paragraph (B) of the Commission's Order issued June 22, 1978 in these dockets. Ordering Paragraph (B) gives Northern 30 days to file proof that it has successfully renegotiated an Alaskan advance payment contract with BP Alaska, Inc. Northern represents that it needs additional time because of various complexities involved in negotiating and in receiving necessary management approval for any such contract amendment.

Upon consideration, notice is hereby given that an extension of time is granted to and including August 21, 1978, within which Northern shall comply with Ordering Paragraph (B) of the June 22, 1978 Order.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21536 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. ER78-496]

NORTHERN STATES POWER CO.

Notice of Filing

JULY 26, 1978.

Take notice that Northern States Power Co. (Northern States) on July 18, 1978, tendered for filing Supplement No. 4, dated June 30, 1978, to the Manitoba-United States Winnipeg-Grand Forks 230 Kv Interconnection Coordinating Agreement, dated January 16, 1969, between the Manitoba Hydro-Electric Board, Minnkota Power Cooperative, Inc., Northern States and Otter Tail Power Co.

According to Northern States Supplement No. 4 provides a fourth revision of the Service Schedules to the Agreement, modifying the rates for power and energy in Service Schedule II—Participation Power, Service Schedule III—Peaking Power, and Service Schedule IV—Short Term Power.

Northern States requests an effective date of August 15, 1978, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 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 August 4, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21537 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. CP78-415]

NORTHWEST PIPELINE CORP.

Notice of Application

JULY 28, 1978.

Take notice that on July 10, 1978, Northwest Pipeline Corp. (Applicant), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. CP78-415 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for a term not to exceed September 30, 1989, authorizing Applicant to sell on an "as available" basis up to 50 billion Btu's per day of natural gas to Southwest Gas Corp. (Southwest Gas) and to deliver such volumes to El Paso Natural Gas Company (El Paso) for the account of Southwest Gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application states that Applicant has available at the Sumas import point during off-peak periods a quantity of natural gas above its total

requirements which it proposes to sell to Southwest Gas. Pursuant to a sales agreement dated April 28, 1978, between Applicant and Southwest GAS, it is stated, Applicant would sell up to 50 billion Btu's per day on an "as available" basis and deliver such available volumes to El Paso for the account of Southwest Gas, for subsequent transportation and redelivery by El Paso to Southwest Gas, at an existing point between the facilities of Applicant and El Paso located in La Plata County, Colo.

The sales agreement would be effective for a basic term ending October 31, 1981, but would be automatically extended to match any extension of the term of Applicant's import authority to receive gas under Export License GL-4 at Kingsgate, British Columbia, it is indicated. It is added, however, that the agreement would not be extended beyond September 30, 1989.

Applicant proposes to charge Southwest a rate consisting of the following three elements: (a) A gas charge which will equal the border price paid by applicant for gas imported from Canada; (b) a transportation charge of 20.69 cents per Mcf of gas sold to Southwest Gas; and (c) a fuel charge equal to 2 percent of the volumes sold multiplied by Applicant's then current average cost of purchased gas. The estimated cost of gas per million Btu's, assuming a continuation of the current Canadian gas cost of $2.16 per million Btu, would be $2.39 it is stated.

Applicant states that this proposed sale would be rendered under the same price and availability terms as the sale which Applicant has been authorized to make to Pacific Interstate Transmission Company (PIT) on July 1, 1977, as extended by the Commission on July 6, 1978. It is indicated that when both PIT and Southwest request gas on the same day Applicant would deliver to each its pro rata share of the available quantities.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 21, 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. 78-21538 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. RP 73-36 (PGA78-3)(DCA78-2)]

PANHANDLE EASTERN PIPE LINE CO.

Notice of Change in Tariff

JULY 24, 1978.

Take notice that on June 15, 1978, Panhandle Eastern Pipe Line Co. (Panhandle) tendered for filing Twenty-Fifth Revised Sheet No. 3-A and Second Revised Sheet No. 3-B to its FERC Gas Tariff, Original Volume No. 1. Panhandle submits that these revised tariff sheets reflect rate adjustments as follows.

(1) A DCA Commodity Surcharge Adjustment pursuant to section 16.6(e) of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1; and

(2) A Rate Adjustment pursuant to section 18.4 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1; such adjustment reflecting a proposed Pipeline Supplier rate adjustment to be effective concurrently herewith; and

(3) A PGA Rate Adjustment pursuant to section 18.2 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1.

An effective date of August 1, 1978 is proposed.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with section 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 application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21539 Filed 8-2-78; 8:45 am]

[6740-02]

[Project No. 2812]

PUBLIC UTILITY DISTRICT NO. 1 OF KLICKITAT COUNTY, WASH.

Notice Granting Interventions

JULY 28, 1978.

On August 1, 1977, the Public Utility District No. 1 of Klickitat County, Wash. filed an application for preliminary permit for the proposed White Salmon River project No. 2811 to be located on the White Salmon River in Klickitat, Skamania, and Yakima Counties, Wash. Public notice of the filing was given with June 19, 1978, as the last day for filing protests or petitions to intervene. The following timely petitions to intervene have been received:

Petitioner	*Date filed*
Washington State Department of Fisheries	May 30, 1978.
Washington State Department of Game	May 30, 1978.
Friends of the White Salmon—White Salmon Chapter	June 8, 1978.
Pacific Power & Light Co	June 12, 1978.
Yakima Indian Nation	June 19, 1978.
National Marine Fisheries Service	June 19, 1978.
Friends of the White Salmon—Trout Lake Chapter	June 19, 1978.

The Petitioners are concerned with subjects such as: need for power; need for additional studies; potential effects on fish runs; existence of feasible alternatives; and possible effects on the operation of Project No. 2342, water quality, game fish and wildlife resources, recreation activities, and the local environment.

No responses to the petitions have been received.

Any permit that might be issued in this case would not authorize any construction of the proposed project. Sec-

tion 4(f) of the Federal Power Act, 16 U.S.C. § 797(f).

Pursuant to § 3.5(a) of the Commission's general rules, as promulgated by Order No. 557 (issued on December 10, 1976), the above-named petitioners are permitted to intervene in this proceeding subject to the rules and regulations of the Commission. Participation of the intervenors shall be limited to asserted rights and interests specifically set forth in the petitions to intervene. Admission of the intervenors shall not be construed as recognition by the Commission that they might be aggrieved by any order issued in this proceeding.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21540 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. CP76-428]

SEA ROBIN PIPELINE CO.

Filing of Revised Tariff Sheets

JULY 27, 1978.

Take notice that on July 19, 1978, Sea Robin Pipeline Co. (Sea Robin) tendered for filing with the Federal Energy Regulatory Commission (Commission) first revised sheet Nos. 259, 263, 264, and 275 to rate schedule X-15, being a transportation agreement dated August 19, 1976, as amended, with Northern Natural Gas Co. It is proposed that these tariff sheets become effective of August 20, 1978.

Sea Robin states that copies of these tariff sheets have been mailed to Northern Natural Gas Co.

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 August 11, 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.78-21515 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. CI78-745]

SOUTHLAND ROYALTY CO.

Order Granting Rehearing for Purposes of Further Consideration and Granting Intervention Out of Time

JULY 27, 1978.

By letter order issued May 31, 1978, we issued a temporary certificate of public convenience and necessity to Southland Royalty Co. 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 27, 1978, El Paso filed a petition to intervene out of time 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 31, 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. 78-21516 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. CP78-421]

TEXAS GAS TRANSMISSION CORP. AND TENNESSEE GAS PIPELINE CO., A DIVISION OF TENNECO INC.

Joint Pipeline Application

JULY 28, 1978.

Take notice that on July 13, 1978, Texas Gas Transmission Corp., 3800 Frederica Street, Owensboro, Ky. 42301, and Tennessee Gas Pipeline Co., a Division of Tenneco Inc., Tenneco Building, Houston, Tex. 77001 (herein referred to as Applicants), filed a joint application in Docket No. CP78-421 pursuant to section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction of:

Approximately 3.3 miles of 12-inch pipeline and related metering facilities extending from the "A" Platform of Texaco Inc., and Tenneco Oil Co., located in Block 365, Eugene Island Area, South Addition, Offshore Louisiana, to a interconnection in Block 343, Eugene Island, South Addition, Offshore Louisiana, on the existing 30-inch pipeline jointly owned by Applicants and Texas Eastern Transmission Corp.

The facilities proposed are necessary in order to permit Applicants to receive and transport the gas purchased in Blocks 348 and 365 to the interconnection of the existing 30-inch pipeline for further transportation onshore through other previously authorized facilities.

Applicants show that the total estimated cost of the proposed facilities is $3,136,560. Applicants state that the additional volumes to be made available to Applicants from the blocks to be connected will help to reduce the level of future curtailments.

Any person desiring to be heard or to make any protest with reference to said application, on or before August 21, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a

hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21518 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. CP78-429]

TEXAS GAS TRANSMISSION CORP.

Notice of Application

JULY 27, 1978.

Take notice that on July 17, 1978, Texas Gas Transmission Corp. (Applicant), 3800 Frederica Street, Owensboro, KY 42301, filed in Docket No. CP78-429 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon six sales meter stations and approximately 5,470 feet of 4-inch pipeline, all located in Gibson, Clay, and Pike Counties, Ind., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant proposes to abandon: (1) The Arketex No. 2 meter station and 3,000 feet of 4-inch pipeline connected thereto, and the Arketex No. 4 meter station and 1,150 feet of 4-inch pipeline connected thereto; (2) the Terre Haute No. 5 meter station and 1,320 feet of 4-inch pipeline connected thereto; (3) the Prudential No. 1 and No. 2 meter stations; and (4) the Ashland Oil meter station.

The Arketex No. 2 and No. 4 meter stations have been used as delivery points for the sale of natural gas to the Arketex Ceramic Corp. (Arketex) dated March 1, 1966, it is said. Applicant states that Arketex has agreed to the proposed abandonment pursuant to a letter agreement between Applicant and Arketex dated December 13, 1977.

The Terre Haute No. 5 meter station has been used as a delivery point for the sale of natural gas to Terre Haute Gas Corp. (Terre Haute) for resale, pursuant to a service agreement between Applicant and Terre Haute, it is said. Applicant states that deliveries of natural gas to Terre Haute ceased in October 1974, and that Terre Haute has agreed to the proposed abandonment pursuant to a letter agreement between Applicant and Terre Haute dated February 6, 1978.

The Prudential No. 1 and No. 2 meter stations have been used as delivery points for the sale of natural gas to Prudential Oil Co. (Prudential) pursuant to a contract for sale of industrial natural gas between Applicant and Har-Ken Oil Co. (predecessor of Prudential) dated March 8, 1971, it is said. Applicant states that Prudential's operations have ceased and that it has agreed to the proposed abandonment pursuant to a letter agreement between Applicant and Prudential dated May 10, 1978.

The Ashland Oil meter station has been used as a delivery point to Ashland Oil, Inc. (Ashland) pursuant to the terms of a contract for sale of industrial natural gas between Applicant and Ashland dated March 1, 1971, it is said. Applicant states that the natural gas sold to Ashland at this station has been used by Ashland in its oil pumping operations since 1947, that Ashland's operations have ceased, and that it has agreed to the proposed abandonment pursuant to a letter agreement between Applicant and Ashland dated April 11, 1978.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 18, 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 section 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 not 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. 78-21519 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. CP78-430]

TEXAS EASTERN TRANSMISSION CORP. AND TRANSCONTINENTAL GAS PIPE LINE CORP.

Joint Pipeline Application

JULY 28, 1978.

Take notice that on July 18, 1978, Texas Eastern Transmission Corp. (Texas Eastern), Post Office Box 2521, Houston, Tex. 77001, and Transcontinental Gas Pipe Line Corp. (Transco), Post Office Box 1396, Houston, Tex. 77001, (Applicants), filed an application in Docket No. CP78-430 pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing operation of facilities for the exchange of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants state that Texas Eastern will receive from or for the account of Transco at the existing point of connection to Texas Eastern's system to the outlet of Gulf Oil Corp.'s Venice Gas Processing Plant, Plaquemines Parish, Louisiana, up to 10,000 Mcf of gas per day and deliver a thermally equivalent quantity of gas to Transco at the existing point of interconnection between Applicants' systems located near Ragley, Beauregard Parish, La. Applicants state that the purpose of the proposed exchange is to enable Transco to receive into its system quantities of gas it will purchase from Texaco Inc. (Texaco) at the plant outlet, where Transco has no facilities. The gas will be produced by Texaco in the Garden Island Bay Field, Plaquemines Parish and sold to Transco in partial satisfaction of payback obligations imposed by orders issued July 14 and July 26, 1977, and February 10, 1978 in *Texaco Inc.*, et al., Docket Nos. CI77-329, et al.

Any person desiring to be heard or to make any protest with reference to said application, on or before August 21, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed

with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH PLUMB,
Secretary.

[FR Doc. 78-21520 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. CP78-4]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Amendment to Application

JULY 28, 1978.

Take notice that on July 10, 1978, Transcontinental Gas Pipe Line Corp. (Applicant), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP78-4 an amendment to its application filed in the instant docket on October 3, 1977, 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) for a certificate of public convenience and necessity. Applicant requests an extension of the term of the transportation service to be rendered to Guilford Mills, Inc. (Guilford), an industrial customer of Piedmont Natural Gas Co., Inc. (Piedmont), a resale customer of Applicant, which service was authorized by temporary certificate issued December 6, 1977, in the instant docket for a term expiring July 31, 1978, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In the application filed on October 3, 1977, Applicant requested authorization to transport gas for Guilford pursuant to a transportation agreement dated September 2, 1977 among Applicant, Guilford, and Piedmont. It was stated that Guilford has purchased from Glen A. Martin (Martin) up to 550 Mcf (at 14.65 psia) of natural gas per day to be produced from the Green Branch and Longhorn Areas, McMullen and Duval Counties, Tex. It was indicated that Guilford would pay Martin a price of $2.00 per million Btu's during the first contract year and $2.10 per million Btu's commencing with the second contract year for the proposed volumes of gas, and that Martin was unwilling to sell the gas for resale in the interstate market.

Applicant stated that Guilford would arrange to have such quantities delivered to Applicant at mutually agreeable points on Applicant's system and Applicant would redeliver the transportation quantities to existing points of delivery to Piedmont for the account of Guilford. It was stated that Guilford would transport such quantities of natural gas delivered to it by Applicant to Guilford's Greensboro, N:C., plant where the gas would be used for direct fabric dryers, direct flame laminating, and EPA fume incinerations, for which there is no technically feasible alternate fuel.

Applicant further stated that it would charge Guilford, initially, 29.8 cents per Dekatherm (dt) equivalent for all quantities delivered, and that this rate was applicable to similar transportation services providing for deliveries in its Rate Zone 2. it was added that Applicant would retain, initially, 3.8 percent of the quantities received for transportation as make up for compressor fuel and line loss.

Applicant proposed to install at an estimated cost of $5,000 a 3-inch hot tap on the Conoco-Driscoll Lateral at M.P.24.8. Martin would reimburse Applicant for the actual cost of such material and installation, it was said.

No changes are made by this amendment in the arrangements for the transportation service as set out above. The purpose of this amendment, it is stated, is to request authorization for the transportation term for the remainder of the original 2-year period now that the Commission has reevaluated Order No. 533 transportation policy and issued Order No. 2 on February 1, 1978, extending the Order No. 533 policy.

Any person desiring to be heard or to make any protest with reference to said application, should on or before August 21, 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. Persons having heretofor filed need not do so again.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21521 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. CP78-417]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Application

JULY 27, 1978.

Take notice that on July 10, 1978, Transcontinental Gas Pipe Line Corp. (Applicant), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP78-417 an application pursuant to section 7(c) of the Natural Gas Act and section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.78) for a certificate of public convenience and necessity authorizing Applicant to transport up to 4,994 Mcf of natural gas per day on an interruptible basis for The Anaconda Co., Aluminum Division (Anaconda) pursuant to a transportation agreement dated March 30, 1978, between Applicant and Anaconda, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Anaconda has informed it that the subject gas would be supplied by Atlantic Richfield Co. (Atlantic Richfield) under an intercompany-transfer arrangement from production in the Katy Gas Field, Waller, Harris, and Fort Bend Counties, Tex.[1] Anaconda would arrange to have the transportation quantities delivered to Applicant near Katy, Waller County, Tex., and Applicant would redeliver equivalent quantities (less compressor fuel and line loss make-up) to Texas Gas Transmission Corp. (Texas Gas) at an existing delivery point near Eunice, Evangeline Parish, Louisiana, or other mutually agreeable points of exchange between Applicant and Texas Gas, for the account of Anaconda, it is said. It is stated that the subject gas is for high-priority use at Anaconda's Indiana and Kentucky plants.

[1] It is indicated that Anaconda is a wholly owned subsidiary of Atlantic Richfield.

Applicant states that it would charge Anaconda, initially, 8.75 cents per dekatherm equivalent of natural gas for all quantities delivered and that it would retain, initially, 2.4 percent of the quantities received for transportation as make-up for compressor fuel and line loss.

It is indicated that the transportation agreement dated March 30, 1978, would continue in effect for a period of two years from the date of initial delivery.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 18, 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. 78-21522 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. CP78-295]

UNITED GAS PIPE LINE CO.

Amendment to Pipeline Application

JULY 28, 1978.

Take notice that on July 7, 1978, United Gas Pipe Line Co. (United), P.O. Box 1478, Houston, Tex. 77001, filed in Docket No. CP78-295 an application pursuant to section 1.11(a) of the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) amending the application heretofore filed on April 17, 1978.

As stated in the application, under the terms and conditions of a Gas Transportation Agreement dated April 7, 1978, United has agreed to transport up to 9,400 Mcf of gas per day for the account of Southern Natural Gas Co. (Southern) from Block 32, Eugene Island Area, offshore Louisiana to points of delivery onshore near Bayou Sale, St. Mary Parish, La., and other mutually agreeable points of interconnection between the systems of United and Southern.

Southern, it is stated, has acquired the right to purchase additional volumes of gas from production in the Eugene Island Area, Block 57, and has requested United to transport such additional volumes. United and Southern have therefore amended the Gas Transportation Agreement of April 7, 1978, to provide for the transportation by United of up to a total of 46,800 Mcf per day for the account of Southern United has amended its application to provide for the increase in the transportation quantity for Southern, all as more fully described in the amendment to application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application, on or before August 21, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21523 Filed 8-2-78; 8:45 am]

[6740-02]

[Project No. 2802]

VILLAGE OF SPRINGVILLE, N.Y.

Application for Minor License

JULY 27, 1978.

Public notice is given that an application for minor license was filed on July 5, 1977, under the Federal Power Act, 16 U.S.C. 791a-825r, by the Village of Springville, N.Y. (Applicant) (Correspondence to: Paul F. Frank, Mayor, Village Office, 5 West Main Street, Springville, N.Y. 14141; James H. Gibbon Esq., Village Attorney, 22 East Main Street, Springville, N.Y. 14141) for its constructed Springville Project No. 2802. The project is located on Cattaraugus Creek in Erie and Cattaraugus Counties, N.Y.

The project consists of: a concrete dam approximately 25 feet high, with crest elevation at approximately 1,100 feet m.s.l.; conduits; flumes; a frame and brick powerhouse containing two generating units with a total installed capacity of 500 kW; and appurtenant facilities. The reservoir currently contains no useable storage due to accumulated sediment.

The project produces approximately 10 percent of the power sold by the Applicant to its electric customers.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977), and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission (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) or 402 (a)(2) of the DOE Act.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 2, 1978, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1978). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21524 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. ER78-505]

VIRGINIA ELECTRIC & POWER CO.

Notice of Filing

JULY 27, 1978.

Take notice that on July 24, 1978, Virginia Electric & Power Co. (Vepco) tendered for filing a revised supplement to the contract between Vepco and Central Virginia Electric Cooperative. Vepco states that the revised contract supplement reflects changes, as set forth below, due to the purchase of the Company's air-break switch and the fuse assembly by the Cooperative at Midway Delivery Point:

Present FERC No. 94-9; proposed FERC No. 94-33; and items corrected, 1, 4, 5(3), 8, 10, 11.

Vepco states that the revised contract supplement is intended to supersede the listed FERC Rate Schedule and requests that the revised supplement be allowed to become effective on June 19, 1978, the date of the completion of the purchase of the air-break switch and fuse assembly.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 11, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21525 Filed 8-2-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. CP76-222]

TENNESSEE GAS PIPELINE CO., A DIVISION OF TENNECO INC.

Findings and Order After Statutory Hearing Amending Certificate of Public Convenience and Necessity; Correction

Issued July 5, 1978; July 26, 1978.

Page 3, Ordering Paragraph (A), Line 4: Change "Texas Eastern Transmission" to "Texas Gas Transmission".

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-21545 Filed 8-2-78; 8:45 am]

[6740-02]

[Docket No. CP75-155]

WISCONSIN GAS CO.

Petition To Amend

JULY 27, 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(1)(1) of the DOE Act.

Take notice that on July 10, 1978, Wisconsin Gas Co. (petitioner), 620 East Wisconsin Avenue, Milwaukee, Wis. 53201, filed in Docket No. CP75-155 a petition pursuant to section 7(c) of the Natural Gas Act to amend the order issued by the FPC on June 23, 1975, in Docket No. CP75-155 (53 FPC 2198), so as to reflect a 5-year extension of the term of the authorized exchange of natural gas for liquified natural gas between petitioner and Northern States Power Co. (NSP), 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 an agreement dated July 16, 1973, NSP-Wisconsin agreed to deliver quantities of liquified natural gas (LNG) to petitioner at NSP-Wisconsin's LNG plant facility at Eau Claire, Wis., and petitioner agreed to arrange for delivery to NSP-Minnesota of natural gas in the amount of twice the equivalent volume of LNG delivered to it by NSP-Wisconsin.

The petition states that to accomplish this delivery petitioner entered into an agreement on August 30, 1973, with Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin) and Midwestern Gas Transmission Co. (Midwestern), two companies from which petitioner buys natural gas. Pursuant to this agreement, it is said, petitioner agreed to limit its receipt of gas from Michigan Wisconsin so that the volume taken when added to the gas to be delivered to NSP-Minnesota would not exceed the gas purchase entitlement of petitioner from Michigan Wisconsin. The agreement further provided that Michigan Wisconsin would reduce its receipt of gas from Midwestern at Midwestern's existing point of delivery at Marshfield, Wis., by an amount equal to the volume of gas to be delivered to NSP-Minnesota, it is stated. Midwestern would deliver the gas to NSP-Minnesota at its existing delivery point on its Fargo Sales Lateral in Cass County, N. Dak., the petition indicates.

Petitioner asserts that the agreement dated July 16, 1973, between it and NSP-Wisconsin was to expire on March 31, 1978, but that the parties, by an agreement dated February 28, 1974, agreed to extend the term an additional 5 years, through March 31, 1983. Petitioner therefore requests that its certificate of public convenience and necessity be amended to reflect this extension in the term according to the following schedule:

SALE AND DELIVERY OF LNG TO WISCONSIN GAS

Period	Seasonal volume[1]	Daily volume[2]
Sept. 1, 1978-Mar. 31, 1979	75,000	5,000
Sept. 1, 1979-Mar. 31, 1980	75,000	5,000
Sept. 1, 1980-Mar. 31, 1981	75,000	5,000
Sept. 1, 1981-Mar. 31, 1982	75,000	5,000
Sept. 1, 1982-Mar. 31, 1983	75,000	5,000

[1] Mcf equivalent.
[2] Maximum Mcf equivalent.

REDELIVERY OF NATURAL GAS TO NSP (MINNESOTA)

Period	Mcf[1]	Mcf[2]
	Up to	
Nov. 15, 1978-Mar. 31, 1979	150,000	5,000
Nov. 15, 1979-Mar. 31, 1980	150,000	5,000
Nov. 15, 1980-Mar. 31, 1981	150,000	5,000
Nov. 15, 1981-Mar. 31, 1982	150,000	5,000
Nov. 15, 1982-Mar. 31, 1983	150,000	5,000

[1]Seasonal volume.
[2]Maximum daily volume.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 18, 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. 78-21543 Filed 8-2-78; 8:45 am]

[6560.01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 939-1; PF 106]

PESTICIDE PROGRAMS

Filing of Feed Additive Petition

E. I. du Pont de Nemours & Co., Wilmington, Del. 19898, has submitted a petition (FAP 8H5189) to the Environmental Protection Agency (EPA) which proposes that 21 CFR 561 be amended by the establishment of a regulation permitting residues of the insecticide/nematocide oxamyl (methyl N',N' - dimethyl - N - [(methylcarbamoyl)oxy] - 1 - thiooxamidate) on the commodity pineapple bran with a tolerance limitation of 6.0 parts per million resulting in feed. Notice of this submission is given pursuant to the provisions of section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act. PM12.

Interested persons are invited to submit written comments on this petition to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460, by August 18, 1978. As provided in the Administrative Procedure Act (5 U.S.C. 553(d)(3)), the comment period for this notice of filing is being shortened to less than 30 days because of mealybug infestation posing a serious threat to hundreds of acres of pineapple in Hawaii. No currently registered pesticide product can effectively control the pest.

Inquiries concerning this petition may be directed to Product Manager (PM) 12, Registration Division (TS-767), Office of Pesticide Program, at the above address, or by telephone at 202-426-9425. Written comments should bear a notation indicating the petition number. Comments may be made at any time while a petition is pending before the Agency. All written comments will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: July 31, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-21611 Filed 8-2-78; 8:45 am]

[6570-06]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

[Employer Information Report EEO-1]

RECORDS AND REPORTS

Extension of Deadline for Filing Report

Notice is hereby given that the deadline for filing the 1978 Employer Information Report EEO-1 required by 29 CFR 1602.7 is extended from March 31, 1978, to October 31, 1978. The payroll period for the EEO-1 report remains unchanged.

Signed at Washington, D.C. this 28th day of July, 1978.

ELEANOR HOLMES NORTON,
Chair, Equal Employment
Opportunity Commission.

[FR Doc. 78-21567 Filed 8-2-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[CT Doc. No. 78-223; CSC-124, CSR-1002 (TX0103); FCC 78-525]

TEXAS COMMUNITY ANTENNAS, INC., d.b.a. NACOGDOCHES CABLE TV

Petition for Reconsideration, and Clarification; Memorandum Opinion and Order and Order To Show Cause

Adopted: July 21, 1978.

Released: July 28, 1978.

By the Commission:

1. On April 7, 1977, Texas Community Antennas, Inc., d.b.a. Nacogdoches Cable TV (Nacogdoches), operator of a cable television system at Nacogdoches, Tex., filed the above-captioned petition for reconsideration and clarification directed against the Commission's decision in *Texas Community Antennas, Inc.* (Nacogdoches, Tex.) FCC 77-131, 63 FCC 2d 339 (1977). Buford Television, Inc. (Buford), licensee of station KTRE-TV (ABC/NBC, Channel 9), Lufkin, Tex., filed an "Opposition" to the subject petition, and Nacogdoches subsequently replied. Thereafter, Nacogdoches submitted a "Supplement to Petition for Reconsideration and Clarification," to which Buford has not responded.

2. In *Texas Community Antennas, Inc., supra,* the Commission denied Nacogdoches' petition for waiver of its network program nonduplication obligations vis-a-vis KTRE-TV and directed the cable system to comply with the requirements of sections 76.92 and 76.94 of the Rules within 30 days by providing KTRE-TV with program protection against the simultaneous, duplicating programming of Stations KLTV (ABC/NBC, Channel 7) Tyler, Tex.; KTBS-TV (ABC, Channel 3) Shreveport, La.; and KTAL-TV (NBC Channel 6) Texarkana, Tex. Action on Buford's then-pending petition for an order to show cause (CSC-124) seeking enforcement of its nonduplication rights against the Nacogdoches system was deferred during the 30-day period. In the event, however, the system failed to achieve compliance within the time prescribed, the Chief, Cable Television Bureau was delegated authority to order Nacogdoches to show cause why it should not be directed to cease and desist from further violation of the Commission's Rules. Prior to expiration of the 30-day compliance period, Nacogdoches filed the instant petition for reconsideration but has, to date, declined to accord KTRE-TV program protection.

ARGUMENTS

3. Petition offers three fundamental contentions in support of its request for reconsideration. First, Nacogdoches argues that the affidavits it submitted attesting to KTRE-TV's poor signal quality, including that of an independent engineering consultant, raised a material question of fact which remains unresolved on the record and that the Commission's failure to designate this issue for evidentiary hearing was unjustified.[1] The signal quality question is material, it is

[1]Petitioner cites *United Television of New Hampshire,* 38 FCC 2d 400 (1972) and *National Air Carriers Association* v. *CAB,* 436 F. 2d 185, 191 (D.C. Cir. 1970) for the proposition that disputes as to material facts must be resolved by a hearing.

contended, because inferior signals are not entitled to nonduplication protection. And the issue is still unresolved, Nacogdoches apparently reasons, because the Commission's reliance on the allegedly favorable but undisclosed evaluation of KTRE-TV's signals by a Commission inspector was improper [2] and the only other evidence adduced which tended to rebut Nacogdoches' showing on this issue was the "necessarily self-serving affidavit of KTRE-TV's own Chief Engineer." Moreover, petitioner contends that the Commission's rigorous treatment and eventual rejection of Nacogdoches' evidentiary efforts to demonstrate KTRE-TV's poor signal quality were inconsistent with the policy announced in the *Third Report and Order in Docket 19995*, FCC 76-1076, 62 FCC 2d 99 (1976), that "flexibility and experimentation in the manner of proof" would be permitted. In any event, Nacogdoches argues that the Commission's initial decision did not entirely discount the cable system's evidence of KTRE-TV's inferior signal; rather, it merely found the evidence "less persuasive" in view of certain asserted deficiencies. "[T]here is still evidence with some persuasive value in the record as to KTRE-TV's poor signal quality," petitioner concludes, and a hearing is therefore required to resolve the question.

4. Second, Nacogdoches contends that the Commission failed to articulate the basis for its decision and that this failure has rendered meaningful judicial review of the decision impossible. In this connection, petitioner asserts that it presented arguments in its petition for special relief, as well as in its opposition to Buford's petition for an order to show cause, demonstrating that: (a) The Commission's network program nonduplication rules are predicated on a presumption of adverse economic impact on local television stations; (b) This presumption must be rebuttable; and (c) Upon a prima facie showing by the cable system of lack of adverse impact, the presumption must disappear, resulting, at a minimum, in the need for an evidentiary hearing to settle the issue of impact and thereby determine the applicability of the nonduplication rules. In support of the third contention, petitioner analogizes to the *Carroll* doctrine. *Carroll Broadcasting Co. v. FCC*, 258 F. 2d 440 (D.C. Cir. 1958). Under this doctrine, Nacogdoches asserts, an existing licensee must be afforded an opportunity to present evidence demonstrating that economic competition will result in diminution or destruction of its service. Since the cable television rules presume adverse impact, however, they invert the *Carroll* principle and create a burden on the potential competitor—the cable television system—to show lack of impact. In making such a showing, Nacogdoches argues, the cable system should be afforded the same hearing opportunity which the *Carroll* doctrine would afford a licensee in demonstrating the existence of impact in broadcast proceedings. Moreover, petitioner contends that the recent decision in *Home Box Office, Inc. v. FCC*, Case No. 75-1280 (D.C. Cir., decided Mar. 25, 1977), petition for cert. filed, 45 U.S.L.W. 3824 (U.S. June 4, 1977) (No. 76-1724), requires evenhanded treatment of cable television and broadcasting and that this in turn mandates direct application of the *Carroll* hearing principle to cable television systems seeking to rebut the adverse impact presumption. To these arguments, Nacogdoches asserts, the Commission responded "with but two bald conclusory words: 'unpersuasive' and 'erroneous'." Such summary treatment, it is claimed, cannot support the Commission's action in *Texas Community Antennas, Inc., supra*, for it fails to satisfy the Commission's fundamental obligation to explain the rationale for its decision and precludes effective appellate review.

5. Finally, Nacogdoches contends that it must be given an opportunity to introduce evidence of lack of adverse impact and notes that the Commission's decision specifically acknowledged a cable system's right to submit such evidence in the context of a waiver proceeding. Petitioner asserts that it considered its previous showing of KTRE-TV's enormous profitability adequate to rebut the impact presumption, and argues that its showing in this regard was the best possible based on the financial information publicly available to it. If the Commission's rejection of this showing reflects a determination that Nacogdoches failed to make even a prima facie demonstration of lack of adverse impact, then petitioner contends, the only other source of information which would satisfy the waiver standard announced in the Commission's decision would be the Annual Financial Reports, FCC Form 324, filed with the Commission by KTRE-TV. Nacogdoches states that it has separately sought to obtain these reports pursuant to the Freedom of Information Act and, if granted access to them, will undertake—and should be allowed an opportunity—to meet the Commission's waiver standard on the basis of the information in those documents.

6. In addition to reconsideration of the Commission's decision in *Texas Community Antennas, Inc., supra*, as it relates to petitioner's specific request for waiver and the petition for an order to show cause filed by Buford, Nacogdoches seeks a general clarification of the waiver standard stated in that decision. In this connection, Nacogdoches claims that the standard is precedential in nature, but remains vague in many crucial respects. Petitioner therefore requests the Commission to clarify the standard by responding to the following questions concerning it:

(a) Should cable operators use the same "impact analysis" devised by the Commission in its *Second Report and Order in Docket 19995*, 54 FCC 2d 229 (1975)?

(b) Does the Commission regard the "impact analysis" of the *Second Report and Order* as producing "statistically valid projections of future impact"?

(c) If not, what modifications are necessary to arrive at such "statistically valid projections"?

(d) If it is not necessary to produce a complete "impact analysis" as outlined in the *Second Report and Order*, what is the appropriate methodology to follow?

(e) Is the cable operator limited to publicly available financial information, or will the Commission allow inspection of the relevant licensee's Annual Financial Reports, FCC Form 324, in order to obtain historical data upon which to make extrapolations of future impact?

Further, Nacogdoches requests clarification of what the Commission would deem a prima facie showing of lack of adverse impact under the new standard.

7. Buford contends that Nacogdoches' petition is both "procedurally deficient and wholly without merit" and must therefore be considered an intolerable attempt to further delay compliance with the Commission's Rules. Such dilatory tactics, it is argued, make a mockery of the Commission's procedures and should be rebuffed by immediate issuance of an order to show cause against Nacogdoches for its failure to provide KTRE-TV with network program nonduplication protection as required by the Commission's order. This action is particularly critical, Buford asserts, because Nacogdoches has not only neglected to cure its existing violations, it has expanded them by discontinuing the partial program protection which was apparently being afforded at the time of the Commission's original decision.[3]

8. In support of its position, Buford argues that Nacogdoches' petition is nothing more than a recapitulation of arguments already fully considered and rejected by the Commission and as such cannot justify reconsideration. Moreover, Buford contends that petitioner's arguments constitute an attack upon the nonduplication rule

[2] Nacogdoches contends that the Commission's failure to divulge the nature of its inspector's report denied petitioner an opportunity to respond thereto and violated the Administrative Procedure Act, 5 U.S.C. 556(e).

[3] Buford bases this conclusion on a limited monitoring survey it conducted covering the period April 8 through April 14, 1977.

itself which should be considered, if at all, in a rulemaking context, but which are wholly inappropriate in the insular, adjudicatory framework of the instant case—especially since the Commission has already indicated that it will not permit rearguing of the rule's policy rationale on an ad hoc basis. In this regard, Buford refers to Nacogdoches' position that network affiliated stations should not receive program protection if they are profitable as suggesting a fundamental change in nonduplication policy and precedent. Similarly, Buford adverts to petitioner's *Carroll* doctrine contentions as reflecting a "new and hoped-for standard." Buford also points out that it is Nacogdoches which seeks an exception to the Commission's Rules in this proceeding and that if any financial impact showing is relevant in connection with that exception, it is impact on the party seeking waiver which is germane. Since Nacogdoches has made no attempt to demonstrate that its own financial position will be impaired by providing nonduplication protection, Buford concludes that no basis for wiaver has been established.

9. Finally, in connection with Nacogdoches' request for clarification, Buford contends that the suggested use of the impact analysis promulgated by the Commission in its *Second Report and Order in Docket 19995*, FCC 75-820, 54 FCC 2d 229 (1975), as a method of establishing grounds for waiver of the nonduplication requirement is inappropriate. That analysis, Buford argues, was intended to deal with the special problem of expanded program protection for Mountain Time Zone stations and should not be transferred to situations such as the instant case which do not involve that problem.

10. In reply, Nacogdoches argues that its basic waiver contentions have neither been fully considered nor definitely resolved by the Commission. It also contends that Buford ignores the Commission's express invitation to the cable system "that it is 'clearly entitled to introduce evidence of lack of adverse impact'." Nacogdoches further argues that it has not attacked the essential validity of the nonduplication rule; rather it has endeavored to obtain Commission recognition of the procedural implications of the rule. In this connection, petitioner retraces its previous reasoning concerning the necessary rebuttability of the adverse impact presumption underlying the nonduplication rule and emphasizes that because the rule is not grounded on factual determinations of impact, ad hoc consideration of this issue must be permitted. Otherwise, Nacogdoches argues, the Commission might never examine the facts and would, in effect, have promulgated an irrebuttable presumption of the type specifically rejected by the court in *Home Box Office, Inc., supra.* Such a result would not only be unconstitutional, petitioner asserts, but would, in view of the *Carroll* doctrine, produce the anomalous situation of providing cable operators with less procedural protection against arbitrary regulatory restrictions than broadcasters, even though the Commission has plenary jurisdiction over the latter and merely ancillary jurisdiction over the former. A cable operator must, Nacogdoches concludes, be allowed to show that its operations will not occasion harm to local broadcasters. And, once a prima facie case of lack of impact has been established, the burden of demonstrating a need for exclusivity protection should shift to the broadcast licensee demanding it.

11. Turning to the specific impact considerations of the instant case, Nacogdoches states that its Freedom of Information request to obtain financial information from KTRE-TV's Annual Financial Reports (FCC Form 324) has been denied by the Commission's Broadcast Bureau (FOIA Control No. 7-27), in part because the Bureau deemed audience-loss data, as contrasted to financial data, sufficient to meet the Commission's impact standard. Petitioner argues that this denial is both inconsistent with the import of the Commission's decision in *Texas Community Antennas, Inc., supra,*[4] and logically indefensible since audience impact calculations serve no purpose unless they can be related to the financial health of the station subject to the audience loss.[5] Nonetheless, Nacogdoches presents the following observations regarding audience fractionalization in KTRE-TV's market, ostensibly utilizing the methodolgy of the *Second Report and Order in Docket 19995, supra;*[6]

(a) Assuming that only Nacogdoches' cable television system fails to provide nonduplication protection, the audience impact on KTRE-TV would be 1.1 percent.[7]

(b) Assuming that none of the cable television systems in operation within KTRE-TV's 55 mile zone provides nonduplication protection, the audience impact on KTRE-TV would be 4.4 percent.[8]

Taken in conjunction with KTRE-TV's known 50 percent return on investment[9], Nacogdoches argues that these audience fractionalization figures clearly demonstrate that no harm would result from deletion of nonduplication protection for KTRE-TV, even if implemented on a market-wide basis.

12. In the "Supplement" to its petition for reconsideration[10], Nacogdoches alleges that failure to grant access to KTRE-TV's Annual Financial Reports conflicts with the Commission's own emphasis on financial impact as the key element in evaluating the effect of its rules[11] and is irre-

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[4]The decision, petitioner reasons, is couched in terms of financial data and thus implies that this is the type of information necessary to meet the Commission's waiver standard.

[5]Nacogdoches' application for review of the Broadcast Bureau's action has since been denied by the Commission. *Texas Community Antennas, Inc.* (FOIA Control No. 7-27), FCC 77-456 (released July 12, 1977).

[6]Nacogdoches refers to the Commission's reliance on this methodology in its *Further Notice of Proposed Rulemaking in Docket 20561*, FCC 77-215, 63 FCC 2d 1007 (1977), as evidencing the general applicability of the *Second Report and Order* impact analysis.

[7]The 1.1 percent figure was calculated as follows: [6,600 subscribers × 38 percent market rating × 49 percent station share in Nacogdoches County × 50 percent fractionalization factor] ÷ 53,500 TV homes in counties comprising KTRE-TV's 55 mile zone.

[8]The 4.4 percent impact figure, petitioner explains, was derived by multiplying the subscriber levels for the cable systems in each of the following communities by KTRE-TV's share rating in the applicable county:

Community	Subscribers	Share (Percent)
Rusk	800	22
Grapeland	382	61
Crockett	1,962	61
Trinity	905	50
Livingston	949	34
San Augustine	350	24
Center	800	25
Nacogdoches	6,600	49
Lufkin	7,095	81
Diboll	1,150	81

The resulting figures were added together, multiplied by the 38 percent market rating and 50 percent fractionalization factor and divided by 53,000, the number of TV homes in the counties within KTRE-TV's 55 mile zone.

[9]The 50 percent return estimate is based on petitioner's earlier determinations regarding KTRE-TV's financial condition, as ascertained from publicly available information.

[10]Petitioner justifies filing this further pleading on the grounds that the Commission's denial of petitioner's FOIA request and its recent policy statements in the *Notice of Inquiry in Docket 21284*, FCC 77-407, 65 FCC 2d 9 (1977), make additional discussion essential to a thorough consideration of the instant case. The Commission denied Nacogdoches' petition for review of the Broadcast Bureau's adverse action on petitioner's FOIA request for KTRE-TV's financial reports on July 12, 1977, well after the initial pleading cycle had closed. *See* note 5, *supra.*

[11]*Inter alia*, Nacogdoches cites the following language from the Commission's *Further Notice of Proposed Rulemaking in Docket 20561*, FCC 77-215, 63 FCC 2d 1007, 1008 n.3 (1977) [citation omitted]:

It should be noted, moreover, that from a regulatory standpoint the Commission is

Footnotes continued on next page

concilable with the burden of proof placed on petitioner in the initial decision in the instant case. On the latter point, Nacogdoches notes that the Commission's decision in *Texas Community Antennas, Inc., supra,* announced a waiver standard requiring "statistically valid projections" of future impact on KTRE-TV, yet when petitioner requested historical financial data by which to make these projections, it was denied the information on the grounds that its request constituted a "broad attack" on the rules. Unless the Commission is willing to accept publicly available financial information as satisfying the waiver standard,[12] Nacogdoches argues, then its refusal to disclose KTRE-TV's financial data renders the waiver standard impossible to meet and, in effect, creates an impermissible, irrebuttable presumption. Moreover, if the Commission insists on promulgating a waiver standard of insurmountable proportions, then the nonduplication rule itself becomes an unconstitutional restraint on speech. In this regard, petitioner notes that the Commission has acknowledged the "theoretical" foundation of its nonduplication rule in its *Notice of Inquiry in Docket 21284, supra,* and argues that a refusal to examine the actual facts behind this theory in the context of a waiver proceeding would render the nonduplication rule directly analogous to the "speculative" restraints on speech which were embodied in the pay cable rules and which were found to violate the First Amendment in *Home Box Office, Inc., supra.*

13. Finally, Nacogdoches contends that the inclusion of a *future* impact showing in the waiver standard announced in *Texas Community Antennas, Inc., supra,* represents a requirement which the Commission has never previously imposed in analyzing the effect of its rules, and which entails an ability to forecast that the Commission elsewhere admits it does not possess itself. *Notice of Inquiry in Docket 21284, supra.* It is argued, therefore, that singling out Nacogdoches to meet a novel, future impact standard reflects an arbitrary and unfair action which demands reversal.

Discussion

14. Nacogdoches' arguments may be divided into five basic subject areas: (a) Signal quality; (b) basis for the initial decision; (c) rebuttability of the impact presumption; (d) clarification of the waiver standard; and (e) petitioner's evidentiary attempts to satisfy the waiver standard. We shall discuss each of these elements, and where applicable Buford's comments thereon, in turn.

A. SIGNAL QUALITY

15. Petitioner's arguments concerning the disposition of its signal quality contentions misconstrue the Commission's decision in *Texas Community Antennas, Inc., supra.* In reaching our conclusion that Nacogdoches had failed to substantiate its allegations of inferior signal quality, we did not, as petitioner implies, rely on an undisclosed technical evaluation of KTRE-TV by a Commission inspector. Nor did we give undue credence to the assertedly "self-serving" affidavits of Buford's engineers. Rather, we resolved this issue primarily on the grounds that both parties conceded facts which rendered the question moot. As we stated in the opinion:

Moreover, the cable system seems to ascribe KTRE-TV's alleged technical problems to an inferior microwave link between Houston and Lufkin, Texas, yet Buford points out that this link has been replaced as a source of network programing, with the sole exception of a 1-hour period from 2 to 3 p.m. daily. Thus, even assuming KTRE-TV suffered technical difficulties sufficient to warrant waiver of the rules, the root cause of the problem, as asserted by the system itself, has been substantially eliminated. [*Texas Community Antennas, Inc., supra* at 345-46.]

Nacogdoches admitted in its pleadings that KTRE-TV's ABC programing was not subject to the technical problems which its engineering consultant—Mr. Howard—attributed to the station's NBC programs. Moreover, Nacogdoches never disputed Buford's assertion that KTRE-TV had changed microwave feeds for its NBC program material nor did it conduct tests of KTRE-TV's signal subsequent to the changeover. In short, Mr. Howard's observations—the sole substantive basis for Nacogdoches' claim that KTRE-TV's signal was inferior—had been rendered obsolete by the shift in microwave systems. Nothing in the record remained, therefore, to rebut the logically necessary conclusion that KTRE-TV's NBC programing had risen to the same admittedly good quality level which its ABC programing had achieved as a result of reception via the station's new microwave link.[13] Since petitioner has offered no further substantive evidence on the issue, this conclusion remains unimpugned.

B. BASIS FOR INITIAL DECISION

16. Nacogdoches' argument that the Commission failed to properly delineate the basis for its decision in *Texas Community Antennas, Inc., supra,* also results from a misreading of our opinion. At Paragraph 14 of our decision we stated:

Nacogdoches' pending petition for waiver of section 76.92(a) of the rules is unpersuasive. The system's contention that KTRE-TV's financially sound condition rebuts the underlying justification of the nonduplication rules and that these rules should not, therefore, be enforced in the instant case, is erroneous. In the context of a waiver proceeding, a system is clearly entitled to introduce evidence demonstrating lack of adverse impact on the local station as a result of program duplication. At a minimum, such a showing would necessarily include statistically valid projections of future impact and would address the problem on a market-wide basis, not just with respect to a single cable community. Nacogdoches' presentation of isolated financial data going only to KTRE-TV's present economic position clearly falls well short of this standard.

It seems apparent from the foregoing that our rejection of Nacogdoches' position as "erroneous" went to its contention concerning the nature of the showing necessary to actually rebut the rule's presumption of impact and not, as petitioner claims, to its general argument that the presumption is inherently rebuttable. Moreover, it is evident that the Commission's decision did not stop at merely describing Nacogdoches' position as "erroneous", but went on to elaborate why it was in error by outlining the appropriate waiver standard.

C. REBUTTABILITY OF IMPACT PRESUMPTION

17. The preceding discussion touches upon still another misunderstanding. Nacogdoches has directed considerable attention in its pleadings to establishing three principles: (a) The nonduplication rules are grounded on a presumption that duplication of a local station's network programing will adversely affect that station's ability to serve the public interest; (b) this presumption is rebuttable by a showing of lack of adverse impact by a cable operator; and (c) upon a prima facie showing of lack of impact, this presumption must disappear and a hearing is required. Nacogdoches is entitled to a waiver if it can show unique circumstances or anomalous consequences flowing from the rule. We do not ex-

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concerned not with audience fragmentation, per se, but rather with the impact on station revenues and profits that is so great as to diminish the station's ability to serve the public interest.

[12] Nacogdoches notes that it has already submitted the financial data on KTRE-TV which it was able to glean from public records.

[13] As we noted in our initial decision, Buford admitted that one hour of KTRE-TV's daily NBC programing was not received over the improved relay facilities. We therefore excused Nacogdoches from providing nonduplication protection during that period. *See Texas Community Antennas, Inc., supra*n. 15. Since Buford has not demonstrated any grounds for revoking this exemption, it shall remain in effect.

clude from the range of possibilities of which a waiver applicant may attempt to avail itself a showing of no adverse impact in the affected television market. But so long as the rule is effective,[14] the threshold is very high. This is particularly so in this case both because the approach Nacogdoches has chosen runs directly counter to a proposition we found to be generally applicable and because of the threat such an approach poses to the orderly conduct of Commission business.[15]

18. In seeking a waiver, the principle is well established that the heavy burden of making a persuasive public interest showing for individual relief from the terms of the rule rests squarely with the party seeking a waiver. *WAIT Radio* v. *FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *aff'd after remand*, 459 F.2d 1230 (D.C. Cir. 1972). *Industrial Broadcasting Co.* v. *FCC*, 437 F.2d 680 (D.C. Cir. 1973). The burden of demonstrating just why the public interest would be best served by the waiver does not shift because of the particular character of the rule. To the extent the theory advanced by Nacogdoches suggests otherwise, it is erroneous and we reject it. An "applicant for waiver faces a high hurdle even at the starting gate," *WAIT Radio, supra*, 418 F.2d 1157; "it must plead with particularity the facts and circumstances which warrant such action," and the applicant must make its request "with clarity and accompanied by supporting data. . . ." *Id.* "No reason would appear to distinguish the procedural requirements for obtaining a waiver of the . . . nonduplication rules." *Treasure Valley CATV Committee* v. *U.S.*, 562 F.2d 1183, 1186 (9th Cir. 1977). By the same token we appreciate that *WAIT Radio* places upon the Commission faced with a waiver request a duty to do more than passively rely on any rule "of general application which, in the overall perspective, establishes the public interest for a broad range of situations. . . ." 418 F.2d at 1157. It has the "obligation to seek out the 'public interest' in particular, individualized cases" and give such waiver requests a "hard look." *Id.* It is entirely proper for a waiver applicant to seek to demonstrate a lack of adverse impact in its specific situation as a reason for not applying an otherwise valid rule. While parties seeking waivers of our cable rules are not entitled necessarily to a hearing on their application, *Great Falls Community TV Cable Co.* v. *FCC*, 416 F.2d 238, 242-243, (9th Cir. 1969), *Total Telecable Inc.* v. *FCC*, 411 F.2d 639, 643-644 (9th Cir. 1969), *Treasure Valley CATV Committee, supra*, they may attempt to make their public interest showing on any basis they desire. Likewise, a party opposing the waiver may attempt to rebut the public interest showing of the waiver applicant in any appropriate manner it so desires.

D. CLARIFICATION

19. The remainder of the parties' contentions concern a request for clarification of the waiver standard and an attempt by Nacogdoches to satisfy that standard. We shall first consider petitioner's request for clarification. In our underlying decision in this proceeding we described the minimum showing necessary to warrant special relief from the nonduplication rules on the grounds of lack of adverse impact as follows: Nacogdoches has inquired whether the impact analysis employed in the *Second Report and Order in Docket 19995, supra*, would produce the "statistically valid projections" required under this standard. While we do not intend to narrowly limit the method by which prospective petitioners might undertake to show a lack of impact, we would consider an analysis of potential impact generally patterned on the methodology of the *Second Report and Order* an appropriate means of carrying the waiver burden. Certain evident changes in that analytical framework, however, would be required and would include:

[S]uch a showing would necessarily include statistically valid projections of future impact and would address the issue on a market-wide basis, not just with respect to a single cable community. [*Texas Community Antennas, Inc., supra*, at Paragraph 14.]

(a) The audience fractionalization calculations described in paragraph 26(1)-(3) of the *Second Report and Order* must be adjusted to reflect the impact of eliminating a station's network program nonduplication protection altogether, not of just reducing it from same-day to simultaneous protection.

(b) The prime-time, non prime-time distinctions utilized in paragraph 26(1)-(3) of the *Second Report and Order* in estimating audience fractionalization may be dispensed with and total audience share statistics used instead. Commission experience indicates that these distinctions complicate impact determinations without providing a commensurate increase in the accuracy of the resulting prediction.

(c) Cable subscribership or penetration within a station's specified zone must be projected for a reasonable, short-term period and corresponding increases or decreases in audience fractionalization to be expected in this period estimated.

So modified, the *Second Report and Order* formulation would, at least so far as audience-loss calculations are concerned, satisfactorily supply the market-wide, future impact showing required by our waiver standard. We are aware, of course, that both the *Second Report and Order* and long-standing Commission policies require eventual translation of audience-loss data into financial impact figures and ultimately into "loss of service" estimates before a complete impact analysis will have been made.[16] Indeed, Nacogdoches contends that this requirement mandates that it be granted access to KTRE-TV's Annual Financial Reports (FCC Form 324). Balancing the minimal program diversity benefits to be gained by deletion of non-duplication protection,[17] however, against the substantial countervailing public interest considerations dictating non-disclosure of a broadcaster's financial information unless placed in issue by station involved,[18] we do not believe that the release of confidentially-obtained data is justified simply because a cable operator alleges that exemption from the nonduplication rule will occasion negligible financial impact on a local station. At the same time, we are sensitive to the legitimate needs of a cable system for the information necessary to bear its waiver burden. We have concluded, therefore, that for purposes of establishing a prima facie case for waiver based on lack of adverse economic impact, the Commission shall look to audience-loss data, the nature of the market and station involved and the financial data concerning the station which is publicly available.[19] In view of the corelation between viewer diversion and revenue impact, we do not consider this necessary compromise either unreasonable or unduly distortive.[20] Buford's argument that *Second Report and Order* methodology is unsuited to evaluation of waiver petitions such as Nacog-

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[14] We note that the rule at issue has been upheld on judicial review. *See CBS Television Network Affiliates Association* v. *FCC*, 555 F.2d 983 (D.C. Cir. 1977).

[15] We have a long established preference in the area of cable television for making regulatory adjustments by means of rulemaking rather than case-by-case adjudication. This preference stems from the recognition that ad hoc litigation as an instrument of policy tends to be inefficient from the perspective of the regulator and inequitable from the perspective of the vast majority of regulatees who by definition are not parties to the adjudication. The courts traditionally have upheld the exercise of agency discretion in this important matter of the ordering of agency business. *SEC* v. *Chenery Corp.*, 332 U.S. 194 (1947).

[16] *See Second Report and Order in Docket 19995, supra*, at paragraph 26(4); and n. 11, *supra*.

[17] *See* Paragraph 20, *infra*.

[18] *See e.g., Brookhaven Cable TV, Inc.* and *Carter Cable TV of Gainesville, Inc.*, FCC 77-570, 65 FCC 2d 639 (1977).

[19] Petitioner's contention that non-disclosure of KTRE-TV's financial reports alone renders the waiver standard insurmountable and the nonduplication rule, in turn, an unconstitutional restraint on speech, is unpersuasive. The alternative indices of impact we have detailed here are sufficient to measure the potential effects of a waiver and provide the necessary means for rebutting the impact presumption.

[20] The extent of this correlation is presently being considered in our *Notice of Inquiry in Docket 21284, supra*.

doches' is unsupported and unconvincing. The Commission has relied upon this methodology in contexts other than the Mountain Time Zone cases for which is was developed [21], and nothing suggests that this means of impact calculation, modified as indicated above, should be any less applicable here.

20. Nacogdoches contends that the inclusion of a future impact requirement in the waiver standard is both unprecedented and arbitrary. We cannot agree. This requirement is necessary if the Commission is to avoid granting waivers which, based on reasonably predictable changes in circumstances, must soon thereafter be withdrawn, with the consequent disruption of market conditions and subscriber habits such withdrawal might entail. It should also be noted that, contrary to petitioner's claims, the Commission has utilized similar short-term projections of impact in evaluating waivers in other contexts.[22] Although it is clear that this case is not decided on the grounds of future impact, we emphasize that we do not expect a petitioner to engage in highly sophisticated if not speculative labors to demonstrate what this impact might be. We do, however, expect a petitioner, based upon his knowledge of the market, to provide us with data from which reasonable predictions can be made. Relevant factors include, but are not limited to, the number of existing systems, the number of outstanding franchises and the history of past cable growth.

e. *Nacogdoches' Evidence*

21. We must now turn to an evaluation the audience-loss data submitted by petitioner in an attempt to justify its request for waiver. Nacogdoches claims that audience fractionalization resulting from deletion of nonduplication protection for KTRE-TV on all cable television systems within that station's specified zone [23] would approximate 4.4%. Petitioner has arrived at this estimate by first determining the number of subscribers on each cable television system inside KTRE-TV's zone of protection, multiplying the total for each system KTRE-TV's share of viewing in the appropriate county and summing the resulting figures to ascertain the total number of cable subscribers who would be viewing KTRE-TV if all cable subscribers in the zone were watching television at any given time. This total was in turn multiplied by the rating (percentage of homes viewing television) for KTRE-TV's market (presumably during the 9:00 a.m. to midnight period) in order to determine the average number of subscribers actually viewing KTRE-TV. The resulting average was then multiplied by a 50% fractionalization factor to arrive at the total number of subscribers potentially diverted from KTRE-TV to a duplicating signal. Finally, the percentage audience-loss for KTRE-TV occasioned by diversion of these subscribers was calculated by dividing the number of diverted subscribers by the total number of TV households in KTRE-TV's 55 mile zone. Unfortunately, petitioner's analysis suffers from such substantial errors that its conclusions are of no value. The most serious of these mistakes is the assumption that the total number of TV households in KTRE-TV's specified zone may be taken to represent the station's base audience in calculating the audience-loss impact percentage.[24] This assumption is faulty in two respects. First, since we seek to determine the percentage of KTRE-TV's *total* audience which potentially diverted subscribers represent, we must ascertain the station's base audience from the average number of viewers it receives from all areas, not just from inside the station's specified zone. Second, and more importantly, if the number of cable viewers lost to KTRE-TV by removal of nonduplication protection is determined by adjusting the total number of cable subscribers in the station's zone of protection by the market rating factor and by KTRE-TV's share factor, then the total audience figure against which this result is to be compared must also be adjusted by these factors. Otherwise, impact will be grossly understated. Substitution of KTRE-TV's average total survey area (TSA) audience, 9:00 a.m. to midnight, for the denominator in petitioner's impact calculation, as indicated in the formula below, resolves both of these errors.[25]

Relying on TSA audience figures, then, and correcting for other data errors in petitioner's calculations, the actual audience-loss percentage for KTRE-TV may be determined as follows:

$$\frac{[\textit{Potential KTRE-TV Cable Audience}]\ [26] \times [\text{Marketing Rating}] \times .5}{[\text{KTRE-TV's Average Total Survey Area Audience, 9 a.m.-midnight}]}$$

Thus:

$$([5903] \times [0.33] \times [0.5]) \div 7{,}000 = 974 \div 7{,}000 = 0.139$$

Thus, KTRE-TV may be expected to lose 13.9 percent of its average audience if market-wide deletion of nonduplication protection is authorized.[27] And, since this percentage represents only the effects of present, not projected, cable penetration, the predictable audience loss to KTRE-TV could well be larger. Even accepting the 50-percent return on investment for KTRE-TV suggested by Nacogdoches,[28] the magnitude of the audience-loss indicated by the above calculations, coupled with the small size of KTRE-TV's market, compels the conclusion that Nacogdoches has failed to establish the prima facie case of lack of impact which it posits as justification for waiver of the rules.

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[21] *See, e.g., NEP Communications, Inc.* (Scranton, Pennsylvania), FCC 76-640, 60 FCC 2d 92 (1976), *recons. granted in part*, FCC 77-58, 63 FCC 2d 282 (1977). *See also, Further Notice of Proposed Rulemaking in Docket 20561, supra; Notice of Inquiry in Docket 21284, supra.*

[22] Extrapolation of future impact is implicit, for example, in the durational limitations imposed on waivers granted by the Commission in several Mountain Time Zone cases. *See e.g., Four States Television, Inc.* (Farmington, New Mexico) FCC 76-533, 59 FCC 2d 1159 (1976).

[23] Petitioner's impact calculation premised on removal of protection on the Nacogdoches system alone will not be considered here since any showing based on such a calculation would be facially insufficient to satisfy the waiver standard.

[24] Petitioner has also erred by utilizing uniformly incorrect share percentages for KTRE-TV in its calculations, although its error here tends to overstate rather than understate impact since the figures were consistently too high. *Compare* n. 8, *supra*, with n. 27, *infra*.

[25] TSA audience figures are based on a survey of television homes in the geographical area comprising those counties in which an estimated 98% of the viewing of a home market station occurs. And, because TSA audience figures reflect the actual number of households viewing a given station, they automatically account for the market rating and share percentage factors.

[26] Assumes 100% of cable subscribers are viewing television during the 9:00 a.m.-midnight period.

[27] The 5903 figure in the above formula was derived as follows (subscriber totals for individual systems are taken from Television Digest "Factbook," services volume, 1977 edition, and are identical to those employed by petitioner):

Community (County)	Subscribers	× KTRE-TV County "Shares"*	= Potential KTRE-TV Cable Audience
Rusk (Cherokee)	800	1%	8
Grapeland (Houston)	382	26%	99
Crockett (Houston)	1962	26%	510
Trinity (Trinity)	905	40% **	362
Livingston (Polk)	949	5% ***	47
San Augustine (San Augustine)	350	15% ***	53
Center (Shelby)	800	1% **	8
Nacogdoches (Nacogdoches)	6600	33%	2178
Lufkin (Angelina)	7095	32%	2270
Diboll (Angelina)	1150	32%	368
			5903

* All share percentages are taken from Arbitron Television 1976 county coverage reports and are based on cable households, unless otherwise noted.

** Total audience share percentage used since neither cable nor noncable share figures are reported for these counties.

*** Cable share percentage derived by means of a weighted average from total audience and noncable shares. The market (Tyler, Tex.) rating and KTRE-TV's share percentage as well as KTRE-TV's average TSA audience were derived from Arbitron Television reports for 1976.

[28] We do not imply, of course, that this percentage is necessarily correct. In fact, we have been unable, from the data submitted by petitioner, to determine the method by which this figure was calculated.

In view of the foregoing, and given our disposition of petitioner's other arguments supporting reconsideration, the Commission finds that grant of the instant petition for reconsideration would not be in the public interest. Moreover, since petitioner has advanced no viable grounds for waiver of its nonduplication obligations to KTRE-TV, its continued failure to provide KTRE-TV with such program protection constitutes a violation of section 76.92 of the rules.[29] And, since petitioner has previously been directed to comply with our rules and has not done so, we shall now order Nacogdoches to show cause why it should not be directed to cease and desist from further violation of our network program nonduplication requirements.

Accordingly, *it is ordered*, That the "Petition for Reconsideration" filed by Texas Community Antennas, Inc., d.b.a. Nacogdoches Cable TV, is denied.

It is further ordered, That the "Petition for Order to Show Cause" (CSC-124) filed by Buford Television, Inc., is granted.

It is further ordered, That pursuant to sections 312 (b) and (c) of the Communications Act of 1934, as amended, 47 U.S.C. 312 (b) and (c), Texas Community Antennas, Inc., d.b.a. Nacogdoches Cable TV, is directed to show cause why it should not be ordered to cease and desist from further violation of section 76.92 of the Commission's rules on its cable television system at Nacogdoches, Tex.

It is further ordered, That Texas Community Antennas, Inc., d.b.a. Nacogdoches Cable TV, is directed to appear and give evidence with respect to the matters described above at a hearing to be held at a time and place and before an Administrative Law Judge to be specified by subsequent order, unless hearing is waived, in which event a written statement may be submitted.

It is further ordered, That Buford Television, Inc., is made a party to this proceeding.

It is further ordered, That the Secretary of the Federal Communications Commission shall send copies of this order by certified mail to Texas Community Antennas, Inc., d.b.a. Nacogdoches Cable TV.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-21489 Filed 8-2-78; 8:45 am]

[29] We note that KTBS-TV is significantly viewed in Nacogdoches County and that, pursuant to the Commission's action in its *Memorandum Opinion and Order in Docket 19995*, FCC 78-217, —— FCC 2d —— (1978), petitioner would not be required to delete KTBS-TV in favor of KTRE-TV. The effective date of this decision, however, has been stayed pending reconsideration and Nacogdoches must, therefore, provide protection in the interim.

[6712-01]

TUSCOLA BROADCASTING CO., ET AL.

Designating Applications for Consolidated Hearing on Stated Issues; Memorandum Opinion and Order

In re applications of Tuscola Broadcasting Co. (WKYO), Caro, Mich. Has: 1360 kHz; 500 w; D. For Renewal of Standard Broadcast License, BC Docket No. 78-214; File No. BR-4146. CASS RIVER BROADCASTING CO., Caro, Mich. Req: 1360 kHz; 1 kW, DA-2; U. For Construction Permit for New Standard Broadcast Station, BC Docket No. 78-215 File No. BP-20,663. TUSCOLA BROADCASTING CO. (WIDL-FM), Caro, Mich. Has: 104.9 MHz, Channel No. 285; 3 kW ERP; 300 feet (H&V). For Renewal of FM Broadcast License, BC Docket No. 78-216; File No. BRH-2982. CASS RIVER BROADCASTING CO., Caro, Mich. Req: 104.9 MHz, Channel No. 285; 3 kW. ERP; 300 feet (H&V). For Construction Permit for New FM Broadcast Station, BC Docket No. 78-217; File No. BPH-10,245.

Adopted: July 12, 1978.

Released: July 28, 1978.

By the Commission:

1. The Commission has before it for consideration: (a) the above-captioned applications of Tuscola Broadcasting Co. (Tuscola) for renewal of its broadcast licenses for radio Stations WKYO and WIDL-FM, Caro, Mich.; (b) the above-captioned applications of Cass River Broadcasting Co. (Cass) for construction permits for new AM and FM stations at Caro, Mich., to operate on the same frequency and channel as stations WKYO and WIDL-FM; and (c) results of a Commission filed investigation into the operation of Tuscola.

2. Except as indicated below, the applicants are qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. In addition, information before the Commission raises serious questions as to whether Tuscola and Cass posses the requisite qualifications to remain or become a licensee of the captioned facilities. In view of these questions, the Commission is unable to find that a grant of the renewal applications for Tuscola or the construction permits for Case would serve the public interest, convenience and necessity and must, therefore, designate the applications for hearing.

3. Accordingly, *it is ordered*, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(a) To determine whether, and if so, the extent to which Tuscola has violated section 73.1205 of the Commission's Rules regarding fraudulent billing practices, the degree of knowledge or participation in those practices by principals of Tuscola and the degree of supervision over the operation of WKYO and WIDL-FM exercised by the licensee Tuscola;

(b) To determine whether, and if so, the extent to which Tuscola has violated section 1.613 of the Commission's Rules regarding the filing of stock option contracts;

(c) To determine whether, and if so, the extent to which Tuscola has violated section 1.615 of the Commission's Rules regarding the filing of its station ownership report;

(d) To determine whether, and if so, the extent to which principals of Cass have violated section 73.1205 of the Commission's Rules regarding fraudulent biling practices and the degree of knowledge or participation in those practices by principals of Cass;

(e) To determine which of the proposals would on a comparative basis, better serve the public interest; and

(f) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

4. *It is ordered*, That the Chief of the Broadcast Bureau is directed to serve upon the captioned applicants within thirty (30) days of the release of this Order, a Bill of Particulars with respect to issues (a) through (c), inclusive.

5. *It is further ordered*, That the Broadcast Bureau and Cass shall jointly proceed with the initial presentation of evidence with respect to issues (a) through (c), inclusive, the Bureau shall proceed with the initial presentation of evidence with respect to issue (d) and that Tuscola shall then proceed with its evidence concerning issues (a) through (c) and have the burden of establishing that it possesses the requisite qualifications to be and remain a Commission licensee and that a grant of the application would serve the public interest, convenience and necessity.

6. *It is further ordered*, That Cass River shall, within 30 days, amend its AM application to specify a different site, radiation pattern or other technical changes designed to limit overlap received by the co-channel station in Walkerton-Hanover, Ontario, to that presently authorized by Tuscola's outstanding construction permit (BMP-

14345) to increase daytime power and add nighttime hours of operation.[1]

7. *It is further ordered,* That absent the submission of a suitable amendment, the Administrative Law Judge shall dismiss the Cass River AM application.

8. *It is further ordered,* That to avail themselves of the opportunity to be heard, the applicants, pursuant to section 1.221(c) of the Commission's Rules, in person or by attorney, shall, within twenty (20) days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and present evidence on the issues specified in this Order.

9. *It is further ordered,* That the applicants herein, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 1.594 of the Commission's Rules, shall give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission thereof as required by section 1.594(g) of the Rules.

10. *It is further ordered,* That the Secretary of the Commission send a copy of this Order by Certified Mail—Return Receipt Requested to Tuscola Broadcasting Co. and Cass River Broadcasting Co.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-21490 Filed 8-2-78; 8:45 am]

[1] Cass River proposes facilities essentially identical to those described in BMP-14345, except for the site location. On Oct. 4, 1976, Canada notified the United States of a new station assignment at Walkerton-Hanover, Ontario. The Commission responded to Canada's notification with no objection on Oct. 13, 1977, noting that the Walkerton-Hanover station apparently would receive overlap from station WKYO, but would not cause any overlap to WKYO. However, since the Cass River application specifies a site about one mile closer to the Walkerton-Hanover notified site, it would cause additional overlap to the Canadian station contrary to the provisions of the North American Regional Broadcasting Agreement.

[1610-01]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following request for clearance of reports intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on July 28, 1978. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed ICC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before August 21, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

INTERSTATE COMMERCE COMMISSION

The ICC requests an extension without change clearance of Form M-4, Annual Report—Motor Carrier Holding Companies. Form M-4 is required to be filed pursuant to section 220 of the Interstate Commerce Act. Data collected by Form M-4 are used for economic regulatory purposes. The ICC estimates that respondents number approximately 73 and that reporting burden averages 45 hours per report.

The ICC requests an extension without change clearance of Form TCS, Annual Report of Freight Statistics—Motor Carrier. Form TCS is required to be filed pursuant to section 220 of the Interstate Commerce Act. Data collected by Form TCS are used for economic regulatory purposes. Reports are mandatory and available for use by the public, except that traffic of less than 3 shippers of a single commodity may be excluded and filed in a supplemental report not open for public inspection. The ICC estimates respondents to number approximately 634 Class I Motor Carriers of Property and that reporting burden averages 470 hours per report.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-21571 Filed 8-2-78; 8:45 am]

[6820-22]

GENERAL SERVICES ADMINISTRATION

REGIONAL PUBLIC ADVISORY PANEL ON ARCHITECTURAL AND ENGINEERING SERVICES

Meeting

JULY 20, 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 5, August 31, 1978, from 9 a.m. to 5 p.m., Room 3520A, John C. Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Ill. 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 the proposed Energy Conservation Retrofit Studies for two (2) Federal Buildings located in Chicago, Ill. The meeting will be open to the public.

Dated: July 20, 1978.

CLARENCE S. SOCHOWSKI,
Regional Administrator.

[FR Doc. 78-21471 Filed 8-2-78; 8:45 am]

[6820-22]

REGIONAL PUBLIC ADVISORY PANEL ON ARCHITECTURAL AND ENGINEERING SERVICES

Meeting

JULY 25, 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 1; August 31, 1978, from 9 a.m. to 1 p.m., Room 711, J. W. McCormack Post Office and Courthouse, Post Office Square, Boston, Mass. 02109.

The Public Advisory Panel will review and advise the region on the acceptability of conceptual design proposed by the A-E firm commissioned for this project:

New Construction, U.S. Border Station, Fort Kent, Maine.

The meeting is open to the public.

ALAN E. GORHAM,
Acting Regional Administrator.

[FR Doc. 78-21656 Filed 8-2-78; 8:45 am]

[4110-92]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services

[Program Announcement No. 13627-783]

RESEARCH AND TRAINING CENTERS

Announcement of Availability

AGENCY: Office of Human Development Services, DHEW.

SUBJECT: Announcement of Availability of Grant Funds for Rehabilitation Research and Training Center Program in the rehabilitation of persons with severe or chronic disabilities resulting from mental illness.

SUMMARY: The Rehabilitation Services Administration (RSA) announces that applications are being accepted for a grant, under title II of the Rehabilitation Act of 1973, as amended, to establish a Rehabilitation Research and Training Center in the area of mental illness. Regulations governing this program are published in the *Code of Federal Regulations* in 45 CFR part 1362.62. Institutions of higher education, States, and public or nonprofit organizations, including rehabilitation facilities which will collaborate with an institution of higher education may apply.

DATES: Closing date for receipt of application is September 13, 1978. Applicants are encouraged to respond at an earlier date if possible.

SCOPE OF THIS ANNOUNCEMENT

This program announcement covers one funding priority of the Rehabilitation Research and Training Center Program for fiscal year 1978. This funding priority is in the area of mental illness.

PROGRAM PURPOSE

The Rehabilitation Act authorizes the establishment of Rehabilitation Research and Training Centers as distinct organizational and physical entities in conjunction with appropriate institutions of higher education which have expertise and well-developed resources for conducting multidisciplinary research and training and operate in association with clinical services considered essential for carrying out a comprehensive program of patient/client care and rehabilitation.

PROGRAM GOAL AND OBJECTIVES

The major goal of a Research and Training Center in rehabilitation of mentally ill persons is to conduct a program of rehabilitation research which focuses on the psychological, social, and vocational problems of persons with severe and/or persistent functional impairments resulting from mental illness. RSA defines a program of research as that in which the entire research program is planned so as to contribute in a sequential or complementary way to a centralized body of knowledge of manageable scope. Each separate study or investigation must have some reasonable relationship to the central topic or research core area and must be undertaken on the basis of a predetermined plan developed upon the basis of a review of what is already known about the topic. The research should focus on a limited number of high priority areas. The research findings should have near-term relevance and application to the rehabilitation of mentally ill persons.

The training objectives are to conduct teaching and training programs to disseminate and promote the utilization of research findings, thereby reducing the usual long delay between the discovery of new knowledge and its application in a practical setting, and to assist in the maintenance of high quality technical and professional staff.

The specific objectives of the service component is to provide an array of rehabilitation services for mentally ill persons in cooperation with local and State agencies and health centers whose responsibilities include the mentally ill, and to test, in a practical setting, the effectiveness of various techniques and patterns of delivering rehabilitation services for the mentally ill.

Research, training, and services are expected to be mutually supportive. Specifically, this calls for research ideas to derive from service delivery problems and for research findings to be disseminated through training.

Applicants for a Research and Training Center in Rehabilitation of Mentally Ill Persons must demonstrate their capabilities for achieving the Research and Training Center Program goal and objectives. Problem areas that may be addressed, but not limited to are:

a. Improved *methods for assessing rehabilitation potential and for measuring rehabilitation outcomes* for persons disabled by mental illness.

b. The *differential effects of alternative types of living arrangement* on the functioning of persons disabled by different types and degrees of mental illness problems, including hospitals, supportive or sheltered community environments, family environments, transitional living facilities, etc.

c. Factors contributing to successful vocational rehabilitation and community adjustment, such as:

(1) Characteristics of mentally ill people and associated work behavior patterns.

(2) Influences on vocational rehabilitation of such factors as: Family, living situation, treatment availability, general socioeconomic conditions (e.g., unemployment), and work environment.

(3) Effect of medication on the vocational rehabilitation process, work performance, and community adjustment.

d. Evaluate existing methods and develop improved approaches for providing *transitional and long-term employment opportunities* in the least restrictive settings.

e. *Determine impact on families, employers, and the community at large* of alternative methods for providing treatment and rehabilitation services.

f. Develop and evaluate improved methods for prompt intervention to minimize functional impairment.

g. Develop and evaluate improved methods for promoting such activities as peer support and *mutual and self help* to enhance rehabilitation.

h. *Cost effectiveness of alternative approaches to organizing comprehensive rehabilitation and community* support systems.

i. Utilization of and training implications for institutional staff displaced by deinstitutionalization.

TRAINING

The training objectives are to conduct teaching and training programs to disseminate and promote the utilization of the research findings, thereby reducing the usual long delay between the discovery of new knowledge and its wide application into practice, and to assist in the maintenance of high quality technical and professional staff.

TECHNICAL ASSISTANCE

In response to concerns expressed by service providers which relate to the Center's research activities, the Research and Training Center staff members agree to serve as consultants and to make recommendations for improving service delivery. The Research and Training Center also plays a coordinating and communication role with various agencies serving the mentally ill.

ELIGIBLE APPLICANTS

Institutions of higher education, States, and public or nonprofit agencies and organizations or rehabilitation facilities having well-recognized programs of research and associated with institutions of higher education may apply for Center grants.

AVAILABLE FUNDS

The Research and Training Center is jointly funded by the National Institute of Mental Health and the Rehabilitation Services Administration. Approximately $300,000 is available to establish the Research and Training Center.

The initial grant sustains the Federal share of the budget for the first year of the project. Annually, the continuation grant is based upon an evaluation of the performance of the center and the availability of funds.

Additional core areas may be supported in subsequent years depending on funds available and needs of the agency.

GRANTEE SHARE OF THE PROJECT

While no specific percentage of grantee sharing is required, grantees are expected to commit their resources to the support of activities of the

center. The administrative overhead costs (indirect) in the research and training center program is limited to 15 percent of total allowable direct costs. The difference may be considered as a part of the applicant or the university's share.

THE APPLICATION PROCESS

Availability of forms

Application for a research and training center grant must be submitted on standard forms provided for this purpose. Application kits which include the forms and other information may be obtained by writing to: Division of Grants and Contract Mangement, Office of Human Development Services, Room 1427, Mary E. Switzer Building, 330 C Street SW., Washington, D.C. 20201; Attention: 13627-783—telephone, 202-245-0051.

Application submission

One signed original and two copies of the grant application, including all attachments, must be submitted to the address indicated in the application instructions. Additionally, a copy of the application is to be submitted concurrently to the appropriate State Vocational Rehabilitation Agency for review and comment.

Application consideration

The Commissioner of Rehabilitation Services Administration determines the final action to be taken with respect to each grant application.

All grant applications are subjected to a competitive review and evaluation conducted by qualified persons including those outside the Federal Government. The results of the competitive review supplement and assist the Commissioner's consideration of the competing applications. The Commissioner's consideration also takes into account the comments of the State Agencies of Vocational Rehabilitation, the RSA Regional Office and the headquarters program office. Comments on the applications may also be requested from appropriate specialists and consultants inside and outside the Government.

After the Commissioner has reached a decision either to disapprove or not to fund a grant application, unsuccessful applicants are notified in writing of this decision. The successful applicant is notified through the issuance of a notice of grant awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which support is given, the total grantee share expected, and the total period for which project support is contemplated.

CRITERIA FOR REVIEW AND EVALUATION OF APPLICATIONS

Competing grant applications will be reviewed and evaluated against the following criteria:

1. Objective of the Research and Training Center are in consonance with and capable of achieving the RSA program goal and objectives as defined in this announcement;
2. The Center design, including the research and training plan, is capable of attaining Center objectives;
3. Adequate facilities are available to the applicant to carry out the project;
4. Project personnel, actual or proposed are highly qualified and University faculty appointments of core staff are appropriate;
5. Staffing patterns are appropriate;
6. The Center demonstrates a satisfactory affiliation arrangement with a University and is a distinct organizational unit and sufficiently independent in its administration within the affiliation arrangement;
7. The University with which the Center is affiliated has multidisciplinary rehabilitation resources available;
8. The Center has adequate relationships with other departments within the University, with State vocational rehabilitation agencies, mental health centers, and with public and voluntary organizations, serving the mentally ill;
9. The application demonstrates or contains adequate plans and procedures for insuring the relevance of research and training to current needs in rehabilitation of persons with severe or chronic disabilities resulting from mental illness;
10. The University's affiliated service components are satisfactory and adequate;
11. The extent to which the applicant or University appropriately commits its resources to the activities of the Center;
12. The project demonstrates the potential for project results to be effectively utilized;
13. The application demonstrates that the applicant has a knowledge of vocational rehabilitation issues as well as past and present research in the core areas selected;
14. The application demonstrates that the Center research will directly improve affiliated clinical services;
15. The estimated cost to the Government is reasonable in relation to anticipated project results; and
16. Applicant's demonstrated ability and capacity in their long-range planning to accomplish or achieve all core areas listed.

CLOSING DATE FOR RECEIPT OF APPLICATIONS

The closing date for receipt of applications under this Program Announcement is September 13, 1978. Applicants are encouraged to respond at an earlier date if possible. Applicants may be mailed or hand delivered. Hand delivered applications will be accepted during regular working hours of 9 a.m. to 5 p.m.

An application will be considered to have arrived by the closing date if:

1. The application was sent by registered or certified mail, no later than September 13 as evidenced by the U.S. Postal Service postmark or the original receipt from the U.S. Postal Service.
2. The application is hand delivered to the office designated to receive the application in the application instructions. Hand delivered applications will be accepted no later than close of business, September 13, 1978, in any case; and
3. The application is sent by mail and received on or before the closing date in the Department of Health, Education, and Welfare, the Office of Human Development Services or the Rehabilitation Services Administration mailrooms as evidenced by the time date stamp or other documentary evidence of receipt maintained by such mailroom.

Late applications are not acceptable and applicants will be notified accordingly.

(Catalog of Federal Domestic Assistance Program No. 13.627, Rehabilitation Research and Demonstrations.)

Dated: July 27, 1978.

JOHN A. LAVAN
Acting Commissioner of Rehabilitation Services.

Approved: July 28, 1978.

ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

[FR Doc. 78-21482 Filed 8-2-78; 8:45 pm]

[4110-12]

Office of the Secretary

SECRETARY'S ADVISORY COMMITTEE ON THE RIGHTS AND RESPONSIBILITIES OF WOMEN

Meeting

The Secretary's Advisory Committee on the Rights and Responsibilities of Women, which is established to provide advice to the Secretary of Health, Education, and Welfare on the impact of the policies, programs, and activities of the Department on the status of women, will hold its Health Task Force meeting on Wednesday, September 6, 1978 from 9 a.m. to 5 p.m., in Room 529-A, HEW-Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. The agenda will include: (1) Report by Alberta Parker on her meeting with HEW health planners on July 17-18; (2) report on alcoholism initiative, teenage pregnancy initiative and sterilization regulations; (3) discussion of women employed in health field in HEW in the health profession and on health advisory boards.

Further information on the committee may be obtained from: Susan C. Lubick, Executive Secretary, telephone, 202-245-8454. These meetings are open to the public.

Date: July 28, 1978.

SUSAN C. LUBICK,
Executive Secretary, Secretary's Advisory Committee on the Rights and Responsibilities of Women.

[FR Doc. 78-21552 Filed 8-2-78; 8:45 am]

[4110-12]

STATEMENT OF MISSION, ORGANIZATION, AND FUNCTIONS

Amendments

Part A of the Statement of Mission, Organization, and functions for the Department of Health, Education, and Welfare, Office of the Secretary, is amended to amend and supersede chapter AL, Office of the Assistant Secretary (Legislation), (37 FR 5673, Mar. 17, 1972). The revised chapter will be coded AL and reads as follows:

SECTION AL-00 MISSION

The Office of the Assistant Secretary for Legislation provides advice and assistance to the Secretary with respect to all aspects of the Department's legislative program and congressional relations activities. The primary responsibilities of the Office of the Assistant Secretary for Legislation (AL) are to manage the presentation of the Department's legislative program to Congress, to service all types of congressional requests for assistance regarding HEW programs, and to facilitate communication generally between the Department and the Congress.

SECTION AL-10 ORGANIZATION

The Office of the Assistant Secretary for Legislation headed by the Assistant Secretary for Legislation, who reports to the Secretary, consists of the following:

The Office of the Assistant Secretary for Legislation (AL), Deputy Assistant Secretary for Legislation (AL-1), Office of Program Coordination (AL-2), Office of the Deputy Assistant Secretary for Legislation (Health) (ALH), Office of the Deputy Assistant Secretary for Legislation (Education) (ALE), Office of the Deputy Assistant Secretary for Legislation (Welfare) (ALW), and Congressional Liaison Office (ALC).

SECTION AL-20 FUNCTIONS

THE IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY FOR LEGISLATION (AL)

1. Serves as principal advisor to the Secretary with respect to all aspects of the Department's legislative program and congressional relations activities.

2. Manages presentation of the Department's legislative program to Congress.

3. Provides and coordinates liaison and information to Members of Congress, congressional committees, and committee staffs about the Department's legislative program.

4. Provides and coordinates liaison and information to Members of Congress, congressional committees, and congressional staffs about the policies and programs of the Department and its principal operating components.

5. Provides and coordinates liaison with the White House, other executive Departments, and in conjunction with the Offices of the General Counsel and the Assistant Secretary for Management and Budget with the Office of Management and Budget, in developing and explaining the Department's legislative program.

6. Works with other Assistant Secretaries and Departmental officials, in accordance with guidelines established by the Secretary, in developing and implementing the Department's legislative program. Works closely with the General Counsel, the Assistant Secretary for Planning and Evaluation, Assistant Secretary for Public Affairs, and the Assistant Secretary for Management and Budget.

7. Serves as functional manager of the Office of Intergovernmental and Congressional Affairs in each HEW Regional Office which is responsible for providing liaison with State and local governments and congressional district offices and carrying out analysis of major intergovernmental issues.

8. Provides and coordinates liaison to external organizations, including public and private interest groups, with respect to the Department/Administration's legislative program.

DEPUTY ASSISTANT SECRETARY FOR LEGISLATION (AL-1)

Serves as principal deputy to assist in carrying out a broad range of the Assistant Secretary's responsibilities. This includes various aspects connected with the development and administration of the Department's legislative program and congressional relations activities. In the absence of the Assistant Secretary, incumbent serves as the Acting Assistant Secretary.

OFFICE OF PROGRAM COORDINATION (AL-2)

Responsible for the management of the policy development and analysis, evaluation, and clearance activities of the Assistant Secretary's office. Responsible for the coordination of activities of Office of the Assistant Secretary for Legislation and the Department with respect to the Congressional Budget Process (Pub. L. 93-344). Provides staff support for the Assistant Secretary for Legislation functional manager responsibilities to the 10 Intergovernmental and Congressional Affairs staffs of the HEW regional offices. Directs the personnel, budget, and general management affairs of the Office of the Assistant Secretary for Legislation and, as assigned, responsible for legislative affairs in specific substantive areas, including those dealing with personnel and general management issues.

OFFICE OF THE DEPUTY ASSISTANT SECRETARY FOR LEGISLATION (HEALTH) (ALH)

The Deputy Assistant Secretary for Legislation (Health) reports to the Assistant Secretary for Legislation and assists him in carrying out the functions described above in the area of health and health care financing. Participates in coordinating legislative planning, helps to implement the Department's legislative program, and provides specialized liaison to congressional committees, both staff and members.

OFFICE OF THE DEPUTY ASSISTANT SECRETARY FOR LEGISLATION (EDUCATION) (ALE)

The Deputy Assistant Secretary for Legislation (Education) reports to the Assistant Secretary for Legislation and assists him in carrying out the functions described above in the area of education. Participates in coordinating legislative planning, helps to implement the Department's legislative program and provide specialized liaison to congressional committees, both staff and members.

OFFICE OF THE DEPUTY ASSISTANT SECRETARY FOR LEGISLATION (WELFARE) (ALW)

Reports to the Assistant Secretary for Legislation and assists him in carrying out the functions described above in the area of social services and income security policy. Participates in coordinating legislative program and provides specialized liaison to congressional committees, both staff and members.

CONGRESSIONAL LIAISON OFFICE (ALC)

The Director of this office reports to the Assistant Secretary for Legislation and has responsibility for maintaining orderly and harmonious relationships between Members of Congress and their office staff and the Department. This serves as a focal point for oral and written communications between the Department and the Congress. It is responsible for following up on requests from Congress for information and assistance about the programs and operations of the Department. The Office also maintains the Department's grant notification system to Members of Congress to advise them

on awards made from departmental programs.

Dated: July 24, 1978.

LEONARD D. SCHAEFFER,
Assistant Secretary for Management and Budget.

[FR Doc. 78-21553 Filed 8-2-78; 8:45 am]

[4110-85]

Public Health Service

NATIONAL CENTER FOR HEALTH STATISTICS POLICY STATEMENT ON RELEASE OF DATA

Availability

The National Center for Health Statistics (NCHS) in the Office of Health Policy, Research, and Statistics of the Public Health Service is authorized under section 304 of the Public Health Service Act, 42 U.S.C. 242(b) to carry out and support health statistical activities. In the course of these activities, in accordance with section 308(g)(2) of the act, 42 U.S.C. 242m, the Center is required to develop and disseminate high quality, timely, and comprehensive health related data which has been standardized, analyzed, and indexed. To explain how it carries out this mandate, NCHS recently issued a policy statement: *On Release of Data for Individual Elementary Units and Special Tabulations*, DHEW Publication No. (PHS) 78-1212, effective May 1, 1978, which revises a previous policy statement, issued July 1, 1972.

The policy statement discusses the ethical, legal, technical, technological, and economic restraints which affect NCHS's collection and publication of health related data for individual elementary units, persons and establishments. The policy statement may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Dated: July 24, 1978.

DOROTHY P. RICE,
Director, National Center for Health Statistics.

[FR Doc. 78-21491 Filed 8-2-78; 8:45 am]

[4310-02]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

CREEK INDIANS

Plan for the Use and Distribution of the Creek Judgment Funds Awarded in Docket 275 Before the Indian Claims Commission

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 210 DM 1.2.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated by the act of October 3, 1972, 86 Stat. 1498, in satisfaction of the award granted to the Creek Indians in Indian Claims Commission docket 275. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated April 3, 1978, and was received (as recorded in the Congressional Record) by the House of Representatives and the Senate on April 6, 1978. Neither House of Congress having adopted a resolution disapproving it, the plan became effective on June 15, 1978, as provided by section 5 of the 1973 act, supra.

The plan reads as follows:

The funds appropriated by the act of October 31, 1972, 86 Stat. 1498, in satisfaction of an award granted to the Creek Nation in docket 275 before the Indian Claims Commission, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be used and distributed as provided herein.

Section 2. The Secretary of the Interior (hereinafter "Secretary") shall divide the judgment funds in docket 275, together with the interest and investment income accruing thereon, between the Creek Nation of Oklahoma and the descendants of the Creek Indians east of the Mississippi (hereinafter "Eastern Creeks"), on the basis of the number of persons of each group, to the total of 41,653 persons, designated as "Oklahoma Creek" or "Eastern Creek", on the 1968 payment roll, prepared pursuant to the act of September 21, 1968, 82 Stat. 855, for the purpose of distributing the Creek judgment funds in docket 21. The share of the Oklahoma Creeks is 33,997/41,653, or 81.6196 percent, and the share of the Eastern Creeks is 7,656/41,653, or 18.3804 percent.

EASTERN CREEK DESCENDANTS

Section 3. For the purposes of distributing the apportioned share of the funds of the Eastern Creeks, the Secretary shall bring current to the effective date of this plan the list of enrollees designated as Eastern Creeks on the updated 1968 payment roll: (i) By adding the names of persons living on the effective date of this plan who were eligible for enrollment under section 1 of the 1968 act, supra, but who were not enrolled; (ii) by adding the names of children born and living on the effective date of this plan to persons who were eligible for enrollment under section 1 of the 1968 act, supra, but who were not enrolled, regardless of whether such parents are living or deceased on the effective date of this plan; (iii) by adding the names of children born to enrollees on or prior to and who are living on the effective date of this plan; and (iv) by deleting the names of enrollees who are deceased as of the effective date of this plan.

(b) An application by a person who meets the requirements of subsections (i), (ii), or (iii), of section 3(a), for addition of his or her name on the updated roll for the purposes of a per capita share distribution of the funds apportioned to the Eastern Creeks, must be filed with the area director of the Bureau of Indian Affairs, Muskogee, Okla., in the manner and within the time limits prescribed for those purposes in regulations to be issued by the Secretary in the FEDERAL REGISTER. Such rules and regulations will also provide procedures for enrollees on the 1968 payment roll to claim their shares of docket 275 funds. Appeals shall be handled in accordance with the procedures established under 25 CFR 42, Enrollment Appeals.

(c) The Secretary shall make a per capita distribution of the totality of the Eastern Creek funds and the interest and investment income accrued thereon, in a sum as equal as possible to each person enrolled for purposes of effecting this plan.

CREEK TRIBE OF OKLAHOMA

Section 4(a) The apportioned funds of the Creek Tribe of Oklahoma, shall be utilized to provide and maintain social and economic development programs set forth in this plan and in the amounts specified, which shall be subject to proportionate adjustments when the exact share of the Creek Tribe is determined, for the benefit of the Creek members by blood:

Economic development, $435,000. The principal fund and the interest and investment earnings thereon, shall be invested in the development of tribal and individual enterprises, the support of individual Creek entrepreneurs, tribal industrial development, and in tribal land purchases from which the tribe may realize a productive return. The amounts utilized shall be secured by equivalent collateral in order to safeguard the tribe's investment.

Social development, $350,000. The principal fund shall be earmarked for specific programs and such funds and/or the interest and investment earnings thereon, shall be utilized in the manner and for the purposes set out in this plan.

(1) *Legal services $75,000.*—The earnings on such sum shall be used by the tribe to employ private or public counsel for the tribe or for individual members without resources for this service, on issues that may

affect the entire tribal membership or the interest of the tribe, such as Indian civil rights, protection of individual's rights in regard to land, and other matters.

(2) *Revolving loan—higher education, $150,000.*—The principal sum and the earnings thereon shall be utilized in secured loans to Creek individuals to pursue their higher education. Scholarships to exceptional Creek students shall be made by the utilization earnings.

(3) *Consumer credit program, $95,000.*—The consumer credit program shall be established to meet those needs not available from commercial credit resources. The principal fund and 80 percent of the earnings shall be available for loans which are one hundred percent secured. Twenty percent of the earnings shall be used as secured risk loans.

(4) *Welfare, $30,000.*—The earnings on such funds shall be used to make grants in certain areas of welfare and medical aid to tribal members who are without other sources of assistance.

Tribal operations $220,462. The principal funds shall be earmarked for specific programs and such funds and/or the interest and investment earnings thereon shall be utilized in the manner and for the purposes set out in this plan.

(1) *Tribal operations, $85,000.*—The principal amount and/or the earnings thereon shall be utilized in the administration of tribal operations and shall supplement funds from other sources used in tribal administration. The principal sum is to be expended not to exceed $10,000 per year.

(2) *Tribal claims and development, $75,000.*—The principal fund and/or earnings thereon, shall be expended for claims development.

(3) *Program development, $35,462.*—The earnings on such funds shall be used to meet the costs and expenses of developing programs.

(4) *Land management and development, $25,000.*—The principal fund and earnings thereon shall be expended over a period not to exceed 5 years for land management and development activities to provide the tribe maximum returns from the land.

(b) Such funds shall be deposited in separate interest-bearing accounts under the three major categories, Economic Development, Social Development and Tribal Operations, and shall be earmarked for the specific program activities delineated in section 4(a) of this plan. Such funds shall be withdrawn only as currently needed for program purposes under written guidelines and plans of operation and tribal budgets as are authorized by the Principal Chief and approved by the Secretary.

(c) The principal funds in the respective accounts until used for program purposes shall be held and invested by the Secretary pursuant to 25 U.S.C. 162e, and the interest and investment earnings thereon shall be utilized first in the programs of the respective categories. Principal sums invested pursuant to the plan shall be secured by equivalent collateral and higher education loans and consumer credit and loan programs shall also be secured. Pursuant to the Creek Nation credit program established on January 25, 1975, Resolution No. 75-14, the use and expenditure of funds set aside for investments, loans, and consumer loans and credits shall be governed by a credit programs declaration of policy and plan of operations, which shall be subject to approval by the Secretary.

(d) The funds set aside in each program activity may be used interchangeably within each category, except any changes in the proposed use of a specific line item resulting in a change as to purpose or amount shall require the approval of the Secretary.

Dated: July 26, 1978.

FORREST J. GERARD,
Assistant Secretary,
Indian Affairs.

[FR Doc. 78-21474 Filed 8-2-78; 8:45 pm]

[4310-84]

Bureau of Land Management

MONTROSE DISTRICT GRAZING ADVISORY BOARD

Meeting

JULY 26, 1978.

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Montrose District Grazing Advisory Board will be held on September 12 and 13, 1978. On September 12, the meeting will convene at 9:30 a.m. in the conference room of the Bureau of Land Management Office, Highway 550 South, Montrose, Colo. On September 13, the meeting will convene at 8 a.m. at the same place.

On both days attendees will then travel to allotments within the Uncompahgre Basin Resource Area to review grazing systems and proposed allotment management plans.

The agenda for the meeting will include: (1) A review of the current policy and program relating to allotment management plans including the final Uncompahgre Basin Resource Area Grazing ES and future grazing environmental statement effort; (2) the expenditure of advisory board funds for range improvements; and (3) the arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the board between 9:30 and 10:30 a.m. on September 12, 1978, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 1269, Montrose, Colo. 81401, by September 8, 1978. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the district manager.

Persons desiring to make the tour on September 12 or 13, should furnish their own transportation, food, and drink.

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.

R. S. SCHMIDT,
Acting District Manager.

[FR Doc. 78-21452 Filed 8-2-78; 8:45 am]

[4310-84]

Bureau of Land Management

[NM 33978]

NEW MEXICO

Application

JULY 25, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Tuco, Inc., has applied for one 4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 21 S., R. 25 E.,
Sec. 35, NW¼SW¼ and S½SW¼.

This pipeline will convey natural gas across 0.550 of a mile of public land in Eddy County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc. 78-21492 Filed 8-2-78; 8:45 am]

[4310-84]

[NM 33887 and 33981]

NEW MEXICO

Applications

JULY 25, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16,

1973 (87 Stat. 576), El Paso Natural Gas Co. has applied for four 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 21 S., R. 21 E.,
Sec. 23, W½NE¼, SE¼NW¼ and NW¼SE¼.
T. 20 S., R. 30 E.,
Sec. 29, NW¼SE¼.

These pipelines will convey natural gas across 0.785 of a mile of public lands in Eddy County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-21493 Filed 8-2-78; 8:45 am]

[4310-84]

[NM 33979]

NEW MEXICO

Application

JULY 26, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Natural Gas Pipeline Co. of America has applied for one 4-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 19 S., R. 24 E.,
Sec. 5, lot 1, S½NE¼ and W½SE¼.
Sec. 8, NW¼NE¼.

This pipeline will convey natural gas across 1.290 miles of public land in Eddy County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-21494 Filed 8-2-78; 8:45 am]

[4310-84]

[Wyoming 64389]

WYOMING

Application

JULY 27, 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 Continental Pipe Line Co. of Houston, Tex., filed an application for a right-of-way to construct a cathodic protection station for the protection and safe operations of their natural gas pipeline system and affects the following described public land:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 38 N., R. 79 W.,
Sec. 29, SW¼SW¼;
Sec. 30, SE¼SE¼.

The facilities for this station extend from a point of connection with an existing pipeline in the SE¼SE¼ sec. 30 and end in the SW¼SE¼ of sec. 29, T. 38 N., R. 79 W., Natrona 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, 951 Union Boulevard, Casper, Wyo. 82601.

WILLIAM S. GILMER,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-21496 Filed 8-2-78; 8:45 am]

[4310-84]

Bureau of Land Management

[Wyoming 64331]

WYOMING

Application

JULY 26, 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 Phillips Petroleum Co. of Bartlesville, Okla., filed an application for a right-of-way to construct a 6-inch inner diameter low pressure pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 47 N., R. 69 W.,
sec. 31, N½SE¼.
T. 46N., R. 70 W.,
sec. 1, SE¼.

The proposed pipeline will transport natural gas from points in the SW¼NW¼ sec. 32, T. 47 N., R. 69 W., SW¼NW¼ sec. 6, T. 46 N., R. 69 W., and NW¼SE¼ sec. 1, T. 46 W., R. 70 W., to a point of connection with Phillips Petroleum Co.'s gathering system located in the SW¼NW¼ sec. 12, T. 46 N., R. 70 W., 6th P.M., Campbell 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, 951 Union Boulevard, Casper, Wyo. 82601.

WILLIAM S. GILMER,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-21456 Filed 8-2-78; 8:45 am]

[4310-84]

[Wyoming 64374]

WYOMING

Application

JULY 27, 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 Marathon Pipe Line Co. of Casper, Wyo., filed an application for a right-of-way to construct a 4-inch pipeline and related facilities for the purpose of transporting crude oil across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 47 N., R. 92 W.,
sec. 2, lot 4.
T. 48 N., R. 92 W.,
sec. 35, W½SW¼.

The proposed pipeline with related facilities will transport crude oil produced from the Altus 35-1 Well Extension located in the NW¼SW¼ of sec. 35, T. 48 N., R. 92 W., to a point in the NW¼NW¼ (lot 4) of sec. 2, T. 47 N., R. 92 W., in Washakie 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 ap-

proved 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, 1700 Robertson Avenue, P.O. Box 119, Worland, Wyo. 82401.

WILLIAM S. GILMER,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-21453 Filed 8-2-78; 8:45 am]

[4310-84]

[Wyoming 64653]

WYOMING

Application

JULY 25, 1978.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185) Powder River Pipeline Corp. of Casper, Wyo. filed an application for a right-of-way to construct a 6⅝-inch pipeline for the purpose of transporting crude oil across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 44 N., R. 77 W.
sec. 1, S½NW¼.

The pipeline will transport crude oil from a point in the SW¼SE¼ of section 1, T. 44 N., R. 77 W. to a point in the SW¼NW¼ of section 1, T. 44 N., R. 77 W., in Johnson 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, 951 Union Boulevard, Casper, Wyo. 82601.

WILLIAM S. GILMER,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-21454 Filed 8-2-78; 8:45 am]

[4310-84]

[W-64651]

WYOMING

Application

JULY 25, 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 Cities Service Gas Co. of Oklahoma City, Okla. filed an application for a right-of-way to construct a 4½-inch pipeline and install anodes for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 18 N., R. 95 W.,
sec. 12, N½S½

The proposed pipeline will transport natural gas from the Champlin 221 D-1 well located in the SW¼ of section 11, T. 18 N., R. 95 W., in an easterly direction to a point of connection with an existing pipeline in the SE¼ of section 7, T. 18 N., R. 94 W., all within 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, 1300 Third Street, P.O. Box 670, Rawlins, Wyo. 82301.

WILLIAM S. GILMER,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-21455 Filed 8-2-78; 8:45 am]

[4310-31]

Geological Survey

[Int DES 78-25]

ENVIRONMENTAL IMPACT STATEMENT

Public Hearings, Pronghorn Mine, Campbell County, Wyo.

Notice is hereby given of public hearings concerning the content of the draft environmental statement (DES 78-25) on the proposed Pronghorn surface coal mining operation by the Consolidation Coal Co., in joint partnership with the Mobil Oil Corp., on Federal coal lease W-58112, located 16 miles southeast of Gillette, Wyo., in Campbell County.

Public hearings on the draft will be held on August 22, 1978, at the Campbell County High School auditorium, 1000 Camel Drive Gillette, Wyo. Hearings will be held at 1 p.m. and 7 p.m. and will continue until all desiring to speak have spoken.

The Director, U.S. Geological Survey, 108 National Center, Reston, Va. 22092, will also receive written comments on the draft until the close of business on September 5, 1978. All comments received by that date will be carefully considered in the preparation of the final environmental statement.

Dated: July 21, 1978.

HENRY W. COULTER,
Acting Director.

[FR Doc. 78-21495 Filed 8-2-78; 8:45 am]

[4310-70]

National Park Service

OGLALA SIOUX CEDAR PASS CONCESSION ENTERPRISE

INTENTION TO NEGOTIATE CONCESSION CONTRACT

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that on September 5, 1978, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Oglala Sioux Cedar Pass Concession Enterprise, authorizing it to provide concession facilities and services for the public at Badlands National Monument for a period of approximately 10 years from January 1, 1978.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment may be reviewed in the Rocky Mountain Regional Office, 655 Parfet Street, P.O. Box 25287, Denver, Colo. 80225.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1977, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. This provision, in effect, grants Oglala Sioux Cedar Pass Concession Enterprise, as the present satisfactory concessioner, the right to meet the terms of responsive offers for the proposed new contract and a preference in the award of the contract, if, thereafter, the offer of Oglala Sioux Cedar Pass Concession Enterprise is substantially equal to others received. In the event a responsive proposal superior to that of Oglala Sioux Cedar Pass Concession Enterprise (as determined by the Secretary) is submitted, Oglala Sioux Cedar Pass Concession Enterprise will be given the opportunity to meet the terms and conditions of the superior proposal, the Secretary considers desirable, and, if it does so, the new contract will be negotiated

with Oglala Sioux Cedar Pass Concession Enterprise. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal including that of the existing concessioner must be submitted on or before September 5, 1978, to be considered and evaluated.

Interested parties should contact the Chief, Concessions Management Division, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

Dated: July 25, 1978.

ROBERT STANTON,
Acting Associate Director,
National Park Service.

[FR Doc. 78-21546 Filed 8-2-78; 8:45 am]

[4310-70]

National Park Service

CAPE COD NATIONAL SEASHORE ADVISORY COMMISSION

Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, August 25, 1978, at 1 p.m. at the Headquarters Building, Cape Cod National Seashore, Marconi Station Area, South Wellfleet, Mass.

The Commission was established pursuant to Pub. L. 91-383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The Commission will consider the following matters: (1) Election of Chairman and Vice Chairman; (2) effects of February 6-7, 1978 storm on Coast Guard Beach, North Beach and Nauset Spit properties, Hatches Harbor Dike, and Breach at Long Point; (3) busing operation at Nauset Light and Coast Guard Beaches; (4) status of Planning for new facilities at Coast Guard and Nauset Light Beaches; (5) Provincetown water emergency; (6) status report on proposed new zoning standards; (7) status report on proposed fee schedule for oversand vehicles; and (8) future of Salt Pond Motel, Nauset Knoll Motel and Herring Cove Beach refreshment stand.

The meeting is open to the public. It is expected that 15 persons will be able to attend the session in addition to Commission members. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Lawrence C. Hadley, Superintendent, Cape Cod National Seashore, South Wellfleet, Mass. 02663, telephone 617-349-3785. Minutes of the meeting will be available for public information and copying 4 weeks after the meeting at the office of the Superintendent, Cape Cod National Seashore, South Wellfleet, Mass.

Dated: July 24, 1978.

LAWRENCE C. HADLEY,
Superintendent,
Cape Cod National Seashore.

[FR Doc. 78-21559 Filed 8-2-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-36]

CERTAIN PLASTIC FASTENER ASSEMBLIES

Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as presiding officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued: July 28, 1978.

DONALD K. DUVALL,
Chief Administrative Law Judge.

[FR Doc. 78-21614 Filed 8-2-78; 8:45 am]

[7020-02]

[Investigation No. TA-201-36]

CLOTHESPINS

Investigation and Hearing

AGENCY: U.S. International Trade Commission.

ACTION: Initiation of an investigation under section 201 of the Trade Act of 1974.

SUMMARY: This action initiates an investigation under section 201 of the Trade Act of 1974 to determine whether clothespins provided for under items 790.05, 790.07, and 790.08 of the Tariff Schedules of the United States (TSUS), are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

This investigation was instituted by the Commission on its own motion on July 27, 1978, on the basis of information collected in connection with Commission investigation Nos. TA-406-2, TA-406-3, and TA-406-4, conducted under section 406(a) of the Trade Act of 1974 concerning clothespins from the People's Republic of China, the Polish People's Republic, and The Socialist Republic of Romania.

PUBLIC HEARING ORDERED: A public hearing in connection with this investigation will be held in Portland, Maine, at 10 a.m., e.d.t., on Thursday, October 5, 1978. The place of the Portland hearing will be announced later.

Requests for appearance at the hearing should be received in writing by the Secretary of the Commission at his office at the U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, Friday, September 29, 1978.

There will be a prehearing conference in connection with this investigation which will be held in room 117 of the U.S. International Trade Commission Building at 701 E Street NW., Washington, D.C., at 10 a.m., e.d.t., on Friday, September 29, 1978.

WRITTEN SUBMISSIONS: In lieu of or in addition to appearances at the public hearings, interested persons may submit written statements. Any business information which a submitter desires the Commission to treat as confidential shall be submitted on separate sheets, each clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than October 16, 1978. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

EFFECTIVE DATE: This investigation will be instituted on the date ordered by the Commission.

FOR FURTHER INFORMATION CONTACT:

Mr. William Schechter, Office of Investigations, U.S. International Trade Commission, 202-523-0300.

Issued: July 31, 1978.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-21613 Filed 8-2-78; 8:45 am]

[7020-02]

SAFEGUARDING INDIVIDUAL PRIVACY

Existence and Continued Effectiveness of Systems of Records

The purpose of this document is to give notice that the systems of records

identified in a notice published in the FEDERAL REGISTER at 40 FR 41981-41983 modified by additional routine uses at 42 FR 1082-1084, and further modified by increasing the numbers and types of individuals covered at 42 FR 52502-52503 continue in effect. This notice is published in compliance with the requirements of 5 U.S.C. 552a(e)(4) as added by section 3 of the Privacy Act of 1974

Issued: July 31, 1978.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-21612 Filed 8-2-78; 8:45 am]

[7555-01]

NATIONAL SCIENCE FOUNDATION

GEOPHYSICS PROGRAM

Additional Funds for Earthquake Research

The National Science Foundation announces that some additional fiscal year 1979 funds have been allocated to the geophysics program to augment its program of fundamental research on the nature of earthquakes. This increased emphasis is in response to option B of the Newmark-Stever report to the President's Science Adviser, dated September 1976—"Earthquake Prediction and Hazard Mitigation—Options for USGS and NSF Programs," available from the superintendent of documents, U.S. Government Printing Office, Washington, D.C. 20402; price $1.90, stock No. 038-000-00332-1—which outlines an NSF-USGS initiative in earthquake hazard reduction.

Research proposed for this program should involve studies and measurements of a basic nature directed toward understanding the natural phenomena involved. Proposals should be prepared in accordance with NSF 76-38, "Grants for Scientific Research," and must be received by November 1, 1978, or February 15, 1979. Proposals will be evaluated by normal mail and panel review in competition with all other proposals in geophysics. Please refer any questions to Dr. Roy E. Hanson, Program Director for Geophysics, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550, telephone 202-632-4219.

ROBIN BRETT,
Division Director,
Earth Sciences.

JULY 31, 1978.

[FR Doc. 78-21601 Filed 8-2-78; 8:45 am]

[7555-01]

SUBCOMMITTEE ON CELL BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Cell Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.
Date and time: August 22d and 23d, 1978: 9 a.m. to 6 p.m.
Place: Room 338, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. Gertrude Kasbekar, Assistant Program Director for Cell Biology, Room 334-C, National Science Foundation, Washington, D.C. 20550, telephone, 202-634-4117.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in cell biology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 19, 1977.

Dated: JULY 31, 1978.

M. REBECCA WINKLER,
Committee Management
Coordinator.

[FR Doc. 78-21600 Filed 8-2-78; 8:45 am]

[7555-01]

AD HOC SUBCOMMITTEE FOR REVIEW OF THE NORTH PACIFIC EXPERIMENT ADVISORY COMMITTEE FOR OCEAN SCIENCES

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Ad Hoc Subcommittee for Review of the North Pacific Experiment (NORPAX) of the Advisory Committee for Ocean Sciences.
Date and time: August 24 and 25, 1978—9 a.m. to 5 p.m. each day.
Place: Scripps Institution of Oceanography, Building T-29, La Jolla, Calif. 92093.
Type of meeting: Closed.
Contact person: Dr. Curtis Allan Collins, IDOE Section, National Science Foundation, Washington, D.C. 20550, telephone 202-632-4334.
Purpose of meeting: To review NORPAX proposals and the NORPAX project.
Agenda: Detailed review and evaluation of renewal proposals for support of the NORPAX project.
Reason for closing: Discussion of project/proposal reviews will involve information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer, pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

Dated: July 31, 1978.

M. REBECCA WINKLER,
Committee Management
Coordinator.

[FR Doc. 78-21599 Filed 8-2-78; 8:45 am]

[7555-01]

ADVISORY COMMITTEE FOR APPLIED SCIENCE AND RESEARCH APPLICATIONS POLICY

Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), it is hereby determined that the establishment of the Advisory Committee for Applied Science and Research Applications Policy is necessary, appropriate, and in the public interest in connection with the performance of the duties imposed upon the Director, National Science Foundation (NSF) by the National Science Foundation Act of 1950, as amended, and other applicable law. This determination follows consultation with the Committee Management Secretariat, pursuant to the Federal Advisory Committee Act and OMB Circular No. A-63, Revised.

Name of committee: Advisory Committee for Applied Science and Research Applications Policy.

Purpose: To provide advice, recommendations, oversight, and counsel on major goals and policies pertaining to Applied Science and Research Applications activities and programs.

Effective date of establishment and duration: The establishment of the Committee is effective upon filing the charter with the Director, NSF, and the standing committees of Congress having legislative jurisdiction of the Foundation. The Committee will operate on a continuing basis contingent upon its renewal every 2 years.

Membership: The Committee will consist of not more than 70 persons eminent in their respective fields of endeavor or specialization as related to the areas of interest of the Directorate for Applied Science and Research Applications. Members will be chosen to represent the academic sector, industry, State and local governments and the community of potential users of research supported by ASRA. Members will be chosen without regard to race, color, national origin, religion, or sex.

Operation: The Committee will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463); NSF policy and procedures, OMB Circular No. A-63, Revised, and other directives and instructions issued in implementation of the act.

RICHARD C. ATKINSON,
Director.

JULY 31, 1978.

[FR Doc. 78-21598 Filed 8-2-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-333]

POWER AUTHORITY OF THE STATE OF NEW YORK

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued amendment No. 38 to facility operating license No. DPR-59, issued to Power Authority of the State of New York (the licensee), which revised technical specifications for operation of the James A. FitzPatrick Nuclear Power Plant (the facility) located in Oswego County, N.Y. The amendment is effective as of its date of issuance.

This amendment revises the technical specifications by (1) revision of the specification relative to radiological protection to explicitly define the control for access to high radiation areas, (2) reduction of the squib charge batch size for surveillance testing of the standby liquid control system and (3) miscellaneous minor changes to correct errors in the current specifications.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. 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 application for amendment dated January 13, 1978, (2) amendment No. 38 to license No. DPR-59, 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 Oswego County Office Building, 46 East Bridge Street, Oswego, N.Y. 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 28th day of July 1978.

For the Nuclear Regulatory Commission,

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-21504 Filed 8-2-78; 8:45 am]

[4910-58]

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 78-31]

ACCIDENT REPORT; SAFETY RECOMMENDATIONS AND RESPONSES

AIRCRAFT ACCIDENT REPORT

The National Transportation Safety Board has released its formal report on the investigation of the crash last October 20 of a twin-engine Convair 240 five miles northeast of Gillsburg, Mississippi. At the time of the accident, the Convair, owned and operated by L & J Company, was transporting the Lynyard Skynyrd Band from Greenville, South Carolina, to Baton Rouge, Louisiana.

There were 24 passengers and two crewmembers on board the aircraft. The two crewmembers and four of the passengers were killed; 20 others were injured. The aircraft was destroyed by impact; there was no fire. The investigation report, No. NTSB-AAR-78-6, indicates that the flight had reported to the Houston Air Route Traffic Control Center that it was "low on fuel" and requested radar vectors to McComb, Mississippi. The aircraft crashed in a heavily wooded area during an attempted emergency landing.

The Safety Board determines that the probable cause of this accident was fuel exhaustion and total loss of power from both engines due to crew inattention to fuel supply. Contributing to the fuel exhaustion were inadequate flight planning and an engine malfunction of undetermined nature in the right engine which resulted in higher-than-normal fuel consumption.

No safety recommendations were submitted as a result of this accident. The Federal Aviation Administration issued Advisory Circular 91-37A on January 16, 1978, with detailed guidance relative to the leasing of aircraft.

SAFETY RECOMMENDATIONS

Aviation

A-78-47 and 48.—Last November 17 an Aero Commander 560E crashed on a farm after the pilot initiated an emergency descent near Queen, Pennsylvania. The pilot was seriously injured in the crash and died shortly after release from the hospital. While flying at 9,500 feet between cloud layers the pilot reported a drop in manifold pressure and experienced engine roughness accompained by a loss of power in both engines. Although he applied alternate air to both engines, he was not able to regain normal engine operation. Investigation revealed that both engines were capable of developing full power and that there was sufficient uncontaminated fuel in the fuel tanks to power the engines.

In a similar accident on November 26, 1975, an Aero Commander 560E crashed about a mile from the Quad City Airport, Moline, Illinois. The pilot was killed. Investigation disclosed that the pilot, flying IFR at 11,000 feet, reported to air traffic control that he could no longer obtain sufficient power from his engines to maintain his assigned altitude. The airplane was being vectored to the airport when it crashed in a residential area. Persons who arrived first at the crash site noted that the ram air tubes and mixing chambers of both carburetors were packed with ice.

The Aero Commander 560E uses Stromberg PS Series, Model 5BD carburetors—an injection-type, single-barrel, low-pressure carburetor. Fuel is introduced downstream from the throttle valve and beyond the venturi chamber. This design feature virtually eliminates fuel vapor ice and reduces the hazard of throttle ice in the induction system.

The Board notes that a third type of induction ice—impact ice—does pose a

problem for aircraft which use injection-type pressure carburetors. When these aircraft are flown for extended periods in weather conditions conducive to the formation of ice on leading edges of the aircraft structure, impact ice may form in the carburetor air inlet ducts, the carburetor screen, the carburetor elbow, the heat valve, and the carburetor metering elements.

Because of the generally favorable design and performance characteristics of the injection-type pressure carburetor, pilots of airplanes such as the Aero Commander 560E may not recognize that impact ice poses a potential hazard for their aircraft. Moreover, undue delay in switching to the alternate air system in some icing conditions may result in an ice accumulation which immobilizes the heat valves. Once this has happened, the pilot may be powerless to counter further ice buildup, and he may subsequently lose all power.

In order that this information may be more widely disseminated among users of the Aero Commander 560E, the Safety Board on July 24 recommended that the Federal Aviation Administration—

Direct accident prevention specialists, flight instructors, and flight examiners, as part of their training or biennial review programs, to inform all owners and pilots of aircraft which use injection-type, pressure carburetors of the aircrafts' susceptibility to impact ice in the induction system. (A-78-47)

Require manufacturers of aircraft equipped with the subject carburetors to publish and provide to all owners the necessary information about this hazard and how to cope with it in flight. (A-78-48)

A-78-49.—On July 24, 10 days after an incident involving a Bell 212 helicopter near Vernel, Utah, the Safety Board issued this "Class I, Urgent Action" recommendation to FAA:

Determine immediately the potential risks of operating the Bell 212 helicopter with the main transmission input spiral bevel gear PN 204-040-701-3 installed and act to minimize those risks. (A-78-49)

The helicopter pilot had been conducting water-drop operations under contract for the Department of Interior when noise and excessive vibration emanating from the main transmission caused him to make a precautionary landing. Preliminary examination of the aircraft's main transmission disclosed that four teeth had separated from the main transmission input spiral bevel gear (PN 204-040-701-3). Total time on the component was 562 hours.

This incident occurred only 41 days after a fatal accident involving a Bell 212 helicopter which was engaged in offshore oil operations; a transmission gear failure also appears to have been a causal factor. Review of the service history of the main transmission input spiral bevel gear has revealed that Bell 212 helicopters used by the military recently had three such failures; two had resulted in forced landings and one had resulted in a nonfatal accident. All failures have been random from the standpoint of manufacturing dates and operating times.

A-78-50.—The Safety Board is concerned by two accidents within the past 2 months involving the Ted Smith Aerostar (Piper Aerostar). On July 18, an Aerostar 600 crashed while on approach to Jacksonville, Fla., after the pilot reported that he had lost power on both engines. On May 26, another Ted Smith Aerostar, 601P, was ditched in Lake Anna, near Bumpass, Virginia, after power was lost from both engines. According to the pilots, their fuel gauges indicated about 49 gallons of fuel remaining when the power was lost, and the low-level light for the fuselage tank did not illuminate.

As the Board's investigation continues, preliminary data indicate that the loss of power from both engines was caused by fuel starvation. Several other accidents and incidents reviewed by the Safety Board have been surrounded by similar circumstances. In most of the accidents and incidents fuel-quantity indicating systems and fuel management procedures were involved. The Board's review indicates that design changes to the fuel tank vent system, wing fuel tanks, and the fuel-quantity indicating system would improve the Aerostar fuel system.

The Safety Board has also reviewed the August 1977 report and recommendations made by the FAA Special Certification Review Team on the Ted Smith Aerostar Model 600 series aircraft's fuel system. The suggestions and recommendations made by the Special Certification Review Team were nearly identical to those that resulted from the Safety Board's review. These conclusions were:

Fuel Tank Vent System.—The current wing tank fuel vent valve will not function properly with more than 162 gallons of fuel. Depending on temperature changes and fuel demand, either an overpressure or a negative pressure in the wing tanks could result. Carried to extremes, structural damage to the wing or uneven fuel feeding may result as fuel is drawn from the wing tank.

A modified vent system valve is being considered, to which an overpressurization relief and an underpressure relief feature have been added. When the reliability of this modified vent system valve has been established, and AD requiring its incorporation in the vent system should be issued for all 600 series aircraft.

Flight Test Evaluation.—The reported accidents indicate that some in-flight situations need further investigation to determine whether additional operating procedures or special techniques are necessary. A minimum listing of in-flight evaluations is:

Demonstrate in-flight restart of an engine after fuel tank exhaustion.

Determine wing tank fuel which becomes unavailable to the engines during normal angles of climb and descent, and with one engine out.

Evaluate proper functioning of new fuel tank vent valve.

Product Improvement.—The following areas which need improvement to enhance the level of safety of the Aerostar Model 600 series airplanes:

Fuel-Quantity Indicating System.—The current fuel-quantity indicating system has contributed to the majority of the accidents by giving either erratic or erroneous fuel-quantity readings. The fuel system should be studied immediately to determine what improvements are needed to give accurate fuel-quantity indications throughout most of the flight envelope. The short-comings which should be corrected are: (1) The very limited aircraft attitudes at which fuel-quantity can be read with any degree of accuracy, (2) the mathematical calculations needed to determine the quantity of fuel in the fuselage tank, and (3) the inability to accurately read fuel quantities greater than 150 gallons.

Internal Wing Tank Baffling.—Any uncoordinated flight can cause fuel to shift in the wing tanks, giving inaccurate fuel-quantity readings and possible unporting the fuel tank outlet making large quantities of fuel unavailable to the engines. The compartment in which the wing tank outlets are located should be isolated from the rest of the fuel tank by closing the lightening holes in the ribs and installing one-way flapper-type check valves to permit the fuel to flow easily into this compartment but to prevent the fuel from flowing outboard during uncoordinated flight maneuvers.

Changes to Federal Aviation Regulations, Part 23.—As a result of the design review of this airplane, the following changes are recommended:

FAR 23.1337(b).—Make the fuel-quantity indicator read accurately throughout the entire range of the indicator.

FAR 23.1305.—A means of low-fuel warning should be required on general aviation aircraft.

The Safety Board is aware that Airworthiness Directive 77-26-04 was prompted by two of the recommendations made by the Special Certification Review Team. The Board is also aware of the Emergency Airworthiness Directive dated July 7, 1978. However, the Board believes that other actions are necessary to insure that the problem of fuel starvation in this aircraft is solved. Accordingly, on June 24, the Safety Board urged FAA to—

Expedite the actions indicated by the Special Certification Review Team in August 1977, as detailed above, to insure that the necessary changes are implemented on production aircraft, and by Airworthiness Directive on those aircraft in service at an early date. (A-78-50)

Marine

M-78-45 through 52 and M-78-53 through 55.—On July 22, 1977, the Greek tankship M/V *Dauntless Colocotronis*, carrying 48,741 long tons of crude oil, was upbound in the Missis-

sippi River about 4 miles below New Orleans, Louisiana, when it struck a sunken barge. The bottom plating of the *Colocotronis* was fractured, permitting cargo oil from the tanker's No. 5 center tank to enter its pumproom. Within minutes, cargo oil penetrated into the tanker's engineroom and ignited. The fire spread from the engineroom to the accommodation spaces through a door which had been tied open. All 35 persons onboard escaped from the vessel; 2 persons were slightly injured. Fire damage in the accommodation spaces, water damage in the engineroom, and bottom structural damage was estimated to be $6 million.

Although the U.S. Army Corps of Engineers (COE) had determined in January 1974 that the sunken barge was a hazard to navigation, the sunken barge was neither removed nor its location marked between February 1974 and the time of this accident. The Safety Board believes that better procedures could be established between the Coast Guard and COE for the marking and removing of wrecks in the Mississippi River. Furthermore, an annual summary of all wrecks that constitute a hazard to navigation would provide ship operators with updated information on the location and depth of water over wrecks.

The extent and duration of the fire were the result of several factors, including lack of firefighting drills and inadequate firefighting training for the crew and the use of combustible materials in the accommodation spaces. There had been no firefighting drills aboard the *Colocotronis* for 3½ months before the accident. The proper use of a firehose on the oil fire might have extinguished the fire before any extensive damage occurred. The closing of all doors from the engineroom would have prevented the spreading of the fire to the accommodation spaces, and the use of noncombustible materials in the accommodation spaces would have limited the intensity of the fire.

The Safety Board further noted that the firefighting effort was delayed by the lack of information regarding the arrangement of the tankship. An arrangement plan posted on the outside of the deckhouse would have provided the rescue personnel with valuable information.

Accordingly, on July 24 the Safety Board recommended that—

The U.S. Coast Guard:

Develop, in conjunction with the U.S. Army Corps of Engineers, standards that will define what constitutes a hazard to navigation in the Mississippi River so that the Coast Guard can better enforce 33 CFR Part 64. (M-78-45)

Prepare, in conjunction with the U.S. Army Corps of Engineers, an annual summary of wrecks that continue to be a hazard to navigation in the Mississippi River and distribute the summary in a manner similar to a Local Notice to Mariners. (M-78-46)

Insure that depths of water over wrecks in the Mississippi River are stated in terms of mean sea level in Local Notices to Mariners and Broadcasts to Mariners. (M-78-47)

Seek international agreement to improve the firefighting training for officers and crew on tankships. (M-78-48)

Insure that all foreign tankships that enter U.S. waters comply with the 1960 Safety of Life at Sea Convention requirements for fire drills. (M-78-49)

Develop regulations, under the Ports and Waterways Act of 1972, that require all foreign tankships built after 1980 and entering U.S. waters to meet the fire safety requirements of the 1974 Safety of Life At Sea Convention. (M-78-50)

Seek international agreement to require all ships of more than 500 gross tons to post, under watertight cover and outside the ship's deckhouse in a prominent place, an arrangement plan of the ship to aid emergency personnel. (M-78-51)

Seek international agreement to require that cargo pumps on tankships be segregated from all sources of vapor ignition by gastight bulkheads and that pump shafts penetrating these bulkheads be fitted with stuffing boxes or other approved glands which will prevent vapor ignition. (M-78-52)

The U.S. Army Corps of Engineers:

Develop, in conjunction with the U.S. Coast Guard, standards that will define what constitutes a hazard to navigation in the Mississippi River so that the Coast Guard can better enforce 33 CFR Part 64. (M-78-53)

Provide information to the U.S. Coast Guard concerning wrecks that continue to be a hazard to navigation in the Mississippi River so the Coast Guard can publish an annual summary of such wrecks. (M-78-54)

Adopt or develop improved techniques for locating the position of wrecks and determining the depth of water over wrecks in the Mississippi River. (M-78-55)

Each of the above recommendations is designated "Class II, Priority Action."

Responses to Safety Recommendations

Aviation

A-78-30 through 32.—The Federal Aviation Administration on July 5 responded to recommendations issued following investigation into the September 22, 1976, crash of a Grumman Gulfstream II while the aircraft was making an instrument landing system approach to Ingalls Field Airport, Hot Springs, Virginia. The aircraft was operated by Johnson & Johnson, Inc., under 14 CFR Part 91, Subpart D.

Recomendation A-78-30 asked FAA to develop criteria to determine which corporate/executive flight departments are required to operate under formal flight operations manuals. FAA states that it is unable to correlate accident factors with the numbers and complexity of aircraft operated by corporate flight departments. FAA does not believe that development of criteria to determine which corporate/executive flight departments should be required to operate under formal operations manuals is feasible or that it would have a significant beneficial effect on the current high level of corporate flight safety.

Commenting on recommendations A-78-31 and 32, both seeking amendment of 14 CFR Part 91 regarding flight operations manuals for corporate/executive flight departments, FAA states that operations manuals must be appropriate to the needs of the company and constitute agreements and understandings between management, chief pilot, and flightcrews. FAA believes that requirements for operations manuals and their contents should remain a decision of company management for the present. FAA has no evidence to justify regulatory action to require corporate/executive flight departments to maintain and operate under flight operations manuals, or to establish criteria for flight operations; no further action is planned at this time.

A-78-37 through 41.—FAA's letter of July 6 comments on recommendations resulting from investigation into the crash of an Alaska Aeronautical Industries DHC-6-200 into Mount Iliamna, Alaska, last September 6. The aircraft strayed off course en route from Iliamna to Anchorage.

Recommendation A-78-37 asked that FAA revise the surveillance requirements of commuter airlines by FAA inspectors to provide more stringent monitoring. FAA states that in order to provide its inspectors with an adequate surveillance program, the agency continually reviews the Federal Aviation Regulations, advisory circulars, and other information applicable to commuter operators. Also, FAA has, with public participation, recently developed a regulatory proposal (NPRM 77-17) to update 14 CFR Part 135, "Air Taxi Operators and Commercial Operators of Small Aircraft," which, when adopted, will place additional operating requirements on commuter airlines.

In answer to A-78-38, which recommended that FAA identify its offices responsible for surveillance of air taxi/commuter operators and insure that an adequate number of inspectors are assigned to monitor properly each operator, FAA notes that it now has 3,594 FAR Part 135 certificate holders of which 242 are commuter air carrier operators. The number of these operators that are the responsibility of any one FAA office varies from year to year as certificates are surrendered or new applicants certificated, but FAA continually reviews its manpower allocations and will assign inspectors, as

required, to monitor the operations of each certificate holder.

FAA, in answer to A-78-39, states that flight operations and training manuals of all air taxi certificate holders are reviewed periodically to determine compliance with applicable Federal Aviation Regulations. FAA states that adoption of the proposed Part 135 amendment, which revises requirements pertaining to management personnel and their responsibilities, will accomplish the substance of recommendation A-78-40, which called for flight operations manuals to specify: (1) The duties and responsiblities of key management personnel, and (2) positive means to insure the control of flights by company management as well as by the pilots.

In response to A-78-41, FAA notes that air taxi maintenance procedures are under continuous review and evaluation by FAA district offices as a priority item and that the proposed update of Part 135 will, when adopted, require additional maintenance controls beyond those presently in effect.

Pipeline

P-71-3 and 4.—Letter of July 7 from the Research and Special Programs Administration (RSPA) of the U.S. Department of Transportation is in response to recommendations issued following investigation of the Equitable Gas Company pipeline accident which occurred near Farmington, West Virginia, October 29, 1970. The recommendations asked that DOT determine whether there is a hazard within the meaning of section 3(b) of the Natural Gas Pipeline Safety Act of 1968, and that DOT review the overall problem of safety of pipelines in areas where mine subsidence exists.

Referring to an earlier response of April 12, 1971, RSPA now reports that a review by the West Virginia Public Service Commission has disclosed that the Equitable Gas Company X-rayed the welds, and the pipeline was hydrostatically tested at 1,793 p.s.i. maximum and 1,501 p.s.i. minimum for a distance of 11.16 miles. Also, because of the subsidence problem, the pipeline is kept under close surveillance. In an emergency, the fully manned station at Lumberport and the automatic valves on the pipeline provide fast shut off capability, RSPA states. The West Virginia Public Service Commission concluded that Equitable had taken adequate precautions to protect the public.

RSPA states that, based on review of this report and a metallurgical analysis of the failed pipe conducted by Battelle Memorial Institute, RSPA concurs in the findings of the Commission. RSPA believes that adequate evidence does not exist to make a finding that a hazard exists within the meaning of section 3(b) of the Natural Gas Pipeline Safety Act of 1968, this opinion being based, in part, on the fact that no notification of additional problems concerning this particular pipeline has been received. No further action on P-71-3 is planned.

Regarding recommendation P-71-4, a review of pipeline safety relative to mine subsidence has been made and RSPA has studied the phenomenon of stress corrosion cracking failures associated with environmentally induced displacement of pipelines. Also, various new developments, e.g., downward looking radar, have been studied to help identify subsidence. RSPA states that while these developments are not too promising at this time, the knowledge gained about corrosion cracking is worthwhile and will be used to improve pipeline safety. RSPA further states that beyond these efforts, its Federal and State enforcement officers, during routine inspections, are alert for adverse consequences of mine subsidence on pipelines. When such conditions are suspected or found, the pipeline operator is required to take corrective action.

P-71-7.—A second July 7 letter from RSPA relates to a recommendation issued following investigation of a pipeline accident which occurred near Houston, Texas, on September 9, 1969. The recommendation asked DOT to review the methods used by pipeline operators to protect existing transmission lines against accidental overpressuring upon the failure of pressure control equipment.

RSPA reports that it contracted with Mechanics Research, Incorporated, to study rapid shutdown and pressure limiting devices on operating liquid and gas pipeline systems. Their study, "Rapid Shutdown of Failed Pipeline Systems and Limiting of Pressure to Prevent Pipeline Failure Due to Overpressure," dated October 31, 1974, included a review of pressure control practices used in industry.

Based on a review of this report and other available information, RSPA is developing proposals for new regulations that include additional requirements for overpressure and automatic controls on liquid pipelines. RSPA is evaluating the cost-effectiveness of protecting existing liquid pipelines against accidental overpressuring. Notices on these proposals will be published in FY-78. However, RSPA states that it is doubtful that present technology can provide a cost-effective means of protecting existing gas transmission lines against accidental overpressuring resulting from the failure of pressure control equipment. "Until we are convinced otherwise, we do not plan to take regulatory action in this area," RSPA stated.

Railroad

R-77-1.—Letter of July 5 from the Federal Railroad Administration is in answer to the Safety Board's May 24 request for information concerning test and inspection programs conducted on SDP-40F locomotives. These programs were initiated to investigate the interaction between SDP-40F locomotives of passenger trains and track conditions to determine the causes for the widening of the track gage, as recommended in R-77-1. This recommendation was issued in the wake of numerous passenger train derailments involving SDP-40F locomotives.

FRA notes that Amtrak has been submitting, monthly, the "Amtrak Special Inspection" reports required by FRA since January 1977. As a result, Amtrak's locomotive inspections have become more thorough, and worn critical safety items on the locomotives are being replaced more expeditiously. FRA further reports that its inspectors also have increased their monitoring activities on these locomotives, and FRA considers the results of this inspection program very satisfactory.

FRA states that the four-party test program in which FRA participated, along with Amtrak, the Association of American Railroads and the locomotive manufacturer (General Motors), was completed in June 1977, at which time test data were submitted to Transportation Systems Center for evaluation and a final report. To date no final report has been provided.

Since the SDP-40F problem first became apparent, FRA reports that Amtrak, the major owner of these locomotives, has reduced its fleet from about 150 units to 88 units by converting SDP-40F units from their characteristic three-axle truck configuration to a two-axle truck configuration. The remaining SDP-40F locomotives eventually will be converted to the two-axle truck configuration also, eliminating the associated problems, according to FRA.

R-77-11.—Letter of June 28 from Chicago and North Western Transportation Company (CNW) is in reply to the Safety Board's inquiry of May 31 concerning a recommendation issued to CNW following investigation of the May 16, 1976, derailment of two CNW trains near Glen Ellyn, Illinois. The recommendation called for CNW to maintain tracks to the specifications of the Federal Track Safety Standards for each class and to not increase train speeds until the track is adequate for such speeds.

CNW advises that it is completing a $22 million 4-R program consisting of 95.25 miles of continuous welded rail (CWR), 82,125 ties, and 2,775 cars of ballast. Also, the company applied for an additional $105.7 million for work

starting July 1, 1978, and going through 1980 would consist of 353.8 miles of new CWR, 383,613 ties, and 13,644 cars of ballast. CNW further reports that it has a track rehabilitation program with the Regional Transportation Authority costing $17 million and consisting of 52.9 miles of CWR, 210,000 ties, and 1,222 cars of ballast. This work is in addition to CNW's own tack programs which consists of 80 miles of CWR, 550,000 ties, and 3,000 cars of ballast for 1978.

The Safety Board on July 26 acknowledged CNW's response and expressed appreciation for CNW's intent to maintain trackage to proper FRA Track Safety Standards and to operate trains at speeds commensurate with track conditions.

NOTE.—The above notice reports on Safety Board documents recently released and recommendation response letters received. Single copies of the accident report and the Board's recommendation letters in their entirety are available to the general public without charge. Copies of the full text of the responses to recommendations may be obtained at a cost of $4.00 for service and 10¢ per page for reproduction.

All requests to the Board for copies must be in writing, identified by report or recommendation number and date of publication of this notice in the FEDERAL REGISTER. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of accident reports may be purchased by mail from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151.

(Secs. 304(a)(2) and 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2169, 2172 (49 U.S.C. 1903, 1906)).)

Dated: July 31, 1978.

MARGARET L. FISHER,
Federal Register Liaison Officer.

[FR Doc. 78-21548 Filed 8-2-78; 8:45 am]

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

LIST OF REQUESTS

Clearance of Reports

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 28, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

DEPARTMENT OF LABOR

Employment and Training Administration, CETA Supplemental Reporting System, ETA-15, other (see SF-83), State and local agencies, Strasser, A., 395-6132.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Standard Application for (Nonconstruction) Library Research and Demonstration program, OE-336, on occasion, 300 I HE's, 300 responses, 4,500 hours, Laverne V. Collins, 395-321.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-21680 Filed 8-2-78; 8:45 am]

[3110-01]

LIST OF REQUESTS

Clearance of Reports

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 28, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

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NEW FORMS

VETERANS ADMINISTRATION

A Study of Men Eligible for Military Service During Vietnam War, single time, 20350 Vietnam Veterans, Office of Federal Statistical Policy and Standard, 673-7956.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, WIC Migrant Project Evaluation, single time, 333 cooperating WIC agencies and migrant households, Clearance Office, Human Resources Division, 395-3772.

Economics, Statistics, and Cooperatives Services, Public Preferences for Achievement of Environmental Quality, single-time, 1,050 houseoulds in 5 Oregon counties, Clearance Office, Ellett, C. A., 395-3772.

DEPARTMENT OF COMMERCE

Industry and Trade Administration, Nonrubber footwear, ITA-9,016, annualy, 400 shoe manufacturers, Laverne V. Collins, 395-3214.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health, Cooley's Anemia Survery, single time, 265 treating cooley's anemia Hospital and Family with patients, Office of Federal Statistical Policy and Standard, Richard Eisinger, 673-7956.

Food and Drug Administration:

Questionnaire Concerning Cathode Ray Tube Video Display Devices, single time, 90 video display device manufacturers, Human Resources Division, Richard Eisinger, 395-3532.

Quick Response Surveys, II, other (see SF-83), telephone households in a national probability sample, Office of Federal Statistical Policy and Standard, 673-7956.

Product License Application for The Manufacture of Reagent Red Blood Cells, FD-3,086, on occasion, 40 red blood cells, Richard Eisinger, 395-3214.

DEPARTMENT OF LABOR

Employment and Training Administration, Employment Service Complaint Form, ETA-8,429, on occasion, 20,000 uses applicants, Strasser, A., 395-6132.

DEPARTMENT OF TREASURY

Bureau of Customs, U.S. Customs Service Cost Submission 274, on occasion, 40 importers, Warren Topelius, 395-6132.

EXTENSIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service, OMB Circular A-102—Supplements, PHS 5,155, PHS 5,159, PHS 5,160, PHS 5,163, on occasion, State and local governments, 8,800 responses, 37 hours, Budget Review Division, 395-4775.

Food and Drug Administration:

Transmittal of Advertisements and Promotional Labeling for Drugs for Human Use, FD-2,253, on occasion, 10,000 pharmaceutical firms, 10,000 responses, 10,000 hours, Richard Eisinger, 395-3214.

Medicated Feed Application, FD 1,800, on occasion, 11,101 feed mills and farms mixing medicated feeds, 8,000 responses, 8,000 hours, Richard Eisinger, 395-3214.

Alcohol, Drug Abuse and Mental Health Administration, Annual Census of Patient Characteristics—1978, State and County Mental Hospital Inpatient Services, MH-45-1, annually, State and county mental hospitals, 323 responses, 646 hours, Office of Federal Statistical Policy and Standard, 673-7956.

Social Security Administration:

Chinese Custom Marriage Statements, SSA-1,344 and 1,345, on occasion, Comp. by Chinese custom marriage—payment of social security benefits, 1,000 responses, 334 hours, Warren Topeltius, 395-6132.

Statement of Person Requesting Payment on Behalf of Estate, SSA-717, on occasion, Persons requesting lump-sump payment of Nonadmin. estate of deceased, 20,000 responses, 3,333 hours, Clearance Office, 395-3772.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit, Mortgagee's Certification and Application for Assistance or Interest Reduction Payments, FHA-3,102, monthly, lending institutions and project owners, 72,000 responses, 36,000 hours, Caywood, D. P., 395-3443.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service:

Request for Representation Before the Board of Immigration Appeal and Immigration and Naturalization Service, G-27, on occassion, non-profit organizations, 50 responses, 4 hours, Clearance Office, 395-3772.

Request for Information From Selective Service File, N-422, on occasion, applicants for naturalization, 4,000 responses, 667 hours, Clearance Office, 395-3772.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-21681 Filed 8-2-78; 8:45 am]

[7708-01]

PENSION BENEFIT GUARANTY CORPORATION

PRIVACY ACT OF 1974

Revision of Routine Use

On June 1, 1978, the Pension Benefit Guaranty Corporation ("PBGC") gave notice (43 FR 23772) that it proposed to revise a routine use pertaining to each PBGC system of records.

Interested persons were invited to submit written data, views or arguments on or before July 3, 1978. Accordingly the routine use is hereby adopted as set forth below.

STATEMENT OF ROUTINE USE

The PBGC routine use No. 4, entitled "Routine Use—Disclosure During Litigation" is hereby amended to read as follows:

4. Routine Use—Disclosure During and in Anticipation of Litigation.

A record from this system of records may be disclosed during litigation, including disclosure to all counsel in the course of discovery or settlement negotiations and during the presentation of evidence to a court, magistrate or administrative tribunal, or during proceedings in reasonable anticipation thereof.

Issued in Washington, D.C., this 27th day of July 1978.

MATTHEW M. LIND,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 78-21362 Filed 8-2-78; 8:45 am]

[7715-01]

POSTAL RATE COMMISSION

VISIT TO POSTAL FACILITY

JULY 31, 1978.

Notice is hereby given that employees of the Postal Rate Commission will be visiting the Rates and Classification Department, U.S. Postal Service Headquarters, L'Enfant Plaza, on August 8, 1978, for the general purpose of identifying ways to simplify and/or expedite the flow of required information pertaining to rate case cost attributions using computer capabilities to the maximum extent possible.

No particular matter at issue in contested proceedings before the Commission nor the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Commission will be discussed.

A report of the visit will be on file in the Commission's docket room.

By direction of the Commission.

DAVID F. HARRIS,
Secretary.

[FR Doc. 78-21565 Filed 8-2-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 20648; 70-6185]

ARKANSAS POWER & LIGHT CO.

Proposal To Consolidate Nuclear Fuel Arrangements

JULY 28, 1978.

Notice is hereby given that Arkansas Power & Light Co. ("Arkansas"), First National Building, Little Rock, Ark. 72203, an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application pursuant to the Public Utility Holding Co. Act of 1935 ("Act"), designating sections 9(a) and 10 of the Act as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Pursuant to authorization of this Commission (HCAR No. 18442, June 4, 1974, and HCAR No. 19370, February 3, 1976), Arkansas entered on June 25, 1974, into a lease ("Original Lease") with Southwest Fuel Co. ("Fuel Company") under which Arkansas leases from the Fuel Company nuclear fuel, including facilities incident to its use, which is used to satisfy the fuel requirements for Unit No. 1 of Arkansas Nuclear One ("Unit No. 1"), located near Russellville, Ark.

In addition, pursuant to authorization of the Commission (HCAR No. 19447, March 26, 1976; HCAR No. 20231, October 27, 1977, and HCAR No. 20304, December 8, 1977), Arkansas entered on April 6, 1976, into a lease with Razorback Nuclear Properties, Inc. ("Razorback") under which Arkansas leases from Razorback nuclear fuel, including facilities incident to its use ("Razorback Nuclear Fuel"), which is used to satisfy the fuel requirements for Unit No. 2 of Arkansas Nuclear One ("Unit No. 2").

In order to consolidate the arrangements whereby Arkansas leases nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), for Unit No. 1 and Unit No. 2, Arkansas proposes to terminate the Razorback Lease and cause title in the Razorback Nuclear Fuel to vest with the Fuel Company. Arkansas understands that Razorback will consent to the arrangements necessary to cause such transfer of title to the Fuel Company. On a date which shall be set by Arkansas for settlement of termination ("Termination Settlement Date"), the Fuel Company shall purchase the Razorback Nuclear Fuel from Razorback, or Arkansas shall purchase the Razorback Nuclear Fuel from Razorback and sell it to the Fuel Company, at a purchase price equal to the sum of the Stipulated Loss Value, as defined in the Razorback Lease, of the Razorback Nuclear Fuel plus the Termination Rent, as defined in the Razorback Lease, both computed as of the day of purchase. Upon consummation of the purchase, all obligations of Arkansas under the Razorback Lease will terminate. Arkansas understands that upon the termination of such obligations of Arkansas, Razorback will terminate its related credit arrangements with a group of commercial banks under a credit agreement dated as of April 6, 1976 ("Razorback Credit Agreement"). As required by the Razorback Lease, Arkansas would provide Razorback with its consent to such termination. The amounts of the Stipulated Loss Value and the Termination Rent at June 30, 1978, were approximately $43,000,000 and $-0-, respectively.

Under the terms of the Original Lease as it is proposed to be restated and amended ("Lease"), the Fuel Company will make additional payments to suppliers, processors and manufacturers necessary to carry out the terms of Arkansas' contracts for Nuclear Fuel for Unit No. 1 and Unit No. 2 or Arkansas will make such payments and will be reimbursed by the Fuel Company; the Fuel Company may also make payments to future suppliers of Nuclear Fuel for Unit No. 1 or Unit No. 2 or Arkansas will make such payments, subject to reimbursement by the Fuel Company. The maximum commitment of the Fuel Company to make payments for Nuclear Fuel is $99,000,000 at any one time outstanding.

Under the Lease Arkansas will be responsible for operating, maintaining, repairing, replacing, and insuring the Nuclear Fuel and for paying all taxes and costs arising out of the ownership, possession or use thereof. The initial term of the Lease will be through Sepbember 1, 1982; on September 1, 1979, and on each succeeding September 1 the 3 year balance will be extended for 1 year, unless either party gives prior written notice of termination, up to September 1, 2018.

Lease payments will commence with the term of the Lease; they will be payable quarterly. These payments will include (A) a quarterly lease charge, which will represent an administrative charge of one-eighth of 1 percent per annum of the Stipulated Loss Value, as defined in the Lease, payable by the Fuel Company to its parent, Broad Street Contract Services, Inc. ("BSC"), and other allocated operational costs of the Fuel Company and (B) a burn-up charge equal to the cost of the Nuclear Fuel consumed while the Nuclear Fuel is in the reactors and producing heat. When the Nuclear Fuel, or a portion thereof, is not in a reactor and producing heat Arkansas may elect to capitalize quarterly lease charges or daily portions thereof on the portion of the Nuclear Fuel not producing heat so long as the amount of credit still available to the Fuel Company under the Credit Agreement referred to below exceeds the sum of the Stipulated Loss Value of the Nuclear Fuel, the amount of such charges and $1,000,000. Arkansas may consequently, subject to the foregoing limitation, defer rental payments on any portion of the Nuclear Fuel until those times during commercial operation when that portion of the Nuclear Fuel is in a reactor and producing heat in the production of electric energy.

Arkansas may terminate the Lease at any time. The Fuel Company may terminate the Lease under certain circumstances, including, among others, if it becomes subject to certain adverse rules, regulations or declarations with respect to its status or the conduct of its business, if there is a nuclear incident of sufficient magnitude, and by notice of a desire not to renew the Lease on September 1, 1979, and any subsequent September 1 followed by the lapse of the remaining term. Upon the occurrence of any event of termination as defined in the Lease ("Event of Termination") title to the Nuclear Fuel shall automatically be transferred to Arkansas. Within 120 days, but not less than 90 days after notice of termination, Arkansas will be unconditionally obligated to purchase the Nuclear Fuel from the Fuel Company at a purchase price equal to the sum of the Stipulated Loss Value of the Nuclear Fuel plus the Termination Rent, as defined in the Lease, both computed as of the day of purchase. Upon consummation of such purchase, all obligations of Arkansas under the Lease will terminate.

The Fuel Company will receive alternative termination rights upon certain events of default as defined in the Lease ("Events of Default"). Upon the occurrence of an Event of Default the Fuel Company may (a) treat the Event of Default as an Event of Termination with the results specified in the preceding paragraph and proceed at law or in equity for enforcement of the applicable provisions of the Lease or for damages, and/or (b) it may terminate the Lease. If it terminates the Lease, Arkansas' interest in the Nuclear Fuel will terminate and the Fuel Company may take possession of the Nuclear Fuel and sell it. In the event of such a termination, the Fuel Company may recover from Arkansas damages and expenses resulting from the breach of the Lease, all accrued and unpaid amounts owed to it by Arkansas, and liquidated damages.

Arkansas proposes to continue its practice under the Original Lease and the Razorback Lease by charging the rent under the Lease to fuel expense and accounting for the transaction as a lease rather than a purchase.

Under the terms of the Lease the amount of the quarterly lease payments by Arkansas will be measured by, among other things, the amount of costs incurred by the Fuel Company in connection with its acquisition of the Nuclear Fuel. The Fuel Company has advised Arkansas that it will finance its obligations under the Lease by entering into a $100,000,000 credit agreement ("Credit Agreement") with Bank of America National Trust and Savings Association ("Bank"), a commercial bank, and Southwest Contracts, Inc. ("Southwest"). In addition, the Fuel Company has advised Arkansas that simultaneously with entering into the Credit Agreement it will terminate its credit arrangements with Security Pacific National Bank under a credit agreement dated June 25, 1974 ("Security Pacific Credit Agreement"). As required by the Original Lease, Arkansas would provide the Fuel Company with its consent to such termination. As required by the Lease, Arkansas would approve of the entry into the Credit Agreement by the Fuel Company.

Southwest is a Delaware corporation which is a wholly owned subsidiary of BSC Holdings, Inc. ("Holdings"). Holdings, like BSC, which wholly owns the Fuel Company, is a Delaware corporation engaged with its other subsidiaries in a general leasing business. Holdings and BSC are both owned by a partnership composed of partners who are also partners of Goldman, Sachs & Co., an investment banking firm. It is stated that neither Holdings or BSC, their respective subsidiaries, including Southwest and the Fuel Company, Goldman, Sachs & Co. nor any persons affiliated with any of these companies are affiliated with Arkansas or any of its affiliated companies.

Under the Credit Agreement Southwest would issue its commercial paper the proceeds of which, to the extent not required to pay its maturing commercial paper, will be advanced to the Fuel Company to permit the Fuel Company to meet its obligations under the Lease or to repay revolving credit loans ("Revolving Credit Loans") from the Bank. The Bank will be unconditionally committed to make loans ("Refunding Loans") to Southwest in an amount equal to the face amount of matured commercial paper for the payment of which funds are not otherwise available to Southwest. All obligations of Southwest to the Bank (including the obligations to repay Refunding Loans) will be guaranteed by the Fuel Company. In addition, the Fuel Company will be jointly and severally liable for all fees and other amounts owed to the Bank, and will agree to reimburse Southwest for discounts and commissions incurred by Southwest in connection with the sale of its commercial paper, for all taxes, governmental charges and assessments of Southwest and for administrative expenses of Southwest. Goldman, Sachs & Co. would use its best efforts to sell the commercial paper at the best rate available (which rate will include a one-eighth percent per annum dealer discount) consistent with prudent marketing considerations. Morgan Guaranty Trust Co. of New York ("Depositary"), a commercial bank, will act as issuing agent for Southwest's commercial paper.

Under the Credit Agreement, the Fuel Company could also obtain Revolving Credit Loans from the Bank to be evidenced by the Fuel Company's promissory note ("Revolving Credit Note"). Refunding Loans which are

not repaid on the same day when made will automatically become Revolving Credit Loans and also be evidenced by the Revolving Credit Note. The Credit Agreement will have an initial term extending through December 1, 1982; it will be extended for 1 year on December 1, 1979, and on each succeeding December 1, unless either party has given prior notice of termination, up to December 1, 2018.

In consideration for the Bank's commitment to make loans to the Fuel Company and Southwest (collectively, the "Companies"), the Companies will pay to the Bank a quarterly commitment fee equal to one-half of 1 percent per annum of the excess of (i) the Bank's loan commitment under the Credit Agreement (initially $100,000,000) over (ii) the average daily amount of Revolving Credit Loans outstanding during each quarter, and will also pay to the Bank a quarterly availability fee equal to one-quarter of 1 percent per annum of the average daily face amount of all commercial paper of Southwest outstanding during each quarter. The Fuel Company and Southwest will be jointly and severally obligated to pay the commitment fee and the availability fee.

Each Revolving Credit Loan will bear interest (computed on the basis of a 360-day year) from its date on its unpaid principal amount, payable quarterly and at maturity, at a rate per annum equal to the greater of (i) 120 percent of the sum of (x) the lending rate announced by the Bank from time to time for 90-day commercial loans to its largest and most creditworthy customers and (y) one-quarter of 1 percent, and (ii) the sum of (x) the secondary market bid rate as determined by the Bank from time to time for certificates of deposit of a principal amount equivalent to all outstanding Revolving Credit Loans having a maturity of 90 days and (y) 1 percent. Interest on overdue principal and, to the extent permitted by applicable law, on any overdue interest, from the due date thereof, until the obligation of the Fuel Company to the Bank with respect thereto is discharged, will be at the rate per annum equal to the greater of (i) 122 percent of the sum of (x) the lending rate announced by the Bank from time to time for 90-day commercial loans to its largest and most credit-worthy customers and (y) one-quarter of 1 percent, and (ii) (x) the secondary market bid rate as determined by the Bank from time to time for certificates of deposit of principal amount equivalent to all outstanding Revolving Credit Loans and having a maturity of 90 days and (y) 3 percent.

The aggregate amount outstanding on the Fuel Company's Revolving Credit Note and of Southwest's commercial paper at any time outstanding will not exceed the maximum credit limit under the Credit Agreement.

Based upon the pricing terms of the Credit Agreement, Arkansas states that the Fuel Company will have a lower effective cost of money under the Credit Agreement than it has under the Security Pacific Credit Agreement and than Razorback has under the Razorback Credit Agreement.

Arkansas has been advised by the Fuel Company that the Bank will receive an assignment of the rents and certain other obligations under the Lease as security for the Bank's loans under the Credit Agreement. The Fuel Company also has advised that the Bank of Southwest will receive a security interest in the Nuclear Fuel. Arkansas will agree in the Lease to acknowledge notice of the assignment and granting of a security interest by an instrument.

A statement of the fees, commissions and expenses to be incurred in connection with the proposed transaction will be filed by amendment. It is stated that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transaction, except that the Nuclear Regulatory Commission has licensing and regulatory jurisdiction over the ownership, possession, storage and handling of the Nuclear Fuel.

Notice is further given that any interested person may, no later than August 21, 1978 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing theron. 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 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, as filed or as it may be 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 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. 78-21602 Filed 8-2-78; 8:45 am]

[8010-01]

[Release No. 20649; 70-6183]

ARKANSAS POWER & LIGHT CO.

Proposal to Make Short-term Borrowings; Exception From Competitive Bidding

JULY 28, 1978.

Notice is hereby given that Arkansas Power & Light Co. ("Arkansas"), First National Building, Little Rock, Ark. 72203, an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6 and 7 of the act and rule 50(a)(2) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Arkansas is presently authorized (HCAR No. 19734, Oct. 29, 1976, and HCAR No. 20003, Apr. 27, 1977) to issue and sell, from time to time, through September 30, 1978, up to $110,000,000 aggregate principal amount outstanding at any one time of unsecured short-term promissory notes (including commercial paper) to various commercial banks and/or a dealer in commercial paper, to meet its interim financing requirements.

Arkansas now proposes to revise the foregoing program and to issue and sell, from time to time through July 31, 1980, unsecured short-term promissory notes (including commercial paper) to various commercial banks and/or a dealer in commercial paper in an aggregate principal amount outstanding at any one time of not more than $125,000,000. Subject to the foregoing limitations, the nature of each issue of such notes (including commercial paper) will be determined in the light of the then prevailing market conditions and other factors.

Heretofore the net proceeds received by Arkansas from the sale of such short-term promissory notes have been applied solely to the company's construction program. The company proposes that in the future it may use some fo such proceeds for the acquisition of property, the construction, extension or improvement of its facilities or the discharge or lawful refunding of its obligations.

As of June 30, 1978, Arkansas construction program is expected to result in expenditures of approximately $266,600,000 in 1978, $170,600,000 in 1979, and $172,300,000 in 1980. Included in the estimate of construction program expenditures for 1978 are $216,400,000 for generating facilities, $15,600,000 for transmission facilities, $28,000,000 for distribution facilities, and $6,600,000 for other facilities. Most of the net proceeds to be received by Arkansas from the issuance and sale of the notes referred to herein, together with other funds available from time to time to Arkansas from its operations or derived from the issuance and sale of long-term debt and/or equity securities, will be applied to Arkansas construction program. As such notes mature, they will be renewed (but to mature not later than Apr. 30, 1981) or repaid out of funds then available to Arkansas from its operations or derived from the issuance and sale of similar securities or long-term debt and/or equity securities.

The notes proposed to be issued and sold to commercial banks will be in the form of unsecured promissory notes payable not more than 9 months from the date of issuance with right of renewal, will bear interest at the prime commercial bank rate in effect at the lending bank on the date of issuance or renewal or from time to time depending upon the requirements of the lending bank, and will, at the option of Arkansas, be prepayable, in whole or in part, at any time without premium or penalty. While no formal commitments for future borrowings have been made with any bank, it is expected that the banks to whom such notes will be issued and sold and the maximum amount to be issued and outstanding at any one time to each such bank will be substantially as follows:

Name of bank and maximum amount to be borrowed	(Thousands)
First National Bank of Eastern Arkansas, Forrest City, Ark	$400
Arkansas Bank & Trust Co., Hot Springs, Ark	800
The Commercial National Bank, Little Rock, Ark	1,600
First National Bank in Little Rock, Little Rock, Ark	4,000
Union National Bank, Little Rock, Ark	1,500
Worthen Bank & Trust Co., N.A., Little Rock, Ark	4,000
National Bank of Commerce, Pine Bluff, Ark	1,700
Simmons First National Bank, Pine Bluff, Ark	14,000
Peoples Bank & Trust Co., Russellville, Ark	300
Security Pacific National Bank, Los Angeles, Calif	3,500
Chemical Bank, New York, N.Y.	2,500
Irving Trust Co., New York N.Y.	10,000
Manufacturers Hanover Trust Co., New York N.Y.	45,000
Marine Midland Trust Co., New York, N.Y.	2,500
Morgan Guaranty Trust Co. of New York, New York, N.Y.	8,000
	$99,800

Except as indicated above, Arkansas will not effect borrowings from banks pursuant to this application-declaration until it shall have filed an amendment hereto setting forth the name or names of the banks from which such other borrowings are to be effected and the amounts thereof and such other borrowings shall have been authorized by order of the Commission.

Arkansas maintains accounts with the above Arkansas banks, and although balances in these accounts may be deemed to be compensating balances, these accounts are working accounts, and fluctuations in their balances do not reflect or depend upon fluctuations in the amounts of bank loans outstanding. Assuming that a 15 percent compensating balance is maintained and assuming an 8.75 percent prime rate, the effective interest cost would be 10.29 percent. The above non-Arkansas banks may require compensating balances of up to 10 percent of the amount of the commitment for loans and in some instances may require additional compensating balances not exceeding in any event 10 percent of the average annual amount of the loans outstanding from those banks. Assuming an 8.75 percent prime rate and a 20 percent compensating balance, the effective interest cost on loans from the non-Arkansas banks would be 10.94 percent.

The proposed commercial paper will be in the form of unsecured promissory notes with varying maturities not to exceed 270 days, the actual maturities to be determined by market conditions, effective cost of money to Arkansas and Arkansas anticipated cash requirements at the time of issuance. In accordance with the established custom and practices in the market, the proposed commercial paper will not be payable prior to maturity.

Arkansas proposes to issue, reissue and sell commercial paper in denominations of not less than $100,000 directly to Salomon Bros. (Dealer), a dealer in commercial paper, at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality of that particular maturity sold by public utility issuers to commercial paper dealers.

No commission or fee will be payable by Arkansas in connection with the issuance and sale of the commercial paper. The Dealer, as principal, will reoffer and sell the commercial paper at a discount rate of one-tenth of 1 percent per annum less than the prevailing discount rate to Arkansas in such a manner as not to constitute a public offering. The Dealer in reoffering the commercial paper will limit the reoffer and sale to a nonpublic customer list of not more than 200 buyers of commercial paper. Each such list will be prepared in advance of each offering and will include commercial banks, insurance companies, corporate pension funds, investment trusts, foundations, colleges and university funds, municipal and State funds and other financial and nonfinancial corporations which normally invest funds in commercial paper. Such list will be furnished to the Commission and no change will be made therein without advising the Commission of such change.

It is anticipated that the commercial paper will be held by the buyers to maturity. However, the Dealer may, if desired by a buyer, repurchase the commercial paper for resale to others on the list of customers.

It is stated that the issuance and sale of notes to banks is excepted from the competitive bidding requirements of Rule 50 by reason of paragraph (a)(2). It is further stated that the application of the competitive bidding requirements of Rule 50 with respect to the issuance and sale of commercial paper is not necessary or appropriate in the public interest or for the protection of investors or consumers because the commercial paper will have a maturity not in excess of 270 days, current rates for commercial paper for such prime borrowers as Arkansas are published daily in financial publications and it is impracticable to invite bids for commercial paper.

The fees, commisssions and expenses to be incurred in connection with the proposed transaction are estimated at $7,000. It is stated that 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 21, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants 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-decla-

ration, as amended 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 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. 78-21603 Filed 8-2-78; 8:45 am]

[8010-01]

[Rel. No. 5952; 18-12]

GIBSON, DUNN & CRUTCHER RETIREMENT PLAN

Filing of Application for an Order Exempting From the Provisions of the Act Interests or Participations

JULY 28, 1978.

Notice is hereby given that the law firm of Gibson, Dunn & Crutcher ("Applicant" or the "Firm"), 515 South Flower Street, Los Angeles, CA 90071, a California partnership, has, by letter dated January 15, 1978, and enclosures submitted therewith, and by letter dated June 22, 1978, applied for an exemption from the registration requirements of the Securities Act of 1933 (the "Act") for participations or interests issued in connection with the Gibson, Dunn & Crutcher Retirement Plan (the "Plan"). All interested persons are referred to these documents, which are on file with the Commission, for the facts and representations contained therein, which are summarized below.

I. INTRODUCTION

The Plan covers the Firm's partners and non-lawyer employees, of whom approximately 83 partners and 152 non-lawyer employees were eligible to participate as of December 1, 1977.

Non-lawyer employees of the Firm are required to participate in the Plan, and all required contributions made under the Plan on their behalf are made by the Firm. In addition, subject to the limitations of the Plan, each non-lawyer employee participant is permitted to make optional additional contributions to his account in the Plan in excess of the maximum amount which may be contributed on his behalf by the Firm, and the amount of such voluntary contributions may be withdrawn by him at any time. Partners may elect to, but are not required to, participate in the Plan, and are similarly permitted to make voluntary additional contributions to their accounts, subject to the limitations of the Plan. All contributions by the Firm on behalf of a Partner reduce his share of the Firm's profits otherwise allocated to him.

Since January 1, 1976, participants have been afforded the option to elect that contributions for their account in the Plan be invested in a managed investment fund (solely for the investment of Plan assets), or in savings accounts and certificates.

Heretofore all participants were residents of and employed at the Firm's offices in the State of California, and Applicant has concluded that registration of interests and participations issued in connection with the Plan under section 5 of the Act was not required on the basis, among others referred to below, that any offering of such interests was exclusively intrastate, within the meaning of section 3(a)(11) of the Act. However, the Firm recently opened offices in Washington, D.C., and one of the Firm's partners who has left California to manage that office, may become a resident of another state. Accordingly, this exemption may no longer be applicable. Since the Plan is of a type, commonly referred to as a "Keogh" plan, which covers persons (in this case the Firm's partners) who are "employees" within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954 ("Code"), as amended, the exemption provided by section 3(a)(2) of the Act is inapplicable to interests in the Plan, absent an order of the Commission issued under section 3(a)(2).

Section 3(a)(2) of the Act provides essentially that the Commission shall exempt from the provisions of section 5 of the Act any interest or participation issued in connection with a pension or profit-sharing plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of the Code, if and to the extent that the Commission determines this to be 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.

II. DESCRIPTION AND ADMINISTRATION OF THE PLAN

A. QUALIFICATION, FORM, AND COVERAGE

The plan is qualified under section 401 of the code, and applicant represents that the plan is an "employee pension benefit plan" subject to the Employees' Retirement Income Security Act of 1974 ("ERISA"). The plan is funded through a single trust (the "trust"), governed by a single trust agreement, under which Security Pacific National Bank (the "trustee") is currently trustee.

The plan provides that nonlawyer employees of the firm and its partners are eligible for participation if they participated in the plan prior to January 1, 1976, or have completed 3 years of service, without a break in service as defined in the plan. The firm makes contributions to the plan: (i) On behalf of a nonlawyer employee participant, in an amount equal to percentages of his annual compensation specified in the plan; and (ii) on behalf of a partner participant, in the same percentages (or such lesser percentages specified by the partner participant) of the amounts otherwise annually distributable to him by the firm. In addition, under the plan each participant is permitted, at his option, to make voluntary contributions to his account, in lump sum or through withholding, of up to an additional aggregate amount of 10 percent of his annual compensation. The aggregate of firm and voluntary contributions is subject to a maximum limitation contained in the plan and such further limitation, if any, required to prevent disqualification of the plan under section 415 of the code. All contributions are at all times fully vested and nonforfeitable, though withdrawal fo firm contributions and earnings on voluntary contributions are restricted in accordance with the applicable tax requirements.

B. INVESTMENT OF CONTRIBUTIONS

The trustee is solely responsible for investment of amounts contributed to the plan, except to the extent, pursuant to the plan, the firm has retained such investment authority; or has delegated management of fund assets to a separate investment manager; or has allowed participants to direct the investment of their firm and voluntary contributions among alternative investment vehicles specified by the firm. Under this authority, since March 1, 1976, each participant has been afforded the option to designate the following alternative media for investment of firm and voluntary contributions for his account: (i) A portfolio of equity and fixed income securities selected by the investment manager, currently Scudder, Stevens & Clark Inc., a registered investment adviser (the "adviser"), which may include common and preferred stocks and corporate and government obligations of short- or long-term maturity; or (ii) an investment certificate or savings account (a "savings and loan account") offered by one of the savings and loan associations designated by the firm's Retirement Plan Committee to offer its accounts and certificates through operation of the plan. The adviser's

portfolio consists solely of plan assets and none of the assets of the plan have or will in any event be invested by the adviser in any collective or commingled fund containing assets other than assets of the plan.

As an administrative rule, prior to October 1, 1977, such election by the participant among these alternative investment media was permitted to be made once annually, and only with respect to all past and future firm and voluntary contributions on the participant's behalf. Effective October 1, 1977, the plan was revised to afford each participant the option, (a) commencing January 1, 1978, semiannually to direct investment of all previous amounts contributed by the firm or voluntarily to his plan account and of all amounts thereafter contributed by the firm to his plan account, either by the adviser or into the savings and loan account; and (b) from time to time, to direct (and to change the direction of) investment of his own future voluntary contributions, either by the adviser or into the savings and loan account, independently of his election in (a) above.

C. ADMINISTRATION OF PLAN

The plan is administered by the firm's Retirement Plan Committee (the "Retirement Committee"), the size and members of which are determined by the firm. The Retirement Committee presently consists of five partners of the firm. The Retirement Committee has general authority to control the operation of the plan and to supervise its administration, including interpreting the plan, determining eligibility for participation within the requirements of the plan, designating the adviser and alternative investment media to be available through the plan, instructing the trustee as to amounts to be invested in, transferred to, or withdrawn from the investment media in which assets of the plan may be invested, and directing the trustee to make payments from the assets of the plan. The Retirement Committee also has authority to employ investment managers, accountants and other experts to assist in administration of the plan.

III. REPORTING AND DISCLOSURE TO PLAN PARTICIPANTS

The plan is subject to ERISA, and the firm intends to comply with all of the ERISA reporting and disclosure requirements. In accordance with ERISA requirements, a summary plan description, written in language understandable by the average participant and a summary annual report have been and will be delivered to each participant and persons currently receiving benefits under the plan. Each participant and person receiving benefits under the plan has been and will be informed that the full annual report for the plan will be available upon request. All reports and other basic documents relating to the plan are available to participants for their review, and copies will be supplied to participants at no charge upon request. At least annually each participant will be notified of the value of his account under the plan. An ERISA notice briefly describing to participants their rights to information has been distributed.

In addition, the firm will make available to participants on request the latest interim financial statements of the plan's investment fund, including detailed schedules of assets. The firm has not distributed and does not intend to distribute, any type of promotional material relating to the plan.

Finally, applicant does not request (and the exemptive authority vested in the Commission by sec. 3(a)(2) does not authorize) exemption from the provisions of section 17 of the act, or any other applicable antifraud provisions of the securities laws, or any rules adopted pursuant thereto.

IV. DISCUSSION

Applicant contends that were the firm a corporation, rather than a partnership, interests or participations issued in connection with the plan would be exempt from registration under section 3(a)(2) of the act, because no person who would be an "employee" within the meaning of section 401(c)(1) of the code would participate in the plan. Applicant argues that the mere fact that it conducts its business as a partnership rather than as a corporation should not result in a requirement that interests in the plan be registered under the act.

Applicant also maintains that were the firm's partners not permitted to participate in the plan, the interests or participations issued in connection with the plan would be exempt under section 3(a)(2) since no other persons covered by the plan would be "employees" within the meaning of section 401(c)(1) of the code. Applicant argues that there is no valid basis for a contrary result merely because the plan also covers partners in the firm.

Applicant argues that the characteristics of the plan are essentially typical of those maintained by many single corporate employers and that the legislative history of the relevant language in section 3(a)(2) of the act does not suggest intent of the part of Congress that interests issued in connection with single-employer Keogh plans necessarily should be registered under the act. Rather, Congress excluded interests issued in connection with Keogh plans from the section 3(a)(2) exemption primarily out of concern over interests or participations in commingled or collective Keogh funds which might be marketed by sponsoring financial institutions to self-employed persons unsophisticated in the securities field. Applicant asserts that the plan assets are not invested in any such master or prototype plan or commingled with assets of any other plans or collective funds, and that the plan, like similar plans of large corporations, has been specifically tailored to meet Applicant's own particular requirements.

Finally, Applicant states that the disclosures required by ERISA and the other disclosures to be made the plan participants are additional grounds for granting the requested exemption.

Applicant concludes that under the circumstances, granting the requested exemption would be appropriate in the public interest, 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 22, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement of the nature of his interest, the reasons 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 be shall served personally or by mail upon Applicant 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. An order disposing of the matter will be issued as of course following August 22, 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. 78-21604 Filed 8-2-78; 8:45 am]

[8010-01]

[Release No. 10345; 812-4286]

MASSACHUSETTS FINANCIAL BOND FUND, INC. ET AL.

Application of the Act for Exemption

JULY 28, 1978.

Notice is hereby given that Massachusetts Financial Bond Fund, Inc., Massachusetts Cash Management Trust, MFS Managed Municipal Bond Trust, and Massachusetts Financial High Income Trust (collectively, the "Funds"), Massachusetts Financial Services Co. ("MFS"), 200 Berkeley Street, Boston, Mass. 02116, and Bruce S. Old ("Old;" referred to hereinafter together with the Funds and MFS as "Applicants") Arthur D. Little, Inc., Acorn Park, Cambridge, Mass. 02140, have filed an application on February 1, 1978, and an amendment thereto on July 27, 1978, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") for an order of the Commission declaring that Old shall not be deemed to be an interested person, within the meaning of section 2(a)(19) of the Act, of the Funds or of MFS, by reason of his status as an officer and shareholder of Arthur D. Little, Inc. ("ADL"). 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 Funds are open-end management investment companies registered under the Act. MFS serves as: (1) Investment adviser for each of the Funds; and (2) principal underwriter for each of the Funds except Massachusetts Cash Management Trust, a no-load Fund. Applicants assert that Old is a director or trustee of each of the Funds.

In addition to those positions, Applicants assert that Old is a senior vice president of ADL and owns 120 shares of its common stock out of 1,675,934 shares outstanding on June 30, 1977. ADL is a research and consulting organization serving industry, commerce, local, State and Federal Government entities, and foreign governments. ADL's work for its clients includes research, development and engineering in the physical and life sciences, and management consulting and economic services. Applicants state that Old is not a director of ADL.

Impact Securities Corporation ("Impact") is a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the Boston, Midwest and New York Stock Exchanges. Applicants state that, prior to July 8, 1977, Impact was a wholly owned subsidiary of ADL. On that date, Applicants assert, ADL sold its shares of Impact to Eugene E. Burlingame, Impact's president. In 1976, Impact had gross revenues of about $1,036,488 out of total ADL gross revenues of approximately $86,221,000. The net income of Impact was $22,270 compared to ADL's net income of $3,459,000. Applicants assert that: (1) Impact does not sell mutual Fund shares; and (2) Old is neither an officer nor a director of Impact.

Pursuant to an operating agreement with ADL, Impact has agreed to use its best efforts to market certain ADL publications and services (the "Offerings") provided by the Impact Services division of ADL to institutions which are in the business of dealing in securities for their own account or of managing securities investments for others. In addition, the agreement provides that ADL and Impact shall cooperate in the development and execution of a marketing and client maintenance plan relating to the Offerings. ADL is paid an annual subscription fee for the Offerings, and pays to Impact a commission of 15 percent of such fee for Offerings provided to Impact brokerage customers. The subscription fee for Offerings provided by ADL to Impact brokerage customers is paid by Impact to ADL in cash, and payment to Impact by its customers is made in the form of brokerage commissions.

The Offerings are also marketed directly by ADL through its Impact Services division. Applicants assert that MFS subscribes to one of the Offerings and pays an annual subscription fee therefor of $7,000 directly to ADL in cash. MFS is not a customer of Impact and has represented in the application that it will not become an Impact customer. Therefore, Applicants state, no commission is or will become payable to Impact on account of the MFS subscription to the Offering and its payment to ADL of the annual fee therefor.

Section 2(a)(19) of the act, in pertinent part, defines an interested person of an investment company, investment adviser or principal underwriter, as any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such broker or dealer. Section 2(a)(3) of the act defines an affiliated person of another person to include any officer of such other person, or any person under common control with such other person. Applicants submit that if Impact, because of its business relationship with ADL, is regarded as the equivalent of an operating division of ADL, or if Old and Impact were deemed to be under the common control of ADL, Old would be an affiliated person of a registered broker-dealer and, consequently, an interested person of the fund and MFS. Accordingly, Applicants request an order declaring that Old not be deemed to be an interested person, within the meaning of section 2(a)(19) of the Act, of the funds or of MFS by reason of his status as an officer and shareholder of ADL.

Applicants represent that: (1) None of the funds has or will have any interest in or relationship with ADL or Impact; (2) MFS pays and will continue to pay for the offering in cash and any other ADL offering MFS subscribes to will be paid for in cash; and (3) brokerage on the funds' portfolio transactions will not be used by MFS to pay for any offering it subscribes to, and no portfolio brokerage on behalf of the funds will be placed with Impact.

MFS represents that brokerage on portfolio transactions of other registered investment companies served by MFS as investment adviser and principal underwriter will not be used by MFS to pay for any of the offerings, and that no portfolio brokerage on behalf of such other registered investment companies will be placed with impact. With respect to the portfolio securities of MFS's investment advisory clients, other than the funds and the other registered investment companies which it serves as investment adviser and principal underwriter, MFS represents that no brokerage-generating business will be placed with Impact except that MFS may place such business with Impact if directed to do so by such clients and if the aggregate amount of such business does not exceed $500,000 in any year. MFS asserts that there is no adverse effect on any of the funds or such other registered investment companies or such investment advisory clients in MFS representing that no portfolio brokerage on their behalf will be placed with Impact because MFS believes that their portfolio brokerage needs can be completely satisfied, consistent with "best execution", by broker-dealers other than Impact.

Applicants claim that Old would be subject to no conflicts of interest as a result of his relationship with ADL since his activities as a senior vice president of ADL would be unrelated to and independent of any business activities of the funds or of MFS or of Impact. Neither Old nor ADL has any authority over or responsibility for the management or operation of Impact, and neither has any voice in its management. Accordingly, Applicants contend that Old is not in a position to, nor would he have any reason to, in any way act for or with, or to the detriment of, any of the funds in connection with any portfolio securities transaction of any of the funds. Further, Applicants contend that Old would be subject to no conflict of interest as a result of MFS's business re-

lationship with ADL since the amount paid annually by MFS for the offering ($7,000) is de minimis when compared to ADL's gross revenues.

Applicants aver that Old is a man of great stature and recognized integrity, experience, and competence in a wide variety of fields. Applicants believe that it is in the public interest, as well as in the best interests of the funds and their shareholders, that Old be permitted to serve as a disinterested director of the funds.

Section 6(c) of the act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the act.

Notice is further given that any interested person may, not later than August 22, 1978 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses 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. 78-21606 Filed 8-2-78; 8:45 am]

[8010-01]

[Rel. No. 20650; 70-6192]

METROPOLITAN EDISON CO.

Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

JULY 31, 1978.

Notice is hereby given that Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pa. 19605, an electric utility subsidiary company of General Public Utilities Corp., a registered holding company, has filed with this commission an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6 and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Med-Ed proposes to issue and sell at competitive bidding up to $50,000,000 principal amount of first mortgage bonds to be dated the date of their issue and to mature September 1, 2008 (the "New Bond"). The New Bonds will be issued under the Indenture dated November 1, 1944, between Met-Ed and Morgan Guaranty Trust Co. of New York, Trustee, as heretofore supplemented and amended and as to be further supplemented and amended by a Supplemental Indenture to be dated as of September 1, 1978. The interest rate (which will be a multiple of ⅛ of 1 percent) and the price (which will be not less than 98 percent and not more than 101 percent of the principal amount) will be determined by competitive bidding. None of the New Bonds may be redeemed at the option of Met-Ed prior to September 1, 1983, if the funds for such redemption are obtained at an interest cost lower than the yield of the New Bonds, except in certain circumstances.

It is stated that substantially all the net proceeds from the sale of the New Bonds will be applied to the payment at or before maturity of a like amount of Met-Ed's approximately $80,000,000 of short-term bank loans expected to be outstanding at the time of such sale, and the balance, if any, will be applied to reimburse Med-Ed's treasury for funds previously expended therefrom for construction purposes. The estimated cost of Med-Ed's construction program for 1978 is $90,000,000 (including allowance for funds used during construction), and that for 1979 is $70,000,000.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $165,000, including printing expenses of $70,000, attorneys' fees of $43,000 and trustee's fees of $17,500. The Pennsylvania Public Utility Commission has jurisdiction over the proposed transaction. No other State commission and no Federal Commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested persons may, not later than August 28, 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 application-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 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 filed or as it may be 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. 78-21605 Filed 8-2-78; 8:45 am]

[8010-01]

[Release No. 20647; 70-6080]

MONONGAHELA POWER CO. ET AL.

Post-Effective Amendment Relating to Proposed Issuance and Sale of Short-Term Notes to Banks

In the matter of Monongahela Power Co., 1310 Fairmont Avenue, Fairmont, W. Va. 26554; the Potomac Edison Co., Downsville Pike, Hagerstown, Md. 21740; the West Penn Power Company, 800 Cabin Hill Drive, Greensburg, Pa. 15601.

Notice is hereby given that Monongahela Power Co. ("Monongahela"), the Potomac Edison Co. ("Potomac"), and West Penn Power Co. ("West Penn"), each a wholly owned electric utility subsidiary of Allegheny Power

System, Inc. ("Allegheny"), a registered holding company, have filed a post-effective amendment to their application in this proceeding pursuant to section 6(b) of the Public Utility Holding Company Act of 1935 ("Act"), and Rule 50(a)(5) promulgated thereunder regarding the proposed transactions. All interested persons are referred to the amended application, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated December 28, 1977 (HCAR No. 20343), the above subsidiaries of Allegheny were authorized to borrow funds during the period ending June 30, 1979, through the issuance and sale of short-term notes to banks and commercial paper to dealers in commercial paper in an aggregate amount not to exceed $50,000,000 in the case of Monongahela, $48,000,000 in the case of Potomac, and $50,000,000 in the case of West Penn. Jurisdiction was reserved with respect to that portion of the borrowings requested by West Penn in excess of $50,000,000. In accordance with the post-effective amendment, the banks from which such borrowings are effected remain the same but in some instances the maximum amount of the borrowings to be outstanding from each bank at any one time has been changed. The complete list of banks and maximum amounts to be borrowed will be as follows:

Citibank, N.A.	$40,000,000
The Chemical Bank	30,000,000
Mellon Bank, N.S.	55,000,000
Pittsburgh National Bank	7,500,000
Manufacturers Hanover Trust Co.	60,000,000
Irving Trust	5,000,000
Chase Manhattan Bank, N.A.	2,500,000
Total	200,000,000

The maximum amount of such borrowings at any one time outstanding will not, when taken together with any commercial paper then outstanding, be in excess of $50 million in the case of Monongahela, $50 million in the case of West Penn, and $48 million in the case of Potomac as previously authorized.

The original filing stated that no commitment or agreement has been made with respect to any of the proposed borrowings and that Allegheny and the Companies have established lines of credit with such banks for short-term borrowing. It was stated that balances are maintained by one or more of the System Companies at all of these banks to meet regular operating requirements as well as, when necessary, in connection with these lines of credit. It was further stated that compensating cash balances requirements are generally either on the basis of a percentage of the line of credit extended by such bank (for example 10 percent), or a higher percentage of notes outstanding (for example 20 percent), whichever is greater, or a percentage of the line of credit (for example 10 percent) plus a percentage (for example 10 percent) of notes outstanding, in each case on an average annual basis.

The post-effective amendment states that certain of the banks listed above have offered to substitute fees for, or to be used in conjunction with lower compensating balances than those set forth above. The fee arrangements vary. In some cases fees equal to a specific percentage of the prime commercial rate (for example 8½ percent of the prime commercial rate) are involved, while in another instance the arrangement provides that balances be maintained equal to 5 percent of the line of credit with an additional fee of 2½ percent of prime payable, rather than more burdensome balance arrangements. It is stated that the fee arrangements would not be utilized unless the effective cost thereof is less than the compensating balance arrangement in effect at that bank at that time. It is further stated that the proposed fee arrangements result in an effective interest cost of issuing and selling the notes between 7.96 and 8.38 percent based upon a prime commercial rate of 7 percent and between 10.23 and 10.77 percent based upon a prime commercial credit rate of 9 percent. This compares with an effective cost between 8.75 percent and 11.25 percent based upon the compensating balance requirements set forth above.

In all other respects the proposed transactions remain the same. It is stated that the State Corporation Commission of Virginia has jurisdiction over the issuance and sale by Potomac of the short-term debt. It is further stated that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than August 23, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and issues of fact or law raised by said post-effective amendment to the application 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 applicants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application as now amended or as it may be further amended, may be granted 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. 78-21607 Filed 8-2-78; 8:45 am]

[8010-01]

[Rel. No. 20651; 70-6189]

OHIO EDISON CO.

Proposed Issuance and Sale of Preferred Stock at Competitive Bidding

JULY 31, 1978.

Notice is hereby given that the Ohio Edison Co. ("Ohio Edison"), 47 North Main Street, Akron, Ohio 44308, a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7 and 12(c) of the Act and Rules 42, 50 and 100(a) promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

Ohio Edison Co. proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, up to 450,000 shares of a new series of its authorized Preferred Stock, $100 par value. The dividend rate (which shall be a multiple of .04 percent) and the purchase price (which shall be not less than 100 percent nor more than 102.75 percent of par, plus accrued dividends) will be determined by competitive bidding. Such proposals shall also specify separatey (and not take such amount into account in specifying the purchase price of the Preferred Stock) the amount to be paid as underwriting compensation if the purchaser or purchasers thereof propose to make a public offering.

The new Preferred Stock will be identical in all respects to the presently outstanding shares of Ohio Edison Preferred Stock, except as to rate of dividend and dividend payment dates, terms of redemption, amount payable on voluntary liquidation and sinking fund requirements, if any, which will

be determined prior to issue. No shares of the new Preferred Stock will be redeemable prior to September 1, 1983, if the redemption is for the purpose or in anticipation of refunding such shares directly or indirectly through the issuance of debt or stock ranking equally with or prior to the new series of Preferred Stock if such debt or stock has an effective interest cost or dividend cost less than the effective dividend cost to Ohio Edison of the new series of Preferred Stock. Ohio Edison anticipates that it may become necessary to include in the terms of the new Preferred Stock a provision for a sinking fund pursuant to which it will be required, beginning in 1983, to retire up to 5 percent of the shares of the new Preferred Stock annually.

The proceeds from the sale of the new Preferred Stock are to provide funds to reduce unsecured short-term debt (estimated to aggregate $60,000,000 at the time of such issue) and to provide funds for its construction program which is estimated at $381,635,000 for 1978.

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. The Public Utilities Commission of Ohio has jurisdiction over the proposed transaction. No other 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 25, 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 application-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 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 filed or as it may be 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. 78-21608 Filed 8-2-78; 8:45 am]

[8010-01]

[Release No. 10344; 812-4325]

STATE MUTUAL LIFE ASSURANCE CO. OF AMERICA

Filing of Application for an Order Permitting Acquisition of Certain Notes

JULY 28, 1978.

Notice is hereby given that State Mutual Life Assurance Co. of America ("Insurance Company"), 440 Lincoln Street, Worcester, Mass. 01605, a mutual life insurance company organized under the laws of Massachusetts, filed an application on June 9, 1978, and an amendment thereto on July 25, 1978, for an order pursuant to Section 17(d) of the Investment Company Act of 1940 ("Act") and Rule 17d-1 thereunder, permitting the Insurance Company to acquire $2,000,000 of 9⅜ percent Senior Notes of the William C. Carter Co. ("Carter"). 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.

Pursuant to an order of the Commission issued on February 12, 1973 (Investment Company Act Release No. 7665), corrected on February 27, 1973 (Investment Company Act Release No. 7698), and amended on July 28, 1976 (Investment Company Act Release No. 9371) (collectively referred to as the "Order"), the Insurance Company, which acts as investment adviser to State Mutual Securities, Inc. ("Fund"), a closed-end, diversified investment company registered under the Act, is permitted to invest concurrently in each issue of securities purchased by the Fund at direct placement in an amount equal to the amount invested in such issue by the Fund and to exercise warrants, conversion privileges and other such rights at the same time and in the same amount as the Fund. The Order is subject to several conditions, one of which requires, generally, that purchases at direct placement of securities which would be consistent with the investment policies of the Fund be shared equally by the Insurance Company and the Fund. Another condition is that once the Insurance Company and the Fund have acquired interests in an issuer, neither the Insurance Company nor the Fund, unless otherwise permitted by order of the Commission, may acquire any further interest in such issuer or in any affiliated person of such issuer, or in securities issued by such issuer or affiliated person, other than interests in all respects identical.

The Insurance Company states that it has made a commitment to purchase at direct placement $2,000,000 principal amount of a new issue of $10,000,000 of 9⅜ percent Senior Notes due 1993 of Carter ("Notes"). The Insurance Company further states that the Insurance Company and the Fund each currently hold $2,375,000 principal amount of 8¾ percent Senior Notes due 1989 issued by Carter in April 1974 ("Outstanding Senior Notes"). The Insurance Company states that because the Notes will be long-term debt obligations and both the Insurance Company and the Fund presently hold some of the Outstanding Senior Notes, the Insurance Company may not, pursuant to the terms of the Order, individually purchase the Notes unless it obtains a further Commission order expressly permitting such acquisition.

Section 17(d) of the Act and Rule 17d-1 thereunder provide that an affiliated person of a registered investment company, acting as principal, may not effect any transaction in which such investment company is a joint participant without the permission of the Commission. In passing upon applications for orders granting such permission, the Commission will consider whether the participation of the investment company in such joint enterprise or arrangement on the basis proposed 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.

The Insurance Company submits that its acquisition of the Notes would not be disadvantageous to the Fund and would be consistent with the provisions, policies and purposes of the Act. It is stated that the Fund currently has approximately 2.4 percent of its net assets invested in the Outstanding Senior Notes and that a further investment in Carter debt securities would expose the Fund to excessive risk in the credit of a single issuer. Therefore, the Notes are not considered to be an appropriate investment for the Fund, and the Board of Directors of the Fund has voted to decline participation in the proposed issue of Notes.

It is further stated that Carter will be receiving signifcant new value in consideration for the Notes and that it will use a substantial portion of the proceeds from the issuance of the Notes to amortize outstanding indebt-

edness to banks. Issuance of the Notes will thus reduce Carter's dependence upon short-term bank debt and extend the final maturity of such debt until 1993. Therefore, it is asserted that issuance of the Notes will provide Carter with improved financing capability and flexibility.

The Insurance Company further states that the Notes, which will rank *pari passu* with the Outstanding Senior Notes and the debt owed to banks, will contain provisions prohibiting, respectively, their prepayment for a period of 7 years and their repayment at any time with funds borrowed at a rate of interest less than 9⅝ percent. These provisions, it is submitted, will afford further protection to the holders of the Outstanding Senior Notes, which mature prior to the Notes. The Insurance Company concludes that its purchase of the Notes would not materially affect Carter's ability to meet its obligation to the Fund on the Outstanding Senior Notes. Finally, the Insurance Company states that the Notes would be an attractive investment for it, and that it would be disadvantaged if it were not permitted to acquire a portion of these securities.

Notice is further given that any interested person may, not later than August 22, 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 at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who 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. 78-21609 Filed 8-2-78; 8:45 am]

[4710-07]

DEPARTMENT OF STATE

[Public Notice CM-8/84]

STUDY GROUP 1 OF THE U.S. ORGANIZATION FOR THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT)

Meeting

The Department of State announces that Study Group 1 of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on August 30, 1978 at 10 a.m. in room 1406 of the Department of State, 2201 C Street NW., Washington, D.C. This study group deals with U.S. Government regulatory aspects of international telegraph and telephone operations and tariffs.

The study group will discuss international telecommunications questions relating to telegraph, telex, data, videotex and leased channel services in order to develop U.S. positions to be taken at an international CCITT Study Group III meeting to be held in the fall of 1978 in Geneva, Switzerland.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is therefore requested that prior to August 30, 1978, members of the general public who plan to attend the meeting inform Mr. Arthur L. Freeman, Office of International Communications Policy, Department of State, telephone (202) 632-1007, of their intention. All non-Government attendees must use the C Street entrance to the building.

Dated: July 28, 1978.

ARTHUR L. FREEMAN,
Chairman, U.S. CCITT National Committee.

[FR Doc. 78-21463 Filed 8-2-78; 8:45 am]

[4910-59]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

BETTE CHESTNUT AND SELINA H. EHRLEIN

Denials of Petitions to Commence Defect Proceedings

This notice sets forth the reasons for denial of two petitions to commence a proceeding to determine whether a defect related to motor vehicle safety exists in a vehicle. This notice is published in accordance with section 124 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) which provides that the National Highway Traffic Safety Administration must grant or deny such petition within 120 days of receipt, and "If the Secretary denies such petition he shall publish in the FEDERAL REGISTER his reasons for such denial" (section 124(d)).

Bette Chestnut. On April 3, 1978, Bette Chestnut of Jefferson City, Mo., petitioned the agency to determine whether American Motors Corp. ("AMC") had reasonably met its obligation to remedy a safety related defect in the 1976 Matador. After receiving notice that her car was recalled for replacement of the engine cooling fan, Ms. Chestnut informed AMC that she wished to have the repairs performed by a local service garage, rather than by the nearest franchised AMC dealer, located 28 to 30 miles away. When AMC was unresponsive to this request she wrote NHTSA of her problem, whereupon AMC made arrangements satisfactory to her. There being no similar complaints pertaining to the recall compaign, Ms. Chestnut's petition was denied based upon the ability of NHTSA to resolve the problem without holding a hearing.

Selina H. Ehrlein. On April 11, 1978, Selina H. Erhlein of Rockville Centre, N.Y., petitioned NHTSA for a determination whether Chrysler Corp. had reasonably met its obligation to remedy two safety related defects in a reasonable length of time. Within a month of filing her petition Mrs. Ehrlein reported that Chrysler had finally resolved the matter to her satisfaction. Therefore her petition was denied based upon the ability of NHTSA to resolve the problem without holding a hearing.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 318 (15 U.S.C. 1392, 1407), sec. 106, Pub. L. 93-492, 88 Stat. 1482 (15 U.S.C. 1410), delegations of authority at 49 CFR 1.50 and 501.8.)

Issued on July 26, 1978.

LYNN BRADFORD,
Acting Associate Administrator for Enforcement.

[FR Doc. 78-21361 Filed 8-2-78; 8:45 am]

[4910-59]

National Highway Traffic Safety Administration

NATIONAL HIGHWAY SAFETY ADVISORY COMMITTEE

Field Trip

The National Highway Safety Advisory Committee's State-Federal Rela-

tions Subcommittee is planning a field trip to Des Moines, Iowa, on August 23 and 24, 1978.

Subcommittee members plan to discuss with legislators, State and local officials and FHWA and NHTSA regional personnel current program management and the impact on Iowa of the new management concept envisioned in the highway safety legislation now pending before Congress. Some specific items for discussion will be how highway safety problem areas will be identified; how will countermeasures be selected and evaluated; what will be the role of local communities; and what are the State's priority programs.

A report on the trip will be made by the subcommittee chairman at the September meeting of the full Advisory Committee. The arrangements for visits to various officials are being made by the Iowa Governor's Highway Safety Representative.

The visit is subject to the approval of the appropriate DOT officials.

Additional information may be obtained from the NHTSA Executive Secretary, Room 5215, 400 Seventh Street SW., Washington, D.C. 20590, telephone, 202-426-2872.

Issued in Washington, D.C., on July 31, 1978.

WM. H. MARSH,
Executive Secretary.

[FR Doc. 78-21563 Filed 8-2-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Customs Service

[520747]

AMERICAN MANUFACTURER'S PETITION

Notice of Receipt of American Manufacturer's Petition To Reclassify Cotton Denim Trousers Known as "Blue Jeans"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of American manufacturer's petition.

SUMMARY: The Customs Service has received a petition from an American manufacturer of wearing apparel requesting the reclassification of certain cotton denim trousers for men and women, commonly referred to as "blue jeans."

DATES: Interested persons are invited to submit written comments regarding this petition. Comments must be received on or before September 5, 1978.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Philip Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5865.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), by an American manufacturer of wearing apparel, including cotton denim trousers for men and women commonly referred to as "blue jeans." The petitioner contends that certain blue jeans which are currently classifiable as nonornamented wearing apparel in either item 380.39, Tariff Schedules of the United States (TSUS) or item 382.33, TSUS, are more properly classifiable under the provision for other ornamented wearing apparel of cotton, in either item 380.00, TSUS, if for use by men or boys, or item 382.00, TSUS, if for use by either sex or by women, girls or infants.

Headnote 3, schedule 3, TSUS, defines the term "ornamented" as used in relation to the tariff classification of articles made of textile materials. For an article to be considered ornamented, it must possess one or more of the features enumerated in headnote 3. The petitioner contends that, in accordance with headnote 3, blue jeans possessing any of the following features should be classified as ornamented for tariff purposes: (1) inserted leather yokes; (2) fabric used for pocket openings when pockets have been inserted into the leather portions of a garment; (3) double layered patch pockets formed by two pieces of irregular shaped fabric which are stitched together, and then stitched to a third piece of fabric which acts as a backing; (4) a braided fabric strip stitched to the edge of a patch pocket opening; (5) stitching made necessary by precutting when the precutting has no apparent functional purpose except to make the stitching essential to completing the article; (6) separate belt loops sewn to form an "X"; (7) leather piping inserted along the edge of a pocket opening; (8) basket weave inserts made of leather strips inserted in patch pockets; (9) metal rivets; (10) stitching which holds a patch pocket made of two pieces of fabric together; (11) leather strips used to finish the opening of stand pockets; (12) patch pockets with openings which are formed from the material of the pocket itself, instead of by failing to stitch the top of the pocket to the body of the garment; and (13) leather piping inserted in the seams where two pieces of fabric are joined.

COMMENTS

Pursuant to § 175.21(b) of the Customs Regulations (19 CFR 175.21(b)), the Customs Service invites written comments on this petition from all interested parties.

The American manufacturer's petition as well as all comments received in response to this notice will be available for public inspection in accordance with §§ 103.8(b), 175.21(a) of the Customs Regulations (19 CFR 103.8(b), 175.21(a)) during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

AUTHORITY

This notice is being published in accordance with § 175.21(a) of the Customs Regulations (19 CFR 175.21(a)).

LEONARD LEHMAN,
Assistant Commissioner, Regulations and Rulings.

[FR Doc. 78-21497 Filed 8-2-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 691]

ASSIGNMENT OF HEARINGS

JULY 31, 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 103066 (Sub-67F), Stone Trucking Co., now being assigned September 19, 1978 (1 day), at Boston, MA, in a hearing room to be later designated.

MC 45414 (Sub-3), Metropolitan Coach Service, Inc., now being assigned September 20, 1978 (3 days), at Boston, MA, in a hearing room to be later designated.

MC 134922 (Sub-256), B. J. McAdams, Inc., application dismissed.

MC 36874, Notice of Intent to File Divisions Complaint by Long Island RR. Co., now being assigned prehearing conference September 12, 1978, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 2960 (Subs-9, 10, 11, 13, 14, 16, and 18), all England Transportation Co. of TX now being assigned for continued hearing on August 28, 1978 (1 week), in the Conference Room 577, 5th Floor, Federal Building, 300 East 8th Street, Austin, TX.

MC 136268 (Sub-8F), Whitehead Specialties, Inc., now assigned October 19, 1978, at Chicago, IL, is canceled and transfered to Modified Procedure.

MC 143249 (Sub-2), Mid Eastern Transportation, Inc., Common Carrier Application, now being assigned September 6, 1978 (1 day), at Nashville, TN, in Room A-961, U.S. Courthouse, 801 Broadway.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21575 Filed 8-2-78; 8:45 am]

[7035-01]

[Docket No. AB-18 (Sub-No. 15)]

CHESAPEAKE & OHIO RAILWAY CO.

Abandonment Between Oldtown and Nelsonville, Ohio; Findings

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision entered on March 8, 1978, a finding, which is administratively final, was made by the Administrative Law Judge, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 ICC 584 (1978), the present and future public convenience and necessity permit the abandonment by the Chesapeake & Ohio Railway Co. of its branch line of railroad between Diamond, Ohio, in Hocking County, at milepost 58.6, and Nelsonville, Ohio, in Athens County, at milepost 62.9, both points located on applicant's Armitage Branch. A certificate of abandonment will be issued to the Chesapeake & Ohio Railway Co. based on the above-described finding of abandonment, 30 days after publication of this notice (September 5, 1978), unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return of the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21573 Filed 8-2-78; 8:45 am]

[7035-01]

[Docket No. AB-11 (Sub-No. 3)] [1]

CHICAGO & EASTERN ILLINOIS RAILROAD

Abandonment Between Goodwine and Alonzo in Iroquois County, Ill.; Findings

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision entered on November 2, 1977, a finding, which is administratively final, was made by the Commission, Review Board No. 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 ICC 584 (1978), the present and future public convenience and necessity permit the abandonment by the Chicago & Eastern Illinois Railroad as merged into the system of the Missouri Pacific Railroad Co., of that portion of its line between Goodwine (milepost 98.05) and Alonzo (milepost 95.02), Iroquois County, Ill., a distance of 3.03 miles. A certificate of abandonment will be issued to the Missouri Pacific Railroad Co. based on the above-described finding of abandonment, 30 days after publication of this notice (September 5, 1978), unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978 at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21572 Filed 8-2-78; 8:45 am]

[7035-01]

[Docket No. AB-43 (Sub-No. 26)]

ILLINOIS CENTRAL GULF RAILROAD CO.

Abandonmnet Near Hardwood, La, and Woodville, in Woodville, Miss. in West Feliciana Parish, La, and Wilkinson County, Miss.; Findings

Notice is herby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision entered on June 22, 1978, a finding, which is administratively final, was made by the Administrative Law Judge, stating that, subject to the conditions for the protection of railway employees prescribed by the Com-

[1] Missouri Pacific Railroad Company is being substituted as applicant herein.

mission in *Oregon Short Line R. Co.—Abandonment Goshen*, 354 ICC 584 (1978), the present and future public convenience and necessity permit the abandonment by the Illinois Central Gulf Railroad Co., of that portion of its branch line extendilng from railroad milepost 19.2 near Hardwood (Argue) La, to milepost 41.65 at Woodville, Miss., a distance of 22.45 miles in West Feliciana Parish, La, and Wilkinson County, Miss., including the stations of Bains, Whitman, Wakefield and Laurel Hill, La, and Woodville, Miss. A certificate of abandonment will be issued to the Illinois Central Gulf Railroad Co. based on the above-described finding of abandonment, 30 days after publication of this notice (September 5, 1978), unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 month, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonmnet, to provide such assistance or to purchase such line, and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such assistance or acquisition and operating agreement, the Commission shall postpone the issuence of such a certificate for such period of times as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978 at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

H. G. HOMME, Jr.
Acting Secretary.

[FR Doc. 78-21574 Filed 8-2-78; 8:45 am]

[7035-01]

[Notice No. 135]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 4, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 45893 (Sub-14TA), filed June 9, 1978. Applicant: ROSS TRUCK LINES, INC., P.O. Box 249, 1010 North Pearl Street, Paola, KS 66071. Representative: Emanuel Bernard, Jr., Route 1, Box 458A, DeSoto, KS 66018. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural implements and grain dryers*, from Waverly, KS, and points within 5 miles thereof, to points in AR, IA, MO, NE, OK, and TX, for 180 days. Applicant states it does not intend to tack, but intends to interline at Kansas City, MO. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Berico Industries, Box 557, Waverly, KS 66871. Send protests to: Thomas P. O'Brien, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 147 Federal Building and U.S. Courthouse, 444 Southeast Quincy, Topeka, KS 66683.

MC 59655 (Sub-13TA), filed June 14, 1978. Applicant: SHEEHAN CARRIERS, INC., 62 Lime Kiln Road, Suffern, NY 10901. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Containers, container closures, ends and components*, from Fairport and Rochester, NY, to Nashua, NH, and (2) *Materials, equipment and supplies* used in the manufacture and distribution of containers, container closures, ends and components, from Nashua, NH, to Fairport and Rochester, NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Can Co., American Lane, Greenwich, CT 06830. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

MC 60186 (Sub-52TA), filed June 14, 1978. Applicant: NELSON FREIGHTWAYS, INC., 47 East Street, Rockville, CT 06066. Representative: Clifford J. O. Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods, frozen foodstuffs and exempt commodities* when moving in the same vehicle, between Syracuse, NY, on the one hand, and, on the other, PA, NJ, MA, CT, and NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Empire Freezers of Syracuse, Inc., P.O. Box 4892, Farrell Road, Syracuse, NY 13221. Send protests to: J. D. Perry, Jr., District Supervisor, Interstate Commerce Commission, 135 High Street, Room 324, Hartford, CT 06101.

MC 78228 (Sub-86TA), filed June 9, 1978. Applicant: J. MILLER EXPRESS, INC. 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., and David M. O'Boyle, 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Zinc and zinc alloys*, from the plantsite of St. Joe Zinc Co., Division

of St. Joe Minerals Corp., located at Josephtown, Potter Township, Beaver County, PA, to points in the Chicago, IL, commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: St. Joe Zinc Co., Division of St. Joe Minerals Corp., 2 Oliver Plaza, Pittsburgh, PA 15222. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 107403 (Sub-1087TA), filed June 13, 1978. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground limestone* (in bulk and bags), from Sylacauga, AL, to Westwego, LA, for 180 days. Supporting shipper: Sylacauga Calcium Products Co., P.O. Box 330, Sylacauga, AL 35150. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 107576 (Sub-26TA), filed May 30, 1978. Applicant: SILVER WHEEL FREIGHTLINES, INC., 1321 Southeast Water Avenue, Portland, OR 97214. Representative: Ben D. Browning or Ronald D. Browning (same address as applicant). Authority sought to operate in interstate or foreign commerce, as a *common carrier*, by motor vehicle, of *general commodities* (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk in tank vehicles, and those requiring special equipment); (1) between Seattle and Walla Walla, WA via Interstate Hwy 90 to junction U.S. Hwy 97 (near Ellensburg), then via U.S. Hwy 97 to junction U.S. Hwy 12, then via U.S. Hwy 12 to Walla Walla, serving intermediate and off-route points located in Kittitas, Yakima, Benton, Franklin, and Walla Walla Counties, WA; (2) between Goldendale and United States-Canada border (U.S. Hwy 97) near Oroville, WA via U.S. Hwy 97, serving intermediate and off-route points located in Yakima, Kittitas, Chelan, Douglas, and Okanogan Counties, WA; and (3) between Plymouth, WA and junction U.S. Hwy 2 and U.S. Hwy 97 (at Olds, WA) via Washington State Hwy 14 to junction U.S. Hwy 12, then via U.S. Hwy 12 to junction U.S. Hwy 395, then via U.S. Hwy 395 to junction Washington State Hwy 17, then via Washington State Hwy 17 to junction Interstate Hwy 90, then via Interstate Hwy 90 to junction Washington State Hwy 281 (near George, WA), then via Washington State Hwy 281 to junction Washington State Hwy 28, then via Washington State Hwy 28 to junction U.S. Hwy 2, then via U.S. Hwy 2 to junction U.S. Hwy 97, serving intermediate and off-route points located in Benton, Franklin, Adams, Grant, Douglas, and Chelan Counties, WA. also requested is authority to tack, interline, and serve the commercial zone of the above-named points, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 81 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor A. E. Odoms, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 Southwest Yamhill Street, Portland, OR 97204.

MC 115651 (Sub-39TA), filed June 14, 1978. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Road, Rockford, IL 61102. Representative: Robert D. Higgins (Same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Asphalt*, in bulk, in tank trucks from the facilities of Koch Refining Co. at or near Dubuque, IA, to points in IL, IA, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately five statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Lois M. Stahl, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 118159 (Sub-264TA), filed June 5, 1978. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cotton bale ties and bagging* from Houston and Galveston, TX, to Forth Worth, Quanah, Sherman, Stamford, Sweetwater, Walfe City, and Lubbock, TX, and Altus, Hossil, Clinton, Oklahoma City, Lawton, and Frederick, OK, for 180 days. (Restricted to shipments having a prior movement by water). Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Fiber Packaging Co., Inc., Box 327, Vienna, GA 31092. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 118959 (Sub-167TA), filed April 14, 1978. Applicant: JERRY LIPPS, INC., 130 South Frederick Street, Cape Girardeau, MO 63701. Representative: Robert M. Pierce, P.O. Box 1899, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cans, fibreboard, with or without metal ends, set-up*, from the facilities of Sonoco Products Co. at Henderson, KY, to Grand Prairie, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sonoco Products CO., North Second Street, Hartsville, SC 29550. Send protests to: P. E. Binder, Acting District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 North 12th Street, St. Louis, MO 63101.

MC 119789 (Sub-481TA), filed June 14, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 6188, Dallas, TX 75222. Representative: Ralph W. Pulley, Jr., Phinney, Hallman, Pulley & Coke, 4555 First National Bank Building, Dallas, TX 75202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Telephone equipment; switchboard parts; materials and supplies* used in the manufacture, installation and maintenance of telephone equipment and telephone lines; plant and office supplies, (1) from facilities shipped from and utilized by Western Electric Co., at or near Kearney, South Kearney and Bayonne, NJ, to Atlanta, GA; Jacksonville and Miami, FL; Montgomery, AL; New Orleans, LA; Dallas and Houston, TX; and Oklahoma City, OK; and (2) from facilities utilized by Western Electric Co. at Baltimore, MD to Montgomery and Birmingham, AL, for 180 days. Supporting shipper: Western Electric Co., Inc., Guilford Center, Greensboro, NC 27420. Send protests to: Opal M. Jones, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 124606 (Sub-5TA), filed June 14, 1978. Applicant: FORD TRUCK LINE, INC., 240 East Trigg Avenue, P.O. Box 529, Memphis, TN 38101. Representative: Mr. Daniel C. Sullivan, Esq., Sullivan & Associates, Ltd., 10 South LaSalle Street, Suite 1600, Chicago, IL 60603. Authority sought to operate as

a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Memphis, TN, and its commercial zone and Jackson, MS, and its commercial zone, serving the intermediate point of Canton, MS, and its commercial zone. From Memphis, TN, over U.S. Hwy 51 to Jackson, MS, and return over the same route. NOTE: Applicant intends to interline with other carriers at Memphis, TN and Jackson, MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 57 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, for copies thereof which may be examined at the field office named below. Send protests to: Mr. Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 129326 (Sub-29TA), filed June 8, 1978. Applicant: CHEMICAL TANK LINES, INC., Hwy 60 West, P.O. Drawer 432, Mulberry, FL 33860. Representative: Keith Alexander (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid resin plasticizer*, in bulk, in tank vehicles, from facilities of U.S.S. Polyester, at or near Bartow, FL, to points in the States of AL, AR, GA, LA, NC, SC, and TN, for 180 days. There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: U.S.S.—Polyester, 1711 Elizabeth Avenue West, Linden, NJ 07036. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 Northwest 53d Terrace, Miami, FL 33166.

MC 134888 (Sub-6TA), filed June 8, 1978. Applicant: MOROSA BROS. TRANSPORTATION CO., 4800 Stine Road, Bakersfield, CA 93309. Representative: R. Y. Schureman, 1545 Wilshire Boulevard, Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fly ash, in bulk*, from 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, for 180 days. Applicant has also filed an undelying ETA seeking up to 90 days of operating authority. Supporting shipper: Pozzolanic Northwest, Inc., 1449 West Meeker Street, Kent, WA 98031. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, 300 North Los Angeles Street, Room 1321, Los Angeles, CA 90012.

MC 135874 (Sub-130TA), filed June 14, 1978. Applicant: LTL PERISHABLES, INC., 550 East Fifth Street South, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery products*, in vehicles, equipped with mechanical refrigeration (1) from Altonna, IA, to Minneapolis, MN; Madison, Milwaukee, Monroe, and West Bend, WI, and St. Louis, MO.; (2) from Cleveland, OH, to Monroe, WI; St. Louis, MO, and Altonna, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Salem Bakery, 805 Eighth Street, Altonna, IA 50009. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building, U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

MC 136220 (Sub-55TA), filed June 9, 1978. Applicant: ROY SULLIVAN, d.b.a. SULLIVAN'S TRUCKING CO., INC., P.O. Box 2164, Ponca City, OK 74601. Representative: G. Timothy Armstrong, 6161 North May Avenue, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal* (in bulk, in dump vehicles), from the mines of Titan Mining, Ltd., at or near Lamar and Paris, AR, to the facilities of Bunge Corp., at Cairo, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Titan Mining, Ltd., P.O. Box 3179, Little Rock, AR 72203. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 140974 (Sub-4TA), filed June 9, 1978. Applicant: LLOYD GARBER, d.b.a. GARBER'S TRUCKING, 14th and K Streets, Fairbury, NE 68352. Representative: Lloyd Garber (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle over irregular routes, transporting: *Brick and clay products*, from the facility of Endicott Clay Products, at or near Endicott, NE, to points in TX, NM, AZ, NV, UT, and CA, under a continuing contract or contracts with Endicott Clay Products Co., for 180 days. Supporting shipper: Stanley A. Judd, Vice President, Endicott Clay Products Co., P.O. Box 17, Fairbury, NE 68352. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 143437 (Sub-2TA), filed May 30, 1978. Applicant: JRR, INC., 101 Wheatley Road, Ashland, KY 41101. Representative: Beery & Spurlock Co., 275 East State Street, Columbus OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Steel buildings, knocked down, and fabricated metal products*, from the plantsite of Armco Steel, located within 3 miles of Washington Court House, OH, to points in KY, TN, NC, SC, GA, and AL; and (2) *Iron and steel, and iron and steel articles*, from Greenfield, IN, Ashland and Junction City, KY, to the plantsite of Armco Steel Corp., located within 3 miles of Washington Court House, OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Charles W. Hall, Director of Transportation, Armco Steel Corp., 703 Curtis Street, Middletown, OH 45043. Send protests to: Linda H. Sypher, District Supervisor, Interstate Commerce Commission, 426 Post Office Building, Louisville, KY 40202.

MC 144800 (Sub-4TA), filed June 9, 1978. Applicant: ROLLS ROYCE CARRIAGE RENTALS, U.S. Route 1, Morrisville, PA 19067. Representative: William E. Benner, 102 North Main Street, Doylestown, PA 18901. Authority sought to operate as a *comon carrier*, by motor vehicle, over irregular routes, transporting: *Passengers* with and without baggage in luxury limousine service of not more than eight passengers, not including the driver or children 10 years of age or under who do not occupy a seat or seats, between Atlantic City, NJ, New York, NY; Philadelphia, PA; Baltimore, MD; and the District of Columbia, including the commercial zones of each of the respective cities, limited to persons originating at or destined to Resorts International Hotel, Atlantic City, NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Resorts International, Inc., North Carolina Avenue, Atlantic City, N.J. 08404. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 144863 TA, filed June 9, 1978. Applicant: LONNIE WHITE, d.b.a. LUBBOCK WRECKER SERVICE,

2327 Erskine Road, Lubbock, Tex. 79047. Representative: Richard Hubbert, P. O. Box 10236, Lubbock, Tex. 79408. Authority sought operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Wrecked or disabled cars, trucks, tractors, and trailers* (except mobile homes and replacement vehicles, in wrecker service), from Lubbock County, TX., to points in New Mexico and vice versa, for 180 days. Supporting shipper: Plains Truck Center, Inc., 4510 Avenue A, Lubbock, TX 79404. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box F-13206, Federal Building, Amarillo, TX 79101.

MC 144864 TA, filed June 9, 1978. Applicant: PERRY STEEL TRANSPORT, INC., 3687 Sheppard Road, Perry, OH 44081. Representative: Frank Colb, 1234 Standard Building, Cleveland, OH 44113. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Iron and steel and iron and steel articles,* between the facilities of Mid-West Materials, Inc., at or near Perry (Lake County), OH, and points in OH, MI, NY and PA, within 200 miles of Perry (Lake County), OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operation authority. Supporting shipper: Mid-West Materials, Inc., 3687 Sheppard Road, Perry, OH 44081. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, 731 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 144865 TA, filed June 9, 1978. Applicant: JASCO TRUCKING, INC., 202 94th Street, SW., Albuquerque, NM 87105. Representative: David C. Olson, Campbell, Cherpelis & Pica, Suite 405, 20 First Plaza, Albuquerque, NM 87102. Authority sought operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Coal,* from the National King Cole mine located east of Durango, and near Hesperus, LaPlata County, CO, to Ideal Basic Industries' plant, Tijeras Canyon, Bernalillo County, NM, under a continuing contract, or contracts with Ideal Basic Industries, Cement Division, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ideal Basic, Industries, Cement Division, P.O. Box 8789, 950 17th Street, Denver, CO 80201. Send protests to: Darrell W. Hammons, District Supervisor, Interstate Commerce Commission, 1106 Federal Office Building, 517 Gold Avenue SW., Albuquerque, NM 87101

MC 144891TA, filed June 9, 1978. Applicant: CASSIDY'S TRANSFER & STORAGE LTD., 1001 MacKay Street, P.O. Box 515 ON, Canada—K8A 6X7. Representative: R. D. Gunderman, Suite 710, Statler Hilton Hilton, Buffalo, NY 14202. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *New, uncrated office furniture* from ports of entry on the International Boundary line between the United States and Canada in NY and MI, to points in and east of ND, SD, NE, KS, OK, and TX, returned shipments of the same commodities in the reverse direction, restricted to the transportation of traffic, under a continuing contract, or contracts, with Storwall International, Inc., originating at or destined to its facilities in Pembrooke, ON, Canada for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Storwall Inter-National, Inc., 1000 Olympic Drive, Pembrooke, ON, Canada. Send protests to: Interstate Commerce Commission, Bureau of Operations, 910 Federal Building, 111 West Huron Street, Buffalo, NY 14202.

MC 114896 TA, filed June 14, 1978. Applicant: JOSEPH E. SONNIER, P.O. Box 69, Eunice, LA 70535. Representative: Mr. Jack B. Pucheu, Pucheu & Pucheu, P.O. Box 1109, Eunice, LA 70535. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Rough board road lumber* incidental to or used in the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum from oilfield locations between points in LA, on the one hand, and, on the other, points in MS, and TX, for 180 days. Supporting shipper: Mr. Joseph E. Sonnier, P.O. Box 69, Eunice, LA 70535. Send protests to: Mr. Ray C. Armstrong, Jr., District Supervisor, T-9038 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

MC 144897 TA, filed June 14, 1978. Applicant: SUN FREIGHTWAYS, INC., 500 East 50th Street, Lubbock, TX 79404. Representative: Mr. John C. Sims, Sims, Kidd & Hubbert, P.O. Box 10236, Lubbock, TX 79408. Temporary authority sought to operate as a *common carrier* by motor vehicle over irregular routes, transporting: *General commodities* (except Classes A and B explosives, household goods, as defined by the Commission, commodities in bulk, and those requiring special equipment), between Lubbock, TX, and Carlsbad, NM, serving all intermediate points. From Lubbock, TX, over U.S. 62/82 to Seminole, TX; then U.S. 62/180 to Carlsbad, NM, and return over same routes. Between Lubbock, TX, and Hobbs, NM, serving all intermediate points. From Lubbock, TX over U.S. 84 to Clovis, NM; then State Hwy 18 to Hobbs, NM, and return over same route. Between Lubbock, TX, and Carlsbad, NM, serving all intermediate points. From Lubbock, TX, over U.S. 62/82 to Brownfield, TX; then U.S. 380 to Roswell, NM; then U.S. 285 to Carlsbad, NM, and return over same route. Between Lubbock, TX, and Lovington, NM, serving all intermediate points. From Lubbock, TX, over U.S. 62 to Hobbs, NM; then State Hwy 18 to Lovington, NM, and return over same route. Between Lubbock, TX, and Roswell, NM, serving all intermediate points. From Lubbock, TX, over U.S. 84 to Clovis, NM; then U.S. 70 to Roswell, NM, and return over same route. Between Lubbock, TX, and Clovis, NM, serving all intermediate points. From Lubbock, TX, over State Hwy 114 to Dora, NM; then State Hwy 18 to Clovis, NM, and return over same route. Between Lubbock, TX, and Artesia, NM, serving all intermediate points. From Lubbock, TX, over U.S. 82 to Artesia, NM, and return over same route. Between Lubbock, TX, and Artesia, NM, serving all intermediate points. From Lubbock, TX, over U.S. 62 to its intersection with State Hwy 529; then State Hwy 529 to its intersection with U.S. 82; then U.S. 82 to Artesia, NM, and return over same routes. Between Lubbock, TX, and Roswell, NM, serving all intermediate points. From Lubbock, TX, over U.S. 62 to Carlsbad, NM; then U.S. 285 to Roswell, NM, and return over same route. Between Lubbock, TX, and Carlsbad, NM, serving all intermediate points. From Lubbock, TX, over U.S. 62 to Hobbs, NM; then State Hwy 18 to Jal, NM; then State Hwy 128 to its intersection with U.S. 285; then U.S. 285 to Carlsbad, NM, and return over same routes. (Restricted against service to TX points on west-bound traffic, and restricted against pickup service from TX points on east-bound traffic.) Servicing all commercial zones of the towns to be served herein. Applicant intends to interline with carriers at Lubbock, TX; Roswell, NM; Carlsbad, NM; and Clovis, NM, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 88 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box F-13206 Federal Building, Amarillo, TX 79101.

MC 144898 TA, filed June 14, 1978. Applicant: JACK W. BAUER d.b.a. BAUER'S TRUCKING, Route 2, Medford, WI 54451. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Doors and windows, millwork, window units, sashes, frames, blinds, screens, thresholds, sills, glass, and unassembled components of these products*, from Medford, WI, to points in CO, IL, IN, IA, MI, MN, NE, ND, and SD, and (2) *Materials, equipment, and supplies* used or useful in the manufacture, distribution, or sale of the commodities named in part (1) above, from points in CO, IL, IN, IA, MI, MN, NE, ND, and SD to Medford, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hurd Millwork Co. Division of Harlyn Industries, Inc., 520 South Whelen Avenue, Medford, WI 54451. Send protests to: District Supervisor Ronald A. Morken, 139 West Wilson Street, Room 202, Madison, WI 53703.

MC 144899 TA, filed June 14, 1978. Applicant: EAST COAST HOT SHOT SERVICE, INC., Davisville Road, North Kingstown, RI 02854. Representative: Philip W. Noel, 15 Westminster Street, Providence, RI 02903. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Oil field drilling equipment and material and supplies* used in connection therewith, between North Kingstown, RI, and all points in RI, MA, CT, NY, NJ, DE, MD, VA, NC, SC, GA, PA, WV, OH, MI, IN, IL, MS, AR, LA, OK, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: (1) Imco Services, a Division of Halliburton Co., Box 984, Davisville, RI 02854. (2) Magcobar Division, Dresser Industries, Inc., P.O. Box 335, North Kingstown, RI 02854, and (3) McJunkin Corp., Box 981, Davisville, RI 02854. Send protests to: Gerald H. Curry, District Supervisor, 24 Weybosset Street, Room 102, Providence, RI 02903.

MC 144900TA, filed June 14, 1978. Applicant: R. CHARBONNEAU & SONS, INC., 124 West Third Street, Logan, IA 51546. Representative: Ralph L. Charbonneau (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rock, sand, gravel and roadbuilding materials* from points in NE on and east of U.S. Hwy 281 to points in IA on and west of U.S. Hwy 71, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Fort Calhoun Stone Co., J. Stavely Wright, Sales, 1255 South Street, Blair, NE 68008. Send protests to: District Supervisor Carroll Russell, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 144916TA, filed June 14, 1978. Applicant: EDDIE L. WISE, d.b.a. WISE & SON TRANSPORT CO., 87 Dwight Street, Jersey City, NJ 07304. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Ink, glue, paint, paint materials, plaster molds*, except in bulk, and on return *materials and supplies* used in the manufacturing and sales thereof, from Glen Burnie, MD, to Chicago, IL, Kingston and New York, NY, Miami, FL, Midland Park, NJ, and Seattle, WA, under a continuing contract or contracts with Stafford/Reeves, Inc., Reward Ceramic Color, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Stafford/Reeves, Inc., Reward Ceramic Color, Inc., 314 Hammonds Ferry Road, Glen Burnie, MD 21061. Send protests to: Robert E. Johnston, District Supervisor, 9 Clinton Street, Newark, NJ 07102.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21576 Filed 8-2-78; 8:45 am]

[7035-01]

[Notice No. 134]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 3, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicted, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 8472 (Sub-6TA), filed June 9, 1978. Applicant: SOUTH END CARTAGE, INC., Corporation of Delaware, 4222 South Knox Avenue, Chicago, IL 60632. Representative: Abraham A. Diamond, 29 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, restricted to shipments in containers and vehicles having a prior or subsequent movement by rail or by water, between railroad yards and steamship piers and facilities in the Chicago Commercial Zone as defined by the Commission on the one hand, and points in the States of KY, MO, and NE; and also *empty containers, vehicles and chassis*, between the same points, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Cast North America, Ltd., Gunther A. Quellmaly, General Manager, One Westmont Square, Montreal, PQ, Canada. Send protests to: Lois M. Stahl, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Everett McKinely Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 52579 (Sub-172TA), filed June 5, 1978. Applicant: GILBERT CARRIER CORP., One Gilbert Drive, Secaucus, NJ. 07094. Representative: Irwin Rosen, One Gilbert Drive, Secaucus, NJ 07094. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel* on hangers used by wearing apparel stores, and return of defective, damaged, out of season, or unsalable wearing apparel, from Unadilla, GA, to Wilmington, DE, and Columbus, OH, for 180 days. Applicant

does not intend to tack or interline. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Oxford Industries, Inc., 222 Piedmont Avenue NE., Atlanta, GA 30308. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

MC 68123 (Sub-3TA), filed June 9, 1978. Applicant: MARIE R. CAVALLERI, d.b.a. M & J TRUCKING, 220 Eliot Street, Fairfield, CT 06430. Representative: James M. Burns, Suite 413, Johnson's Bookstore Building, 1383 Main Street, Springfield, MA 01103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Zinc or zinc alloys, viz: Annodes, ingots, pigs or slabs*, from the plantsite of the St. Joe Zinc Co., Josephtown, Potter Township, Beaver County, PA, to points in the States of CT, MA, NY, and RI, for 180 days. Supporting shipper: St. Joe Zinc Co., Two Oliver Plaza, Pittsburgh, PA. Send protests to: J. D. Perry, Jr., Interstate Commerce Commission, 135 High Street, Room 324, Hartford, CT 06101.

MC 71593 (Sub-8TA), filed June 9, 1978. Applicant: FORWARDERS TRANSPORT, INC., 1815 Front Street, Scotch Plains, NJ 07076. Representative: Charles J. Williams, 1815 Front Street, Scotch Plains, NJ 07076. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, loose leaf binders, books, box filers, file folders, paper pads, paper tablets, and record carrying cases*, (a) between Brooklyn, NY, and Elizabeth, NJ, on the one hand, and, on the other, Kankakee, IL, and Syracuse, NY, and (b) from Syracuse, NY, to Kankakee, IL, restricted to traffic moving between or to and from the facilities of Boorum & Pease Co. or its affiliates, for 180 days. Supporting shipper: Boorum & Pease Co., 801 Newark Avenue, Elizabeth, NJ 07208. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102.

MC 77016 (Sub-18TA), filed June 8, 1978. Applicant: BUDIG TRUCKING CO., 1100 Gest Street, Cincinnati, OH 45203. Representative: Laura C. Berry, 4560 North 2nd Street, St. Louis, MO 63147. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, with the usual exceptions, between Cincinnati, OH, and the facilities of Retail Merchants Consolidation and the Distribution Center located in Columbus, OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately five (5) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

MC 79687 (Sub-18TA), filed June 9, 1978. Applicant: WARREN C. SAUERS CO., INC., 200 Rochester Road, Zelienople, PA 16063. Representative: Henry M. Wick, Jr., and David M. O'Boyle 2310 Grant Building Pittsburg, PA 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass bottles, and materials and supplies* used in the manufacture or distribution of glass bottles, from the facilities of Foster-Forbes Glass Co., Division of National Can Corp., at Cornplanter Township, Venango County, PA, to the facilities of Vlasic Foods, Inc., at Millsboro, DE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Foster Forbes Glass Co., Division of National Can Corp., Cornplanter Township, Venago County, Oil City, PA 16301. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 100 Liberty Avenue, Pittsburgh, PA 15222.

MC 106674 (Sub-323 TA), filed June 8, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123 U.S. Hwy 24 West Remington, IN 47977. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass containers, caps and covers*, from the facilities of Glass Containers Corp. at or near Gas City and Indianapolis, IN, to AL, AR, GA, IL, KY, LA, MI, MS, MO, OH, and TN; and (2) *Materials, equipment and supplies* used in the manufacture, distribution and sale of glass containers, from AL, AR, GA, IL, KY, LA, MI, MS, MO, OH and TN, to the facilities of Glass Containers Corp. at or near Gas City and Indianapolis, IN., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Glass Containers Corp., 1301 South Keystone Avenue, Indianapolis, IN 46203. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 106674 (Sub-324TA), filed June 8, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123 U.S. Hwy 24 West, Remington, IN 47977. Representative: Linda J. Sundy, P.O. Box 123, Remington, IN 47977. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Insulation and materials, equipment and supplies* used in the manufacture, sale and distribution of insulation, from the facilities of U.S. Fiber Corporation at or near Denison, TX to points in AL, AR, KS, LA, MS, MO, OK, and TN; and from the facilities of U.S. Fiber Corp. at or near Newport, MN to points in IL, IA, MI, NE, ND, SD and WI. (2) *Materials, equipment and supplies* used in the manufacture, sale, and distribution of insulation (except in bulk) from points in and east of ND, SD, NE, OK, KS, and TX to the plantsites of U.S. Fiber Corp. at or near Denison TX; Newport, MN, Oskaloosa, IA; Jonesville, NC; Lee, MA; and Delphos, OH, and (3) *Paper bags* from the facilities of Apex Bag Co., at or near Spencerville, OH to the plantsite of U.S. Fiber Corp. at or near Denison, TX and Newport, MN, for 180 days. Supporting shipper: U.S. Fiber Corp., 101 South Main Street, Delphos, OH 45833. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

MC 107403 (Sub-1088TA), filed June 13, 1978. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martine C. Hynes, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Molten sulphur* (in bulk, in tank vehicles), from Indianapolis, IN, to North Bend, OH, and Tuscola, IL, for 180 days. Supporting shipper: Ashland Petroleum Co., Division of Ashland Oil, Inc., 1401 Winchester Avenue, P.O. Box 391, Ashland, KY 41101. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 109692 (Sub-58TA), filed June 5, 1978. Applicant: GRAIN BELT TRANSPORTATION CO., P.O. BOX 16047, Kansas City, MO 64112. Representative: Warren H. Sapp, P.O. Box 16047, Kansas City, MO 64112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Solar energy heating and cooling systems, parts and accessories* used in connection with the operation of such systems; woodburning heating appliances, and parts,

materials, supplies and accessories used in the manufacture, distribution, installation, and operation of such systems and appliances, between the plantsite of Valmont Industries, Inc., located at or near Valley, NE, on the one hand, and on the other, points in AZ, AR, CO, IL, IN, IA, KS, LA, MI, MN, MO, NE, NM, ND, OH, OK, SD, TX and WI, for 180 days. Supporting shipper: Valmont Industries, Inc., Valley, NE 68064. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 111434 (Sub-95TA), filed June 9, 1978. Applicant: DON WARD, INC. 241 West 56th Avenue, Denver, CO 80216. Representative: J. Albert Sebald, 1700 Western Federal Building, Denver, CO 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid concrete admixture*, (in bulk, in tank vehicles), from Denver, CO, and its commercial zone to points in ND, SD, NE, and KS, for 180 days. No tack or interline. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Master Builders, Division of Martin Marietta Corp., Lee at Mayfield, Cleveland, OH 44118. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 113666 (Sub-133TA), filed June 9, 1978. Applicant: FREEPORT TRANSPORT, INC., 1200 Butler Road, Freeport, PA 16229. Representative: D. R. Smetanick, 1200 Butler Road, Freeport, PA 16229. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from ports of entry on the International boundary between the United States and Canada located in MI, to points in DE, IN, KY, MD, MI, NJ, NY, OH, PA, VA, and WV, and DC, for 180 days, applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Green Forest Lumber Ltd., 250 Merton Street, Toronto, ON. M4S 2Y6 Canada. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 114194 (Sub-203TA), filed June 8, 1978. Applicant: KREIDER TRUCK SERVICE, INC., 8003 Collinsville Road, East St. Louis, IL 62201. Representative: A. Bruce Fraser (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sugar and corn products*, in bulk, in tank vehicles, from the facilities of Archer-Daniels-Midland Co., Cincinnati, OH, and Indianapolis, IN, to points in AR, IL, IN, IA, KS, KY, LA, MD, MI, MS, MO, MN, NY, ND, PA, SD, TN, TX, VA, WV, NE, OK, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wilson K. Cassell, Traffic Manager, Archer Daniels Midland Co., 4666 Faries Parkway, P.O. Box 1470, Decatur, IL 62525. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 115931 (Sub-64TA), filed June 6, 1978. Applicant: BEE LINE TRANSPORTATION, INC., P.O. Box 3987, Missoula, MT 59801. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Grain storage bins, and equipment, materials, accessories and supplies* used in the installation and operation thereof, from the facilities of Chicago Eastern Corp., at Marengo, IL, to points in AR, CA, GA (except Sylvania), IN (except Rensselaer), IA (except Muscatine and Sioux City), KS (except Peabody), KY, LA, MI (except Elkton and Ruth), MN (except Mankato), MS, MO (except East Prairie), MT, NE (except Holdrege), NV, NC (except Enfield), ND (except Fargo), OH (except New Holland), OR, SC, SD, TN, TX (except Bay City, Hereford, McCook, and Nada), UT, WA, WI, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Chicago Eastern Corp., 200 N. Prospect Street, Marengo, IL 60152. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602—1st Avenue North, Billings, MT 59101.

MC 129387 (Sub-65TA), filed June 9, 1978. Applicant: PAYNE TRANSPORTATION, INC., P.O. Box 1271, Huron, SD 57350. Representative: Doug W. Sinclair, P.O. Box 1271, Huron, SD 57350. Authority sought operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from the facilities of Professional Mixers, Inc., located at or near Rialto, CA, to points in the United States (except AL and HI), with no transportation for compensation on return except as otherwise authorized. Restriction: Restricted to traffic originating at named origin and destined to the named destination, for 180 days. Supporting shipper: Professional Mixers, Inc., 300 Chesterfield Center, Suite 21, Chesterfield, MO 63011 (Laura A. Ford, Manager, Traffic Department). Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501

MC 133099 (Sub-11 TA), filed June 9, 1978. Applicant: THE GLASGOW & DAVIS CO., Box 1717, South Division Street, Salisbury, MD 21801. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, DC 20014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Winston-Salem, NC, to points in that part of MD and VA, south of the Chesapeake & Delaware Canal and east of the Chesapeake Bay, for 180 days. Supporting shipper(s): (1) Chaptank Distributors, Inc., East New Market, MD 21631. (2) Eastern Shore Beverage Distributors, Nassawadox, VA. (3) Wyatt Wholesale, Inc., Salisbury, MD 21801. Send protests to: W. C. Hersman, District Supervisor, Interstate Commerce Commission, 12th and Constitution Avenue NW., Room 1413, Washington, DC 20423.

MC 134235 (Sub-10 TA), filed June 9, 1978. Applicant: KUHNLE BROTHERS, INC., 15625 Chillocothe Road, P.O. Box 128, Chagrin Falls, OH 44022. Representative: Kenneth T. Johnson. Bankers Trust Bldg., Jamestown, NY 14701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rock salt* (in bulk, in pneumatic equipment), from Fairport Harbor, OH, to points in NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Morton Salt Co., 110 North Wacker Drive, Chicago, IL. 60606. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 135078 (Sub-30 TA), filed June 13, 1978. Applicant: AMERICAN TRANSPORT, INC. 7850 "F" Street Omaha, NE 68127. Representative: Arthur J. Cerra, P.O. Box 19251, 2100 Ten Main Center, Kansas City, MO 64141. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Felt base carpeting, vinyl samples and adhesives*, from points in NJ and PA, to points AZ, AR, CO, KS, LA, OK, MS, NM, TX, UT, and WY, for 180 days. Supporting shipper: L. D. Brinkman, Dear Green, Warehouse and Traffic Manager, P.O. Box 47586, Dallas, TX 75247. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission,

Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 136220 (Sub-54TA), filed June 9, 1978. Applicant: ROY SULLIVAN, d.b.a. SULLIVAN'S TRUCKING CO., INC, P.O. Box 2164, Ponca City, OK 74601. Representative: G. Timothy Armstrong, 6161 North May Avenue, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron bearing stone* (in bulk, in open top dump vehicles), from Henderson County, TX, to the plantsite of Long Star Industries, Inc., at New Orleans, LA, for 180 days. Supporting shipper: Tex-Iron, Inc., P.O. Box 46, LaRue, TX 75770. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 136220 (Sub-56TA), filed June 9, 1978. Applicant: ROY SULLIVAN, d.b.a. SULLIVAN'S TRUCKING CO., INC., P.O. Box 2164, Ponca City, OK 74601 Representative: G. Timothy Armstrong, 6161 North May Avenue, Oklahoma City, OK. 73112. Authority sought to operate as a *Common carrier*, by motor vehicle, over irregular routes, transporting: *Fish meal*, (in bulk, in open top dump vehicles), from Empire, Dulac, Holmwood, and Cameron, LA, to points in MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wilbur-Ellis Co., 1000 Plaza West Building, Little Rock, AR. 72207. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, Ok. 73102.

MC 141546 (Sub-26TA), filed June 9, 1978. Applicant: BULK TRANSPORT SERVICE, INC., 1 Dundee Park, Andover, MA 01810. Representative: Kenneth B. Williams, 84 State Street, Boston, MA 02109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Stone and stone aggregate*, in dump vehicles, from Westbrook, ME, to Seabrook, NH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Public Service Co. of New Hampshire, c/o United Engineers, Site Access Road, Seabrook, NH 03874. Send protests to: Max Gorenstein, Bureau of Operations, Interstate Commerce Commission, 150 Causeway Street, Boston, MA 02114.

MC 143414 (Sub-2TA), filed June 9, 1978. Applicant: SAVICK TRUCKING SERVICE, INC., 9116 Pawnee Road, Homerville, OH 44235. Representative: Edwin F. Savick, 9116 Pawnee Road, Homerville, OH 44235. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Feed, animal and poultry*, (in bags, in bulk, or bag-bulk combined, and *animal health aid and sanitation products and dry feed ingredients*), from the plantsite of Allied Mills, Inc., at or near Fort Wayne, IN, to all points in the States of PA and WV, under a continuing contract, or contracts, with Allied Mills, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Allied Mills, Inc., 450 West Wilson Bridge Road, Worthington, OH 43085. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 144762 (Sub-1TA), filed June 9, 1978. Applicant: TANK LINES LTD., P.O. Box 3500, Calgary, AB, Canada T2P 2P9. Representative: D. S. Vincent (Same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fish oil* (in bulk), from the ports of entry on the international boundary line between the United States and Canada located at or near Houlton, ME, to Weehauken and Newark, NJ; New York, NY; Philadelphia, PA; Saugis, Salem, and Boston, MA, restricted to traffic having a prior movement in foreign commerce, for 180 days. Supporting shipper: C. David Gordon, Manager, Shafer Haggart Commodities, Ltd., 77 City Centre Drive, Suite 305, Mississauga, ON, Canada. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 144843TA, filed May 30, 1978. Applicant: W. R. GRACE & CO., d.b.a. GRACE DISTRIBUTION SERVICES, P.O. Box 308, Duncan, SC 29334. Representative: J. Max Harding, P.O. Box 83028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Polyester resins*, from the manufacturing and distribution facilities of U.S.S. Chemicals, Division of U.S. Steel Corp., Polyesters United, located at or near Linden and Edison, NJ; Swanton, OH; Jacksonville, AR; Doraville, GA; and Miami, Tampa, Pensacola, Bartown, and Orlando, FL, to points in and east of MN, IA, MO, AR, and TX; and (2) *Chemicals, glass fiber, and paint brushes*, from points in and east of the above-named destination States to the manufacturing and distribution facilities of U.S.S. Chemicals, Division of U.S. Steel Corp., Polyesters United, located at or near the above-named origin points. Restriction: Restricted against the transportation of commodities in bulk and further restricted to a transportation service to be performed, under a continuing contract, or contracts, with U.S.S. Chemicals, Division of U.S. Steel Corp., Polyesters United, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: U.S.S. Chemicals, Division of U.S. Steel Corp., Polyesters United, 1605 West Elizabeth Avenue, Linden, NJ 07036. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Building, 1400 Pickens Street, Columbia, SC 29201.

MC 144858 (Sub-1TA), filed June 13, 1978. Applicant: DENVER SOUTHWEST EXPRESS, INC., P.O. Box 9950, Little Rock, AR 72219. Representaitve: John T. Wirth, 2310 Colorado State Bank Building, 1600 Broadway, Denver, CO 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carbonated soft drink beverages*, from Camden, AR, to Anniston, AL, and Indianola, MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Gold Medal Beverage Co., 553 North Fairview, St. Paul, MN 55106. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 144871TA, filed June 9, 1978. Applicant: DOYLE SMITH, d.b.a. DOYLE SMITH HAULING, Route 4, Box 432, Waycross, GA 31501. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Materials and supplies* used in the manufacture of clothing, from Wilmington, NC, and Brooklyn, NY, to Waycross, GA; and (2) *Clothing*, from Waycross, Rossville, Nichols, and Douglas, GA, to Clinton, NC, Sercus, NJ, and New York, NY, under a continuing contract, or contracts, with Jana Lee, Inc., for 180 days. Supporting Shipper: Jana Lee, Inc., 330 West 34th Street, New York, NY 10001. Send protest to: G. H. Fauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 144886TA, filed June 13, 1978. Applicant: DONNIE A. DIXON, INC., Route 9, Box 378, Greenville, NC 27834. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting:

General commodities (except those of unusual value, commodities in bulk, classes A and B explosives, commodities requiring special equipment, and household goods as defined by the Commission), restricted to traffic having a prior or subsequent movement by rail, between points and places in Pitt County, NC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sterling Radiator Division of Reed National Corp., P.O. Box 265, Farmville, NC 27828. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

PASSENGER CARRIERS

MC 45861 (Sub-13TA), filed June 9, 1978. Applicant: WILSON BUS LINES, INC., Main Street, East Templeton, MA 01438. Representative: David M. Marshall, Marshall & Marshall, 101 State Street, Suite 304, Springfield, MA 01103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in special operations between Athol, East Templeton, Gardner, Westminster, Fitchburg and Leominster, MA, on the one hand, and, on the other, Hampton and Hampton Beach, NH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately (10) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protest to: David M. Miller, District Supervisor, Interstate Commerce Commission, 436 Dwight Street, Room 338, Springfield, MA 01103.

MC 144887TA, filed June 9, 1978. Applicant: NORTHERN DUTCHESS TAXI, INC., 38 Albany Post Road, Hyde Park, NY 12538. Representative: John T. Orcutt, Route 44, P.O. Box 656, Pleasant Valley, NY 12569. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, only in both special and charter operations, by limousine carrying not more than 15 passengers, from points in Dutchess County, on the one hand, and, on the other hand, Newark, NJ; Atlantic City, NJ; East Rutherford, NJ; and Wildwood, NJ, for 180 days. Supporting shipper: There are approximately (9) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies there of which may be examined at the field office named below. Send protests to: Robert A. Radler, District Supervisor, P.O. Box 1167, Albany, NY 12201.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21578 Filed 8-2-78; 8:45 am]

[7035-01]

[Volume No. 108]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), RAILROAD ABANDONMENTS ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS

JULY 26, 1978.

PETITIONS FOR MODIFICATION, INTERPRETATION OR REINSTATEMENT OF OPERATING RIGHTS AUTHORITY

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

All pleadings and documents must clearly specify the suffix (e.g. M1F, M2F) numbers where the docket is so identified in this notice.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission on or before September 5, 1978. Such protests shall comply with special rule 247(e) of the Commission's general rules of practice (49 CFR 1100.247) [1] and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be shall concurrently upon petitioner's representative, or petitioner if no representative is named.

MC 47471 (Sub-92) (M1F) (notice of filing of petition to broaden commodity descrption), filed May 23, 1978. Petitioner: COOPER MOTOR LINES, INC., P.O. Box 4259, Greenville, SC 29608. Representative: Francis W. McInerny, 1000—16th Street NW., Washington, DC 20036. Petitioner holds a motor *common carrier* certificate in MC 47171 (Sub-92), issued October 13, 1977, authorizing transportation, over irregular routes of: *Medicines, and toilet preparations*, (except in bulk), between Norwich and North Norwich, NY, on the one hand, and, on the other, Greenville, SC. By the instant petition, petitioner seeks to broaden the commodity description to read *such articles as are dealt in or distributed by pharmaceutical houses* (except commodities in bulk), between Norwich and North Norwich, NY, on the one hand, and, on the other, Greenville, SC.

MC 75320 (Sub-170)(M1F) (notice of filing of petition to delete restriction), filed May 11, 1978. Petitioner: CAMPBELL SIXTY-SIX EXPRESS, INC., P.O. Box 807, Springfield, MO 65801. Representative: John A. Crawford, P.O. Box 22567, Jackson, MS 39205. Petitioner holds a motor *common carrier* certificate in MC 75320 (Sub-170), issued November 5, 1974, authorizing transportation, over alternate routes for operating convenience only, of: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Wichita Falls, TX, and Texarkana, AR, in connection with carrier's authorized regular-route operations, serving no intermediate points, but serving Texarkana for purposes of joinder only: From Wichita Falls over U.S. Hwy. 82 to Texarkana, and return over the same route. Restriction: The authority granted herein is restricted to the transportation of traffic moving between Wichita Falls, TX and Little Rock, AR, and against the transportation of traffic originating at, or destined to, or received from or delivered to connecting carriers at Memphis, TN, or Little Rock, AR, or points in their respective commercial zones as defined by the Commission. By the instant petition, petitioner seeks to remove the above restriction in its entirety from the above described authority.

MC 110144 (Sub-11)(M1F) (notice of filing of petition to modify certificate to relocate interchange point), filed May 4, 1978. Petitioner: JACK C. ROBINSON, d.b.a. ROBINSON FREIGHT LINES, 3600 Papermill Road, Knoxville, TN 37919. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Petitioner holds a motor *common carrier* certificate in MC 110144 (Sub-11), issued May 17, 1974, authorizing the transportation of, over irregular routes: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in TN, on and east of U.S. Hwy 27, on the one hand, and, on the other, Jackson, MS. Petitioner generates traffic daily within the east Tennessee area he is authorized to serve, which is destined to points beyond Jackson, MS. That traffic is being moved to the Jackson gateway for interline there

[1] Copies of special rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

with other carriers. Due to recent changes involving the carriers available at Jackson, Petitioner no longer has an outlet for certain of this traffic, particularly that moving to destinations in the southwest. By the instant petition, he seeks to relocate the interchange point for this traffic from Jackson, MS to Memphis, TN at which gateway there are carriers available to handle the subject traffic.

MC 115218 (Sub-1) (M1F) (notice of filing of petition to modify permit to add additional origin point and contracting shipper), filed May 4 1978. Petitioner: ALLAN D. GIBSON, 1915 Main Street, Eldorado, Il 62930. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Petitioner holds a motor *contract carrier* permit in MC 115218 (Sub-1), issued September 17, 1976, authorizing transportation over irregular routes, as pertinent, of: *Sand, gravel, stone, fluorspar, and barite,* from the facilities of Allied Chemical Corp. in Hardin County, IL, to points in AL, AR, IL, IN, IA, KS, KY, LA, MI, MS, MO, NJ, NY, NC, OH, OK, PA, RI, TN, TX, WV, and WI. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts with Allied Chemical Corp., of Morristown, NJ. By the instant petition, petitioner seeks to modify the above authority by adding from the facilities of "Ozark Mahoning Co." in the origin territory and also by adding in the restriction the following language: "and with Ozark Mahoning Co. of Tulsa, OK."

MC 125140 (MIF) (notice of filing of petition to modify permit), filed May 15, 1978. Petitioner: RICHARD B. BRUNZLICK, INC., P.O. Box 69, Augusta, WI 54722. Representative: Michael T. Hoekstra, 301 Midwest Federal Building, St. Paul, MN 55101. Petitioner holds a motor *contract carrier* permit in MC 125140 issued September 12, 1975, authorizing transportation, over irregular routes, of: (1) *Dairy products,* (a) between Whitehall, WI, on the one hand, and, on the other, Winona and Caledonia, under a continuing contract, or contracts, with Land O'Lakes Creameries, Inc., Minneapolis, MN (b) from Chippewa Falls, WI, to points in MN, under a continuing contract or contracts with Dean Foods Co., of Franklin Park, IL; (2) *Cheese, cottage cheese, cheese dip, butter, powdered milk, and cream,* from Chippewa Falls and Deerfield, WI, to points in IL (except points in the Chicago, IL, commercial zone as defined by the Commission), IN, MO, and IA; (3) *cottage cheese,* from Holy Cross and Bettendorf, IA, to Chippewa Falls, WI; (4) *new empty containers,* used in retail sales of cottage cheese and cheese dip, from points in IL (except points in the Chicago, IL, commercial zone, as defined by the Commission), IN, MO, and IA, to Chippewa Falls, WI; (5) *orange juice,* (a) from Chippewa Falls, WI, and Columbia, MO, to points in IN, MO, IA, and IL (except points in the Chicago, IL, commercial zone as defined by the Commission), (b) from Columbia, MO, to Chippewa Falls, WI; (6) *dairy products, fruit juices, and fruit drinks,* from Rockford, IL, to points, in IL, IN, IA , MO, WI, MN, and points in MI, on and south of U.S. Hwy 10. Restriction: The operations authorized in the five commodity descriptions immediately above are limited to a transportation service to be performed, under a continuing contract, or contracts, with Dean Foods Co., of Franklin Park, IL. (7) *Dairy products and fruit juices,* (a) from Chippewa Falls, WI, to points in that part of MI on and south of U.S. Hwy 10, under a continuing contract, or contracts, with Dean Foods Co., (b) from Whitehall Kand Chippewa Falls, WI, to points in that part of MN bounded by a line beginning at Wabasha, MN, and extending along MN Hwy 60 to junctions U.S. Hwy 65, then along U.S. Hwy 65 southward to the IA-MN State line, then along the IA-MN State line eastward to the Mississippi River, then northward along the Mississippi to Wabasha, MN, under a continuing contract, or contracts, with Land O'Lakes Creameries, Inc., of Minneapolis, MN; (8) *dairy products, dairy byproducts, fruit juices, and fruit drinks,* (a) from Rochester, MN, to Chippewa Falls, Galesville, La Crosse, and Whitehall, WI, under a continuing contract, or contracts, with Land O'Lakes Creameries, Inc., of Minneapolis, MN, (b) from St. Paul, MN, to points in Barron, Chippewa Dunn, Eau Claire, La Crosse, Monroe, Polk, St Croix, and Trempealeau Counties, WI, under a continuing contract, or contracts, with Land O'Lakes, Inc. By the instant petition, petitioner seeks to modify the above authority by adding Westby, Wi as an additional point of origin in parts (1)(b), (2), (5)(a), and (7)(a), and as an additional destination point in parts (3), (4), and (5)(b) above.

NOTE.—Petitioner states that by order of the Commission, dated September 29, 1977, and served October 6, 1977, Dean Foods Co. was substituted for Fieldcrest Sales Co. as the Correct Shipper.

MC 125985 (Sub-9) (M1F) (notice of filing of petition to delete restriction), filed May 19, 1978. Petitioner: AUTO DRIVEAWAY CO., a corporation, 310 South Michigan Avenue, Chicago, IL 60604. Representative: Daniel B. Johnson, 4304 East-West Highway, Washington, DC 20014. Petitioner holds a motor *common carrier* certificate in docket No. 125985 (Sub-9) issued April 22, 1974, authorizing transportation, over irregular routes, of: *Motor homes,* in driveaway service, between points in the United States (including points in AK and HI, but excluding Mount Clemens and Pontiac, MI), subject to the following restriction: The authority granted herein is restricted against the transportation of traffic between points in CA, on the one hand, and, on the other, points in the United States. By the instant petition, petitioner seeks to delete restrictions from the certificate which preclude service at Mount Clemens and Pontiac, MI.

MC 129600 (Sub-13, 16, and 27) (M1F) (notice of filing of petition to modify permits), filed May 19, 1978. Petitioner: POLAR TRANSPORT, INC., P.O. Box 44, 176 King Street, Hanover, MA 02339. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Petitioner holds motor *contract carrier* permits in MC 129600 (Subs-13, 16, and 27), issued August 10, 1977, March 9, 1976 and November 14, 1977, respectively, authorizing, transportation over irregular routes, in MC 129600 (Sub-13) of: (1) *Ice cream, ice cream confections, ice water confections, and sherbert,* (a) from Suffield, CT and Portland, ME to points in AL, DE, FL, BA, IL, IN, MD, ME, MA, MI, NJ, NY, OH, PA, RI, TN, TX, VA and the DC; (b) from Laurel, MD and York, PA to Suffield, CT; and (2) *Packaging materials and materials, supplies and ingredients* used in the manufacture of ice cream, confections, ice water confections, sherbert, and dairy products, from points in NJ and NY to Suffield, CT and Agawam, MA; in MC 129600 (Sub-16), as pertinent, of *orange juice and frozen fruit juice concentrates,* in containers, from Dunedin, FL to Agawam and Boston, MA, Binghamton, NY, Burlington, VT, Cranston and Providence, RI, Hillside, NJ, Manchester, NH and Portland, ME; and in MC 129600 (Sub-27), of *yogurt,* in vehicles equipped with mechanical refrigeration, from Agawam and Boston, MA and Suffield and South Windsor, CT to points in AL, AZ, AR, CA, CO, DE, FL, GA, IL, IN IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NV, NJ, NW, NY, NC, OH, OK, OR, PA, SC, TN, TX, UT, VA, WA, WV, WI, and DC under a continuing contract or contracts with R. P. Hood, Inc. of Charleston, MA. By the instant petition, petitioner seeks to delete the words ice cream, ice cream confections, ice water confections and sherbert from the commodity description (1) in its Sub-13 and to broaden the commodity description in (1) of Sub-13 to read foodstuffs, except in bulk; to delete the words "used in the manufacture of ice cream confections, ice water confections, sherbert and dairy products" from the commodity description (2) of the Sub-13 and to

broaden the commodity description to read "used in the manufacture of foodstuffs, (except in bulk); to delete the words orange juice and frozen fruit juice concentrates, in containers in Sub-16 and to broaden the commodity description in its Sub-16 to read foodstuffs, except in bulk; and to delete the words yogurt, in vehicles equipped with mechanical refrigeration in Sub-27 and to broaden the commodity description in its Sub-27 to read foodstuffs, (except in bulk). The territorial descriptions remain the same.

MC 129742 (Sub-11) (M1F) (notice of filing of petition to modify certificate), filed May 22, 1978. Petitioner: PUROLATOR COURIER, LTD., 302 The East Mall, Suite 303, Islington, Toronto, ON, Canada M9B 6C7. Representative: Peter A. Greene, 900 17th Street NW., Washington, DC 20006. Petitioner holds a motor *common carrier* certificate in MC 129742 (Sub-11) issued January 26, 1978, authorizing transportation, over irregular routes, of: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment, and such commercial papers, documents and written instruments as are used in the business of banks and banking institutions), (1) between ports of entry on the United States-Canada boundary line located at or near Mooers, Champlain, Rouses Point, and Trout River, NY, on the one hand, and, on the other, points in NY; (2) between ports of entry on the United States-Canada Boundary Line located at or near Alburg, Swanton, Morses, Richford, North Troy, Derby Line and Norton, VT, on the one hand, and, on the other, points in VT; and (3) between ports of entry on the United States-Canada boundary line located at or near Jackman and Woburn, ME, on the one hand, and, on the other, points in ME, subject to several restrictions including the following: "restricted against the transportation of packages weighing more than 50 pounds and each package or article shall be considered a separate and distinct shipment." By the instant petition, petitioner seeks to modify the foregoing restriction by deletion of the phrase "with each package or article considered as a separate and distinct shipment." Petitioner states the proposed modification will not affect the present weight restriction but will only eliminate unnecessary multiple documentation and assessment of multiple per shipment minimum charges.

MC 134388 (Sub-8) (M1F) (notice of filing of petition to modify a certificate), filed May 9, 1978. Applicant: HOME RUN, INC., Three East Washington Street, Jamestown, OH 45335. Representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. Petitioner holds a motor *common carrier certificate in MC 134388 (Sub-8), issued December 6, 1976, authorizing the transportation, over irregular routes, of: Buildings and component parts, materials, supplies, and fixtures* used in the erection or assembly of buildings (except buildings in sections when mounted on wheeled undercarriages, and except cement), (1) from Jamestown, OH, Eightyfour and Wampum, PA, Victor, NY, and Fredericksburg, VA, To points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, ME, MD, MA, MO, MI, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VA, VT, WV, WI, and the DC; and (2) between Victor, NY, Fredericksburg, VA, Eightyfour, Wampum, and Coraopolis, PA, and Chardon and Jamestown, OH. Restriction: The authority granted herein is limited to a transportation service to be performed under a continuing contract, or contracts with Ryan Homes, Inc., of Pittsburgh, PA. By the instant petition, petitioner seeks to add as a service point the facilities of Home Run, Inc. at Houston, PA. in each of the above paragraphs.

MC 134730 (Sub-5) (M1F) (Notice of filing of petition to modify permit by adding contracting shipper), filed May 10, 1978. Petitioner: METALS TRANSPORT, INC., 528 South 108th Street, West Allis, WI 53214. Representative: M. H. Dawes (same address as petitioner). Petitioner holds a motor *contract carrier* permit in MC 134730 (Sub-5), issued February 11, 1976, authorizing transportation, over irregular routes, of: *Material handling equipment, parts and accessories* for material handling equipment, and *materials, parts, supplies,* and *equipment* used in the manufacturer and repair of material handling equipment, between points in the United States (including AK but excluding HI). Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Vulcan Materials Co., of Birmingham, AL. By the instant petition, petitioner seeks to add Autotrol Corp. of Oak Creek, WI as an additional contracting shipper.

MC 135867 (Sub-1) (M1F) (notice of filing of petition to modify permit), filed May 5, 1978. Petitioner: H. T. L., INC., P.O. Box 122, Fairfield, AL 35064. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Petitioner holds a motor *contract carrier* permit in MC 135867 (Sub-1), issued March 10, 1975, authorizing transportation, over irregular routes, of: *Steel and steel products,* from the facilities of Hanna Steel Corp., at Fairfield and Gadsden, AL, to points in AL, AR, FL, GA, KY, LA, MS, MO, NC, OK, SC, TN, and TX; and *equipment materials,* and *supplies* used in the processing of steel and steel products (except commodities in bulk and except iron and steel articles from Nashville, TN), from points in the above-named States, to the facilities of Hanna Steel Corp., at Fairfield and Gadsden, AL. Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Hanna Steel Corp., at Fairfield, AL. By the instant petition, petitioner seeks to modify the above authority by amending the restriction to read: Restriction: The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with Hanna Steel Corp., at Fairfield, AL. When from or to Gadsden, AL, the operations authorized herein are limited to a transportation service to be performed under a continuing contract, or contracts with Hanna Steel Corp. and Republic Steel Corp. All service performed to be to or from the facilities of Hanna Steel Corp.

MC 139206 (M2F) (notice of filing of petition to modify permit by adding additional contracting shipper and three additional radial base points), filed May 19, 1978. Petitioner: F.M.S. TRANSPORTATION, INC., 2564 Harley Drive, Maryland Heights, MO 46043. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Petitioner holds a motor *contract carrier* permit, in MC 139206, issued December 6, 1977, authorizing transportation, as here pertinent, over irregular routes, of: (1) *Textiles and textile products, chemicals,* and *materials, equipment,* and *supplies* used in the sale, manufacture, processing, production and distribution of textiles, and textile products and chemicals (except commodities in bulk), between Arlington, Laredo, Brenham, and Houston, TX, Wellsville, MO, and Johnson City, TN, on the one hand, and on the other, points in the United States (except AK and HI). Restricted to a transportation service to be performed, under a continuing contract, or contracts, with Chromalloy American Corp. By the instant petition petitioner seeks to modify the aforesaid permit to add an additional contracting shipper, namely Salant Corp., and also to add three additional radial base points of Del Rio, Eagle Pass, and Carrizo Springs, TX.

MC 141252 (M1F) (notice of filing of petition to modify certificate), filed May 10, 1978. Petitioner: PAN WESTERN CORP., 4105 Las Lomas, Las Vegas, NV 89102. Representative: Richard Celio, 1415 West Garvey

Avenue, Suite 102, West Covina, CA 91790. Petitioner holds a motor *common carrier* certificate in MC 141252 issued March 7, 1977, authorizing transportation, over irregular routes, of: *Gypsum and Gypsum products,* and *supplies* used in the installation thereof, from the facilities of Johns-Manville Products Corp., at or near Apex, NV, to points in AZ, CA, OR, UT, ID, and CO. By the instant petition, petitioner seeks to modify the territorial description by adding the facilities utilized by the Flintkote Co., located at Blue Diamond, NV, as an origin point.

REPUBLICATIONS OF GRANTS OF OPERATING RIGHTS AUTHORITY PRIOR TO CERTIFICATION

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the FEDERAL REGISTER.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. All pleadings and documents must clearly specify the "F" suffix where the docket is so identified in this notice. Such pleading shall comply with special rule 247(e) of the Commission's General Rules of Practice (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 4405 (Sub-564) (republication), filed September 26, 1977, published in the FEDERAL REGISTER issue of November 17, 1977, and republished this issue. Applicant: DEALERS TRANSIT, INC., 522 South Boston Avenue, Tulsa, OK 74103. Representative: Alan Foss, 502 First National Bank Building, Fargo, ND 58102. An order of the Commission, Review Board No. 3, decided June 15, 1978, and served July 11, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier,* by motor vehicle, over irregular routes, in the transportation of: (1) *Trailers* designed to be drawn by passenger automobiles (except travel trailers and camping trailers), in initial movements; and (2) *buildings,* complete or in sections, mounted on wheeled undercarriages, in initial movements, from points in Schley County, GA; Columbia and Manatee Counties, FL; Blair County, PA; Fannin, Hunt, Van Zandt, and Leon Counties, TX; Otsego and Oneida Counties, NY; Henry County, TN; Harnett County, NC; and Shenandoah County, VA, to points in the United States (except AK and HI), that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this repulication is to indicate Blair County, PA, as a point of origin in lieu of Washington County, PA.

MC 107638 (Sub-3) (second republication), filed April 29, 1977, published in the FEDERAL REGISTER issue of June 9, 1977, republished as corrected August 18, 1977, and republished this issue. Applicant: EVERGREEN TRAILS, INC., 1936 Westlake Avenue, Seattle, WA 98101. Representative: Elwood Arneson (same address as applicant). An order of the Commission, Review Board No. 1, decided June 26, 1978, and served July 11, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier,* by motor vehicle, over regular routes, in the transportation of: *Passengers and their baggage, and express and newspapers* in the same vehicle with passengers, (1) between Seattle, WA, and Anacortes, WA (a) from Seattle over Interstate Hwy 5 to junction Washington Hwy 525, then over Washington Hwy 525 via Mukilteo, WA, to junction Washington Hwy 20 on Whidbey Island, then over Washington Hwy 20 to Anacortes, and return over the same route, serving all intermediate points; and (b) from Seattle over Interstate Hwy 5 to junction Washington Hwy 536 in Mount Vernon, WA, then over Washington Hwy 536 to junction Washington Hwy 20, then over Washington Hwy 20 to Anacortes, and return over the same route, serving all intermediate points; and (2) between Anacortes, WA, and the international boundary line between the United States and Canada, near San Juan Island via the Washington State Ferry, restricted in (1) and (2) against traffic originating at or destined to points in Canada other than Sidney or Victoria, BC, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate the change from irregular to regular routes; authority is substantially changed and broadened to include service (1) over specified routes to a point on the international boundary line between the United States and Canada; and (2) at the intermediate point of Mount Vernon, WA.

MC 109397 (Sub-392) (second republication), filed December 12, 1977, published as a correction in the FEDERAL REGISTER issue to February 9, 1978, and republished this issue. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). An initial decision of Administrative Law Judge John P. Dodge, served April 26, 1978, effective June 21, 1978, finds that the present and future public convenience and necessity require operation, by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, transporting: *Mechanical lifting devices, and related machinery, parts, and attachments,* from St. Joseph, MO, and Elwood, KS, to points in the United States (including AK but excluding HI), restricted to traffic originating at the facilities of A-T-O, Inc., at the origin points named, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to enlarge the origin area to include named facilities at Elwood, KS, and otherwise to effect minor amendments and restriction of the authority sought.

MC 110659 (Sub-22) (second republication), filed May 10, 1977, published in the FEDERAL REGISTER issue of June 23, 1977; republished as amended July 28, 1978, and republished this issue. Applicant: COMMERCIAL CARRIERS, INC., 975 Virginia Street West, Charleston, WV 25302. Representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, WV 25526. An order of the Commission, Review Board No. 3, decided February 16, 1978, and served March 15, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier,* by motor vehicle, over irregular routes, in the transportation of: *Malt beverages in containers,* (1) from South Volney, NY, to facilities of Capitol Beverage Co., at Charleston, WV, and the facilities of Mingo Bottling Co., Inc., at Williamson, WV; (2) from Eden, NC, to the facilities of Capitol Beverage Co., at Charleston, WV, and the facilities of Mingo Bottling Co., Inc., at Williamson, WV; and (3) from Williamsburg, VA, to the facilities of Central Distributing Co., at Charleston, WV, that applicant is fit, willing, and able properly to perform such

service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the territorial description; deleting Huntington, WV, as destination points in parts (1) and (2), and adding Charleston, WV, in lieu of Huntington, WV, as a destination point in part (3).

MC 114273 (Sub-293) (Republication), filed January 3, 1977, published in the FEDERAL REGISTER issue of February 17, 1977, and republished this issue. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Robert E. Konchar, Suite 315, Commerce Exchange Building, 2720 First Avenue NE., P.O. Box 1943, Cedar Rapids, IA 52406. An order of the Commission, division 1, decided June 23, 1978, and served July 10, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular route, in the transportation of: *Alcoholic beverages, wine, cocktail mixes, and bitters* (except malt beverages and commodities in bulk), from Minneapolis, MN, to Omaha, NE, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity description, and impose conditions (1) that the above grant of authority shall expire 2 years from the date of issuance of the certificate in MC 114273 (Sub-283); and (2) issuance of the certificate shall be withheld for a period of 30 days from the date of publication in the FEDERAL REGISTER of a notice of the authority actually granted in MC 114273 (Sub-283).

MC 116915 (Sub-32) (republication), filed August, 8 1977, published in the FEDERAL REGISTER issue of September 8, 1977, and republished this issue. Applicant: ECK MILLER TRANSPORTATION CORP., 1830 South Plate Street, P.O. Box 1365, Kokomo, IN 46901. Representative: Fred F. Bradley, P.O. Box 773, Frankfort, KY 40601. A decision of the Commission, by the initial decision of Administrative Law Judge Richard A. White, served June 5, 1978, effective July 19, 1978, finds that the present and future public convenience and necessity require operation, by applicant, in interstate or foreign commerce, as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Irrigation systems*, from the facilities of Consolidated Pipe & Tube Co., located at or near San Angelo and Lubbock, TX, to points in the United States in and east of ND, SD, NE, KS, OK, and TX, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity description.

MC 124078 (Sub-772) (republication), filed January 6, 1978, published in the FEDERAL REGISTER issue of February 24, 1978, and republished this issue. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28 Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1610, Milwaukee, WI 53201. An order of the Commission, Review Board No. 1, decided June 26, 1978, and served July 10, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of: *Dry fertilizers*, in bulk, from the facilities of Agrico Chemical Co., at Melbourne, KY, to points in IL, IN, MI, OH, VA, and WV, restricted to the transportation of traffec originating at the named origin, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to broaden the territorial description by adding MI as a destination point.

MC 134477 (Sub-166) (republication), filed May 4, 1977, published in the FEDERAL REGISTER issue of June 9, 1977, and republished this issue. 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. An order of the Commission, division 1, decided June 23, 1978, and served July 10, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of: *Alcoholic beverages, wine, cocktail mixes, and bitters* (except malt beverages and commodities in bulk), from Minneapolis, MN, to Omaha, NE, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the commission's rules and regulations. The purpose of this republication is to modify the commodity description, and to impose a condition that the issuance of the certificate shall be withheld for a period of 30 days from the date of publication in the FEDERAL REGISTER of a notice of the authority actually granted in MC 134477 (Sub-166).

MC 138882 (Sub-37) (republication), filed January 23, 1978, published in the FEDERAL REGISTER issue of March 2, 1978, and republished this issue. Applicant: WILEY SANDERS, INC., P.O. Box 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. A decision of the Commission, Review Board No. 3, decided June 28, 1978, and served July 17, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier* by motor vehicle, over irregular routes, in the transportation of: *Plastic pipe, fittings, and valves*, from the facilities of Dave-Tite PVC Pipe Plant, Division of Davis Water and Waste Industries, Inc., at Thomasville, GA, to points in AL, AR, FL, KY, LA, MS, NC, SC, TN, and VA, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to add MS as a destination point in lieu of MI.

MC 141867 (Sub-1) (republication), filed June 10, 1976, published in the FEDERAL REGISTER issue of August 12, 1976, and republished this issue. Applicant: SPECIALIZED TRUCKING SERVICE, INC., 1523 18th NE., Puyallup, WA 98371. Representative: Jack R. Davis, 1100 IBM Building, Seattle, WA 98101. An order of the Commission, division 1, decided June 29, 1978, and served July 10, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Containers, glassware, plastic articles, sprayers, dispensing devices, ends, covers, plugs, stoppers, corks, fittings and attachments* for containers, between points in CA, on the one hand, and, on the other, points in OR and WA; (2) *glass containers, glassware, and covers, closures, stoppers, plugs, corks, fittings, and attachments* for glass containers and glassware, from points in CA, to points in ID, UT, and MT; (3) *Metal containers, and ends, covers, plugs, stoppers, corks, attachments and fittings*, for metal containers, from points in CA, to points in CO, ID, MT, and UT; (4) *plastic containers, and covers, tops, stoppers, plugs, corks, attachments and fittings*, for plastic containers, from points in WA, to points in CO, ID, MT, OR, and UT; (5) *Soda ash*, from Green River, WY., to Seattle, WA.; (6) *Sand*, from Emmett, ID, to Seattle, WA.; (7) *cardboard and cor-*

rugated (fiberboard or pulpboard) boxes, pallets, and packing materials, for packing containers and closures, and *fittings and attachments* for containers, between points in CA, on the one hand, and, on the other, points in WA and OR; and (8) *equipment, materials and supplies,* used in the manufacture, of containers and packing materials, between points in CA, on the one hand, and, on the other, points in OR and WA, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity and territorial description, and to impose a condition that the issuance of the recommended certificate is conditional upon the prior or coincidental cancellation of the certificates in MC 135877 (Sub-4 and 6), now held by Ronald R. Brader, doing business as Specialized Trucking Service.

MC 143924 (Republication), filed October 28, 1977, published in the FEDERAL REGISTER issue of December 15, 1977, and republished this issue. Applicant: GENE C. FUGATE, d.b.a. FUGATE TRUCKING, 1080 Old River Side Drive, Danville, VA 24541. Representative: Theodore Polydoroff, Suite 600, 1250 Connecticut Avenue NW., Washington, DC 20036. A decision of the Commission, Review Board No. 2, decided April 17, 1978, and served May 3, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier* by motor vehicle, over irregular routes, in the transportation of: *General Commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between the facilities of the Southern Railway Co., at or near Greensboro and Reidsville, NC, on the one hand, and, on the other, points in Pittsylvania County, VA, located on and south of VA Hwy 40, restricted to the transportation of traffic having a prior or subsequent movement by rail, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity and territorial description.

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(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 (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally, protests not in reasonable compliance with the 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 applicant if no representative is named. All pleadings and documents must clearly specify the "F" suffix where the docket is so identified in this notice. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(e)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof, and that failure to prosecute an application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission decision which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

MC 24379 (Sub-41F), filed April 14, 1978. Applicant: LONG TRANSPORTATION CO., a corporation, 14510 West Eight Mile Road, Oak Park, MI 48237. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *General commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from the facilities of Ford Motor Co., at or near Milan, MI, to the facilities of Ford Motor Co., at or near Lorain, OH, Mahwah, and Metuchen, NJ, and (2) *empty returned pallets or racks, and rejected materials and commodities,* from the facilities of Ford Motor Co., at or near Lorain, OH, Mahwah and Metuchen, NJ, to the facilities of Ford Motor Co., at or near Milan, MI. (Hearing site: Detroit, MI.)

MC 24379 (Sub-44F), filed April 14, 1978. Applicant: LONG TRANSPORTATION CO. a corporation, 14510 West Eight Mile Road, Oak Park, MI 48237. Representative: A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from the facilities of Ford Motor Co., at Detroit, MI, to the facilities of Ford Motor Co., at or near Norfolk, VA, and (2) *empty pallets or racks, and returned or rejected commodities,* from the facilities of Ford Motor Co., at or near Norfolk, VA, to the facilities of Ford Motor Co., at Detroit, MI. (Hearing site: Detroit, MI.)

MC 29555 (Sub-193F), filed April 14, 1978. Applicant: BRIGGS TRANSPORTATION CO., a corporation, North 400 Griggs-Midway Building, St. Paul, MN 55104. Representative: Stephen F. Grinnell, North 400-Griggs Midway Building, St. Paul, MN 55104. Authority sought to operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Melster Candies, Inc., at or near Cambridge, WI, as an off-route point in connection with applicant's presently authorized regular-route operations. (Hearing site: Madison, WI, or St. Paul, MN.)

NOTE.—Common control may be involved.

MC 43867 (Sub-41F), filed April 14, 1978. Applicant: A. LEANDER McALISTER TRUCKING CO., a corporation, P.O. Box 2214, Wichita Falls, TX 76307. Representative: Brian E. Brewton, P.O. Box 2214, Wichita Falls, TX 76307. Authority sought to operate as

a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, particleboard, and lumber products*, from the facilities of Navajo Forest Products Industries located at points in McKinnley County, NM, to points in AL, AR, CA, FL, GA, IL, IN, KY, LA, MI, MS, MO, NC, OH, OK, SC, TN, and TX. (Hearing site: Albuquerque, NM.)

MC 52510 (Sub-4F), filed April 14, 1978. Applicant: VALLEY TRUCKING CO., a corporation, 1000 East North Street, Morris, IL 60450. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1)(a) *Such commodities* as are dealt in by manufacturers of paper and paper products (except commodities in bulk), (b) *such commodities* as are used in the manufacture of paper and paper products (except commodities in bulk), from the facilities of Federal Paper Board Co., Inc., and Diamond International Corp. at Morris, IL, to points in OH, and that portion of WI on and south of a line starting on the east at Sturgeon Bay, then westerly across Green Bay to Oconto, then over WI Hwy 22 to junction WI Hwy 29, near Shawano, then westerly on WI Hwy 29 to U.S. Hwy 12 near Elk Mound, then westerly on U.S. Hwy 12 to the WI-MN State line; and (2) *materials, equipment and supplies* utilized in the manufacture of the commodities in (1) above (except commodities in bulk), from the area described in (1) above to the facilities of Federal Paper Board Co., Inc., and Diamond International Corp. at Morris, IL, under a continuing contract or contracts with Federal Paper Board Co., Inc., and Diamond International Corp. (Hearing site: Chicago, IL.)

NOTE.—Applicant holds common carrier authority in MC 101529 and Sub-(3), therefore dual operations may be involved.

MC 65660 (Sub-10F), filed April 14, 1978. Applicant: WARNER & SMITH MOTOR FREIGHT, INC., 66 Third Street, Masury, OH 44438. Representative: William J. Lavelle, 2310 Grant Building, Pittsburgh, PA. 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Petroleum and petroleum products*, in packages, from Bradford and Foster Brook, PA, to points in OH; and (2) *empty pallets and refused*, rejected and returned shipments of the above commodities, from points in OH, to Bradford and Foster Brook, PA. (Hearing site: Washington, DC.)

MC 69397 (Sub-41F), filed April 14, 1978. Applicant: JAMES H. HARTMAN & SON, INC., P.O. Box 85, Pocomoke City, MD 21851. Representative: Wilmer B. Hill, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, and fence posts*, from the facilities of Long Life Treated Wood, Inc., located at Dorsey, MD, to points in CT, DE, KY, OH, ME, MA, NH, NJ, NY, PA, RI, IN, VT, VA, WV, and DC. (Hearing site: Baltimore, MD, or Washington, DC.)

NOTE.—Common control may be involved.

MC 73165 (Sub-440F), filed April 14, 1978. Applicant: EAGLE MOTOR LINES, INC., 830 North 33d Street, Birmingham, AL 35202. Representative: R. Cameron Rollins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Roofing, building, and insulation materials* (except iron and steel articles, and commodities in bulk), and (2) *Materials, equipment, and supplies* used in the manufacturer, installation, and distribution of roofing and building materials (except iron and steel articles, and commodities in bulk), (a) between the facilities of CertainTeed Corp., in Erie County, OH, on the one hand, and, on the other, points in IN, MI, KY, WV, NY, and PA, (b) between the facilities of CertainTeed Corp., in Dallas County, TX, on the one hand, and, on the other, points in AR, OK, LA, MS, TN, and NM, and (c) between the facilities of CertainTeed Corp., in Chatam County, GA, on the one hand, and, on the other, points in AL, FL, MS, NC, SC, and TN, restricted to the transportation of traffic originating at or destined to the indicated facilities in (1), (2), and (3) above. (Hearing site: New Orleans, LA or Pittsburgh, Pa.)

NOTE.—Common control may be involved.

MC 73165 (Sub-442F), filed April 14, 1978. Applicant: EAGLE MOTOR LINES, INC., 830 North 33d Street, Birmingham, AL 35202. Representative: R. Cameron Rollins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel sheet, steel strip, and cold-rolled steel* (except commodities in bulk), from the facilities of Thompson Steel Co., at Sparrows Point, MD, to points in the United States in and east of MI, OH, KY, TN, GA, and FL, restricted to the transportation of traffic originating at the facilities of Thompson Steel Co. (Hearing site: Pittsburgh, PA or Washington, DC.)

MC 73165 (Sub-443F), filed April 14, 1978. Applicant: EAGLE MOTOR LINES, INC., 830 North 33d Street, Birmingham, AL 35202. Representative: R. Cameron Rollins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles and air polution equipment*, from the facilities of Superior Tool and Dye Co., at Cleveland, OH, to points in the United States (except in AK and HI), restricted to the transportation of traffic originating at the named facilities. (Hearing site: Columbus, OH.)

NOTE.—Common control may be involved.

MC 73165 (Sub-444F), filed April 14, 1978. Applicant: EAGLE MOTOR LINES, INC., 830 North 33d Street, Birmingham, AL 35202. Representative: R. Cameron Rollins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sheet steel, structural steel, and tube steel*, from Neville Island, PA, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the facilities of Tublar Goods, Inc. (Hearing site: Pittsburgh, PA.)

MC 95876 (Sub-237F), filed April 5, 1978. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, MN 56301. Representative: Robert D. Gisvold, 1000 First National Bank Building, Minneapolis, MN 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrought iron pipe*, from points in Beaver and Lawrence County, PA, Mahoning County, OH, and Chippewa County, MI, to Duluth and Minneapolis, MN, and points on the international boundary line between the United States and Canada at points in ID, MN, MT, ND, and WV. (Hearing site: Minneapolis, MN or Dallas, TX.)

MC 95876 (Sub-244F), filed April 3, 1978. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, MN 56301. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Granite, marble, slate, and stone*, between points in MN, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Minneapolis, MN.)

MC 106398 (Sub-800F), filed April 14, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull, 525 South Main, Tulsa, OK 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials*

(except asbestos tile in bulk) from the facilities of the Masonite Corp. located at Meridian, MS, to points in AR, IL, IN, IA, KY, MI, MO, OH, TN, and WI.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Meridian, MS.

MC 109397 (Sub-423F), filed April 14, 1978. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cranes, draglines, backhoes, shovels, and loaders*, and (2) *machinery, attachments, accessories*, and *parts* used in connection with the commodities in (1) above, between points in the United States (except AK and HI), restricted to the transportation of shipments originating at or destined to the facilities of Gleason Equipment, Inc., Gleason Crane Rental, Inc., Gleason Service, Inc. (Hearing site: Chicago, IL.)

NOTE.—common control may be involved.

MC 111729 (Sub-737F), filed April 7, 1978. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, NY 11040. Representative: Elizabeth L. Henoch (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Live tropical fish, aquariums and aquarium supplies*, restricted against the transportation of shipments weighing in excess of 100 lbs, from one consignor to one consignee on any one day, from Phoenix, AZ to points in AZ, on traffic having a prior movement by air. (Hearing site: Washington, DC.)

NOTE.—Applicant holds motor contract carrier authority in MC 112750, and sub numbers thereunder, and therefore dual operations may be involved. Common control may be involved.

MC 113651 (Sub-272F), filed April 14, 1978. Applicant: INDIANA REFRIGERATOR LINES, INC., P.O. Box 552, Riggin Road, Muncie, IN 47305. Representative: Glen L. Gissing, P.O. Box 552, Riggin Road, Muncie, IN 47305. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise as is dealt in by wholesale, retail and chain grocery and food business houses, and equipment, materials, and supplies* used in the conduct of such business, from Cincinnati, OH, to Charleston, WV, Dallas and Houston, TX, Memphis and Nashville, TN, Little Rock, AR and Atlanta, GA. (Hearing site: Cincinnati, OH or Chicago, IL.)

MC 114457 (Sub-380F), filed April 14, 1978. Applicant: DART TRANSIT CO., a corporation, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills, 2102 University Avenue, St. Paul, MN 55114. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Containers, fibreboard or pulpboard* with or without ends from the facilities of SONOCO Products Co. at or near Henderson, KY, Alpha, OH, Hanover, PA, and Henderson, TN to points in the United States (except AK and HI); and (2) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of the above commodities from points in the United States (except AK and HI) to the points of origin in (1). (Hearing site: Columbus, OH or Columbia, SC.)

MC 115331 (Sub-458F), filed April 14, 1978. Applicant: TRUCK TRANSPORT INC., 29 Claytin Hills Lane, St. Louis, MO 63131. Representative: J. R. Ferris, 230 St. Clair Avenue, East St. Louis, IL 62201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Silica and silica products*, from points in Alexander County, IL, to points in AL, AZ, AR, CA, CO, CT, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NJ, NY, NC, OH, OR, PA, SC, TN, TX, UT, VA, WA, WV and WI. (Hearing site: St. Louis, MO.)

MC 115841 (Sub-627F), filed April 14, 1978. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., Suite 110, Building 100, 9041 Executive Park Drive, Knoxville, TN 37919. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs* (except in bulk), from the facilities of Heintz, U.S.A., Division of H. J. Heintz Co. located at or near Fremont and Toledo, OH, to points in NC, SC, TN, and GA, restricted to the transportation of traffic originating and destined to the named points. (Hearing site: Pittsburgh, PA, or Washington, DC.)

NOTE.—Common control may be involved.

MC 115841 (Sub-628F), filed April 14, 1978. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., Suite 110, Building 100, 9041 Executive Park Drive, Knoxville, TN 37919. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as defined in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, from Augusta, GA, to points in PA and NY. (Hearing site: Augusta or Atlanta, GA, or Washington, DC.)

NOTE.—Common control may be involved.

MC 118859 (Sub-11F), filed April 4, 1978. Applicant: BULLOCK TRUCKING CO., INC., Stall 12, State Farmers' Market, P.O. Box 1634, Thomasville, GA 31792. Representative: M. Craig Massey, P.O. Drawer J, Lakeland, FL 33802. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber, wood products, treated and untreated, particle board, wood chips, sawdust, bark, trusses and pallets*, between points in AL, FL, GA, NC, SC, TN; and (2) *plastic pipe* from the facilities of Davis Industries at/or near Thomasville, GA, to points in AL, FL, GA, NC, SC, and TN. (Hearing site: Macon or Atlanta, GA.)

MC 121437 (Sub-6F), filed April 14, 1978. Applicant: CARROLL E. FLYNN, d.b.a. A-1 MOBILE HOME MOVERS, 2923 West Montebello, Phoenix, AZ 85017. Representative: Phil B. Hammond, 10th Floor, 111 West Monroe, Phoenix, AZ 85003. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Mobile homes and trailers designed to be drawn by passenger automobiles* (except travel trailers and camping trailers) and *buildings in sections mounted on wheeled undercarriages equipped with hitchball connectors*, in secondary movements, between points in AZ, NV, NM and TX; and (2) *mobile homes and trailers designed to be drawn by passenger automobiles* (except travel trailers and camping trailers) and *buildings in sections mounted on wheeled undercarriages equipped with hitchball connectors*, in initial movements, (a) from points in AZ, to points in NV and NM, (b) between the facilities of Charter Industries located at Henrietta, TX, on the one hand, and, on the other, points in AZ, NM, and NV, (c) from the facilities of Cliff Industries located at or near Burrowson and Cleveland, TX, to points in AZ, NM, and NV; and (d) from Murray, UT, to points in AZ, NV, and NM. (Hearing site: Phoenix, AZ.)

MC 135410 (Sub-22F), filed April, 14, 1978. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, 700 South Main Street, Monmouth, IL 61462. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in by lawn and garden care centers*, (except

commodities in bulk), from the facilities of O. M. Scott & Sons Co., at or near Marysville, Columbus, and Vermilion, OH, to points in IL, MO, and those in IA on and east of Interstate Hwy 35, restricted to the transportation of shipments originating at the named origins and destined to the named destinations. (Hearing site: Columbus, OH or Chicago, IL.)

MC 135732 (Sub-33F), filed April 14, 1978. Applicant: AUBREY FREIGHT LINES, INC., P.O. Box 503, Elizabeth, NJ 07208. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery products*, in vehicles equipped with mechanical refrigeration, (1) from the facilities of Nabisco, Inc., at or near Richmond, VA, to points in AZ, CA, OR, TX, and WA, and (2) from the facilities of Nabisco, Inc., at or near Buenta Part, CA, to Richmond, VA. (Hearing site: New York, NY or Washington, D.C.)

MC136161 (Sub-12F), filed April 14, 1978. Applicant: ORBIT TRANSPORT, INC., P.O. Box 163, Spring Valley, IL 61362. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals and chemical compounds* (except in bulk) from Peru, IL to points in IN, KY, MI, OH, TN, WV and WI. (Hearing site: Boston, MA or Washington, DC.)

MC 136521 (Sub-3F), filed April 14, 1978. Applicant: EXECUTIVE COURIER SERVICE, INC., 3000 North Santa Fe, Oklahoma City, OK 73105. Representative: Robert J. Birnbaum, 500 West Sixteenth Street, P.O. Box 1945, Austin, TX 78767. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Currency, cash letters, checks, audit media and other business records, computer print-outs, engineering diagrams, legal documents, exposed and processed film and prints, videotapes, and tape recordings*, transported in passenger cars only between Amarillo, TX, on the one hand, and, on the other, points in Cimarron, TX, Beaver, Harper, Woodware, Ellis, Roger Mills, Beckham Counties, OK, and Seward County, KS. (Hearing site: Dallas, TX or Oklahoma City, OK.)

MC 136553 (Sub-59F), Filed April 14, 1978. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, IA 52001. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer*, from the facilities of N-Ren Corp., in Jo Daviess County, IL, to points in IL, IA, MN, and WI. (Hearing site: Chicago, IL.)

MC 136635 (Sub-7F),filed April 14, 1978. Applicant: UNIVERSAL CARTAGE, INC., 640 West Ireland Road, South Bend, IN. Representative: Donald W. Smith, P.O. Box 40659 Indianapolis, IN 46240. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Refrigeration equipment*, from the facilities of Tyler Refrigeration Corp., at Niles, MI, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Washington, DC.)

NOTE.—Common control may be involved.

MC 136983 (Sub-6F), filed April 14, 1978. Applicant: ARIZONA WESTERN TRANSPORT, INC., P.O. Box F, Chandler, AZ 85224. Representative: A. Micheal Bernstein, 1441 East Thomas Road, Phoenix, AZ 85014. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Soil conditioners or amendments*, from Sahuarita, AZ, to points in AZ, CA, CO, KS, NM, ID, NV, OR, TX, UT, and WA, under continuing contract(s), with the Rinchem Co., Inc., of Phoenix, AZ. (Hearing Site: Phoenix, AZ.)

MC 138188 (Sub-4F), filed April 14, 1978. Applicant: CAUDILL MOBILE MILL, INC., Box 85, Butlerville, IN 47223. Representative: Robert W. Minor, P.O. Box 1008, 52 East Gay Street, Columbus, OH 43216. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular route, transporting: *Plastic synthetic liquid and adhesive glue and plastic articles*, from Columbus, OH to points in TX and CA. (Hearing Site: Columbus, OH.)

MC 138676 (Sub-9F), filed April 14, 1978. Applicant: O-J TRANSPORT CO., a corporation, 2739 Sturtevant, Detroit, MI 48206. Representative: Robert E. McFarland, 999 West Big Beaver Road, Suite 1002, Troy, MI 48084. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *General commodities*, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk), between the facilities of Ford Motor Co., at or near Milan, MI, on the one hand and on the other Chicago, IL.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held in Detroit, MI, or Washington, D.C.

MC 138882 (Sub-68F), filed April 14, 1978. Applicant: WILEY SANDERS, INC., P.O. Box 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 355, Gladstone, NJ 07934. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods* (except frozen and except in bulk), (1) from the facilities of Joan of Arc Co., Inc., at or near Hoopeston and Princeville, IL, to points in AL, AR, CT, FL, GA, LA, ME, MD, MA, MI, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, and WV, and (2) from the facilities of Joan of Arc Co., Inc., at Mayville, WI, to points in AL, AR, CT, FL, GA, LA, ME, MD, MA, MI, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, and IL, restricted in (1) and (2) to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Montgomery or Birmingham, AL.)

MC 139973 (Sub-44F), filed April 14, 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 sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electrical appliances, equipment, and parts, and pole-line hardware*, and (2) *materials and supplies* used in the manufacture, distribution, and sale of electrical appliances, equipment, and parts, and pole-line hardware (except commodities in bulk), between Columbia, Jefferson City, St. Louis, Macon, Moberly, Boonville, and Kirksville, MO, and Centerville, IA, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX, restricted to traffic originating at or destined to the facilities of McGraw-Edison Co. (Hearing site: Kansas City or St. Louis, MO.)

NOTE.—Applicant holds contract carrier authority under MC 138375, therefore, dual operations may be involved. Common control may be involved.

MC 140024 (Sub-104F), filed April 14, 1978. Applicant: J. B. MONTGOMERY, INC., a Delaware corporation, 5565 East 52d Avenue, Commerce City, CO 80022. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nails*, from the ports of entry on the international boundary line between the United States and Canada, at or near Champlain, NY, to Chicago, IL, and points in its commercial zone. (Hearing site: Denver, CO, or Chicago, IL.)

NOTE.—Common control may be involved.

MC 140962 (Sub-1F), filed April 14, 1978. Applicant: PHILIP ANTONUCCI, d.b.a. ANTY TRUCKING, 150

Linwood Avenue, Paterson, NJ 07502. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Mine, quarry, and drilling equipment*, (2) *compressors and loaders*, (3) *bars, tools, and parts* used in connection with the commodities in (1) and (2) and (4) *materials, equipment, and supplies* used in the manufacture and sale of the commodities in (1), (2), and (3) (except commodities in bulk), between the facilities of Atlas Copco, Inc., at Wayne, NJ, on the one hand, and, on the other, points in the United States (except GA, IL, MD, MA, NY, PA, TN, VT, WV, AK, and HI), under a continuing contract, or contracts, with Atlas Copco, Inc., of Wayne, NJ. (Hearing site: New York, NY, or Washington, DC.)

NOTE.—Common control and dual operations may be involved.

MC 142059 (Sub-36F), filed April 14, 1978. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Road, Joliet, IL 60436. Representative: Jack Riley, 1830 Mound Road, Joliet, IL 60436. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron or steel tubing*, from the facilities of Unarco-Leavitt, Division of Unarco Industries, Inc., at Blue Island, Chicago, and Evanston, IL, to points in the United States except AK and HI. (Hearing site: Chicago, IL, or Washington, DC.)

MC 142994 (Sub-6F), filed April 14, 1978. Applicant: VIRGINIA COURIER SERVICE, INC., P.O. Box 287, Harrisonburg, VA 22801. Representative: Chester A. Zyblut, 366 Executive Building, 1030 15th Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except commodities in bulk, household goods, and commodities requiring special equipment), moving in express service, between points in Augusta and Rockingham Counties, VA, on the one hand, and, on the other, points in FL, GA, NC, SC, VA, WV, PA, NY, NJ, CT, DE, MD, and DC. Restriction: (a) No service shall be provided in the transportation of articles weighing in the aggregate more than 500 pounds moving from one consignor at one location to one consignee on any one day and (b) in two-axle vehicles. (Hearing site: Charlottesville, VA.)

MC 143816 (Sub-1F), filed April 14, 1978. Applicant; STEPHEN BUETER, d.b.a. BUETERS TRUCKING CO., Route 1, Lutesville, MO 63762. Representative: Kenneth Schrum, Marble Hill, MO 63764. Authority sought to operate as a *contract carrier* of a motor vehicle, over irregular routes in the transportation of: *Pallets and blocking*, from Marble Hill, MO, to points in IL and TN, under a continuing contract, or contracts with Midwest Pallet Co. (Hearing site: St. Louis, MO.)

MC 143838 (Sub-2F), filed April 11, 1978. Applicant: W. PETER RONSON, JR. & SONS, INC., 2823 Carmen Road, Middleport, NY 14105. Representative: George V. C. Muscato, 231 South Transit Street, Lockport, NY 14094. Authority sought to operate as a *contract carrier*, in interstate or foreign commerce by motor vehicle over irregular routes, in the transportation of: *Apple juice* in bulk, in tank vehicles from (1) Appleton, NY, to North East PA; and (2) Appleton, NY, to Fremont, MI, under continuing contract or contracts with Cornucopia Farms. (Hearing site: Buffalo, NY, or New York, NY.)

MC 144487 (Sub-1F) (correction), filed March 27, 1978, published in the FEDERAL REGISTER issue of May 18, 1978, and republished this issue. Applicant: JACKSON RAPID DELIVERY SERVICE, INC., 910 Larson Street, P.O. Box 482, Jackson, MS 39205. Representative: John A. Crawford, 1700 Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Electrical wiring harnesses, and components, and equipment, materials, and supplies* used in the manufacture, processing, and distribution of electrical wiring harnesses (except commodities in bulk), between Clinton and Jackson, MS, on the one hand, and, on the other, El Paso, TX, under continuing contract(s) with General Motors Corp. (Packard Electric Division). (Hearing site: Jackson, MS.)

NOTE:—The purpose of this republication is to correctly reflect the territorial description and applicant's docket number in its common carrier authority, which were incorrectly published in the FEDERAL REGISTER. Applicant holds common carrier authority in MC 135285, therefore, dual operations may be involved.

MC 144330 (Sub-37F), filed April 14, 1978. Applicant: UTAH CARRIERS, INC., P.O. Box 1218, Building F-9, Freeport Center, Clearfield, UT 84016. Representative: Glade Holfeltz (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bentonite and lignite coal*, (a) from points in Crook County, WY, and Malta, MT, to those points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI), and (b) from Belle Fourche, SD, and Upton and Lovell, WY, to points in CA, OK, and TX; and (2) *lignite coal*, from Gascoyne, ND, to points in CA, OK, and TX, restricted to the transportation of traffic originating at the facilities of American Colloid Co. (Hearing site: Chicago, IL.)

MC 144611 (Sub-2F), filed April 14, 1978. Applicant: BRIDGEWATER TRANSPORTATION, INC., P.O. Box 491, Bound Brook, NJ 08805. Representative: Paul J. Keeler, P.O. Box 253, South Plainfield, NJ 07080. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Disposable hospital supplies*, from Jersey City and Bridgewater, NJ, to points in the United States (except AK and HI); and (2) *Materials, equipment, and supplies* (except commodities in bulk, in tank vehicles) used in the manufacture and sale of the commodities named in (1) above, from points in the United States (except AK and HI), to Jersey City and Bridgewater, NJ, under continuing contract(s) with Hosposable Products, Inc., of Jersey City, NJ, and Bridgewater Manufacturing Corp., of Bridgewater, NJ. (Hearing site: Newark, NJ, or New York, NY.)

MC 144621F, Filed April 14, 1978. Applicant: CENTURY MOTOR LINES, INC., P.O. Box 15246, 1720 East Garry Avenue, Santa Ana, CA 92705. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of: Food, food products and food ingredients, from the facilities of Archer Daniels Midland Co., located at or near Decatur, IL, to points in CT, DE, ME, MD, MA, NH, NY, OH, NC, NJ, PA, RI, TN, VT, VA, WV, and DC. (Hearing site: Decatur, or Chicago, IL.)

NOTE.—Common control may be involved. A carrier affiliated with applicant holds contract carrier authority in MC 135185 and Subs thereto, therefore, dual operations may be involved.

PASSENGER APPLICATION

MC 144649F, filed April 14, 1978. Applicant: LEONARD M. G. BRUBACHER, an individual, Rural Route 2, West Montrose, ON, Canada NOB 2VO. Representative: Jeremy Kahn, Suite 733, Investment Building, 1511 K Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle with passengers, in round-trip charter operations, beginning and ending at ports of entry on the United States-Canada international boundary line, and extending to points in the United States (including AK, but ex-

cluding HI), restricted to foreign commerce. (Hearing site: Buffalo, NY.)

BROKER APPLICATIONS

MC 130485F, filed March 30, 1978. Applicant: TRAVELCENTER AT BOSCOV's, a corporation, 4500 Perkiomen Avenue, Reading, PA 19606. Representative: Lawrence E. Lindeman, 1032 Pennsylvania Building, 425 13th Street NW, Washington, DC 20004. Authority sought to engage in operations in interstate or foreign commerce as a *broker* at Reading, Lebanon, Pottsville, and Sellinsgrove, PA, in arranging for the transportation by motor vehicle, of passengers and their baggage, in special and charter operations, from points in Berk, Schuylkill, Lebanon, and Snyder Counties, PA, to points in the United States including AK (except HI), and return. (Hearing site: Reading or Harrisburg, PA.)

MC 130499F, filed April 14, 1978. Applicant: A1RON TRAVEL, INC., 1180 Garfield, Eugene, OR 97402. Representative: Owen B. McCullen, Suite 102, 777 High Street, Eugene, OR 97401. Authority sought to engage in operation, in interstate or foreign commerce, as a *broker*, at Eugene, OR, in arranging for the transportation by motor vehicle, of: *Passengers and their baggage*, in special and charter operations, beginning and ending at Portland, Salem, Eugene, Roseburg, and Medford, OR, and extending to Las Vegas, Reno, and Lake Tahoe, NV. (Hearing site: Eugene or Salem, OR.)

WATER CARRIER APPLICATION

W 1323F, Filed March 6, 1978, and previously noticed in the FEDERAL REGISTER issue of May 18, 1978. Applicant: SAUSE BROS. OCEAN TOWING CO., INC., 2927 E. Burnside Street, Portland, OR 97214. Representative: Alan F. Wohlstetter, 1700 K Street, NW., Washington, DC 20006. Authority sought to engage in operation, in interstate or foreign commerce, as a *common carrier by water*, in the performance of *general towage* (except the towage of logs, lumber, rough and finished lumber products, piling, grape stakes, fence posts and shingles), (1) between all ports and points on the Pacific Coast, (2) between all points named in (1) above, on the one hand, and, on the other, (A) all ports and points on the Gulf Coast, and (B) all ports and points on the Atlantic Coast, by way of the Panama Canal, (3) between all points named in (2)(A) above, (4) between all points named in (2)(B) above, and (5) between all points named in (2)(A), on the one hand, and, on the other, all points named in (2)(B) above. (Hearing site: Portland, OR).

NOTE.—Applicant holds water contract carrier authority in No. W-435 and subs thereunder, therefore dual operations may be involved. Common control may also be involved. The purpose of this republication is to indicate applicant's correct named.

FINANCE APPLICATIONS

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, or rail carriers of motor carriers pursuant to sections 5(2) or 210a(b) of the Interstate Commerce Act.

An Original and two copies of protests against the granting of the requested authority must be filed with the Commission on or before September 5, 1978. Such protests shall comply with special rules 240(c) or 240(d) of the Commission's general rules of practice (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

MC-F-12068 (reinstatement). By petition filed April 14, 1978, NELSON RESOURCE CORP. and A & B GARMENT DELIVERY filed a petition seeking reinstatement of the application in MC-F-12068 as well as reinstatement of the temporary authority. On June 27, 1978, division 2 granted the petition subject to republication in the FEDERAL REGISTER. Nelson Resource Corp.—control—Great Western Unifreight System and Great Western Unifreight System—merger—A & B Garment Delivery, A & B Garment Delivery of San Francisco, and Garment Carriers, Inc. (republication), published in the January 9, 1974, and October 2, 1974, issues of the FEDERAL REGISTER. The application had been dismissed by order of the Commission entered August 14, 1975. By amendment filed September 16, 1974; applicants seek to modify the original transaction by changing it to one for the purchase of the operating rights of Great Western Unifreight System, Inc., by A & B Garment Delivery, Inc. Applicants' attorney: A. David Millner. Operating rights sought to be acquired: Under a certificate of registration in MC 120700 (Sub-1), covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of CA. Operating rights sought to be transferred: (1) *Garments, clothing and wearing apparel* when transported on garment hangers, *matching accessories and other commodities incidental thereto, including costume or novelty jewelry*, when shipped in van-type trucks in company with garments, clothing, and wearing apparel on hangers, as a common carrier over irregular routes, between points in a defined area of CA, within the Los Angeles Basin Area; (2)(1) *wearing apparel, materials and supplies, accessories, containers, dry goods, clothes, luggage, textiles, and umbrellas*; and (2) *general commodities* not named in (1) above when transported: (a) To or from retailers of garments, not including retailers which sell garments incidentally such as (but not limited to) hardware stores, drug stores, and grocery stores, (b) between retailers, wholesalers, and manyufacturers of the commodities specifically named in (1) above, and (c) to or from fashion shows, over regular routes, between San Francisco, and Santa Rosa, CA, between Ignacio, and Napa, CA, between San Francisco, and North Sacramento, CA, between Napa, CA, and junction CA Hwy 29 and U.S. Hwy 40, between San Francisco, and Sacramento, CA, between Stockton, CA, and junction CA Hwy 4 and U.S. Hwy 40, between Oakland and Pittsburg, CA, between Warm Springs, and Martinez, CA, between Stockton, and Modesto, CA, between junction CA Hwy 33 and U.S. Hwy 50 near Tracy and junction U.S. Hwy 50 and CA Hwy 132 at Vernalis, between Vernalis, and Modesto, CA, with restriction, between San Francisco, and San Jose, CA, between San Jose, and Emeryville, CA, serving all intermediate points; (1) *wearing apparel, materials and supplies, accessories, containers, dry goods, clothes, luggage, textiles, and umbrellas*, and (2) *general commodities* not named in (1) above when transported: (a) To or from retailers of garments, not including retailers which sell garments incidentally such as (but not limited to) hardware stores, drug stores, and grocery stores (b) betweeen retailers, wholesalers, and manufacturers of the commodities specifically named in (1) above, and (c) to or from fashion shows, over irregular routes, from to and between points and places within certain designated areas of CA including Stockton, Sacramento, Santa Rosa and the San Francisco Territory; and (3) *hanging or cartoned garments, clothing and wearing apparel and component parts* used in the manufacture, thereof, as defined in 61 MCC 288 and 289 (except natural furs and natural fur or fur-trimmed garments), *handbags and costume jewelry*, over regular routes, betweeen points in a defined area of CA, serving various intermediate and off-route points, with restriction, over one alternate route for operating convenience only. The purpose of this republication is to permit protests to the section 5 and/or section 210a(b) applications. Any protests to the section 210a(b) application will be treated as petitions for administrative review.

MC-S-13676F. Authority sought for purchase by SOUTHERN REFRIG-

ERATED TRANSPORTATION CO., INC., 2154 Green Valley Drive, Crown Point, IN 46301 of all of the operating rights of CHICAGO SOUTHERN TRANSPORTATION CO. (Main Bank of Chicago as senior secured creditor under Article IX of the Uniform Commercial Code), 601 West 172nd Street, Chicago, IL 60473, and for acquisition by HAROLD E. ANTONSON, 2154 Green Valley Drive, Crown Point, IN 46301, and Michael E. Kibler, 7336 West 15th Avenue, Gary, IN 46406, of control of such rights through the purchase. Transferors' attorney: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. Transferee's attorney: Anthony E. Young, 29 South LaSalle Street, Chicago, IL 60603. Chicago Southern operates as a common carrier over irregular routes in the transportation of *perishable and nonperishable foodstuffs and other specified commodities* between mid-Western points including among other Chicago, IL, St. Louis, MO, named points in IL, KS, MN, IN, and points in WI, on the one hand, and, on the other, points in the Southern and South Eastern United States, including among others, AR, DC, FL, GA, KY, LA, MS, AL, NC, SC, VA, MO, OK, TN, TX, WV, as more fully described in Certificates MC 119792 and subnumbers thereunder. This notice does not purport to be a complete description of all of the operating rights of Chicago Southern. The foregoing summary is believed sufficient for purpose of public notice regarding the nature and extent of this carrier's operating rights without stating, in full, the entirety thereof. Transferee holds no authority from this Commission. However it is controlled by Harold E. Antonson and Michael E. Kibler who control Enterprise Truck Line, Inc. which holds Certificates MN 123194 and subnumbers, thereunder, and is authorized to transport various perishable foodstuffs between Chicago, IL and points within 50 miles of Chicago, IL, and other specified IL points, on the one hand, and, on the other, points in IL, IN, and MI; also pickles and related commodities from the plant site of Claussen Pickle Co., Inc. located at or near Woodstock, IL, to points in CT, DE, IN, ME, MD, MA, MI, NH, NJ, NY, PA, VT, VA, WV, and DC, as more fully described in Certificates MC 123194 and sub-numbers thereunder. This notice does not purport to be a full description of all of the operating rights of Enterprise. The foregoing summary is believed sufficient for purpose of public notice regarding the nature and extent of this carrier's operating rights without stating, in full, the entirety thereof. Approval of the application will not result in dual operations or duplicating authority. Southern Refrigerated Transportation Co., Inc., is a no record carrier, however, it is affiliated with Enterprise Truck Line, Inc. Enterprise Truck Line, Inc., is authorized to operate as a common carrier in IL, CT, DE, IN, ME, MD, MA, MI, NH, NJ, NY, PA, RI, VT, VA, WV, and DC. Application has been filed for temporary authority under section 210a(b).

Motor Carrier Alternate Route Deviations

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before September 5, 1978.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its request.

MOTOR CARRIERS OF PROPERTY

No. MC 30504 (Deviation 32), TUCKER FREIGHT LINES, INC., P.O. Box 3144, South Bend, IN 46619, filed July 24, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of: *General commodities*, with certain exceptions, over a deviation route as follows: From Louisville, KY over Interstate Hwy 64 to junction U.S. Hwy 40 near East St. Louis, IL, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Louisville, KY over U.S. Hwy 31E to Sellersburg, IN, then over U.S. Hwy 31 to Indianapolis, IN, then over U.S. Hwy 40 to junction Interstate Hwy 64 near East St. Louis, IL, and return over the same route.

MC 30504 (Deviation 33), TUCKER FREIGHT LINES, INC., P.O. Box 3144, South Bend, IN 46619, filed July 24, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of: *General commodities*, with certain exceptions, over a deviation route as follows: From Nashville, TN over Interstate Hwy 24 to junction U.S. Hwy 68, then over U.S. Hwy 68 to junction Interstate Hwy 24, then over Interstate Hwy 24 to junction Interstate Hwy 57, then over Interstate Hwy 57 to junction Interstate Hwy 64, then over Interstate Hwy 64 to St. Louis, MO, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Nashville, TN over U.S. Hwy 31-E to junction KY Hwy 61, then over KY Hwy 61 to junction U.S. Hwy 31-W, then over U.S. Hwy 31-W to Louisville, KY, then over U.S. Hwy 31-E to Sellersburg, IN, then over U.S. Hwy 31 to Indianapolis, IN, then over U.S. Hwy 40 to St. Louis, MO and return over the same route.

MC 42487 (Deviation 120), CONSOLIDATED FREIGHTWAYS CORP. OF DELAWARE, P.O. Box 3062, Portland, OR 97208, filed July 18, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of: *General commodities*, with certain exceptions, over deviation routes as follows: (1) From Birmingham, AL over U.S. Hwy 78 to junction AL Hwy 5 near Jasper, AL, then over AL Hwy 5 to junction U.S. Hwy 278 near Natural Bridge, AL, then over U.S. Hwy 278 to junction U.S. Hwy 78 at Hamilton, AL, then over U.S. Hwy 78 to Memphis, TN, then over Interstate Hwy 55 to Springfield, IL; and (2) from Birmingham, AL over U.S. Hwy 78 to Memphis, TN, then over Interstate Hwy 55 to Springfield, IL and return over the same routes for operating convenience only. The notice indicates that the carrier is authorized to transport the same commodities over a pertinent service route as follows: From Birmingham, AL over U.S. Hwy 31 to junction AL Hwy 53, then over AL Hwy 53 to Ardmore, TN, then over TN Hwy 110 to Fayetteville, TN, then over U.S. Hwy 231 to Murfreesboro, TN, then over U.S. Hwy 41 to Nashville, TN, then over U.S. Hwy 31W to Elizabethtown, KY, then over U.S. Hwy 62 to Lexington, KY, then over U.S. Hwy 25 to Cincinnati, OH, then over U.S. Hwy 52 to Indianapolis, IN, then over U.S. Hwy 36 to Springfield, IL and return over the same route.

MC 75320 (Deviation 68), CAMPBELL SIXTY-SIX EXPRESS, INC., P.O. Box 807, Springfield, MO 65801, filed July 18, 1978. Carrier proposes to operate as a *common carrier*, by motor vehicle, of: *General commodities*, with certain exceptions, over a deviation route as follows: From Houston, TX over Interstate Hwy 10 to Beaumont, TX, then over U.S. Hwy 69 to Lufkin, TX, then over U.S. Hwy 259 to junction Interstate Hwy 30, then over Interstate Hwy 30 to Little Rock, AR, and return over the same route for operating convenience only. The notice indicates that the carrier is authorized to transport the same commodities over a pertinent service route as follows: From Houston, TX over U.S. Hwy 75 to Denison, TX, then over U.S. Hwy 69 to Durant, OK, then over U.S. Hwy 70 to Hugo, OK, then over U.S. Hwy 271 to Paris, TX, then over U.S.

Hwy 82 to Texarkana, AR, then over U.S. Hwy 67 to Little Rock, AR and return over the same route.

No. MC 94201 (Deviation 5) (correction), BOWMAN TRANSPORTATION, INC., P.O. Box 17744, Atlanta, GA 30316, filed April 14, 1977, as amended June 2, 1978, and published in the FEDERAL REGISTER on July 6, 1978. Representative: Maurice F. Bishop, 601-09 Frank Nelson Building, Birmingham, AL 35203. Carrier proposes to operate as a *common carrier*, by motor vehicle, of: *General commodities*, with certain exceptions, over a deviation route as follows: From junction Interstate Hwy 59 and Interstate Hwy 20 near Meridian, MS, over Interstate Hwy 20 to junction U.S. Hwy 79 near Shreveport, LA, then over U.S. Hwy 79 to junction U.S. Hwy 59 near Carthage, TX, then over U.S. Hwy 59 to Houston, TX, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: (1) From Mobile, AL over U.S. Hwy 90 to New Orleans, LA, then over U.S. Hwy 61 to Baton Rouge, LA, then over U.S. Hwy 190 to Kinder, LA, then over U.S. Hwy 165 to junction U.S. Hwy 90 (also Interstate Hwy 10), then over U.S. Hwy 90 (also Interstate Hwy 10) to Houston, TX and (2) From Tuscaloosa, AL over U.S. Hwy 11 (also over Interstate Hwy 59) to New Orleans, LA and return over the same routes.

NOTE.—The purpose of this republication is to reflect the correct proposed deviation route and underlying service routes.

MOTOR CARRIER INTRASTATE APPLICATION(S)

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act. These applications are governed by special rule 245 of the Commission's general rules of practice (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

Texas Docket 002627B5A, filed July 14, 1978. Applicant: CENTRAL FREIGHT LINES INC., 5601 West Waco Drive, P.O. Box 238, Waco, TX 76703. Representative: Phillip Robinson, P.O. Box 2207, Austin, TX 78768. Certificate of public convenience and necessity sought to operate a freight service, as follows: Transportation of: *General commodities*, between San Antonio, TX, and Laredo, TX as follows: From San Antonio, TX, over Interstate Hwy 35 and U.S. Hwy 81 to Laredo, TX, and return over the same route serving the termini and all intermediate points. (Hearing site: October 2-November 3, 1978, at Austin, Laredo, and Dallas, TX, commencing at the Hilton Inn, 6000 Middle Fiskville Road, Austin, TX 78752 (for applicant's presentation only). Requests for procedural information should be addressed to Texas Railroad Commission, 611 South Congress, P.O. Drawer 12967, Capitol Station, Austin, TX 78711, and should be directed to the Interstate Commerce Commission.)

NOTE.—Applicant proposes to tack and coordinate the proposed additional services with all services authorized in intrastate commerce under Certificates 2627, 2054, 4336 and 4337, and with all services now authorized in interstate and foreign commerce under authorities granted in Docket No. MC 30867 and all subs thereunder. Applicant seeks no duplicate authority. Intrastate, interstate and foreign commerce authority sought.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-21411 Filed 8-2-78; 8:45 am]

[7035-01]

[Volume No. 107]

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

JULY 24, 1978.

The following applications are governed by special rule 247 of the Commission's general rules of practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(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 (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use a such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, things relied upon, but shall not include issues or allegations phrased generally, 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 applicant if no representative is named. All pleadings and documents must clearly specify the "F" suffix where the docket is so identified in this notice. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(e)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof, and that failure to prosecute an application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission decision which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

MC 2253 (Sub-82F), filed April 10, 1978. Applicant: CAROLINA FREIGHT CARRIERS CORP., P.O. Box 697, Cherryville, NC 28021. Representative: J. S. McCallie (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood, paneling, gypsum board, composition board, and molding*, from the facilities of Pan-American Gyro-Tex, at or near Jacksonville, FL, to points in AL, DE, GA, IL, IN, KY, ME, MD, MI, MS, NH, NJ, NY, PA, TN, VA, VT, WV, and WI. (Hearing site: Jacksonville, FL or DC.)

MC 2392 (Sub-112F), filed April 14, 1978. Applicant: WHEELER TRANSPORT SERVICE, INC., P.O. Box 14248, West Omaha Station, 7722 F Street, Omaha, NE 68124. Representative: Leonard A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, in tank ve-

hicles, from the facilities of Farmland Industries, Inc., at or near Hoag, NE, to points in IA, KS, and MO. (Hearing site: Ohama, NE or Kansas City, MO.)

MC 13134 (Sub-49F), filed April 14, 1978. Applicant: GRANT TRUCKING, INC., P.O. Box 256, Oak Hill, OH 45656. Representative: James M. Burtch, 100 East Broad Street, Columbus, OH 43215. Authority to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* from points in Cabell and Wayne Counties, WV to points in IL, IN, LA, MI, MS, PA, and NY. (Hearing site: Charleston, WV.)

MC 13134 (Sub-57F), filed April 14, 1978. Applicant: GRANT TRUCKING, INC., P.O. Box 256, Oak Hill, OH 45656. Representative: James M. Burtch, 100 East Broad Street, Columbus, OH 43215. Authority to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Kentucky Electric Steel Co. located at or near Coalton (Boyd County) KY to points in AL, GA, and SC. (Hearing site: Charleston, WV.)

MC 29886 (Sub-343F), filed April 14, 1978. Applicant: DALLAS & MAVIS FORWARDING CO., INC., an Indiana corporation, 4314—39th Avenue, Kenosha, WI 53142. Representative: Paul F. Sullivan, 711 Washington Building, Washington, DC. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trucks*, in initial movements, in truckaway service, from the facilities of Freightliner Corp., at (1) Indianapolis, IN, to points in the United States (including AK, but excluding HI); and (2) Portland, OR, to points in the United States (except AL, CT, DE, FL, GA, HI, IL, IN, KY, ME, MD, MA, MI, MS, NY, NC, OH, PA, RI, SC, TN, VT, WV, and DC). (Hearing site: Chicago, IL or Washington, DC.)

MC 30032 (Sub-8F), filed April 14, 1978. Applicant: HOUDEK MOTOR SERVICE, INC., 33 Mockingbird Lane, Oak Brook, IL 60521. Representative: Hubert Grane, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those commodities of unusual value and commodities in bulk in tank vehicles), between the Chicago IL, commercial zone, on the one hand, and, on the other, points within 100 miles of the Chicago commercial zone in Ozaukee, Washington, Dodge, Jefferson, Waukesha, Dane, Green, Rock, Milwaukee, Walworth, Racine, and Kenosha Counties, WI, Allegan, Barry, Van Buren, Kalamozoo, St. Joseph, Cass, and Berrien Counties, MI, Lake, Porter, Newton, Jasper, Benton, Warren, Tippecanoe, Clinton, Tipton, Carroll, Howard, Elkhart, White, Cass, Miami, Wabash, Huntington, Pulaski, St. Joseph, Fulton, Whitley, Starke, Marshall, Kosciusko, La Porte, Noble, and La Grange Counties, IN, and St. Louis County, MO. (Hearing site: Chicago, IL.)

MC 33322 (Sub-20F), filed March 16, 1978. Applicant: JOHN N. APGAR, SR. (Irving L. Apgar, John N. Apgar, Jr. and the First National Bank of Central Jersey, Executors and Trustees), STERLING E. APGAR (Morris Ruter, Trustee) and Dorothy E. Anderson d.b.a. AGAR BROS., 232 West Union Avenue, Bound Brook, NJ 08805. Representative: William P. Sullivan, 1320 Fenwick Lane, Suite 500, Silver Spring, MD 20902. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and building materials, and materials, equipment and supplies* used in their installation, from Erie, PA to points in OH and WV, and of *commodities used in the manufacture of roofing and building materials*, from points in OH and WV, to Erie, PA, under a continuing contract or contracts with GAF Corp. (Hearing site: Washington, DC.)

MC 35358 (Sub-40F), filed April 14, 1978. Applicant: BERGER TRANSFER & STORAGE, INC., 3720 Macalaster Drive, Minneapolis, MN 55421. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Uncrated furniture*, (2) *cabinets*, (3) *fixtures*, and (4) *sinks and tops*, from Chicago, IL, to ME, VT, NH, NY, MA, CT, RI, PA, NJ, MD, DE, VA, WV, NC, SC, KY, TN, GA, FL, AL, MS, MO, AR, LA, those points in OK on and east of a line beginning at the OK-KS State line and extending along U.S. Hwy 169 to junction U.S. Hwy 75, then along U.S. Hwy 75 to TX-OK State line, and those in TX on and east of a line beginning at the OK-TX State line and extending along U.S. Hwy 75 to junction U.S. Hwy 82, then along U.S. Hwy 82 to junction Interstate Hwy 35-E, then along Interstate Hwy 35-E to junction Interstate Hwy 45, then along Interstate Hwy 45 to the Gulf of Mexico. (Hearing site: Chicago, IL.)

MC 35807 (Sub-82F), filed April 14, 1978. Applicant: WELLS FARGO ARMORED SERVICE CORP., P.O. Box 4313, Atlanta, GA 30302. Representative: Harry J. Jordan, 1000 16th Street NW., Washington, DC 20036. Authority sought to operate as a *contract carrier* by motor vehicle over irregular routes, transporting: *Coin, currency, securities, and food stamps* between Kansas City, MO, on the one hand, and, on the other, points in KS, under a continuing contract(s) with banks and banking institutions. (Hearing site: Kansas City, MO or Washington, DC.)

NOTE.—Common control and dual operations may be involved.

MC 78228 (Sub-82F), filed April 14, 1978. Applicant: J MILLER EXPRESS, INC., 962 Greentreen Road, Pittsburgh, PA 15221. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alloys, ores, and metals, in dump vehicles*, from Erie, PA, to points in IL and IN. (Hearing site: Washington, DC or New York, NY.)

NOTE.—Common control may be involved.

MC 95540 (Sub-1024F), filed April 14, 1978. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). Authority sought 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 (1) from Fort Smith and Arkansas City, KS, and Memphis, TN, to points in AL, CT, DE, FL, GA, KY, LA, ME, MD, MA, MS, NC, NH, NJ, NY, PA, RI, SC, TN, VA, VT, WV, and DC, (2) from Wichita, KS, to points in CT, DE, FL, KY, LA, MA, MD, ME, NJ, NH, NY, PA, RI, TN, VA, VT, WV, and DC, and (3) from Shreveport, LA, to points in CT, DE, LA, MA, MD, ME, NH, NJ, NY, PA, SC, VA, VT, WV, and DC, restricted to the transportation of shipments originating at the named origins and destines to the indicated destinations. (Hearing site: Chicago, IL, or Washington, DC.)

MC 103051 (Sub-440F), filed April 14, 1978. Applicant: FLEET TRANSPORT CO., INC., 934-44th Avenue, N., Nashville, TN 37209. Representative: Russell E. Stone, P.O. Box 90408, Nashville, TN 37209. Authority sought to operate as a *common carrier*, by motor vehicles, over irregular routes, transporting: *Liginin sulfonate*, in bulk, in tank vehicles, from New Johnsonville, TN, to Walnut Ridge, AR. (Hearing site: Nashville, TN or Atlanta, GA.)

MC 104430 (Sub-52F), filed April 14, 1978. Applicant: CAPITAL TRANSPORT CO., INC., P.O. Box 408, Highway 24 West, McComb, MS 39648. Representative: Donald B. Morrison, 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Au-

thority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum lubricating oil*, in bulk, in tank vehicles, from New Orleans and Good Hope, LA to points in MS, AL, FL, GA, IN, KY, OH, TN and AR. (Hearing site: Jackson, MS.)

MC 106398 (Sub-801F), filed April 14, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull, 525 South Main, Tulsa, OK 74103. Authority sought 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 the facilities of Savannah Homes at Savannah, TN to points in AL, AR, FL, GA, KY, LA, MO, MS, NC and SC.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Nashville, TN.

MC 106398 (Sub-802F), filed, April 14, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull, Traffic Manager, 525 South Main, Tulsa, OK 74103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hardboard, lumber and lumber mill products* from the facilities of Allied International, Inc. at Wilmington, NC and Burns Harbor, IN to points in and east of NM, CO, WY, and MT.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, IL.

MC 106674 (Sub-314F), filed April 14, 1978. Applicant: SCHILLI MOTOR LINES, INC.: P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Building materials, insulating materials and cement pipe containing asbestos* (except in bulk), from the facilities of Johns-Manville Sales Corp., located at Waukegan, IL to points in OH; (2) *insulated board* from the facilities of Johns-Manville Perlite Corp. at Joliet, IL, to points in OH; and (3) *insulation board* from the Johns-Manville Sales Corp., at Alexandria, IN, to points in IL, KY, MO, TN and WI. Restriction: Restricted to the transportation of traffic originating at the facilities of Johns-Manville Sales Corp. and Johns-Manville Perlite Corp., located at or near the above named origins. (Hearing site: Chicago, IL or Indianapolis, IN.)

MC 106674 (Sub-315F) filed April 14, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson, P.O. Box 123, Remington, IN 47977. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Empty fibre shipping drums, parts and components* from the facilities of Continental Forest Industries, the Continental Group, Inc., at Overland, MO to Calvert City, KY. (Hearing site: Chicago, IL or Indianapolis, IN.)

MC 106674 (Sub-318F), filed April 10, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Salt, in bags*, from the facilities of Hardy Salt Co., at or near Manistee, MI, to points in IL, IN, IA, KY, MD, MO, OH, PA, NJ, NY, WV, and WI, and (2) *salt, in bulk*, in dump vehicles, with or without conveyors, from the above named facilities, to points in IL, IN, and OH. (Hearing site: Chicago, IL or Indianapolis, IN.)

MC 10693 (Sub-1F), filed April 10, 1978, Applicant: LOCKER MOVING AND STORAGE INC., 131 Perry Drive NW., Canton, Ohio 44708. Representative: Tim A. Powell, 800 Cleve-Tusc. Building, Canton, Ohio 44702. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in Ashtabula, Geauga, Mahoning, Medina, Portage, Stark, Summit, Trumbull and Wayne Counties, OH, restricted to (1) the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and (2) the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic. (Hearing site: Columbus, OH.)

MC 107012 (Sub-263F), filed April 14, 1978. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, IN 46801. Representative: Gary M. Crist, P.O. Box 988, Fort Wayne, IN 46801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cargo-box liners, kart tubs, retort separators, and plastic food processing shovels*, from the facilities of Trayco, Inc., at or near Lapeer, MI, to points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

NOTE.—Common control may be involved.

MC 107460 (Sub-75F), filed April 14, 1978. Applicant: WILLIAM Z. GETZ, INC., 3055 Yellow Goose Road, Lancaster, PA 17601. Representative: William Z. Getz, 3055 Yellow Goose Road, Lancaster, PA 17601. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Accessories, parts, materials, and supplies* used in the manfufacture, repair, assembly, and distribution of agricultural machinery, implements, and components parts thereof, from points in IN, IL, MI, MN, WI, IA, KS, and MO, to the facilities of the Sperry Rand Corp., New Holland Division, at or near Grand Island and Lexington, NE, under a continuing contract(s) with Sperry Rand Corp., New Holland Division. (Hearing site: Washington, DC or Harrisburg, PA.)

MC 107515 (Sub-1137F), filed April 14, 1978. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Fifth Floor—Lenox Towers South, 3390 Peachtree Road, Atlanta, GA 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of: (1) *Such merchandise* as is dealt in by wholesale, retail, and chain grocery and food business houses; and (2) *materials and supplies* used in the conduct of such business (except commodities in bulk) from the facilities of Fostoria Distribution Services, Inc., located at or near Fostoria, OH, to points in IN and KY. Restricted to traffic originating at and destined to the points named. (Hearing site: Toledo or Cleveland, OH.)

NOTE.—Applicant holds contract carrier authority in MC 126436 (Sub-6) and subs thereunder, therefore dual operations may be involved. Common control may also be involved.

MC 107515 (Sub-1140F), filed April 14, 1978. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Fifth Floor—Lenox Towers South, 3390 Peachtree Road, Atlanta, GA 30326. Authority sought to operate as a *common carrier*, over irregular routes, by motor vehicle, in the transportation of: *Frozen foods*, from the facilities of Packers Cold Storage, at Laramie, WY, to points in KY, IN, OH, MI, WI, and DC. (Hearing site: Los Angeles, CA.)

NOTE.—Applicant holds contract carrier authority in MC 126436 (Sub-6) and subs thereunder, therefore dual operations may be involved. Common control may also be involved.

MC 107515 (Sub-1141F), filed April 14, 1978. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Fifth Floor—Lenox Towers South, 3390 Peachtree Road, Atlanta, GA 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular

routes, transportion of: *Frozen foods,* from the facilities of Chef Pierre, Inc., at or near Forest, MS, to points in the United States (except AK, HI, AL, FL, GA, NC, SC, TN, and VA). (Hearing site: Detroit, MI, or Chicago, IL.)

NOTE.—Common control may be involved. Applicant holds contract carrier authority in MC 126436, therefore dual operations may be involved.

MC 108053 (Sub-143F), filed April 4, 1978. Applicant: LITTLE AUDREY'S TRANSPORTATION CO., INC., P.O. Box 129, Fremont, NE 68025. Representative: Arnold L. Burke, 180 North La Salle Street, Chicago, IL 60601. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Frozen foods* (except in bulk), from the facilities of Terminal Ice & Cold Storage Co., at or near Plover, WI, to points in AZ, CA, ID, NV, OR, UT, and WA; (2) from the facilities of Ore-Ida Foods Inc., at or near Plover, WI, to points in AZ, CA, ID, NV, OR, UT, and WA. Restricted to the transportation of traffic originating at and destined to the named points.

NOTE.—If a hearing is deemed necessary, applicant requests that it be held at Portland, OR.

MC 109397 (Sub-410F), filed April 14, 1978. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Lumber and lumber products,* from the facilities of Wood Products Division of Georgia Kraft Co., at or near Greenville and Madison GA, to points in CT, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI, and DC. (Hearing site: Atlanta, GA.)

NOTE.—Common control may be involved.

MC 109397 (Sub-415F), filed April 14, 1978. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Construction equipment, materials,* and *supplies,* including *self-propelled vehicles* (except commodities in bulk), between Sacramento, CA, and its commercial zone, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: San Francisco, CA.)

NOTE.—Common control may be involved.

MC 109397 (Sub-416F), filed April 14, 1978. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Pallets and lumber,* from Bearden, AR, to points in the United States (except AK and HI). (Hearing site: Little Rock, AR.)

NOTE.—Common control may be involved.

MC 109397 (Sub-417F), filed April 14, 1978. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Agricultural machinery, implements, parts, and attachments,* from San Joaquin County, CA, to points in the United States (except AK and HI). (Hearing site: San Francisco, CA.)

NOTE.—Common control may be involved.

MC 109397 (Sub-418F), filed April 14, 1978. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Precut log buildings,* unassembled, in mixed loads with *materials and supplies* used in the construction and erection of precut log buildings, from points in King County, WA, to points in the United States (except AK, HI, OR, and WA). (Hearing site: Seattle, WA.)

NOTE.—Common control may be involved.

MC 109397 (Sub-419F), filed April 14, 1978. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Iron and steel articles and fabricated steel products,* from points in Pima and Maricopa Counties, AZ, to points in the United States (except AK and HI). (Hearing site: Phoenix, AZ.)

NOTE.—Common control may be involved.

MC 109397 (Sub-420F), filed April 14, 1978. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Tanks* and *tank parts,* from New Prague, MN, to points in the United States (except AK and HI); and (2) *materials and supplies* used in the manufacture of the commodities named in (1) above, from points in the United States (except AK and HI), to New Prague, MN. (Hearing site: Minneapolis, MN.)

NOTE.—Common control may be involved.

MC 109818 (Sub-23F), filed April 14, 1978. Applicant: WENGER TRUCK LINE, INC., P.O. Box 3427, Davenport, IA 52808. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen foods* (except in bulk), between the facilities of Terminal Ice & Cold Storage, Inc. and Ore-Ida Foods, Inc. at or near Plover, WI, on the one hand, and, on the other, points in AR, IL, IN, IA, KS, KY, LA, MN, MO, NE, OK, TN, and TX, restricted to traffic originating at or destined to the named origin point. (Hearing site: Milwaukee, WI or Chicago, IL.)

MC 110525, (Sub-1235F), filed April 14, 1978. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, PA 19335. Representative: Thomas J. O'Brien, same address as applicant. Authority sought to operate as a *common carrier,* by motor vehicles over irregular routes transporting: *Petroleum Wax,* in bulk, in tank vehicles from the facilities of Exxon at Bayonne, NJ to ME and NH. (Hearing site: Newark, NJ.)

MC 111812 (Sub-563F), filed April 14, 1978. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: Ralph H. Jinks, P.O. Box 1233, Sioux Falls, SD 57101. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Tractors, agricultural implements, pumps, and parts thereof,* from Fargo, ND, to points in the United States (except AK and HI); and (2) *materials and supplies* used in the manufacture of tractors, agricultural implements, and pumps, from points in the United States (except AK and HI) to Fargo, ND. (Hearing site: Minneapolis, MN.)

MC 112989 (Sub-64F), filed April 14, 1978. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97203. Representative: John A. Anderson, Suite 1440, 200 Market Building, 200 South West Market Street, Portland, OR 97201. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Paper and paper articles,* between Portland, OR, on the one hand, and, on the other, points in CA. (Hearing site: Portland, OR.)

MC 113362 (Sub-328F), filed April 14, 1978. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East

Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, 1105½ Eighth Avenue NE., P.O. Box 429, Austin, MN 55912. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Paper and paper products*, from Counce, TN to points in the United States in and east of MN, IA, NE, CO, OK, and TX, (except TN, VT, NH, ME, and FL). Restriction: Restricted to traffic originating at Counce, TN. (Hearing site: Memphis, TN or Washington, DC.)

MC 114457 (Sub-381F), filed April 14, 1978. Applicant: DART TRANSIT CO., a corporation, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Such commodities* as are dealt in by wholesale and retail grocers (except commodities in bulk), between points in AR, CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MO, NE, NM, NC, OH, OK, TN, TX, and WI. (Hearing site: St. Paul, MN, or Chicago, IL.)

MC 119176 (Sub-19) (second correction), filed January 9, 1978, and previously noticed in the FEDERAL REGISTER issue of March 16, 1978, and May 25, 1978. Applicant: THE SQUAW TRANSIT CO., a corporation, P.O. Box 9368, Tulsa, OK 74107. Representative: Clayte Binion, 1108 Continental Life Building, Fort Worth, TX 76102. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: (1) *Machinery, equipment, materials, and supplies*, used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and byproducts, (2) *machinery, materials, equipment*, used in, or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up therof, and (3) *earth drilling machinery and equipment, and machinery, equipment, materials, supplies, and pipe*, incidental to, used in, or in connection with, (a) the transportation, installation, removal, operation, repair, servicing, maintenence and dismantling of drilling machinery, and equipment, (b) the completion of holes or wells drilled, (c) the production, storage and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, between points in OK, TX, KS, LA, OH, CO, NM, MO, MI, WY, UT, AR, MS, and MT, on the one hand, and, on the other, points in PA and WV. (Hearing site: Oklahoma City or Tulsa, OK.)

NOTE.—The purpose of this republication is to indicate that WV is the correct radial service State.

MC 119726 (Sub-126F), filed April 14, 1978. Applicant: N. A. B. TRUCKING CO., INC., 1644 West Edgewood Avenue, Indianapolis, IN 46217. Representative: James L. Beattey, 130 East Washington Street, Suite One Thousand, Indianapolis, IN 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum Wax* (except in bulk), from the facilities of Petrolite Corp., Bareco Division, at Barnsdall, OK, to points in GA and TN. (Hearing site: Tulsa, OK, or Indianapolis, IN.)

MC 126276 (Sub-193F), filed June 13, 1978. Applicant: FAST MOTOR SERVICE, INC., 9100 Plainfield Road, Brookfield, IL 60513. Representative: James C. Hardman, 33 North LaSalle Street, Chicago, IL 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by a producer and distributor of paper and plastic products (except commodities in bulk, and those which because of size or weight require special equipment), between Fort Worth, TX and Millville, NJ, under continuing contract(s) with The Continental Group, Inc., of New York, NY. (Hearing site: Chicago, IL.)

NOTE.—This application is subject to the Commission's favorable determination that applicant meets the definition of a contract carrier in the proceedings pending in MC 126276 (Sub-161), et al.

MC 129704 (Sub-2F), filed April 14, 1978. Applicant: CLARENCE B. BLANKENSHIP, d.b.a. TROY CAB CO., 2136 Burdic, Troy, MI 48084. Representative: Robert E. McFarland, 999 West Big Beaver Road, Suite 1002, Troy, MI 48084. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the Lower Peninsula of Michigan, on the one hand, and, on the other, points in IN, IL, TN, KY, MO, and AR. (Hearing site: Detroit, MI, or Lansing, MI.)

MC 133562 (Sub-29F), filed April 14, 1978. Applicant: HOLIDAY EXPRESS CORP., P.O. Box 115, Estherville, IA 51334. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses* 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 the facilities of John Morrell & Co. at or near Humbolt and Sioux City, IA; St. Paul, MN; and Sioux Falls, SD to points in AL, AR, FL, GA, MS, NC, SC, and TN. Restriction: Restricted to the transportation of shipments originating at the named facilities at or near the named origins and destined to the named destination States, except traffic moving in foreign commerce. (Hearing site: Chicago, IL.)

MC 133689 (Sub-191F), filed April 14, 1978. Applicant: OVERLAND EXPRESS, INC., 719 First Street, SW., New Brighton, MN 55112. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Applicant seeks authority as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), from Decatur, IL to points in MN. Restricted to traffic originating at the facilities of A. E. Staley Manufacturing Co. located at or near the above indicated origin and destined to the indicated destination. (Hearing site: Minneapolis, MN.)

MC 133689 (Sub-193F), filed April 14, 1978. Applicant: OVERLAND EXPRESS, INC., 719 First Street, SW., New Brighton, MN 55112. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Applicant seeks authority as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles* (except in bulk) from the facilities of Mobil Chemical Co. at Jacksonville and Springfield, IL to points in ND, SD, NE, MN, IA, WI, MI, OH, KY, TN, GA, WV, MD, DE, PA, NY, SC, NC, VA, NJ, RI, NH, VT, ME, CT. (Hearing site: Minneapolis MN.)

MC 133689 (Sub-194F), filed April 14, 1978. Applicant: OVERLAND EXPRESS, INC., 719 First Street, SW., New Brighton, MN 55112. Representative: Anthony E. Young, 29 South LaSalle Street, Chicago, Il 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printed matter and materials, equipment and supplies used in the manufacture, sale, and distribution of printed matter* (except commodities in bulk), between Taunton, MA, Versailles and Lexington, KY and points in NJ, OH, IL, IN, NC, SC, NY, IA, and MN. (Hearing site: Chicago, IL.)

MC 134286 (Sub-64F), filed June 14, 1978. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Charles M. Wil-

liams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1)(a) *Plastic film, plastic articles, and corrugated boxes* (except in bulk), and (1)(b) *materials, equipment, and supplies* used in the manufacture and distribution for the commodities named in (1) above (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Resinite Department, Borden Chemical, Division of Borden, Inc., at or near North Andover, MA, Griffin, GA, Illiopolis, and Elk Grove Village, IL, Carson, and Oakland, CA, North Bergen, and Gloucester City, NJ, Cockeysville, MD, Charlotte, NC, Cleveland, OH, Seattle, WA, Dallas, TX, Tampa, FL, Minneapolis, MN, and Yonkers, NY, to points in the United States (except AK and HI), and (2) *returned, refused, and rejected shipments* of the commodities named in (1) above (except commodities in bulk), from the destinations named in (1) above, to the origins named in (1) above, restricted to the transportation of traffic originating at or destined to the named origin facilities. (Hearing site: Wichita, KS or Kansas City, MO.)

NOTE.—The carrier must satisfy the Commission that its common control possibilities are either approved by the Commission or do not require Commission approval.

MC 134922 (Sub-258F), filed April 14, 1978. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals* (except in bulk) from the facilities of Degussa Corp./Alabama group, Theodore, AL, to those points in the United States in and west of NM, CO, WY, and MT (except AK and HI). (Hearing site: Mobile, AL or Washington, DC.)

NOTE.—Common control may be involved.

MC 136315 (Sub-28F), filed April 14, 1978. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 22-A, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Lumber*, from Detroit, MI, to points in AL, AR, GA, LA, MS, and TN. (Hearing site: Washington, DC or Jackson, MS.)

NOTE.—Applicant holds contract carrier authority in MC 123905, therefore, dual operations may be involved.

MC 136828 (Sub-26F), filed April 14, 1978. Applicant: COOK TRANSPORTS, INC., 214 South Tenth Street, Birmingham, AL 35233. Representative: Robert M. Pearce, P.O. Box 1899, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metals, metal articles, metal fabrications*, and *materials, supplies, and equipment* used in connection therewith (except commodities in bulk, in tank and hopper vehicles), between points in AL on and north of U.S. Hwy 80, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Birmingham, AL.)

MC 139193 (Sub-74F), filed April 13, 1978. Applicant: ROBERTS & OAKE, INC., 527 East 52d Street N., Sioux Falls, SD. 57101. Representative: Jacob P. Billig, 2033 K Street NW, Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bananas, frozen, fresh, and hermetically sealed in cans or drums, and commodities* otherwise exempt from regulation under section 203(b)(6) of the Interstate Commerce Act when moving with the aforesaid banana commodities, from the ports of Charleston, SC, Gulfport, MS, Galveston, TX, Miami and Tampa, FL, and New Orleans, LA, to Points in AL, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WV, WI and WY, under a continuing contract or contracts with Chiquita Brands, Inc. (Hearing site: Washington, DC.)

MC 139206 (Sub-53F), filed March 31, 1978. Applicant: F.M.S. TRANSPORTATION, INC., Box 1597, 2564 Harley Drive, Maryland Heights, MO 64043. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW, Washington, DC 20001. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Carpeting equipment, carpeting systems, machinery* and *equipment* used for rolling and unrolling carpeting, and *parts and accessories* therefor and (2) *materials, equipment* and *supplies* used in the manufacture, sale, assembly, installation, repair, packing, distribution, and transportation of the commodities in (1) above, (except commodities in bulk), between Gardena, CA, on the one hand, and, on the other, points in the United States (except AK and HI), under a continuing contract, or contracts, with Chromalloy American Corp. (Hearing site: St. Louis, MO.)

NOTE.—Applicant states it is a commonly controlled contract carrier for and on behalf of Chromalloy American Corp. and the purpose of this application is to enable the shipper to replace its private carriage with the contract carrier services of applicant.

MC 139973 (Sub-43F), filed April 14, 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 sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electrical appliances, electrical equipment, and electrical parts*, (2) *Pole-line hardware*, and (3) *materials and supplies* used in the manufacture, distribution, or sale of commodities in (1) and (2) above (except commodities in bulk), between Columbia, Jefferson City, St. Louis, Macon, Moberly, Boonville, and Kirksville, MO, on the one hand, and, on the other, Cleveland, Warren, and Dover, OH, and Chicago and Granite City, IL, restricted to the transportation of traffic originating at or destined to the facilities of McGraw-Edison Co. (Hearing site: Kansas City, MO, or St. Louis, MO.)

NOTE.—Applicant holds motor contract carrier authority in MC 138375 and subnumbers thereunder, therefore, dual operations may be involved.

MC 140024 (Sub-105F), filed April 14, 1978. Applicant: J. B. MONTGOMERY, INC., a Delaware corporation, 5565 East 52d Avenue, Commerce City, CO 80022. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic beverages* (except in bulk), from the ports of entry on the international boundary line between the United States and Canada, at or near Champlain, NY, to Denver, CO, and points in its commercial zone. (Hearing site: Denver, CO.)

NOTE.—Common control may be involved.

MC 142559 (Sub-13F), filed April 14, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215, 614-228-1541. Applicant seeks authority as a *common carrier*, over irregular routes, in the transportation of: (1) *Fans, heaters, heat recyclers, vacuum cleaners, household compactors, door chimes, range hoods*, and *range splash plates, roof cappings*, and *parts, accessories, display materials* and *exhibition booths* for such commodities (a) from Hartford, WI, to Clearwater and Tampa, FL, Atlanta, GA, New Orleans, LA, Wilkesboro, NC, Chattanooga and Nashville, TN, and Dallas, TX; and (b) between Hartford, WI, on the one hand, and, on the other, Old Forge, PA; (2) *Parts* and *materials* used in the manufacturer, packaging, sale, and

distribution of the commodities described in (1) above, (a) from Jacksonville and Jonesboro, AR, Gainesville, GA, Chicago, IL, Fort Wayne, IN, Detroit and Owosso, MI, Wilkesboro, NC, and Columbus and West Lafayette, OH, to Hartford, WI; and (b) between Hartford, WI, on the one hand, and, on the other, Old Forge, PA. (Hearing site: Columbus, OH.)

NOTE.—Applicant holds contract carrier authority in MC 139254 and other subs, therefore dual operations may be involved. Common control may be involved.

MC 142615 (Sub-1F), filed April 10, 1978. Applicant: ATTILIO BRUNO, d.b.a. N.A.B. TRANSPORT, 17 Berwyn Drive, Lake Ronkonkoma, NY 17779. Representative: Eugene M. Malkin, suite 6193, Five World Trade Center, New York, NY 10048. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Musical instrument cases*, from Syosset, NY, to points in CT, NJ, and PA, under a continuing contract, or contracts, with D'Andrea Manufacturing Co., Inc., of Syosset, NY. (Hearing site: New York, NY, or Washington, DC.)

MC 144233 (Sub-1F), filed April 14, 1978. Applicant: RAJEAN, INC., Highway 64 East, Russellville, AR 72801. Representative: Thomas B. Staley, 1550 Tower Building, Little Rock, AR 72201. Authority sought to operate as a *common carrier* over irregular routes, transporting: *Candy and confectionary, and canned and preserved foodstuffs;* from the facilities of the Chicago Candy Association at Franklin Park, IL, to points in OR, WA, CA, AZ, NV, UT, CO, NM, and TX. (Hearing site: Little Rock, AR.)

MC 144348 (Sub-2F), filed April 10, 1978. Applicant: JOE ZAMORA, d.b.a. ZAMORA TRUCKING CO., Route 3, Box 343A, Burley, ID 83318. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: *Sulphur soil*, in bulk, from the facilities used by Forminco, Inc., at or near Beaver, UT, to points in ID, NV, and MT. (Hearing site: Beaver, UT, or Boise, ID.)

MC 144574F, filed April 10, 1978. Applicant: RUSSELL TRANSFER CO., INC., P.O. Box 829, Washington, GA 30673. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Road NE., Atlanta, Ga 30326. Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: (1) *Fertilizer and fertilizer materials*, liquid or dry, in bulk, in tank vehicles or hopper-type vehicles, and dump trucks, or dry in bags; (2) *anhydrous amonia urea and soda ash*, in bulk, in tank vehicles, or hopper-type vehicles and dump trucks; (3) *liquid nitrogen solution*, in bulk, in tank vehicles; and (4) *phosphatic fertilizer solutions*, in bulk, in tank vehicles, from Richmond County, GA, to points in NC, SC, VA, WV, TN, and KY. (Hearing site: Atlanta, GA.)

NOTE.—Applicant holds contract carrier authority in MC 61506 and subs thereunder, therefore dual operations may be involved.

MC 144640F, filed April 14, 1978. Applicant: AGRICULTURAL SERVICES ASSOCIATION, INC., Washington Street, Bells, TN 38006. Representative: Charles Ephraim, 1250 Connecticut Avenue NW., Suite 600, Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Carton, boxes, trays, fillers, and sheets*, from Newnan, GA, to Fort Smith, Little Rock, and Batesville, AR; Bells, Memphis, Nashville, Humboldt, and Rossville, TN; Stillwell, OK; West Point, MS; Marshall, Carrolton, Macon, and Milan, MO; Lafayette, LA; Duluth, MN; and Dallas, Harlingen, Dennison, Brownsville, San Antonio, Houston, and Brenham, TX; (2) *plastics and plastic products*, (A) from Newnan, GA, to Union City, TN; (B) from Burnsville, MN; and Jackson and North Kingsville, OH, to Alamo, TN; (C) from Harrisville, WV; Cranston, RI; Haverhill, MA; Greensboro, NC; Stratford and Fairfield, CT; Farmingdale, Melville, Brooklyn, and New York, NY; and Fairfied, NJ, to Memphis, TN; (D) from Greensboro, NC, and New York, NY, to Olive Branch, MS; (E) from Stratford, CT, to Dallas, Mesquite, Bryan, Garland, and Garnsville, TX; Walls and Tupelo, MS; East Chattanooga and Cleveland, TN; and Fort Smith, AR; and (F) from New Castle, DE; Farmingdale, Port Washington, and New York, NY; Avenal, Burlington, Carlstadt, Kearny, Lodi, Newark, North Bergen, and Whippany, NJ; and Bristol, PA, to Brownsville, TN; and (3) *textiles and textile products*, (A) from Atlanta, Dublin, and Mayfield, GA; Henderson and Tarboro, NC; Lawrence, MA; Passaic, NJ; and New York, NY, to Greenfield, TN; (B) from Bridgeport, CT; New York, NY; Allentown, Fort Washington, Reading, and West Point, PA; Charlotte and Asheville, NC; Westerly, RI; York, SC; and Newport, TN, to Alamo, TN; and (C) from Benson, NC,to Jackson, TN. (Hearing site: Memphis, TN; New York, NY; Orlando, FL.)

MC 144640 (Sub-1F), filed April 14, 1978. Applicant: AGRICULTURAL SERVICES ASSOCIATION, INC., Washington Street, Bells, TN 38006. Representative: Charles Ephraim, 1250 Connecticut Avenue NW., Suite 600, Washington, DC 20036, 202-833-1170. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Commodities dealt in by* building material and supply stores, from Atlanta, GA; Tiffin, OH; Plainfield, CT; Norwood, MA; Trenton and Keyport, NJ; and West Pawlett, VT, to points in TN; (2) *machinery, auto parts and lubricants*, from Dowagiac, MI; West Union, Marion, and Sidney, OH; LaGrange and Logansport, IN; Norfolk, VA; and Oklahoma City, OK, to points in TN; (3) *metal powder*, from Holden, MA; Union, Riverton, and Elizabeth, NJ; Niagra Falls, NY; and Hammond, IN, to Brownsville, TN; (4) *granulated clay*, from Quality, GA, to Bells, Dyersburg, Humboldt, Huntington, Jackson, Lexington, Livingston, and New Johnsonville, TN; (5) *imitation leather*, from New York, NY, to Memphis, TN. (Hearing site: Memphis, TN; New York, NY; Orlando, FL.)

MC 144640 (Sub-3F), filed April 14, 1978. Applicant: AGRICULTURAL SERVICES ASSOCIATION, INC., Washington Street, Bells, TN 38006. Representative: William J. Augello, 120 Main Street, P.O. Box Z, Huntington, NY 11743. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Citrus and fruit concentrates*, (A) from Weslaco, TX to Nashville, TN; Montvale, Martinsburg, Richmond, Salem, and Williamsburg, VA; Landover, MD; Vineland, Bayonne, and Egg Harbor City, NJ; New Haven, CT; Birmingham, AL; Harvard, MA; Tamaqua, PA; Columbia, SC and Washington, DC. (B) from Highland City, Bartow, Umatilla, Plymouth, Bradenton, Auburndale, Leesburg, Forest city, Winterhaven, Orlando, Lake Wales, and Lakeland, FL to Midfield and Huntsville, AL; Jonesboro and Helena, AK; Columbia and Gallation, IN; Jackson, Canton, and Southhaven, MS; Columbia and St. Louis, MO; Vineland, NJ; Memphis, Nashville, Lebanon, Cookeville, Union City, Lawrenceburg, Martin, and Humboldt, TN and Richmond, VA. (2) *Juice* (canned and bottled), from Highland City, Bartow, Umatilla, Plymouth, Bradenton, Auburndale, Leesburg, Forest City, Winterhaven, Orlando, Lake Wales, and Lakeland, FL to Midfield and Huntsville, AL; Jonesboro and Helena, AK; Columbia and Gallation, IN; Jackson, Canton, and Southaven, MS; Columbia and St. Louis, MO; Vineland, NJ; Memphis, Nashville, Lebanon, Cookeville, Union City, Lawrenceburg, Martin, and Humboldt, TN and Richmond, VA. (3) *Lemon puree*, from Plymouth, FL to Humboldt, TN. (4) *Beverages* (canned, bottled) and *bottles*, from Atlanta, GA; Chattanooga, and Memphis, TN; Ruston, LA; Evansville, IN; Alton, IL; and Montgomery and Birmingham, AL to Jackson, TN. (5) *Bottle caps*, from Arlington,

TX to Jackson, TN. (Hearing site: Memphis, TN, New York, NY, Orlando, FL.)

MC 144651F, filed April 14, 1978. Applicant: ADAMS, INC., 210 North 11th Street, Fargo, ND 58102. Representative: Robert J. Gallagher, 1000 Connecticut Avenue NW., Suite 1200, Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, restricted to the transportation of traffic having a prior or subsequent movement beyond the points authorized, and further restricted to the performance of a pick-up and delivery service in connection with packing, crating, and containerization or unpacking, uncrating and decontainerization of such traffic, between all points in Cass, Barnes, Stutsman, Dickey, Sargent, LaMoure, Richland, Ransom, Traill, Steele, Grand Forks, Griggs, and Foster Counties, ND, and points in Clay, Becker, Wilken, Otter Trail, Norman, and Mahnomen Countes, MN. (Hearing site: Fargo, ND.)

NOTE.—Common control may be involved.

By the Commission.

H. G. HOMME, JR.,
Acting Secretary.

[FR Doc. 78-21410 Filed 8-2-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409), 5 U.S.C. 552b(e)(3).

CONTENTS

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[6210–01]

1

FEDERAL RESERVE SYSTEM.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 32925, July 28, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, August 2, 1978.

CHANGES IN THE MEETING: Addition of the following open item to the meeting:

Proposed delegation of authority to insure the expeditious handling of Board business when a quorum is not available.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202–452–3204.

Dated: August 1, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S–1581 Filed 8–1–78; 2:11 pm]

[7035–01]

2

INTERSTATE COMMERCE COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, August 1, 1978.

PLACE: Hearing Room "C", Interstate Commerce Commission Building, 12th Street and Constitution Avenue NW., Washington, D.C.

STATUS: Short notice—Open special conference.

MATTERS TO BE CONSIDERED:

Proposed service order directing Louisville and Nashville RR. to supply cars to single-car coal shippers.

Proposed service order directing Seaboard Coast Line and affiliates to deliver 100 locomotives to Louisville and Nashville RR.

CONTACT PERSON FOR MORE INFORMATION:

Douglas Baldwin, Director, Office of Communications, telephone 202–275–7252.

The Commission's professional staff will be available to brief news media representatives on conference issues at the conclusion of the meeting.

[S–1579 Filed 8–1–78; 8:45 am]

[7590–01]

3

NUCLEAR REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Week of July 31, 1978.

CHANGES IN THE MEETING: The following budget meetings scheduled for this week are canceled:

Monday, July 31, 2 p.m. (postponed to August 3).
Tuesday, August 1, 10:30 a.m. and 2 p.m.
Wednesday, August 2, 2 p.m. (postponed to August 3).

The schedule of Commission meetings for Thursday, August 3 is as follows:

THURSDAY, AUGUST 3—COMMISSIONERS' CONFERENCE ROOM

9:30 a.m.—1. Briefing on status of Systematic Evaluation Program (time changed, approximately 1 hour, public meeting). 2. Budget markup/reciama (approximately 1½ hours, closed, exemption 9).
2 p.m.—1. Final budget markup (approximately 3 hours, closed, exemption 9).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202–634–1410.

Dated: July 31, 1978.

WALTER MAGEE,
Office of the Secretary.

[S–1580 Filed 8–1–78; 12:28 pm]

THURSDAY, AUGUST 3, 1978
PART II

THE NATIONAL ARCHIVES OF THE UNITED STATES
1934

federal register

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

■

HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

HEAL

[4110-02]

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

HEALTH EDUCATION ASSISTANCE LOAN PROGRAM (HEAL)

Interim Final Regulations

AGENCY: Office of Education, HEW.

ACTION: Interim final regulation.

SUMMARY: This regulation implements the 1976 amendments to the Public Health Service Act and authorizes a Federal program of insured loans to graduate students in schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, public health, and pharmacy.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the FEDERAL REGISTER. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

Public hearings will be held in seven cities at the addresses listed below. The date and time for each hearing follows:

August 29, 1978, New York, N.Y., 9 a.m.

September 13, 1978, Berkeley, Calif., 9 a.m.

September 25, 1978, Boston, Mass., 9 a.m.

October 12, 1978, Atlanta, Ga., 9 a.m.

November 8, 1978, Chicago, Ill., 9 a.m.

November 17, 1978, Philadelphia, Pa., 9 a.m.

December 12, 1978, Fort Worth, Tex., 9 a.m.

ADDRESSES: Written comments should be addressed to David C. Bayer, Acting Chief, Health Loan Branch, DPPD, Bureau of Student Financial Assistance, Office of Education, 400 Maryland Avenue SW., ROB No. 3, Room 4642, Washington, D.C. 20202. It would be extremely helpful if comments refer to specific sections and are made sequentially. The comments will be available for public inspection at the GSA Building, Room 4525, Seventh and D Streets SW., between 8:30 a.m. and 4 p.m., Monday through Friday, except on Federal holidays. The public hearings will be held at the following locations:

August 29, 1978—New York University Medical Center, classroom B, 550 First Avenue, New York, N.Y., 9 a.m.

September 13, 1978—University of California, School of Optometry, Room 209, Minor Hall, Berkeley, Calif., 9 a.m.

September 25, 1978—Tufts Medical School, 57 Kneeland Street, Boston, Mass., 9 a.m.

October 12, 1978—Mercy University, Southern School of Pharmacy, Room 105, 345 Boulevard NE., Atlanta, Ga., 9 a.m.

November 8, 1978—Northwestern University Medical School, Room 147, Weiboldt Hall, 330 East Superior Street, Chicago, Ill., 9 a.m.

November 17, 1978—University of Pennsylvania, Annenberg Center for Communications, Studio Theatre, 37th and Walnut Street, Philadelphia, Pa., 9 a.m.

December 12, 1978—Texas College of Osteopathic Medicine, Medical Education Building, 3516 Camp Bowie Boulevard. at Montgomery, Fort Worth, Tex., 9 a.m.

To facilitate scheduling of speakers, it would be helpful if any person desiring to present his or her views orally at any of the scheduled hearings would inform the appropriate representative listed in advance of the hearing. If a prepared statement will be presented, the presenter is requested to file 10 copies with the representative either prior to or on the date of the hearing:

Ms. Tillie Wachs, U.S. Office of Education, Room 3954, 26 Federal Plaza, New York, N.Y. 10007, 212-264-4045.

Mr. Ernest Z. Robles, U.S. Office of Education, Room 250, 50 United Nations Plaza, San Francisco, Calif. 94102, 415-556-8382.

Mr. William T. Logan, Jr., U.S. Office of Education, Room 2403, JFK Federal Building, Boston, Mass. 02203, 617-223-7205.

Mr. Joe M. Beutell, U.S. Office of Education, Suite 203, 101 Marrietta Tower Building, Atlanta, Ga. 30323, 404-221-4171.

Dr. Don Aripoli, U.S. Office of Education, 12th Floor, 300 South Wacker Drive, Chicago, Ill. 60606, 312-353-2508.

Mr. Frank A. Willier, U.S. Office of Education, P.O. Box 17716, 3535 Market Street, Philadelphia, Pa. 19101, 215-596-1027.

Dr. W. Carl Hammock, U.S. Office of Education, 1200 Main Tower Building, Room 1560, 1200 Main Street, Dallas, Tex. 75202, 214-767-3811.

FOR FURTHER INFORMATION CONTACT:

Ms. K. Lynn Laverentz, 202-447-9001.

SUPPLEMENTARY INFORMATION: The Bureau of Health Manpower in the Public Health Service did the initial planning for implementation of the health education assistance loan program. On March 9, 1977, however, under departmental reorganization, the program was assigned by the Secretary to the Bureau of Student Financial Assistance in the Office of Education.

Certain legislative amendments were found necessary to strengthen the existing legislation and eliminate statutory deficiencies which would impede both program implementation and effective policymaking. Therefore, amendments were sought and granted under Pub. L. 95-83 (Aug. 1, 1977) and Pub. L. 95-215 (Dec. 19, 1977) containing substantive amendments which:

Authorize lenders to defer and accrue interest on loans until the beginning of the repayment period, at which time the accured interest may be added to and become a part of the principal amount of the loan.

Allow borrowing to pay interest on previous loans during internship and residency, the grace period and authorized deferments.

Increase the maximum interest rate which may be charged from 10 to 12 percent.

Override State and Federal usury laws restricting interest charges on loans to less than 12 percent.

Enable students who have been accepted for enrollment as well as those who are already attending an eligible institution to receive a loan.

Clarify which students may receive loans by limiting eligibility to those individuals enrolled in a course of study leading to a degree of doctor of medicine, doctor of dentistry, doctor of osteopathy, doctor of optometry, doctor of veterinary medicine, doctor of podiatry, or a degree of bachelor or master of science in pharmacy, or a graduate degree in public health, or any degree equivalent to these degrees.

Permit a medical school to participate in the HEAL program if it did not receive a capitation grant for the preceding fiscal year solely because it did not meet the statutory requirement of a 5-percent increase in the third-year class for the school year 1978-79.

This regulation is being issued as an interim final rule in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)). The delay associated with affording an opportunity for comment makes publication as a proposed rule contrary to the public interest. Students typically need to know what resources they will have available for educational purposes before the start of a new academic year so they can make realistic enrollment decisions. Unless the Commissioner waives proposed rulemaking, the HEAL program cannot become operational before the commencement of the 1978-79 academic year. Therefore, the Commissioner has decided to waive proposed rulemaking for the

HEAL program because it is contrary to the public interest. By publishing the HEAL program rules as an interim final regulation, the Commissioner is insuring that the regulation will be effective before the start of the new academic year. This will permit lenders interested in participating in the program to make HEAL loans to students in time for the students to make important enrollment decisions about the new academic year.

It should be noted, however, that publication of the regulation as an interim final regulation is intended to encourage submission of public comments. No deadline for submission of comments is provided in order to encourage interested parties to submit comments at any time, especially after some experience has been gained in the administration of the program. Comments which are offered will be reviewed and consideration will be given to making subsequent regulatory changes in light of these comments.

Additional regulations will be published covering subjects not included in the publication. These include: (1) The application process for the nonstudent borrower; (2) Federal payment for service in the National Health Service Corps or for practice in a health manpower shortage area; and (3) withholding of medicare-medicaid earnings in the event of default on a loan. In an effort to expedite implementation of the HEAL program, regulations on these matters are not being offered at this time since it will be at least 1 year before they are needed. Suggestions for implementing these provisions are solicited both at the public hearings on this regulation and in writing.

The following descriptions of the individual sections of the regulations are intended to facilitate reader understanding of the HEAL Program. These descriptions are arranged in order of their corresponding sections in the proposed regulation. However, the reader should consult the specific sections in the regulation for precise guidance on matters referred to in this Preamble.

Subpart A—General Program Description

1. Section 126.1, *What is the HEAL Program?* Gives a brief overview of the health education assistance loan (HEAL) program and generally references some of the major aspects of the regulation. The reader should note that terms used in the regulation have been defined and incorporated within the appropriate sections rather than having a separate section of definitions.

Subpart B—The Borrower

1. Section 126.5, *Who is an eligible student borrower?* Sets forth borrower eligibility requirements necessary to receive a HEAL loan. The courses of study in which a borrower may be enrolled to be eligible are specified along with special requirements for pharmacy, medical, dental, and osteopathic students.

Paragraph 126.5(g) reflects the prohibition in the law barring a borrower from receiving both a loan under the guaranteed student loan program (or the Federal insured student loan program) and the HEAL program in the same academic year.

Paragraph 126.5(h) requires that the borrower agrees to use all funds received from a HEAL loan solely for tuition and other reasonable educational expenses. This paragraph further describes what may be considered reasonable educational expenses.

There is no provision in the law or the regulation which relates a borrower's eligibility for a loan to family income.

2. Section 126.6, *Who is an eligible nonstudent borrower?* The borrower must have previously received a HEAL loan and must use the proceeds of any loan solely to pay the HEAL insurance premium and interest currently accruing on prior HEAL loans.

Note.—Future regulations will provide further clarification with regard to loans to nonstudent borrowers.

3. Section 126.7, *The loan application process,* deals with the specific duties of the student and the school when beginning the loan application process.

For the information of the borrower, this program is designed, along with other health education assistance programs to meet a national health policy: Improving health service delivery. Financial assistance is available from other Federal sources, including the National Health Service Corps scholarship program administered by the Public Health Service for students in the fields of medicine, osteopathic medicine, and dentistry. Therefore, schools are required to certify that no more than 50 percent of the students in each class in these disciplines receive new HEAL loans each 12-month academic year.

4. Section 126.8, *What are the borrower's major rights and responsibilities?* Provides a detailed statement of a borrower's major rights and responsibilities. Paragraph 126.33(d) specifies that a statement reflecting these provisions must be signed by the borrower before a loan is made. The Commissioner will provide lenders with a form for this purpose.

Subpart C—The Loan

1. Section 126.10, *How much can be borrowed?* Sets annual and aggregate loan amounts for student and nonstudent borrowers.

2. Section 126.11, *Terms of repayment,* provides the borrower with a 9-month grace period before repayment of the loan begins. Although the statute provides for an option of 9 to 12 months, the Commissioner has set this period as specified to simplify administrative procedures for both borrowers and lenders. For example, when a student has loans from multiple lenders, this provision will result in all loans entering repayment after grace periods at the same time.

The regulation requires a minimum annual payment of $600 or a sum equal to the interest that accrues during the year on all loans, whichever amount is greater. However, the $600 rule does not apply in any case where it would result in a borrower repaying a HEAL loan in fewer than 10 years.

Paragraph 126.11(e), *Repayment schedule agreement,* requires that repayment be made either in equal or graduated payments. In order to prevent "balloon payments," the regulation specifies that under a graduated repayment schedule, no installment can be more than five times greater than any other installment.

Paragraph 126.11(f), *Supplemental repayment agreement,* permits a lender to enter into an agreement with the borrower supplementing the regular repayment schedule. Under this arrangement, a borrower could agree to equal monthly installments under the regular repayment schedule but agree under the supplemental agreement to monthly installments based on a percentage of income. The purpose of this provision is to provide greater flexibility in repayment terms for those lenders who wish to provide this option. Several schools have indicated an interest in flexible repayment plans under the guaranteed student loan program, which has proposed similar regulations. However, no plan of this type may be implemented without prior approval of the Commissioner.

3. Section 126.12, *Deferment,* allows a borrower's installments of principal to be deferred during specified periods of education, training or service to the country. However, the borrower must submit written proof to a lender that he or she is entitled to a deferment. Payment of interest may be deferred but only at the holder's option.

4. Section 126.13, *Interest.* The rate of interest has been designated by the Commissioner as "not to exceed 12 percent," the maximum allowed by law. The lender is given the option of making loans at a fixed rate or a variable rate which is determined on a

quarterly basis. The variable rate is based upon the same formula in use in the guaranteed student loan program (GSLP) in determining the special allowance paid to lenders. In the GSLP, this formula is applied retroactively whereas in the HEAL program, it is prospective.

A great deal of concern has been expressed over the interest burden a borrower undertakes when receiving a HEAL loan. Moreover, this indebtedness is incurred at a time when a borrower can least afford it. The lender is permitted to allow a borrower to postpone payment of interest before the beginning of the repayment period or during a period of deferment or forbearance. Such a postponement provides additional assistance to the borrower which will lessen the possibility of default. Interest which is postponed may be compounded semiannually or accrued and added to the principal amount of the loan when the repayment period begins or resumes.

State or Federal usury laws prohibiting loans at the maximum rate prescribed for this program are not applicable.

5. Section 126.14, *The insurance premium,* sets the rate of the insurance premium at one-fourth of 1 percent per year of the disbursed loan principal. This is the same rate charged by the Commissioner on federally insured student loans made under the GSLP. The HEAL law authorizes a premium of up to 2 percent per year. Because of the potential earning ability of those who borrow under the HEAL program and the low attrition rate of students attending HEAL schools, defaults are expected to be minimal and the need to maintain a larger insurance fund appears to be unnecessary. Furthermore, the larger loan amounts available under the HEAL program, the unsubsidized interest rate and the high cost of tuition and fees for health professions students would make a higher premium rate an additional burden.

The premium on each loan is a one-time charge and is calculated to cover the period from disbursement of the loan to the borrower's anticipated graduation date plus 9 months. When a loan is paid out in multiple disbursements, the insurance premium is calculated for each disbursement.

While the lender is liable for payment of the premium, the law permits the lender to pass this charge to the borrower.

6. Section 126.15, *Other charges to the borrower,* authorizes a lender to assess a late charge when a borrower fails to make a payment within 10 days of its due date. The charge may not exceed 5 percent of the payment due or $5, whichever is less.

A lender may also require the borrower to pay other specified costs incurred in the collection of a delinquent loan. The regulation indicates which costs are permissible and those which are not allowed.

A lender may not pass on to the borrower any costs incurred in the making of a HEAL loan other than the cost of the insurance premium.

7. Section 126.16, *Power of attorney,* states that neither a school nor a lender may acquire a power of attorney from the borrower under the HEAL program. In order to assure that the borrower is aware of the receipt of the loan proceeds, the borrower must endorse the check or draft reflecting the proceeds of a HEAL loan.

8. Section 126.17, *Security and endorsement,* provides that a HEAL loan must be made without security. Except for those States in which a minor cannot create a legally binding obligation, a lender may not require an endorsement on the promissory note. In those States, a lender may require an endorser only for a borrower who is a minor. A loan for which an endorser has been improperly obtained is not an insurable loan.

As virtually all borrowers in the HEAL program will have reached the age of majority, lenders should be careful to establish procedures which will assure that endorsers are not improperly required.

9. Section 126.18, *Consolidation of HEAL loans,* permits a lender, which borrower concurrence, to consolidate two or more HEAL loans into a single promissory note. This consolidation may be performed at the time each new loan is made or at any later date. The notes may be consolidated only if the lender fully explains the effect of the consolidation to the borrower. This explanation must include what is the new interest rate, whether it is fixed or variable, and the effect to the borrower from a cost standpoint. The borrower must also be made aware that he or she is not required to agree to this conversion.

10. Section 126.19, *Forms.* The Commissioner of Education provides all forms for the HEAL program. The provisions of these forms may not be altered in any way without first obtaining the permission of the Commissioner. However, the format may be adjusted for user convenience and may be put under the letterhead of a school, lender or the Student Loan Marketing Association.

11. Section 126.20, *The Commissioner's collection efforts after payment of a default claim,* lists circumstances under which the Commissioner will not attempt to make a collection of all unpaid principal and accrued interest after paying a default claim. If the borrower has a valid defense on the loan, the Commissioner refrains from collection to the extent of the borrower's defense. Examples of a valid defense include expiration of the statute of limitations and infancy.

12. Section 126.21, *Refunds,* specifies that if a borrower is entitled to a refund from the school, a school must send the portion of the refund allocable to the HEAL loan to the lender. A lender must apply the refund to reduce the borrower's loan balance. If the lender has sold the loan to another lender, the lender must transmit the amount to a new holder. The borrower must be notified of this transaction.

SUBPART D—THE LENDER

1. Section 126.30, *Which organizations are eligible to apply to be HEAL lenders?* In these regulations the term "lender" includes a subsequent holder. The Student Loan Marketing Association (Sallie Mae) is, by law, a HEAL holder.

2. Section 126.31, *The application to be a HEAL lender.* An eligible organization must first submit an application to be a lender to the Commissioner of Education. Factors upon which the Commissioner may base approval include applicant capability in complying with applicable regulations, the experience of the applicant in other student loan programs and the applicant's financial resources.

3. Section 126.32, *The HEAL lender insurance contract,* provides the Commissioner with the option of allowing the lender either a standard or comprehensive insurance contract. Under the standard contract, the lender must submit each borrower's loan application for approval prior to disbursement. Under the comprehensive contract, the lender may disburse a loan without prior approval. Insurance is issued on the implied representations of the lender that the loan meets initial insurability. Furthermore, Federal insurance is conditional upon compliance with HEAL regulations applicable to lenders.

4. Section 126.33, *Making a HEAL loan,* specifies the lender's obligations in the loan-making process. The process includes the processing of necessary forms, the approval of the borrower for a loan, the determination of the loan amount, the explanation to a borrower of his or her responsibilities under the loan, having the borrower execute the promissory note, and the disbursement of the loan proceeds.

5. Section 126.34, *HEAL loan servicing,* defines procedures for converting a loan to repayment status. A repayment schedule must be provided to the borrower consistent with the terms of repayment provisions in these regulations. The repayment schedule should be designed to retire a loan as soon as possible, yet not be so stringent so as to result in a default. The borrower's

approval of the schedule is indicated by making the first payment. Therefore, the borrower is not required to sign a schedule.

6. Section 126.35, *HEAL loan collection*, outlines minimum due diligence requirements for a lender in the collection of a delinquent loan. The regulation requires periodic written, telephonic or personal contact with delinquent borrowers. Written communications may be computer generated.

The Commissioner of Education does not pay insurance on a default claim if the lender fails to request preclaim assistance when the borrower's address is unknown or when the borrower is 60 days delinquent. This preclaim assistance may be supplemented by any normal commercial collection techniques.

A lender may sue a borrower for payment of a delinquent loan. If a suit is instituted and a judgment is obtained, a lender may first apply the proceeds of the judgment against a defaulted borrower to its reasonable costs of the suit.

7. Section 126.36, *Consequence of using an agent.* Although administrative functions concerning this loan may be delegated to a servicing agency or other party, the lender is still responsible should the loan be serviced improperly.

8. Section 126.37, *Forbearance*, sets forth the procedures a lender must follow in granting forbearance to a borrower. A HEAL lender is encouraged to grant the borrower an extension of time or smaller payment in the event health, unemployment or other personal problems make it impossible for the borrower to meet the terms of the repayment schedule. The purpose of forbearance is to prevent a default.

9. Section 126.38, *Assignment of a HEAL loan.* The Student Loan Marketing Association or another HEAL lender may be assigned HEAL notes.

Should a loan be assigned, the buyer must notify the Commissioner of Education of the assignment within 30 days of the transaction. The borrower must be notified by the buyer if any matters connected with the loan, such as payments, must be directed to a party other than the seller.

A buyer of a HEAL note assumes all responsibility for the consequences of any previous violations of applicable statutes, regulations or the terms of the note. A HEAL note is not a negotiable instrument and a subsequent holder is not a holder in due course. Any valid legal defenses may be asserted against a new holder.

A buyer may obtain a warranty from the seller protecting the buyer from any financial loss suffered because of an act or failure to act on the part of the seller or other previous holder.

10. Section 126.39, *Death and disability claims*, sets forth the procedures a lender must follow if a borrower dies or claims to be totally and permanently disabled. A borrower's loan is cancelled if the borrower dies or is determined by the Commissioner to be totally and permanently disabled. Any payments received by the holder after the determination that the borrower is dead or permanently and totally disabled must be returned.

11. Section 126.40, *Procedures for filing claims*, details specifically the documentation required for filing a claim along with time limits for filing.

In filing a claim, the lender must assign to the United States of America all right, title and interest in the note which is the subject of the claim. Failure to submit the required documentation timely may result in denial of the claim by the Commissioner.

For all claims, a lender must submit the original promissory note, the loan application and a payment history, if any. The regulation defines the additional documentation required for default, death, disability and bankruptcy claims. Students borrowing under the HEAL program are prohibited from discharging their loan obligations through bankruptcy during a 5-year period beginning with the date repayment is scheduled to start.

12. Section 126.41, *Determination of amount of loss on claims*, sets forth general and special rules for determining the amount of loss on claims by the Commissioner of Education. HEAL Insurance covers the unpaid balance of principal and interest on an eligible HEAL loan. In determining whether to approve an insurance claim for payment, the Commissioner considers legal defects affecting the initial insurability of the loan (e.g., a loan made to an ineligible borrower). The Commissioner also deducts from a claim any amount that is not a legally enforceable obligation of the borrower except to the extent that the defense of infancy applies. The Commissioner further considers whether all holders of the loan have complied with the requirements of the HEAL regulations, including those concerned with the making, servicing and collecting of loans, the timely filing of claims, and the submission of documents with a claim.

If a lender acquires a loan by assignment and files a claim on that loan, that lender is entitled to no greater payment than that to which a previous holder would have been entitled.

If the loan for which a claim is filed was originally made by a school and the claim is filed by that school, the Commissioner deducts from the claim an amount equal to any unpaid refund that the school owes the borrower. If the loan for which a claim is filed was originally made by a school but the claim is filed by another lender, the Commissioner deducts from the claim an amount equal to any unpaid refund that the school owed the borrower prior to the sale of the loan.

Lenders may be required by the Commissioner to cure certain defects as a condition for payment of a default claim.

The payment of an approved claim covers the unpaid principal balance plus interest that accrued through the date the Commissioner authorizes the claim for payment. However, if the lender fails to submit a claim on a timely basis, the Commissioner does not pay the interest accruing from the required filing date through the date the Commissioner receives the claim. In addition, if the claim has to be returned to the lender for additional documentation, interest is paid by the Commissioner only for the first 30 days following the return of the claim to the lender.

13. Section 126.42, *Records, reports and inspection requirements for HEAL lenders*, requires each lender to keep records in a readily identifiable manner, and indicates which records must be kept for not less than 3 years after the date the loan is repaid. In special cases (e.g., if an audit or investigation is in process), the Commissioner may require that they be kept longer. Microform or computer format may be used for all records except the original copy of a promissory note that has not been paid. Upon request, the lender must provide access to its records to any authorized representative of the Secretary of Health, Education, and Welfare or the Comptroller General.

14. Section 126.43, *Limitation, suspension, or termination of the eligibility of a HEAL lender.* Any violations of the HEAL statute, regulations or agreements with the Commissioner may result in limitation, suspension or termination of a lender's eligibility to participate in the HEAL program. In instituting such an action, the Commissioner will follow the due process procedures set forth in the regulations governing the Federal insured student loan program.

Subpart E—The School

1. Section 126.50, *Which schools are eligible to be HEAL schools?* The regulation requires an agreement between the school and the Commissioner of Education for the school's participation in the HEAL program. Courses of study in which the school may give degrees are listed and the school must meet certain requirements relating to capitation grants under section 770 of the Public Health Service Act. If a HEAL school undergoes a change of controlling ownership or form of con-

trol, its agreement automatically expires at the time of that change.

2. Section 126.51, *The student loan application,* applies to information a school supplies attesting to a student's eligibility for a loan including the estimated cost of attendance and other financial aid which a school is aware that has been awarded the student. Family contributions are not calculated in determining what financial aid a student is receiving. In addition, each school of medicine, osteopathic medicine, or dentistry must establish its own procedures in order to assure that no more than 50 percent of the students enrolled in each class receive HEAL loans in a given year.

3. Section 126.52, *The student's loan check,* specifies the disposition of the check once it is received by a school from the lender for one of its students. In the event the borrower does not enroll as planned, it is of particular importance that the school return the check to a lender in a timely fashion. If a school establishes a pattern of not returning the check in a timely manner, action may be taken under limitation, suspension or termination provisions requiring the school to reimburse the student for any interest paid because of the school's delay in returning the check.

4. Section 126.53, *Notification to lender of change in enrollment status,* gives a school flexibility in establishing and implementing the procedures under which it must notify the lender of changes in a student's enrollment status. The established procedures must include giving this notice within 60 days of the status change. If the school does not know the identity of the current holder of a HEAL loan, it must notify the Office of Education of a change in the student's enrollment.

5. Section 126.54, *Payment of refunds by schools,* requires that refunds allocable to HEAL loans be paid directly to the lender. If the school has knowledge that the original lender has sold the loan, it must send the refund to the new holder. The borrower must be notified of this action.

6. Section 126.55, *Administrative and fiscal procedures,* requires a school to establish procedures to assure proper and efficient administration of the HEAL program, protect the rights of students and protect the United States from unreasonable losses due to defaults. Examples of what is required by this provision include: (a) Compliance with these regulations; (b) accurate and timely reporting as required to lenders and the Office of Education; (c) approval only of students eligible to borrow under the HEAL program (e.g., students enrolled in physicians' assistants and dental auxiliary programs are not eligible); and (d) timely and proper handling of loan disbursement checks.

7. Section 126.56, *Records,* describes the records each school must maintain. These records must be easily retrievable and be maintained for 3 years following the date the student graduates, withdraws or fails to enroll as a full-time student. These records may be stored in microform or computer format. In some cases, such as when an audit or investigation of the school is in process, the Commissioner may require maintenance of these records for longer than 3 years.

8. Section 126.57, *Reports in general,* requires the schools to agree to submit reports as the Commissioner may require. Normally, a school must keep a copy of these reports for at least 3 years after submission. In some cases, such as when an audit or investigation of the school is in process, the school may be required to retain these reports for a longer period of time. The regulation also requires schools to provide, upon request of a lender, a report on the current address, postgraduate destination, and other information about a HEAL borrower.

9. Section 126.58, *Federal access to school records.* A HEAL school must provide to authorized representatives of the Secretary of Health, Education, and Welfare and the Comptroller General access to the records relating to HEAL loans which it is required to keep.

10. Section 126.59, *Records and Federal access after a school is no longer a HEAL school.* In the event a school no longer participates in the HEAL program, the school must retain the required HEAL records in the same manner as that of a participating school.

11. Section 126.60, *School audits.* Each school must provide for an audit of all transactions relating to the HEAL program in the same manner as required of all other student financial aid programs administered by the Office of Education. These audits must be conducted at least every 2 years and submitted to the Department of Health, Education, and Welfare Regional Audit Agency.

12. This regulation also amends 45 CFR part 168, subpart H, by incorporating the HEAL program in the general provisions relating to student assistance programs: Procedures for the limitation, suspension, or termination of institutional eligibility for programs under title IV of the Higher Education Act of 1965.

13. This regulation also revokes the provisions of the interim final regulation published in the FEDERAL REGISTER on June 30, 1977, which amended the guaranteed student loan program (GSLP) regulations to permit health professions students to borrow up to $10,000 per academic year under the GSLP. That regulation was intended to be operative only until the HEAL program was implemented.

(Catalog of Federal domestic assistance No. 13.574; health education assistance loan program.)

Dated: June 28, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: July 25, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

PART 126—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

1. Title 45 of the Code of Federal Regulations is amended by adding a new part 126, to read as follows:

Subpart A—General Program Description

Sec.
126.1 What is the HEAL program?

Subpart B—The Borrower

126.5 Who is an eligible student borrower?
126.6 Who is an eligible nonstudent borrower?
126.7 The loan application process.
126.8 What are the borrower's major rights and responsibilities?

Subpart C—The Loan

126.10 How much can be borrowed?
126.11 Terms of repayment.
126.12 Deferment.
126.13 Interest.
126.14 The insurance premium.
126.15 Other charges to the borrower.
126.16 Power of attorney.
126.17 Security and endorsement.
126.18 Consolidation of HEAL loans.
126.19 Forms.
126.20 The Commissioner's collection efforts after payment of a default claim.
126.21 Refunds.

Subpart D—The Lender

126.30 Which organizations are eligible to apply to be HEAL lenders?
126.31 The application to be a HEAL lender.
126.32 The HEAL lender insurance contract.
126.33 Making a HEAL loan.
126.34 HEAL loan servicing.
126.35 HEAL loan collection.
126.36 Consequence of using an agent.
126.37 Forbearance.
126.38 Assignment of a HEAL loan.
126.39 Death and disability claims.
126.40 Procedures for filing claims.
126.41 Determination of amount of loss on claims.
126.42 Records, reports and inspection requirements for HEAL lenders.
126.43 Limitation, suspension, or termination of the eligibility of a HEAL lender.

Subpart E—The School

126.50 Which schools are eligible to be HEAL schools?
126.51 The student loan application.

Sec.
126.52 The student's loan check.
126.53 Notification to lender of change in enrollment status.
126.54 Payment of refunds by schools.
126.55 Administrative and fiscal procedures.
126.56 Records.
126.57 Reports.
126.58 Federal access to school records.
126.59 Records and Federal access after a school is no longer a HEAL school.
126.60 School audits.

AUTHORITY: Title VII, part C, subpart I of the Public Health Service Act, as amended, 90 Stat. 2243 (42 U.S.C. 294-294*l*).

Subpart A—General Program Description

§ 126.1 What is the HEAL program?

(a) The health education assistance loan (HEAL) program is a program of Federal insurance of educational loans designed for students in the fields of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, pharmacy, and public health. The basic purpose of the program is to encourage lenders to make loans to students in these fields who desire to borrow money to pay for their educational costs. In addition, certain nonstudents (such as doctors serving as interns or residents) can borrow in order to pay the current interest charges accruing on earlier HEAL loans.

(b) Schools, State agencies, pension funds, banks and other financial institutions having an insurance contract with the Commissioner of Education can be lenders under the HEAL program. HEAL lender eligibility is described in § 126.30. HEAL school eligibility is described in § 126.50.

(c) By taking a HEAL loan, the student obligates himself or herself to repay the lender the full amount of the money borrowed, plus all interest which accrues on the loan. Depending upon the specific agreement between the borrower and the lender, the borrower may have to pay the lender while in school for the interest that accrues on the loan during that period. Other lenders may permit the borrower to defer all payments towards interest until the borrower is out of school.

(d) Generally, repayment of principal is not required until the first day of the tenth month after the month the student has left school or completed a period of internship or residency or both. After the repayment period has commenced, a borrower may defer repayment of principal for a limited period while serving in the Armed Forces, the Peace Corps, VISTA, the National Health Service Corps, or an internship or residency program, or during a period in which the borrower has returned to school as a fulltime student.

(e) The Commissioner of Education insures each lender for the losses it may incur in the event that a borrower dies, becomes disabled, files bankruptcy, or defaults on his or her loan. If a borrower defaults on a loan and the Commissioner pays the amount of loss to the lender, the borrower's loan is then assigned to the Commissioner. At that time, the U.S. Government becomes the borrower's direct creditor and will actively pursue the borrower for repayment of the debt.

(f) The law also provides that a borrower's loan may not be discharged in bankruptcy until after the first 5 years of the repayment period. A defaulted borrower practicing his or her profession is subject to having medicare or medicaid payments withheld up to the amount of the loan.

(g) The Commissioner of Education may enter into a special contract with a borrower who has obtained a degree from a HEAL school. Under the contract, the borrower agrees to serve for at least 2 years in a health manpower shortage area as a member of the National Health Service Corps or as a private practitioner. In return, the Commissioner agrees to pay an amount, not to exceed $10,000 per year, to the holder of the borrower's HEAL loan to be applied toward interest and principal.

(h) The determination of health manpower shortage areas will be made by the Secretary. The availability of any contracts for any year is not assured and is limited by the size of the nation's health manpower shortages in the various health disciplines, and the appropriation of funds for this purpose. An individual may receive a contract only at the Commissioner's discretion. In addition, and except in cases of impossibility or extreme hardship, severe penalties are provided in the law for any borrower who does not comply with the terms of the contract.

(42 U.S.C. 294-294*l*.)

Subpart B—The Borrower

§ 126.5 Who is an eligible student borrower?

In order to receive a HEAL loan, a student must satisfy the following requirements:

(a) He or she must be:

(1) A citizen, national or permanent resident of the United States; or

(2) A permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; or

(3) In the United States for other than a temporary purpose and intend to become a permanent resident.

(b) He or she must be enrolled or accepted for enrollment at a HEAL school in a course of study that leads to one of the following degrees:

Doctor of Medicine.
Doctor of Osteopathy.
Doctor of Dentistry or equivalent degree.
Doctor of Veterinary Medicine or equivalent degree.
Doctor of Optometry or equivalent degree.
Doctor of Podiatry or equivalent degree.
Bachelor or Master of Science in Pharmacy or equivalent degree.
Graduate or equivalent degree in Public Health.

(c) He or she must be carrying or plan to carry, during the period for which the loan is intended, the normal workload of a full-time student, as determined by the school. The student's work load may include any combination of courses, work experience, research or special studies that the school considers sufficient to classify the student as full-time.

(d) If currently enrolled in school, he or she must be in good standing, as determined by the school.

(e) In the case of a pharmacy student, he or she must have satisfactorily completed 3 years of training toward the pharmacy degree. These 3 years of training may have been taken at the pharmacy school or at a different school whose credits are fully accepted on transfer by the pharmacy school.

(f) In the case of a medical, dental or osteopathic student enrolled in a 6-year program that the student enters directly from secondary school, the student must be enrolled in the last 4 years of the program.

(g) He or she may not have received a loan under the guaranteed student loan program (popularly called the "GSLP" or "FISLP" and covered by the regulations at 45 CFR part 177) for any part of the same academic year for which the HEAL loan is sought.

(h) He or she must agree that all funds received under the proposed loan will be used solely for tuition and other reasonable educational expenses, including room and board, fees, books, supplies and equipment, laboratory expenses, transportation and commuting costs, personal expenses, the HEAL insurance premium, and interest on HEAL loans.

(42 U.S.C. 294b, 294d, 294h, 294j.)

§ 126.6 Who is an eligible nonstudent borrower?

In order to receive a HEAL loan, a person who is not a student must satisfy all of the following requirements:

(a) He or she must have previously received a HEAL loan for which he or she is required to make payments of interest, but not principal, during the period for which the new loan is intended. This may be the grace period or a period of internship, residency or deferment.

(b) He or she must continue to meet the citizen, national, or residency qualifications required of student borrowers.

(c) He or she must agree that all funds received under the proposed loan will be used solely for payment of currently accruing interest on HEAL loans and the HEAL insurance premium.

(42 U.S.C. 294d, 294h.)

§ 126.7 The loan application process.

(a) A person seeking a HEAL loan must accurately and completely fill out the loan application form provided by the lender. In the case of a student borrower, the student borrower must complete a portion of the application form and must have his or her school complete another portion. The school provides information relating to the student's eligibility, the student's estimated cost of attendance, and other financial aid (exclusive of family contributions) which the school is aware will be awarded the student during the academic period covered by the proposed HEAL loan.

(b) A special requirement exists for students enrolled or accepted for enrollment in courses of study leading to a degree in medicine, osteopathic medicine, or dentistry. For these students, the school must additionally state on the loan application that it authorizes the loan applicant to receive a HEAL loan. Schools of medicine, osteopathic medicine and dentistry are responsible for making sure that no more than 50 percent of their students in each class are authorized to receive new HEAL loans each 12-month academic year.

(c) If the lender agrees to make the loan to the applicant, and if the Commissioner of Education approves the loan for HEAL insurance, the applicant then must sign a promissory note. The promissory note sets out the rights and responsibilities of the borrower and lender. Subpart C of these regulations describes the terms of the loan in detail.

(42 U.S.C. 294d, 294h, 294*l*.)

§ 126.8 What are the borrower's major rights and responsibilities?

(a) *The borrower's rights.* (1) Once the terms of the HEAL loan have been established, the lender may not change them without the borrower's consent.

(2) The lender must provide the borrower with a copy of the completed promissory note when the loan is made. The lender must return the original note to the borrower when the loan is paid in full.

(3) The lender must make the HEAL loan disbursement check or draft payable to the borrower or, if authorized by the borrower in writing, jointly to the borrower and the school. The loan disbursement check or draft must require the personal endorsement of the borrower.

(4) The lender must provide the borrower with a copy of the repayment schedule before repayment begins.

(5) If the loan is sold from one lender to another lender, or if the loan is serviced by a party other than the lender, the holder must notify the borrower if the borrower is required to send installment payments or direct other matters connected with the loan to a new address.

(6) The borrower does not have to begin repayment until nine full months after leaving school or an accredited internship or residency program as more fully described in § 126.11.

(7) The borrower is entitled to deferment from repayment of the principal amount of his or her loans during certain periods as more fully described in § 126.12.

(8) The borrower may prepay the whole or any portion of the loan at any time without penalty.

(9) The borrower's total loan obligation is cancelled in the event of death or total and permanent disability.

(10) In order to assist the borrower in avoiding default, the lender may grant the borrower forbearance. However, whether or not to grant forbearance is wholly within the lender's discretion. Forbearance is more fully described in § 126.37.

(11) At the option of the Federal Government, the borrower may apply for a special contract to have his or her loan fully or partially repaid by serving for at least 2 years in a health manpower shortage area determined by the Secretary. A contract may be granted depending on the availability of the various health manpower positions in shortage areas at the time repayment is due and the availability of funds appropriated for this purpose.

(b) *The borrower's responsibilities.* (1) The borrower must become familiar with the terms of the loan, including the manner in which interest is payable over the life of the loan.

(2) The borrower must pay any insurance premium that the lender may require as more fully described in § 126.14.

(3) The borrower must pay all interest charges on the loan as required by the lender.

(4) The borrower must immediately notify the lender if any of the following occurs:

(i) Change of address;

(ii) Change of name;

(iii) Failure to enroll in a HEAL school for the period for which the loan is intended;

(iv) Transfer to another school;

(v) Withdrawal from a HEAL school or change in status to less than full-time attendance at a HEAL school;

(vi) Graduation;

(vii) Cessation of participation in an internship or residency program;

(viii) Change of status that entitles a borrower to deferments; and

(ix) Change of status that authorized deferment of loan.

(5) The borrower must repay the loan in accordance with the repayment schedule. A borrower may not have a HEAL loan discharged in bankruptcy until after the first 5 years of the repayment period.

(6) If the borrower fails to make payments on the loan on time, the total amount to be repaid by the borrower may be increased by additional interest, late charges, attorney's fees, court costs, and other collection charges. In addition, the United States may offset amounts attributable to an unpaid loan from Federal reimbursements for medicaid or medicare to a defaulted borrower practicing his or her profession.

(42 U.S.C. 294d, 294e, 294f, 294h, 294k.)

Subpart C—The Loan

§ 126.10 How much can be borrowed?

(a) *Student borrowers.* Eligible student borrowers enrolled in programs of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, and public health may borrow up to $10,000 principal for each academic year, up to a total principal amount of $50,000. A pharmacy student may borrow up to $7,500 principal for each academic year, up to a total principal amount of $37,500. For these purposes, an academic year is 12 months in duration. However, in no case may a student receive a loan that is greater than the sum of the student's estimated cost of attendance less other financial aid awarded for the same academic period plus the HEAL insurance premium and the interest that is expected to accrue and must be paid on HEAL loans during the period for which the new loan is intended.

(b) *Nonstudent borrowers.* Eligible nonstudent borrowers in the fields of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, and public health may borrow up to $10,000 principal for a 12-month period. Eligible nonstudent borrowers in the field of pharmacy may borrow up to $7,500 for a 12-month period. However, in no case may a nonstudent borrower receive a loan that is greater than the sum of the HEAL insurance premium and the interest that is expected to accrue and must be paid on HEAL loans during the period for which the new loan is intended. Nonstudent borrowers are

subject to the same limitations on overall principal indebtedness as student borrowers. That is, borrowers in the fields of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, and public health may not borrow more than $50,000 total principal on all HEAL loans, including loans obtained while the borrower was a student. Borrowers in the field of pharmacy may not borrow more than $37,500 total principal on all HEAL loans, including HEAL loans obtained while the borrower was a student.

(42 U.S.C. 294b, 294d, 294h.)

§ 126.11 Terms of repayment.

(a) *Commencement of repayment.* The borrower's repayment period must begin the first day of the 10th month after the month he or she ceases to be a full-time student at a HEAL school. However, if the borrower becomes an intern or resident in an accredited program within 9 full months after leaving school, then the borrower's repayment period must begin the first day of the 10th month after the month he or she ceases to be an intern or resident. The 9-month period before the repayment period begins is popularly called the "grace period." If a nonstudent borrower obtains another another HEAL loan during the grace period or a period of internship, residency, or deferment, the borrower must begin to repay this loan when repayment on the borrower's other HEAL loans begins or resumes.

(b) *Length of the repayment period.* In general, a lender must allow a borrower at least 10 years, but not more than 15 years, to repay a loan calculated from the beginning of repayment period. A borrower must fully repay a loan within 23 years after it is made. There is an exception, however, to these rules. If a borrower receives a deferment from repayment, as more fully described in § 126.12, the period of the deferment is not included in the calculation of the 10-, 15-, and 23-year periods.

(c) *Prepayment.* A borrower may repay the whole or any part of a loan before required by the repayment schedule. A borrower who prepays a loan may not be penalized in any way by the holder of the loan.

(d) *Minimum annual payment.* During each year of repayment, a borrower's payments to all holders of his or her HEAL loans must total at least $600 or a sum equal to the interest that accrues during the year on all of the loans, whichever amount is greater. However, the $600 rule does not apply in any case where it would result in a borrower repaying a HEAL loan in fewer than 10 years.

(e) *Repayment schedule agreement.* During the grace period, a borrower must contact the holder of the loan to establish the precise terms of repayment. The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period. If a graduated repayment schedule is established, it may not provide for any single installment that is more than five times greater than any other installment.

(f) *Supplemental repayment agreement.* (1) A lender and a borrower may enter into an agreement supplementing the regular repayment schedule agreement. Under a supplemental repayment agreement, the lender agrees that the borrower is deemed to meet the terms of the regular repayment schedule so long as the borrower makes payments in accordance with a separate schedule.

(2) The purpose of a supplemental repayment agreement is to permit a lender, at its option, to offer a borrower a repayment schedule based on other than equal or graduated payments. (For example, a supplemental repayment agreement may base the amount of the borrower's payments on his or her income.)

(3) The agreement and separate schedule must contain terms which the Commissioner of Education is satisfied do not unduly burden the borrower and do not subject the Commissioner to undue liability. A lender and borrower may not enter into a supplemental repayment agreement unless the lender has obtained the Commissioner's prior approval of its terms.

(4) The borrower may not insist upon the establishment of a supplemental repayment agreement. The lender may not insist upon the establishment of a supplemental repayment agreement unless the borrower's written consent to enter into an agreement of this type was obtained by the lender at the time the loan was made.

(5) A lender may assign a loan subject to a supplemental repayment agreement only if it makes the buyer aware of the terms of the supplemental agreement. In such cases, the loan and the supplemental agreement must be assigned together.

(42 U.S.C. 294d, 294h.)

§ 126.12 Deferment.

(a) Once the repayment period has commenced, periodic installments of principal may be deferred during any period:

(1) During which the borrower is pursuing a full-time course of study at a HEAL school or at an institution of higher education that is a "participating school" in the guaranteed student loan program; or

(2) Not in excess of 3 years during which the borrower is a participant in an accredited internship or residency program; or

(3) Not in excess of 3 years during which the borrower is a member of the Armed Forces of the United States; or

(4) Not in excess of 3 years during which the borrower is in service as a volunteer under the Peace Corps Act; or

(5) Not in excess of 3 years during which the borrower is a member of the National Health Service Corps; or

(6) Not in excess of 3 years during which the borrower is a full-time volunteer under title I of the Domestic Volunteer Service Act of 1973.

(b) In order to receive a deferment, a borrower must apply to the holder of the loan. If the borrower submits written evidence that verifies eligibility for the deferment, the holder of the loan must approve the deferment.

(c) At the holder's option, the borrower may also postpone payment of interest during the period of deferment.

(42 U.S.C. 294d, 294h.)

§ 126.13 Interest.

(a) *Rate.* At the lender's option, the interest rate on a HEAL loan may be calculated on a fixed rate or on a variable rate basis. However, whichever method is selected must continue over the life of the loan, except where the loan is consolidated with another HEAL loan.

(1) Interest that is calculated on a fixed rate basis may not exceed 12 percent per year on the unpaid principal balance of the HEAL loan. A lender may set a rate of less than 12 percent per year. A fixed interest rate applies uniformly over the life of the loan.

(2) Interest that is calculated on a variable rate basis may not, for any period of time, exceed 12 percent per year on the unpaid principal balance of the HEAL loan. A variable interest rate consists of a flat rate of 7 percent per year plus a variable component that is determined every calendar quarter as the market price of U.S. Treasury bills changes.

(3) The Commissioner of Education computes the variable component for a particular calendar quarter: (i) By determining the average of the bond equivalent rates reported for the 91-day U.S. Treasury bills auctioned for the preceding calendar quarter, (ii) by subtracting 3.5 percent from that average, (iii) by rounding the difference up to the nearest one-eighth of 1 percent, and (iv) by dividing the result by 4. If the variable component would cause the interest rate for the preceding 12-month period to exceed 12 percent, the Commissioner reduces the rate of the variable component for the current quarter to the highest one-eighth

of 1 percent which would not cause the excess.

(4) The Commissioner announces the variable rate on a quarterly basis through a notice published in the FEDERAL REGISTER.

(b) *Compounding of interest.* As a general rule, unpaid accrued interest must be compounded semiannually and added to principal. However, a lender that permits a borrower to postpone payment of interest before the beginning of the repayment period or during periods of deferment or forbearance may refrain from semiannual compounding of interest and add accrued interest to principal only at the time repayment of principal begins or resumes. A lender may do so only if this practice does not result in interest being compounded more frequently than semiannually.

(c) *Payment.* Interest begins to accrue when a loan is disbursed and is payable in periodic installments over the life of the loan. However, a lender may permit a borrower to postpone payment of interest before the beginning of the repayment period or during a period of deferment or forbearance. In these cases, payment of interest must begin or resume on the date on which repayment of principal begins or resumes.

(d) *Usury laws.* The law provides that no provision of any Federal or State law that limits the rate or amount of interest payable on loans (commonly known as usury laws) shall apply to a HEAL loan.

(42 U.S.C. 294d, 294h.)

§ 126.14 The insurance premium.

(a) *General.* The Commissioner of Education insures each lender of a HEAL loan against losses it may suffer if the borrower defaults on his or her loan, dies, becomes totally and permanently disabled, or is adjudicated a bankrupt. For this insurance, the Commissioner charges each lender an insurance premium. The lender may pass along the cost of the insurance premium to the borrower in the form of a one time special charge with no subsequent adjustments required. The lender may bill the borrower separately for the insurance premium or may deduct an amount attributable to it from the loan proceeds. The lender must clearly identify to the borrower the amount of insurance premium and the method of calculation. The HEAL insurance coverage on a loan ceases to be effective after a 60-day default by the lender in the payment of the premium. Premiums are not refundable by the Commissioner, and need not be refunded by the lender to the borrower, even if the borrower graduates or withdraws from the school, or defaults, dies or becomes totally and permanently disabled prior to the anticipated graduation date.

(b) *Rate.* The rate of the insurance premium is one-fourth of 1 percent per year of the loan principal.

(c) *Method of calculation.*—(1) *Student borrowers.* The lender must calculate the insurance premium on the basis of the period commencing the month beginning after the month the loan proceeds are disbursed to the student borrower and ending 9 full months after the month of the student's anticipated date of graduation.

(2) *Nonstudent borrowers.* The lender must calculate the insurance premium for nonstudent borrowers on the basis of the period commencing the month beginning after the month the loan proceeds are disbursed to the borrower and ending at the conclusion of the month preceding the month in which repayment of principal is expected to begin or resume on the borrower's previous HEAL loans.

(3) *Multiple installments.* In cases where the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement.

(42 U.S.C. 294d, 294e, 294h.)

§ 126.15 Other charges to the borrower.

(a) *Late charges.* The lender may, to the extent permitted by State law, require that the borrower pay a late charge if the borrower fails to pay all of a required installment payment within 10 days after its due date or fails to provide written evidence that verifies eligibility for the deferment of the payment. A late charge may not exceed 5 cents for each dollar of installment payment due or $5 for each payment, whichever is less.

(b) *Collection charges.* The lender may also require that the borrower pay the holder of the note for certain reasonable costs incurred by the holder or its agent in collecting any installment not paid when due. These costs may including attorney's fees, court costs, telegrams, and long-distance phone calls. The holder may not charge the borrower for the normal costs associated with preparing letters and making personal and local telephone contacts with the borrower. No charges other than those authorized by this section, including a service agency's fees for normal servicing of a loan, may be passed on to the borrower, either directly or indirectly.

(c) *Other loanmaking costs.* A lender may not pass any cost of making a HEAL loan other than the cost of the insurance premium on to the borrower.

(42 U.S.C. 294h.)

§ 126.16 Power of attorney.

Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse a disbursement check on behalf of a borrower. The borrower must personally endorse the check and may not authorize anyone else to endorse it on his or her behalf.

(42 U.S.C. 294h.)

§ 126.17 Security and endorsement.

A HEAL loan must be made without security. With one exception, it must also be made without endorsement. If a borrower is a minor and cannot under State law create a legally binding obligation by his or her own signature, a lender may require an endorsement by another person on the borrower's HEAL note. For puposes of this section, an "endorsement" means a signature of any party—other than the borrower—who is to assume either primary or secondary liability on the note.

(42 U.S.C. 294d, 294h.)

§ 126.18 Consolidation of HEAL loans.

If a lender holds two or more HEAL loans made to the same borrower, the lender and the borrower may agree to consolidate the loans into a single HEAL loan obligation evidenced by one promissory note. In this situation, the lender must first inform the borrower of the effect of the consolidation on the interest rate and explain to the borrower that he or she is not required to agree to the consolidation.

(42 U.S.C. 294e, 294h.)

§ 126.19 Forms.

All forms required under the HEAL program are provided by the Commissioner of Education. A school, a lender, or the Student Loan Marketing Association may change the format of any forms provided by the Commissioner. However, without prior approval of the Commissioner, a school, a lender, or the Student Loan Marketing Association may not change the provisions of any form. The Commissioner may prescribe the parties by whom the forms must be completed, the parties to whom the forms must be transmitted, and the times at which the forms must be transmitted. A school or lender, or an agent of either, may not sign in blank any form used in connection with a HEAL loan and it may not ask or permit a borrower to do so either.

(42 U.S.C. 294e, 294h.)

§ 126.20 The Commissioner's collection efforts after payment of a default claim.

After paying a default claim on a HEAL loan, the Commissioner of Education attempts to collect against the

borrower and any valid endorser in accordance with the Federal claims collection standards (4 CFR Parts 101-105). The Commissioner attempts collection of all unpaid principal and accrued interest, except in the following situations:

(a) *The borrower has a valid defense on the loan.* In this situation, the Commissioner refrains from collection against the borrower or endorser to the extent of any defense that either may have. Examples of a valid defense include expiration of the statute of limitations and infancy.

(b) *A school owes the borrower a refund for the period covered by the loan.* In this situation, the Commissioner refrains from collection to the extent of the unpaid refund if the borrower assigns to the Commissioner the right to receive the refund.

(c) *The school or lender is the subject of a lawsuit or Federal administrative proceeding.* In this situation, if the Commissioner determines that the proceeding involves allegations that, if proven, would provide the borrower with a full or partial defense on the loan, then the Commissioner may suspend collection activity on all or part of a loan until the proceeding ends. The Commissioner suspends collection activity only for so long as he or she believes that the proceeding is being energetically prosecuted in good faith and that the allegations that relate to the borrower's defense are reasonably likely to be proven.

(d) *The borrower dies, becomes totally and permanently disabled, or has the HEAL loan discharged in bankruptcy.* In this situation, the Commissioner terminates all collection activity against the borrower. If the borrower dies or becomes totally and permanently disabled, the Commissioner also terminates all collection activity against any valid endorser.

(42 U.S.C. 294f, 294h.)

§ 126.21 Refunds.

(a) *Student authorization.* By applying for a HEAL loan, a student authorizes a participating school to make payment of a refund that is allocable to a HEAL loan directly to the original lender (or to a subsequent holder of the loan note, if the school has knowledge of the holder's identity).

(b) *Treatment of lenders.* (1) A holder of a HEAL loan must treat a refund payment received from a HEAL school as a downward adjustment in the amount of the principal amount of the loan.

(2) If a lender receives from a HEAL school a refund payment allocable to a loan no longer held by that lender, the lender must transmit that payment to the party to whom it assigned the loan, together with an explanation as to its source. At the same time, the lender must provide to the borrower written notice of the transmission of this amount. However, if the lender does not have knowledge of the borrower's address, it must so advise the subsequent holder of the loan. The subsequent holder must then provide the borrower with written notice of its receipt of the refund payment.

(42 U.S.C. 294h, 294f.)

Subpart D—The Lender

§ 126.30 Which organizations are eligible to apply to be HEAL lenders?

(a) A HEAL lender may make and hold loans under the HEAL program. In these regulations, the term "lender" includes a subsequent holder.

(b) The following types of organizations are eligible to apply to the Commissioner of Education to be HEAL lenders:

(1) A financial or credit institution (including a bank, savings and loan association, credit union, or insurance company) which is subject to examination and supervision in its capacity as a lender by an agency of the United States or of the State in which it has its principal place of business;

(2) A pension fund, approved by the Commissioner;

(3) An agency or instrumentality of a State; and

(4) A HEAL school.

(c) The Student Loan Marketing Association (popularly known as "Sallie Mae") is, by law, an eligible HEAL holder.

(42 U.S.C. 294a, 294e, 294h, 294j.)

§ 126.31 The application to be a HEAL lender.

(a) In order to be a HEAL lender, an eligible organization must submit an application to the Commissioner of Education.

(b) In determining whether to enter into an insurance contract with an applicant and what the terms of that contract should be, the Commissioner may consider the following criteria:

(1) Whether the applicant is capable of complying with the requirements in the HEAL regulations applicable to lenders;

(2) The amount and rate of loans which are currently delinquent or in default, if the applicant has had prior experience with similar Federal or State student loan programs; and

(3) The financial resources of the applicant.

(c) The Commissioner of Education may require an applicant to submit sufficient materials with its application so that the Commissioner may fairly evaluate it in accordance with these criteria.

(42 U.S.C. 294h.)

§ 126.32 The HEAL lender insurance contract.

(a) (1) If the Commissioner of Education approves a lender's application to be a HEAL lender, the Commissioner and the lender sign an insurance contract. In general, the lender agrees to comply with all the laws, regulations, and other requirements applicable to its participation as a lender in the HEAL program. The Commissioner agrees to insure each eligible HEAL loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy. The Commissioner's insurance covers 100 percent of the lender's losses on both unpaid principal and interest, except to the extent that a borrower may have a defense on the loan, other than infancy.

(2) HEAL insurance, however, is not unconditional. The Commissioner issues HEAL insurance on the implied representations of the lender that all the requirements for the initial insurability of the loan have been met. HEAL insurance is further conditioned upon compliance by all holders of the loan with the HEAL regulations applicable to lenders. The contract may contain a limit on the duration of the contract and the number or amount of HEAL loans a lender may make or hold. Each HEAL lender has either a standard insurance contract or a comprehensive insurance contract with the Commissioner.

(b) *Standard insurance contract.* A lender with a standard insurance contract must submit to the Commissioner a borrower's loan application for HEAL insurance on each loan that the lender determines to be eligible. The Commissioner notifies the lender whether the loan is or is not insurable and the amount of the insurance. No disbursements made on a loan made prior to the Commissioner's approval of that loan are insured.

(c) *Comprehensive insurance contract.* A lender with a comprehensive insurance contract may disburse a loan without submitting an individual borrower's loan application to the Commissioner for initial approval. All eligible loans made by a lender with this type of contract are automatically insured.

(42 U.S.C. 294a, 294h, 294d, 294e, 294f, 294h, 294k.)

§ 126.33 Making a HEAL loan.

The loan-making process includes the processing of necesary forms, the approval of a borrower for a loan, the determination of the loan amount, the explanation to a borrower of his or her responsibilities under the loan, having the borrower execute the promissory note, and the disbursement of the loan proceeds. A lender may not delegate its loan-making func-

tions to a servicing agency or other party. A lender may rely in good faith upon statements of a borrower and the HEAL school contained in application papers.

(a) *Processing of forms.* Before making a HEAL loan, a lender must determine that all required forms have been completed by the borrower, the HEAL school, and the lender.

(b) *Approval of borrower.* A lender may make a HEAL loan only to an eligible student or nonstudent borrower.

(c) *Determination of loan amount.* A lender may not make a HEAL loan in an amount that exceeds the permissible annual and aggregate maximums described in § 126.10.

(d) *Borrower interview.* (1) Before making an initial HEAL loan to a borrower, an employee of the lender should meet personally with the borrower in order to ensure that the borrower understands his or her rights and responsibilities under the loan. In particular, the lender should explain to the borrower that the loan must be repaid and that the loan proceeds may be applied toward educational expenses only. In addition, the lender must familiarize the borrower with the manner in which he or she must pay the interest that accrues prior to the beginning of the repayment period.

(2) In all cases, a lender must obtain from a borrower a signed statement, on a form provided by the Commissioner, describing the borrower's rights and responsibilities.

(e) *Promissory note.* Each loan must be evidenced by a promissory note. The Commissioner of Education periodically makes an approved promissory note form available to HEAL lenders. A lender must obtain the Commissioner's prior approval before it makes a HEAL loan evidenced by a promissory note containing any deviation from the provisions of the Commissioner's most current form. The lender must give the borrower a copy of each executed note.

(f) *Disbursement of HEAL Loan.* (1) A lender must disburse HEAL loan proceeds by means of a check or draft payable to a student borrower or, if authorized by the student in writing, jointly to the student and the HEAL school. Except where a lender is also a school, a lender must mail the check or draft to the school (to the attention of the school official named on the loan application) for delivery to the student borrower. A lender may not mail the check or draft to a school earlier than is reasonably necessary to meet the cost of education for the period for which the loan is made.

(2) The Commissioner encourages lenders to disburse HEAL loan proceeds in multiple installments that correspond to a borrower's needs over the period for which the loan is intended.

(3) A school lender must disburse the HEAL loan proceeds in one or more installments that correspond to a borrower's educational expenses over the period for which the loan is intended. However, in no case may the school lender disburse the proceeds earlier than is reasonably necessary to meet the costs of education for the period for which the loan is made.

(42 U.S.C. 294f, 294h.)

§ 126.34 HEAL loan servicing.

(a) *Borrower inquiries.* A lender must respond on a timely basis to written inquiries and other communications from a borrower and any endorser of a HEAL loan.

(b) *Conversion of loan to repayment status.* (1) When a lender determines that a borrower's loan is about to enter repayment, the lender must promptly contact the borrower in order to establish the terms of repayment.

(2) When establishing repayment terms, the lender should take into consideration the financial obligations and the current and potential income of the borrower. The lender should design a repayment schedule that retires the loan as soon as possible without leading to default caused by the borrower's inability to make payments.

(3) Terms of repayment are established in a written schedule that is made a part of, and subject to the terms of, the borrower's original HEAL note.

(4) The lender may not surrender the original promissory note to the borrower until the loan is paid in full. At that time, the lender must give the borrower the original promissory note.

(42 U.S.C. 294f, 294h.)

§ 126.35 HEAL loan collection.

A lender must exercise due diligence in the collection of a HEAL loan with respect to both a borrower and any endorser. In order to exercise due diligence, a lender must implement the following procedures when a borrower fails to honor his or her payment obligation:

(a) When a borrower is delinquent in making a payment, the lender must remind the borrower within 15 working days of the date the payment was due by means of a letter, telephone call, or personal contact. If payments do not resume, the lender must attempt to contact both the borrower and any endorser at least three more times at regular intervals during the following 4-month period. These contacts should become progressively more firm in tone.

(b) Whenever a lender does not know the borrower's correct address, the lender must attempt to locate the borrower through normal commercial collection techniques, including contacting any endorser or other individual named on the borrower's application. If these efforts are unsuccessful, the lender must attempt to learn the borrower's correct address through use of the Office of Education preclaim assistance. This preclaim assistance consists of attempts to locate a missing borrower. The Office of Education advises the lender of the results of its efforts to locate the missing borrower. The Commissioner of Education does not pay insurance on a default claim if the lender failed to request preclaim assistance where the borrower's address was unknown.

(c) When a borrower is 60 days delinquent in making a payment, the lender must request preclaim assistance from the Office of Education. This preclaim assistance consists of a series of letters to the borrower urging the borrower to contact the lender and resume payments. The Commissioner of Education does not pay insurance on a default claim if the lender failed to request preclaim assistance in this situation.

(d) If a lender does not sue the borrower, it must send a final demand letter to the borrower and any endorser at least 30 days before it files a default claim. However, the lender need not send a final demand letter to a borrower whose address is unknown.

(e) If a lender sues a defaulted borrower or endorser, it may first apply the proceeds of any judgment against its reasonable attorney's fees and court costs, whether or not the judgment provides for these fees and costs.

(42 U.S.C. 294f, 294h.)

§ 126.36 Consequence of using an agent.

The delegation of functions to a servicing agency or other party does not relieve a lender of its responsibilities under the HEAL program.

(42 U.S.C. 294f, 294h.)

§ 126.37 Forbearance.

(a) The Commissioner of Education encourages a HEAL lender to grant forbearance for the benefit of a borrower in order to prevent a borrower from defaulting on his or her payment obligations. "Forbearance" means an extension of time for making loan payments or the acceptance of smaller payments than were previously scheduled. A lender may grant forbearance whenever unemployment, health, other personal problems, or study that is ineligible for deferment temporarily affects the borrower's ability to make scheduled payments on a HEAL loan.

(b) A lender may exercise forbearance in accordance with terms that are consistent with the minimum annual payment requirement and the 15- and 23-year limitations on length of repayment (described in § 126.11) if the lender and borrower agree in writing to the new terms.

(c) A lender may also exercise forbearance for a period of up to 6 months in accordance with terms that are inconsistent with the minimum annual payment requirement and the 15- and 23-year limitations on length of repayment (described in § 126.11) if the lender complies with the requirements listed below. Subsequent renewals of the forbearance must also be documented in accordance with the following requirements:

(1) The lender must reasonably believe that the borrower intends to repay the loan but is currently unable to make payments in accordance with the terms of the loan note. The lender must state the basis for its belief in writing and maintain that statement in its loan file on that borrower.

(2) Both the borrower and an authorized official of the lender must sign a written agreement of forbearance.

(3) If the agreement between the borrower and lender provides for deferment of all payments, the lender must contact the borrower at least every 3 months during the period of forbearance in order to remind the borrower of the outstanding obligation to repay.

(42 U.S.C. 294f, 294h.)

§ 126.38 Assignment of a HEAL loan.

A HEAL note may not be assigned except to another HEAL lender or the Student Loan Marketing Association (popularly known as "Sallie Mae"). In this section "seller" means any kind of assignor and "buyer" means any kind of assignee.

(a) *Procedure.* A HEAL note assigned from one lender to another must be subject to a blanket endorsement together with other HEAL notes being assigned or must individually bear effective words of assignment. Either the blanket endorsement or the HEAL note must be signed and dated by an authorized official of the seller. The buyer must notify the Commissioner of Education of the assignment within 30 days of the transaction. The buyer must assure that the borrower is notified if the assignment results in the borrower being required to make installment payments or direct other matters connected with the loan to a party other than the seller. The notice to the borrower must contain a clear statement of all the borrower's rights and responsibilities which arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller subsequent to receipt of the notice.

(b) *Risks assumed by the buyer.* Upon acquiring a HEAL loan, a new holder assumes responsibility for the consequences of any previous violations of applicable statutes, regulations, or the terms of the note. A HEAL note is not a negotiable instrument, and a subsequent holder is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the previous holder, the borrower can also assert the defense against the new holder. In this situation, if the new holder files a default claim on a loan, the Commissioner denies the default claim to the extent of the borrower's defense. Furthermore, when a new holder files a claim on a HEAL loan, it must provide the Commissioner with the same documentation that would have been required of the original lender.

(c) *Warranty.* Nothing in this section precludes the buyer of a HEAL loan from obtaining a warranty from the seller covering certain future reductions by the Commissioner in computing the amount of insurable loss, if any, on a claim filed on the loan. The warranty may only cover reductions which are attributable to an act or failure to act of the seller or other previous holder. The warranty may not cover matters for which the buyer is charged with responsibility under the HEAL regulations.

(42 U.S.C. 294a, 294e, 294h.)

§ 126.39 Death and disability claims.

(a) *Death.* If a borrower dies, his or her obligation to make any further payments of principal and interest on a HEAL loan is canceled. The holder of the loan may not attempt to collect on the loan from the borrower's estate or any endorser. The holder may make a determination that the borrower has died on the basis of a death certificate or other proof of death which is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan is canceled on account of death only upon a determination by the Commissioner of Education on the basis of other evidence that the Commissioner finds conclusive. The holder must return to the sender any payments received from the estate of the borrower or paid on behalf of the borrower after the date of death.

(b) *Disability.* (1) If a borrower becomes totally and permanently disabled, his or her obligation to make any further payments of principal and interest on a HEAL loan is canceled. A borrower is totally and permanently disabled if he or she is unable to engage in any substantial gainful activity because of a medically determinable impairment, which the Commissioner expects to continue for a long and indefinite period of time or to result in death.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the holder of the loan may not attempt to collect on the loan from the borrower or any endorser. The holder must promptly request that the Commissioner determine whether a borrower has become totally and permanently disabled. With its request, the holder must submit medical evidence no more than 4 months old that it has obtained from the borrower or the borrower's representative.

(3) If the Commissioner determines that the borrower is totally and permanently disabled, the lender must return to the borrower any payments that it may have received after being notified that the borrower claims to be totally and permanently disabled.

(42 U.S.C. 294h, 294k.)

§ 126.40 Procedures for filing claims.

(a) A lender must file an insurance claim on a form provided by the Commissioner of Education. The lender must attach to the claim all documentation which the Commissioner may require. Failure to submit the required documentation may result in a claim not being honored. The Commissioner may also deny a claim that is not timely filed. The Commissioner requires for all claims the following documentation:

(1) The original promissory note;

(2) The loan application; and

(3) A payment history, if any.

(b) The Commissioner's payment of a claim is contingent upon receipt of all required documentation and an assignment to the United States of America of all right, title, and interest of the lender in the note underlying the claim. The lender must warrant that the loan is eligible for HEAL insurance.

(c) In addition, the lender must comply with the following requirements for the filing of default, death, disability, and bankruptcy claims:

(1) *Default claims.* (i) Unless a lender has notified the Commissioner that it has filed suit against a defaulted borrower, it must file a default claim with the Commissioner within 90 days after a loan has been determined to be in default. Default means that persistent failure of the borrower to make a payment when due, or to comply with other terms of the note or other written agreement evidencing a loan under circumstances where the Commissioner finds it reasonable to conclude that the borrower no longer intends to honor the obligation to

repay. In the case of a loan repayable (or on which interest is payable) in monthly installments, this failure must have persisted for 120 days. In the case of a loan repayable (or on which interest is payable) in less frequent installments, this failure must have persisted for 180 days.

(ii) In addition to the documentation required for all claims, the lender must submit with its default claim the following:

(A) The repayment schedule;

(B) A collection history;

(C) A final demand letter, if required; and

(D) The original or a copy of all correspondence relevant to the amount owed by the borrower (whether or not received by the original lender, a subsequent holder, or an independent servicing agent).

(iii) If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the borrower's bankruptcy, the lender must promptly forward that notice to the Office of Education. The lender may not file a proof of claim with the bankruptcy court in this situation.

(2) *Death claims.* A lender must file a death claim with the Commissioner within 60 days after the lender determines that a borrower is dead. In addition to the documentation required for all claims, the lender must submit with its death claim those documents which formed the basis for its determination of death.

(3) *Disability claims.* A lender must file a disability claim with the Commissioner within 60 days after it is notified that the Commissioner has determined a borrower to be totally and permanently disabled. In addition to the documentation required for all claims, the lender must submit with its claim evidence of the Commissioner's determination.

(4) *Bankruptcy claims.* A lender must file a bankruptcy claim with the Commissioner within 60 days after the lender receives a notice of the first meeting of creditors in a borrower's bankruptcy proceeding. The lender must file a proof of claim with the bankruptcy court. In addition to the documentation required for all claims, the lender must submit with its claim to the Commissioner the following:

(i) The repayment schedule;

(ii) A collection history, if any;

(iii) An assignment to the United States of America of its proof of claim;

(iv) All pertinent documents sent to or received from the bankruptcy court; and

(v) A statement of any facts of which the lender is aware that may form the basis for an objection to the bankrupt's discharge or an exception to the discharge. Section 733(g) of the Public Health Service Act provides that a HEAL loan may be discharged in bankruptcy only after the expiration of the 5-year period beginning when the repayment period for the loan begins.

(42 U.S.C. 294f, 294h.)

§ 126.41 Determination of amount of loss on claims.

(a) *General rule.* HEAL insurance covers the unpaid balance of principal and interest on an eligible HEAL loan. In determining whether to approve an insurance claim for payment, the Commissioner of Education considers legal defects affecting the initial validity or insurability of the loan. The Commissioner also deducts from a claim any amount that is not a legally enforceable obligation of the borrower except to the extent that the defense of infancy applies. The Commissioner further considers whether all holders of the loan have complied with the requirements of the HEAL regulations, including those concerned with the making, servicing, and collecting of loans, the timely filing of claims, and the submission of documents with a claim.

(b) *Special rules for loans acquired by assignment.* If a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. In particular, the Commissioner deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(c) *Special rules for loans made by school lenders.* (1) If the loan for which a claim is filed was originally made by a school and the claim is filed by that school, the Commissioner deducts from the claim an amount equal to any unpaid refund that the school owes the borrower.

(2) If the loan for which a claim is filed was originally made by a school but the claim is filed by another lender that obtained the note by assignment, the Commissioner deducts from the claim an amount equal to any unpaid refund that the school owed the borrower prior to the assignment.

(d) *Circumstances under which defects in claims may be cured or excused.* The Commissioner may permit a lender to cure certain defects in a specified manner as a condition for payment of a default claim. The Commissioner may excuse certain defects if the holder submitting the default claim satisfies the Commissioner that the defect did not contribute to the default or prejudice the Commissioner's attempts to collect on the loan from the borrower. The Commissioner may also excuse certain defects if the defect arose while the loan was held by another lender and the holder submitting the default claim satisfies the Commissioner that the assignment of the loan was an arm's length transaction, that the present holder did not know of the defect at the time of the sale, and that the present holder could not have become aware of the defect through an examination of the loan documents.

(e) *Payment of insured interest.* The payment on an approved claim covers unpaid interest that accrues through the date the Commissioner approves the claim and authorizes payment, subject to two exceptions:

(1) If the lender failed to submit a claim within the required period after the borrower's default, death, disability, or bankruptcy, the Commissioner does not pay interest that accrued between the end of that period and the date the Commissioner received the claim.

(2) If the Commissioner returned the claim to the lender for additional documentation necessary for the approval of the claim, the Commissioner pays interest only for the first 30 days following the return of the claim to the lender.

(42 U.S.C. 294b, 294d, 294f, 294h.)

§ 126.42 Records, reports, and inspection requirements for HEAL lenders.

(a) *Records.* (1) A lender must keep complete and accurate records of each HEAL loan which it holds. The records must be organized in a way that permits ready identification of the current status of each loan. The required records include:

(i) The loan application;

(ii) The original promissory note;

(iii) The repayment schedule agreement;

(iv) Evidence of each disbursement of loan proceeds;

(v) Notices of changes in a borrower's address and status as a full-time student;

(vi) Evidence of the borrower's eligibility for a deferment; document;

(vii) The borrower's signed statement describing his or her rights and responsibilities in connection with a HEAL loan;

(viii) The documents required for the exercise of forbearance; and

(ix) Documentation of the assignment of the loan.

(2) The lender must maintain for each borrower a payment history showing the date and amount of each payment received on the borrower's behalf, and the amounts of each payment attributable to principal and interest. A lender must also maintain for each loan a collection history showing the date and subject of each communi-

cation with a borrower or endorser for collection of a delinquent loan. Furthermore, a lender must keep any additional records which are necessary to make any reports required by the Commissioner of Education.

(3) A lender must retain the records required for each loan for not less than 3 years following the date the loan is repaid in full by the borrower. However, in particular cases the Commissioner may require the retention of records beyond this minimum period. A lender must keep the original copy of an unpaid promissory note, but may store all other records in microform or computer format.

(b) *Reports.* A lender must submit reports to the Commissioner at the time and in the manner as the Commissioner may reasonably require.

(c) *Inspections.* Upon request, a lender must afford the Secretary of Health, Education, and Welfare, the Comptroller General of the United States, and any of their authorized representatives access to its records in order to assure the correctness of its reports.

(42 U.S.C. 294e, 294h.)

§ 126.43 Limitation, suspension, or termination of the eligibility of a HEAL lender.

(a) The Commissioner of Education may limit, suspend, or terminate the eligibility under the HEAL program of an otherwise eligible lender that violates any provision of title VII, part C, subpart I of the Public Health Service Act, as amended (42 U.S.C. 294-294*l*), the HEAL regulations, or agreements with the Commissioner concerning the HEAL program. The Commissioner takes this action in accordance with procedures for the limitation, suspension, or termination of the eligibility of lenders under the Federal insured student loan program which are set forth in 45 CFR part 177.

(b) This section does not apply to a determination that a HEAL lender fails to meet the statutory definition of an "eligible lender."

(c) This section also does not apply to administrative action by the Department of Health, Education, and Welfare based on any alleged violation of:

(1) Title VI of the Civil Rights Act of 1964, which is governed by 45 CFR parts 80 and 81;

(2) Title IX of the Education Amendments of 1972, which is governed by 45 CFR part 86; or

(3) The Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act, as amended), which is governed by 45 CFR part 99.

(42 U.S.C. 294f, 294h.)

Subpart E—The School

§ 126.50 Which schools are eligible to be HEAL schools?

(a) In order to participate in the HEAL program, a school must enter into a written agreement with the Commissioner of Education. In the agreement, the school promises to comply with provisions of the HEAL law and the HEAL regulations. In order to initially enter into this agreement and in order for the agreement to remain in effect, a school must satisfy the following requirements:

(1) The school must be legally authorized within a State to conduct a course of study leading to one of the following degrees:

Doctor of Medicine.
Doctor of Osteopathy.
Doctor of Dentistry or equivalent degree.
Bachelor or Master of Science in Pharmacy or equivalent degree.
Doctor of Optometry or equivalent degree.
Doctor of Veterinary Medicine or equivalent degree.
Doctor of Podiatry or equivalent degree.
Graduate degree in Public Health or equivalent degree.

For the purposes of this section, the term "State" includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The school must be accredited by a recognized agency approved for that course of study by the Commissioner of Education. If a school is not eligible for accreditation solely because it is too new, that school may nevertheless be eligible for the HEAL program. A new school is eligible if the Commissioner determines that it can reasonably expect to be accredited before the beginning of the academic year following the normal graduation date of its first entering class. The Commissioner makes this determination after consulting with the appropriate accrediting agency and receiving reasonable assurance to that effect.

(3) The school must have received a capitation grant under section 770 of the Public Health Service Act for the preceding fiscal year. If the school did not receive a grant, it is nevertheless eligible for the HEAL program if it was eligible to receive a grant or if it met all the requirements to receive a grant except the requirement contained in section 771(b)(3) of the Public Health Service Act.

(b) If a HEAL school undergoes a change of controlling ownership or form of control, its agreement automatically expires at the time of that change. The school must enter into a new agreement with the Commissioner in order to continue its participation in the HEAL program.

(42 U.S.C. 294h, 294j.)

§ 126.51 The student loan application.

(a) A school must accurately and completely fill out its portion of a student's loan application. In general, the information requested of the school pertains to the student's eligibility for a loan, the student's estimated cost of attendance for the period for which the loan is sought, and other financial aid (exclusive of family contribution) of which the school is aware that has been awarded the student for that period.

(b) In addition, a school of medicine, osteopathic medicine or dentistry must provide a special authorization that a student may receive a loan. A school of medicine, osteopathic medicine or dentistry may not authorize more that 50 percent of the students in each class to receive a HEAL loan in any 12-month academic year. Each school of medicine, osteopathic medicine, or dentistry may establish its own procedures for determining which students are authorized to receive HEAL loans.

(42 U.S.C. 294h, 294*l*.)

§ 126.52 The student's loan check.

(a) When a school receives from a HEAL lender a loan disbursement check or draft payable to one of its students, it must do the following:

(1) If the school receives the instrument after the student is enrolled, it must promptly deliver the instrument to the student.

(2) If the school receives the instrument before the student is enrolled, it must hold the instrument and deliver it to the student at the time of enrollment. However, if the student is unable to meet educational expenses due before the time of enrollment, the school may send the instrument to the student in time to meet those expenses.

(b) When a school receives from a HEAL lender a loan disbursement check or draft payable jointly to the school and to one of its students, it must do the following:

(1) If the school receives the instrument after the student is enrolled, it must either:

(i) Endorse the instrument and transmit it to the student; or

(ii) Obtain the student's endorsement, retain that portion of funds due the school, and disburse the remaining funds to the student.

(2) If the school receives the instrument before the student is enrolled, it must, prior to endorsing the instrument, send the instrument to the student for the student to endorse it and return it to the school. The school

may then retain that portion of funds then due the school but must hold the remaining funds for disbursement to the student at the time of enrollment. However, if the student is unable to meet other educational expenses due before the time of enrollment, the school may obtain the student's endorsement and disburse to the student that portion of funds required to meet these other educational expenses.

(c) If a school determines that a student does not plan to enroll, the school must return a loan disbursement check or draft to the lender within 30 days of its determination.

(42 U.S.C. 294h, 294*l*.)

§ 126.53 Notification to lender of change in enrollment status.

Each school must establish and implement procedures under which it notifies the holder of a student's HEAL loan of a change in the student's enrollment status. Those procedures must include giving that notice within 60 days following the change in status. Each notice must contain the date of the student's graduation, formal withdrawal, or failure to enroll as scheduled for any academic period as a full-time student. Each notice must also contain the student's latest known permanent and temporary addresses. The procedures must provide that if the school does not know the identity of the current holder of the HEAL loan, it notifies the HEAL Program Office of the U.S. Office of Education of a change in the student's enrollment status.

(42 U.S.C. 294h, 294*l*.)

§ 126.54 Payment of refunds by schools.

A participating school must pay that portion of a refund that is allocable to a HEAL loan directly to the original lender (or to a subsequent holder of the loan note, if the school has knowledge of the holder's identity). At the same time, the school must provide to the borrower written notice that it is doing so.

(42 U.S.C. 294h, 294*l*.)

§ 126.55 Administrative and fiscal procedures.

Each school must establish and maintain administrative and fiscal procedures necessary to achieve the following objectives:

(a) Proper and efficient administration of the funds received from students who have HEAL loans;

(b) Protection of the rights of students under the HEAL program;

(c) Protection of the United States from unreasonable risk of loss due to defaults; and

(d) Compliance with applicable requirements for HEAL schools.

(42 U.S.C. 294h, 294*l*.)

§ 126.56 Records.

(a) Each school must maintain an easily retrievable record with respect to each student who has a HEAL loan containing all of the following items of information that are applicable:

(1) The student's name;

(2) The student's address;

(3) The student's academic standing;

(4) The student's period of attendance;

(5) The name of the HEAL lender;

(6) The amount of the HEAL loan;

(7) The period for which the HEAL loan was intended;

(8) The date the school receives the HEAL check or draft and the date it either gives it to the student or returns it to the lender (in the case of a school that is not the lender);

(9) The amount and source of other financial assistance (exclusive of family contribution) received by the student for the period for which the HEAL loan was made;

(10) The date the school disburses a loan to a student (in the case of a school that is the lender);

(11) The date the school signs the loan check or draft (in the case of a school that is a copayee);

(12) The amount of tuition, fees and other charges paid by the student to the school for the academic period covered by the loan and the dates of payment;

(13) A copy of each form used by the school in connection with the loan; and

(14) The student's postgraduate destination.

(b) The school must maintain the record for not less than 3 years (unless otherwise directed by the Commissioner of Education) following the date the student graduates, withdraws or fails to enroll as a full-time student. The school may store the record in microform or computer format.

(42 U.S.C. 294h, 294*l*.)

§ 126.57 Reports.

A school must submit reports to the Commissioner of Education at the times and in the manner the Commissioner may reasonably prescribe. The school must retain a copy of each report for not less than 3 years following the report's completion, unless otherwise directed by the Commissioner. A school must also make available to a HEAL lender, upon the lender's request, the name, address, postgraduate destination and other reasonable identifying information for each of the school's students who has a HEAL loan.

(42 U.S.C. 294h, 294*l*.)

§ 126.58 Federal access to school records.

For the purposes of audit and examination, a HEAL school must provide the Secretary of Health, Education, and Welfare, the Comptroller General of the United States, and any of their authorized representatives access to the records that the school is required to keep and to any documents and records pertinent to the administration of the HEAL program.

(42 U.S.C. 294h, 294*l*.)

§ 126.59 Records and Federal access after a school is no longer a HEAL school.

In the event a school ceases to participate in the HEAL program, the school (or its successor, in the case of a school which undergoes a change in ownership) must retain all required HEAL records and provide the Secretary of Health, Education, and Welfare, the Comptroller General of the United States, and any of their authorized representatives access to them.

(42 U.S.C. 294h, 294*l*.)

§ 126.60 School audits.

(a) A school's transactions relating to its participation in the HEAL program shall be audited by the school or at the school's direction by a Certified Public Accountant or by a Licensed Public Accountant licensed before December 31, 1970. The purpose of these audits is to determine, at a minimum, the fiscal integrity of financial transactions and reports and whether those transactions are in compliance with applicable laws and regulations. Audits shall be scheduled with reasonable frequency, usually annually, but not less than once every 2 years, considering the size and complexity of the activity of the program. Each audit must cover the entire period of time that has elapsed since the last audit that was performed.

(b) The required audit report must be submitted for review to the regional office of the Department of Health, Education, and Welfare Audit Agency serving the region in which the school is located. The school must afford the Secretary of Health, Education, and Welfare, the Comptroller General of the United States, and any of their authorized representatives access to the records or other documents necessary to review the results of those audits.

(42 U.S.C. 294h, 294*l*.)

PART 168—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

2. In 45 CFR Part 168, Subpart H is amended to read as follows:

Subpart H—Procedures for the Limitation, Suspension, or Termination of Institutional Eligibility for the HEAL Program or Programs under Title IV of the Higher Education Act of 1965

§ 168.71 Purpose and scope.

(a) This subpart establishes rules for the limitation, suspension, or termination of the eligibility of an otherwise eligible institution participating in the HEAL program or any or all of the following student assistance programs authorized by title IV of the Higher Education Act of 1965: The basic educational opportunity grant, supplemental educational opportunity grant, guaranteed student loan, college work-study, and national direct student loan programs. These rules apply to an institution which violates any provision of a program statute or any regulation, special arrangement, agreement or limitation prescribed under those programs. These rules also apply to an institution participating in the guaranteed student loan program which comes within the terms of 45 CFR 177.66.

(b) This subpart does not apply to a determination (1) that an institution fails to meet the statutory definition set forth in section 737(1) of the Public Health Service Act, (2) that an institution of higher education fails to meet the statutory definition set forth in sections 435(b), 491(b)(3), or 1201(a) of the Higher Education Act of 1965, or (3) that a vocational school fails to meet the statutory definition set forth in section 435(c) of the Higher Education Act of 1965.

(c) This subpart does not apply to administrative action by the Department of Health, Education, and Welfare based on any alleged violation of title VI of the Civil Rights Act of 1964, which is governed by 45 CFR Parts 80 and 81; title IX of the Education Amendments of 1972, which is governed by 45 CFR Part 86; or the Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act, as amended) which is governed by 45 CFR Part 99.

(20 U.S.C. 1088f-1(a)(4), 42 U.S.C. 294*l*(a)(3).)

§ 168.72 Definitions.

For the purpose of this subpart:

"Commissioner" means the U.S. Commissioner of Education or a designee.

"Designated OE official" means an official of the U.S. Office of Education, to whom the Commissioner has delegated responsibilities indicated in this subpart.

"Funds" means any money, commitments to provide money and commitments of insurance or reinsurance provided under the HEAL program or any or all title IV programs covered under his subpart to an institution or to students enrolled and attending an institution.

"HEAL program" means the health education assistance loan program. The governing statutory provisions are in title VII, part C, subpart I of the Public Health Service Act, and the governing regulatory provisions are in 45 CFR Part 126.

"Institution" means (1) an institution as defined in section 737(1) of the Public Health Service Act, (2) an institution of higher education, (3) a vocational school, or (4) with respect to students who are nationals of the United States, an institution outside the United States which is comparable to an institution of higher education or to a vocational school and which has been approved by the Commissioner for purposes of participation in title IV programs covered under this subpart.

(20 U.S.C. 1085(b), 1088(b), 1141(a).)

"Institution of higher education" means an institution of higher education as defined in sections 435(b), 491(b), or 1201(a) of the Higher Education Act of 1965.

(20 U.S.C. 1088f-1(e); 1085(a).)

"Limitation" means the continuation of an institution's eligibility for the HEAL program or any or all title IV programs covered under this subpart subject to compliance with special conditions which the Commissioner has set as a result of a decision in a limitation or termination proceeding.

"Suspension" means the removal of an institution's eligibility for the HEAL program or any or all title IV programs covered under this subpart for a period of time.

"Termination" means the unqualified removal of an institution's eligibility for the HEAL program or any or all title IV programs covered under this subpart for an indefinite period of time.

"Title IV" means title IV of the Higher Education Act of 1965. The programs under that title that are covered under this subpart, and the governing statutory and regulatory provisions, are as follows:

Program	Statutory provisions	Regulatory provisions
National direct student loan program	Title IV-E, HEA	45 CFR pt. 144.
College work-study program	Title IV-C, HEA	45 CFR pt. 175.
Supplemental educational opportunity grant program	Title IV-A-2, HEA	45 CFR pt. 176.
Federal, State, and private programs of low-interest loans to vocational students and students in institutions of higher education.	Title IV-B, HEA	45 CFR pt. 177.
Basic educational opportunity grant program	Title IV-A-1, HEA	45 CFR pt. 190.

"Vocational school" means a school as defined in section 435(c) of the Higher Education Act of 1965.

(20 U.S.C. 1085(c).)

(20 U.S.C. 1088f-1(a)(4), 42 U.S.C. 294*l*(a)(3), unless otherwise noted.)

§ 168.73 Informal compliance procedures.

(a) If the Commissioner receives a complaint, or has other information which the Commissioner believes to be reliable, indicating that an institution is, or may be, in violation of applicable laws, regulations, special arrangements, agreements, or limitations, the Commissioner may call the matter to the attention of the institution and may give it a reasonable opportunity—

(1) To respond to the complaint or other information;

(2) To show that the matter has been corrected; or

(3) To submit an acceptable plan to correct the violation and prevent its recurrence.

(b) The procedures provided in this subpart for suspenision, limitation, or termination need not be delayed during the informal compliance procedure if the Commissioner believes—

(1) The delay would have an adverse effect on the HEAL program or any or all title IV programs covered under this subpart, or

(2) The informal compliance procedure will not result in a correction of the alleged violation.

(20 U.S.C. 1088f-1(a)(4), 42 U.S.C. 294*l*(a)(3).)

§ 168.74 Emergency action.

(a) The Commissioner, through a designated OE official, may take emergency action to withhold funds from an institution or its students and to withdraw the authority of an instutition to obligate funds under the HEAL program or any or all title IV programs covered under this subpart if the designated OE official—

(1) Receives information which the official believes to be reliable that an institution is in violation of applicable laws, regulations, special arrangements, agreements, or limitations,

(2) Determines that such action is necessary to prevent the likelihood of substantial loss of funds to the Federal Government or to the students at the institution, and

(3) Determines that the likelihood of loss outweighs the importance of following the procedures set forth in this subpart for suspension, limitation, or termination.

(b) The designated OE offical begins an emergency action by notifying the institution, by certified mail with return receipt requested, of the action and the basis on which it is taken. The effective date of the action is the date on which the notice is received by the institution.

(c) An emergency action shall not exceed 30 days unless a suspension, limitation, or termination proceeding is begun under this subpart before the expiration of that period. In such case, the period may be extended until the completion of that proceeding, including any appeal to the Commissioner.

(d) If a suspension, limitation, or termination proceeding is begun, the Commissioner will provide the institution, if it so requests an opportunity to show cause that the emergency action is unwarranted, pending the outcome of that proceeding.

(20 U.S.C. 1088f-1(a), 1232c(c), 1232d, section 113(b) of Pub. L. 94-482, 42 U.S.C. 294*l*(a)(3).)

§ 168.75 Suspension proceeding.

(a) *Scope and consequences.* From its effective date, a suspension removes an institution's eligibility for the HEAL program or any or all title IV programs covered under this subpart for a period of time not exceeding 60 days unless—

(1) The institution and the designated OE official agree to an extension where the institution has not requested a hearing, or

(2) The designated OE official begins a limitation or termination proceeding under § 168.76.

(b) *Procedures.* (1) The designated OE official begins a suspension proceeding by sending a notice to an institution by certified mail with return receipt requested. The notice must—

(i) Inform the institution of the intent of the Commissioner to suspend the institution's eligibility, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the suspension, which shall be at least 20 days after the date of mailing of the notice of intent;

(iii) Inform the institution that the suspension will not be effective on the date specified in the notice if the designated OE official receives, at least 5 days before that date, a request for a hearing or written material indicating why the suspension should not take place; and

(iv) Invite voluntary efforts to correct the violation(s) which led to the commencement of the action.

(2) If the institution does not request a hearing, but submits written material, the designated OE official, after considering that material, notifies the institution that—

(i) The proposed suspension is dismissed, or

(ii) The suspension is effective as of a specified date.

(3) If the institution on a timely basis requests a hearing, the designated OE official sets a date and place for it. The date will be at least 15 days after the designated OE official receives the request. No suspension takes place until a hearing is held.

(4) A presiding officer conducts a hearing on the record.

(5) At the hearing, the presiding officer shall consider any written material presented to him before the hearing or any material or other evidence presented to him during the course of the hearing.

(6) If, after considering the evidence, the presiding officer concludes that the suspension is warranted, the presiding officer will issue an initial decision that may suspend the eligibility of all or part of the institution.

(7) The Commissioner will review the initial decision of the presiding officer and will issue a final decision adopting the initial decision, unless the initial decision is clearly unsupported by the evidence.

(c) Notice of the suspension will be prompty mailed to the institution. The suspension takes effect either upon the date on which the notice is received by the institution or the original proposed effective date stated in the notice of intent, whichever is later.

(d) A suspension shall not exceed 60 days unless a limitation or termination proceeding is begun under this subpart before the expiration of that period. In such case, the period may be extended until the completion of that proceeding, including any appeal to the Commissioner.

(20 U.S.C. 1088f-1(a)(4), 42 U.S.C. 294*l*(a)(3).)

§ 168.76 Limitation or termination proceeding, whether or not a suspension proceeding.

(a) *Scope and consequences.* From its effective date, a limitation or termination shall either—

(1) Result in limitations on an institution's eligibility, or

(2) End the eligibility of an institution for the HEAL program or any or all title IV programs covered under this subpart.

(b) *Procedures.* The designated OE official begins a limitation or termination proceeding has begun under § 168.75, by sending an institution a notice, by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the intent of the Commissioner to limit or terminate the institution's eligibility, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action, and in the case of a limitation proceeding, state the limits to be imposed;

(ii) Specify the proposed effective date of the limitation or termination, which shall be at least 20 days after the date of mailing of the notice of intent;

(iii) Inform the institution that the limitation or termination will not be effective on the date specified in the notice if the designated OE official receives, at least 5 days before that date, a request for a hearing or written material indicating why the limitation or termination should not take place;

(iv) Invite voluntary efforts to correct the violation(s) which led to the initiation of the action.

(2) If the institution does not request a hearing but submits written material, the designated OE official, after considering that material, notifies the institution that:

(i) The proposed action is dismissed,

(ii) Limitations are effective as of a specified date, or

(iii) The termination is effective as of a specified date.

(3) If the institution on a timely basis requests a hearing, the designated OE official sets a date and a place for it. The date will be at least 15 days after the designated OE official receives the request. No proposed limitation or termination takes place until after a hearing is held.

(4) A presiding officer conducts the hearing on the record.

(5) At the hearing the presiding officer shall consider any written material presented to him before the hearing, or any material or other evidence presented to him during the course of the hearing.

(6) If, after considering the evidence, the presiding officer concludes that limitation or termination is warranted, the presiding officer will issue an initial decision that may limit or terminate the institution's eligibility in whole or in part. If a termination action is brought against an institution, the presiding officer may issue a decision to impose one or more limitations on an institution rather than terminating its eligibility, if the presiding officer believes the limitation to be more appropriate.

(c) *Expedited hearing.* With the approval of the presiding officer and the

mutual consent of the parties, any time schedule specified in this section may be shortened.

(20 U.S.C. 1088f-1(a)(4), 42 U.S.C. 294*l*(a)(3).)

§ 168.77 Initial and final decisions.

(a) The presiding officer issues an initial decision in any suspension, limitation, or termination proceeding based on findings of fact and conclusions of law. Findings of fact shall be based only on evidence considered at the hearing and matters of which official notice has been taken. The initial decision of the presiding officer will be promptly mailed to the institution.

(b) In a suspension proceeding, the Commissioner will review the initial decision of the presiding officer and will issue a final decision adopting the initial decision, unless the initial decision is clearly unsupported by the evidence.

(c) (1) In a limitation or termination proceeding, the initial decision of the presiding officer becomes the Commissioner's final decision 20 days after being issued, unless within that 20-day period the institution or the designated OE official appeals the decision to the Commissioner.

(2) Within a period of time specified by the Commissioner, the party that appeals to the Commissioner may submit any additional written material, including exceptions to the initial decision, proposed findings and conclusions, and supporting briefs and statements. The opposing party shall respond within such time as the Commissioner specifies. Parties making any submission to the Commissioner must provide a copy to each party that participated in the hearing.

(3) The initial decision of the presiding officer limiting or terminating the institution's eligibility does not take effect pending the appeal, unless the Commissioner determines that a stay would produce a serious and adverse effect upon the programs involved.

(4) In the case of an appeal, the Commissioner issues a final decision affirming, modifying, or reversing the initial decision, including a statement of reasons for the decision.

(20 U.S.C. 1088f-1(a)(4), 42 U.S.C. 294*l*(a)(3).)

§ 168.78 Verification of mailing and receipt dates.

(a) Verification of the Office of Education's mailing dates and receipt dates referred to in this subpart is evidenced by the original receipt from the U.S. Postal Service.

(b) If an institution refuses to accept a notice mailed under this subpart, the Commissioner considers the notice as being received on the date that the institution refuses to accept the notice.

(20 U.S.C. 1088f-1(a)(4), 42 U.S.C. 294*l*(a)(3).)

§ 168.79 Limitation.

A limitation may include, as appropriate to the program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive HEAL program or title IV funds covered under this subpart;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from HEAL program or title IV funds covered under this subpart;

(c) A requirement that an institution obtain a bond, in a specified amount, to assure its ability to meet its financial obligations to students who receive HEAL program or title IV funds covered under this subpart; or

(d) Such other conditions as may be determined to be reasonable and appropriate.

(20 U.S.C. 1088f-1(a)(4), 42 U.S.C. 294*l*(a)(3).)

§ 168.80 Termination.

(a) *Effect.* Except as provided in paragraph (b) of this section, a termination—(1) Ends an institution's eligibility for the HEAL program or any or all title IV programs covered under this subpart;

(2) Prohibits an institution or the Commissioner from making or increasing financial aid awards;

(3) Prohibits an institution from making any other new obligations against title IV funds covered under this subpart; and

(4) Prohibits further commitments of Federal insurance by the Commissioner under the HEAL program or the guaranteed student loan program for loans to students to attend that institution, and prohibits further disbursements by an institution which is a lender under the HEAL program or the guaranteed student loan program (whether or not insurance commitments have been issued by the Commissioner or a guarantee agency for such disbursements).

(b) *Payment period.* (1) If an institution is terminated during a payment period, any student at that school who has received an award or to whom a commitment has been made before the effective date of the termination may receive payment for that payment period.

(2) For the purposes of this section, the payment period is a semester, trimester, or quarter for institutions using these academic periods. For all other institutions, the payment period is the period from the beginning to the midpoint of the academic year, or from the midpoint to the end of the academic year.

(c) *Commitment.* For the purposes of this section (1) a commitment under the basic educational opportunity grant program occurs after a student is enrolled and attending the institution and has submitted a valid student eligibility report to the institution, or to the Commissioner if the student is attending an institution which is under the alternate disbursement system, (2) a commitment under the supplemental educational opportunity grant, college work-study, or national direct student loan program occurs when the student is enrolled and attending the institution and has received an award letter from the institution, and (3) a commitment under the HEAL program or the guaranteed student loan program occurs when the Commissioner or a guarantee agency advises the lender that the loan will be insured.

(20 U.S.C. 1088f-1(a)(4), 42 U.S.C. 294*l*(a)(3).)

§ 168.81 Reimbursements, refunds, and offsets.

(a) The designated OE official, presiding officer, or Commissioner may require an institution to take reasonable and appropriate corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment of any funds, to the Commissioner or to designated recipients, which the institution improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to (1) with respect to the guaranteed student loan program—(i) ineligible interest benefits, special allowances or other claims paid by the Commissioner, and (ii) discounts, premiums, or excess interest paid in violation of part 177 of title 45 of the Code of Federal Regulations; (2) with respect to the HEAL program, ineligible claims paid by the Commissioner; and (3) with respect to the HEAL program or all title IV programs covered under this subpart—(i) refunds due to students under the regulations, and (ii) any grants, work-study assistance, or loans made in violation of program regulations.

(c) If any final decision requires an institution to reimburse or make any other payment to the Commissioner, the Commissioner may offset these claims against any benefits or claims due to the institution.

(20 U.S.C. 1088f-1(a)(4), 42 U.S.C. 294*l*(a)(3).)

§ 168.82 Reinstatement after termination.

(a) An institution whose eligibility for the HEAL program or any or all title IV programs covered under this subpart has been terminated may not

file a request for reinstatement of its eligibility before the expiration of 18 months from the effective date of its termination.

(b) After the minimum termination period, the institution may request reinstatement of its eligibility. The request must be in writing and must show that the institution has corrected the violations on which the termination was based and that it meets all qualifications for eligibility.

(c) Not later than 60 days after receipt of the request for reinstatement, the Commissioner shall respond to the institution—

(i) Granting its request;

(ii) Denying its request; or

(iii) Granting the request subject to limitations.

(d)(1) If the Commissioner denies the institution's request, or allows reinstatement subject to limitation(s), the institution, upon request, will be granted an opportunity to show cause why it should be fully reinstated.

(2) In the event the Commissioner's response allows reinstatement subject to limitation, the institution, by requesting a show cause meeting, shall not be deemed to waive its rights to participate in the HEAL program or any or all title IV programs covered under this subpart if it complies with the reinstatement limitations pending the outcome of the meeting.

(20 U.S.C. 1088f-1(a)(4), 42 U.S.C. 294*l*(a)(3).)

§ 168.83 Removal of limitation.

(a) An institution whose eligibility for the HEAL program or any or all title IV programs covered under this subpart has been limited may not apply for removal of the limitation of its eligibility before the expiration of 12 months from the effective date of the limitation.

(b) After the minimum limitation period, the institution may request removal of the limitation. The request must be in writing and show that the institution has corrected the violations on which the limitation was based.

(c) No later than 60 days after the receipt of the request, the Commissioner shall respond to the institution—

(i) Granting its request;

(ii) Denying its request; or

(iii) Granting the request subject to other limitations.

(d) If the Commissioner denies the request, or establishes other limitations, the institution upon request will be granted an opportunity to show cause why its eligibility should be fully reinstated.

(e) The institution's request for a show cause meeting shall not be deemed to waive its right to participate in the HEAL program or any or all title IV programs covered under this subpart if it complies with such continuing limitations pending the outcome of the meeting.

(20 U.S.C. 1088f-1(a)(4), 42 U.S.C. 294*l*(a)(3).)

PART 177—FEDERAL, STATE, AND PRIVATE PROGRAMS OF LOW-INTEREST LOANS TO VOCATIONAL STUDENTS AND STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION

3. In 45 CFR part 177, §§ 177.12(a)(1)(xv) and 177.15 are deleted and §§ 177.12(a)(1) (i) and (ii), and 177.43(a) are amended to read as follows:

§ 177.12 Agreements for Federal payments to reduce student interest costs for insured loans.

(a)(1) Except as provided for in § 177.13, interest benefits under insured loan programs shall be available only insofar as the loans to which they relate are covered under an agreement between the guarantee agency and the Commissioner pursuant to section 428(b) of the act. The Commissioner may enter into such an agreement if he determines that the loan insurance program of the guarantee program:

(i) Authorizes the insurance of not less than $1,000 nor more than $2,500 in the case of a student who has not successfully completed a program of under graduate education or $5,000 in the case of a graduate or professional student, except:

(A) That the program may not authorize the insurance of a loan which is made by an eligible lender as described in section 435(g)(1)(D) of the act or which is made or originated (as defined in section 433(b) of the act) by an eligible institution to a student who has not successfully completed a program of undergraduate education in an amount in excess of $2,500 or 50 per centum of the estimated cost of attendance (calculated in accordance with section 428(a)(2)(C)(i)), and

(B) That the program may not authorize the insurance of loans in excess of $1,500 for an academic year which is made or originated (as defined in section 433(b) of the act) by an eligible institution, and is made to a student for his first academic year of postsecondary education, unless the loan is to be disbursed in two or more installments, none of which exceeds one-half of the loan, with the interval between the first and second of such installments being not less than one-third of the period of enrollment for which the student received the loan. The annual insurable limit per student shall not be deemed to be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any year in excess of the annual limit;

(ii) Provides that the aggregate insured unpaid principal amount for all loans made under programs covered by this part to any student shall not at any time exceed $7,500, in the case of any student who has not sucessfully completed a program of undergraduate education, and $15,000 in the case of any graduate or professional student (including any loans made to such persons before he became a graduate or professional student);

* * * * *

(20 U.S.C. 1078, 1082.)

§ 177.43 Limitations governing maximum amount of federally insured loans.

(a) *Annual amounts.* The Commissioner will not insure loans in an academic year of study:

(1) To a student who has not successfully completed a program of undergraduate study in an amount in excess of $2,500, except:

(i) That in the case of a loan to a student who is or will be in his first year of a program of undergraduate education and who has not previously enrolled in such a program which is made by an eligible lender as described in section 435(g)(1)(D) of the act or which is made or originated (as defined in section 433(d) of the act) by an eligible institution, the loan may not exceed the lesser of $2,500 or 50 per centum of the estimated cost of attendance (calculated in accordance with the provisions of section 428(a)(2)(C)(i) of the act, and

(ii) That in the case of a loan made or originated (defined in section 433(b) of the act) by an eligible institution which is made to a student for his first academic year of postsecondary education, the loan may exceed $1,500 only if it is to be disbursed in two or more installments none of which exceed one-half of the loan, with the interval between the first and second of such installments being not less than one-third of the period of enrollment for which the student received the loan; and

(2) To any graduate or professional student in an amount in excess of $5,000.

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(20 U.S.C. 1075, 1082.)

[FR Doc. 78-21314 Filed 8-2-78; 8:45 am]

federal register

THURSDAY, AUGUST 3, 1978
PART III



ENVIRONMENTAL PROTECTION AGENCY

■

NEW, MODIFIED, AND RECONSTRUCTED GRAIN ELEVATORS

Standards of Performance for New Stationary Sources

[6560-01]

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 907-2]

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Grain Elevators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The standards limit emissions of particulate matter from new, modified, and reconstructed grain elevators. The standards implement the Clean Air Act and are based on the Administrator's determination that emissions from grain elevators contribute significantly to air pollution. The intended effect of these standards is to require new, modified, and reconstructed grain elevators to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, environmental and energy impacts.

EFFECTIVE DATE: August 3, 1978.

ADDRESSES: Copies of the standards support documents are available on request from the U.S. EPA Library (MD-35), Research Triangle Park, N.C. 27711, telephone 919-541-2777 or (FTS) 629-2777. The requester should specify "Standards Support and Environmental Impact Statement, Volume 1: Proposed Standards of Performance for Grain Elevator Industry," (EPA-450-77-001a) and/or "Standards Support and Environmental Impact Statement, Volume 2: Promulgated Standards of Performance for Grain Elevator Industry," (EPA-450/2-77-001b). Copies of all comment letters received from interested persons participating in this rulemaking are available for inspection and copying during normal business hours at EPA's Public Information Reference Unit, Room 2922, EPA Library, 401 M Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Don R. Goodwin, Director Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone 919-541-5271.

SUPPLEMENTARY INFORMATION: On January 13, 1977, standards of performance were proposed for the grain elevator industry (42 FR 2842) under the authority of section 111 of the Clean Air Act. Public comments were requested on the proposal in the FEDERAL REGISTER publication. Approximately 2,000 comments were received from grain elevator operators, vendors of equipment, Congressmen, State and local air pollution control agencies, other Federal agencies, and individual U.S. citizens. Most of these comments reflected a general misunderstanding of the proposed standards and were very general in nature. A number of comments, however, contained a significant amount of useful data and information. Due to the time required to review these comments, the standards were suspended on June 24, 1977. This action was necessary to avoid creating legal uncertainties for those grain elevator operators who might have undertaken various expansion or alteration projects before promulgation of final standards.

On August 7, 1977, Congress amended the Clean Air Act. These amendments contained a provision specifically exempting country grain elevators with less than 2.5 million bushels of grain storage capacity from standards of performance developed under section 111 of the Act.

Following review of the public comments, a draft of the final standards was developed consistent with the adopted amendments to the Clean Air Act. A report responding to the major issues raised in the public comments and containing the draft final standards was mailed on August 15, 1977, to each individual, agriculture association, equipment vendor, State and local government, and member of Congress who submitted comments. Comments were requested on the draft final standards by October 15, 1977. One hundred comments were received, and the final standards reflect a thorough evaluation of these comments.

The proposed standards are reinstated elsewhere in this issue of the FEDERAL REGISTER.

THE STANDARDS

The promulgated standards apply only to new, modified, or reconstructed grain elevators with a permanent grain storage capacity of more than 88,100 m^3 (ca. 2.5 million U.S. bushels) and new, modified, or reconstructed grain storage elevators at wheat flour mills, wet corn mills, dry corn mills (human consumption), rice mills, or soybean oil extraction plants with a permanent grain storage capacity of more than 35,200 m^3 (ca. 1 million U.S. bushels).

The standards limit particulate matter emissions from nine types of affected facilities at grain elevators by limiting the visibility of emissions released to the atmosphere. The affected facilities are each truck loading station, truck unloading station, railcar loading station, railcar unloading station, barge or ship loading station, barge or ship unloading station, grain dryer, all grain handling operations and each emission control device.

The standards can be summarized as follows:

(a) Truck loading station—visible emissions may not exceed 10 percent opacity.

(b) Truck unloading station, railcar loading station, and railcar unloading station—visible emissions may not exceed 5 percent opacity.

(c) Ship or barge loading station—visible emissions may not exceed 20 percent opacity.

(d) Ship or barge unloading station—specified equipment or its equivalent must be used.

(e) Grain dryer—visible emissions may not exceed 0 percent opacity.

(f) All grain handling operations—visible emissions may not exceed 0 percent opacity.

(g) Emission control devices—visible emissions may not exceed 0 percent opacity; and the concentration of particulate matter in the exhaust gas discharged to the atmosphere may not exceed 0.023 g/dscm (ca. 0.01 gr/dscf).

These standards are different from those proposed in the following areas. The visible emission limits for truck unloading stations and railcar loading and unloading stations have been increased from 0 percent opacity to 5 percent opacity. The visible emission limit for barge and ship loading has been increased from 10 percent opacity during normal loading and 15 percent opacity during "topping off" loading, to 20 percent opacity during all loading operations. The applicability of the visible emission standards for column grain dryers has been narrowed from dryers with perforated plate hole sizes of greater than 0.084 inch diameter to dryers with perforated plate hole sizes of greater than 0.094 inch diameter.

The August 1977 amendments to the Clean Air Act authorize the promulgation of design, equipment, work practice, or operational standards if development of a numerical emission limit is not feasible. Numerical emission limits may not be feasible where emissions are not confined or where emissions cannot be measured due to technological or economic limitations. Observation of visible emissions at barge unloading stations led to the conclusion that a numerical emission limit is not feasible for this facility. The visible emissions data showed an extremely wide range with some 6 minute averages above 65 percent opacity. Because of this wide range of visible emissions, an opacity numerical emission limit cannot be established that would ensure the use of the best

system of continuous emission reduction. An equipment standard, therefore, rather than an emission standard is being promulgated for barge and ship unloading stations.

Another change from the proposed standards is that section 60.14 (modification) of the general provisions has been clarified to ensure that only capital expenditures which are spent directly on an affected facility are used to determine whether the annual asset guideline repair allowance percentage is exceeded. The annual asset guideline repair allowance percentage has been defined to be 6.5 percent.

The remaining change from the proposed standards is that four types of alterations at grain elevators have been exempted from consideration as modifications. The exempted alterations are:

(1) The addition of gravity load-out spouts to existing grain storage or grain transfer bins.

(2) The installation of automatic grain weighing scales.

(3) Replacement of motor and drive units driving existing grain handling equipment.

(4) The installation of permanent storage capacity with no increase in hourly grain handling capacity.

Environmental and Economic Impacts

The promulgated standards will reduce uncontrolled particulate matter emission from new grain elevators by more than 99 percent and will reduce particulate matter emissions by 70 to 90 percent compared to emission limits contained in State or local air pollution regulations. This reduction in emissions will result in a significant reduction of ambient air concentration levels of particulate matter in the vicinity of grain elevators. The maximum 24-hour average ambient air particulate matter concentration at a distance of 0.3 kilometer (km) from a typical grain elevator, for example, will be reduced by 50 to 80 percent below the ambient air concentration that would result from control of emissions to the level of the typical State or local air pollution regulations.

Several of the changes to the proposed standards reduce the estimated primary impact of the proposed standards in terms of reducing emissions of particulate matter from grain elevators. The promulgated standards, for example, apply only to large grain elevators. These changes will permit more emissions of particulate matter to the atmosphere. It was estimated that the proposed standards would have reduced national particulate matter emissions by approximately 21,000 metric tons over the next 5 years; it is now estimated that the promulgated standards will reduce particulate matter emissions by 11,000 metric tons over the next 5 years.

The secondary environmental impacts associated with the promulgated standards will be a small increase in solid waste handling and disposal and a small increase in noise pollution. A relatively minor amount of particulate matter, sulfur dioxide and nitrogen oxide emissions will be discharged into the atmosphere from steam/electric power plants supplying the additional electrical energy required to operate the emission control devices needed to comply with the promulgated standards. The energy impact associated with the promulgated standards will be small and will lead to an increase in national energy consumption in 1981 by the equivalent of only 1,600 m^3 (ca. 10,000 barrels) per year of No. 6 fuel oil.

Based on information contained in the comments submitted during the public comment periods, approximately 200 grain terminal elevators and grain storage elevators at grain processing plants will be covered by the promulgated standards over the next 5 years. The total incremental costs required to control emissions at these grain elevators to comply with the promulgated standards, above the costs necessary to control emissions at these elevators to comply with State or local air pollution control regulations, is $15 million in capital costs over this 5-year period and $3 million in annualized costs in the fifth year. Based on this estimate of the national economic impact, the promulgated standards will have no significant effect on the supply and demand for grain products, or on the growth of the domestic grain industry.

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the Federal Register of a meeting of the National Air Pollution Control Techniques Advisory Committee. In addition, copies of the proposed standards and the Standards Support and Environmental Impact Statement (SSEIS) supporting these standards were distributed to members of the grain elevator industry and several environmental groups at the time of proposal. The public comment period extended from January 13, to May 14, 1977. During this period 1,817 comments were received from grain elevator operators, vendors of equipment, Congressmen, State and local air pollution control agencies, other Federal agencies, and individual U.S. citizens.

Due to the time required to review these comments, the proposed standards were suspended on June 24, 1977. This action was necessary to avoid creating legal uncertainties for those grain elevator operators who might have undertaken various expansion or alteration projects before promulgation of final standards.

Following review of the public comments, a draft of the final standards was developed consistent with the August, 1977, amendments to the Clean Air Act. A report responding to the major issues raised in the public comments and containing the draft final standards was mailed on August 15, 1977, to each individual, agriculture association, equipment vendor, State and local government, and member of Congress who submitted comments. Comments were requested on the draft final standards by October 15, 1977.

One hundred and one comments were received and the final standards reflect a thorough evaluation of these comments. Several comments resulted in changes to the proposed standards. A detailed discussion of the comments and changes made to the proposed standards is contained in volume 2 of the SSEIS, which was distributed along with a copy of the final standards to all interested parties prior to today's promulgation of final standards.

Significant Comments

Most of the comment letters received by EPA contained multiple comments. The most significant comments and changes made to the proposed standards are discussed below:

NEED FOR STANDARDS

Numerous commenters questioned whether grain elevators should be regulated since the industry is a small contributor to nationwide emissions of particulate matter and grain dust is not hazardous or toxic.

The standards were proposed under section 111 of the Clean Air Act. This section of the act requires that standards of performance be established for new stationary sources which contribute to air pollution. Existing sources are not affected unless they are reconstructed, or modified in such a way as to increase emissions. The overriding purpose of standards of performance is to prevent new air pollution problems from developing by requiring maximum feasible control of emissions from new, modified, or reconstructed sources at the time of their construction. This is helpful in attaining and maintaining the National Ambient Air Quality Standard (NAAQS) for suspended particulate matter.

The Report of the Committee on Public Works of the United States Senate in September 1970 (Senate Report No. 91-1196), listed grain elevators as a source for which standards of performance should be developed. In addition, a study of 200 industrial cat-

egories of sources, which were evaluated to develop a long-range plan for setting standards of performance for particulate matter, ranked grain elevators relatively high. The categories were ranked in order of priority based on potential decrease in emissions. Various grain handling operations ranked as follows: Grain processing—4; grain transfer—6; grain cleaning and screening—8; and grain drying—33. Therefore, grain elevators are a significant source of particulate matter emissions and standards of performance have been developed for this source category.

Many commenters felt, however, that it was unreasonable to require small country elevators to comply with the proposed standards because of their remote location and small amount of emissions. This sentiment was reflected in the 1977 amendments to the Clean Air Act which exempted country elevators with a grain storage capacity of less than 88,100 m^3 (ca. 2.5 million U.S. bushels) from standards of performance. Consequently, the scope of the proposed standards has been narrowed and the promulgated standards apply only to new, modified, or reconstructed facilities within grain elevators with a permanent storage capacity in excess of 88,100 m^3.

A number of commenters also felt small flour mills should not be covered by standards of performance because they are also small sources of particulate matter emissions and handle less grain than some country elevators which were exempted from standards of performance by the 1977 amendments to the Clean Air Act. These processors are considered to be relatively small sources of particulate matter emissions that are best regulated by State and local regulations. Consequently, grain storage elevators at wheat flour mills, wet corn mills, dry corn mills (human consumption), rice mills, and soybean oil extraction plants with a storage capacity of less than 35,200 m^3 (ca. 1 million U.S. bushels) of grain are exempt from the promulgated standards.

With regard to the hazardous nature or toxicity of grain dust, the promulgated standards should not be interpreted to imply that grain dust is considered hazardous or toxic, but merely that the grain elevator industry is considered a significant source of particulate matter emissions. Studies indicate that, as a general class, particulate matter causes adverse health and welfare effects. In addition, some studies indicate that dust from grain elevators causes adverse health effects to elevator workers and that grain dust emissions are a factor contributing to an increased incidence of asthma attacks in the general population living in the vicinity of grain elevators.

EMISSION CONTROL TECHNOLOGY

A number of commenters were concerned with the reasonableness of the emission control technology which was used as the basis for the proposed standards limiting emissions from railcar unloading stations and grain dryers.

A number of commenters believed it was unreasonable to base the standards on a four-sided shed to capture emissions from railcar unloading stations at grain elevators which use unit trains. The data supporting the proposed standards were based on observations of visible emissions at a grain elevator which used this type of shed to control emissions from the unloading of railcars. This grain elevator, however, did not use unit trains. Based on information included in a number of comments, the lower rail rate for grain shipped by unit trains places a limit on the amount of time a grain elevator can hold the unit train. The additional time required to uncouple and recouple each car individually could cause a grain elevator subject to the proposed standards to exceed this time limit and thus lose the cost benefit gained by the use of unit trains. In light of this fact, the proposed visible emission limit for railcar unloading is considered unreasonable. The promulgated standards, therefore, are based upon the use of a two-sided shed for railcar unloading stations. This change in the control technology resulted in a change to the visible emission limit for railcar unloading stations and is discussed later.

A number of comments were received concerning the proposed standard for column dryers. The proposed standards would have permitted the maximum hole size in the perforated plates used in column dryers to be no larger than 2.1 mm (0.084 inch) in diameter for the dryer to automatically be in compliance with the standard. A few comments contained visible emission data taken by certified opacity observers which indicated that column dryers with perforated plates containing holes of 2.4 mm (0.094 inch) diameter could meet a 0-percent opacity emission limit. Other comments indicated that sorghum cannot be dried in column dryers with a hole size smaller than 2.4 mm (0.094 inch) diameter without plugging problems. In light of these data and information, the specification of 2.1 mm diameter holes is considered unreasonable and the promulgated standards apply only to column dryers containing perforated plates with hole sizes greater than 2.4 mm in diameter.

STRINGENCY OF THE STANDARDS

Many commenters questioned whether the standards for various affected facilities could be achieved even if the best system of emission reduction were installed, maintained, and properly operated. These commenters pointed out that a number of variables can affect the opacity of visible emissions during unloading, handling, and loading of grain and they questioned whether enough opacity observation had been taken to assure that the standards could be attained under all operating conditions. The variables mentioned most frequently were wind speed and type, dustiness, and moisture content of grain.

It is true that wind speed could have some effect on the opacity of visible emissions. A well-designed capture system should be able to compensate for this effect to a certain extent, although some dust may escape if wind speed is too high. Compliance with standards of performance, however, is determined only under conditions representative of normal operation, and judgment by State and Federal enforcement personnel will take wind conditions into account in enforcing the standards.

It is also true that the type, dustiness, and moisture content of grain affect the amount of particulate matter emissions generated during unloading, handling, and loading of grain. A well-designed capture system, however, should be designed to capture dust under adverse conditions and should, therefore, be able to compensate for these variables.

In developing the data base for the proposed standards, over 60 plant visits were made to grain terminal and storage elevators. Various grain unloading, handling, and loading operations were inspected under a wide variety of conditions. Consequently, the standards were not based on conjecture or surmise, but on observations of visible emissions by certified opacity observers at well-controlled existing grain elevators operating under routine conditions. Not all grain elevators were visited, however, and not all operations within grain elevators were inspected under all conditions. Thus, while the proposed standards were based upon a sufficiently broad data base to allow extrapolation of the data, particular attention was paid to those comments submitted during the public comment period which included visible emission data taken by certified observers from operations at grain elevators which were using the same emission control systems the proposed standards were based upon. Evaluation of these data indicates that the visible emission limit for truck unloading stations and railcar loading stations should be 5 percent opacity instead of 0 percent opacity which was proposed. The promulgated standards, therefore, limit visible emissions from these facilities to 5 percent opacity.

As discussed earlier, the emission control technology selected as the basis for the visible emissions standard for railcar unloading has been changed from a four-sided shed to a two-sided shed. Visible emission data included with the public comments indicate that emissions from a two-sided shed will not exceed 5 percent opacity. Consequently, the promulgated standards limit visible emissions from railcar unloading stations to 5 percent opacity.

A number of commenters also indicated that the opacity limit included in the proposed standards for barge loading was too stringent. One commenter indicated that the elevator operator had no control over when the "topping off" operation commenced because the ship captain and the stevedores decide when to start "topping off." Several State agencies commented that the standards should be at least 20 percent opacity. Based on these comments, the standards for barge and ship loading operations have been increased to 20 percent opacity during all loading operations. The comments indicate that this standard will still require use of the emission control technology upon which the proposed standards were based.

Data included with the public comments confirm that a visible emission limit of 0 percent opacity is appropriate for grain handling equipment, grain dryers, and emission control equipment. Consequently, the visible emission limits for these facilities have not been changed.

OPACITY

Many commenters misunderstood the concept of opacity and how it is used to measure visible emissions. Other commenters stated that opacity measurements were not accurate below 10 to 15 percent opacity and a standard below these levels was unenforceable.

Opacity is a measure of the degree to which particulate matter or other visible emissions reduce the transmission of light and obscure the view of an object in the background. Opacity is expressed on a scale of 0 to 100 percent with a totally opaque plume assigned a value of 100 percent opacity. The concept of opacity has been used in the field of air pollution control since the turn of the century. The concept has been upheld in courts throughout the country as a reasonable and effective means of measuring visible emissions.

Opacity for purposes of determining compliance with the standard is not determined with instruments but is determined by a qualified observer following a specific procedure. Studies have demonstrated that certified observers can accurately determine the opacity of visible emissions. To become certified, an individual must be trained and must pass an examination demonstrating his ability to accurately assign opacity levels to visible emissions. To remain certified, this training must be repeated every 6 months.

In accordance with method 9, the procedure followed in making opacity determinations requires that an observer be located in a position where he has a clear view of the emission source with the sun at his back. Instantaneous opacity observations are recorded every 15 seconds for 6 minutes (24 observations). These observations are recorded in 5 percent increments (i.e., 0, 5, 10, etc.). The arithmetic average of the 24 observations, rounded off to the nearest whole number (i.e., 0.4 would be rounded off to 0), is the value of the opacity used for determining compliance with visible emission standards. Consequently, a 0 percent opacity standard does not necessarily mean there are no visible emissions. It means either that visible emissions during a 6-minute period are not sufficient to cause a certified observer to record them as 5 percent opacity, or that the average of the twenty-four 15-second observations is calculated to be less than 0.5 percent. Consequently, although emissions released into the atmosphere from an emission source may be visible to a certified observer, the source may still be found in compliance with a 0 percent opacity standard.

Similarly, a 5-percent opacity standard permits visible emissions to exceed 5 percent opacity occasionally. If, for example, a certified observer recorded the following twenty-four 15-second observations over a 6-minute period: 7 observations at 0 percent opacity; 11 observations at 5 percent opacity; 3 observations at 10 percent opacity; and 3 observations at 15 percent opacity, the average opacity would be calculated as 5.4 percent. This value would be rounded off to 5 percent opacity and the source would be in compliance with a 5 percent opacity standard.

Some of the commenters felt the proposed standards were based only on one 6-minute reading of the opacity of visible emissions at various grain elevator facilities. None of the standards were based on a single 6-minute reading of opacity. Each of the standards were based on the highest opacity readings recorded over a period of time, such as 2 or 4 hours, at a number of grain elevators.

A number of commenters also felt the visible emission standards were too stringent in light of the maximum absolute error of 7.5 percent opacity associated with a single opacity observation. The methodology used to develop and enforce visible emission standards, however, takes into account this observer error. As discussed above, visible emission standards are based on observations recorded by certified observers at well-controlled existing facilities operating under normal conditions. When feasible, such observations are made under conditions which yield the highest opacity readings such as the use of a highly contrasting background. These readings then serve as the basis for establishing the standards. By relying on the highest observations, the standards inherently reflect the highest positive error introduced by the observers.

Observer error is also taken into account in enforcement of visible emission standards. A number of observations are normally made before an enforcement action is initiated. Statistically, as the number of observations increases, the error associated with these observations taken as a group decreases. Thus, while the absolute positive error associated with a single opacity observation may be 7.5 percent, the error associated with a number of opacity observations, taken to form the basis for an enforcement action, may be considerably less than 7.5 percent.

ECONOMIC IMPACT

Several commenters felt the estimated economic impact of the proposed standards was too low. Some commenters questioned the ventilation flow rate volumes used in developing these estimates. The air evacuation flow rates and equipment costs used in estimating the costs associated with the standards, however, were based on information obtained from grain elevator operators during visits to facilities which were being operated with visible emissions meeting the proposed standards. These air evacuation flow rates and equipment costs were also checked against equipment vendor estimates and found to be in reasonable agreement. These ventilation flow rates, therefore, are compatible with the opacity standards. Thus, the unit cost estimates developed for the proposed standards are considered reasonably accurate.

Many commenters felt that the total cost required to reduce emissions to the levels necessary to comply with the visible emission standards should be assigned to the standards. The relevant costs, however, are those incremental costs required to comply with these standards above the costs required to comply with existing State or local air pollution regulations. While it is true that some States have no regulations, other States have regulations as stringent as the promulgated standards. Consequently, an estimate of the costs required to comply with the typical or average State regu-

lation, which lies between these extremes, is subtracted from the total cost of complying with the standards to identify the cost impact directly associated with these standards.

Most State and local regulations, for example, require aspriation of truck dump pit grates and installation of cyclones to remove particulate matter from the aspirated air before release to the atmosphere. The promulgated standards would require the addition of a bifold door and the use of a fabric filter baghouse instead of a cyclone. The cost associated with the promulgated standards, therefore, is only the cost of the bifold doors and the difference in cost between a fabric filter baghouse and a cyclone.

In conclusion, the unit cost estimates developed for the proposed standards are essentially correct and generally reflect the costs associated with the promulgated standards. As a result, the economic impact of the promulgated standards on an individual grain elevator is considered to be about the same as that of the proposed standards. The maximum additional cost that would be imposed on most grain elevators subject to compliance with the promulgated standards will probably be less than a cent per bushel. The impact of these additional costs imposed on an individual grain elevator will be small.

Based on information contained in comments submitted by the National Grain and Feed Association, approximately 200 grain terminal elevators and grain storage elevators at grain processing plants will be covered by the standards over the next 5 years. Consequently, over this 5-year period the total incremental costs to control emissions at these grain elevators to comply with the promulgated standards, above the costs to control emissions at these elevators to comply with State or local air pollution control requirements, is $15 million in capital costs and $3 million in annualized costs in the 5th year. Based on this estimate of the national economic impact, the promulgated standards will have no significant effect on the supply and demand of grain or grain products, or on the growth of the domestic grain industry.

ENERGY IMPACT

A number of commenters believed that the energy impact associated with the proposed standards had been underestimated and that the true impact would be much greater. As pointed out above, the major reason for this disagreement is probably due to the fact that these commenters assigned the full impact of air pollution control to the proposed standards, whereas the impact associated with compliance with existing State and local air pollution control requirements should be subtracted. In the example discussed above concerning costs, the additonal energy requirements associated with the promulgated standards is simply the difference in energy required to operate a fabric filter baghouse compared to a cyclone.

For emission control equipment such as cyclones and fabric filter bag houses, energy consumption is directly proportional to the pressure drop across the equipment. It was assumed that the pressure drop across a cyclone required to comply with existing State and local requirements would be about 80 percent of that across a fabric filter baghouse required to comply with the promulgated standards. This is equivalent to an increase in energy consumption required to operate air pollution control equipment of about 25 percent. This represents an increase of less than 5 percent in the totl energy consumption of a grain elevator.

Assuming 200 grain elevators become subject to the promulgated standards over the next 5 years, this energy impact will increase national energy consumption by less than 1,600 m^3 (ca. 10,000 U.S. barrels) per year in 1982. This amounts to less than 2 percent of the capacity of a large marine oil tanker and is an insignificant increase in energy consumption.

MODIFICATION

Many commenters were under the mistaken impression that all existing grain elevators would have to comply with the proposed standards and that retrofit of air pollution control equipment on existing facilities within grain elevators would be required. This is not the case. The proposed standards would have applied only to new, modified, or reconstructed facilities within grain elevators. Similarly, the promulgated standards apply only to new, modified, or reconstructed facilities and not existing facilities.

Modified facilities are only subject to the standards if the modification results in increased emissions to the atmosphere from that facility. Furthermore, any alteration which is considered routine maintenance or repair is not considered a modification. Where an alteration is considered a modification, only those facilities which are modified have to comply with the standards, not the entire grain elevator. Consequently, the standards apply only to major alterations of individual facilities at existing grain elevators which result in increased emissions to the atmosphere, not to alterations which are considered routine maintenance and repair. Major alterations that do not result in increased emissions, such as alterations where existing air pollution control equipment is upgraded to maintain emissions at their previous level, are not considered modifications.

The following examples illustrate how the promulgated standards apply to a grain elevator under various circumstances. The proposed standards would have applied in the same way.

(1) If a completely new grain elevator were built, all affected facilities would be subject to the standards.

(2) If a truck unloading station at an existing grain elevator were modified by making a capital expenditure to increase unloading capacity and this resulted in increased emissions to the atmosphere in terms of pounds per hour, then only that affected facility (i. e., the modified truck unloading station) would be subject to the standards. The remaining facilities within the grain elevator would not be subject to the standards.

(3) if a grain elevator contained three grain dryers and one grain dryer were replaced with a new grain dryer, only the new grain dryer would be subject to the standards.

The initial assessment of the potential for modification of existing facilities concluded that few modifications would occur. The few modifications that were considered likely to take place would involve primarily the upgrading of existing country grain elevators into high throughput grain elevator terminals. A large number of commenters, however, indicated that they believed many modifications would occur and that many existing grain elevators would be required to comply with the standards.

To resolve this confusion and clarify the meaning of modification, a meeting was held with representatives of the grain elevator industry to identify various alterations to existing facilities that might be considered modifications. A list of alterations was developed which frequently occur within grain elevators, primarily to reduce labor costs or to increase grain handling capacity, although not necessarily annual grain throughput. The impact of considering four of these alterations as modifications, subject to compliance with the standards, was viewed as unreasonable. Consequently, they are exempted from consideration as modifications in the promulgated standards.

In particular, the four alterations within grain elevators which are specifically exempt from the promulgated standards are (1) The addition of gravity load-out spouts to existing grain storage or grain transfer bins; (2) the addition of electronic automatic grain weighing scales which increases hourly grain handling capacity; (3) the replacement of motors and drive trains driving existing grain handling equipment with larger motors and drive

trains which increases hourly grain handling capacity; and (4) the addition of grain storage capacity with no increase in hourly grain handling capacity.

If the first alteration were considered a modification, this could require installation of a load-out shed thereby requiring substantial reinforcement of the grain storage or grain transfer bin to support the weight of emission control equipment. In light of the relatively small expenditure usually required to install additional gravity load-out spouts to existing grain storage or transfer bins, and the relatively large expenditure that would be required to install a load-out shed or to reinforce the storage or transfer bin, consideration of this sort of alteration within an existing grain elevator as a modification was viewed as unreasonable.

Under the general modification regulation which applies to all standards of performance, alteration two, the addition of electronic automatic grain weighing scales, would be considered a change in the method of operation of the affected facility if it were to increase the hourly grain throughput. If this alteration were to increase emissions to the atmosphere and require a capital expenditure, the grain receiving or loading station whose method of operation had changed (i.e., increased grain throughput), would be considered a modified facility subject to the standards. Consideration of this type of alteration, which would result in only minor changes to a facility, is viewed as unreasonable in light of the relatively high expenditure this could require for existing grain elevators to comply with the standards.

Alterations three and four, replacement of existing motors and drives with larger motors and drives and addition of grain storage capacity with no increase in the hourly grain handling capacity, would probably not be considered modifications under the general modification regulation. Since it is quite evident that there was considerable confusion concerning modifications, however, alterations three and four, along with alterations one and two discussed above, are specifically exempt from consideration as modifications in the promulgated standards.

The modification provisions in 40 CFR 60.14(e) exempt certain physical or operational changes from being considered as modifications, even though an increase in emission rate occurs. Under 40 CFR 60.14(e)(2), if an increase in production rate of an existing facility can be accomplished without a capital expenditure on the stationary source containing that facility, the change is not considered a modification.

A capital expenditure is defined as any amount of money exceeding the product of the Internal Revenue Service (IRS) "annual asset guideline repair allowance percentage" times the basis of the facility, as defined by section 1012 of the Internal Revenue Code. In the case of grain elevators, the IRS has not listed an annual asset guideline repair allowance percentage. Following discussions with the IRS, the Department of Agriculture, and the grain elevator industry, the Agency determined that 6.5 percent is the appropriate percentage for the grain elevator industry. If the capital expenditures required to increase the production rate of an existing facility do not exceed the amount calculated under the IRS formula, the change in the facility is not considered a modification. If the expenditures exceed the calculated amount, the change in operation is considered a modification and the facility must comply with NSPS.

Often a physical or operational change to an existing facility to increase production rate will result in an increase in the production rate of another existing facility, even though it did not undergo a physical or operational change. For example, if new electronic weighing scales were added to a truck unloading station to increase grain receipts, the production rate and emission rate would increase at the unloading station. This could result in an increase in production rate and emission rate at other existing facilities (e.g., grain handling operations) even though physical or operational changes did not occur. Under the present wording of the regulation, expenditures made throughout a grain elevator to adjust for increased production rate would have to be considered in determining if a capital expenditure had been made on each facility whose operation is altered by the production increase. If the capital expenditure made on the truck unloading station were considered to be made on each existing facility which increased its production rate, it is possible that the alterations on each such facility would qualify as modifications. Each facility would, therefore, have to meet the applicable NSPS.

Such a result is inconsistent with the intent of the regulation. The Agency intended that only capital expenditures made for the changed facility are to be considered in determining if the change is a modification. Related expenditures on other existing facilities are not to be considered in the calculation. To clarify the regulation, the phrase "the stationary source containing" is being deleted. Because this is a clarification of intent and not a change in policy, the amendment is being promulgated as a final regulation without prior proposal.

PERFORMANCE TEST

Several commenters were concerned about the costs of conducting performance tests on fabric filter baghouses. These commenters stated that the costs involved might be a very substantial portion of the costs of the fabric filter baghouse itself, and several baghouses may be installed at a moderately sized grain elevator. The commenters suggested that a fabric filter baghouse should be assumed to be in compliance without a performance test if it were properly sized. In addition, the opacity standards could be used to demonstrate compliance.

It would not be wise to waive performance tests in all cases. Section 60.8(b) already provides that a performance test may be waived if "the owner or operator of a source has demonstrated by other means to the Administrator's satisfaction that the affected facility is in compliance with the standard." Since performance tests are heavily weighed in court proceedings, performance test requirements must be retained to insure effective enforcement.

SAFETY CONSIDERATIONS

In December 1977, and January 1978, several grain elevators exploded. Allegations were made by various individuals within the grain elevator industry contending that Federal air pollution control regulations were contributing to an increase in the risk of dust explosions at grain elevators by requiring that building doors and windows be closed and by concentrating grain dust in emission control systems. Investigation of these allegations indicates they are false.

There were no Federal regulations specifically limiting dust emissions from grain elevators which were in effect at the time of these grain elevator explosions. A number of State and local air pollution control agencies, however, have adopted regulations which limit particulate matter emissions from grain elevators. Many of these regulations were developed by States and included in their implementation plans for attaining and maintaining the NAAQS for particulate matter. Particulate matter, as a general class, can cause adverse health effects; and the NAAQS, which were promulgated on April 30, 1971, were established at levels necessary to protect the public health and welfare.

Although compliance with State or local air pollution control regulations, or the promulgated standards of performance, can be achieved in some instances by closing building doors and windows, this is not the objective of these regulations and is not an accept-

able means of compliance. The objective of State and local regulations and the promulgated standards of performance is that dust be captured at those points within grain elevators where it is generated through the use of effective hoods or enclosures with air aspiration, and removed from the grain elevator to an air pollution control device. This is the basis for the promulgated standards of performance. Compliance with air pollution control regulations and the promulgated standards of performance does not require that windows and doors in buildings be closed to prevent escape of dust and this practice may in fact be a major safety hazard.

Fabric filter baghouses have been used for many years to collect combustible dusts such as wheat flour. There have been extremely few incidences of dust explosions or fires caused by such emission control devices in the flour industry. In the grain elevator industry, no air pollution control device has been identified as the cause of a grain elevator explosion. Consequently, fabric filter baghouses, or emission control devices in general, which are properly designed, operated, and maintained will not contribute to an increased risk of dust explosions at grain elevators.

These conclusions were supported at a joint meeting between representatives of EPA; the Federal Grain Inspection Service (FGIS) of the Department of Agriculture; the Occupational Safety and Health Administration (OSHA); the grain elevator industry; and the fire insurance industry. Installation and use of properly designed, operated, and maintained air pollution control systems were found to be consistent with State and local air pollution regulations, OSHA regulations, and national fire codes. Chapter 6 of the National Fire Code for Grain Elevators and Bulk Grain Handling Facilities (NFPA No. 61-B), which was prepared by the National Fire Protection Association, for example, recommends that "dust shall be collected at all dust producing points within the processing facilities." The code then goes on to specially recommend that all elevator boots, automatic scales, scale hoppers, belt loaders, belt discharges, trippers, and discharge heads, and all machinery such as cleaners, scalpers, and similar devices be provided with enclosures or dust hoods and air aspiration.

Consequently, compliance with existing State or local air pollution regulations, or the promulgated standards of performance, will not increase the risk of dust explosions at grain elevators if the approach taken to meet these regulations is capture and control of dust at those points within an elevator where it is generated. If, however, the approach taken is merely to close doors, windows, and other openings to trap dust within the grain elevator, or the air pollution control equipment is allowed to deteriorate to the point where it is no longer effective in capturing dust as it is generated, then ambient concentrations of dust within the elevator will increase and the risk of explosion will also increase.

The House Subcommittee on Compensation, Health, and Safety is currently conducting oversight hearings to determine if something needs to be done to prevent these disastrous grain elevator explosions. The FGIS, EPA, and OSHA testified at these oversight hearings on January 24 and 25, 1978. The testimony indicated that dust should be captured and collected in emission control devices in order to reduce the incidence of dust explosions at grain elevators, protect the health of employees from such ailments as "farmer's lung," and prevent air pollution. Consequently, properly operated and maintained air pollution control equipment will not increase the risk of grain elevator explosions.

Miscellaneous

It should be noted that standards of performance for new sources established under section 111 of the Clean Air Act reflect the degree of emission limitation achievable through application of the best adequately demonstrated technological system of continuous emission reduction (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements). State implementation plans (SIP's) approved or promulgated under section 110 of the act, on the other hand, must provide for the attainment and maintenance of national ambient air quality standards (NAAQS) designed to protect public health and welfare. For that purpose, SIP's must in some cases require greater emission reductions than those required by standards of performance for new sources. Section 173 of the act requires, among other things, that a new or modified source constructed in an area in violation of the NAAQS must reduce emissions to the level which reflects the "lowest achievable emission rate" for such category of source as defined in section 171(3). In no event can the emission rate exceed any applicable standard of performance.

A similar situation may arise when a major emitting facility is to be constructed in a geographic area which falls under the prevention of significant deterioration of air quality provisions of the act (part C). These provisions require, among other things, that major emitting facilities to be constructed in such areas are to be subject to best available control technology for all pollutants regulated under the act. The term "best available control technology" (BACT), as defined in section 169(3), means "an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of 'best available control technology' result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to sections 111 or 112 of this Act."

Standards of performance should not be viewed as the ultimate in achievable emission control and should not preclude the imposition of a more stringent emission standard, where appropriate. For example, while cost of achievement may be an important factor in determining standards of performance applicable to all areas of the country (clean as well as dirty), statutorily, costs do not play such a role in determining the "lowest achievable emission rate" for new or modified sources locating in areas violating statutorily mandated health and welfare standards. Although there may be emission control technology available that can reduce emissions below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. This in no way should preclude its use in situations where cost is a lesser consideration, such as determination of the "lowest achievable emission rate."

In addition, States are free under section 116 of the act to establish even more stringent emission limits than those established under section 111 or those necessary to attain or maintain the NAAQS under section 110. Thus, new sources may in some cases be subject to limitations more stringent than standards of performance under section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

Economic Impact Assessment

An economic assessment has been prepared as required under section 317 of the Act."

Dated: July 26, 1978.

DOUGLAS M. COSTLE,
Administrator.

REFERENCES

1. "Standards Support and Environmental Impact Statement—Volume I: Proposed Standards of Performance for Grain Elevator Industry," U.S. Environmental Protection Agency—OAQPS, EPA-450/2-77-001a, Research Triangle Park, N.C., January 1977.
2. "Draft—For Review Only: Evaluation of Public Comments: Standards of Performance For Grain Elevators," U.S. Environmental Protection Agency—OAQPS, Research Triangle Park, N.C., August 1977.
3. "Standards Support and Environmental Impact Statement—Volume II: Promulgated Standards of Performance for Grain Elevator Industry," U.S. Environmental Protection Agency—OAQPS, EPA-450/2-77-001b, Research Triangle Park, N.C., April 1978.

Part 60 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart A—General Provisions

1. Section 60.2 is amended by revising paragraph (v). The revised paragaraph reads as follows:

§ 60.2 Definitions.

* * * * *

(v) "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by the reference methods specified under each applicable subpart, or an equivalent or alternative method.

* * * * *

§ 60.14 [Amended]

2. Section 60.14 is amended by deleting the words "the stationary source containing" from paragraph (e)(2).

3. Part 60 is amended by adding subpart DD as follows:

Subpart DD—Standards of Performance for Grain Elevators

Sec.
60.300 Applicability and designation of affected facility.
60.301 Definitions.
60.302 Standard for particulate matter.
60.303 Test methods and procedures.
60.304 Modification.

AUTHORITY: Secs. 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart DD—Standards of Performance for Grain Elevators

§ 60.300 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to each affected facility at any grain terminal elevator or any grain storage elevator, except as provided under § 60.304(b). The affected facilities are each truck unloading station, truck loading station, barge and ship unloading station, barge and ship loading station, railcar loading station, railcar unloading station, grain dryer, and all grain handling operations.

(b) Any facility under paragraph (a) of this section which commences construction, modification, or reconstruction after (date of reinstatement of proposal) is subject to the requirements of this part.

§ 60.301 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the act and in subpart A of this part.

(a) "Grain" means corn, wheat, sorghum, rice, rye, oats, barley, and soybeans.

(b) "Grain elevator" means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded.

(c) "Grain terminal elevator" means any grain elevator which has a permanent storage capacity of more than 88,100 m^3 (ca. 2.5 million U.S. bushels), except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots.

(d) "Permanent storage capacity" means grain storage capacity which is inside a building, bin, or silo.

(e) "Railcar" means railroad hopper car or boxcar.

(f) "Grain storage elevator" means any grain elevator located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant which has a permanent grain storage capacity of 35,200 m^3 (ca. 1 million bushels).

(g) "Process emission" means the particulate matter which is collected by a capture system.

(h) "Fugitive emission" means the particulate matter which is not collected by a capture system and is released directly into the atmosphere from an affected facility at a grain elevator.

(i) "Capture system" means the equipment such as sheds, hoods, ducts, fans, dampers, etc. used to collect particulate matter generated by an affected facility at a grain elevator.

(j) "Grain unloading station" means that portion of a grain elevator where the grain is transferred from a truck, railcar, barge, or ship to a receiving hopper.

(k) "Grain loading station" means that portion of a grain elevator where the grain is transferred from the elevator to a truck, railcar, barge, or ship.

(l) "Grain handling operations" include bucket elevators or legs (excluding legs used to unload barges or ships), scale hoppers and surge bins (garners), turn heads, scalpers, cleaners, trippers, and the headhouse and other such structures.

(m) "Column dryer" means any equipment used to reduce the moisture content of grain in which the grain flows from the top to the bottom in one or more continuous packed columns between two perforated metal sheets.

(n) "Rack dryer" means any equipment used to reduce the moisture content of grain in which the grain flows from the top to the bottom in a cascading flow around rows of baffles (racks).

(o) "Unloading leg" means a device which includes a bucket-type elevator which is used to remove grain from a barge or ship.

§ 60.302 Standard for particulate matter.

(a) On and after the 60th day of achieving the maximum production rate at which the affected facility will be operated, but no later than 180 days after initial startup, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere any gases which exhibit greater than 0 percent opacity from any:

(1) Column dryer with column plate perforation exceeding 2.4 mm diameter (ca. 0.094 inch).

(2) Rack dryer in which exhaust gases pass through a screen filter coarser than 50 mesh.

(b) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility except a grain dryer any process emission which:

(1) Contains particulate matter in excess of 0.023 g/dscm (ca. 0.01 gr/dscf).

(2) Exhibits greater than 0 percent opacity.

(c) On and after the 60th day of achieving the maximum production rate at which the affected facility will be operated, but no later than 180 days after initial startup, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere any fugitive emission from:

(1) Any individual truck unloading station, railcar unloading station, or railcar loading station, which exhibits greater than 5 percent opacity.

(2) Any grain handling operation which exhibits greater than 0 percent opacity.

(3) Any truck loading station which exhibits greater than 10 percent opacity.

(4) Any barge or ship loading station which exhibits greater than 20 percent opacity.

(d) The owner or operator of any barge or ship unloading station shall operate as follows:

(1) The unloading leg shall be enclosed from the top (including the receiving hopper) to the center line of the bottom pulley and ventilation to a control device shall be maintained on both sides of the leg and the grain receiving hopper.

(2) The total rate of air ventilated shall be at least 32.1 actual cubic meters per cubic meter of grain handling capacity (ca. 40 ft^3/bu).

(3) Rather than meet the requirements of subparagraphs (1) and (2), of this paragraph the owner or operator may use other methods of emission control if it is demonstrated to the Administrator's satisfaction that they would reduce emissions of particulate matter to the same level or less.

§ 60.303 Test methods and procedures.

(a) Reference methods in appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance with the standards prescribed under § 60.302 as follows:

(1) Method 5 or method 17 for concentration of particulate matter and associated moisture content;

(2) Method 1 for sample and velocity traverses;

(3) Method 2 for velocity and volumetric flow rate;

(4) Method 3 for gas analysis; and

(5) Method 9 for visible emissions.

(b) For method 5, the sampling probe and filter holder shall be operated without heaters. The sampling time for each run, using method 5 or method 17, shall be at least 60 minutes. The minimum sample volume shall be 1.7 dscm (ca. 60 dscf).

(Sec. 114, Clean Air Act, as amended (42 U.S.C. 7414).)

§ 60.304 Modifications.

(a) The factor 6.5 shall be used in place of "annual asset guidelines repair allowance percentage," to determine whether a capital expenditure as defined by § 60.2(bb) has been made to an existing facility.

(b) The following physical changes or changes in the method of operation shall not by themselves be considered a modification of any existing facility:

(1) The addition of gravity loadout spouts to existing grain storage or grain transfer bins.

(2) The installation of automatic grain weighing scales.

(3) Replacement of motor and drive units driving existing grain handling equipment.

(4) The installation of permanent storage capacity with no increase in hourly grain handling capacity.

[FR Doc. 78-21444 Filed 8-2-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 60]

[FRL 907-3]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Grain Elevators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reinstatement of proposed rule.

SUMMARY: Proposed standards of performance limiting emissions of particulate matter from new, modified and reconstructed grain elevators are being reinstated. The proposed standards were suspended on June 24, 1977, to provide time for a thorough review of the usually large number of public comments received. Suspension was necessary to avoid creating legal uncertainties for those grain elevator operators who might have undertaken various expansion or alteration projects before promulgation of final standards. The effect of this reinstatement is that any grain elevator the construction or modification of which is commenced after August 3, 1978, is subject to the final grain elevator standards promulgated elsewhere in this issue of the FEDERAL REGISTER.

EFFECTIVE DATE: August 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Don R. Goodwin, Director, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711; telephone 919-541-5271.

SUPPLEMENTARY INFORMATION: On January 13, 1977, standards of performance were proposed for the grain elevator industry (42 FR 2842) under the authority of section 111 of the Clean Air Act. Public comments were requested on the proposal in the FEDERAL REGISTER publication. About 2,000 comments were recieved from grain elevator operators, vendors of equipment, Congressmen, State and local air pollution control agencies, other Federal Agencies, and individual U.S. citizens. Many of the comments were based on a misunderstanding that the proposed standard would cover existing as well as new grain elevators. A number of comments, however, contained a significant amount of useful data and information. Due to the time required to review these comments, the proposed standards were suspended on June 24, 1977. This action was necessary to avoid creating legal uncertainties for those grain elevator operators who might have undertaken various expansions or alteration projects before promulgation of final standards.

Final standards of performance limiting emissions of particulate matter from new, modified, and reconstructed grain elevators are promulgated elsewhere in this issue of the FEDERAL REGISTER. The final standards reflect a thorough evaluation of all comments recieved on the proposed standards.

All facilities at grain elevators that are covered by the final standards, which are constructed, modified, or reconstructed on or after August 3, 1978 will be subject to compliance with these standards.

Dated: July 26, 1978.

DOUGLAS M. COSTLE,
Administrator.

[FR Doc. 78-21443 Filed 8-2-78; 8:45 am]

Federal Register

THURSDAY, AUGUST 3, 1978
PART IV



IMPROVING GOVERNMENT REGULATIONS

REPORTS FROM INDEPENDENT REGULATORY AGENCIES

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[6750-01]

FEDERAL TRADE COMMISSION

COMMISSIONER'S REPORT TO THE PRESIDENT AND TO THE CONGRESS ON REGULATORY REFORM

AGENCY: Federal Trade Commission.

ACTION: Notice of report.

SUMMARY: By letter of March 23, 1978, President Carter requested the independent agencies to voluntarily institute procedures and policies to improve their regulations similar to those required by Executive Order 12044 for the exceutive agencies and to report on the progress of such efforts no later than June 30, 1978.

The following report, which the Federal Trade Commission submitted to the President and to Congress on June 22, 1978, demonstrates that except for the Executive Order's requirement that executive agencies publish a semiannual agenda of signficant regulations under development, the procedures or policies of the Order have already been substantially incorporated into existing Federal Trade Commission procedures.

Beginning in July 1978, and during the third week of January thereafter, the Federal Trade Commission will publish in the FEDERAL REGISTER an agenda of regulatory proposals under consideration. Proposed revisions to the Commission's Operating Manual will further implement the policies reflected in the Executive Order.

REFERENCE: Exectuve Order 12044, 43 FR 12661 (1978).

FOR FURTHER INFORMATION CONTACT:

Leslie Rice Melman, Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580, 202-523-3496.

FEDERAL TRADE COMMISSION

REGULATORY REFORM

MAY 1, 1978.

On March 24, 1978, the President issued Executive Order 12044, entitled "Improving Government Regulations." The new Executive Order provides the framework for regulatory reform initiatives by the executive agencies. While the Order is not binding on the independent regulatory agencies, the Federal Trade Commission strongly supports the policies and goals reflected in the Order. The Commission is aware that the costs of regulation are often borne by the consumers and competitors whom regulations are designed to protect and that excessive regulation may result in a misallocation of goods and services. For these reasons, the Commission is committed to minimizing the burden of its regulations and to the principle that simple regulations promoting the desired results are more effective than detailed fiats.

Most of the procedures required in the Executive order are already substantially followed by the Commission through its rules of practice, the provisions of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, Pub. L. No. 93-637, 88 Stat. 2183 (1975), and current or proposed operating procedures. Moreover, the Commission's evaluation and public participation programs go beyond the requirements of the order.

I. THE REGULATION DEVELOPMENT PROCESS

a. Agency head oversight.

The process by which the staff requests Commission resolutions opening industrywide investigations or initiating rulemaking proceedings insures the involvement of policymaking officials before the allocation of significant resources to rulemaking. The staff memorandums that accompany such requests routinely describe the issues to be considered, alternative approaches to rulemaking, and target dates for completion. Moreover, proposed revisions to the Commission's Operating Manual recommend that staff prepare a strategy memorandum to develop both the legal and economic aspects of a contemplated rule and a broad-scale plan for the conduct of the investigation before proposing the investigation to the Commission. The strategy memorandum, which delineates abuses, proposed remedies, alternatives to rulemaking, and the types of information required, facilitates discussion at the preliminary stages of review and may also serve as the basis for the memorandum to the Commission requesting the opening of a formal investigation.

b. Impact analysis.

The initial staff report, the nonexempt portions of which are placed on the public record at the time of the notice of proposed rulemaking, is similar to the formal "regulatory analysis" outlined in section 3 of the Order. The staff report does not follow a prescribed format. Proposed revisions to the Commission's Operating Manual recommend, however, that the report include: (1) a summary and analysis of relevant information concerning the existence of unfair practices; (2) a discussion of legal theories underlying the proposed course of action; (3) a discussion of possible effects on State and local laws; (4) a discussion of alternatives to rulemaking; and (5) an analysis of compliance considerations.

While the Commission believes that full-scale prospective impact analyses would inordinately delay Commission rulemaking proceedings and relief to the consuming public if prepared at this early stage in the decisionmaking process, it nevertheless requires that prior to proposing rules, staff scrutinize their prospective economic impact.[1] Evaluation committees comprising lawyers and economists conduct initial screenings of proposed rules to determine if there is a sufficient net benefit to warrant commencement of formal proceedings.

The detailed statement of basis and purpose that must accompany trade regulation rules promulgated under section 18 of the Federal Trade Commission Act further insures that the Commission has considered the consequences of regulation. In reviewing the rulemaking record, the Commission considers a number of factors, including the economic effect on small businesses and consumers.[2] The Commission's analysis is disclosed in the Statement of Basis and Purpose. The Commission has collected baseline data on trade regulation rules concerning over-the-counter drug advertising, franchising, and warranties.

c. Public participation.

Section 3(c) of the Executive Order requires executive agencies to provide an early and meaningful opportunity for public participation in the development of proposed regulations, including, when possible, a minimum 60-day comment period.

The Commission's public participation program exceeds the requirements outlined in the President's Order. The vast majority of Commission substantive rulemaking is governed by statutes that require more procedural formalities than the notice and comment provisions of 5 U.S.C. 553. Title I of the Magnuson-Moss Act, 15 U.S.C. 2309, provides for an informal hearing and substantial evidence review of Commission rules concerning consumer product warranties. In the case of trade regulation rules promulgated under section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, there is, in addition, a limited right of cross-examination on disputed issues of material fact. While not required by statute or the Commission's Rules of Practice, a comment period of at least 60 days is the minimum allowed with respect to substantive rules. A much longer period for public comment is allowed with respect to proposed trade regulation rules promulgated under section 18 of the act. For example, the

[1] See H. Rept. No. 93-1107, 93d Cong., 2d sess. 47. The House report recommends that full-scale economic investigations await implementation of rules promulgated by the Commission to avoid such delay.

[2] Section 18(d)(1), 15 U.S.C. 57(d)(1), requires that the Statement of Basis and Purpose include, in addition, a statement as to the prevalence of the acts and a statement as to the manner and context in which such acts or practices are unfair or deceptive.

Commission has established a 180-day comment period for its recently announced rulemaking proceeding on television advertising directed at children.

Moreover, the 1975 Magnuson-Moss Act authorized the Commission to compensate certain parties for participation in rulemaking proceedings conducted under section 18 of the Federal Trade Commission Act who could not otherwise afford to represent their interests effectively.[3] Five hundred thousand dollars have been appropriated annually since enactment of the enabling legislation. A percentage of these funds has gone to those who have been regulated by the proposed rules in insure a balanced record for each proceeding.

The Commission has also taken steps to bring about increased involvement of State and local government officials early in the rulemaking process. The staff has been directed to consult such officials during the development of trade regulation rules that affect State laws or regulations.

The Commission believes that these efforts will increase public participation in rulemaking and improve agency analyses and awareness of the consequences of rules, which are the stated purposes of the Order.

II. Simplifying Regulations

As required for executive agencies by the Executive Order, the Commission has already taken significant steps to insure that its regulations are as clear as possible. The Commission has employed Dr. Rudolph Flesch, author of "The Art of Readable Writing," to assist Commission staff in writing consumer disclosures in its rules and orders in "readable" English. Dr. Flesch has also advised presiding officers in Commission rulemaking proceedings on how to write final notices of proposed rulemaking in plain English. In addition, the Commission recently retained Dr. Veda Charron, a linguist associated with the Center for Applied Linguistics, to test consumer comprehension of the buyer's notice required in the Commission's proposed trade regulation rule concerning used motor vehicles.

III. Evaluating Regulations

The Commission has been engaged for more than 2 years in the type of review process described in section 4 of the Order. The Bureau of Consumer Protection has instituted a program to reexamine 152 trade practice rules to determine which are outdated in view of changed circumstances, or no longer useful in obtaining compliance with the law. The public has been given an opportunity to comment on staff recommendation with respect to each of these. To date, the Commission has rescinded 111 in their entirety. These account for approximately two-thirds of the pages in the Code of Federal Regulations devoted to Commission substantive rules. Staff review of comments on the remaining 41 sets of trade practice rules is complete.

The Commission, through its Office of Policy Planning, has also undertaken a major effort to conduct impact evaluations of major rules. These will enable the Commission to monitor expected benefits to the consumer and to determine what types of remedies work best at a minimum cost to the public. Data are now being gathered on the impact of trade regulations and enforcement efforts concerning the preservation of consumers' claims and defenses, the availability of advertised specials, and vertical restraints. For fiscal 1978, the Commission has budgeted $920,000 to study the impact of other proposed rules, investigations, and enforcement efforts. Part of the money will be used to develop baseline data for proposed rules so that the conditions that exist a year or so after implementation can be measured against those that existed prior to intervention by the Commission.

IV. Semiannual Agenda

Beginning in July 1978, the Commission will publish in the Federal Register a semiannual agenda of regulations similar to that required by section 2(a) of the Executive order for executive agencies. The agenda will describe the subject areas in which significant regulations are being considered and the status of pending proposals; the general subject matter of industrywide investigations that with a reasonable probability will result within 6 months in a recommendation to the Commission for a proposed rule; and the subject matter of reports expected to be made public within 6 months. The regulatory agenda will also include for each item the name and telephone number of a person to contact for further information.

By direction of the Commission, dated June 22, 1978.

Carol M. Thomas,
Secretary.

Federal Trade Commission—Semiannual Agenda of Reports and Regulations

The following agenda of reports and regulations is published voluntarily by the Federal Trade Commission in connection with Executive Order 12044, issued by the President on March 24, 1978. The agenda has been divided into four categories: (A) The general subject matter of reports expected to be made public within the next 6 months, (B) the general subject matter of internal rules or operating procedures upon which the Commission is expected to take action within the next 6 months, (C) a list of investigations that are expected to result within the next 6 months in recommendations to the Commission for proposed rules or reports, and (D) a list of rules already proposed by the Commission with target dates for completion of significant steps in their development. Each item on the list includes the name and telephone number of a person to contact for further information.

It should be noted that these lists are based on projections at the time of this publication of the subject matter and timing of future Commission action. Discovery of new information, changes in circumstances or personnel and changes in the law may alter the projected dates of matters listed in this publication. All matters are subject to review and approval by the Commission.

For further general information, call or write the Office of Policy Planning, Federal Trade Commission, Washington, D.C. 20580, 202-523-1447.

A. Reports expected to be made public:

1. *Farm size and regional distribution of the benefit under Federal milk market regulation.* It is believed that the scheme of Federal milk market regulation raises milk prices and the incomes of dairy farmers. This report estimates the distribution of this income enhancement, by farm size, category, and geographic region.

2. *Market shares, concentration, and competition in manufacturing industries.* This report theoretically and empirically investigates the impact of the size of individual firms' market shares on industry price-cost margins.

3. *The development and structure of the U.S. electric lamp industry.* This report is an industry study of electric lamp manufacturing. It discusses the technology of lamp production, and investigates market structure, business conduct, economic performance, and their interrelationships in the industry.

4. *Brand performance in the cigarette industry and the advantage of early entry.* This report examines the importance of rank and timing of "entry" on subsequent brand "success" in consumer product submarkets.

5. *Grocery retailing concentration in metropolitan areas, economic census years, 1954-1972.* This is a statistical report describing changing patterns of seller concentration in food retailing within individual urban markets over the period 1954-1972.

6. *Consumer reaction to Government provision of information: The impact*

[3] The Commission has revised its Rules of Practice to implement the compensation program. See 16 CFR 1.17 (1977).

of health information on nicotine and tobacco consumption. This report is an econometric study of the impact of health warning information on the cigarette smoking behavior of individuals.

7. *Economic structure and behavior in the natural gas production industry.* This study describes concentration in natural gas reserves and production (both onshore and offshore) in 1974 and in selected earlier years. It also describes the impact of outer continental shelf joint ventures on concentration measures, as well as the motivations for joint ventures. Finally, it analyzes the evidence that nonproducing shut-in leases were a result of monopolistic behavior.

8. *Analysis of the ban on intra-major joint ventures in OCS petroleum lease sales.* This study analyzes the impact of the Department of the Interior ban on joint ventures on the outer continental shelf by the largest oil companies. It compares the number of bids, size of partners and concentration in bidding and in the winning bids before and after the joint venture took place. It also considers the probable effect of changing the definition of which firms are included in the joint venture ban.

9. *Competition in the nuclear fuel industry.* This study describes the structure of the nuclear fuel industry including concentration in production, reserves, acreage, and drilling. It also lists mergers and acquisitions, joint ventures, new entry, and the significance of reserves and production accounted for by oil and gas companies. It briefly describes such other topics as economies of scale and vertical integration, recent uranium price increases, government price guarantees, foreign sources of uranium, and the breeder reactor.

10. *Oil firm diversification into coal: A comparative study of performance.* This study compares the performance of independent coal companies with that of coal companies owned by oil firms. Changes in coal output, research and development expenditures, exploration and mine development expenditures, and investment in land and mineral rights by the groups of companies will be compared.

Contact person for the preceding 10 reports: P. David Qualls, 202-254-7770. Bureau of Economics.

11. *The structure of the Nation's coal industry, 1964-1974.* This study describes production and reserve concentration in the coal industry. Concentration is measured at the national level, in six separate geographic regions, and in a number of Federal Power Commission electric utility regions. Concentration is measured for high and low sulfur coal, and for strip and for underground mines. Concentration is also measured including and excluding uncommitted Federal and Indian lands, and including and excluding committed coal reserves. Finally, market shares of coal production and reserves are estimated for various company groups such as oil and gas companies, electric utilities, steel companies, railroads, and independent coal companies.

Contact persons: P. David Qualls, 202-254-7770. Bureau of Economics. Walter T. Winslow, 202-254-5030. Bureau of Competition.

12. *Arbitration.* A report on the use of arbitration to resolve consumer disputes.

Contact person: John O'Brien, 212-264-1207. New York Regional Office.

13. *Buying clubs.* A report examining consumer problems connected with the sale of memberships in buying clubs.

Contact person: Alan Krause, 312-353-5546. Chicago Regional Office.

14. *Unavailability of advertised specials.* A report examining the impact of the Commission's trade regulation rule governing retail food store advertising and marketing practices, 16 CFR 424.

Contact person: Michael Mazis, 202-523-1576. Office of Policy Planning.

15. *Warranties.* A report gathering baseline data with which to examine the impact of regulations issued under the Magnuson-Moss Warranty Act, 15 U.S.C. 2301.

Contact person: Gail Shearer, 202-523-1596. Office of Policy Planning.

16. *1973 Annual line of business report.* This report contains aggregated data on advertising to sales ratios, direct operating costs, and research and development expenditures for selected companies in approximately 200 manufacturing industries.

Contact person: William F. Long, 202-254-8170. Bureau of Economics.

B. Internal rules or procedures upon which the Commission is expected to take action:

1. *Restrictions on practice before the Commission by former members and employees.* The Commission is expected to publish for comment a proposed amendment to its rules that will specify the period of time during which former members and employees will be required to seek permission prior to representing a client before the agency. The proposed rule will also clarify the standards that the Commission uses to decide whether, in a given matter, participation by a former member or employee would be proper.

Contact person: Jack Schwartz, 202-523-3615. Office of General Counsel.

2. *Standards of conduct for attorneys practicing before the Commission.* The Commission is expected to publish for comment a proposed amendment to its rules that will clarify the standards of ethical conduct expected of lawyers who practice before the Commission and will set out in more detail the procedures to be followed when there is an allegation that a lawyer has not conformed to those standards.

Contact person: Oliver J. Trytell, 202-523-3442. Office of General Counsel.

3. *Discovery Rules, 41 FR 21793 (May 28, 1976).* The Commission is expected to publish revisions to its rules of practice governing discovery in Commission adjudications. These revisions have previously been published for public comment.

Contact person: Jack Schwartz, 202-523-3615. Office of General Counsel.

C. Investigations which may result in a recommendation to the Commission for a rule or report:

1. *Blue Shield.* An investigation of the extent to which physicians influence or control the conduct of Blue Shield plans, especially with respect to reimbursement of physicians, and the extent to which such influence or control may impede the ability of Blue Shield plans to hold down reimbursement levels and costs generally.

Contact person: Jonathan Gaines, 202-724-1341. Bureau of Competition.

2. *Eyeglasses II.* An investigation of private and State restrictions on ownership and method of operation by dispensers of opthalmic goods.

Contact person: Terry Latanich, 202-523-3426. Bureau of Consumer Protection.

3. *Mileage guide.* An investigation of whether to amend the Mileage Guide for fuel-economy advertisements.

Contact person: Ann Nachbar, 202-724-1453. Bureau of Consumer Protection.

4. *Octane disclosure.* An investigation of a uniform method for certifying and disclosing gasoline octane ratings.

Contact person: Charles Slayman, 202-724-1478. Bureau of Consumer Protection.

5. *Written warranties.* An investigation of warranty advertising, the form of warranty titles and text, the disclosure of warranty terms and delayed warranty and service contract performance.

Contact person: Rachel Miller, 202-523-1753. Bureau of Consumer Protection.

6. *Standards and certification.* An investigation of the development and use of private product standards and certifications.

Contact person: Robert Schroeder, 202-523-3935. Bureau of Consumer Protection.

7. *Detergent product information.* An investigation of the availability to consumers of comparative cleaning information among detergents.

Contact person: Gregory Lewis, 202-523-3461. Bureau of Consumer Protection.

8. *Insurance cost disclosure.* An investigation of: (1) The extent to which consumers lack adequate cost information to comparison shop for whole life insurance; and (2) the adequacy of various proposed cost disclosure systems.

Contact person: David Fix, 202-523-3812. Bureau of Consumer Protection.

9. *Dental laboratories investigation.* An investigation of restrictions on the ability of denture laboratories to provide dental care directly to the public.

Contact person: Ann Grover, 415-556-1270, San Francisco Regional Office.

10. *State prescription drug antisubstitution laws.* An investigation of the effectiveness of State laws respecting substitution of generic drugs for branded drugs.

Contact person: Peter Holmes, 202-523-3945, Bureau of Consumer Protection.

11. *Advertising of veterinary goods and services.* An investigation of private and State restrictions on the advertising of veterinary goods and services.

Contact person: F. Kelly Smith, 303-837-2271, Denver Regional Office.

12. *Public accounting profession.* An investigation of private and state restrictions on advertising, solicitation and delivery of services by accountants.

Contact person: John M. Peterson, 312-353-8522, Chicago Regional Office.

D. Target dates for the development of rules already proposed:

1. *Used motor vehicle sales, 41 FR 1089 (Jan. 6, 1976).* Publication of staff report on or before September 15, 1978. End of post record comment period on or before November 15, 1978. Oral presentation, before the Commission during December 1978, if determined necessary by the Commission. Commission consideration of the rule on or before January 15, 1979.

Contact person: Bernard J. Phillips, 202-523-1642, Bureau of Consumer Protection.

2. *Disclosure requirements and prohibitions concerning franchising and business opportunity ventures, 36 FR 21607 (Nov. 11, 1971); 39 FR 30360 (Aug. 22, 1974).* Publication of final trade regulation rule as adopted by the Commission on or before September 15, 1978. Publication of proposed compliance guides to assist franchisors in understanding their responsibilities under the rule on or before September 15, 1978.

Contact person: John Tifford, 202-523-3911, Bureau of Consumer Protection.

3. *Proprietary vocational and home study schools, 40 FR 20138 (May 15, 1975).* Commission vote on a final rule on or before October 15, 1978.

Contact person: Walter Gross, 202-523-1753, Bureau of Consumer Protection.

4. *Health spas, 40 FR 34615 (Aug. 18, 1975).* Publication of presiding officer's report on or before November 30, 1978.

Contact person: John Crowley, 212-264-7150, New York Regional Office.

5. *Labeling and advertising of residential thermal insulation materials, 42 FR 59678 (Nov. 18, 1977).* Publication of staff report on or before July 15, 1978. Publication of presiding officer's report on or before August 15, 1978. End of post record comment period on or before September 15, 1978. Oral presentation before the Commission during October 1978, if determined necessary by the Commission. Commission consideration of the rule on or before November 30, 1978.

Contact person: Kent Howerton, 202-724-1514, Bureau of Consumer Protection.

6. *Amendments to the care labeling of textile wearing apparel, 41 FR 3747 (Jan. 26, 1976).* End of post record comment period on or before August 18, 1978. Oral presentation before the Commission during November 1978, if determined necessary by the Commission. Commission consideration of the rule on or before December 15, 1978.

Contact person: John Lefevre, 202-724-1175, Bureau of Consumer Protection.

7. *Disclosure requirements and prohibitions concerning the flammability of plastics, 39 FR 28292 (Aug. 6, 1974).* Publication of amended initial notice on or before July 31, 1978, Written comment period for Part I of the questions for comment ends on or before September 30, 1978.

Contact person: Kent Howerton, 202-724-1514, Bureau of Consumer Protection.

8. *Hearing aid industry, 40 FR 26646 (Jan. 24, 1975).* Publication of staff report on or before September 15, 1978. End of post record comment period on or before November 15, 1978.

Contact person: Steven D. Newberg-Rinn, 202-724-1490, Bureau of Consumer Protection.

9. *Food advertising (phase I), 39 FR 39842 (Nov. 11, 1974); 41 FR 8980 (Mar. 19, 1976).* Publication of staff report on or before September 15, 1978. End of post record comment period on or before November 15, 1978.

Contact person: Judith Neibrief, 202-724-1496, Bureau of Consumer Protection.

10. *Food advertising (phase II), 39 FR 39842 (Nov. 11, 1974); 41 FR 8980 (Mar. 19, 1976).* Publication of revised proposed rule on or before October 1, 1978. Written comment period ends on or before December 1, 1978. Commencement of public hearings on or before January 15, 1978.

Contact person: Judith Neibrief, 202-724-1496, Bureau of Consumer Protection.

11. *Advertising for over-the-counter antacids 41 FR 14534 (Apr. 16, 1976).* Publication of Final Notice on or before August 1, 1978. Written comment period ends on or before October 15, 1978. Commencement of public hearings on or before December 1, 1978.

Contact person: Joel Brewer, 202-724-1530, Bureau of Consumer Protection.

12. *Over-the-counter drugs, 41 FR 39768 (Sept. 16, 1976).* Publication of Presiding Officer's Report on or before August 15, 1978. Publication of Staff Report on or before November 1, 1978. End of post record comment period on or before January 1, 1979.

Contact person: Joel Brewer, 202-724-1530, Bureau of Consumer Protection.

13. *Children's television advertising, 43 FR 17967 (Apr. 27, 1978).* Comment period ends on October 24, 1978. Commencement of public hearings in San Francisco on November 6, 1978. Public hearings in Washington, D.C. commencing on November 20, 1978.

Contact person: Ellis M. Ratner, 202-724-1464, Bureau of Consumer Protection.

14. *Amendment to preservation of consumers' claims and defenses, 40 FR 53530 (Nov. 18, 1975).* Publication of staff report on or before September 15, 1978. End of post record comment period on or before November 15, 1978.

Contact person: Martin B. White, 202-724-1158, Bureau of Consumer Protection.

15. *Credit practices, 40 FR 16347 (Apr. 11, 1974).* Publication of Presiding Officer's Report on or before August 31, 1978. Publication of staff report on or before November 30, 1978.

Contact person: David H. Williams, 202-724-1100, Bureau of Consumer Protection.

16. *Funeral industry practices, 40 FR 39901 (Aug. 29, 1975).* End of post record comment period on August 21, 1978. Oral presentation before the Commission during December 1978, if determined necessary by the Commission. Commission consideration of the rule on or before January 15, 1979.

Contact person: Scott Klurfeld, 202-523-3427, Bureau of Consumer Protection.

17. *Disclosure regulations concerning retail prices for prescription drugs, 40 FR 24031 (June 4, 1975).* Oral presentation before the Commission during September 1978, if determined necessary by the Commission. Commission consideration of whether to terminate this proceeding on or before September 30, 1978.

Contact person: Teresa Hennessy, 202-523-3452, Bureau of Consumer Protection.

18. *Advertising and labeling of protein supplements, 40 FR 41144 (Sept. 5, 1975); 41 FR 22593 (June 4, 1976).* Publication of staff report on or before January 1, 1979.

Contact person: Karen Chandler, 415-556-1270, San Francisco Regional Office.

19. *Appliance labeling, 43 FR 31806 (July 21, 1978).* Comment period ends on or before September 19, 1978. Commencement of public hearings in Washington, D.C. on or before September 20, 1978. Rebuttal period ends on or before November 11, 1978. Publication of staff report on or before December 23, 1978. Post record comment period ends on or before January 23, 1979.

Contact person: Andy Wolf, 202-724-1453, Bureau of Consumer Protection.

20. *Hart-Scott-Rodino premerger notification rules, 41 FR 55488 (Dec. 20, 1976); 42 FR 39040 (Aug. 1, 1977).* Final promulgation of the rules is expected during July 1978.

Contact person: Malcolm R. Pfunder, 202-523-3894, Bureau of Competition.

By the Commission dated July 25, 1978.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-21551 Filed 8-2-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

IMPROVING NRC REGULATIONS

Response to Executive Order 12044

AGENCY: Nuclear Regulatory Commission.

ACTION: Progress report to the President and Congress.

SUMMARY: The NRC is making public its response to the President and Congress dated July 21, 1978 (copy attached), outlining the plans for voluntarily implementing Executive Order 12044, "Improving Government Regulations." Comments from the public are invited.

DATE: Comment period expires September 5, 1978.

ADDRESS: Interested persons should send their comments and suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention; Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT:

William M. Shields, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 2055, 202-634-3215.

Dated at Washington, D.C., this 31st day of July 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[7590-01]

U.S. NUCLEAR
REGULATORY COMMISSION,
Washington, D.C., July 21, 1978.

THE PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I am pleased to transmit the NRC report of progress in improving its regulations as requested by your letter of March 23 accompanying Executive Order 12044. We fully support the basic objectives of the order and believe that the preparation of clearer and less complex regulations is a necessary prerequisite for satisfying these objectives.

We have carefully examined the provisions of the Executive Order 12044 to determine how current NRC procedures compare. We have found that, for the most part, our procedures appear to satisfy the requirements of the order, or at least will satisfy its intent upon suitable modification. In one area (section 4) further study is needed to determine our position.

The NRC is fully cognizant of the importance of eliminating unnecessary burdens upon those being regulated, and of reducing as far as possible the economic cost of Government regulation. The following quote from the NRC's Value-Impact Guidelines, adopted by the Commission in January 1978, illustrates our commitment to these ideals:

> The policy of the Nuclear Regulatory Commission is that value-impact analysis be conducted for any proposed regulatory actions that might impose a significant burden on the public (where the term public is defined in its broadest sense). Such policy is not to be construed to mean that cost considerations take precedence over considerations of health, safety, environment, or national security. These factors remain paramount. However, where there are alternative means of realizing equivalent benefits in regulatory matters, cost should be a prime consideration.

Enclosed is a section-by-section response to the provisions of Executive Order 12044. In each case we outline briefly our current procedures and plans for some future changes in certain areas. In our comments on section 4 we indicate why further study is needed.

Respectfully,

JOSEPH M. HENDRIE.

Enclosure: Analysis.

SECTION-BY-SECTION ANALYSIS OF EXECUTIVE ORDER 12044

SECTION 2(a)

Requirements

Publish semi-annual agenda of regulations under development or review. Each item should include a staff contact.

Comment

The NRC now employs four separate procedures which seek to achieve the goals of this section:

(1) NRC publishes an agenda of petitions for rulemaking currently under review;

(2) NRC publishes proposed regulations for public comment;

(3) A status summary report listing, among other things, those regulations under development by the Office of Standards Development (the "Green Book") is published quarterly and is available to the public on request; and

(4) Commission staff papers, which are discussed in Commission meetings open to public attendance, are placed in the Washington Public Document Room on the day of the Commission meeting.

The NRC proposes to publish a semiannual list of significant regulations under review by the staff, in addition to the procedures already in place. A staff contact will be listed where possible.

SECTION 2(b)

Requirements:

Agency head must review issues and alternatives before staff initiates development of significant new regulations.

Comment:

The Commission is kept informed of current staff efforts. "Predevelopment" reviews are conducted only selectively by the Commission. However, the staff generally prepares preliminary regulatory analyses of significant regulations in early stages of their development.

SECTION 2(c)

Requirements:

1. Provide opportunity for public participation.

2. Allow 60 days for comments.

3.Notify interested parties directly if necessary.

Under present NRC procedures public comment on proposed regulations is invited upon publication in the FEDERAL REGISTER. Most Commission meetings on proposed regulations are open to the public. Current practice is to allow 45 days for public comments.

The 60-day period for public comment can be implemented without difficulty. In certain rare cases immediate action must be taken for safety, security, or other reasons, and a regulation may then be issued prior to the expiration of time for public comment. In such cases the need for immediate implementation is explained in the published notice of the new regulation.

Certain licensees who may not have immediate access to the FEDERAL REGISTER (e.g., physicians and radiographers) are generally notified by direct mail of proposed regulations affecting them.

SECTION 2(d)

Requirements:

1. Agency head or designee shall review and approve significant regulations before publication in FEDERAL REGISTER. The review shall include analysis of alternatives and impacts, including any burdens imposed by reporting requirements.

2. Agency head or designee shall determine that regulation is written in plain English and is understandable to licensees.

3. A plan shall be developed for evaluating a regulation after it has been implemented.

[7590-01]

Comment

The Commission reviews all significant regulations prior to their publication for comment in the FEDERAL REGISTER, and would consider most of the listed factors. The NRC Office of Inspection and Enforcement takes such additional steps as directly contacting affected parties to assure that licensees correctly understand the intent of our regulations.

The Commission does not at this time require a formal plan for evaluating the regulation after its issuance (No. 8). Such evaluation is performed on a continuing basis by the regulatory and enforcement staff, particularly in regard to new regulations of uncertain impact. (See comments below on a related requirement in section 4.)

SECTIONS 2(E), 3(A), 3(B), AND 3(C)

Requirements

1. Establish criteria for evaluating regulations and analyze alternatives.
2. Publish the analyses.

Comment

Sections 2(e), 3(a)

The value-impact analysis currently performed by the NRC staff for most proposed regulations weighs many of the listed factors, where applicable to the NRC situation. The NRC does not have a formal set of criteria to determine which regulations are "significant". The guidelines for the value-impact analysis stipulate only that all proposed regulatory actions which are non-recurring or nonroutine should be examined. [Historically, value-impact analyses have been performed on about 80 percent of significant proposed regulations. Under the Commission's new value-impact guidelines, adopted in January 1978, this figure is expected to increase.] In certain cases a more extensive environmental impact assessment may be prepared which will consider the listed factors in greater detail.

Current NRC criteria for the value-impact analysis are more restrictive than those required by the order, that is, the NRC performs an analysis of many regulations whose total economic impact is far less than $100 million. Similarly an analysis may be performed on regulations having only a minor economic effect on the nuclear industry and hence on electric consumers. The Commission may, of course, order that an analysis be performed on any proposed regulation or other staff action. In our view the NRC is in compliance with this section.

[7590-01]

Section 3(b)

At this time some proposed regulations are published accompanied by the value-impact analysis. It will be NRC policy in the future to make any value-impact analyses available for public review at the time proposed or final regulations are published.

Section 3(c)

The NRC Office of Standards Development now places in the Public Document Room a final value-impact analysis if there have been any modifications or changes since the proposal was first published for comment. This procedure will be extended to all regulations subjected to value-impact analysis.

SECTION 4

Requirements

Periodically review existing significant regulations for continued need, burden, simplicity, duplication, and changes in economic or technical conditions.

Comment

The NRC does not at this time have a comprehensive plan for review of existing regulations. Some regulations are reviewed if a particular program is under review (for example, current safeguards regulations); others may be reviewed due to external events (such as petitions for rulemaking). Finally, there are staff-initiated reviews, such as the current plan to review significant fuel cycle regulations beginning in fiscal year 1978.

The Commission soon will be discussing with its staff reasonable and resource-effective methods, involving full opportunity for public input, for periodically reviewing our regulations as outlined in section 4.

SECTION 5

Requirements

1. Prepare a draft report outlining: (1) Process for developing regulations and any proposed changes thereon; (2) criteria for identifying significant regulations, or regulations requiring regulatory analysis; and (3) proposed criteria for identifying regulations to be included in the periodic review; publish report in FEDERAL REGISTER and send report to Office of Management and Budget.
2. After revising report in light of public comments, send to OMB for approval before final publication in FEDERAL REGISTER.

Comment

NRC will voluntarily comply with the reporting requirements of this section and submit the report to OMB for comment. With suitable modification this section-by-section analysis will constitute the draft report. Because the order does not apply to NRC, an independent regulatory agency, we do not believe that OMB approval of our report should be required.

[FR Doc. 78-21648 Filed 8-2-78; 8:45 am]

federal register

THURSDAY, AUGUST 3, 1978
PART V



DEPARTMENT OF TRANSPORTATION

Coast Guard

■

LIQUEFIED NATURAL GAS FACILITIES

Advance Notice of Proposed Rulemaking

[4910-14]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 126]

[CGD 78-038]

LIQUEFIED NATURAL GAS FACILITIES

AGENCY: U.S. Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard invites public participation at the earliest stages in the development and implementation of regulations to provide standards for safety, security, and environmental protection in the transportation, transfer, handling, and storage of liquefied natural gas. These regulations will become an integral part of the revised and updated general waterfront facilities regulations.

DATES: Comments must be received on or before December 1, 1978.

ADDRESS: Comments should be submitted to Commandant (G-CMC/81), U. S. Coast Guard, Washington, D.C. 20590. Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, NASSIF Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Capt. George K. Greiner, Executive Secretary, Marine Safety Council, U.S. Coast Guard, Department of Transportation, NASSIF Building, 400 Seventh Street SW., Washington, D.C. 20590, telephone 202-426-1477.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, and arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 78-038) and the specific sections of the proposal to which their comments apply, and give reasons for their comments. All comments received will be considered before further rulemaking action is taken on this proposal. No public meeting is planned, but one may be held at a time and place to be set in a later notice in the FEDERAL REGISTER if requested in writing by a sufficient number of interested persons raising genuine issues and desiring to comment orally at a public hearing.

DRAFTING INFORMATION

The draft materials contained in this advance notice rely heavily upon recommendations by the Coast Guard's Chemical Transportation Advisory Committee (CTAC) and its Liquefied Gas Facilities Subcommittee. This advance notice has been drafted by the Coast Guard's Waterfront Facilities Task Force, which consists of: Lt. Comdr. Edward H. Bonekemper III, Coordinator; Lt. Comdr. John Busavage; Lt. Comdr. Roger Pike; Lt. Comdr. George Buffleben, Jr.; Lt. Ronald Tanner; Lt. Malcolm Williams; Mr. Stanley Colby, Project Counsel; and Dr. Robert Stearns, and Dr. James Veatch, Project Economists.

DISCUSSION OF THE PROPOSED REGULATIONS

This Advance Notice contains a preliminary draft of proposed regulations which would apply to waterfront liquefied natural gas (LNG) facilities. It must be emphasized that these are preliminary draft regulations designed to stimulate comment and thoughtful suggestions by raising a variety of issues. The Coast Guard is not committed to any particular approach during this conceptual stage. Even where detailed specific proposals (such as lighting standards, hose pressures, etc.) are presented, this is being done solely to generate more extensive and more informed comment concerning them.

BACKGROUND

Existing Coast Guard waterfront facilities regulations in 33 CFR part 126 were issued in the 1950's and 1960's under the authority of the Magnuson Act (50 U.S.C. 191). Although some sections were revised in 1970, many have remained unchanged since the early 1950's. As a result, they do not take into account the extensive development in technology and variety of waterfront marine activities.

Attention has been directed recently to the rapid increase in the number and complexity of petrochemical facilities; and the transportation, storage, and handling of a wide variety of new hazardous chemicals and dangerous cargoes. Liquefied natural gas has been of particular concern. It is the Coast Guard's position that the hazards associated with each hazardous material should be carefully evaluated and consistent regulatory action taken with due consideration of the risks associated with each hazardous material.

Since the 1950's and 1960's significant laws have been enacted which will have a vast effect upon the development of liquefied natural gas regulations. Among these laws are: the Ports and Waterways Safety Act (86 Stat. 424, 33 U.S.C. 1221-7); the Transportation Safety Act (which includes the Hazardous Materials Transportation Act) (88 Stat. 2156, 49 U.S.C. 1801 et seq.); and the Natural Gas Pipeline Safety Act (82 Stat. 720, 49 U.S.C. 1671 et seq.).

The Office of Pipeline Safety Operations (OPSO) of the Materials Transportation Bureau issued an advance notice of proposed rulemaking concerning safety of LNG facilities on April 21, 1977 (42 FR 20766). In order to eliminate the overlapping of, and conflicts between, proposed OPSO regulations and those proposed by the Coast Guard, and to assist the owners and operators of LNG facilites which would be subject to both Coast Guard and OPSO regulations, a Memorandum of Understanding has been negotiated and signed by the two agencies.

This Memorandum of Understanding follows:

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. COAST GUARD AND THE MATERIALS TRANSPORTATION BUREAU FOR REGULATION OF WATERFRONT LIQUEFIED NATURAL GAS FACILITIES

I. INTRODUCTION

Within the Department of Transportation (DOT), the U.S. Coast Guard (USCG) and the Materials Transportation Bureau (MTB) exercise separate and overlapping safety regulatory authority affecting the siting, design, construction, maintenance, and operation of waterfront liquefied natural gas (LNG) facilities adjoining the navigable waters of the United States. The USCG derives its authority over such facilities from the Ports and Waterways Safety Act of 1972 (Pub. L. 92-340, 33 U.S.C. 1221-1227) and the Magnuson Act (50 U.S.C. 191). The regulatory authority of the MTB over these same facilities (as well as nonwaterfront LNG facilities) is derived from the Natural Gas Pipeline Safety Act of 1968 (Pub. L. 90-481, 49 U.S.C. 1671 et seq.) and the Hazardous Materials Transportation Act (Pub. L. 93-633, 40 U.S.C. 1801 et seq.).

In recognition of each of the parties respective regulatory responsibilities, the USCG and the MTB agree that a memorandum of understanding is needed to avoid duplication of regulatory efforts regarding waterfront LNG facilities and to maximize the exchange of relevant information.

II. RESPONSIBILITIES OF THE PARTIES

For the foregoing reasons, the USCG and the MTB agree to the following division of regulatory responsibilities with respect to waterfront LNG facilities and cooperation in carrying out those responsibilities:

USCG Responsibilities

The USCG is responsible for establishing regulatory requirements for—

(1) Facility site selection as it relates to management of vessel traffic in and around a facility;

(2) Fire prevention and fire protection equipment, systems, and methods for use at a facility;

(3) Security of a facility; and

(4) All other matters pertaining to the facility between the vessel and the last manifold (or valve) immediately before the receiving tank(s).

MTB Responsibilities

The MTB is responsible for establishing regulatory requirements for—

(1) Facility site selection except as provided by paragraph (1) of the "USCG Responsibilities" set forth in this memorandum; and

(2) All other matters pertaining to the facility beyond (and including) the last manifold (or valve) immediately before the receiving tank(s) except as provided by paragraphs (2) and (3) of the "USCG Responsibilities" set forth in this memorandum.

Joint Responsibilities

(1) The USCG and the MTB will cooperate and assist each other in carrying out their respective waterfront LNG facility regulatory enforcement activities; and

(2) The USCG and the MTB, in an effort to avoid inconsistent regulation of similar safety matters (including as between waterfront and nonwaterfront LNG facilities), will consult with each other before issuing each Advance Notice of Proposed Rulemaking, Notice of Proposed Rulemaking, and final regulation affecting waterfront LNG facilities.

Dated: February 7, 1978.

For the U.S. Coast Guard.

ADM. OWEN W. SILER,
Commandant.

Dated: February 1, 1978.

For the Materials Transportation Bureau.

L. D. SANTMAN,
Acting Director.

Under this MOU, the MTB has responsibility for facility site selection except as it relates to management of vessel traffic in and around a facility. Vessel traffic management entails factors such as navigational safety, marine traffic density, and accessibility of the port of LNG carrying vessels.

Because of this MOU, not all of the proposals in this advance notice would apply throughout all portions of an LNG waterfront facility; thus, the applicability clause in § 126.2002 should be examined carefully.

These Coast Guard proposed LNG facility regulations apply to the loading, unloading, storage and movement of LNG. They call for specified maintenance, repairs, tests, and records. Fire protection requirements, safety equipment, and security requirements are also specified. Facility personnel are required to have training in specific areas depending upon their operational level. The proposals also set forth detailed operational requirements similar to those provided in the Coast Guard's present oil pollution prevention regulations (33 CFR Parts 154-156).

It should be noted that the Ports and Waterways Safety Act provides that State and local governments may prescribe more stringent safety equipment requirements and standards for waterfront facilities than might be prescribed by the Coast Guard.

The Coast Guard has previously published an Advance Notice of Proposed Rulemaking on General Waterfront Facilities requirements (43 FR 15107-15116, Apr. 10, 1978). In addition to compliance with the general requirements, LNG facilities would be required to comply with these proposed regulations, which apply specifically to those facilities which load, unload, store, and handle LNG. At this stage of the rulemaking procedure, no attempt has been made to reconcile the two Advance Notices of Proposed Rulemaking. This Advance Notice is intended to stimulate useful comments and suggestions by raising a variety of issues. It is important that the public realize that this Advance Notice is not determinative of the form of the final rule and that these regulations are only a portion of a very large set of requirements which will eventually regulate all waterfront facilities which are involved in the handling of any hazardous material.

Various sources of information are being explored in order to make these proposed regulations as realistic and responsive as possible. Among these sources are National Transportation Safety Board reports, Captain of the Port reports of unusual occurrences, information and opinions being submitted by Coast Guard District Commanders and Captains of the Port, national consensus standards, (NFPA, ANSI, etc.), and CTAC's Subcommittee of Liquefied Gas Facilities. (Meetings of CTAC and its subcommittees have been and will be announced in advance in the FEDERAL REGISTER.) Further comment is sought from State and local governments, marine and other industry representatives, port and harbor authorities, environmental groups and other interested parties.

The Coast Guard is required to evaluate the economic impact of proposed regulations. To satisfy this obligation and to produce reasonable rules, it is important that economic issues of benefits and costs be addressed for LNG facilities. Primary concern should be given to additional benefits and costs that will be generated by the proposed rules, but attention can be given to the absolute level of benefits and costs. Thus, comments contributing to cost/benefit analysis and suggesting economical, efficient, but effective regulatory approaches will be most helpful. Such information includes number and location of facilities affected, quantities of LNG affected, the scope and degree of safety and environmental hazards, the extent to which the proposed regulations reduce the risks associated with storing and handling LNG, time and costs required for compliance (equipment, personnel training, procedures, etc.), local practices and customs, and effects upon facility productivity, efficiency, and profits. Economists, Dr. Robert N. Stearns and Dr. James F. Veatch, of the Coast Guard's Ports and Waterways Planning Staff can be consulted on what kinds of data and evaluations would be most useful (202-426-2262).

It is the intention of the Coast Guard to avoid overlap with any other Federal regulations and to avoid any conflicts or gaps. Comments are solicited on any existing or potential gaps or overlaps between these proposed Coast Guard regulations and those of any other governmental agency.

Information, comments and opinions concerning environmental and economic impacts, and any other facet of any of the matters mentioned in this advance notice that would be of assistance to the Coast Guard and its Task Force in developing detailed LNG facilities regulations, are solicited from interested parties.

The "Standard for the Protection, Storage, and Handling of Liquefied Natural Gas (LNG)," NFPA 59A-1975 edition, has been incorporated by reference into these regulations. Anyone interested in obtaining a free copy of this standard may do so by writing:

Commandant (G-WLE-1/73), U.S. Coast Guard Headquarters, Washington, D.C. 20590, Attention: Lt. (jg.) Dickman

Part 126 of title 33, Code of Federal Regulations, would be amended by adding requirements for LNG facilities to read as follows:

LNG FACILITY REQUIREMENTS

126.2000-126.2099 APPLICATION AND ENFORCEMENT

Sec.

126.2001 Purpose.
126.2002 Applicability.
126.2003 Definitions.
126.2011 Letter of intent.
126.2012 Use permit.
126.2013 Enforcement.
126.2015 LNG facility inspections.
126.2016 Suspension of transfer operations.
126.2025 Effective dates.
126.2031 Alternatives.
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AUTHORITY: 40 Stat. 220 (50 U.S.C. 191); 86 Stat. 427 (33 U.S.C. 1224); 49 CFR 1.46(l) and (n)(4).

§126.2001 Purpose.

This part sets forth requirements for LNG facilities to promote safety and protect the marine environment in port areas where LNG facilities exist. They are basically concerned with fire prevention and protection, facility security, and LNG loading and unloading operations.

§126.2002 Applicability.

This part applies to the design, construction, equipment, maintenance and operation of LNG facilities as follows:

(a) Fire prevention requirements and fire protection equipment, systems and methods requirements, apply throughout the entire LNG facility.

(b) Security requirements apply throughout the entire LNG facility.

(c) All other requirements apply only between the vessel and the last manifold (or valve) immediately before the receiving tank(s).

§126.2003 Definitions.

As used in this part:

"Bulk liquids" means all liquids except compressed and liquefied gases that are handled in bulk in trucks, rail cars, storage tanks, or that are transferred to or from vessels transporting such liquids on the navigable waterways of the United States.

"Bunkering" means the loading of a ship's bunker or tank with fuel oil for use in connection with propulsion or auxiliary equipment.

"Captain of the Port (COTP)" means the U.S. Coast Guard officer commanding a Captain of the Port Area or the COTP's designated representative.

"Commandant" means the Commandant of the U.S. Coast Guard or the Commandant's designated representative.

"Control room" means an area within the LNG facility from which facility functions are controlled.

"Design pressure" means the pressure used in the design of equipment, a container, or a vessel for the purpose of determining the physical characteristics of its different parts.

"Dike" means a structure used to establish an impounding area.

"Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

"District Commander" means the officer of the Coast Guard designated by the Commandant to command a Coast Guard District or the District Commander's authorized representative.

"Dock area" means the area at which an LNG vessel moors and the loading or discharging operation takes place.

"Existing LNG facility" means any LNG facility in operation, or substantially or wholly constructed on the effective date of these regulations.

"Failsafe" means the design features which provide for the maintenance of safe operating conditions in the event of a malfunction of control devices or an interruption of an energy source.

"Flame endurance rating" means the duration for which an assembly will contain a fire or retain its structural integrity or both when exposed to a standard time-temperature curve as defined in NFPA 251.

"Handled" means that the fluid undergoes a significant change in pressure, temperature, composition, state or other property in equipment provided, other than analysis or testing.

"Hazardous material" means any article, chemical, material, or cargo included in any of the following:

(a) 46 CFR Subchapter D (bulk liquids and gases);

(b) 46 CFR Subchapter O (bulk liquids and gases);

(c) 46 CFR Part 146 (military explosives);

(d) 46 CFR Part 148 (bulk solids);

(e) 49 CFR 172.101 ("packaged" hazardous materials);

(f) 33 CFR 124.14 (cargoes of particular hazard); or

(g) Oil of any kind.

"Impounding space" means a volume of space formed by dikes and floors for holding a spill of LNG.

"Liquefied natural gas (LNG)" means a fluid composed predominantly of methane and which may contain minor quantities of ethane, propane, nitrogen, or other components normally found in natural gas.

"Liquefied petroleum gas (LPG)" means a fluid obtained as a by-product in petroleum refining or natural gasoline manufacture.

"LNG facility" means a waterfront facility at which LNG is loaded, unloaded, handled, stored, or transferred.

"Loading flange" means the main connection or group of connections for transferring cargo between the LNG facility and the vessel.

"Maintenance level" includes all personnel assigned to the LNG facility who perform maintenance.

"Maximum allowable working pressure" means the maximum gauge pressure permissible at the top of equipment, containers, or vessels while operating at design temperature.

"New LNG facility" means any LNG facility which is not an existing LNG facility.

"Oil" means oil of any kind or in any form including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredged spoil, but does not include liquefied natural gas or liquefied petroleum gas.

"Operator" means the owner or operator, or both, of any LNG facility or the operator's designated representative.

"Operator level" means all personnel assigned to the LNG facility who have

operating control over some function of the facility related to natural gas or LNG.

"Pascal (pa)" means the metric unit of pressure stress. One pascal equals 0.0001451 pounds force per square inch.

"Person in charge" means a facility or vessel employee on site designated as the person in charge of operations.

"Pier" or "wharf" means a structure, usually of greater length than width, of timber, stone, concrete, steel, or other materials, that projects from the shore into the navigable waters so that vessels may be moored alongside for loading and unloading or for storage.

"Pierhead line" means the line established, in navigable waters, by Federal authority, beyond which piers and marine structures of any kind may not extend.

"Process plant" means the systems required to condition, liquefy, of vaporize natural gas.

"PSIG" means pounds per square inch gage. One pound force per square inch (psi) equals 6894 pascals.

"Shore area" means an area of land, including waterfront facilities theron, immediately adjacent to the navigable waters of the U.S. and extending inland to the extent that controls are necessary to prevent damage to, destruction of, or loss of a vessel, bridge, or waterfront facility on or in those waters, or protect those waters from environmental harm resulting from vessel or facility damage, destruction, or loss.

"Substructure" means the portion of a pier or wharf other than the superstructure.

"Superstructure" means the portion of a pier or wharf above the pier or wharf deck.

"Supervisor level" includes all personnel who have the responsibility for the operation of the entire LNG facility and the supervision of its personnel.

"Transfer area" means the portion of an LNG facility containing piping systems where LNG, flammable liquids, or flammable refrigerants are introduced into or removed from the facility, such as truck loading or ship unloading areas or where piping connections are routinely connected or disconnected.

"Vessel' means a vessel constructed or converted to carry LNG in tanks.

"Waterfront facility" means any building, refinery, tank farm, warehouse, dock, pier, wharf, or other structure in, on, or immediately adjacent to the navigable waters of the United States or on a shore area immediately adjacent to those waters. A facility includes Federal, State, municipal, and private facilities.

§ 126.2011 Letter of intent.

(a) The operator of any existing or planned facility to which this part applies shall submit a Letter of Intent to construct or operate a facility to the COTP prior to the start of construction or the start or continuation of operations.

(b) The Letter of Intent required in paragraph (a) of this section may be in any form but must contain—

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

(2) When available, the name, address, and telephone number of the facility;

(3) The location of the facility with respect to the associated body of navigable waters; and

(4) Copies of pertinent information developed concerning the site. This information must include the following:

(i) Facility description including preliminary site plans and flow sheets showing planned quantities of flammable materials to be stored and material transfer rates.

(ii) Information showing the frequency and method of planned LNG vessel movements to and from the terminal including the size and speed of the vessels contemplated for the service.

(iii) Maps showing waterway channels and identification of commercial, industrial, and environmentally sensitive facilities as well as residential communities adjacent to the waterway.

(iv) Information on water depths and access from the sea, oceanography (currents, tides, swells, and stratification), protection of site from high seas, meteorological conditions (wind direction and force), existence of traffic barriers (i.e., reefs, rocks, sandbars), existence of pierhead lines, distance of berthed vessel from and width of channel, the existence of marine aids to navigation, description of water bottom characteristics and proximity to existing anchorages. In addition the probabilities of all natural events occurring, such as seismic events, tsunamis, snow, fog, and similar events, must be included.

(c) The operator of any LNG facility for which a Letter of Intent has been submitted, shall immediately advise the COTP in writing of any significant changes to information in the letter and shall cancel, in writing, the letter for any facility at which LNG transfer operations are no longer conducted.

§ 126.2012 Use permit.

(a) A use permit shall be obtained from the COTP by the operator. As a prerequisite for issuance of this use permit the operator of a new LNG facility shall certify that the LNG facility has been designed and constructed in accordance with the requirements contained in this part and 49 CFR Part 193. Noncompliance with the provisions of these parts may result in the revocation of the use permit.

(b) If the requirements of § 126.2025 are met, the COTP issues a use permit to a new or existing LNG facility upon submission of a Letter of Intent by the facility operator.

(c) The use permit terminates 5 years after the date it is issued. An operator may request, in writing, a renewal of the permit.

(d) No person may operate an LNG facility unless a use permit has been issued for that facility by the COTP.

§ 126.2013 Enforcement.

(a) The rules and regulations in this part shall be enforced by the COTP under the supervision and general direction of the District Commander.

§ 126.2015 LNG facility inspections.

(a) The operator shall allow any person designated for such purpose by the COTP to make reasonable examinations and inspections necessary to insure compliance with this part. All required testing of facility equipment must be conducted by the operator in a manner acceptable to the COTP.

(b) The COTP records the date, scope, and results of each LNG facility inspections in the facility's inspection record required by § 126.2904 and lists the deficiencies in the inspection record when the LNG facility is not in compliance with the regulations in this part.

§ 126.2016 Suspension of transfer operations.

(a) The COTP may issue an order to suspend transfer operations to the operator if the COTP finds that there is a condition requiring immediate action.

(b) An order of suspension may be effective immediately.

(c) An order of suspension will include a statement of each specific condition requiring immediate action.

(d) The operator may petition the District Commander in writing, or in any manner when the order is effective immediately, to reconsider the issuance of the order of suspension.

§ 126.2205 Effective dates.

(a) No operator may store, handle, or transfer LNG in a new LNG facility or a new addition or expansion to an existing LNG facility unless that facility meets the requirements of this part.

(b) No operator may store, handle, or transfer LNG at an existing LNG facility unless that facility complies with the requirements of this part in accordance with the following schedule:

(1) Any repair or replacement commenced on such facility after the effective date shall be in accordance with the applicable requirements of §§ 126.2200-126.2299.

(2) After 1 year from the effective date the operator shall comply with the applicable operating and maintenance requirements of §§ 126.2300-126.2999.

§ 126.2031 Alternatives.

(a) The COTP may consider and approve alternative procedures, methods, or equipment standards to be used by an operator in lieu of any requirements in this part if—

(1) The operator submits a written request for the alternative at least 30 days before operations under the alternative are proposed to begin, unless the COTP authorizes a shorter time; and

(2) The alternative provides at least the same degree of safety and environmental protection provided by the regulations in this part.

(b) The COTP approves or disapproves any alternative requested, either in writing or orally, with written confirmation later.

§ 126.2035 Exemption.

(a) The Commandant may grant an exemption or partial exemption from compliance with any requirement in this part if—

(1) The operator submits an application to the Commandant via the COTP at least 30 days before operations under the exemption are proposed to begin, unless the Commandant authorizes a shorter time; and

(2) The Commandant determines from the application that—

(i) Compliance with the requirement is economically or physically impracticable; and

(ii) No alternative preocedures, methods, or equipment standards exist that would provide the same degree of safety and environmental protection provided by the regulations in this part.

(b) In making the determinations in paragraph (a), the Commandant may require—

(1) Any appropriate information, including an environmental and economic assessment of the effects of and reasons for the exemption; and

(2) Procedures, methods, or equipment standards, even though they may provide less than an equivalent degree of safety and environmental protection provided by the regulations in this part.

(c) The Commandant grants or denies an exemption in writing.

§ 126.2036 Appeals.

(a) Any person directly affected by an order or direction issued under this part may request reconsideration by the official who issued the order or direction, and may appeal the order or direction to the COTP and then the District Commander, whose decision will be final.

(b) Requests for reconsideration and appeals may be written or oral, but if oral, must be confirmed by no less than a written outline of the key points made. The Coast Guard official to whom the request or appeal is made will provide a written decision if requested.

(c) While any request or appeal is pending, the order or direction remains in effect.

§ 126.2050 Reference specifications, standards, and codes.

The following specifications, standards and codes, to the extent specified in the text, form a part of this subpart.

(a) Publications issued by the National Fire Protection Association, 470 Atlantic Avenue, Boston, Mass. 02210, as listed in this paragraph.

(1) "Standard for the Selection, Installation, Inspection, Maintenance and Testing of Portable Fire Extinguishing Equipment," NFPA 10—1977 Edition.

(2) "Standard for Foam Extinguishing Systems," NFPA 11—1976 Edition.

(3) "Standard for High Expansion Foam Systems," NFPA 11A—1977 Edition.

(4) "Standard on Synthetic Foam and Combined Agent Systems," NFPA 11B—1974 Edition.

(5) "Standard for the Installation of Sprinkler Systems," NFPA 13-1976 Edition.

(6) "Standard for the Care and Maintenance of Sprinkler Systems," NFPA 13A—1976 Edition.

(7) "Standard for the Installation of Standpipe and Hose Systems." NFPA 14—1976 Edition.

(8) "Standard for Water Spray Fixed Systems for Fire Protection," NFPA 15—1973 Edition.

(9) "Standard for Dry Chemical Extinguishing Systems," NFPA 17—1975 Edition.

(10) "Standard for Automotive Fire Apparatus," NFPA 19—1975 Edition.

(11) "Standard for Outside Protection," NFPA 24—1973 Edition.

(12) "Standard for the Production, Storage and Handling of Liquefied Natural Gas (LNG)," NFPA 59A—1975 Edition.

(13) "National Electrical Code," NFPA 70—1975 Edition.

(14) "Local Protective Signaling Systems," NFPA 72A—1975 Edition.

(15) "Standard for Auxiliary Protective Signaling Systems for Fire Alarm Service," NFPA 72B—1975 Edition.

(16) "Standard for Proprietary Protective Signaling Systems for Watchman, Fire Alarm and Supervisory Service," NFPA 72D—1975 Edition.

(17) "Standard for the Construction and Protection of Piers and Wharves," NFPA 87—1975 Edition.

(18) "Standard Methods of Fire Tests of Building Construction and Materials," NFPA 251, 1972 Edition.

(b) Standard issued by American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018, as listed in this paragraph.

(1) "Petroleum Refinery Piping," ANSI B31.3, 1973 Edition.

§ 126.2110 LNG facility siting; LNG vessels.

The waterway leading to the site must be suitable for the number and size of vessels contemplated as carriers for LNG.

§ 126.2210 Design and construction.

(a) Except as modified in this part, the LNG facility must meet the following design criteria in NFPA 59A.

(1) Chapter 1, except Section 11;

(2) Chapter 3;

(3) Chapter 5;

(4) Chapter 6;

(5) Chapter 7, only section 75 and 76;

(6) Chapter 8, except sections 82, 84 and 861; and

(7) Chapter 9.

(b) Definitions listed in NPFA 59A are incorporated by reference only for the purpose of intepreting NFPA 59A requirements.

§ 126.2213 Piping design, installation and material.

(a) The piping system design must include studies and calculations to assure accommodation of pressure surges, including those caused by valve operation, power failure and emergency shut-down modes, both at the LNG facility and aboard the LNG vessel.

(b) Transfer piping, pumps and compressors must be located so that they are not susceptible to damage by routine vessel movement.

(c) Compression couplings on cryogenic piping systems must be limited to instrumentation use, must not be greater than 19 mm (¾ inch) nominal diameter and must be designed for the service intended.

(d) Discharge from relief valves must be into a lower pressure line of compatible design or via manifold into a closed vent system or be otherwise arranged so that no venting occurs over navigable waters. Emergency measures may be provided for venting over navigable waters if such discharges are arranged to protect persons, property and equipment.

§ 126.2214 Piers and wharves.

(a) In regions subject to earthquakes, pier and wharf structures and appurtenances must be designed and

installed to resist earthquake forces, as provided in Appendix B.7 of NFPA 59A.

(b) Steel piles and other steel portions of piers and wharves must be adequately protected from atmospheric corrosion and from corrosion caused by contact with water or soils.

(c) Substructures and decks must be of substantial construction and protected from short-term LNG exposure. Decks must be constructed of a material which affords flexibility, resistance to shock, durability, strength and fire resistance.

(d) Substructures, including horizontal floors and decks, which support or are within 5 metres (15 ft.) of any pipe or equipment containing LNG, or are within 15 metres (50 ft.) of a loading flange, must be concrete or steel. Each substructure must have a fire endurance rating in all of its parts of not less than four hours.

(e) Piers that are exposed to impact or excessive abrasion by vessels or are subject to damage by floating ice or debris must be designed to minimize any damage thereby. Construction must be of materials which will substantially eliminate damage from wind, current and impact forces which could be exerted on the pier.

(f) For drainage, substructure decks must be pitched to a slope of not less than 4 mm per metre (one inch in 20 ft.). Decks must be arranged to safely drain off through scuppers or drains, or other suitable means, excess water.

(g) Any portion of the superstructure within 15 metres (50 ft.) of a loading flange or 5 metres (15 ft.) of any piping or equipment containing LNG must:

(1) Be supported by a concrete column and girder or steel column and girder. If used, steel column and girder must be protected by concrete or other fire-resistive material of a type and thickness which provide a four-hour fire endurance rating.

(2) Have a roof support constructed of reinforced concrete, protected steel, or other fire resistive material. Supporting members must have a four-hour fire endurance rating and the roof must have a three-hour fire endurance rating.

(3) Have walls constructed of noncombustible materials and which are securely fastened to the frame. All doors in exterior walls must be fire doors or be constructed of noncombustible materials.

(h) Buildings or structural enclosures on piers in which LNG is handled must meet section 22 of NFPA 59A.

(i) Heating equipment which utilizes direct combustion must not be located within 60 metres (200 ft.) of any loading flange. Electrical heating equipment, if used, must meet Class I, Group D,. Division I (explosion proof) of NFPA 70.

(j) Horizontal surfaces must be arranged to safely drain off through scuppers or drains, or by other suitable means, excess water.

(k) The operator shall locate and protect all equipment, piping and tanks normally containing LNG so that damage will not result from normal operations of vehicles on the facility.

(l) Tanks primarily for the storage of LNG or other hazardous materials must not be located upon piers or wharves, except tanks for—

(1) Surge protection;

(2) Pump suction supply; or

(3) Storage of fuel for emergency or support equipment of 1.9 cubic metres (500 gallons) or less.

(m) Warning alarms must be installed at the waterside of a facility to warn approaching or transiting water traffic of immediate danger in the event of fire or cargo release. There must be a siren alarm or an emergency rotating flashing light warning alarm, both of which must be of sufficient intensity to be heard, or seen, a distance of 1.6 km (1 mile) during normal facility working conditions.

§ 126.2215 Means of access.

There must be an all-weather access route suitable for the movement of fire apparatus to and throughout the LNG facility.

§ 126.2216 Sewers, trenches and drains.

No sewer, open trench, or drain may pass through the LNG facility that would allow LNG or vapors to be carried to areas not under the full control of the operator.

§ 126.2217 Quality assurance.

(a) The operator shall develop a quality assurance plan for a new LNG facility during the design phase of the project. The plan must include procedures that will ensure compliance with this part.

(b) The plan must establish procedures for administration, responsibility, lines of communication, standards of acceptability, documentation and other matters pertinent to the assurance of quality in the construction of the project for the following:

(1) Material specification and certification.

(2) Material fabrication.

(i) Receiving and identification.

(ii) Certification.

(iii) Marking.

(3) Welding.

(i) Qualification records.

(ii) Welding procedures.

(iii) Inspection records.

(4) Non-destructive testing.

(5) Cleaning and painting.

(6) Field construction procedures.

(c) A complete set of material certifications to meet this part, test records, job specification, and construction drawings must be maintained for the life of the facility. These documents must be updated as system revisions and modifications are made.

§ 126.2219 LNG facility layout and systems spacing.

(a) A berthed LNG vessel may not be within 50 metres (164 ft) or a distance "d", whichever is greater, of the impounding space surrounding the facility LNG storage tanks. Distance "d" must be determined from the following formula:

$$d = 0.8\sqrt{a}$$

Where

d = distance, in metres, from the edge of the impounding space to the berthed LNG vessel.

a = inside area, in square metres, measured across the top of the impounding space.

(b) Any LNG loading flange must be located at least 305 metres (1,000 ft.) from the following which are primarily intended for the use of the general public or railways:

(1) Each bridge crossing a navigable waterway.

(2) Each entrance to or superstructure of any vehicular tunnel under a navigable waterway.

§ 126.2220 Electrical power systems.

(a) The LNG facility must have the following:

(1) A primary power system.

(2) An emergency power supply.

(b) All electrical power systems must meet the National Electrical Code NFPA 70.

(1) Fixed electrical equipment and wiring installed within 15 metres (50 feet) of any LNG loading flange must comply with the class I, group D, division II requirements of NFPA 70, except that buildings or enclosures containing instrumentation and controls not fully conforming to the above classifications may be pressurized from a remote source.

(2) Areas of the LNG facility not under paragraph (b)(1) of this section must meet the classification requirements of Chapter 7 of NFPA 59A.

The emergency power supply must provide for orderly shutdown and the operation of necessary safety equipment.

(d) In the event of a power failure, there must be a means provided to ensure that all required aids to navigation are operational.

§ 126.2221 Lighting systems.

(a) The LNG facility must be adequately illuminated during operations. The facility must have—

(1) A general lighting system; and

(2) Emergency lighting.

(b) Lighting of an LNG facility must be arranged in a regular or symmetrical pattern. This pattern must make the pier distinguishable as a fixed structure when viewed by transiting marine traffic.

(c) Area and other lighting must be shielded and directed on the dock to minimize loss of night vision aboard transiting marine traffic.

(d) For operations between sunset and sunrise, the LNG facility must assure lighting that illuminates—

(1) Each transfer connection point on the facility with an average minimum lighting intensity of 54 lx (five footcandle);

(2) Each LNG transfer operation work area on the facility with average minimum lighting intensity of 11 lx (one footcandle);

(3) Each tranfer connection point in use on any barge moored at the facility with an average minimum lighting intensity of 54 lx (five footcandle); and

(4) Each LNG transfer operations work area on any barge moored at the facility to or from which LNG is being transferred, with an average minimum lighting intensity of 11 lx (one footcandle). The lighting intensity must be measured on a Horizontal plane one metre (3.3 feet) above the barge deck or walking suface.

(e) Emergency lighting must be provided for orderly shut-down, operation of necessary safety equipment, and required navigational aids.

§ 126.2222 Communications systems.

(a) The LNG facility must have—

(1) A primary communication system;

(2) An emergancy communication system; and

(3) An operations communication system.

(b) The primary communication system must provide communication between all areas of the LNG facility.

(c) The operations communication system must be a dedicated system, continuously manned during transfer operations, to provide communication between the persons in charge on the vessel and on the LNG facility.

(d) The emergency communication system must provide communication to all those persons and locations necessary for the orderly shut-down and operation of necessary safety equipment in time of emergency. This system must be independent of and physically separated from the primary communication and power systems.

(e) Communication equipment must meet the electrical classifications in § 126.2220, except that portable amplifiers and radios utilized in the facility must be approved by the Commandant or listed by an independent laboratory that is specifically approved by the Commandant, such as Underwriters Laboratories, Inc. or Factory Mutual Research Corporation, for Class I, Group D, Division II or be classified intrinsically safe.

§ 126.2310 Detection systems.

Gas and fire detection equipment are required for the following areas:

(a) Pump, vaporizer, and process equipment.

(b) Housed mechanical equipment handling LNG or vapor.

(c) Truck, rail, or vessel loading areas.

(d) Transfer areas.

(e) Storage container penetrations for product transfer.

§ 126.2315 Fire detection.

Fire detection equipment must be one of the following types:

(a) Ultraviolet flame detection.

(b) Smoke detection.

(c) Temperature detection (such as fusible elements).

§ 126.2320 Gas detection.

Permanently installed flammable gas detection systems must meet the following:

(a) Gas detection alarms must be activated before the gas concentration exceeds 30 percent of the lower flammable limit.

(b) Pipe runs from gas sampling heads must not be passed through enclosed areas occupied by personnel unless—

(1) Gas sampling lines are equipped with shut-off valves or an equivalent arrangement to prevent cross-communication with spaces where leaking gas could accumulate; and

(2) Exhaust gas from the detector is discharged to the atmosphere in a safe location.

(c) Gas detection equipment must be capable of sampling and analyzing from each sampling head within 15-minute intervals, unless the sampling head is located in enclosed spaces where a source of ignition is continuously present and is continuously monitored.

(d) A minimum of two portable gas detectors capable of measuring 0-100 percent of the lower flammable limit must be available for use by facility personnel.

§ 126.2325 Additional fire and gas detection requirements.

(a) Gas and fire detection equipment must be installed so that they may be readily tested.

(b) Audible and visual alarms must be provided to alert operating personnel of the existence of vapor hazards and fire. These alarms must be located in the terminal control center or other manned areas.

§ 126.2330 Low temperature sensors.

When low temperature sensors are provided for the purpose of monitoring LNG leakage of liquid carryover, they must have audible and visual alarms

§ 126.2335 Automatic shutdown.

Automatic shutdown system must be designed to failsafe in response to the presence of flammable vapors at 30 percent or more of the lower flammable limit or in response to a signal indicating a fire.

§ 126.2410 Maintenance, repair and retests.

(a) The operator of the LNG facility shall develop a maintenance, repair, and retesting program for the facility. This program must include requirements for transfer, process and storage operations.

(b) Nondestructive examination methods, limitations on defects, and qualifications of the authorized inspector and personnel performing the examination must meet the requirements of section 336 of ANSI B31.3, except that substitution of inprocess examination for radiography or ultrasonic in section 336.5.1(b) of ANSI B31.3 is prohibited.

(c) Repair and maintenance that involves welding, cutting, or similar operations may be conducted at times and places authorized by the Coast Guard if they are conducted under constant supervision by the operator.

(d) The maintenance, repair and retesting program must have precautions to prevent damage or overload to those components that may be affected during the retesting activity.

§ 126.2411 Electrical systems.

Electrical power systems must be maintained in a safe condition, free of defects or modifications that may cause fire or personal injury. Defective or dangerous wiring, equipment and devices must be removed.

§ 126.2420 Maintenance requirements.

The operator shall develop and follow a preventive maintenance program that is designed to maintain all safety devices in proper working condition for the following systems:

(a) Transfer systems.

(b) Gas and fire detection equipment.

(c) All fire protection systems and safety equipment. Fire protection equipment must be maintained in accordance with the following:

(1) "Care and Maintenance of Sprinkler Systems" (NFPA 13A).

(2) "Local Protective Signaling Systems" (NFPA 72A).

(3) "Protective Signaling Systems" (NFPA 72B).

(4) "Proprietary Protective Signaling Systems" (NFPA 72D).

(5) "Standpipe and Hose Systems" (NFPA 14).
(6) "Portable Fire Extinguishers" (NFPA 10).

§ 126.2430 Inspection requirements.

(a) LNG hoses and loading arms must be visually inspected by the operator for damage or defects before each use.

(b) The operator shall conduct at regular intervals, not to exceed 3 months from the previous inspection, a comprehensive visual inspection of the storage facility for leaks, frost indications, malfunctions, or other factors that would affect safety and operation. The inspection must include, but not be limited to, the following:

(1) Valves, external piping and insulation.
(2) Relief devices.
(3) Tank foundation.
(4) Foundation heating system.

(c) The operator shall conduct at regular intervals not to exceed 6 months from the previous inspection, a visual inspection of the transfer areas and process plant for indications of leaks, malfunctions and other factors affecting safety and operations.

(d) The operator shall conduct at regular intervals, not to exceed 12 months from the previous inspection, a visual inspection of pressure-relief devices not capable of being tested, such a rupture disks.

§ 126.2440 Testing and calibration.

(a) The interval between tests on a system is dependent upon visual inspection, system modification and repair, or upon an indication which would warrant a test to assure system integrity. Piping tests must be done following alterations or repairs to the pipe system if the maximum allowable working pressure is increased. The test pressure must be 110 percent of the maximum allowable working pressure and be held for a minimum of 30 minutes.

(b) The pressure test medium must be the working fluid, other liquids, air, natural gas, or inert gas that is compatible with the system, free from deleterious materials, and, except for LNG or natural gas, nonflammable.

(c) The operator shall perform at regular intervals, not to exceed 12 months from the previous test, a test of the following equipment:

(1) Safety valve and relief valve equipment.
(2) Loading arms in accordance with the requirements of paragraph 33.7.4.3 of ANSI B31.3 (1973).

(d) The operator shall perform at regular intervals, not to exceed 6 months from the previous test, an inspection, test and calibration of all fire protection, gas detection and fire detection equipment.

(e) The operator shall perform at regular intervals, not to exceed 12 months from the previous calibration, calibration of gauges, pressure switches, controllers, transmitters and other instruments that are essential to the safety of the plant and transfer operations.

§ 126.2460 Repairs.

(a) Insulation failures, leaking flanges, valves, gauges, or other appurtenances may be repaired while the storage facility continues to operate.

(b) Repairs for safety or construction reasons must be made when the system is out of service.

(c) For those repairs that affect the structural integrity of pressure retaining components of the system, such as those made by welding, a detailed repair procedure must be established. The procedure must include each necessary step to safely execute the repair. The welding procedure must be in accordance with the standards used for initial construction. Detailed repair procedures must be established for repairs under paragraph (b) of this section.

§ 126.2510 Fire protection and safety equipment.

The operator shall obtain written approval from the COTP for the installation of any fire control system.

§ 126.2511 Fire protection systems.

(a) Each fire protection system must be maintained in good operating condition and ready for use at all times.

(b) An emergency fire pump, capable of operating during loss of primary electrical power at the LNG facility, must be installed and operable.

(c) All firefighting equipment including hydrants, standpipe and hose stations, fire extinguishers, and fire alarm boxes must be conspicuously marked and readily accessible.

(d) There must be maintained at least 1.2 metres (4 feet) of clear and open operating space around any fire alarm box, standpipe, fire hose, sprinkler valve, fire door, access hatch, or fire appliance.

(e) Fire protective and extinguishing equipment must be listed and labeled by Underwriters Laboratories, Inc. or Factory Mutual Research Corp.

§ 126.2512 Automotive fire apparatus.

(a) Fire trucks and other portable, manually operated fire control equipment must be operated by suitably trained employees. The equipment may not be used for any purpose other than firefighting.

(b) Fire and water trucks must meet NFPA 19, "Standard for Automotive Fire Apparatus."

§ 126.2520 Fire mains.

(a) A loop fire main system must be provided around the effective operating perimeter of the LNG facility and around the entire process area.

(b) The fire main system must be capable of providing water to each area, building, or structure listed in paragraph (f) of this section from two separate fire main connections without having to use more than 30 metres (98 feet) of fire hose at each connection.

(c) The capacity of the fire main system must be sufficient to supply two fire streams discharging at a minimum of 0.006 cubic metres per second (1.5 gal./sec.) per hose on each major structure, building and area unit listed in paragraph (f) of this section which could be simultaneously engulfed in a credible fire on the facility.

(d) The fire main must be supplied from two separate connections to the fire main supply.

(e) The fire main supply system must provide water for not less than four hours duration.

(f) The fire main must supply monitors, hydrants, hose stations, or sprinklers throughout the facility and must cover the following:

(1) Control building.
(2) Compressor building.
(3) Liquefaction or re-liquefaction areas.
(4) Process areas.
(5) Vaporization areas.
(6) Pumpout and storage tank areas.
(7) Truck station areas.
(8) Transfer areas.
(9) Generator buildings.
(10) Warehouse.
(11) Switchgear buildings.
(12) Office, maintenance and utility structures.

§ 126.2522 Fire main piping.

(a) A fire main system that has a "wet" piping design must have all water headers and mains located below "frost" depth. All vertical risers must be maintained in a drained condition above the "frost" depth utilizing automatic ball drip valves or equivalent means. Fire mains located in freezing climates where there exists a high water table, must be installed with provisions to isolate and pump out vertical risers and hydrants after each use.

(b) A fire main system that incorporates above ground piping located in a freezing climate must have means to prevent freezeup.

(c) Sectionalizing gate valves complete with post indicators must be installed to provide fire main isolation. If a single component of the system is inoperative, one of the sources of water supply required under § 126.2520(b) must remain operable.

(d) The fire main must be designed so that the pressure at the end of 30

metres (98 ft.) of 1½-inch hose does not exceed 1.05 M pa (152 PSIG).

(e) Pressure relief devices must be provided to ensure the fire pump discharge pressure does not exceed the design pressure of fire main piping.

(f) Piping 100 mm (4 inches) and larger must be ASTM 21.6 class 125 cast iron or the equivalent. Cast iron piping must be cleaned and tested in accordance with NFPA 24.

(g) For the marine berth, at least two international shore connections must be available for use by the local fire department. The international shore connection must meet 46 CFR Subpart 162.034.

§ 126.2523 Hydrants systems.

Hydrant systems must meet NFPA 24.

§ 126.2524 Dry chemical system.

(a) Fixed or portable dry chemical equipment must be ready for immediate use in the—

(1) Loading arm and dock area;
(2) Piping manifold and hose transfer areas;
(3) Process area;
(4) Vaporizer area;
(5) Shop areas;
(6) Office areas;
(7) Utility areas;
(8) Control room; and
(9) Storeroom areas.

(b) Dry chemical equipment and installations must meet NFPA 17 and NFPA 10 and have chemicals capable of extinguishing the types of fire most likely to be encountered.

§ 126.2525 Foam systems.

Foam systems must meet NFPA 11, 11a, or 11b.

§ 126.2526 Water deluge systems.

Water deluge systems must meet NFPA 15.

§ 126.2527 Sprinkler systems.

Sprinkler systems must meet NFPA 13.

§ 126.2550 Personnel emergency equipment.

(a) The operator shall provide the following personnel emergency equipment outfits in the quantity determined necessary by the COTP. Each outfit must include the following:

(1) Self-contained breathing apparatus, approved under 30 CFR Part 11, with a belt and lifeline attached.

(2) An explosion proof flashlight, approved by Underwriters Laboratories, Inc., for use in Class I, Group D, hazardous areas.

(3) Boots and gloves of rubber or other electrically nonconducting material.

(4) A rigid helmet that provides effective protection against impact.

(5) Protective clothing that will protect the skin from heat and burns of fire and LNG. The outer surface must be water resistant and have tolerance to LNG.

(6) A combustible gas indicator.

(b) Emergency equipment outfits must be stored in a dry, conspicious place and marked "Emergency Equipment Outfit." This equipment may not be used for any other purpose except for emergencies.

(c) The operator shall provide two personnel emergency equipment outfits:

(1) In the control room.
(2) In the dock house.
(3) At the entrance gate.

(d) Piers or marine structures extending 90 metres (295 feet) or more into the waterway and having only one means of access must have evacuation equipment for four persons. This equipment must provide protection against fire, explosion, suffocation, exposure, shock, swamping and capsizing.

§ 126.2610 LNG facility security.

(a) The operator shall provide a security system with controlled access acceptable to the COTP, which shall be designed to minimize entry by unauthorized persons.

(b) The operator shall provide a steel, chain-link security fence enclosing the facility. This fence must be at least 2.4 metres (8 feet) in height including a 0.45 metre (18 inch) 45° outrigger at the top that faces outward and is strung with three strands of barbed wire. Fencing must reach within 50 mm (2 inches) of firm ground. Culverts or depressions under fences must be filled with welded bar grilles or the equivalent.

(c) The operator shall provide adequate security personnel physically capable of performing guard duty. They must receive appropriate training in the purpose, layout, hazards and vulnerable portions of the facility.

(d) Animals used for security purposes must be restrained to eliminate a hazard to the law abiding public. Warning signs regarding the use of animals must be conspicuously posted and lighted at intervals around the perimeter fence.

§ 126.2710 Emergency response personnel.

During the following plant operational stages, the operator shall insure that the LNG facility is manned by personnel available for emergency response at the minimum levels indicated.

(a) During process plant shutdown, without any LNG at the facility, the minimum number of personnel manning the process plant must be one person who is of operator level.

(b) During process plant shutdown, with LNG in storage tanks, the minimum number of personnel manning the plant must be two persons who are of operator level.

(c) During process plant operations, without a vessel at the dock, the minimum number of personnel manning the process plant who are directly involved with LNG operations must be two persons who are of operator level, one of whom is assigned to the control room.

(d) During process plant operations, with a vessel at the dock, the minimum number of personnel manning the LNG facility must be—

(1) one person in the dock area who is of operator level;

(2) one person at the control room who is of operator level; and

(3) one person who is of supervisor level.

(e) Any additional manning as may be required must comply with the LNG facility Operations Manual.

§ 126.2712 Personnel requirements.

For each position in the facility the operator shall establish—

(a) Minimum qualifications;
(b) Job descriptions; and
(c) Training requirements.

§ 126.2722 Training requirements.

(a) The operator shall ensure that permanent maintenance, operator, and supervisor level employees must have the following minimum training:

(1) Basic firefighting, including principles in extinguishing an LNG fire.

(2) Basic first aid.

(3) Basic safety instructions for LNG and gas operations which include, but are not limited to—

(i) Properties and hazards;

(ii) Dangers of asphyxiation;

(iii) Procedures for handling liquid nitrogen; and

(iv) Procedures for handling LNG.

(5) Responsibilities of each position.

(6) Emergency procedures.

(b) The operator shall ensure that personnel of operator and supervisor level must also have the following additional training:

(1) Detailed instruction on the facility operation, including controls, functions, and operating procedures.

(2) Advanced firefighting instructions.

(3) Basic instruction in security procedures.

(4) Basic introduction to the operation and construction of LNG ships, trucks, and rail cars.

(5) Basic introduction to gas and liquid characteristics, properties, and hazards as related to the products handled by the facility.

(6) Advanced instruction in emergency procedures.

(7) Advanced first aid instructions including—
(i) Treatment of frostbite;
(ii) Treatment of burns;
(iii) Personnel resuscitation; and
(iv) Procedures for transporting injured personnel.
(c) The operator shall insure that supervisor level must also have the following additional training:
(1) Complete operating instructions for all systems within the plant.
(2) Advanced security instructions.
(d) The operator shall repeat all required training at least every two years.

§ 126.2810 LGN Facility operations.

(a) No person may operate an LNG facility under this part unless the the equipment, personnel, and operating procedures of the facility meet the requirements of this part and are in compliance with the Operations Manual.
(b) At least 60 days prior to the initial transfer or processing of liquefied natural gas the operator shall submit to the COTP an Operations Manual meeting the requirements of § 126.2821 and an Emergency Manual meeting the requirements of § 126.2822 for approval.

§ 126.2811 Person in charge: evidence of designation.

Each person in charge shall carry evidence of designation as a person in charge unless such evidence is immediately available at the facilty.

§ 126.2813 Compliance with suspension order.

No operator to whom an order of suspension has been issued under § 126.2016 may conduct LGN transfer operations until that order is withdrawn.

§ 126.2821 Operations manual.

The operator of each LNG facility to which this part applies shall prepare and submit to the COTP an Operations Manual that contains—
(a) The geographic location of the facility;
(b) A description of the facility, including a plan of the facility showing mooring areas, transfer locations, control stations, systems schematics, and fire and safety equipment;
(c) The number, duties, responsibilities and names of personnel required during each operation;
(d) The names and telephone numbers of facility supervisor level personnel, local Coast Guard unit, hospitals, fire department, police department, and other personnel who may be called by the employees of the facility in an emergency;
(e) A description of each communication system;
(f) The location and provisions at each personnel shelter;
(g) A description and the location of each emergency shutdown system;
(h) The maximum relief valve setting (or maximum system pressure when relief valves are not provided) for each transfer system;
(i) Procedures for—
(1) Vessel loading and discharge;
(2) LNG pump start-up and shutdown;
(3) Venting;
(4) Leak detection systems;
(5) Fire detection systems;
(6) Utility systems;
Extinguishment and control systems;
(8) Control room operations; and
(9) Security.
(j) Training program under §§ 126.2700-126.2799; and
(k) Maintenance, repair, and retest programs under § 126.2410.

§ 126.2822 Emergency manual.

(a) The operator shall have a separate Emengency Manual. Detailed plans shall be made to cover emergency procedures, emphasizing shutdown, cutting off gas supply and liquid flows at the LNG facility, isolation of various portions of the system, depressurizing and other applicable procedures to ensure that the escape of gas or liquid is promptly cut off or reduced as much as possible, whether or not a fire has occurred. A copy of the the Emergency Manual shall be furnished to the COTP by the operator.
(b) Each Emergency Manual must have detailed instructions for the following:
(1) General emergency procedures.
(2) Fire control and firefighting systems and procedures.
(3)Emergency lighting procedures.
(4) Emergency power system procedures.
(5) First aid procedures.
(6) Emergency shutdown procedures.
(7) Dock emergency procedures.
(8) LNG release response procedures.
(9) Response procedures for other potential emergency situations.

§ 126.2823 Manuals: amendments.

(a) The COTP may require the operator to amend the Operations Manual and the Emergency Manual.
(b) When the COTP requires an amendment to a manual, the COTP notifies the operator in writing. The operator may submit written information, views and arguments on the amendment not more than 14 days from the date of the notice After considering all relevant material presented, the COTP notifies the operator of any amendment required or adopted unless the notice is rescinded. The effective date will be not less than 30 days after the operator receives the last COTP notice unless the operator petitions the District Commander to reconsider the notice, in which case its effective date is stayed pending a decision by the District Commander. Petitions to the District Commander must be submitted in writing via the COTP.
(c) If the COTP finds that there is a condition requiring immediate action to prevent the discharge or risk of discharge of LNG that makes the procedure in paragraph (a) of this section impracticable or contrary to the public interest, the COTP may issue an amendment effective, without stay, on the date the operator receives notice of it. In such a case, the COTP includes a statement of the reasons for the finding in the notice.

§ 126.2825 Manuals changes.

(a) The operator shall keep the Operations Manual and Emergency Manual current so that at all times they meet the requirements of this part.
(b) The operator shall provide a copy of each change to either manual to the COTP at least 24 hours before transferring LNG in operations to which this part applies.

126.2826 Manuals: availability.

The operator shall keep an Operations Manual and an Emergency Manual at the LNG facility and shall make them readily available to operator level personnel, vessel personnel and to the COTP.

§ 126.2841 Smoking.

The operator shall prohibit smoking, and no person may smoke, on any portion of the waterfront facility except in locations specifically designated as smoking areas and approved by the COTP. "NO SMOKING" signs must be prominently displayed throughout prohibited areas. "Designated Smoking Area" signs must be prominently displayed throughout designated smoking areas.

§ 126.2842 Motor vehicles.

(a) Motor vehicles may not remain or park in cargo transfer areas, except under any of the following conditions:
(1) When actually awaiting opportunity to load or discharge cargo, ship supplies, or passengers and attended by a driver.
(2) When being used for or incident to maintenance, repair, or alterations and attended by a driver.
(3) When facing toward an unimpeded exit and attended by a driver.
(b) Motor vehicles may remain or park in such portions of the LNG facility as are designated and marked as "Parking Areas" by the operator when permitted by local ordinances and regulations, and provided no fire lanes

are blocked or exits impeded by their presence.

§ 126.2843 Pier automotive equipment.

Tractors, stackers, lift trucks, hoisters, and other equipment driven by internal combustion engines used on a facility must be of such construction and condition as not to constitute a fire hazard. Each unit must be kept free from excess grease, oil, or lint. Each unit must be equipped with an approved type fire extinguisher except where the COTP has determined that fire extinguishers that are adequate in numbers, type and location to protect pier automotive equipment are available at the LNG facility. When not in use, automotive equipment must be stored in a safe manner and location. Gasoline or other fuel used for such equipment must be stored and handled in accordance with accepted safe practices. Refueling of such equipment or any vehicle is prohibited on any pier within the facility.

§ 126.2844 Grounds maintenance.

The LNG facility must be free from rubbish, debris, and other materials which present a fire hazard. Burning rubbish in an open fire on a waterfront facility is prohibited. Grass on the facility must be maintained at a length of not more than three inches. Grass cuttings must be removed from the ground after mowing.

§ 126.2845 Maintenance of stores and supplies.

Hazardous materials, to be used in connection with operation or maintenance of the facility, may not be stored on any pier or elsewhere on the facility except in amounts necessary for normal current operating conditions. Covered metal containers must be provided for storage of used wiping cloths and the contents must be removed at the end of each working day.

§ 126.2851 Transfer operations: prior to transfer.

(a) No person may handle, load, discharge, or transport LNG at any facility unless a use permit has been issued by the COTP.

(b) Before transfer, the person in charge of the vessel and the person in charge of the LNG facility shall inspect all transfer equipment to ensure it is in proper operating condition. After the inspection, they shall meet and determine the transfer procedure, verify that adequate ship-to-shore communication exists, and review emergency procedures. The vessel cargo tank pressure, temperature and density conditions must be jointly inspected prior to unloading the vessel.

(c) Both persons in charge of LNG transfer operations shall review the following prior to transfer:

(1) The identity of the product to be transferred.

(2) The sequence of transfer operations.

(3) The transfer rate.

(4) The location of personnel participating in the transfer.

(5) Particulars of the transferring and receiving systems.

(6) Critical stages of the transfer operations.

(7) Federal, State and local rules that apply to the transfer of LNG.

(8) Emergency procedures.

(9) Communication systems.

(10) Watch or shift arrangement.

(d) Before transfer, the operator shall take gage readings to insure that the receiving container or vessel tank will not overfill.

§ 126.2852 Declaration of inspection.

(a) After completing the inspection and before giving their approval to start the transfer operation, the person in charge on the vessel and the person in charge on the facility pier shall complete the following Declaration of Inspection in duplicate. The original of the Declaration of Inspection must be kept aboard the vessel and the duplicate must be kept at the facility. Each must be retained for 1 year.

DECLARATION OF INSPECTION TO

TRANSFER LNG

Date: _____

Facility Name: _____

Address: _____

Vessel Name: _____ Port of _____

I, _____, being the person in charge on the vessel for the transfer of LNG about to be undertaken, do certify that I have personally inspected this vessel with reference to the following requirements and that opposite each of them I have indicated that the regulations have been complied with.

(1) Warnings are displayed as required. _____

(2) Cargo connections have been properly made and cargo valves are properly set. _____

(3) There are no fires or open flames present on the deck or in any compartment of the vessel which is located on, facing, open and adjacent to the main deck of the vessels on which cargo connections have been made. _____

(4) The LNG facility concerned has reported itself in readiness for transfer of LNG. _____

(5) If the boiler fires are lighted, an inspection has been made and they may be operated with reasonable safety. _____

(6) If the galley fires are lighted, an inspection has been made and they may be operated with reasonable safety. _____

(7) An inspection has been made to determine whether smoking is to be permitted. _____

(8) If smoking to to be permitted, spaces have been designated for that purpose. _____

I, _____, being the person in charge of the LNG facility do certify that I have personally inspected the facility with reference to the following requirements and that opposite each of them I have indicated that the regulations have been complied with:

(1) Warning signs are displayed on the facility at the point of transfer facing the shoreline, and facing each way along the shoreline without obstruction, at all times during the coupling, transfer operation and uncoupling. _____

(2) There is no repair work on the transfer system or receiving tanks during LNG transfer. _____

(3) Communication systems used in the LNG transfer operation have been tested and found to be working in a satisfactory manner. _____

(4) The transfer system has been checked to ensure that all valves are properly lined up. _____

(5) Suitable material is used in joints and in couplings when making connections to insure that they are tight and leak free. _____

(6) All bolts are used in bolted couplings to prevent leakage. _____

(7) The vessel's moorings are strong enough to hold all expected conditions of surge, current and weather and are long enough to allow adjustment for changes in drift, draft and tide during the transfer operation. _____

(8) The designated personnel are on duty to conduct the transfer operations in accordance with the facility Operations Manual and vessel LNG transfer procedures that apply to the transfer operation. _____

(9) The ship and facility personnel responsible for LNG transfer operations speak and understand the English language. _____

Person in Charge of Vessel	Person in Charge of Facility
_____ (Signature)	_____ (Signature)
_____ (Title)	_____ (Title)
_____ Date _____ Time	_____ Date _____ Time

(b) No person may transfer LNG to or from a vessel unless each person in charge has signed the Declaration of Inspection form prescribed in this section. No person in charge may sign the Declaration of Inspection unless he or the other person in charge has determined by inspection that the facility and vessel meets the requirements of this section.

§ 126.2853 Requirements for LNG transfer.

(a) When performing LNG cargo transfer operations, the facility LNG transfer system must meet the following conditions:

(1) The LNG transfer system in use must be under the continuous control and surveillance of the operator or his designated representative.

(2) There must be one person in charge present dockside at all times responsible for the LNG transfer operations from each vessel. A person in charge shall have no other duties assigned during the transfer operation.

(b) In the case of an emergency involving liquid spillage or the use of fire protection equipment with one or more vessels at the same facility, each vessel must immediately shut down transfer operations and remain shut down until authorized to resume cargo operations by the COTP.

(c) The person in charge on the LNG facility shall not start LNG transfer operations or, if started, shall discontinue transfer when any of the following conditions occur:

(1) During severe electrical storms.

(2) If a fire occurs on the facility, the vessel, or in the vicinity.

(3) If a break occurs in the LNG transfer system.

(d) If during transfer operations either person in charge requests that the transfer be discontinued, the other person in charge shall immediately comply with this request. Transfer of LNG shall not proceed until the person in charge on the facility and the person in charge on the vessel agree it is safe to conduct the transfer.

(e) Receiving container or vessel tank levels must be gauged during transfer operatios to insure they do not overfill.

(f) Transfer operations must be commenced slowly and, if any unusual variance in pressure or temperature occurs, transfer must be stopped until the cause has been determined and corrected. Pressure and temperature conditions must be monitored during the transfer operation.

(g) When gas or liquid is vented, it must be vented to a safe location.

(h) Prior to and during transfer of LNG, no other cargoes may be transferred without specific approval of the COTP. Vessels may bunker during the LNG transfer only if that bunkering is from a shorebased pipeline. Personnel involved in the bunkering operation shall not be involved in the LNG transfer.

(i) At facilities where multiple cargoes are handled, the hoses and systems must be marked to specify the allowable products.

(j) Ships, lighters, barges, or other vessels must be moored in an orderly manner to provide their rapid removal in the event of a fire.

(k) The person in charge of the vessel shall provide sufficient wire towing pendants, hung on the outboard side of moored LNG vessels, to assist in their removal from the pier in the event of an emergency.

(l) Vehicle traffic must be prohibited on the pier or dock within 30 meters (100 feet) of the loading and unloading manifold during transfer operations. Warning signs or barricades must be used to indicate when transfer operations are in progress.

(m) Material handling equipment and the fueling thereof must meet 49 CFR 176.78.

(n) Oxyacetylene or similar welding or burning or other hot work including electric welding or the operation of equipment may not be conducted on an LNG facility or vessels moored at the facility while LNG is being handled, stored, loaded, unloaded, or transported without the specific approval of the COTP.

(o) At least two facility and vessel fire hoses must be layed out and charged. The vessel fire main system must be connected to the facility fire main system.

§ 126.2901 Records: Letter of intent.

The operator shall keep on file his Letter of Intent and any changes.

§ 126.2904 Records: Inspection.

The operator shall keep on file a record of each inspection made by the Captain of the Port and any other regulatory body for a period of 5 years.

§ 126.2906 Inspection and maintenance.

The operator shall keep on file for a period of 5 years a record of the dates and results of—

(a) Each required inspection;

(b) Periodic maintenance of safety equipment and devices including fire protection;

(c) Unscheduled repairs to transfer systems;

(d) Material and equipment failures and corrective action taken; and

(e) Accidents and corrective action taken.

§ 126.2907 Tests.

The operator shall keep on file a permanent record of each test performed on the transfer systems of the LNG facility. The record must contain—

(a) Facility name and date;

(b) Employee responsible for test;

(c) Company or individual or both making test;

(d) Component or system tested;

(e) Test results; and

(f) Corrective action taken.

§ 126.2908 Personnel records.

The operator shall keep personnel records for each employee assigned to the facility which include—

(a) Name;

(b) Qualifications;

(c) Training; and

(d) Lost time accidents.

(40 Stat. 220 (50 U.S.C. 191); (86 Stat. 427 (33 U.S.C. 1224); 49 CFR 1.46(1) and (n)(4)).)

R. H. SCARBOROUGH,
Vice Admiral, U.S. Coast Guard,
Vice Commandant.

JULY 26, 1978.

[FR Doc. 78-21566 Filed 8-2-78; 8:45 am]

Federal Register

THURSDAY, AUGUST 3, 1978
PART VI



DEPARTMENT OF THE INTERIOR

Office of the Secretary

SURFACE COAL MINING

Hearings and Appeals Special Rules Governing Adjudicatory Proceedings

[4310-10]

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Department of the Interior.

ACTION: Final rule.

SUMMARY: The regulations in this subpart set out the rules of procedure to govern adjudicatory proceedings before administrative law judges and the Board of Surfacing Mining and Reclamation Appeals pursuant to the Surface Mining Control and Reclamation Act of 1977.

EFFECTIVE DATE: August 3, 1978.

ADDRESSES: Office of Hearings and Appeals, Department of the Interior, 4105 Wilson Boulevard, Arlington, Va. 22203.

FOR FURTHER INFORMATION CONTACT:

David B. Graham, Director, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Va. 22203, 703-557-1500.

SUPPLEMENTARY INFORMATION: The Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201-1328, required the Secretary of the Interior to publish initial environmental protection regulations that would be applicable to all coal mining operations on lands that are regulated by the States until a State has an approved regulatory program or a Federal regulatory program has been implemented in the State. The Secretary published such regulations on December 13, 1977. The initial environmental protection regulations make numerous references to proceedings which are required to be conducted before the Office of Hearings and Appeals pursuant to procedures set forth in 43 CFR Part 4. These procedural regulations have been developed to provide procedures for various proceedings required by the Act and the initial regulations. Following publication of the permanent substantive regulations, as required by section 501(b) of the Act, additional procedural regulations will be proposed to supplement these procedural rules.

A brief discussion of the major parts in the regulations follows:

Sections 4.1100-16 set forth the jurisdiction of the Board of Surface Mining and Reclamation Appeals (the Board) and contain certain general regulations governing practice before the administrative law judges and the Board.

Sections 4.1120-29 outline the powers of the administrative law judges and set forth generally the actions that may be taken by the administrative law judges.

Sections 4.1130-41 contain rules to regulate discovery in proceedings before administrative law judges under the act.

Sections 4.1150-58 set out the procedure for obtaining review of a proposed assessment of a civil penalty.

Sections 4.1160-71 provide the method for obtaining review of notices of violation or orders of cessation or the modification, vacation, or termination of such notices or orders. These procedures apply to orders of cessation which are not subject to expedited review under § 4.1180 et seq. of these regulations.

Sections 4.1180-86 contain regulations to provide for expedited review of certain orders of cessation. Such expedited review is required by § 525(b) of the Act.

Sections 4.1190-96 encompass the procedures for review of an order to show cause why a permit for surface coal mining operations should not be suspended or revoked.

Sections 4.1200-05 set forth the rules governing formal review of alleged acts of discrimination.

Sections 4.1210-39 have been reserved for permit procedures which will be developed following completion of permanent substantive regulations governing the application process for permits for surface coal mining operations.

Sections 4.1240-59 have been reserved for procedures relating to performance bond release. Such procedures will be proposed following publication of permanent substantive regulations concerning performance bond release.

Sections 4.1260-67 set forth the procedures for applying for temporary relief in section 525 review proceedings under the Act. The procedure for seeking temporary relief from alleged discriminatory acts is covered in § 4.1203 of these rules.

Sections 4.1270-76 establish procedures governing Board review of decisions or orders of administrative law judges.

Sections 4.1280-86 provide procedures for appealing directly to the Board from a decision of the Director, Office of Surface Mining (OSM), granting or denying a small operator exemption pursuant to 30 CFR 710.12, or from any other written decision of an official of OSM which specifically grants the right of appeal to the Board.

Sections 4.1290-96 set forth regulations to govern the awarding of costs and expenses, including attorneys' fees, in administrative proceedings pursuant to section 525(e) of the Act.

These rules were published in proposed form in the FEDERAL REGISTER on April 13, 1978 (43 FR 15441). Public hearings on the proposed rules were held in Washington, D.C., on May 10, 1978, and in Denver, Colo., on May 12, 1978. The comment period for the regulations closed on May 23, 1978. The transcripts of the public hearings and all written comments have been considered in the development of these final rules.

General comments are set forth below, followed by summaries of specific comments relating to particular sections or definable groups of sections.

GENERAL COMMENTS

1. A number of commenters objected that the rules, as proposed were burdensome, overly complex, and too lengthy. One commenter suggested that the regulations be rewritten in "plain, understandable language." It is hoped that the changes which have been made in these final rules have helped to reduce any burdensome and complex aspects of the regulations. To a certain extent, the length and complexity of the regulations is necessitated by the number and intricate nature of the various administrative proceedings which may arise under the Act. It is also hoped that these final rules reflect plain, understandable language.

2. One commenter expressed general concern about the detailed requirements for filing petitions and applications. A number of changes have been made, as set forth in the responses to the specific comments below, in an attempt to alleviate some of the difficulties pointed out by the commenters.

GENERAL PROVISIONS

1. Section 4.1101 sets forth the jurisdiction of the Board with respect to the various proceedings under the Act. Several commenters suggested that a provision be added that decisions of the Board are final for the Department. This suggestion was rejected as unnecessary because the regulation reads that the Board has the final decisionmaking power of the Secretary under the Act pertaining to those proceedings listed, subject only to 43 CFR 4.21(c) and 43 CFR 4.5. Also 43 CFR 4.1(4), 43 FR 17941, published on April 27, 1978, provides that the Board performs finally for the Department the appellate and other review functions of the Secretary under the Surface Mining Control and Reclamation Act of 1977.

2. Several commenters suggested that if surface mining proceedings before the Board are to be subject to the supervisory power of the Secretary, as set forth in 43 FR 4.5, then that section should be revised. Revision of 43 CFR 4.5 is presently being actively considered by the Department.

3. Several commenters urged that § 4.1101(b) set out in detail the specific relief which the Board is authorized to grant, arguing that the lack of specificity will create needless litigation. The commenters provided a list of things which the Board should be authorized to do, including changing the nature and statutory designation of a citation and imposing affirmative obligations. These comments were not accepted. The jurisdiction of the Board, as set forth, is general in nature. It is not felt that the particularity proposed by the commenters is necessary for this regulation.

4. Section 4.1103 contains procedures relating to eligibility to practice before the Department. One commenter suggested deleting this section in view of existing provisions in 43 CFR Part 1. Several other commenters recommended merely a cross-reference to 43 CFR Part 1 indicating that eligibility to practice before the Office of Hearings and Appeals in any proceeding under the Act should be in accordance with 43 CFR Part 1. These comments were not accepted. Section 4.1103 states that eligibility to practice shall be determined pursuant to 43 CFR Part 1. This section merely gives an administrative law judge or the Board the authority to determine the eligibility of persons to practice before them, subject to the guidelines of 43 CFR Part 1. This section is not meant to create any new independent means of disqualifying individuals on unstated grounds.

5. Other commenters requested that § 4.1103 be modified to permit representation by law students under proper supervision of members of the bar and be clarified as to representation of a citizens' group by a full-time employee of that group. This comment was not properly directed to § 4.1103. Such changes would require amending 43 CFR 1.3—Who may practice. Revision of that regulation is not within the scope of this rulemaking.

6. Section 4.1105 sets forth the statutory parties to the various review proceedings under the Act. Several commenters requested the deletion of "any other person having an interest which is or may be adversely affected" from § 4.1105(a)(1), covering civil penalty proceedings under the Act. This suggestion was accepted because the deleted phrase is overly broad and such a person would not be easily definable for purposes of service of notice of the particular proceeding. However, acceptance of this comment does not mean, as urged by some commenters, that such persons would never have a right to intervene in a civil penalty proceeding. Such a person could always seek to intervene in a civil penalty proceeding pursuant to 43 CFR 4.1110.

7. One commenter suggested that § 4.1105(c) should be changed to conform with the intent of § 514(f) of the Act, which the commenter characterized as requiring a third party intervenor to have participated in the administrative proceedings as an objector who had been aggrieved by the decision of the regulatory authority. This comment was not accepted. The section of the Act cited by the commenter relates to the process for issuance of permits. The interim regulatory program does not address the permit process. In addition, the section of the Act cited by the commenter actually relates to who may seek judicial review of a decision of the regulatory authority granting or denying a permit in whole or in part, not to who may participate as a party in a proceeding.

8. One commenter suggested that with respect to § 4.1105(c), persons who fail to exercise their right to participate in each stage of a proceeding should not be permitted to become participants at a later date. This comment was rejected. There is no basis for such a restrictive policy.

9. Several commenters recommended the complete revision of § 4.1105(c) in order to make clear that when a statutory party does not timely participate in a proceeding, it will not be considered a party to the proceeding, unless permitted by the administrative law judge or the Board for good cause shown. The commenters considered the regulation to be deficient because no criteria were stated and that the insertion of the "good cause" standard would rectify that problem. The comment was rejected. The regulation allows any statutory party or any intervenor with full party rights who fails to participate in each stage of a proceeding to become a participant with the rights of a party in the discretion of the administrative law judge or the Board. There is no reason to impose a good cause standard. The commenters' suggestion for limiting third party participation in civil penalty proceedings by a language change in § 4.1105(c) was also rejected. As stated above, there is no reason to foreclose third party participation in civil penalty proceedings.

10. Section 4.1106 relates to hearing sites. One commenter complained that the language that the administrative law judge "give due regard to the convenience of the parties or their representatives and witnesses" was useless. It was suggested that hearing sites be located in and around coal regions. No change was made in the regulation. In addition to its Arlington, Va., headquarters the Office of Hearings and Appeals has field offices, staffed by administrative law judges, in Sacramento, Calif., Salt Lake City, Utah, and Knoxville, Tenn. Depending on the case load arising under the Act, offices are also planned for Charleston, W Va., Louisville, Ky., and Pittsburgh, Pa. It is anticipated that the administrative law judges will schedule hearings with due regard for the convenience of the parties and the regulation provides the necessary flexibility to accomplish such goal.

11. Several commenters also suggested that the Office of Hearings and Appeals establish a field office in an area convenient to the south central coal fields of Texas, Louisiana, Alabama, Oklahoma, and Arkansas. While there was no change in the regulation, the Office has taken this suggestion under advisement and will monitor the cases arising in that part of the country in order to determine whether an office in that area is necessary.

12. Section 4.1107 sets forth the requirements for filing documents in proceedings before administrative law judges under the Act. The reference to different initial filing requirements for expedited review proceedings and temporary relief proceedings in proposed § 4.1107(a) was eliminated. Because all the OHA field offices have not yet been established, all initial filing shall be with the Hearings Division, OHA, Arlington, Va. One commenter stated that § 4.1107(a) should be amended by requiring filing by certified mail, return receipt requested. This amendment was not made. Section 4.1107(a) only refers to the filing of a document initiating a proceeding. Filing is not complete until receipt; therefore, there is no reason to strictly regulate the manner of filing.

13. One commenter suggested the elimination in § 4.1107 of the filing of proof of service, except in those cases where actual receipt was not evidenced through responsive pleading or otherwise. The commenter characterized the requirement as burdensome and unnecessary. This comment was not accepted. The requirement of filing proof of service is not burdensome and is necessary to determine if parties were properly notified.

14. Several commenters recommended that contemporaneously with filing, a copy of any document initiating a formal proceeding under the Act be sent by the initiator to the local OSM office, and that the document be posted in a public place for public examination. This comment was not accepted. While the posting of an initiat-

ing document in the local OSM office might be desirable, it is not felt that the burden of serving OSM should rest with the initiator of the action. It might be possible for the Solicitor's Office and OSM to undertake an informal notification system.

15. Section 4.1109 regulates the service of documents in proceedings before administrative law judges under the Act. Several commenters urged that service of initiating documents should be made on the Associate Solicitor, Division of Surface Mining, Washington, D.C., rather than on the Field Solicitor for the region in which the mine site is located. The commenters stated that such a change would avoid confusion and mistaken service on the improper field office. Also it was argued that the change would allow the Solicitor's Office a degree of latitude in the assignment of cases. This comment was rejected. The Solicitor has established field offices in various parts of the country in order to provide prompt and efficient legal services to OSM. In order to accomplish that purpose and to comply with the various statutory deadlines in the Act, service of documents on the field solicitors is a necessity.

16. Several commenters suggested that the addition of the word "known" in § 4.1109(a) would clarify who should be served with respect to statutory parties and "other persons." This comment was not accepted because the word "known" adds no meaning to statutory parties in light of the change made in § 4.1105(a)(1). The statutory parties for the various proceedings are those persons listed in § 4.1105(a).

17. A number of comments were received requesting either deletion of § 4.1109(b) or the clarification of that section to show that separate service on OSM is not required and suggesting that the reference to statutory parties should be to "known" statutory parties. The clarification comments were adopted in part; the section has been changed to make it clear that separate service on OSM is unnecessary. However, the word "known" has not been inserted for the reasons stated in the comment response above. In addition, it was stated that the requirement for service of initiating documents by certified or registered mail, return receipt requested, or by personal service in subsection (b) should be eliminated as unnecessary where receipt by the responding party is otherwise evidenced. This comment was not accepted. Receipt of initiating documents is sufficiently important to require such service and it is not believed to be burdensome.

18. Section 4.1110 contains the rules for intervening in a proceeding under the Act. Several commenters argued that civil penalty proceedings should be exempt from intervention. The commenters believe that civil penalty proceedings, as a matter of law, are only between the person charged with the civil penalty and the agency. This comment was not accepted. The legislative history is clear that public participation in all phases of surface mining regulation, including enforcement, was contemplated by Congress in the enactment of the Surface Mining Control and Reclamation Act of 1977. See S. Rep. No. 128, 95th Cong., 1st Sess. 59 (1977). In fact, one of the stated purposes of the Act, section 102(i), 30 U.S.C. 1202(i), is to "assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs established by the Secretary or any State under this Act."

19. One commenter requested that the phrase "at any stage of a proceeding" be deleted from § 4.1110(a). This comment was rejected. Deletion of the phrase would not alter the interpretation of the section.

20. A comment was received that § 4.1110(c) should be changed to eliminate intervention of right. This comment was rejected and, in response to another comment, the standard for intervention of right was broadened. Subsection (c)(2) was changed to reflect the fact that there shall be a right of intervention for anyone with an interest which is or may be adversely affected by the outcome of the proceeding in which intervention is sought. This change comports with the intent of Congress. As stated in the comment response above, public participation in the daily workings of the Act was of primary interest to Congress. While it is true that citizens may not commence two of the most important enforcement proceedings under the Act, i.e., civil penalty review and suspension or revocation proceedings, citizen participation is, nevertheless, of critical importance to such proceedings. The importance of such participation to suspension or revocation proceedings was expressly recognized in the legislative history. It was stated in S. Rep. No. 128, 95th Cong., 1st Sess. 96 (1977) that "[a]ny person who has an interest which is or may be adversely affected by a suspension or revocation of a permit shall be allowed to participate." The commenter also urged the inclusion of language in § 4.1110(c)(2) to allow intervention of right to persons or groups in cases where significant legal determinations may be reached which might affect the ability of such persons or groups to protect their interests in subsequent proceedings. Such language was not accepted. It is believed that the first change that was made is broad enough to encompass those persons for whom the commenter sought to provide by the additional suggested language.

21. For the purposes of clarification, subsection (e) was added to § 4.1110 in order to explain that intervenors may participate in a proceeding in a capacity less than that of a party. If an intervenor desires to participate in only a limited capacity, the privileges that such a person may exercise, such as filing oral or written statements, will be regulated by the administrative law judge or the Board. Limited party status is important for public participation under the Act. It is realized that persons desiring to participate in a proceeding under the Act may not have sufficient time and/or resources for full participation, but that they may make a limited but valuable contribution.

22. Section 4.1111 allows a party who initiated a proceeding to move to dismiss at any stage of the proceeding. One commenter suggested that the regulation make it clear that a party may withdraw a pleading at any stage without prejudice. This regulation relates only to termination of an action by the party initiating the action. The administrative law judge or the Board may determine whether the dismissal is with or without prejudice.

23. The words "seek to" were added to § 4.1111 in order to clarify the fact that the granting of such a motion is not automatic, but rather, is in the discretion of the administrative law judge or the Board.

24. Section 4.1112 outlines the procedure for filing motions in the Office of Hearings and Appeals. Several commenters suggested including prehearing conferences in § 4.1112(a), in order to make it clear that oral motions would be acceptable at prehearing conferences. The nature of the comment was accepted by substituting language to clarify that oral motions can be entertained whenever the proceeding is on the record.

25. Comments were received urging that the requirement for affidavits in § 4.1112(b) be eliminated as being burdensome. This comment was accepted.

26. One comment suggested that § 4.1112(c) be amended to read that failure to make a timely response or file a statement in response be automatically construed as a waiver of objection. Such a result could be unduly harsh and the comment was not accepted.

27. Section 4.1113 provides for consolidation of proceedings before an administrative law judge or the Board. One commenter requested the addition of the phrase "the same parties." This comment was rejected. There is no necessity to allow only consolida-

tion of proceedings involving the same parties, particularly where there are common issues of law or fact. Consolidation is in the discretion of the administrative law judge or the Board.

28. Section 4.1114 allows for the advancement of a proceeding upon proper motion. One commenter stated that the requirement in § 4.1114(b)(4) that affidavits be filed with the motion should be eliminated. The comment was not accepted. The language of the regulation allows the administrative law judge or the Board the opportunity to waive the affidavit requirement. The same commenter suggested the elimination of the requirement for registered or certified mail in § 4.1114(c). This comment was accepted. In addition, the first clause in § 4.1114(f) was dropped and the phrase "[i]f the motion is granted" was substituted for the purposes of clarification.

29. Section 4.1115 sets forth the manner in which the right to a hearing may be waived. Several commenters stated that a party should not be deemed to have waived the right to a hearing unless a show cause order is issued and good cause is not shown. This comment was not accepted. The regulation allows the administrative law judge to exercise sound discretion in determining whether the party has waived his right to a hearing.

Evidentiary Hearings

1. Section 4.1121 delineates the powers of administrative law judges. A comment was received urging that this section be modified to set out in detail the specific relief the administrative law judge is authorized to grant in order to comport with the companion comments for § 4.1101(b)—Jurisdiction of the Board. This comment was not accepted. The regulation, which duplicates the powers for employees presiding at hearings, as listed in the Administrative Procedure Act, 5 U.S.C. 556(c) (1970), with certain modifications, is believed to be adequate without being to highly specific.

2. Section 4.1124 provides the procedure for certification to the Board of an interlocutory ruling. A comment was received suggesting that the word "only" be deleted to make it clear that the administrative law judge has discretion in determining when certification to the Board would materially advance ultimate disposition of the case. The comment was accepted for the purposes of clarification.

3. Section 4.1125 establishes the procedure for obtaining a sumary decision in a proceeding before an administrative law judge. It was stated that subsection (b) should be amended to provide for the support of factual allegations with depositions, answers to interrogatories, admissions and documents produced upon request, as well as, with affidavits. This comment was accepted. It is recognized that a summay decision motion may be based upon discovery documents and that if such is the case, supporting affidavits would be unnecessary.

4. Section 4.1128 sets forth when an intial order or decision of an administrative law judge becomes final. One commenter suggested that the regulation be clarified and that references to other sections were unnecessary. The comment was accepted in part. Reference to one of the sections has been deleted. It is felt that the regulation is sufficiently clear and that reference to the two other sections is necessary.

Discovery

1. Numerous comments were received concerning §§ 4.1130–42, which regulate discovery in proceedings under the Act. Some of the commenters indicated that they were in agreement with a stated purpose of the discovery rules, i.e., to avoid confusion when general Federal civil discovery rules, were made applicable to the specialized procedures and terminology of Office of Hearings and Appeals hearings on surface coal mining matters. The basis for a number of the comments was that confusion existed over the proposed discovery sections when read in conjunction with § 4.1142 which attempted to incorporate by reference certain sections of the "Federal Rules of Civil Procedure" relating to discovery. As pointed out by the commenters, the effect was unclear as to the unstated portion of a Federal rule which was partially adopted, assuming that § 4.1142 stated that such rule was adopted by reference. The solution recommended by the commenters was to delete all the discovery sections and substitute a general provision that the "Federal Rules of Civil Procedure" which relate to discovery be incorporated by reference.

After careful consideration, these comments were not accepted. However, § 4.1142 was deleted in order to avoid any confusion which might have arisen in trying to determine what discovery procedure to follow. The discovery procedures to be used in proceedings before administrative law judges under the Act are set forth in §§ 4.1130–41. However, §§ 4.1130–41 track closely the language of the "Federal Rules of Civil Procedure" and it is the intention of the Department that, where possible, in interpreting these rules, the body of case law regarding discovery which has evolved under the "Federal Rules" be applicable to discovery problems arising under this Act.

2. Several commenters requested that the language of § 4.1135(a) be changed to avoid confusion. After careful consideration it is believed that the rule as written is not confusing and the comment was not accepted.

3. A number of commenters argued that § 4.1135(d) should be deleted in its entirety because it should not be necessary for a party against whom discovery efforts are directed to seek a protective order as a precondition to objecting to an improper question, interrogatory, etc. This comment was accepted and proposed subsection (d) has been deleted.

4. Several commenters recommended that § 4.1135(f) be deleted in its entirety. The commenters argued that subsection (f) appeared to expand unnecessarily a party's entitlement to discovery. This comment was accepted and proposed subsection (f) has been deleted.

5. To avoid confusion and to be in conformance with the "Federal Rules," the word "questions" was substituted throughout § 4.1137 for "interrogatories." This change is directed at differentiating between the taking of a deposition upon "written interrogatories" pursuant to this rule and the serving of "written interrogatories" upon parties under § 4.1139.

6. A comment was received arguing that the 7-day time limit for serving cross-questions under § 4.1137(e) was much too short and that 30 days would be a more reasonable time period. This comment was accepted and the time has been expanded to 30 days.

7. One commenter recommended that the third sentence of § 4.1137(f) be deleted as being unnecessary. This comment was also accepted.

Petitions for Review of Proposed Assessments of Civil Penalties

1. One commenter suggested that a more appropriate procedure for assessment would require payment of proposed assessments into an escrow fund with OSM filing a petition for assessment of civil penalty to collect the money. This comment was rejected. The basic procedure complained of has been established by regulation, 30 CFR 723.18, and is not properly the subject of this rulemaking.

2. Numerous comments were received concerning the review of a waiver determination contained in § 4.1154. One commenter suggested that abuse of discretion was an inappropriate standard for review. The standard for review has been established by regulation, 30 CFR 723.15, and cannot be changed in this rulemaking. A number of commenters recommend that § 4.1154(a) be amended to permit any party, not just the petitioner, to move the administrative law judge to review a waiver determination. The comment was not accepted.

There is no basis for allowing review of the waiver determination by a party other than the person charged with civil penalty. Intervening parties may assert their positions at the full hearing on the merits.

3. Several commenters argue that criteria should be contained in § 4.1154(c) to provide guidance for the administrative law judge in determining whether there has been an abuse of discretion. No criteria were adopted. The abuse of discretion standard is not easily defined. Therefore, it is believed better to allow the administrative law judge to be guided by case law and the particular facts of a case in determining whether there has been an abuse of discretion.

4. One commenter suggested that § 4.1155 relating to burden of proof in civil penalty proceedings could be made more readable and understandable by rearranging the language. This comment was accepted.

5. A comment was received that orders to show cause issued under § 4.1156(a) of the summary disposition section should be sent by certified mail or by personal service. This comment was rejected. It is not necessary to place such a requirement in these regulations.

6. Another commenter requested the insertion of a new subsection (f) in § 4.1156 indicating that the administrative law judge could invoke similar sanctions against the Solicitor for failure to comply with a prehearing order. This requested addition was not accepted. The rationale for § 4.1156 is that it is necessary to make an administrative determination of when the person against whom a civil penalty is assessed does not want a hearing. On the other hand, it is assumed that the Solicitor desires a hearing, and if the Solicitor's representative fails to appear at a hearing or fails to make a necessary filing, the administrative law judge may dismiss the case for failure to prosecute.

7. Numerous comments were received concerning the requirement in § 4.1157 that the administrative law judge adhere to the point system and conversion table in 30 CFR Part 723. This requirement was not changed. Most commenters felt the requirement was inappropriate and that the Office of Hearings and Appeals had abdicated its adjudicatory responsibility by restricting itself to the point system. On the other hand, several other commenters pointed out that the point system promulgated by the Secretary is not inflexible but is a well-reasoned framework for application of the four statutory criteria of section 521(a) to the particular facts of a case. The point system provides ample room for assessing a civil penalty appropriate for each individual violation. The conversion table was developed in conjunction with the point system to provide a reasonable range of civil penalties. The system attempts to insure a degree of uniformity which is necessary for a fair and effective civil penalty program. The Department does not believe that the civil penalty formula denies the person charged with a civil penalty review based on the four statutory criteria, because those criteria are the pillars of the point system. The point system merely provides the framework for consideration of the criteria. Moreover, this requirement is contained in 30 CFR 723.18(c).

8. Several commenters urged that § 4.1157(b)(1) be amended so that the administrative law judge would be foreclosed from making a de novo determination regarding waiver of the civil penalty formula. This comment was rejected. It was the purpose of § 4.1157(b)(1) to allow the administrative law judge to make an independent determination concerning waiver. The administrative law judge, after consideration of all the evidence at a hearing, will be in an excellent position to determine whether or not the point system should be waived.

9. Several commenters believed that the last sentence in § 4.1157(b)(1) should be deleted because it imposed a one-sided limitation on the administrative law judge such that the proposed assessment could be increased but not reduced. This comment was rejected. It is believed that the sentence that the commenter sought to have deleted does not create the suggested limitation. The presence of the sentence does not foreclose the administrative law judge from reducing the assessment. However, it does preclude the administrative law judge from reducing the assessment in one particular circumstance, namely when the person charged with the civil penalty argues that the money that would be saved by a reduction in the amount of the penalty could be used by that person to abate other violations of the Act. It is clear the Congress did not intend that penalties be reduced on the basis of such an economic argument.

10. A comment was received indicating that appeals under § 4.1158 should be as a matter of right rather than be had by petitioning the Board under § 4.1270 and allowing the Board to have discretionary review authority. This comment was not accepted. It is anticipated that the bulk of the civil penalty cases in which review is sought before the Board will be routine cases. For that reason, the discretionary review system was adopted as a method of allowing the Board to concentrate on cases of greater legal importance.

REVIEW OF SECTION 521 NOTICES OF VIOLATION AND ORDERS OF CESSATION

1. One commenter suggested that § 4.1160 be clarified by deletion of the various statutory references. This change was not accepted. It is believed the statutory citations help cross-reference the act and regulations and thereby minimize confusion and ambiguity.

2. A number of commenters argue that § 4.1160(b) should be deleted because the act has established distinct and separate review for notices of violation as opposed to orders of cessation. Such commenters believe that all orders of cessation should receive 30-day review treatment. These comments were rejected. It is clear that expedited review of cessation orders is not available in every instance. The person seeking review may waive expedited consideration or temporary relief may be granted. There must be procedures for review in such cases and there is no logical reason why such orders should not be governed by the same procedural rules as those covering review of notices of violation. This allows two distinct categories of procedures—the first, governing notices of violation and orders of cessation not subject to expedited review and the second, governing expedited review of orders of cessation.

3. Several commenters indicated that the last sentence in § 4.1162 should be deleted so that the regulation mandates a 30-day time limitation for all persons to file an application for review. This comment was rejected. Section 525 of the act states that an application for review of a notice of violation or order of cessation may be filed by a permittee or any person having an interest which is or may be adversely affected by such notice or order. It is clear that the permittee should be able, if so desired, to file an application for review within 30 days of receipt of a notice or an order. However, other persons having an interest which may be adversely affected, may not be served with a copy of the notice or order but may be interested in filing an application. Therefore, such persons have been granted 40 days from the date of the notice or order within which to file an application. This extended filing time comports with the basic intent of Congress that appropriate procedures are provided for public participation in proceedings under the act.

4. One comment was received urging the elimination of the requirement in § 4.1164 for a statement requesting or waiving a hearing. The commenter felt that entitlement to a hearing should be presumed. The comment was rejected. While there is no question as to the right to a hearing, the statement is necessary in order for the Hearings

Division of the Office of Hearings and Appeals to efficiently and effectively conduct its business.

5. A commenter believed that § 4.1168 inappropriately limited amendments to pleadings and that an administrative law judge could effectively deal with amendments if they became burdensome to the proceeding. The regulation, as written, does not limit amendments to the pleadings. It allows amendment once as a matter of right prior to the filing of an answer and, thereafter, by leave of the administrative law judge. This allows the administrative law judge to control the course of the proceedings.

6. It was stated that the 10-day requirement in § 4.1170 for filing a copy of any subsequent notices or orders modifying, vacating, or terminating the notice or order under review was unrealistically short. The time set by the regulation is not too short and does not represent a great burden to the applicant.

7. One commenter argued that § 4.1171 should be amended to place the ultimate burden of persuasion on OSM. The basis for the commenter's argument is an analysis of the Administrative Procedure Act (APA). The comment was rejected. Section 556(d) of the APA, 5 U.S.C. 556(d) (1970), relied upon by the commenter, was analyzed by Judge Leventhal in his supplemental opinion on petition for rehearing in *Environmental Defense Fund, Inc.* v. *Environmental Protection Agency*, 548 F. 2d 998, 1012 (D.C. Cir. 1976). He concluded at 1013 that the burden of proof referred to in section 556 "is the burden of going forward with proof, and not the ultimate burden of persuasion." In addition, the legislative history clearly states that an applicant for review has the ultimate burden of proof in proceedings to review notices and orders. S. R. N. 128, 95th Cong. 1st sess. 93 (1977).

EXPEDITED REVIEW OF ORDERS OF CESSATION

1. Numerous comments were received arguing that expedited review under §§ 4.1180–87 should not be limited to unabated orders of cessation. It was argued that there was no statutory authority for such a restriction. In response to these comments the term unabated was removed from §§ 4.1180 and 4.1181.

2. One commenter suggested that § 4.1180 should be amended to indicate that if the 30-day decision requirement is waived, the decision must be issued "as expeditiously as possible but in any event within sixty (60) days of the filing of the application." Another commenter, in response to the same language in § 4.1186, stated that a decision within 120 days "would not seem inappropriate." No change was made in either section. The 120-day decision is a reasonable alternative to the 30-day decision, if the 30-day decision is waived.

3. Several commenters objected to the characterization in § 4.1181(b) that the granting of temporary relief constitutes a waiver of the right to a 30-day decision. They pointed out that the sole basis for denying parties a 30-day decision is the granting of temporary relief and that that point was accurately stated in § 4.1181(a). Section 4.1181(a) relates only to the filing of the application when no temporary relief has been granted. The reason for § 4.1181(b) is to make clear that even after an application is filed, the granting of temporary relief removes from the Secretary the obligation of issuing a 30-day decision. The fact that it is characterized as a waiver is not a misstatement.

4. Section 4.1182 required filing of the application in the Office of Hearings and Appeals field office nearest the minesite with a copy to the main office in Arlington, Va. A commenter requested that the regulation be changed to permit alternate filing in Arlington. Since all the field offices have not been established, the regulation has been changed to require filing in the Hearings Division, Office of Hearings and Appeals, Arlington, Va. This will avoid the confusion of determining the field office nearest the minesite. However, if this system of filing proves to be unworkable because of the stringent deadlines, it may be necessary to change the regulation to require filing in the field.

5. While deletion of § 4.1183(a) was requested by a commenter, no justification was given. The subsection was not deleted. Such notification is thought to be necessary to allow the field solicitor to begin preparation for the expedited proceedings.

6. Other commenters suggested deleting § 4.1183 in its entirety and stating only that the application be filed within 30 days of receipt of "a notice or order" or "modification, vacation, or termination of a notice or order." This comment was rejected. As stated above, § 4.1183(a) is necessary to require notice to the field solicitor. The 40-day time period in § 4.1183(b) was retained because, as explained in the comment response to § 4.1162, the extended filing time comports with the basic intent of Congress to assure that appropriate procedures be provided for public participation. The language suggested by the commenters was not adopted. This section relates only to review of orders of cessation and their modification, vacation, or termination, not to review of notices of violation.

7. Numerous comments were made concerning the requirements for the contents of the application in § 4.1184. In response to such comments the section was generally revised and a number of changes made. The revision also necessitated a change in the numbering and lettering system from the proposed to final regulations. The requirement of affidavits in proposed subsection (a)(1) was eliminated as being unnecessary. Proposed subsection (a)(2) was not changed. The requirement for a supporting memorandum of law in proposed subsection (a)(3) was deleted as being burdensome, although a statement delineating the issues was determined to be necessary. A copy of the order must still be filed. The requirement for a statement requesting or waiving a hearing was deleted. It will be assumed that one filing such an application desires a hearing, unless otherwise stated. Proposed subsection (a)(6) was revised to require a list identifying applicant's witnesses by name, address and place of employment, including expert witnesses and the area of expertise to which they will address themselves at the hearing, and a detailed summary of their testimony. The requirement of subsection proposed (a)(7) was retained with the addition that descriptions must be provided of all physical exhibits and evidence which are not capable of being copied or attached to the application. Proposed subsection (a)(9) was not changed. Proposed subsections (a)(8) and (b) were eliminated as being unnecessary. The proposed regulations solicited comments concerning the adoption of rules requiring that evidence at the expedited hearing be developed through written submissions, including written direct testimony and written cross-examination. The commenters did not specifically address this issue, although the commenters generally favored simpler requirements. While no rules have been adopted concerning such submissions, it may prove to be necessary at a later time to change these rules to mandate such a requirement.

8. A new subsection (b) of § 4.1184 was added to indicate that the applicant must comply with the requirements of § 4.1184(a) in filing an application. Failure to do so allows the administrative law judge the discretion to consider the 30-day decision requirement waived. If the administrative law judge does not consider the requirement to be waived, he must order that the application be perfected. The application shall not be considered filed for the purposes of the 30-day decision until perfected. Failure to timely comply with the administrative law judge's order shall constitute a waiver of the 30-day decision.

9. Various commenters complained that § 4.1185 should be eliminated because there was no statutory basis for

such a section. The section was retained. The computation of time section represents a reasonable interpretation of the 30-day requirement of the act.

10. One commenter requested that the term "qualified," as used in proposed § 4.1186 and § 4.1180, be defined. There is no reason to include such a definition. A qualified person is actually defined in § 4.1181—who may file. A qualified person is a permittee who has been issued an order of cessation and has not been granted temporary relief or a person having an interest which is or may be adversely affected by the issuance of an order of cessation.

11. Section 4.1186 was revised to set forth the various ways in which the 30-day decision requirement may be waived.

12. Comments were received urging that § 4.1187 be changed because the 30-day decision requirement cannot be waived. This was rejected. It is clear that a party entitled to expedited review may waive such review.

13. One commenter requested that § 4.1187(d) be modified to allow the filing of findings of fact and conclusions of law to be optional with the parties rather than discretionary with the administrative law judge. No change was made. The administrative law judge must retain discretion in conducting proceedings under the act.

14. In response to numerous comments concerning the 30-day decision requirement, § 4.1187(e) and subsequent sections have been changed to reflect that the final decision under § 4.1187 must be issued within 30 days of receipt of the application for review. The last sentence of subsection (e) was changed to indicate that the decision of the administrative law judge must be issued within 15 days of the filing of the application. Certain commenters suggested requiring that the administrative law judge provide a written statement of the basis for the decision if an oral ruling is made. This comment was not accepted. In this expedited situation, the administrative law judge should have the flexibility to issue an oral or written decision. If the oral decision is complete, there is no reason to require a written statement also.

15. Comments were received stating that the time for filing a notice of appeal in § 4.1187(f)(2) was insufficient, and that such time period should be no less than 5 days. The fact that a final decision must be issued in 30 days compels the short time period for filing an appeal.

16. The last sentence of § 4.1187(g) has been changed to read that the decision of the Board must be issued within 30 days of the date the application was filed with the Office of Hearings and Appeals.

17. Several commenters sought modification of § 4.1187(h) to conform with their belief that the 30-day decision requirement cannot be waived. As indicated above, waiver of the requirement is possible. No change was made.

18. The elimination of § 4.1187(i) was urged by a number of commenters. They state that the administrative law judge and the Board should have discretion in dealing with delays. Ordinarily, the justification provided by the commenters would be sufficient. The stringent statutory time requirements for a decision necessitate the language of § 4.1187(i). However, to conform with new § 4.1184(b), the reference to § 4.1184 was dropped.

19. A new subsection (j) was added to § 4.1187 to clarify that if the applicant seeks to introduce additional witnesses or evidence at the hearing which were not disclosed in the application and prejudice results to an objecting party, the administrative law judge may allow such objecting party additional time in which to prepare cross-examination or rebuttal evidence. The administrative law judge may rule that the running of the 30-day time for decision is stayed for the period of any additional time allowed, or the administrative law judge may determine that the applicant has waived his right to the 30-day decision.

Suspension or Revocation Proceedings

1. A number of commenters concluded that § 4.1190 should set forth with particularity the nature and extent of a show cause order issued by OSM. The commenters argued that the permittee should be entitled to know the basis upon which the order is issued. This comment was accepted and § 4.1190 was amended to include criteria to be contained in a show cause order filed with the Office of Hearings and Appeals.

2. A comment was made that answers under § 4.1191 should be deemed to have been filed on time if they were submitted to any office of OHA. The requirement of filing answers with the Hearings Division, Office of Hearings and Appeals, Arlington, Va., is not burdensome and the regulation has not been changed.

3. One commenter stated that the detailed requirements for an answer to a show cause order in § 4.1192 were unfair because the regulations failed to require particularity in the show cause order. This problem has been alleviated by the amendment to § 4.1190 detailed above.

4. One comment was received urging that subsection (d) of § 4.1192 be eliminated. The commenter felt that entitlement to a hearing should not be a matter for pleading in an answer and that a request for a hearing should be deemed implicit in an answer unless expressly waived in accordance with proposed rule 43 CFR 4.1115. The comment was rejected. While there is no question as to the right to a hearing, the statement is necessary in order for the Hearings Division, Office of Hearings and Appeals, to efficiently and effectively conduct its business.

5. Numerous commenters argued that § 4.1193 erroneously placed the ultimate burden of persuasion in a suspension or revocation proceeding on the permittee and that such placement was inconsistent with the Administrative Procedure Act. The language of section 521(a)(4) appears to indicate that the ultimate burden of persuasion should be on the permittee when it states, "[u]pon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Secretary or his authorized representative shall forthwith suspend or revoke the permit." The legislative history of the Act makes it clear that such an interpretation was contemplated by Congress. S. Rep. No. 128, 95th Cong. 1st sess. 96 (1977). For the above-stated reasons, no change was made in the regulation.

6. One commenter complained that § 4.1194 only required the administrative law judge to find that a pattern of violations existed or had existed before the permit could be suspended or revoked. The commenter stated that the regulations should require that the violations included in the pattern were caused by an unwarranted failure or were willful. This comment was rejected. Violations which constitute a pattern must be either caused by an unwarranted failure or willfully caused. See 30 CFR 722.16. Therefore, it is implicit that the finding of a pattern of violations must include a determination of the unwarranted failure or willful conduct of the permittee as to each violation constituting the pattern.

7. One commenter complained that the administrative law judge should not be able to make the assumptions as provided in § 4.1195, and that the administrative law judge should be required to hold a hearing and have OSM prove the allegations. The regulation was not changed. There is no reason the assumptions should not be made. If the permittee fails to appear at the hearing, it is tantamount to confessing judgment concerning the alleged pattern.

8. A comment was received that the time set in § 4.1196 for appealing the administrative law judge's decision should be at least 10 days to permit parties to evaluate the decision, prepare the necessary papers and have them docketed with the Board. No

change was made. Because of the statutory deadline for the issuance of a decision in a suspension or revocation proceeding, the 5-day time limit set by the regulation for the filing of a notice of appeal is not unreasonable.

9. Several commenters endorsed the idea of dividing the hearing on the suspension or revocation of a permit into two parts. The first part would concern the issue of whether a pattern of violations exists or has existed, and the second part would involve how long the permit should be suspended or whether it should be revoked. The commenters stated that the evidence relevant to the two issues is so different as to warrant separation at a hearing. This comment was not accepted. While the suggestion has some merit, the administrative law judge must have discretion to regulate the course of the hearing and it is recognized that at certain times the evidence relevant to the two issues may be overlapping.

10. In the case in which a permit is suspended, certain commenters have endorsed a minimum mandatory suspension period. The commenters recommended a minimum suspension period of 5 working days. However, they would also allow the administrative law judge the discretion to suspend the permit for a lesser period, where "imposition of the minimum suspension period would result in manifest injustice and would not further the purposes of the Act." Other commenters are strongly opposed to any minimum mandatory suspension period, indicating that there is no authority for a minimum suspension. The commenters who suggested the minimum suspension indicated the basis for the comment was an attempt "to avoid 1 hour suspensions," which might be used to thwart the purpose of section 521(a)(4) of the Act. This comment was accepted and a new subsection (b) was added to § 4.1194; however, the minimum suspension was limited to 3 days. The implementation of a minimum suspension period ensures evenhanded enforcement of the Act and provides guidance for the administrative law judge. However, the language which was adopted allows the administrative law judge sufficient latitude so that the minimum suspension period may be waived, if the facts adduced at the hearing so dictate.

11. Comments were received requesting that the regulations make explicit the power of the administrative law judge, in suspending the permit, to impose preconditions for reopening the mine. The commenters argue that the power is implicit with the authority to suspend. The last sentence in new subsection (b) of § 4.1194 was added to reflect the acceptance of this comment. The comment is consistent with the directive of 30 CFR 722.16(d)(2).

12. The same commenters also urged that one particular precondition be imposed in all instances of permit suspensions, a prohibition against a change in normal activities or operations prior to the suspension period which would allow the operator to avoid the impact of the suspension. This comment was not accepted. The preconditions to be imposed by the administrative law judge are discretionary with the administrative law judge and should be fashioned to meet a particular set of facts.

13. It was requested that the regulations state explicitly that permit revocation be permanent with respect to that permittee (and any parent, subsidiary, or related corporation) and that permit area. This comment was rejected. The terms of permit revocation are best left to the discretion of the administrative law judge, following a full hearing.

14. Commenters stated that the regulations should provide that at any time prior to or during a suspension or revocation hearing the parties may settle, but that the administrative law judge must approve the settlement. This comment was accepted and a new subsection (d) was added to § 4.1194.

15. Comments were received stating that the regulations should clarify that a show cause order may include any number of violations, but that failure to prove all violations is irrelevant, as long as the necessary showing of a pattern under 30 CFR 722.16 (c)(2) or (c)(3) is made. The essence of this comment was accepted by adding a new sentence to subsection (a) of § 4.1194.

16. Several commenters sought a provision for review of the decision of the Director of OSM under 30 CFR 722.16(c)(3) not to issue a show cause order when he "finds that it would not further enforcement of the performance standards of the Act." The commenters would allow review to be initiated by any person who is or may be adversely affected by the decision. This comment was not accepted. The Director of OSM must be able to exercise discretion in determining enforcement policy under the Act. However, if the Director determines that review of such decision would be desirable, adequate review procedures have been established in §§ 4.1280–86 of these regulations.

Review of Alleged Discriminatory Acts

1. One commenter indicated that § 4.1200 was too restrictive in that it seemed to preclude disposition of the case by OHA prior to the happening of one of the events outlined in the section. The commenter's understanding of the regulation is correct. The reason the Office of Hearings and Appeals is precluded from acting is that the Department has determined by regulation, 30 CFR Part 830, that OSM must at least have the opportunity to resolve the complaint in an informal manner. For that reason, the comment was not accepted.

2. Several comments were received indicating that a procedure in which OSM would represent the applicant was objectionable and not contemplated by the Act. 30 CFR 830.14(a) states that if OSM determines that a violation of 30 CFR Part 830 probably occurred, the Director of OSM shall request a hearing on the employee's behalf before the Office of Hearings and Appeals. That the applicant, in such an instance, would be represented by OSM was contemplated by the drafters of 30 CFR Part 830. See comment 14 under Part 830—Protection of Employees—42 FR 62675, December 13, 1977. Representation of the applicant by OSM in the situation outlined in 30 CFR 830.14(a) is neither improper nor inconsistent with the Act. If OSM undertakes an investigation and determines that a violation probably occurred, it is in the best interests of the Department that the action be pursued to its just conclusion. Anything less than full investigation and prosecution may discourage other persons who have been discriminated against from seeking relief under the Act.

3. A comment was received that § 4.1202(a) should be modified to allow 30 days for the filing of a response to a request for a hearing rather than 20 days. The justification for the suggested change was that the applicant has 30 days from the service of notice from OSM to request a hearing. The fact that the applicant has 30 days to request a hearing does not justify allowing 30 days for responses to be filed. The 20-day time period for filing is reasonable and has been retained.

4. Deletion of § 4.1203 was urged by one commenter because there was no statutory authority for granting temporary relief in discrimination cases. As pointed out by another commenter, aside from the fact that the need for temporary relief is clear, the Secretary has already accepted the principle of temporary relief in promulgating 30 CFR 830.15(d). These regulations merely establish the procedures for seeking such relief.

5. It was suggested that the requirement for affidavits in support of an application for temporary relief was excessive. This comment was accepted and the requirements for affidavits in § 4.1203(c) (1) and (2) were deleted.

6. Comments were received that the standard for granting temporary relief in § 4.1203(c)(2), "substantial likeli-

hood" of prevailing on the merits was too onerous a standard and that the proper standard should be that set forth by Congress in section 105(c)(2) of the Federal Mine Safety and Health Amendments Act of 1977, 30 U.S.C. 815. Relief is to be granted under that section if the Secretary of Labor finds that "the complaint was not frivolously brought." This comment was adopted and the standard has been changed to "not frivolously brought." This change affords a greater degree of protection to the applicant without substantial prejudice to the alleged discriminating person.

7. Several commenters requested that there be a time limit of 5 days in § 4.1203(f) for the issuance of a decision on an application for temporary relief, rather than the statement that the decision be "expeditiously" issued. This comment was rejected. The regulation allows the administrative law judge a certain flexibility by not requiring adherence to a strict time limit, but by still mandating a swift decision on the application for temporary relief.

8. It was recommended that § 4.1204 set forth, with the greatest particularity possible, the kinds of relief which may be appropriate upon a finding of discrimination. This comment was accepted and the language suggested by the commenter was adopted in part.

APPLICATIONS FOR TEMPORARY RELIEF

1. A comment was received requesting that the requirements for affidavits in § 4.1263 be eliminated as being burdensome. In response to this comment the affidavit requirement was deleted from subsections (a), (b), and (c).

2. Several commenters argued that § 4.1263(d) should be eliminated because an applicant has an absolute right to a decision within 5 days of filing the application. Because only applications for temporary relief which relate to orders of cessation require a 5-day decision, the requirement of a statement whether the 5-day decision is waived is not unreasonable. This conclusion is based upon the time limitation of the Act and the practical necessity of scheduling hearings on such short notice.

3. A number of comments were received stating that § 4.1264(a) should be deleted as inappropriate because it allows 5 days for a response to be filed from the date of receipt of the application while the Act requires that the order or decision be issued within 5 days. The regulation was not changed. Section 525(c) of the Act only requires that an order or decision on an application for temporary relief be issued within 5 days of its receipt when such application relates to an order of cessation issued pursuant to section 521(a) (2) or section 521(a)(3). When such application relates to a notice of violation, section 525(c) requires only that the Secretary issue an order or decision granting or denying such relief expeditiously. The regulation excepts from its requirement those applications relating to orders of cessation which require 5-day decisions.

4. Section 4.1266(b)(1) was totally revised in order to assure that the field solicitor and OSM receive notice concerning the application for temporary relief which will require a decision in 5 days. It was realized that the proposed regulation did not insure that the proper notice would be given. To deal effectively with the stringent statutory deadline, the field solicitor must be in actual receipt of a copy of the application and OSM must know that an application is being filed in order to arrange schedules so that the inspector involved may be made available for the anticipated hearing. The 5-day time for decision will not begin to run until the application is filed with OHA or a copy is received by the field solicitor, whichever occurs at a later date. New § 4.1266(b)(2) requires the applicant to telephone the regional office of OSM to give notice of the filing of the application and to include in the application an affidavit that such notice was given. To avoid problems concerning the date of receipt by the field solicitor, new § 4.1266(b)(3) was added, stating that the applicant must file an affidavit with OHA stating the date upon which the copy of the application was delivered to the office of the field solicitor, or the applicant may make an oral statement at the hearing setting forth that information. The applicant may rely on telephone confirmation by the office of the field solicitor that the application was received. New § 4.1266(b)(4) relates to service of any other parties.

5. One commenter stated that the findings of fact and conclusions of law referred to in proposed § 4.1266(b)(4)(i) should be optional with the parties. This comment was rejected. The submission of findings of fact and conclusions of law should be discretionary with the administrative law judge.

6. The same commenter urged that a request for delay under proposed § 4.1266(b)(6) not be presumed a waiver. The stringent statutory requirements of a decision within 5 days of receipt of the application necessitate the language.

7. A new § 4.1267 was added to establish procedures for appealing an administrative law judge's decision on temporary relief under § 4.1260 et seq. Any party desiring to appeal a decision of an administrative law judge granting temporary relief may appeal to the Board. On the other hand, any party desiring to appeal a decision of an administrative law judge denying temporary relief may appeal to the Board or, in the alternative, if the denial relates to an order of cessation and there has been no waiver of the 5-day decision requirement, any party may seek judicial review pursuant to section 526(a).

APPEALS TO THE BOARD FROM DECISIONS OR ORDERS OF ADMINISTRATIVE LAW JUDGES

1. A number of commenters stated that the Board should not be bound to the point system and conversion table. As a basis for these comments, the commenters referred to their recommendations concerning § 4.1157. The response to those recommendations is equally appropriate to these comments. The suggestion was rejected.

2. It was suggested that § 4.1270(f) should be changed to provide the Board with the same authority to waive the point system as that granted to the administrative law judge. This comment was accepted and the regulation changed to reflect the authority of the Board to waive the point system.

3. One commenter believed that it was not fair to subject an appeal to summary dismissal under § 4.1273(b) for failure to file a timely brief. Such a procedure is not unfair in that it only subjects the appeal to summary dismissal, it does not make the dismissal mandatory. Dismissal remains in the discretion of the Board based upon the circumstances of each case. However, for further clarification "shall" was changed to "may."

4. It was requested that § 4.1273(d) be modified to indicate that the filing of a brief should be limited to a party "who participated actively in the proceeding before the administrative law judge." Such a restriction is unnecessary. There is no reason for such a limitation on the filing of a brief.

5. Section 4.1276(a) was amended to place a time limitation on the filing of a petition for reconsideration. The petition for reconsideration must be filed within 30 days of the date of the Board's decision.

APPEALS TO THE BOARD FROM DECISIONS OF THE OFFICE OF SURFACE MINING

1. Numerous comments were received concerning § 4.1280. The following language "are not specifically covered elsewhere in this subpart" was suggested as a substitute for "do not require formal adjudication under the procedures set forth in 5 U.S.C. 554." The purpose of the reference to 5 U.S.C. 554 was to indicate that the Act requires review under section 554 of the Administrative Procedure Act in only certain enumerated proceedings and that such review is not mandated by the Act for other proceedings. This

is not to suggest that a party under these sections would never receive a hearing before an administrative law judge. Under § 4.1286 any party may request a hearing before an administrative law judge on an issue of fact or the Board may, on its own motion, refer a case to an administrative law judge for a hearing on an issue of fact. For those reasons, these comments were rejected but language was added to clarify the section.

2. Suggestions were also made to amend § 4.1280 and § 4.1281 to allow a citizen to have a right to Board review of informal decisions of the Regional Director issued pursuant to 30 CFR 721.13(d) not to take action on a citizen complaint. It was pointed out that the right of citizen appeals under § 4.1281 should not depend on the largess of the Regional Director of OSM. OSM must be able to exercise some discretion in the investigation of citizen complaints. OSM is charged with the responsibility of enforcing the Act and for that reason, it must be assumed that OSM will properly discharge its duties to investigate legitimate citizen complaints. Despite the commenters' lack of enthusiasm for citizens' suits as a remedy, the Act does provide that such suits may be filed in the Federal courts pursuant to section 520 of the Act. In addition, the citizen may file another complaint with OSM.

3. Several commenters argue that § 4.1281 should be changed in two ways. First, they contend that unwritten decisions of the Director of OSM should be appealable and secondly, they believe the Director of OSM should not have control over the appealability of his decisions. Both parts of the comment were rejected. It would be impossible to provide Board review of unwritten decisions. There would not be a record upon which to base a decision. Also, there is no legimate reason for requiring review of unwritten decisions. Allowing review by the Board of all decisions of the Director of OSM would totally hamstring OSM and grind its operations to a halt. This would be true even if Board review was to be on a discretionary basis. The office of Hearings and Appeals has provided the Director of OSM with an avenue whereby review of his decisions may be had.

4. One commenter suggested the elimination of the requirement for filing proof of service in § 4.1283. This comment was rejected. It is felt that proof of service is necessary.

5. One commenter proposed that §§ 4.1280 and 4.1281 be modified to specifically provide for Board review of decisions of OSM under two sections of the Act—section 201(g) and section 711. This comment was not accepted. Section 201(g) relates to petitions to initiate rulemaking under the Act. The commenter argued that denials of such petitions should be reviewable by the agency; that such a procedure would not unduly burden the agency; that review would not unnecessarily impede the Director of OSM's discretionary ability to render decisions under section 201(g); and that the great importance of such decisions necessitates some formal agency review. The granting or denial of petitions to initiate rulemaking under the Act are properly discretionary with the Director of OSM. Such petitions will ordinarily concern matters in which OSM has expertise. The Director of OSM, as the delegate of the Secretary, is required by 30 CFR 700.12 to publish notice of the petition in the FEDERAL REGISTER soliciting comments on the proposal. The Director may also hold a public hearing, investigation or other action to determine whether or not the petition should be granted. The Director must then issue a written decision granting or denying the petition. There does not appear to be any cogent reason for the Board to review such decisions. The commenter also recommended an appeal of right to the Board from a decision of the regulatory authority concerning approval or denial of a proposal to undertake an experimental practice pursuant to section 711 of the Act. The commenter set forth a number of arguments in favor of such an appeal. It is believed, however, that such decisions should not be appealable of right to the Board. The regulatory authority is in the best position to determine whether departures in individual cases from the environmental protection standards should be granted, and it is possessed of the requisite technical knowledge to make a determination on the proposal. While these suggestions to allow appeals of right in these particular cases were rejected, the Director of OSM retains the ability under the regulations to allow an appeal to the Board of his written decisions.

6. Section 4.1282(a) was amended to require that the notice of appeal be filed in the office of the OSM official who made the decision. The reason for this change is to facilitate transmittal of the case file to the Board. A copy of the notice, however, must be sent to the Board.

AWARD OF COSTS AND EXPENSES

1. Comments were received requesting that the types of proceedings in which costs and expenses may be awarded be broadened to include rulemaking. The commenters argue that the requirement of a "final order" under § 4.1290 and § 4.1291 precludes compensation in rulemaking proceedings. Compensation for participation in rulemaking proceedings was the subject of a petition to initiate rulemaking filed with the Department. The petition is presently under consideration. These regulations only govern surface mining hearings and appeals procedures under the Act, and, therefore, this comment was not accepted.

2. The same commenters argued that § 4.1290 and § 4.1291 should be modified in order to allow for an interim award of costs and expenses. They stated that the requirement that a "final order" be issued is too restrictive and precludes an award under many circumstances where such an award is appropriate. One problem area pointed out by the commenters was that of a settlement. The commenters complained that an award might be appropriate in such a case, yet could not be approved under their reading of the proposed rules. However, a case which is settled while pending in the Office of Hearings and Appeals will be disposed of by final order. In fact all cases docketed with the Office of Hearings and Appeals will be disposed of by some type of "final order." Therefore, awards will not be precluded strictly because of the manner of disposition. With the statutory deadlines for the issuance of decisions under the Act, protraction of proceedings should be at a minimum. For the above-stated reasons, the suggested modifications were rejected.

3. Several commenters objected to the last sentence of § 4.1291. They stated that failure to make a timely filing for an award should not constitute a waiver of the right to such an award where good cause is shown for such failure. In response to this comment, "shall" in the last sentence of § 4.1291 was changed to "may", thereby changing the nature of the sanction from mandatory to permissive.

4. The majority of comments on the award of costs and expenses sections related to § 4.1294—who may receive an award. A number of commenters sought deletion of the entire section and suggested a substitution of the statutory language of § 525(e). This idea was rejected because it did not answer any of the questions raised by the statutory language. Another commenter sought amendment of the section to appropriately limit the permittee's exposure for other persons' costs. While the particular language suggested by this commenter was not adopted, the liability of the permittee for the costs and expenses of others has been set forth with particularity in the revision of § 4.1294. Still other commenters recognized a basic flaw in § 4.1294 in that it did not specify who would pay the fees and what showing was necessary to receive an award. These commenters suggested limited changes to § 4.1294 to rectify the situation. As a result of these comments,

§ 4.1294 has been revised to reflect who will pay the award and the finding that is necessary in making the award. Section 4.1294(a) was changed to state that any person may receive an award from the permittee under certain circumstances. There are three circumstances under which such an award may be made—(1) The person initiates a review proceeding and there is a finding of violation of the Act, regulations, permit or a finding that an imminent hazard existed; (2) If such a finding is made and the person participated in an enforcement proceeding, there is a further finding by the administrative law judge or the Board that the person made a substantial contribution to a full and fair determination of the issues; and (3) If a person files an application for review of alleged discriminatory acts, and there is a finding of discriminatory discharge or other acts of discrimination. A new subsection (b) was added to provide that any person, other than the permittee or his representative, may receive payment from OSM if the person initiates or participates in any proceeding under the Act upon a finding that the person made a substantial contribution to a full and fair determination of the issues. Subsections (c) and (d) were added to indicate when a permittee could receive an award. A permittee is eligible for an award from OSM if the permittee demonstrates that OSM took an enforcement action in bad faith and for the purpose of harrassing or embarrassing the permittee. A permittee may also receive an award from any person if the permittee demonstrates the person initiated or participated in a proceeding under the Act in bad faith and for the purpose of harrassing and embarrassing the permittee. New subsection (e) allows OSM to receive an award from a person where it demonstrates that such person applied for review in bad faith and for the purposes of harrassing or embarrassing the Government or from any party who participates in such a proceeding for the same reasons.

5. Several commenters argued that the Government (OSM) should not be eligible for an award. They point to section 525(e) of the Act which refers to persons and state that the definition of "person" in section 701(19) of the Act does not include governmental entities. However, the legislative history states that attorneys' fees may be awarded "to the permittee or government when the suit or participation is brought in bad faith." S. Rep. No. 128, 95th Cong., 1st sess. 59 (1977). The legislative history, therefore, reflects Congress intent to include the Government as a possible recepient of an award under certain limited circumstances. Section 4.1290 has been changed to reflect that OSM may file for an award.

6. A number of commenters objected to what they characterized as a double standard for recovery. They argued that all persons should be eligible for an award under the same theory, and that the permittee should not be limited to an award only when bad faith is shown. While it is realized that the standards for an award are not the same for all parties, the legislative history, as set forth above, clearly states that an award may be made to the permittee only when the action is brought or participation is undertaken in bad faith.

7. In response to a comment requesting that the regulations explicitly state that entitlement to an award of costs and expenses includes those incurred in seeking the award itself, a new § 4.1295 was added. Proposed § 4.1295 was redesignated § 4.1296.

Drafting Information

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Dated: July 28, 1978.

James A. Joseph,
Acting Secretary of the Interior.

Subpart L is added to part 4 of title 43 to read as follows:

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Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

GENERAL PROVISIONS

§ 4.1100 Definitions.

As used in the regulations in this subpart, the term—

(a) "Act" means the Surface Mining Control and Reclamation Act of 1977, 91 Stat. 445 et seq., 30 U.S.C. 1201 et seq.

(b) "Administrative law judge" means an administrative law judge in the Hearings Division of the Office of Hearings and Appeals appointed under 5 U.S.C. 3105 (1970).

(c) "Board" means the Board of Surface Mining and Reclamation Appeals in the Office of Hearings and Appeals.

(d) "Field solicitor" means an attorney or an assistant regional solicitor—Surface Mining—with the Office of the Solicitor, Department of the Interior, who is located in the offices listed in § 4.1109(a).

(e) "OHA" means the Office of Hearings and Appeals, Department of the Interior.

(f) "OSM" means the Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

§ 4.1101 Jurisdiction of the Board.

(a) The jurisdiction of the Board, as set forth in 43 CFR 4.1(4), and subject to 43 CFR 4.21(c) and 43 CFR 4.5, includes the authority to exercise the final decisionmaking power of the Secretary under the act pertaining to—

(1) Applications for review of decisions by OSM regarding determinations concerning permits for surface coal mining operations pursuant to section 514 of the act;

(2) Petitions for review of proposed assessments of civil penalties issued by OSM pursuant to section 518 of the act;

(3) Applications for review of notices of violation and orders of cessation or modifications, vacations, or terminations thereof, issued pursuant to section 521(a)(2) or section 521(a)(3) of the act;

(4) Proceedings for suspension or revocation of permits pursuant to section 521(a)(4) of the act;

(5) Applications for review of alleged discriminatory acts filed pursuant to section 703 of the act;

(6) Applications for temporary relief;

(7) Petitions for award of costs and expenses under section 525(e) of the act;

(8) Appeals from orders or decisions of administrative law judges; and

(9) All other appeals and review procedures under the act which are permitted by these regulations.

(b) In performing its functions under paragraph (a) of this section, the Board is authorized to—

(1) Order hearings; and

(2) Issue orders to secure the just and prompt determination of all proceedings.

§ 4.1102 Construction.

These rules shall be construed to achieve the just, timely, and inexpensive determination of all proceedings consistent with adequate consideration of the issues involved.

§ 4.1103 Eligibility to practice.

(a) An administrative law judge or the Board may determine the eligibility of persons to practice before OHA in any proceeding under the act pursuant to 43 CFR Part 1.

(b) If an administrative law judge or the Board determines that any person is not qualified to practice before OHA, the administrative law judge or the Board shall disqualify the person and report the disqualification to the Director of OHA.

(c) Upon receipt of a report under paragraph (b) of this section, the Director of OHA may request the Solicitor to initiate a disciplinary proceeding under 43 CFR 1.6.

§ 4.1104 General rules relating to procedure and practice.

Proceedings in OHA under the act are subject to the general rules relating to procedures and practice in subpart B of this part.

§ 4.1105 Parties.

(a) All persons indicated in the act as parties to administrative review proceedings under the act shall be considered statutory parties. Such statutory parties include—

(1) In a civil penalty proceeding under § 4.1150, OSM, as represented by the Office of the Solicitor, Department of the Interior, and any person against whom a proposed assessment is made who files a petition;

(2) In a review proceeding under § 4.1160 et seq. or § 4.1180 et seq. of this part, OSM, as represented by the Office of the Solicitor, Department of the Interior, and—

(i) If a permittee files an application for review, the permittee; and

(ii) If any other person having an interest which is or may be adversely affected files an application for review, the permittee and the person filing such application;

(3) In a proceeding to suspend or revoke a permit under § 4.1190 et seq. OSM, as represented by the Office of the Solicitor, Department of the Interior, and the permittee who is ordered to show cause why the permit should not be suspended or revoked; and

(4) In a discriminatory discharge proceeding under § 4.1200 et seq. OSM, as represented by the Office of the Solicitor, Department of the Interior, any employee or any authorized representative of employees who files an application for review, and the alleged discriminating party, except where the applicant files a request for the scheduling of a hearing under § 4.1201(c) only such applicant and the alleged discriminating party.

(b) Any other person claiming a right to participate as a party may seek leave to intervene in a proceeding by filing a petition to do so pursuant to § 4.1110.

(c) If any person has a right to participate as a full party in a proceeding under the Act and fails to exercise that right by participating in each stage of the proceeding, that person may become a participant with the rights of a party by order of an administrative law judge or the Board.

§ 4.1106 Hearing sites.

Unless the Act requires otherwise, hearings shall be held in a location established by the administrative law judge; however, the administrative law judge shall give due regard to the convenience of the parties or their representatives and witnessess.

§ 4.1107 Filing of documents.

(a) Any initial pleadings in a proceeding to be conducted or being conducted by an administrative law judge under these rules shall be filed, by hand or by mail, with the Hearings Division, Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, Va. 22203.

(b) Where a proceeding has been assigned to an administrative law judge, the parties will be notified by the Chief Administrative Law Judge of the name and address of the administrative law judge assigned to the case and thereafter all further documents shall be filed with the Administrative Law Judge, Office of Hearings and Appeals, at the address designated in the notice.

(c) Any notice of appeal or documents in a proceeding to be conducted or being conducted by the Board shall be filed, by hand or by mail, with the Board of Surface Mining and Reclamation Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Va. 22203.

(d) Any person filing initial pleadings with the Hearings Division or a notice of appeal with the Board shall furnish an original and one copy. Any person filing other documents with OHA shall furnish only an original.

(e) Any person who has initiated a proceeding under these rules before the Hearings Division or filed a notice of appeal with the Board shall file proof of service with the same in the form of a return receipt where service is by registered or certified mail, or an acknowledgement by the party served or a verified return where service is made personally. A certificate of service shall accompany all other documents filed by a party in any proceeding.

(f) The effective filing date for documents initiating proceedings shall be the date the document is received in the Hearings Division, OHA, Arlington, Va.

(g) The effective filing date for all other documents, shall be the date the document is received by the administrative law judge or, in a proceeding before the Board, the date the document is received by the Board.

§ 4.1108 Form of documents.

(a) Any document filed with OHA in any proceeding brought under the Act shall be captioned with—

(1) The names of the parties;

(2) The name of the mine to which the document relates; and

(3) If review is being sought under section 525 of the act, identification by number of any notice or order sought to be reviewed.

(b) After a docket number has been assigned to the proceeding by OHA, the caption shall contain such docket number.

(c) The caption may include other information appropriate for identification of the proceeding, including the permit number or OSM identification number.

(d) Each document shall contain a title that identifies the contents of the document following the caption.

(e) The original of any document filed with OHA shall be signed by the person submitting the document or by that person's attorney.

(f) The address and telephone number of the person filing the document or that person's attorney shall appear beneath the signature.

§ 4.1109 Service.

(a) Any party initiating a proceeding in OHA under the act shall serve copies of the initiating documents on the Field Solicitor, Division of Surface Mining, Department of the Interior, for the region where the minesite is located and on any other statutory parties under § 4.1105. The addresses and telephone numbers of the field solicitors are as follows:

Region I (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Maryland, Delaware, West Virginia, and Virginia). Regional office: Field Solicitor, U.S. Department of the Interior, 950 East Kanawha Boulevard, Charleston, W. Va. 25301, 304-342-7230.

Region II (Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, and Mississippi). Regional office: Field Solicitor, U.S. Department of the Interior, P.O. Box 15006, Knoxville, Tenn., 615-584-4940.

Region III (Ohio, Indiana, Illinois, Michigan, Wisconsin, and Minnesota). Regional office: Field Solicitor, U.S. Department of the Interior, Federal Court Building, Room 521, Indianapolis, Ind., 317-269-6433.

Region IV (Iowa, Missouri, Nebraska, Kansas, Oklahoma, Arkansas, Louisiana, and Texas). Regional office: Field Solicitor, U.S. Department of the Interior, Suite 941, U.S. Courthouse, 811 Grand Avenue, Kansas City, Mo. 64106, 817-374-7272.

Region V (North Dakota, South Dakota, Montana, Wyoming, Colorado, Utah, Arizona, Nevada, California, Idaho, Oregon, Washington, Alaska, Hawaii, and New Mexico). Regional office: Assistant Regional Solicitor—Surface Mining, U.S. Department of the Interior, P.O. Box 25007, Federal Center, Denver, Colo. 80225, 303-234-2253.

Any party or other person shall serve any other documents being filed subsequently with OHA on all other parties and all other persons participating in the proceeding.

(b) Copies of documents by which any proceeding is initiated shall be served on all statutory parties personally or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally or by first class mail.

(c) Service of copies of documents initiating a proceeding is complete at the time of personal service or, if service is made by mail, upon receipt. Service of all subsequent documents is complete at the time of personal service or, if service is by mail, upon mailing.

(d) Whenever an attorney has entered an appearance for a party in a proceeding before an administrative law judge or the Board, service thereafter shall be made upon the attorney.

§ 4.1110 Intervention.

(a) Any person, including a State, or OSM may petition for leave to intervene at any stage of a proceeding in OHA under the act.

(b) A petitioner for leave to intervene shall incorporate in the petition a statement setting forth the interest of the petitioner and, where required, a showing of why his interest is or may be adversely affected.

(c) The administrative law judge or the Board shall grant intervention where the petitioner—

(1) Had a statutory right to initiate the proceeding in which he wishes to intervene; or

(2) Has an interest which is or may be adversely affected by the outcome of the proceeding.

(d) If neither paragraph (c)(1) nor (c)(2) of this section apply, the administrative law judge or the Board shall consider the following in determining whether intervention is appropriate—

(1) The nature of the issues;

(2) The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

(3) The ability of the petitioner to present relevant evidence and argument; and

(4) The effect of intervention on the agency's implementation of its statutory mandate.

(e) Any person, including a State, or OSM granted leave to intervene in a proceeding may participate in such proceeding as a full party or, if desired, in a capacity less than that of a full party. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be in the discretion of the administrative law judge or the Board.

§ 4.1111 Voluntary dismissal.

Any party who initiated a proceeding before OHA may seek to withdraw by moving to dismiss at any stage of a proceeding and the administrative law judge or the Board may grant such a motion.

§ 4.1112 Motions.

(a) Except for oral motions made in proceedings on the record, or where the administrative law judge otherwise directs, each motion shall—

(1) Be in writing; and

(2) Contain a concise statement of supporting grounds.

(b) Unless the administrative law judge or the Board orders otherwise, any party to a proceeding in which a motion is filed under paragraph (a) of this section shall have 15 days from service of the motion to file a statement in response.

(c) Failure to make a timely motion or to file a statement in response may be construed as a waiver of objection.

(d) An administrative law judge or the Board shall rule on all motions as expeditiously as possible.

§ 4.1113 Consolidation of proceedings.

When proceedings involving a common question of law or fact are pending before an administrative law judge or the Board, such proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of an administrative law judge or the Board.

§ 4.1114 Advancement of proceedings.

(a) Except in expedited review proceedings under § 4.1180, or in temporary relief proceedings under § 4.1266, at any time after commencement of a proceeding, any party may move to advance the scheduling of a proceeding.

(b) Except as otherwise directed by the administrative law judge or the Board, any party filing a motion under this section shall—

(1) Make the motion in writing;

(2) Describe the exigent circumstances justifying advancement;

(3) Describe the irreparable harm that would result if the motion is not granted; and

(4) Incorporate in the motion affidavits to support any representations of fact.

(c) Service of a motion under this section shall be accomplished by personal delivery or by telephonic or telegraphic communication followed by mail. Service is complete upon mailing.

(d) Unless otherwise directed by the administrative law judge or the Board, all parties to the proceeding in which the motion is filed shall have 10 days from the date of service of the motion to file a statement in response to the motion.

(e) Following the timely receipt by the administrative law judge of statements in response to the motion, the administrative law judge may schedule a hearing regarding the motion. If the motion is granted, the administrative law judge may advance pleading schedules, prehearing conferences, and the hearing, as deemed appropriate: *Provided*, A hearing on the merits shall not be scheduled with less than 5 working days notice to the parties, unless all parties consent to an earlier hearing.

(f) If the motion is granted, the Board may, if it deems such action to be appropriate, advance the appeal on its calendar and order such other advancement as may be appropriate, including an abbreviated schedule for briefing or oral argument.

§ 4.1115 Waiver of right to hearing.

Any person entitled to a hearing before an administrative law judge under the Act may waive such right in writing. Where parties are directed by any rule in these regulations to file a responsive pleading on or before a specified time, any party who fails to file such responsive pleading by the time specified, may be deemed to have waived his right to a hearing. Unless all parties to a proceeding who are entitled to a hearing waive, or are deemed to have waived such right, a hearing will be held.

§ 4.1116 Status of notices of violation and orders of cessation pending review by the Office of Hearings and Appeals.

Except where temporary relief is granted pursuant to section 525(c) or section 526(c) of the Act, notices of violation and orders of cessation issued under the Act shall remain in effect during the pendency of review before an administrative law judge or the Board.

EVIDENTIARY HEARINGS

§ 4.1120 Presiding officers.

An adminstrative law judge in the Office of Hearings and Appeals shall preside over any hearing required by the act to be conducted pursuant to 5 U.S.C. 554 (1970).

§ 4.1121 Powers of administrative law judges.

(a) Under the regulations of this part, an administrative law judge may—

(1) Administer oaths and affirmations;

(2) Issue subpoenas;

(3) Issue appropriate orders relating to discovery;

(4) Rule on procedural requests or similar matters;

(5) Hold conferences for settlement or simplification of the issues;

(6) Regulate the course of the hearing;

(7) Rule on offers of proof and receive relevant evidence;

(8) Take other actions authorized by this part, by 5 U.S.C. 556 (1970), or by the act; and

(9) Make or recommend decisions in accordance with 5 U.S.C. 557 (1970).

(b) An administrative law judge may order a prehearing conference—

(1) To simplify and clarify issues;

(2) To receive stipulations and admissions;

(3) To explore the possibility of agreement disposing of any or all of the issues in dispute; and

(4) For such other purposes as may be appropriate.

(c) Except as otherwise provided in these regulations, the jurisdiction of an administrative law judge shall terminate upon—

(1) The filing of a notice of appeal from an initial decision or other order dispositive of the proceeding;

(2) The issuance of an order of the Board granting a petition for review; or

(3) The expiration of the time period within which a petition for review or an appeal to the Board may be filed.

§ 4.1122 Conduct of administrative law judges.

Administrative law judges shall adhere to the "Code of Judicial Conduct."

§ 4.1123 Notice of hearing.

(a) An administrative law judge shall give notice to the parties of the time, place and nature of any hearing.

(b) Except for expedited review proceedings and temporary relief proceedings where time is of the essence, notice given under this section shall be in writing.

(c) In an expedited proceeding when there is only opportunity to give oral notice, the administrative law judge shall enter that fact contemporaneously on the record by a signed and dated memorandum describing the notice given.

§ 4.1124 Certification of interlocutory ruling.

Upon motion or upon the initiative of an administrative law judge, the judge may certify to the Board a ruling which does not finally dispose of the case if the ruling presents a controling question of law and an immediate appeal would materially advance ultimate disposition by the judge.

§ 4.1125 Summary decision.

(a) At any time after a proceeding has begun, a party may move for summary decision of the whole or part of a case.

(b) The moving party under this section shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.

(c) An administrative law judge may grant a motion under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows that—

(1) There is no disputed issue as to any material fact; and

(2) The moving party is entitled to summary decision as a matter of law.

(d) If a motion for summary decision is not granted for the entire case or for all the relief requested and an evidentiary hearing is necessary, the administrative law judge shall, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. He shall thereupon, issue an order specifying the facts that appear without substantial controversy and direct such further proceedings as deemed appropriate.

§ 4.1126 Proposed findings of fact and conclusions of law.

The administrative law judge shall allow the parties to a proceeding an opportunity to submit proposed findings of fact and conclusions of law together with a supporting brief at a time designated by the administrative law judge.

§ 4.1127 Initial orders and decisions.

An initial order or decision disposing of a case shall incorporate—

(a) Findings of fact and conclusions of law and the basis and reasons therefore on all the material issues of fact, law, and discretion presented on the record; and

(b) An order granting or denying relief.

§ 4.1128 Effect of initial order or decision.

An initial order or decision shall become final if that order or decision is not timely appealed to the Board under § 4.1270 or § 4.1271.

§ 4.1129 Certification of record.

Except in expedited review proceedings under § 4.1180, within 5 days after an initial decision has been rendered, the administrative law judge shall certify the official record of the proceedings, including all exhibits, and transmit the official record for filing in the Hearings Division, Office of Hearings and Appeals, Arlington, Va.

DISCOVERY

§ 4.1130 Discovery methods.

Parties may obtain discovery by one or more of the following methods—

(a) Depositions upon oral examination or upon written interrogatories;

(b) Written interrogatories;

(c) Production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and

(d) Requests for admission.

§ 4.1131 Time for discovery.

Following the initiation of a proceeding, the parties may initiate discovery at any time as long as it does not interfere with the conduct of the hearing.

§ 4.1132 Scope of discovery.

(a) Unless otherwise limited by order of the administrative law judge in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(b) It is not ground for objection that information sought will not be admissible at the haring if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (a) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

(d) Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following—

(1) The discovery not be had;

(2) The discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) The discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) Certain matters not relevant may not be inquired into, or that the scope of discovery be limited to certain matters;

(5) Discovery be conducted with no one present except persons designated by the administrative law judge; or

(6) A trade secret or other confidential research, development or commercial information may not be disclosed or be disclosed only in a designated way.

§ 4.1133 Sequence and timing of discovery.

Unless the administrative law judge upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

§ 4.1134 Supplementation of responses.

A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows—

(a) A party is under a duty to supplement timely his response with respect to any question directly addressed to—

(1) The identity and location of persons having knowledge of discoverable matters; and

(2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify and the substance of his testimony.

(b) A party is under a duty to amend timely a prior response if he later obtains information upon the basis of which—

(1) He knows the response was incorrect when made; or

(2) He knows that the response though correct when made is no longer true and the circumstances are

such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the administrative law judge or agreement of the parties.

§ 4.1135 Motion to compel discovery.

(a) If a deponent fails to answer a question propounded, or a party upon whom a request is made pursuant to § 4.1140, or a party upon whom answers to interrogatories are served fails to adequately respond or objects to the request, or any part thereof, or fails to permit inspection as requested, the discovering party may move the administrative law judge for an order compelling a response or inspection in accordance with the request.

(b) The motion shall set forth—

(1) The nature of the questions or request;

(2) The response or objection of the party upon whom the request was served; and

(3) Arguments in support of the motion.

(c) For purposes of this section, an evasive answer or incomplete answer or response shall be treated as a failure to answer or respond.

(d) In ruling on a motion made pursuant to this section, the administrative law judge may make such a protective order as he is authorized to make on a motion made pursuant to § 4.1132(d).

§ 4.1136 Failure to comply with orders compelling discovery.

If a party or an officer, director, or other agent of a party fails to obey an order to provide or permit discovery, the administrative law judge before whom the action is pending may make such orders in regard to the failure as are just, including but not limited to the following—

(a) An order that the matters sought to be discovered or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters into evidence; or

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

§ 4.1137 Depositions upon oral examination or upon written questions.

(a) Any party desiring to take the testimony of any other party or other person by deposition upon oral examination or written questions shall, without leave of the administrative law judge, give reasonable notice in writing to every other party, to the person to be examined and to the administrative law judge of—

(1) The proposed time and place of taking the deposition;

(2) The name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him or the particular group or class to which he belongs;

(3) The matter upon which each person will be examined; and

(4) The name or descriptive title and address of the officer before whom the deposition is to be taken.

(b) A deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(c) The actual taking of the deposition shall proceed as follows—

(1) The deposition shall be on the record;

(2) The officer before whom the deposition is to be taken shall put the witness on oath or affirmation;

(3) Examination and cross-examination shall proceed as at a hearing;

(4) All objections made at the time of the examination shall be noted by the officer upon the deposition;

(5) The officer shall not rule on objections to the evidence, but evidence objected to shall be taken subject to the objections.

(d) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature, unless examination and signature is waived by the deponent. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign.

(e) Where the deposition is to be taken upon written questions, the party taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be taken. Within 30 days after service, any other party may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, as in the case of a deposition on oral examination.

(f) A deposition will not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts.

(g) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the United States, to be paid by the party at whose instance the deposition is taken.

(h) The deponent may be accompanied, represented, and advised by legal counsel.

§ 4.1138 Use of depositions.

At the hearing, any part or all of a deposition, so far as admissible, may be used against any party who was present or represented at the taking of the deposition, or who had reasonable notice thereof, in accordance with any of the following provisions—

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness;

(b) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent or a person designated to testify on behalf of a public or private corporation, partnership, or association or governmental agency which is a party may be used by an adverse party for any purpose; or

(c) The deposition of a witness, whether or not a party, may be used by a party for any purpose if the administrative law judge finds that—

(1) The witness is dead;

(2) The witness is at a distance greater than 100 miles from the place of hearing, or is outside the United States, unless it appears that the absence of the witness was procured by the party offering the deposition;

(3) The witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(4) The party offering the deposition has been unable to procure the attendance of the witness by subpena; or

(5) Such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be used.

§ 4.1139 Written interrogatories to parties.

(a) Any party may serve upon any other party written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings shall be served on the administrative law judge and upon all parties to the proceeding.

(b) Each interrogatory shall be answered separately and fully in writing

under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answer and objections shall be signed by the person making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all partes to the proceeding within 30 days after service of the interrogatories, or within such shorter or longer period as the administrative law judge may allow.

(c) Interrogatories may relate to any matters which can be inquired into under § 4.1132. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the administrative law judge may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

§ 4.1140 Production of documents and things and entry upon land for inspection and other purposes.

(a) Any party may serve on any other party a request to—

(1) Produce and permit the party making the request, or a person acting on his behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things within the scope of § 4.1132 and which are in the possession, custody, or control of the party upon whom the request is served; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property (including the air, water, and soil) or any designated object or operation thereon, within the scope of § 4.1132.

(b) The request may be served on any party without leave of the administrative law judge.

(c) The request shall—

(1) Set forth the items to be inspected either by individual item or by category;

(2) Describe each item or category with reasonable particularity; and

(3) Specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party upon whom the request is served shall serve on the party submitting the request a written response within 30 days after service of the request.

(e) The response shall state, with respect to each item or category—

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made in whole or in part, in which case the reasons for objection shall be stated.

§ 4.1141 Admissions.

(a) A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact.

(b) Each matter of which an admission is requested is admitted unless, within 30 days after service of the request or such shorter or longer time as the administrative law judge may allow, the party to whom the request is directed serves on the requesting party—

(1) A sworn statement denying specifically the relevant matters of which an admission is requested;

(2) A sworn statement setting forth in detail the reasons why he can neither truthfully admit nor deny them; or

(3) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(c) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.

(d) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the administrative law judge determines that an objection is justified, he shall order that an answer be served. If the administrative law judge determines that an answer does not comply with the requirements of this section, he may order either that the matter is admitted or that an amended answer be served. The administrative law judge may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to hearing.

(e) Any matter admitted under this section is conclusively established unless the adminisrative law judge on motion permits withdrawal or amendment of the admission.

(f) Any admission made by a party under this section is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

PETITIONS FOR REVIEW OF PROPOSED ASSESSMENTS OF CIVIL PENALTIES

§ 4.1150 Who may file.

Any person charged with a civil penalty may file a petition for review of a proposed assessment of that penalty with the Hearings Division, OHA, 4015 Wilson Boulevard, Arlington, Va. 22203.

§ 4.1151 Time for filing.

(a) A petition for review of a proposed assessment of a civil penalty must be filed within 30 days of receipt of the proposed assessment; or

(b) If a timely request for a conference has been made pursuant to 30 CFR 723.17, a petition for review must be filed within 15 days from service of notice by the conference officer that the conference is deemed completed.

§ 4.1152 Contents of petition; payment required.

(a) The petition shall include—

(1) A short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation is being contested;

(2) If the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula contained in 30 CFR Part 723 was misapplied, along with a proposed civil penalty utilizing the civil penalty formula;

(3) Identification by number of all violations being contested;

(4) The identifying number of the cashier's check, certified check, bank draft, personal check, or bank money order accompanying the petition; and

(5) A request for a hearing site.

(b) The petition shall be accompanied by—

(1) Full payment of the proposed assessment in the form of a cashier's check, certified check, bank draft, personal check or bank money order made payable to—Assessment Office, OSM—to be placed in an escrow account pending final determination of the assessment; and

(2) On the face of the payment an identification by number of the violations for which payment is being tendered.

(c) As required by section 518(c) of the Act, failure to make timely payment of the proposed assessment in full shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

§ 4.1153 Answer.

OSM shall have 30 days from receipt of a copy of the petition within which to file an answer to the petition with the Hearings Division, OHA.

§ 4.1154 Review of waiver determination.

(a) Within 10 days of the filing of a petition under this part, petitioner may move the administrative law judge to review the granting or denial of a waiver of the civil penalty formula pursuant to 30 CFR 723.15.

(b) The motion shall contain a statement indicating all alleged facts relevant to the granting or denial of the waiver;

(c) Review shall be limited to the written determination of the Director of OSM granting or denying the waiver, the motion and responses to the motion. The standard of review shall be abuse of discretion.

(d) If the administrative law judge finds that the Director of OSM abused his discretion in granting or denying the waiver, the administrative law judge shall hold the hearing on the petition for review of the proposed assessment required by section 518(b) of the Act and make a determination pursuant to § 4.1157.

§ 4.1155 Burden of proof in civil penalty proceedings.

In civil penalty proceedings OSM shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the fact of violation and as to the amount of the penalty.

§ 4.1156 Summary disposition.

(a) In a civil penalty proceeding where the person against whom the proposed civil penalty is assessed fails to comply on time with any prehearing order of an administrative law judge, the administrative law judge shall issue an order to show cause why—

(1) That person should not be deemed to have waived his right to a hearing; and

(2) The proceedings should not be dismissed and referred to the assessment officer.

(b) If the order to show cause is not satisfied as required, the administrative law judge shall order the proceedings summarily dismissed and shall refer the case to the assessment officer who shall enter the assessment as the final order of the Department.

(c) Where the person against whom the proposed civil penalty is assessed fails to appear at a hearing, that person will be deemed to have waived his right to a hearing and the administration law judge may assume for purposes of the assessment—

(1) That each violation listed in the notice of violation or order occurred; and

(2) The truth of any facts alleged in such notice or order.

(d) In order to issue an initial decision assessing the appropriate penalty when the person against whom the proposed civil penalty is assessed fails to appear at the hearing, an administrative law judge shall either conduct an ex parte hearing or require OSM to furnish proposed findings of fact and conclusions of law.

(e) Nothing in this section shall be construed to deprive the person against whom the penalty is assessed of his opportunity to have OSM prove the violations charged in open hearing with confrontation and cross-examination of witnesses, except where that person fails to comply with a prehearing order or fails to appear at the scheduled hearing.

§ 4.1157 Determination by administrative law judge.

(a) The administrative law judge shall incorporate in his decision concerning the civil penalty, findings of fact on each of the four criteria set forth in 30 CFR 723.12, and conclusions of law.

(b) If the administrative law judge finds that—

(1) A violation occurred or that the fact of violation is uncontested, he shall establish the amount of the penalty, but in so doing, he shall adhere to the point system and conversion table contained in 30 CFR 723.12 and 723.13, except that the administrative law judge may waive the use of such point system where he determines that a waiver would further abatement of violations of the Act. However, the administrative law judge shall not waive the use of the point system and reduce the proposed assessment on the basis of an argument that a reduction in the proposed assessment could be used to abate other violations of the Act; or

(2) No violation occurred, he shall issue an order that the proposed assessment be returned to the petitioner.

(c) If the administrative law judge makes a finding that no violation occurred or if the administrative law judge reduces the amount of the civil penalty below that of the proposed assessment and a timely petition for review of his decision is not filed with the Board or the Board refuses to grant such a petition, the Department of the Interior shall have 30 days from the expiration of the date for filing a petition with the Board if no petition is filed, or 30 days from the date the Board refuses to grant such a petition, within which to remit the appropriate amount to the person who made the payment, with interest at the rate of 6 percent, or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the administrative law judge increases the amount of the civil penalty above that of the proposed assessment, the administrative law judge shall order payment of the appropriate amount within 30 days of receipt of the decision.

§ 4.1158 Appeals.

Any party may petition the Board to review the decision of an administrative law judge concerning an assessment according to the procedures set forth in § 4.1270.

REVIEW OF SECTION 521 NOTICES OF VIOLATION AND ORDERS OF CESSATION

§ 4.1160 Scope.

These regulations govern applications for review of—

(a) Notices of violation or the modification, vacation, or termination of a notice of violation under section 521(a)(3) of the Act; and

(b) Orders of cessation which are not subject to expedited review under § 4.1180 or the modification, vacation, or termination of such an order of cessation under section 521(a)(2) or section 521(a)(3).

§ 4.1161 Who may file.

A permittee issued a notice or order by the Secretary pursuant to the provisions of section 521(a)(2) or section 521(a)(3) of the Act or any person having an interest which is or may be adversely affected by a notice or order subject to review under § 4.1160 may file an application for review with the Hearings Division, OHA, 4015 Wilson Boulevard, Arlington, Va. 22203.

§ 4.1162 Time for filing.

Any person filing an application for review under § 4.1160 et seq. shall file that application within 30 days of the receipt of a notice or order or within 30 days of receipt of notice of modification, vacation, or termination of such a notice or order. Any person not served with a copy of the document shall file the application for review within 40 days of the date of issuance of the document.

§ 4.1163 Effect of failure to file.

Failure to file an application for review of a notice of violation or order of cessation shall not preclude challenging the fact of violation during a civil penalty proceeding.

§ 4.1164 Contents of application.

Any person filing an application for review shall incorporate in that application regarding each claim for relief—

(a) A statement of facts entitling that person to administrative relief;

(b) A request for specific relief;

(c) A copy of any notice or order sought to be reviewed;

(d) A statement as to whether the person requests or waives the opportunity for an evidentiary hearing; and

(e) Any other relevant information.

§ 4.1165 Answer.

(a) Where an application for review is filed by a permittee, OSM as well as any other person granted leave to intervene pursuant to § 4.1110 shall file an answer within 20 days of service of a copy of such application.

(b) Where an application for review is filed by a person other than a permittee, the following shall file an answer within 20 days of service of a copy of such application—

(1) OSM;

(2) The permittee; or

(3) Any other person granted leave to intervene pursuant to § 4.1110.

§ 4.1166 Contents of answer.

An answer to an application for review shall incorporate—

(a) A statement specifically admitting or denying the alleged facts stated by the applicant;

(b) A statement of any other relevant facts;

(c) A statement whether an evidentiary hearing is requested or waived; and

(d) Any other relevant information.

§ 4.1167 Notice of hearing.

Pursuant to section 525(a)(2) of the act, the applicant and other interested persons shall be given written notice of the time and place of the hearing at least 5 working days prior thereto.

§ 4.1168 Amendments to pleadings.

(a) An application for review may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the administrative law judge upon proper motion.

(b) Upon receipt of an initial or amended application for review or subsequent to granting leave to amend, the administrative law judge shall issue an order setting a time for filing an amended answer if the judge determines that such an answer is appropriate.

§ 4.1169 Failure to state a claim.

Upon proper motion or after the issuance of an order to show cause by the administrative law judge, an administrative law judge may dismiss at any time an application for review which fails to state a claim upon which administrative relief may be granted.

§ 4.1170 Related notices or orders.

(a) An applicant for review shall file a copy of any subsequent notice or order which modifies, vacates, or terminates the notice or order sought to be reviewed within 10 days of receipt.

(b) An applicant for review of a notice shall file a copy of an order of cessation for failure timely to abate the violation which is the subject of the notice under review within 10 days of receipt of such order.

(c) If an applicant for review desires to challenge any subsequent notice or order, the applicant must file a separate application for review.

(d) Applications for review of related notices or orders are subject to consolidation.

§ 4.1171 Burden of proof in review of section 521 notices or orders.

(a) In review of section 521 notices of violation or orders of cessation or the modification, vacation, or termination thereof, including expedited review under § 4.1180, OSM shall have the burden of going forward to establish a prima facie case as to the validity of the notice, order, or modification, vacation, or termination thereof.

(b) The ultimate burden of persuasion shall rest with the applicant for review.

EXPEDITED REVIEW OF SECTION 521(a)(2) OR 521(a)(3) ORDERS OF CESSATION

§ 4.1180 Purpose.

The purpose of §§ 4.1180–87 is to govern applications filed under section 525(b) of the act for expedited review of orders of cessation for which temporary relief has not been granted under section 525(c) or section 526(c) of the act. If a person is qualified to receive a 30-day decision under these regulations, he may waive that right and file an application under § 4.1164, and the procedures in § 4.1160 et seq. shall apply. If there is a waiver as set forth in § 4.1186, the final administrative decision shall be issued within 120 days of the filing of the application.

§ 4.1181 Who may file.

(a) An application for review of an order of cessation may be filed under this section, whenever temporary relief has not been granted under section 525(c) or section 526(c) of the act, by—

(1) A permittee who has been issued an order of cessation under section 521(a)(2) or section 521(a)(3) of the act; or

(2) Any person having an interest which is or may be adversely affected by the issuance of an order of cessation under section 521(a)(2) or section 521(a)(3) of the act.

(b) A permittee or any person having an interest which is or may be adversely affected by a section 521(a)(2) or section 521(a)(3) order of cessation waives his right to expedited review upon being granted temporary relief pursuant to section 525(c) or section 526(c) of the act.

§ 4.1182 Where to file.

The application shall be filed in the Hearings Division, 4015 Wilson Boulevard, OHA, Arlington, Va. 22203.

§ 4.1183 Time for filing.

(a) Any person intending to file an application for expedited review under section 525(b) of the act shall notify the field solicitor, Department of the Interior, for the region in which the mine site is located, within 15 days of receipt of the order. Any person not served with a copy of the order shall file notice of intention to file an application for review within 20 days of the date of issuance of the order.

(b) Any person filing an application for review under § 4.1184 shall file the application within 30 days of receipt of the order. Any person not served with a copy of the order shall file an application for review within 40 days of the date of issuance of the order.

§ 4.1184 Contents of application.

(a) Any person filing an application for expedited review under section 525(b) of the act shall incorporate in that application regarding each claim for relief—

(1) A statement of facts entitling that person to administrative relief;

(2) A request for specific relief;

(3) A specific statement which delineates each issue to be addressed by the applicant during the expedited proceeding;

(4) A copy of the order sought to be reviewed;

(5) A list identifying each of applicant's witnesses by name, address, and place of employment, including expert witnesses and the area of expertise to which they will address themselves at the hearing, and a detailed summary of their testimony;

(6) Copies of all exhibits and other documentary evidence that the applicant intends to introduce as evidence at the hearing and descriptions of all physical exhibits and evidence which is not capable of being copied or attached; and

(7) Any other relevant information.

(b) If any applicant fails to comply with all the requirements of § 4.1184(a), the administrative law judge may find that the applicant has waived the 30-day decision requirement or the administrative law judge shall order that the application be perfected and the application shall not be considered filed for purposes of the 30-day decision until perfected. Failure to timely comply with the administrative law judge's order shall constitute a waiver of the 30-day decision.

§ 4.1185 Computation of time for decision.

In computing the 30-day time period for administrative decision, intermediate Saturdays, Sundays, Federal legal

holidays, and other nonbusiness days shall be excluded in the computation.

§ 4.1186 Wavier of the 30-day decision requirement.

(a) Any person qualified to receive a 30-day decision may waive that right—

(1) By filing an application pursuant to §§ 4.1160–71;

(2) By failing to comply with all the requirements of § 4.1184(a); or

(3) In accordance with § 4.1187(j).

(b) Any person qualified to receive a 30-day decision shall waive that right—

(1) By obtaining temporary relief pursuant to section 525(c) or section 526(c) of the act;

(2) By failing to perfect an applicaion pursuant to § 4.1184(b); or

(3) In accordance with § 4.1187(i).

§ 4.1187 Procedure if 30-day decision requirement is not waived.

If the applicant does not waive the 30-day decision requirement of section 525(b) of the act, the following special rules shall apply—

(a) The applicant shall serve all known parties with a copy of the application simultaneously with the filing of the application with OHA. If service is accomplished by mail, the applicant shall inform all known parties by telephone at the time of mailing that an application is being filed and shall inform the administrative law judge by telephone that such notice has been given. However, no ex parte communication as to the merits of the proceeding may be conducted with the administrative law judge.

(b) Any party desiring to file a response to the application for review shall file a written response within 5 working days of service of the application.

(c) If the applicant has requested a hearing, the administrative law judge shall act immediately upon receipt of the application to notify the parties of the time and place of the hearing at least 5 working days prior to the hearing date.

(d) The administrative law judge may require the parties to submit proposed findings of fact and conclusions of law at the hearing which may be orally supplemented on the record at the hearing or, where proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the hearing.

(e) The administrative law judge shall make an initial decision. He shall either rule from the bench on the application, orally stating the reasons for his decision or he shall issue a written decision. If the administrative law judge makes an oral ruling, his approval of the record of the hearing shall constitute his written decision. The decision of the administrative law judge must be issued within 15 days of the filing of the perfected application under § 4.1184.

(f) If any party desires to appeal to the Board, such party shall—

(1) If the administrative law judge makes an oral ruling, make an oral statement, within a time period as directed by the administrative law judge, that the decision is being appealed and request that the administrative law judge certify the record to the Board; or

(2) If the administrative law judge issues a written decision after the close of the hearing, file a notice of appeal with the administrative law judge and with the Board within 2 working days of receipt of the administrative law judge's decision.

(g) If the decision of the administrative law judge is appealed, the Board shall act immediately to issue an expedited briefing schedule, and the Board shall act expeditiously to review the record and issue its decision. The decision of the Board must be issued within 30 days of the date the perfected application is filed with OHA pursuant to § 4.1184.

(h) If all parties waive the opportunity for a hearing and the administrative law judge determines that a hearing is not necessary, but the applicant does not waive the 30-day decision requirement, the administrative law judge shall issue an initial decision on the application within 15 days of receipt of the application. The decision shall contain findings of fact and an order disposing of the application. The decision shall be served upon all the parties and the parties shall have 2 working days from receipt of such decision within which to appeal to the Board. The Board shall issue its decision within 30 days of the date the perfected application is filed with OHA pursuant to § 4.1184.

(i) If at any time after the initiation of this expedited procedure, the applicant requests a delay or acts in a manner so as to frustrate the expeditious nature of this proceeding or fails to comply with any requirement of § 4.1187(a), such action shall constitute a waiver of the 30-day requirement of section 525(b) of the act.

(j) If the applicant seeks to offer witnesses, exhibits, or testimony at the hearing in addition to those identified, submitted, described, or summarized in the application for expedited review perfected in accordance with the requirements of § 4.1184, upon objection by an opposing party to such offer, the administrative law judge may allow such objecting party additional time in order to prepare for cross-examination of unidentified witnesses or to identify and prepare rebuttal evidence or otherwise uncover any additional prejudice which may result to such party. The administrative law judge may rule that the running of the 30-day time for decision is stayed for the period of any additional time allowed pursuant to this subsection or may determine that the applicant has waived his right to the 30-day decision.

PROCEEDINGS FOR SUSPENSION OR REVOCATION OF PERMITS UNDER SECTION 521(a)(4) OF THE ACT

§ 4.1190 Initiation of proceedings.

(a) A proceeding on a show cause order issued by the Director of OSM pursuant to section 521(a)(4) of the Act shall be initiated by the Director of OSM filing a copy of such an order with the Hearings Division, OHA, 4015 Wilson Boulevard, Arlington, Va. 22203, at the same time the order is issued to the permittee.

(b) A show cause order filed with OHA shall set forth—

(1) A list of the unwarranted or willful violations which contribute to a pattern of violations;

(2) A copy of each order or notice which contains one or more of the violations listed as contributing to a pattern of violations;

(3) The basis for determining the existence of a pattern or violations; and

(4) Recommendations whether the permit should be suspended or revoked, including the length and terms of a suspension.

§ 4.1191 Answer.

The permittee shall have 30 days from receipt of the order within which to file an answer with the Hearings Division, OHA, Arlington, Va.

§ 4.1192 Contents of answer.

The permittee's answer to a show cause order shall contain a statement setting forth—

(a) The reasons in detail why a pattern of violations, as described in 30 CFR 722.16, does not exist or has not existed, including all reasons for contesting—

(1) The fact of any of the violations alleged by OSM as constituting a pattern of violations;

(2) The willfulness of such violations; or

(3) Whether such violations were caused by the unwarranted failure of the permittee;

(b) All mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(c) Any other alleged relevant facts; and

(d) Whether a hearing on the show cause order is desired.

§ 4.1193 Burden of proof in suspension or revocation proceedings.

In proceedings to suspend or revoke a permit, OSM shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

§ 4.1194 Determination by the administrative law judge.

(a) Upon a determination by the administrative law judge that a pattern of violations exists or has existed, pursuant to 30 CFR 722.16 (c)(2) or (c)(3), the administrative law judge shall order the permit either suspended or revoked. In making such a determination, the administrative law judge need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the minimum suspension period shall be 3 working days unless the administrative law judge finds that imposition of the minimum suspension period would result in manifest injustice and would not further the purposes of the Act. Also, the administrative law judge may impose preconditions to be satisfied prior to the suspension being lifted.

(c) The decision of the administrative law judge shall be issued within 20 days following the date the hearing record is closed by the administrative law judge or within 20 days of receipt of the answer, if no hearing is requested by any party and the administrative law judge determines that no hearing is necessary.

(d) At any stage of a suspension or revocation proceeding being conducted by an administrative law judge, the parties may enter into a settlement, subject to the approval of the administrative law judge.

§ 4.1195 Summary disposition.

(a) In a proceeding under this section where the permittee fails to appear at a hearing, the permittee shall be deemed to have waived his right to a hearing and the administrative law judge may assume for purposes of the proceeding that—

(1) Each violation listed in the order occurred;

(2) Such violations were caused by the permittee's unwarranted failure or were willfully caused; and

(3) A pattern of violations exists.

(b) In order to issue an initial decision concerning suspension or revocation of the permit when the permittee fails to appear at the hearing, the administrative law judge shall either conduct an ex parte hearing or require OSM to furnish proposed findings of fact and conclusions of law.

§ 4.1196 Appeals.

Any party desiring to appeal the decision of the administrative law judge shall have 5 days from receipt of the administrative law judge's decision within which to file a notice of appeal with the Board. The Board shall act immediately to issue an expedited briefing schedule. The decision of the Board shall be issued within 60 days of the date the hearing record is closed by the administrative law judge or, if no hearing is held, within 60 days of the date the answer is filed.

APPLICATIONS FOR REVIEW OF ALLEGED DISCRIMINATORY ACTS UNDER SECTION 703 OF THE ACT

§ 4.1200 Filing of the application for review with the Office of Hearings and Appeals.

(a) Pursuant to 30 CFR 830.13, within 7 days of receipt of an application for review of alleged discriminatory acts, OSM shall file a copy of the application in the Hearings Division, OHA, 4015 Wilson Boulevard, Arlington, Va. 22203. OSM shall also file in the Hearings Division, OHA, Arlington, Va., a copy of any answer submitted in response to the application for review.

(b) The application for review, as filed in the Hearings Division, OHA, shall be held in suspense until one of the following takes place—

(1) A request for temporary relief is filed pursuant to § 4.1203;

(2) A request is made by OSM for the scheduling of a hearing pursuant to 30 CFR 830.14(a);

(3) A request is made by the applicant for the scheduling of a hearing pursuant to 30 CFR 830.14(a);

(4) A request is made by the applicant for the scheduling of a hearing pursuant to 30 CFR 830.14(b); or

(5) A request is made by OSM that OHA close the case because OSM, the applicant, and the alleged discriminating person have entered into an agreement in resolution of the discriminatory acts and there has been compliance with such agreement.

§ 4.1201 Request for scheduling of a hearing.

(a) If OSM determines that a violation of section 703(a) of the act has probably occurred and was not resolved at the informal conference, it shall file with the Hearings Division, OHA, a request on behalf of the applicant that a hearing be scheduled. The request shall be filed within 10 days of the completion of the informal conference, or where no conference is held, within 10 days following the scheduled conference. Where OSM makes such a request, it shall represent the applicant in the administrative proceedings, unless the applicant desires to be represented by private counsel.

(b) If OSM declines to request that a hearing be scheduled and to represent the applicant, it shall within 10 days of the completion of the informal conference, or where no conference is held, within 10 days following the scheduled conference, notify the applicant of his right to request the scheduling of a hearing on his own behalf. An applicant shall file a request for the scheduling of a hearing in the Hearings Division, OHA, within 30 days of service of such notice from OSM.

(c) If no request for the scheduling of a hearing has been made pursuant to paragraph (a) or (b) of this section and 60 days have elapsed from the filing of the application for review with OSM, the applicant may file on his own behalf a request for the scheduling of a hearing with the main office of OHA. Where such a request is made, the applicant shall proceed on his own behalf, but OSM may intervene pursuant to § 4.1110.

§ 4.1202 Response to request for the scheduling of a hearing.

(a) Any person served with a copy of the request for the scheduling of a hearing shall file a response with the Hearings Division, OHA, Arlington, Va., within 20 days of service of such request.

(b) If the alleged discriminating person has not filed an answer to the application, such person shall include with the response to the request for the scheduling of a hearing, a statement specifically admitting or denying the alleged facts set forth in the application.

§ 4.1203 Application for temporary relief from alleged discriminatory acts.

(a) On or after 10 days from the filing of an application for review under this part, any party may file an application for temporary relief from alleged discriminatory acts.

(b) The application shall be filed in the Hearings Division, OHA, Arlington, Va.

(c) The application shall include—

(1) A detailed written statement setting forth the reasons why relief should be granted;

(2) A showing that the complaint of discrimination was not frivoulously brought;

(3) A description of any exigent circumstances justifying temporary relief; and

(4) A statement of the specific relief requested.

(d) All parties to the proceeding to which the application relates shall

have 5 days from receipt of the application to file a written response.

(e) The administrative law judge may convene a hearing on any issue raised by the application if he deems it appropriate.

(f) The administrative law judge shall expeditiously issue an order or decision granting or denying such relief.

(g) If all parties consent, before or after the commencement of any hearing on the application for temporary relief, the administrative law judge may order the hearing on the application for review of alleged discriminatory acts to be advanced and consolidated with the hearing on the application for temporary relief.

§ 4.1204 Determination by administrative law judge.

Upon a finding of a violation of section 703 of the act or 30 CFR 830.11, the administrative law judge shall order the appropriate affirmative relief including, but not limited to—

(a) The rehiring or reinstatement of the applicant to his former position with full rights and privileges, full backpay, and any special damages sustained as a result of the discrimination; and

(b) All other relief which the administrative law judge deems apropriate to abate the violation or to prevent recurrence of discrimination.

§ 4.1205 Appeals.

Any party aggrieved by a decision of an administrative law judge concerning an application for review of alleged discriminatory acts may appeal to the Board under procedures set forth in § 4.1271 et seq.

APPLICATIONS FOR TEMPORARY RELIEF

§ 4.1260 Scope.

These regulations contain the procedures for seeking temporary relief in section 525 review proceedings under the Act. The special procedures for seeking temporary relief from an order of cessation are set forth in § 4.1266. Procedures for seeking temporary relief from alleged discriminatory acts are covered in § 4.1203.

§ 4.1261 When to file.

An application for temporary relief may be filed by any party to a proceeding at any time prior to decision by an administrative law judge.

§ 4.1262 Where to file.

The application shall be filed with the administrative law judge to whom the case has been assigned. If no assignment has been made, the application shall be filed in the Hearings Division, OHA, 4015 Wilson Boulevard, Arlington, Va. 22203.

§ 4.1263 Contents of application.

The application shall include—

(a) A detailed written statement setting forth the reasons why relief should be granted;

(b) A showing that there is a substantial likelihood that the findings and decision of the administrative law judge in the matters to which the application relates will be favorable to the applicant;

(c) A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;

(d) If the application relates to an order of cessation issued pursuant to section 521(a)(2) or section 521(a)(3) of the Act, a statement of whether the requirement of section 525(c) of the Act for decision on the application within 5 days is waived; and

(e) A statement of the specific relief requested.

§ 4.1264 Response to application.

(a) Except as provided in § 4.1266(b), all parties to the proceeding to which the application relates shall have 5 days from the date of receipt of the application to file a written response.

(b) Except as provided in § 4.1266(b), the administrative law judge may hold a hearing on any issue raised by the application if he deems it appropriate.

§ 4.1265 Determination on application concerning a notice of violation issued pursuant to § 521(a)(3) of the Act.

Where an application has been filed requesting temporary relief from a notice of violation issued under section 521(a)(3) of the Act, the administrative law judge shall expeditiously issue an order or decision granting or denying such relief.

§ 4.1266 Determination on application concerning an order of cessation issued pursuant to § 521(a)(2) or § 521(a)(3) of the Act.

(a) If the 5-day requirement of section 525(c) of the Act is waived, the administrative law judge shall expeditiously conduct a hearing and render a decision on the application.

(b) If there is no waiver of the 5-day requirement of section 525(c) of the Act, the following special rules shall apply—

(1) The 5-day time for decision shall not begin to run until the application is filed pursuant to § 4.1262 or a copy of the application is received by the field solicitor for the region in which the mine site subject to the order is located, whichever occurs at a later date (see § 4.1109 for addresses);

(2) The application shall include an affidavit stating that telephone notice has been given to the regional office of OSM at the phone number listed below for the region in which the mine site subject to the order is located. The phone notice shall identify the mine, the mine operator, the date and number of the order from which relief is requested, the name of the inspector involved, and the name and phone number of the applicant;

Region I (Charleston, W.Va.) 304-342-8125.
Region II (Knoxville, Tenn.) 615-588-5396.
Region III (Indianapolis, Ind.) 317-269-7068.
Region IV (Kansas City, Mo.) 816-374-5162.
Region V (Denver, Colo.) 303-837-5511.

(3) Prior to or at the hearing, the applicant shall file with OHA an affidavit stating the date upon which the copy of the application was delivered to the office of the field solicitor or the applicant may make an oral statement at the hearing setting forth that information. For purposes of the affidavit or statement the applicant may rely upon telephone confirmation by the office of the field solicitor that the application was received.

(4) In addition to the service requirements of § 4.1266(b) (1) and (2), the applicant shall serve any other parties with a copy of the application simultaneously with the filing of the application. If service is accomplished by mail, the applicant shall inform such other parties by telephone at the time of mailing that an application is being filed, the contents of the application, and with whom the application was filed.

(5) The field solicitor and all other parties may indicate their objection to the application by communicating such objection to the administrative law judge and the applicant by telephone. However, no ex parte communication as to the merits of the proceeding may be conducted with the administrative law judge. The field solicitor and all other parties shall simultaneously reduce their objections to writing. The written objections must be immediately filed with the administrative law judge and immediately served upon the applicant.

(6) Upon receipt of communication that there is an objection to the request, the administrative law judge shall immediately order a location, time, and date for the hearing by communicating such information to the field solicitor, all other parties, and the applicant by telephone. The administrative law judge shall reduce such communications to writing in the form of a memorandum to the file.

(7) If a hearing is held—

(i) The administrative law judge may require the parties to submit proposed findings of fact and conclusions of law at the hearing which may be orally supplemented on the record at the hearing or where written proposed findings of fact and conclusions of law have not been submitted at the hear-

ing, they may be orally presented for the record at the hearing.

(ii) The administrative law judge shall either rule from the bench on the application, orally stating the reasons for his decision or he shall within 24 hours of completion of the hearing issue a written decision. If the administrative law judge makes an oral ruling, his approval of the record of the hearing shall constitute his written decision.

(8) The order or decision of the administrative law judge shall be issued within 5 working days of the receipt of the application for temporary relief.

(9) If at any time after the initiation of this expedited procedure, the applicant requests a delay or acts in a manner so as to frustrate the expeditious nature of this proceeding or fails to supply the information required by § 4.1263 such action shall constitute a waiver of the 5-day requirement of section 525(c) of the act.

§ 4.1267 Appeals.

(a) Any party desiring to appeal a decision of an administrative law judge granting temporary relief may appeal to the Board.

(b) Any party desiring to appeal a decision of an administrative law judge denying temporary relief may appeal to the Board or, in the alternative, if the administrative law judge has rendered a decision pursuant to § 4.1266(b), may seek review pursuant to section 526(a).

(c) The Board shall issue an expedited briefing schedule and shall issue a decision on the appeal expeditiously.

APPEALS TO THE BOARD FROM DECISIONS OR ORDERS OF ADMINISTRATIVE LAW JUDGES

§ 4.1270 Petition for discretionary review of a proposed civil penalty.

(a) Any party may petition the Board to review an order or decision by an administrative law judge disposing of a civil penalty proceeding under § 4.1150.

(b) A petition under this section shall be filed on or before 30 days from the date of receipt of the order or decision sought to be reviewed and the time for filing may not be extended.

(c) A petitioner under this section shall list the alleged errors of the administrative law judge and shall attach a copy of the order or decision sought to be reviewed.

(d) Any party may file with the Board a response to the petition for review within 10 days of receipt of a copy of such petition.

(e) Not later than 30 days from the filing of a petition under this section, the Board shall grant or deny the petition in whole or in part.

(f) If the petition is granted, the rules in §§ 4.1273–77 are applicable and the Board shall use the point system and conversion table contained in 30 CFR part 723 in recalculating assessments; however, the Board shall have the same authority to waive the civil penalty formula as that granted to the administrative law judges in § 4.1157(b)(1). If the petition is denied, the decision of the administrative law judge shall be final for the Department, subject to 43 CFR 4.5.

§ 4.1271 Notice of appeal.

(a) Any aggrieved party may file a notice of appeal from an order or decision of an administrative law judge disposing of a proceeding under this subpart, except a civil penalty proceeding under § 4.1150.

(b) Except in an expedited review proceeding under § 4.1180, or in a suspension or revocation proceeding under § 4.1190, a notice of appeal shall be filed with the Board on or before 30 days from the date of receipt of the order or decision sought to be reviewed and the time for filing may not be extended.

§ 4.1272 Interlocutory appeals.

(a) If a party has sought certification under § 4.1124, that party may petition the Board for permission to appeal from an interlocutory ruling by an administrative law judge.

(b) A petition under this section shall be in writing and not exceed 10 pages in length.

(c) If the correctness of the ruling sought to be reviewed involves a controlling issue of law the resolution of which will materially advance final disposition of the case, the Board may grant the petition.

(d) Upon granting a petition under this section, the Board may dispense with briefing or issue a briefing schedule.

(e) Unless the Board or the administrative law judge orders otherwise, an interlocutory appeal shall not operate as a stay of further proceedings before the judge.

(f) In deciding an interlocutory appeal, the Board shall confine itself to the issue presented on appeal.

(g) The Board shall promptly decide appeals under this section.

(h) Upon affirmance, reversal or modification of the administrative law judge's interlocutory ruling or order, the jurisdiction of the Board shall terminate, and the case shall be remanded promptly to the administrative law judge for further proceedings.

§ 4.1273 Briefs.

(a) Unless the Board orders otherwise, an appellant's brief is due on or before 30 days from the date of receipt of notice by the appellant that the Board has agreed to exercise discretionary review authority pursuant to § 4.1270 or a notice of appeal is filed.

(b) If any appellant fails to file a timely brief, an appeal under this part may be subject to summary dismissal.

(c) An appellant shall state specifically the rulings to which there is an objection, the reasons for such objections, and the relief requested. The failure to specify a ruling as objectionable may be deemed by the Board as a waiver of objection.

(d) Unless the Board orders otherwise, within 20 days after service of appellant's brief, any other party to the proceeding may file a brief.

(e) If any argument is based upon the evidence of record and there is a failure to include specific record citations, when available, the Board need not consider the arguments.

(f) Further briefing may take place by permission of the Board.

(g) Unless the Board provides otherwise, appellant's brief shall not exceed 50 typed pages and an appellee's brief shall not exceed 25 typed pages.

§ 4.1274 Remand.

The Board may remand cases if further proceedings are required.

§ 4.1275 Final decisions.

The Board may adopt, affirm, modify, set aside, or reverse any finding of fact, conclusion of law, or order of the administrative law judge.

§ 4.1276 Reconsideration.

(a) A party may move for reconsideration under § 4.21(c); however, the motion shall be filed with the Board within 30 days of the date of the decision.

(b) The filing of a petition for reconsideration shall not stay the effect of any decision or order and shall not affect the finality of any decision or order for purposes of judicial review.

APPEALS TO THE BOARD FROM DECISIONS OF THE OFFICE OF SURFACE MINING

§ 4.1280 Scope.

This section is applicable to appeals from decisions of the Director of OSM concerning small operator exemptions under 30 CFR 710.12(h) and to other appeals which are not required by the Act to be determined by formal adjudication under the procedures set forth in 5 U.S.C. 554.

§ 4.1281 Who may appeal.

Any person who is or may be adversely affected by a written decision of the Director of OSM or his delegate may appeal to the Board where the decision specifically grants such right of appeal.

§ 4.1282 Appeals; how taken.

(a) A person appealing under this section shall file a written notice of appeal with the office of the OSM official whose decision is being appealed and a copy of such notice shall simultaneously be sent to the Board of Surface Mining and Reclamation Appeals, 4015 Wilson Boulevard, Arlington, Va. 22203.

(b) The notice of appeal shall be filed within 20 days from the date of receipt of the decision. If the person appealing has not been served with a copy of the decision, such appeal must be filed within 30 days of the date of the decision.

(c) The notice of appeal shall indicate that an appeal is intended and must identify the decision being appealed. The notice should include the serial number or other identification of the case and the date of the decision. The notice of appeal may include a statement of reasons for the appeal and any arguments the appellant desires to make.

(d) If the notice of appeal did not include a statement of reasons for the appeal, such a statement shall be filed with the Board within 20 days after the notice of appeal was filed. In any case, the appellant shall be permitted to file with the Board additional statements of reasons and written arguments or briefs within the 20-day period after filing the notice of appeal.

§ 4.1283 Service.

(a) The appellant shall serve personally or by certified mail, return receipt requested, a copy of the notice of appeal and a copy of any statement of reasons, written arguments, or other documents on each party within 15 days after filing the document. Proof of service shall be filed with the Board within 15 days after service.

(b) Failure to serve may subject the appeal to summary dismissal pursuant to § 4.1285.

§ 4.1284 Answer.

(a) Any party served with a notice of appeal who wishes to participate in the proceedings on appeal shall file an answer with the Board within 20 days after service of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal.

(b) If additional reasons, written arguments or other documents are filed by the appellant, a party shall have 20 days after service thereof within which to answer. The answer shall state the reasons the party opposes or supports the appeal.

§ 4.1285 Summary dismissal.

An appeal shall be subject to summary dismissal, in the discretion of the Board, for failure to file or serve, upon all persons required to be served, a notice of appeal or a statement of reasons for appeal.

§ 4.1286 Request for hearing.

(a) Any party may request the Board to order a hearing before an administrative law judge in order to present evidence on an issue of fact. Such a request shall be made in writing and filed with the Board within 20 days after the answer is due. Copies of the request shall be served in accordance with § 4.1283.

(b) The allowance of a request for a hearing is within the discretion of the Board, and the Board may, on its own motion, refer any case to an administrative law judge for a hearing on an issue of fact. If a hearing is ordered, the Board shall specify the issues upon which the hearing is to be held.

PETITIONS FOR AWARD OF COSTS AND EXPENSES UNDER SECTION 525(e) OF THE ACT

§ 4.1290 Who may file.

(a) Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any administrative proceeding under the Act which results in—

(1) A final order being issued by an administrative law judge; or

(2) A final order being issued by the Board.

§ 4.1291 Where to file; time for filing.

The petition for an award of costs and expenses including attorneys' fees must be filed with the administrative law judge who issued the final order, or if the final order was issued by the Board, with the Board, within 45 days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

§ 4.1292 Contents of petition.

(a) A petition filed under this section shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition—

(1) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(2) Receipts or other evidence of such costs and expenses; and

(3) Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

§ 4.1293 Answer.

Any person served with a copy of the petition shall have 30 days from service of the petition within which to file an answer to such petition.

§ 4.1294 Who may receive an award.

Appropriate costs and expenses including attorneys' fees may be awarded—

(a) To any person from the permittee, if—

(1) The person initiates any administrative proceedings reviewing enforcement actions, upon a finding that a violation of the Act, regulations or permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the administrative law judge or Board determines that the person made a substantial contribution to the full and fair determination of the issues; or

(2) The person initiates an application for review of alleged discriminatory acts, pursuant to 30 CFR Part 830, upon a finding of discriminatory discharge or other acts of discrimination.

(b) To any person other than a permittee or his representative from OSM, if the person initiates or participates in any proceeding under the Act upon a finding that the person made a substantial contribution to a full and fair determination of the issues.

(c) To a permittee from OSM when the permittee demonstrates that OSM issued an order of cessation, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee; or

(d) To a permittee from any person where the permittee demonstrates that the person initiated a proceeding under section 525 of the Act or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee.

(e) To OSM where it demonstrates that any person applied for review pursuant to section 525 of the Act or that any party participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the Government.

§ 4.1295 Awards.

An award under these sections may include—

(a) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under the Act; and

(b) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award in OHA.

§ 4.1296 Appeals.

Any person aggrieved by a decision concerning the award of costs and expenses in an administrative proceeding under this Act may appeal such award to the Board under procedures set forth in § 4.1271 et seq., unless the Board has made the initial decision concerning such an award.

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federal register

THURSDAY, AUGUST 3, 1978
PART VII



SECURITIES AND EXCHANGE COMMISSION

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UNIFORM AND INTEGRATED REPORTING REQUIREMENTS

Disclosure Forms and Regulations

[8010-01]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5949, 34-15006, 35-20643; IC-10342]

UNIFORM AND INTEGRATED REPORTING REQUIREMENTS: DIRECTORS AND EXECUTIVE OFFICERS MANAGEMENT REMUNERATION, LEGAL PROCEEDINGS, PRINCIPAL SECURITY HOLDERS AND SECURITY HOLDINGS OF MANAGEMENT

Amendments to Disclosure Forms and Regulations

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending to certain disclosure forms and regulations to standardize and improve its disclosure requirements relating to directors and executive officers, management remuneration, legal proceedings, and principal security holders and security holdings of management. The amendments incorporate into regulation S-K four new items: Item 3, "Directors and Executive Officers"; item 4, "Management Remuneration and Transactions" (with respect to which new amendments have been proposed today in Securities Act Release No. 33-5950); item 5, "Legal Proceedings"; and item 6, "Principal Security Holders and Security Holdings of Management." Forms S-1, S-11, 10, 10-k and 10-Q and schedule 14A have been amended to require that the disclosure of these categories of information be prepared in accordance with these items of regulation S-K to the extent provided in the forms or schedule. The amendments include a reduction from 10 years to 5 of the description of material events in the background of officers and directors currently required by these forms. A requirement for disclosure of certain additional information relating to litigation involving directors and executive officers also has been adopted.

EFFECTIVE DATE: September 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Steven J. Paggioli, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, 202-376-8090, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTAL INFORMATION: On November 2, 1976, the Commission published for comment proposed amendments to certain disclosure forms promulgated under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a et. seq., as amended by Pub. L. No. 94-29 (June 4, 1975)] and the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a et. seq., as amended by Pub. L. No. 94-29 (June 4, 1975)].[1] The amendments were proposed to achieve increased uniformity and integration of the disclosure requirements relating to management background and legal proceedings in various disclosure forms and to provide more meaningful disclosure regarding the backgrounds of the management of publicly held companies. In addition, the Commission requested comments on the need for and possible format of additional disclosure requirements relating to the background, qualifications, remuneration, and transactions of management.

This release summarizes the amendments proposed in release No. 5758, the comments received on the proposed amendments[2] and the action taken with respect thereto. Attention is directed to the text of the amendments for a more complete understanding of the amendments adopted.

A. Incorporation of Four Items Into Regulation S-K

A number of the amendments proposed in Securities Act Release No. 5758 were intended to make uniform the requirements of disclosure items relating to the same category of information in the various disclosure forms. As proposed, the amendments would require identical disclosure in forms S-1 (17 CFR 239.11), S-11 (17 CFR 239.18), 10 (17 CFR 249.210), 10-K (17 CFR 249.310), 10-Q (17 CFR 249.308a), and schedule 14A (17 CFR 240.14a-101) concerning the background of directors and executive officers. The amendments would also provide conformity and clarification of the legal proceedings items of the various forms.

Most of the commentators who addressed this issue approved of the goal of conforming the disclosure requirements of the various forms, expressing the view that the uniformity would result in savings of time in securing interpretations and gathering facts, and would enable registrants to concentrate on complex disclosure matters, without being distracted by efforts to determine reasons for differently worded disclosure requirements. Two commentators opposed the standardization policy and suggested that uniformity may not be desirable because the various forms have different purposes and reach distinct persons.

The Commission believes that the coordination of the disclosure requirements among forms is desirable. Moreover, the Report of the Advisory Committee on Corporate Disclosure recommended that the Commission take steps to assure that disclosure requirements relating to the same categories of information are uniform among filings.[3] The Commission views the uniformity of requirements under the Securities Act and the Exchange Act as necessary to integrate fully the registration requirements of the Securities Act and the periodic reporting requirements of the Exchange Act. Only when the disclosures made pursuant to both acts are comparable, can filings under one act be freely interchangeable with filings under the other.

Release No. 5758 proposed to begin implementation of this policy through a series of amendments to forms S-1, S-11, 10, 10-K and 10-Q and schedule 14A which were intended to make disclosure items relating to directors and executive officers and legal proceedings more comparable in the various disclosure forms and regulations. Since that release was issued, however, the Commission has adopted regulation S-K.[4] Regulation S-K contains specific disclosure requirements to be used by registrants in the preparation of registration statements, periodic reports and proxy or information statements. The various forms under the acts incorporate the regulation S-K items by reference.

In adopting regulation S-K, the Commission expressed its belief that compliance with the Securities Acts will be facilitated by the development of a uniform disclosure regulation. Further, since regulation S-K is included in the Code of Federal Regulations (CFR), it will be revised when CFR is updated to reflect any amendments adopted during the year and registrants will be able to obtain a current copy of the disclosure provisions more easily. Also, the Commission in Securities Act Release No. 5893 stated its intention to include other items in regulation S-K in connection with future amendments to disclosure provisions. Accordingly, rather than include identical item requirements relating to directors and executive officers and legal proceedings in each separate form (as proposed in release No.

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[1] Securities Act Release No. 5758 (November 2, 1976), (41 FR 49495).

[2] Comments were received from 77 commentators. The comments are available for inspection in file No. S7-658.

[3] See report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission, House Committee on Interstate and Foreign Commerce, Committee Print 95-30, 1977 at 428-32 ["Advisory Committee Report"].

[4] See Securities Act Release No. 5893 (December 23, 1977) 42 FR 65554.

5758), the Commission has determined, in furtherance of its policy of providing more uniformity among disclosure forms, to incorporate these items and two additional items relating to management remuneration and security ownership of certain beneficial owners and management into regulation S-K. No substantive changes have been made to the two additional items not addressed in release No. 5758. The Commission is also incorporating items relating to these categories of information into regulation S-K to facilitate further integration of the securities acts.[5]

These amendments to regulation S-K also require technical amendments to forms S-1, S-11, 10, and 10-K and schedule 14A of regulation 14A to provide that director and executive officer, management remuneration, legal proceeding and security ownership information shall be presented in accordance with the appropriate provisions of the newly adopted items of regulation S-K. Eventually, the Commission intends to include all express substantive disclosure requirements under the securities acts in regulation S-K together with instructions as to which items shall be provided in annual reports, quarterly reports, proxy statements or registration statements covering a particular type of offering.

The amendments to these forms and schedule 14A to reference a single disclosure item in regulation S-K result in minor and insignificant amendments to the disclosure requirements of any particular form, but in no respect is any new information not presently required in any disclosure form added. In some cases the changes simply add clarifying instructions. In others, they codify existing staff interpretations or expand the availability of exceptions. In view of the minor nature of these changes and because these amendments simplify the disclosure process and generally reduce the burden on registrants, the Commission believes that further notice of proposed rulemaking is not required.

The amendments to the disclosure requirements of specific forms which result from the amendments to regulation S-K are discussed below.

A. ITEM 3. DIRECTORS AND EXECUTIVE OFFICERS

1. *Disclosure regarding nominees for election as directors.*—Item 3 of regulation S-K requires disclosure of certain background information about persons nominated to serve on the board of directors of the registrant. This requirement is not presently specified in forms S-1, S-11, 10, or 10-K, but the information would be required pursuant to the materiality standards of rule 408 (17 CFR 230.408) under the Securities Act or rule 12b-20 under the Securities Exchange Act (17 CFR 240.12b-20).

2. *Ages of directors.*—Although the appropriate items of forms S-1, S-11, 10 and 10-K require disclosure of the ages of directors and nominees, Item 6 of schedule 14A presently does not. Item 3 of regulation S-K will require this information and thus be incorporated by reference as part of the requirements of item 6 of schedule 14A.

3. *Certain background information regarding executive officers.*—Currently item 11 of form 10-K prescribes the disclosure requirements concerning executive officers of the registrant, and item 15 prescribes the disclosure concerning directors of the registrant. Item 15 is in part II of form 10-K. Part II may be omitted from a filing on that form if a definitive proxy statement or a definitive information statement which involved the election of directors is filed within 120 days after the close of the fiscal year, because the information required by part II is substantially the same as that required by schedule 14A. The item relating to executive officers is included in part I because, generally speaking, disclosure relating to executive officers who are not directors or nominees for election as directors is not required by schedule 14A.

Since information on both directors and executive officers is to be prepared in accordance with item 3 of regulation S-K and item 15 in part II of form 10-K will be amended to reference this item, a clarifying instruction has been added. Information on executive officers called for by item 3 will not be required in proxy or information statements prepared pursuant to schedule 14A if such information is furnished in a separate item, captioned Executive Officers of the Registrant, and included in part I of form 10-K.

B. MANAGEMENT REMUNERATION AND TRANSACTIONS

Currently forms S-1, S-11, 10 and 10-K have separate items relating to "Remuneration of Directors and Officers," "Options to Purchase Securities," and "Interest of Management and Others in Certain Transactions." Item 4 of regulation S-K combines all of these categories of disclosure under a single caption, "Management Remnuneration and Transactions," which tracks the current format of item 7 of schedule 14A under the Commission's Proxy Rules. By separate release issued today (Securities Act Release No. 33-5950), the Commission is proposing substantive amendments to the disclosure requirements of new item 4. The adoption of item 4 is intended to standardize in one item existing disclosure requirements regarding management remuneration and transactions. Any further changes in these disclosure requirements may thus be effected through the amendment of one uniform item.

(a) *Raising dollar threshold for disclosure of certain types of remuneration and transactions.*—Item 4 of regulation S-K establishes $40,000 as the uniform threshold or floor for disclosure of salaries of individual directors and the three highest paid officers of the registrant. This has the effect of raising the threshold in form S-11 which is currently $30,000, but corresponds with existing requirements in the other forms and schedule 14A. Similarly the thresholds for disclosure of certain transactions with management and certain outstanding options and options activity is standardized in regulation S-K at $40,000 rather than the current $30,000 threshold in forms S-1 and S-11.

4. *Options*—(a) *Options granted or exercised during the previous fiscal year.*—Forms S-1, S-11, and 10 currently require information only with respect to options outstanding immediately prior to the filing of the registration statement. They also require a description of the plan pursuant to which the options were granted. Item 4 of regulation S-K requires disclosure of options granted or exercised during the previous fiscal year (if the total market value of the securities called for by the options granted or exercised exceeds $40,000) but deletes the existing requirement to disclose the provisions of the plan.

(b) *Options relating to more than one class of securities.*—Instruction 4 to paragraph (d) of regulation S-K, item 4 requires options information to be given separately for each class of securities. There is no comparable instruction in forms S-1 or S-11 under the Securities Act or form 10 under the Securities Exchange Act and schedule 14A. However, it is an existing instruction to form 10-K. The instruction was proposed as amendment to schedule 14A in release No. 5758 and the commentators generally did not oppose it.

[5] Item 6 of regulation S-K, relating to security ownership, also reflects the commission's new beneficial ownership rules which were adopted in Securities Act Release No. 5925 (April 21, 1978) effective May 30, 1978, 43 FR 18484. In this regard, an instruction has been added to this item to clarify that disclosure of the type of beneficial ownership (i.e., sole or shared voting or investment power) set forth under rule 13d-3 under the Exchange Act (17 CFR 240.13d-3) is required. Also, in Securities Exchange Act Release No. 14970, 43 FR 31945, July 18, 1978, the Commission proposed several substantive amendments to old schedule 14A items 3 and 6. If adopted, these amendments will be made to the corresponding items of and instructions to regulation S-K.

5. *Indebtedness to the registrant.*—The information required by paragraph (e) of item 4 of regulation S-K relating to directors, nominees and officers' indebtedness to the registrant is not presently required in the text of form S-1 or S-11. It is an existing requirement of form 10, form 10-K and schedule 14A. Further, it is required in schedule IV to the financial statements prescribed by rule 12-05 of regulation S-X (17 CFR 210.12-05).

6. *Certain transactions in which management has an interest.*—Although both forms S-1 and S-11 require disclosure of transactions of the registrant in which management has an interest, the instructions in regulation S-K track the instructions in forms 10, 10-K and schedule 14A which are more precise than those in forms S-1 and S-11. In addition, form S-11 currently requires some management transactions information to be reported for a 5-year period. Instruction 6 to item 4(f) of regulation S-K reduces the period covered to 3 years, in conformity with forms S-1 and 10.

7. *Transactions with pension funds.*—Paragraph (g) of regulation S-K item 4 requires disclosure of material transactions of the registrant's pension, retirement, savings, or similar plans in which management has an interest. This information is not presently required by forms S-1 or S-11 but is required by forms 10 and 10-K and schedule 14A.

B. Disposition of the Amendments Proposed in Release No. 5758

In addition to amendments to disclosure requirements resulting from incorporation of disclosure requirements into regulation S-K, summarized above, the Commission has adopted certain of the amendments proposed in release No. 5758. These amendments relate to disclosure about directors and executive officers, and legal proceedings. For the reasons expressed above, these amendments are incorported into regulation S-K. These amendments and the disposition of other proposals in release No. 5758 which are not adopted at this time are discussed below.

1. Information concerning directors and candidates for the board

Information concerning directors and nominees.—In Securities Act Release No. 5758 (November 2, 1976) the Commission published for comment proposed amendments to forms S-1, S-11, 10 and 10-K and schedule 14A designed to provide investors with more comprehensive information about the qualifications and affiliations of directors who serve on the boards of public companies. The proposals would have required disclosure of all other directorships held by each director (or, in the case of proxy statements, each nominee and each director whose term of office would continue after the annual meeting of shareholders), on the board of any other company with a class of securities registered pursuant to section 12 of the Securities Exchange Act, subject to the requirements of section 15(d) of that Act, or registered as an investment company under the Investment Company Act of 1940 [15 U.S.C. 80a et seq.]. Disclosure of all committee memberships held by each director on the registrants board of directors also would have been required.[6]

A majority of commentators who responded to the Commission's request for comments in Securities Act Release No. 5758 criticized the proposal to require disclosure of all directorships on public companies held by a registrant's directors. It was suggested that the proposal would require disclosure of a substantial volume of information irrelevant to an assessment of an individual director's qualifications to manage the affairs of a particular registrant. Furthermore, several persons criticizing the proposal noted that directorships are not comparable since the amount of time devoted or expertise necessary to function effectively as a director can vary greatly from company to company. It was also suggested that such disclosure might result in undue emphasis being placed on directors' "connections" which could result in the selection of board nominees on the basis of other prestigious directorships held, and the adoption of such a requirement might discourage some persons from accepting directorships on the boards of public companies.

In Securities Exchange Act Release No. 13482 (April 28, 1977), 42 FR 23901 (May 11, 1977) the Commission announced its intention to conduct a broad reexamination of its rules relating to shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally. The release solicited written comments on a number of questions, including whether additional disclosure relevant to an assessment of the quality and integrity of management should be included in corporate proxy statements. Subsequently, the Commission published a second release[7] announcing the schedule for public hearings and setting forth a restatement of the issues to be considered based on the public comments which had been received. In this release, the Commission requested comments and testimony concerning the extent to which disclosure of certain other board memberships and outside activities of nominees would reflect potential conflicts of interest or give any indication of the tie available for services to the issuer.

In responding to this question a number of commentators opined that unless a person occupies an inordinate number of other directorships and similar positions, disclosure of such outside activities would not give any meaningful indication of the time that person would have available to devote to the affairs of the issuer. Several commentators, however, expressed the view that disclosure of other board memberships, would be indicative of potential conflicts of interest. In addition, some commentators suggested that identification in the proxy statement of other corporations on which nominees serve as directors would, to some extent, help shareholders assess their qualifications to serve the issuer.

The Commission has concluded that information relating to other directorships held is useful to investors and shareholders in assessing the qualifications, business experience, and potential conflicts of interest of persons who serve on the boards of public companies. For this reason the Commission has determined to adopt the amendments requiring disclosure of all other directorships in the form proposed in Securities Act Release No. 5758 (November 2, 1976). This disclosure requirment has been incorporated in item 3 of regulation S-K.

a. Events material to the integrity and background of management—(1) *Summary of proposals.*—In release No. 5758 the Commission made several proposals to amend the existing requirements for disclosure about the background of officers and directors material to an evaluation of management. It proposed substantive amendments to provide additional information about litigation in which officers and directors had been involved. It proposed to limit the period of time covered by these disclosure requirements to the 5 years prior to filing, rather than the existing 10-year requirement. Finally, it proposed to require this information in proxy state-

[6] The subject of disclosure of committee assignments was explored in depth as part of the Commission's reexamination of rules relating to shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally. See, Securities Exchange Act Release Nos. 13482 and 13901 (April 28 and August 29, 1977). As a result of that proceeding, the Commission published for comment a proposed amendment to schedule 14A to require disclosure of information relating to the existence, composition, frequency of meetings of issuers' audit nominating and compensation committees. See, Securities Exchange Act Release No. 14790 (July 18, 1978) 43 FR 31945. That proposal supersedes the proposal relating to committee memberships described herein.

[7] Securities Exchange Act Release No. 13901 (Aug. 29, 1977), 42 FR 44860 (Sept. 7, 1977).

ments, and registration statements on form S-11, in addition to forms S-1, 10, and 10-K.

The substantive proposals would require information about injunctions prohibiting directors and officers from engaging in any type of business including: (i) Injunctions prohibiting specified persons from engaging in any type of business practice; (ii) injunctions prohibiting specified persons from future violations of Federal or State securities laws; and (iii) civil actions in which specified persons were found to have violated any Federal or State securities laws. The Commission also proposed amendments to require disclosure of not only any court order, judgment, or decree enjoining such persons from acting in certain capacities (e.g., as an investment advisor, or as an underwriter) but also to require disclosure of any such order, judgment, or decree restricting such activities.

(2) *Nature of comments.*—The commentators generally approved the reduction of the 10-year period for which reporting of events in management background is required, although they suggested that the amendments make clear when the 5-year period would begin to run.

The proposals to expand the categories of background events, however, were generally criticized by the commentators. The criticisms were couched largely in general terms which questioned the materiality or usefulness of the information to investors particularly in view of the possibility that the disclosure could be quite lengthy. A number of commentators questioned the fairness of the proposed disclosures in view of the pej- orative connotations which attach to violations of laws. This was viewed as being particularly unfair in those cases when the individual concerning whom the disclosure is made had no significant responsibility for the event being reported. For example, it was suggested that it was unfair to require disclosure of past association with a firm which has filed a petition under the bankruptcy laws, because an officer or director might have been hired at a late date to try to solve the corporation's problems or may have been affiliated with a profitable division. Commentators suggested revision of the proposals to require disclosure only in those cases in which the specified person was a named party in the action. Several commentators also questioned the fairness to the individuals concerned of existing requirements to disclose pending criminal proceedings. It was suggested that it is unfair to require disclosure of a pending criminal proceeding because that represents a guilty-until-proven-innocent approach on the Commission's part. Several commentators suggested that only criminal proceedings relating to fraud or the conduct of business should be required to be disclosed.

Commentators also criticized the proposed amendments which would require disclosure of consent orders or settlements, arguing that such disclosure might discourage settlement of cases; that it would be unfair for settlement of cases to be subjected to the unforeseen, retroactive collateral consequences of such disclosure; and that it would be unfair to stigmatize an individual where there have been no findings of fact about his conduct.

Several commentators criticized the proposed requirement that registrants describe any orders, judgments, or decrees enjoining an officer or director from "engaging in any type of business practice" because that phrase was undefined and because many injunctions relate to business matters which do not reflect on an individual's integrity.

(3) *Commission action.*—The Commission believes that information reflecting on the integrity of management is material to investment and corporate suffrage decisionmaking. The Commission believes that an evaluation of management is an important part of those decisionmaking processes.[7] Because information reflecting on management ability and integrity is, in part, subjective, it is difficult to articulate a meaningful, well-functioning objective disclosure requirement which will elicit it. The Commission believes that the categories of information about officers' and directors' involvement in litigation proposed in release 5758 are material to investors. They represent factual indicia of past management performance in areas of investor concern. Bankruptcy, injunctions (whether litigated or entered into by consent), and violations of the securities laws reflect on management's competence and integrity. Furthermore, it appears to the Commission that many of the concerns expressed by the commentators may be alleviated by explanation. Registrants are permitted to explain any mitigating circumstances surrounding consent orders, decrees, or reflecting judgments or to explain why inferences should not be drawn from prior affiliations with a business association which has filed under the bankruptcy statute.[8]

For these reasons the Commission has determined to adopt the substance of the proposals to require disclosure of the three additional categories of events. This requirement has been incorporated in item 3 of regulation S-K. Also, the period of time for which events must be reported has been reduced from 10 to 5 years. It should be noted, however, that the 5-year period is a guide to disclosure and that events occurring outside this period may be material and should be disclosed.

Certain revisions have been made to the requirements incorporated in item 3 in response to comments received on the amendments proposed in release No. 5758.

(i) Item 3 makes it clear that disclosure of criminal convictions, criminal proceedings, orders, judgments, etc. is required only where the executive officer, director, or nominee for election as a director is a named party in the legal proceeding.

(ii) Item 3 specifically provides that the 5-year period begins to run on the date when the final order, judgment, or decree was entered, and with respect to bankruptcy petitions, the date of filing for uncontested petitions or the date upon which approval of a contested petition became final, or the date on which any rights or appeal from preliminary orders, judgments, or decrees have lapsed.

(iii) An instruction to item 3 indicates that the registrant is permitted to explain any mitigating circumstances surrounding consent orders, decrees, judgments, or petitions filed under the bankruptcy act.

b. *Disclosure about significant persons who are not officers or directors.*—The Commission in release No. 5758 proposed an amendment to the instructions to item 16 of form S-1, item 19 of form S-11 and item 6 of form 10 which define "executive officer" to require that the specified identity and background information also be disclosed about persons employed by the registrant who are not executive officers but who make or are expected to make significant contributions to the business of the registrant. The requirement for disclosure of this information would have been accomplished by deletion of an existing exception in form S-1 for reporting companies and section 12(g)(2)(G) insurance companies.

This proposal was criticized because it would have eliminated the exemp-

[7] See *SEC* v. *Jos. Schlitz Brewing Co.* [ED Wis, No. 77-C-497 June 7, 1978], CCH Fed. Sec. L. Reg. ¶96,464 [current binder]; Advisory Committee Report at 269-304, where it is reported that 54 percent of the respondents in its survey of individual investors identify information reflecting on the quality of management as extremely useful. Thirty-three percent indicated that such information was relatively inaccessible. The Advisory Committee reports that financial analysts also identify the information as important to their evaluation of the company as an investment opportunity. See also, Securities and Exchange Commission, "Report on Questionable and Illegal Corporate Payments and Practices," submitted to the Senate Banking, Housing, and Urban Affairs Committee, May 12, 1976, at 19-20, Wheat Report at 93-95.

[8] See Wheat Report at 94.

tion. It was suggested that the disclosure only be limited to the present requirement for newly public companies, since their success is, to a large extent, contingent upon retaining such persons. The Commission believes the comments have merit and the exception for reporting companies and certain insurance companies will be retained in the regulation S-K item.

c. *Definition of family relationship.*—The Commission also proposed to amend Instruction 1 of item 15 of form 10-K to provide that instruction 3 to item 11, "Executive Officers of the Registrant," which defines the term "family relationship" as it relates to relationships between executive officers as "any relationship by blood, marriage or adoption, not more remote than first cousin," also applies to item 15, "Directors of the Registrant." The substance of this proposal is adopted and incorporated into item 3 of regulation S-K.[9]

d. *Management remuneration—new regulation S-K item 4.*[10]—Item 17 of form S-1, item 20 of form S-11, item 7 of form 10, item 16 of form 10-K and item 7 of schedule 14A require disclosure in such forms "as to all direct remuneration paid by the registrant and its subsidiaries during the registrant's last fiscal year" to each director whose aggregate direct remuneration exceeded that amount. The Commission proposed to amend these items to require disclosure of all direct remuneration paid by the registrant and its affiliates. If it had been adopted, this amendment would have resulted in disclosure about remuneration paid not ony by a registrant and/or its subsidiaries, but also its parents, control persons, and other affiliates of the registrants.

Commentators indicated that in their views the proposal was overbroad and confusing because of uncertainty over the definition of affiliate, and that it was unclear what purpose was served by the disclosure. Some commentators suggested that if the purpose of the proposal is to provide comparative remuneration information, or indicate other demands on time, remuneration received from nonaffiliated persons would also be relevant. They also suggested that this kind of information already should be reported under the requirement to disclose the interest of management persons in certain transactions.

The proposal also was criticized as raising problems concerning remuneration paid by affiliates to officers and directors of registrants with foreign affiliates because such information is not presently required to be reported in foreign countries. Others indicated that mutual funds would be required to report remuneration paid by a mutual fund's investment adviser to its directors and officers and that this might be misleading because of the unique relationship between the fund and its adviser.

In view of these comments and because the issue of disclosure of management remuneration is one that is currently under review by the Commission, the Commission has determined not to adopt this amendment.

The Commission also proposed to amend item 7 of schedule 14A to require that if any part of the remuneration paid to officers and directors was paid pursuant to a material bonus or profitsharing plan, the plan and the basis upon which officers and directors participate should be described briefly, and to require information regarding options to be given for each class of securities to which the options relate.

No comments were received on the proposal relating to options and it is adopted and incorporated into regulation S-K item 4 "Management remuneration." There was some criticism of the proposed requirement relating to bonus or profitsharing plans. It was suggested that "brief" descriptions could be subject to allegations of incompleteness and that such disclosures detracted from what shareholders were being asked to vote on. However, the Commission believes that a description of bonus and profitsharing plans is important to a shareholder's understanding of the management compensation package and believes that this requirement is reasonable and that compliance is practicable. Accordingly, it has determined to adopt this proposal and incorporate it in item 4 of regulation S-K.

(4) *Pending legal proceedings—new regulation S-K item 5.*—(a) *Summary of proposals.*—In release No. 5758 the Commission proposed amendments to the items of various forms requiring disclosure of material pending legal proceedings [item 12 of form S-1, item 16 of form S-11; item 10 of form 10, item 5 of form 10-K, item 1(a) of part II of form 10-Q] which would conform the language in all applicable forms but would not impose any new substantive disclosure requirements as indicated above. These proposals have been adopted and incorporated in item 5 of regulation S-K.

(b) *Comments.*—The commentators did raise several issues with respect to the consequences these conforming amendments would have with respect to quarterly reporting on form 10-Q. First, they suggested that to require disclosure of all pending lawsuits each quarter would result in duplicative reporting. A number of commentators also objected to the proposal to require disclosure of proceedings known to be contemplated by government authorities in quarterly reports. The commentators asserted that this proposal would increase costs and risks of error because companies would be required to determine on a more or less continuous basis what the government was contemplating.

(c) *Commission response.*—In response to the first criticism the Commission has added an instruction to item 1(a) of part II of form 10-Q to provide that a pending legal proceeding need only be reported in the 10-Q for the quarter in which it first becomes a reportable event and in subsequent quarters in which there have been material developments. The instruction also provides that subsequent 10-Q filings in the same fiscal year shall contain a reference to previous form 10-Q's in which pending legal proceedings were reported. An existing provision of form 10-Q is retained to elicit disclosure as to material legal proceedings commenced and

[9] Although the substance of this proposal has been adopted in item 3 of regulation S-K, Securities Exchange Act release 14970, July 18, 1978, 43 FR 31945 proposed an amendment to old item 6(a)(6) of schedule 14A which relates in part to the definition of "family relationship" for purposes of the proxy rules. If adopted, this proposal and certain other amendments proposed in that release will be effected in conformity with the regulation S-K format.

[10] Apart from the matters discussed in this release the Commission is proposing substantive revision of these disclosure requirements in the various forms which relate to management remuneration. See Securities Act release No. 5950. If adopted, these substantive amendments will be included in item 4 of regulation S-K. The amendments adopted today are nonsubstantive and are intended to set in place a uniform disclosure item relating to management remuneration in the regulation. The interpretations set forth in Securities Exchange Act release Nos. 5856 (Aug. 18, 1977) 42 FR 43058 and 5904 (Feb. 6, 1978) 43 FR 6060, relating to management perquisites are applicable to item 4 of regulation S-K. Moreover, release 5758 raised a number of other issues related to management background and compensation. The Commission specifically invited comment on the need for and possible content of additional disclosure requirements relating to management compensation plans. Comments were also invited on the need for and possible format of additional disclosures concerning certain transactions involving the issuer and its subsidiaries and as to whether the current exception from disclosure of transactions with management where the interest of specified persons is solely that of a director of another corporation which is a party to the transaction, where the transaction involves services as a bank depositary of funds, transfer agent, registrant, trustee under a trust indenture, or similar services, or where the transaction involves a loan and the issuer for any of its subsidiaries as primarily engaged in the business of lending should be deleted. These matters and the comments received thereon are being considered in the context of the Commission's review of the substantive remuneration disclosure requirements. Accordingly, the proposals are being withdrawn.

terminated during the period covered by the report. This together with a discussion of all pending proceedings in each form 10-K should assure adequate reporting of pending litigation and at the same time minimize any duplicative reporting.

The Commission carefully considered the second criticism and has determined to retain the requirement to disclose any "proceeding known to be contemplated by governmental authorities" and incorporate it into regulation S-K. The Commission believes that the commentators who criticized this language failed to recognize that only "material" proceedings "known" by the registrant to be contemplated need be reported. It appears to the Commission that these qualifications sufficiently assure the reasonableness of the requirement.

(d) *Disposition of Other Legal Proceedings Proposals.*—The Commission also proposed in release No. 5758 to amend item 7 of schedule 14A to add a new item 7(h). That item would require a brief description of any material pending legal proceedings in which any director, officer, or affiliate of the issuer, any nominee for election as director, any person owning more than 10 percent of the issuer's outstanding voting securities, or any associate of such person is a party adverse to the registrant or any of its subsidiaries. The substance of this proposal has been adopted and incorporated into item 5 of regulation S-K, with a revised 5-percent-ownership figure to reflect the current beneficial ownership reporting requirements in the forms.

The Commission invited public comment as to whether it would be appropriate in the public interest or for the protection of investors to provide an exemption from the proposed item 7(h) for disclosure relating to civil actions brought in connection with proxy contests against issuers or nominees for election as directors and, if so, under what conditions. Some commentators who addressed this issue favored an exemption for litigation arising out of proxy contests. Others favored disclosure only of material or nonfrivolous litigation. The Commission has determined not to add an instruction exempting litigation arising out of proxy contests, because it believes the materiality standard sufficiently distinguishes the type of litigation which is required to be disclosed. In addition, in Securities Exchange Act release No. 14970, 43 FR 31945, the Commission proposed an amendment to former item 3(b)(6) of regulation 14A, which calls for a description of election contest settlements.[11] If adopted, this provision will be made applicable to proxy and information statements through appropriate instructions in regulation S-K and possibly incorporated into the regulation so as to require this information in all documents that reference the regulation.

[11] Securities Exchange Act release No. 14970, 43 FR 31945, July 18, 1978.

D. Certain Findings

As required by section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the amendments adopted herein would have on competition and has concluded that they impose no significant burden on competition. In any event, the Commission has determined that any possible burden will be outweighed by, and is necessary and appropriate to achieve, the benefits of these amendments to investors and registrants.

E. Effective Date

These amendments are effective for documents filed with the Commission after September 30, 1978.

F. Amendments (Regulations S-K)

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934

1. § 229.20 is amended by adding four additional items as set forth below:

§ 229.20 Information required in document.

* * * * *

§ 229.20.3 Item 3. Directors and executive officers.

(a) *Identification of directors.* List the names and ages of all directors of the registrant, and all persons nominated or chosen to become directors; indicate all positions and offices with the registrant held by each such person; state his term of office as director and any period(s) during which he has served as such; briefly describe any arrangement or understanding between him and any other person or persons (naming such person(s)) pursuant to which he was or is to be selected as a director or nominee.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. No nominee or person chosen to become a director who has not consented to act as such should be named in response to this item. In this regard, with respect to proxy statements, see Rule 14a-4(d).

3. If the information called for by item 3(a) is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

4. With regard to proxy statements in connection with action to be taken concerning the election of directors, if fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that the proxies cannot be voted for a greater number of persons than the number of nominees named.

5. With regard to proxy statements in connection with action to be taken concerning the election of directors, if the solicitation is made by persons other than management, information should be given as to nominees of the persons making the solicitation. In all other instances, information should be given as to directors and persons nominated for election or chosen by management to become directors.

(b) *Identification of executive officers.* List the names and ages of all executive officers of the registrant and all persons chosen to become executive officers; indicate all positions and offices with the registrant held by each such person; state his term of office as officer and the period during which he has served as such and briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as an officer.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. No person chosen to become an executive officer who has not consented to act as such should be named in response to this item.

3. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration, or finance) and any other person who performs similar policy making functions for the registrant.

4. The information regarding executive officers called for by item 3 need not be furnished in proxy or information statements prepared in accordance with schedule 14A by those registrants relying on general instruction H of form 10-K, provided that such information is furnished in a separate item captioned Executive officers of the registrant, and included in part I of the registrant's annual report on form 10-K.

(c) *Identification of certain significant employees.* Where the registrant employs persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make significant contributions to the business of the registrant, such persons should be identified and their background disclosed to the same extent as in the case of executive officers. Such disclosure need not be made if the registrant was subject to section 13(a) or 15(d) of the Exchange Act, or was exempt from section 13(a) by section 12(g)(2)(G) of that Act, immediately prior to the filing of the registration statement, report, or statement to which this paragraph is applicable.

(d) *Family relationships.* State the nature of any family relationship between any director, executive officer, or person nominated or chosen by the registrant to become a director or executive officer.

Instruction. The term "family relationship" means any relationship by blood, marriage, or adoption, not more remote than first cousin.

(e) *Business experience.* (1) Given a brief account of the business experience during the past five years of each director, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c), including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. When an executive officer or person named in response to paragraph (c) has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(2) *Directorships.* Indicate any other directorships held by each director or person nominated or chosen to become a director in any company with a class of securities registered pursuant to section 12 of the Exchange Act or subject to the requirements of section 15(d) of that Act or any company registered as an investment company under the Investment Company Act of 1940, naming such company.

(f) *Involvement in certain legal proceedings.* Describe any of the following events which occurred during the past five years and which are material to an evaluation of the ability or integrity of any director, person nominated to become a director or executive officer of the registrant:

(1) A petition under the Bankruptcy Act or any State insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was a general partner at or within 2 years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violatons and other minor offenses);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction permanently or temporarily enjoining him from, or otherwise limiting the following activities:

(i) Acting as an investment adviser, underwriter, broker, or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association, or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(ii) Engaging in any type of business practice; or

(iii) Engaging in any activity in connection with the purchase or sale of any security or in connection with any violation of Federal or State securities laws.

(4) Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or State authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in paragraph (f)(3), of this section or to be associated with persons engaged in any such activity.

(5) Such person was found by a court of competent jurisdiction in a civil action or by the Commission to have violated any Federal or State securities law, and the judgment in such civil action or finding by the Commission has not been subsequently reversed, suspended, or vacated.

Instructions. 1. For purposes of computing the 5-year period referred to in this paragraph, the date of a reportable event shall be deemed the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees have lapsed. With respect to bankruptcy petitions, the computation date shall be the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

2. If any event specified in this subparagraph (f) has occurred and information in regard thereto is omitted on the ground that it is not material, the registrant may furnish to the Commission, at time of filing (or at the time preliminary materials are filed pursuant to rules 14a-6 or 14c-5 under the Securities Exchange Act of 1934), as supplemental information and not as part of the registration statement, report, or proxy or information statement materials to which the omission relates, a description of the event and a statement of the reasons for the omission of information in regard thereto.

3. The registrant is permitted to explain any mitigating circumstances associated with events reported pursuant to this paragraph.

4. If the information called for by item 3(f) is being presented in a proxy or information statement, no information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

§ 229.20.4 Item 4. Management remuneration and transactions.

(a) *Direct Remuneration.* Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by the registrant and its subsidiaries during the registrant's last fiscal year to the following persons for services in all capacities:

(1) Each director of the registrant whose aggregate direct remuneration exceeded $40,000 and each of the three highest paid officers of the registrant whose aggregate direct remuneration exceeded that amount, naming each such director and officer.

(2) All directors and officers of the registrant as a group, stating the number of persons in the group without naming them.

(A)	(B)	(C)
Name of individual or number of persons in group (specify that the named persons are included in the group)	Capacities in which remuneration was received	Aggregate direct remuneration

Instructions. 1. Paragraph (a)(1) of this item does not apply to any person who was not named as a director or officer of the registrant in answer to item 7 of form 10 in the first registration statement filed on that form for the registration of a class of securities pursuant to section 12 of the act, provided (i) such person has not been a director or officer of the registrant since the filing of such statement, and (ii) the same information is not otherwise required to be disclosed in material filed with the Commission.

2. Except as provided in instruction 1, this item applies to any person who was a director or officer of the registrant at any time during the period specified. However, information need not be given for any portion of the period during which such person was not a director or officer of the registrant.

3. The information is to be given on an accrual basis if practicable. The tables required by this paragraph (a) and paragraph

(b) of this section may be combined if the registrant so desires.

4. Do not include remuneration paid to a partnership to which any director or officer was a partner, but see paragraph (f) of this section.

5. If any part of the remuneration shown in response to this item was paid pursuant to a material bonus or profit-sharing plan, briefly describe the plan and the basis upon which directors or officers participate therein. See Instruction 1 to paragraph (b) for the meaning of the term "plan."

6. If the registrant has not completed a full fiscal year since its organization or if it acquired or is about to acquire the majority of its assets from a predecessor within the current fiscal year, the information shall be given for the current fiscal year, estimating future payments, if necessary. To the extent that such remuneration is to be computed upon the basis of a percentage of profits, it will suffice to state such percentage without estimating the amount of such profits to be paid.

(b) *Annuity, pension, or retirement benefits.* Furnish the following information in substantially the tabular form indicated as to all annuity, pension or retirement benefits proposed to be paid to the following persons in the event of retirement at normal retirement date pursuant to any existing plan provided or contributed to by the registrant or any of its subsidiaries:

(1) Each director or officer named in answer to paragraph (a)(1), naming each such person.

(2) All directors and officers of the registrant who are eligible for such benefits, as a group, stating the number of persons in the group without naming them.

(A)	(B)	(C)
Name of individual or number of persons in group	Amount set aside or accrued during registrant's last fiscal year	Estimated annual benefits upon retirement

Instructions. 1. The term "plan" in this paragraph and in paragraph (c) includes all plans, contracts, authorizations or arrangements, whether or not set forth in any formal document.

2. Column (B) need not be answered with respect to payments computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specified age or after a specified number of years of service. In such case, columns (A) and (C) need not be answered with respect to directors and officers as a group.

3. The information called for by column (C) may be given in the form of a table showing the annual benefits payable upon retirement to persons in specified salary classifications.

4. In the case of any plan (other than those specified in instruction 2) where the amount set aside each year depends upon the amount of earnings of the registrant or its subsidiaries for such year or a prior year, or where it is otherwise impracticable to state the estimated benefits upon retirement, there shall be set forth, in lieu of the information called for by column (C), the aggregate amount set aside or accrued to date, unless it is impracticable to do so, in which case there shall be stated the method of computing such benefits.

(c) *Future remuneration.* Describe briefly all remuneration payments (other than payments reported under par. (a) or (b) of this item) proposed to be made in the future, directly or indirectly, by the registrant or any of its subsidiaries pursuant to any existing plan or arrangement to (1) each director or officer named in answer to paragraph (a)(1), naming each such person, and (2) all directors and officers of the registrant as a group, without naming them.

Instruction. Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or similar group payments or benefits. If it is impracticable to state the amount of remuneration payments proposed to be made, the aggregate amount set aside or accrued to date in respect of such payments shall be stated, together with an explanation of the basis for future payments.

(d) *Options, warrants, or rights.* Furnish the following information as to all options to purchase any securities from the registrant or any of its subsidiaries which were granted to or exercised by the following persons since the beginning of the registrant's last fiscal year, and as to all options held by such persons as of the latest practicable date: (i) each director or officer named in answer to paragraph (a)(1), naming each such person; and (ii) all directors and officers of the registrant as a group, without naming them;

(1) As to options granted during the period specified, state (i) the title and aggregate amount of securities called for; (ii) the average option price per share; and (iii) if the option price was less than 100 percent of the market value of the security on the date of grant, such fact and the market price on such date shall be disclosed.

(2) As to options exercised during the period specified, state (i) the title and aggregate amount of securities purchased; (ii) the aggregate purchase price; and (iii) the aggregate market value of the securities purchased on the date of purchase.

(3) As to all unexercised options held as of the latest practicable date (state date), regardless of when such options were granted, state (i) the title and aggregate amount of securities called for, and (ii) the average option price per share.

Instructions. 1. The term "options" as used in this paragraph (d) includes all options, warrants, or rights, other than those issued to security holders as such on a pro rata basis. Where the average option price per share is called for, the weighted average price per share shall be given.

2. The extension, regranting, or material amendment of options shall be deemed the granting of options within the meaning of this paragraph.

3. (i) Where the total market value on the granting dates of the securities called for by all options granted during the period specified does not exceed $10,000 for any officer or director named in answer to paragraph (a)(1), or $40,000 for all officers and directors as a group, this item need not be answered with respect to options granted to such person or group.

(ii) Where the total market value on the dates of purchases of all securities purchased through the exercise of options during the period specified does not exceed $10,000 for any such period or $40,000 for such group, this item need not be answered with respect to options exercised by such person or group.

(iii) Where the total market value as of the latest practicable date of the securities called for by all options held at such time does not exceed $10,000 for any such person or $40,000 for such group, this item need not be answered with respect to options held as of the specified date by such person or group.

4. If the options relate to more than one class of securities the information shall be given separately for each such class.

5. The information called for by this paragraph may be furnished in the form of the table set forth in appendix A to schedule 14A wherever it is required.

6. If the information called for by item 4(d)(3) is being presented in a registration statement filed pursuant to the Securities Act of 1933, the information required by that subparagraph shall be reported for all options outstanding (regardless of who holds them) as of a period 30 days prior to the date of filing of the registration statement. Instructions 1 through 5 do apply.

(e) *Indebtedness of management.* State as to each of the following persons who was indebted to the registrant or its subsidiaries at any time since the beginning of the last fiscal year of the registrant, (i) the largest aggregate amount of indebtedness outstanding at any time during such period, (ii) the nature of the indebtedness and of the transaction in which it was incurred, (iii) the amount thereof outstanding as of the latest practicable date, and (iv) the rate of interest paid or charged thereon:

(1) Each director or officer of the registrant;

(2) Each nominee for election as a director; and

(3) Each associate of any such director, officer or nominee.

Instructions. 1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. This paragraph does not apply to any person whose aggregate indebtedness did not exceed $10,000 or 1 percent of the registrant's total assets, whichever is less, at any time during the period specified. Exclude in the determination of the amount of indebtedness all amounts due from the particular person for purchases subject to usual trade terms, for ordinary travel and expense advances and for other transactions in the ordinary course of business.

3. Notwithstanding instruction 2, if the registrant or any of its subsidiaries is engaged primarily in the business of making loans and loans to any of the specified persons in excess of $10,000 or 1 percent of its total assets, whichever is less, were outstanding at any time during the period specified, such loans shall be disclosed. However, if the lender is a bank, such disclosure may consist of a statement, if such is the case, that the loans to such persons (i) were made in the ordinary course of business, (ii) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and (iii) did not involve more than normal risk of collectibility or present other unfavorable features.

4. If any indebtedness required to be described arose under section 16(b) of the act and has not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the issuer or its subsidiaries and whether suit will be brought or other steps taken to recover such profit. If in the opinion of counsel a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transaction, including the prices and number of shares involved.

5. If the information called for by item 4(e) is being presented in a registration statement filed pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934, the information called for by that paragraph shall be presented for the last 3 years.

(f) *Transactions with management.* Describe briefly any transaction since the beginning of the registrant's last fiscal year or any presently proposed transactions, to which the registrant or any of its subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the registrant, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the registrant;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the registrant to own of record or beneficially more than 5 percent of any class of the registrant's voting securities; and

(4) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director of officer of any parent or subsidiary of the registrant.

Instructions. 1. No information need be given in response to this item 4(f) as to any remuneration or other transaction reported in response to item 4 (a), (b), (c), (d), or (e), or as to any transaction with respect to which information may be omitted pursuant to instruction 2 to item 4(b), the instruction to item 4(c), instruction 3 to item 4(d) or instruction 2 or 3 to item 4(e). Instruction 2 to item 4(a) applies to this item 4(f).

2. No information need be given in answer to this item 4(f) as to any transaction where:

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

(b) The transaction involves services as a bank depositary of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed $40,000; or

(d) The interest of the specified person arises solely from the ownership of securities of the registrant and the specified person receives no extra or special benefit not shared on a pro rata basis by all holders of securities of the class.

3. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which engages in a transaction with the issuer or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this item 4(f) where:

(a) The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from the direct or indirect ownership by such person and all other persons specified in subparagraphs (1) through (4) above, in the aggregate, of less than a 10-percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he and all other persons specified in (1) through (4) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the registrant or any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

5. In describing any transaction involving the purchase or sale of assets by or to the registrant or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within 2 years prior to the transaction, the cost thereof to the seller. If the information prescribed by this instruction is to be included in a registration statement filed on form S-11, disclose the aggregate depreciation claimed by the seller for Federal income tax purposes, if acquired by the seller within 5 years prior to the transaction. Indicate the principle followed in determining the registrant's purchase or sale price and the name of the person making such determination.

6. If the information called for by item 4(f) is being presented in a registration statement filed pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934, the period for which the information called for shall be reported is the previous 3 years.

7. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transactions shall be indicated.

8. Information shall be furnished in answer to this item with respect to transactions not excluded above which involve remuneration from the registrant or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than 10 percent of any class of equity securities of another corporation furnishing the services to the registrant or its subsidiaries.

9. If the filing to which this item relates is a registration statement under the Securities Act, information should be included as to any material underwriting discounts and commissions upon the sale of securities by the registrant where any of the specified persons was or is to be a principal underwriter or is a controlling person, or member, of a firm which was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the registrant or its subsidiaries.

10. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of a specified person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this item. The materiality of any interest or transaction, is to be determined on the basis

of the significance of the information to investors in light of all of the circumstances of the particular case. The importance of the interest to the person having the interest, the relationship of the parties to the transaction to each other and the amount involved in the transaction are among the factors to be considered in determining the significance of the information to investors.

(g) *Transactions with pension or similar plans.* Describe briefly any transactions since the beginning of the registrant's last fiscal year or any presently proposed transactions, to which any pension, retirement, savings, or similar plan provided by the registrant, or any of its parents or subsidiaries was or is to be a party, in which any of the following persons had or is to have a direct or indirect material interest, naming such person and stating his relationship to the registrant, the nature of his interest in the transaction and, where practicable, the amount of such interest:

(1) Any director or officer of the registrant;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the registrant to own of record or beneficially more than 5 percent of the outstanding voting securities of the registrant;

(4) Any relative or spouse of any of the foregoing persons, or any relative of such spouse, who has the same home as such person or who is a director or officer of any parent or subsidiary of the registrant; or

(5) The registrant or any of its subsidiaries.

Instructions. 1. Instructions 2, 3, 4, and 5 to Item 4(f) shall apply to this Item 4(g).

2. Without limiting the general meaning of the term "transaction" there shall be included in answer to this item any remuneration received or any loans received or outstanding during the period, or proposed to be received.

3. No information need be given in answer to paragraph (g) with respect to:

(a) payments to the plan, or payments to beneficiaries, pursuant to the terms of the plan;

(b) payment of remuneration for services not in excess of 5 percent of the aggregate remuneration received by the specified person during the registrant's last fiscal year from the registrant and its subsidiaries; or

(c) any interest of the registrant or any of its subsidiaries which arises solely from its general interest in the success of the plan.

§ 229.20.5 Item 5. Legal proceedings.

Briefly describe any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the registrant or any of its subsidiaries is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities.

Instructions. 1. If the business ordinarily results in actions for negligence or other claims, no such action or claim need to described unless it departs from the normal kind of such actions.

2. No information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. However, if any proceeding presents in large degree the same issues as other proceedings pending or known to be contemplated, the amount involved in such other proceedings shall be included in computing such percentage.

3. Notwithstanding instructions 1 and 2, any material bankruptcy, receivership, or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described.

4. Any material proceedings to which any director, officer, or affiliate of the registrant, any owner of record or beneficially of more than 5 percent of any class of voting securities of the registrant, or any associate of any such director, officer, or security holder is a party adverse to the registrant or any of its subsidiaries or has a material interest adverse to the registrant or any of its subsidiaries, also shall be described.

5. Notwithstanding the foregoing, administrative or judicial proceedings arising under any Federal, State, or local provisions which have been enacted or adopted regulating the discharge of materials into the environment or otherwise relating to the protection of the environment shall not be deemed "ordinary routine litigation incidental to the business" and shall be described if such proceeding is material to the business or financial condition of the registrant or if it involves primarily a claim for damages and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis. Any such proceedings by governmental authorities shall be deemed material and shall be described whether or not the amount of any claim for damages involved exceeds 10 percent of current assets on a consolidated basis and whether or not such proceedings are considered "ordinary routine litigation incidental to the business"; provided however, that such proceedings which are similar in nature may be grouped and described generically stating: the number of such proceedings in each group; the issues generally involved; and, if such proceedings in the aggregate are material to the business or financial condition of the registrant, the effect of such proceedings on the business or financial condition of the registrant.

§ 220.20.6 Item 6. Security ownership of certain beneficial owners and management.

(a) *Security ownership of certain beneficial owners.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, with respect to any person (including any "group" as that term is used in section 13(d)(3) of the Securities Exchange Act of 1934) who is known to the registrant to be the beneficial owner of more than 5 percent of any class of the registrant's voting securities. Show in column (3) the total number of shares beneficially owned and in column (4) the percent of class so owned. Of the number of shares shown in column (3), indicate by footnote or otherwise, the amount known to be shares with respect to which such listed beneficial owner has the right to acquire beneficial ownership, as specified in rule 13d-3(d)(1) under the Exchange Act.

(1)	(2)	(3)	(4)
Title of class	Name and address of beneficial owner	Amount and nature of beneficial ownership	Percent of class

(b) *Security ownership of management.* Furnish the following information, as of the most recent practicable date, in substantially the tabular form indicated, as to each class of equity securities of the registrant or any of its parents or subsidiaries other than directors qualifying shares, beneficially owned by all directors and nominees, naming them and directors and officers of the registrant as a group, without naming them. Show in column (2) the total number of shares beneficially owned and in column (3) the percent of class so owned. Of the number of shares shown in column (2), indicate, by footnote or otherwise, the amount of shares with respect to which such persons have the right to acquire beneficial ownership as specified in rule 13d-3(d)(1) under the Exchange Act.

(1)	(2)	(3)
Title of class	Amount and nature of beneficial ownership	Percent of class

(c) *Changes in control.* Describe any arrangements, known to the registrant, including any pledge by any person of securities of the registrant or any of its parents, the operation of which may at a subsequent date result in a change in control of the registrant.

Instructions. 1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the registrant or its subsidiaries, plus securities deemed outstanding pursuant to rule 13d-3(d)(1) under the Exchange Act.

2. For the purposes of this item, beneficial ownership shall be determined in accordance with rule 13d-3 [17 CFR 240.13d-3] under the Exchange Act. Include such additional subcolumns or other appropriate explanation of column (3) necessary to reflect amounts as to which the beneficial owner has (1) sole voting power, (2) shared voting power, (3) sole investment power, (4) shared investment power.

3. The registrant shall be deemed to know the contents of any statements filed with the Commission pursuant to section 13(d) of the Exchange Act. When applicable, a registrant may rely upon information set forth in such statements unless the registrant knowns or has reason to believe that such infomation is not complete or accurate or that a statement or amendment should have been filed and was not.

4. For purposes of furnishing information pursuant to paragraph (a), the registrant may indicate the source and date of such information.

5. Where more than one beneficial owner is known to be listed for the same securities, appropriate disclosure should be made to avoid confusion.

6. Paragraph (c) does not require a description of ordinary default provisions contained in the charter, trust indentures or other governing instruments relating to securities of the registrant.

Instructions 7-9 apply if the information called for by this item is being presented in a registration statement filed pursuant to the Securities Act of 1933.

7. If equity securities are being registered in connection with, or pursuant to, a plan of acquisition or reorganization, readjustment or succession, indicate as far as practicable the status to exist upon consummation of the plan on the basis of present holdings and commitments.

8. If any of the securities being registered are to be offered for the account of security holders, name each such security holder and state the amount of securities owned by him, the amount to be offered for his account, and the amount to be owned after the offering.

9. If, to the knowledge of the registrant or any principal underwriter of the securities being registered, more than 5 percent of any class of voting securities of the registrant are held or are to be held subject to any voting trust or similar agreement, state the title of such securities, the amount held or to be held and the duration of the agreement. Give the names and addresses of the voting trustees and outline briefly their voting rights and other powers under the agreement.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

a. Items 12, 16, 17, and 18-29 of Form S-1 are amended to read as follows:

§ 239.11 Form S-1, registration statement under the Securities Act of 1933.

* * * * *

Item 12. Legal Proceedings.
The description of legal proceedings shall include the information required by Item 5 of Regulation S-K, 17 CFR 229.20.

* * * * *

Item 16. Directors and Executive Officers.
The description of directors and executive officers shall include the information required by Item 3 of Regulation S-K, 17 CFR 229.20.

Item 17. Management remuneration and transactions.
The description of remuneration of directors and executive officers shall include the information required by item 4 of regulation S-K, 17 CFR 229.20.

Item 18. Security ownership of certain beneficial holders and management.
The description of security ownership of certain beneficial owners and management shall include the information required by item 6 of regulation S-K, 17 CFR 229.20.

Item 19. Financial statements.
[No change from former item 21 of form S-1.]

PART II. INFORMATION NOT REQUIRED IN PROSPECTUS

Item 20. Marketing arrangements.
[No change from former item 22 of form S-1.]

Item 21. Other expenses of issuance and distribution.
[No change from former item 23 of form S-1.]

Item 22. Relationship with registrant of experts named in registration statement.
[No change from former item 24 of form S-1.]

Item 23. Sales to special parties.
[No change from former item 25 of form S-1.]

Item 24. Recent sales of unregistered securities.
[No change from former item 26 of form S-1.]

Item 25. Subsidiaries of registrant.
[No change from former item 27 of form S-1.]

Item 26. Franchises and concessions.
[No change from former item 28 of form S-1.]

Item 27. Indemnification of directors and officers.
[No change from former item 29 of form S-1.]

Item 28. Treatment of proceeds from stock being registered.
[No change from former item 30 of form S-1.]

Item 29. Financial statements and exhibits.
[No change from former item 31 of form S-1.]

b. Items 16, 18, 19, and 20-32 of form S-11 are amended to read as follows:

§ 239.18 Forms S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

* * * * *

Item 16. Legal proceedings.
The description of legal proceedings shall include the information required by item 5 of regulation S-K, 17 CFR 229.20.

* * * * *

Item 18. Security ownership of certain beneficial owners and management.
The description of principal security holders and security holdings of management shall include the information required by item 6 of regulation S-K, 17 CFR 229.20.

Item 19. Directors and executive officers.
The description of directors and executive officers shall include the information required by item 3 of regulation S-K, 17 CFR 229.20.

Item 20. Management remuneration and transactions.
The description of remuneration of directors and officers shall include the information required by item 4 of regulation S-K, 17 CFR 229.20.

Item 21. Selection, management and custody of registrant's investments.
[No change from former item 22 of form S-11.]

Item 22. Policies with respect to certain transactions.
[No change from former item 23 of form S-11.]

Item 23. Limitations of liability.
[No change from former item 25 of form S-11.]

Item 24. Financial statements.
[No change from former item 26 of form S-11.]

PART II INFORMATION NOT REQUIRED IN PROSPECTUS

Item 25. Other expenses of issuance and distribution.
[No change from former item 27 of form S-11.]

Item 26. Relationship with registrant of experts named in registration statement.
[No change from former item 28 of form S-11.]

Item 27. Sales to special parties.
[No change from former item 29 of form S-11.]

Item 28. Recent sales of unregistered securities.
[No change from former item 30 of form S-11.]

Item 29. Subsidiares of registrant.
[No change from former item 31 of form S-11.]

Item 30. Indemnification of directors and officers.

[No change from former item 32 of form S-11.]

Item 31. Treatment of proceeds from stock being registered.

[No change from former item 33 of form S-11.]

Item 32. Financial statements and exhibits.

[No change from former item 34 of form S-11.]

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

c. Items 5 and 8-16 of Form 10 are amended to read as follows:

§ 249.210 Form 10, General form for registration of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

* * * * *

Item 5. Security ownership of certain beneficial owners and management.

* * * * *

The description of principal security holdings of management shall include the information required by item 6 of regulation S-K, 17 CFR 229.20.

Item 6. Directors and executive officers.

The description of directors and executive officers shall include the information required by item 3 of regulation S-K, 17 CFR 229.20.

Item 7. Management remuneration and transactions.

a. The description of remuneration of directors and officers shall include the information required by item 4 of regulation S-K, 17 CFR 229.20.

b. If the registrant was organized within the past five years, furnish the following information:

(1) State the names of the promoters, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter directly or indirectly from the registrant, and the nature and amount of any assets, services or other considerations therefor received or to be received by the registrant.

(2) As to any assets acquired or to be acquired by registrant from a promoter, state the amount at which acquired or to be acquired and the principle followed or to be followed in determining the amount. Identify the persons making the determination and state their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the registrant, state the cost thereof to the promoter.

Item. 8. Legal proceedings.

The description of legal proceedings shall include the information required by item 5 of regulation S-K, 17 CFR 229.20.

Item. 9. Number of equity security holders.

[No change from former item 11 of form 10.]

Item. 10. Nature of trading market.

[No change from former item 12 of form 10.]

Item. 11. Recent sales of unregistered securities.

[No change from former item 13 of form 10.]

Item. 12. Capital stock to be registered.

[No change from former item 14 of form 10.]

Item. 13. Debt securities to be registered.

[No change from former item 15 of form 10.]

Item. 14. Other securities to be registered.

[No change from former item 16 of form 10.]

Item. 15. Indemnification of directors and officers.

[No change from former item 17 of form 10.]

Item. 16. Financial statements and exhibits.

[No change from former item 18 of form 10.]

d. Items 5 and 11-18 of form 10-K are amended to read as follows:

§ 249.310 Form 10-K, annual report pursuant to section 13 or 15d of the Securities Exchange Act of 1934.

* * * * *

Item. 5. Legal proceedings.

The description of legal proceedings shall include the information required by item 5 of regulation S-K, 17 CFR 229.20.

* * * * *

Item. 11. Indemnification of directors and officers.

[No change from former item 12 of form 10-K.]

Item. 12. Financial statements, exhibits filed, and reports on form 8-K.

[No change from former item 13 of form 10-K.]

PART II. (SEE GENERAL INSTRUCTION H)

Item. 13. Security ownership of certain beneficial owners and management.

The description of principal security holders and security holdings of management shall include the information required by item 6 of regulation S-K, 17 CFR 229.20.

Item. 14. Directors and executive officers of the registrant.

The description of directors and executive officers shall include the information required by item 3 of regulation S-K, 17 CFR 229.20.

Item. 15. Management remuneration and transactions.

The description of renumeration of directors and officers shall include the information required by item 4 of regulation S-K, 17 CFR 229.20.

SIGNATURES

[No change.]

[No change in remainder of Form 10-K.]

e. Item 1 of part II of form 10-Q is amended to read as follows:

§ 249.308a Form 10-Q, for quarterly reports under section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

PART II OTHER INFORMATION

INSTRUCTION

[No change from current Form 10-Q.]

Item 1. Legal proceedings.

The description of legal proceedings shall include the information required by item 5 of regulation S-K, 17 CFR 229.20.5. As to such proceeding which have been terminated during the period covered by the report, provide similar information, including the date of termination and a description of the disposition thereof with respect to the registrant and its subsidiaries.

Instruction. A legal proceeding need only be reported in the 10-Q filed for the quarter in which it first became a reportable event and in subsequent quarters in which there have been material developments. Subsequent form 10-Q filings in the same fiscal year in which a legal proceeding or a material development is reported should reference any previous reports in that year.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

f. Items 5 through 7 of Schedule 14A are amended to read as follows:

§ 240.14a-101. Schedule 14A. Information required in proxy statement.

* * * * *

Item 5. Voting securities and principal holders thereof.

* * * * *

(d) The information required by item 6(a) of regulation S-K, 17 CFR 229.20 shall be reported pursuant to this paragraph (d) to the extent known by the persons on whose behalf the solicitation is made.

(e) The information required by item 6(b) of regulation S-K, 17 CFR 229.20 shall be reported pursuant to this paragraph (e).

* * * * *

(g) The information required by item 6(c) of regulation S-K, 17 CFR 229.20 shall be reported pursuant to this paragraph (g).

Item 6. Directors and executive officers.

If action is to be taken with respect to the election of directors, furnish the information required by item 3 of regulation S-K, 17 CFR 229.20, in tabular form to the extent practicable, with respect to each person nominated for election as a director and each other person whose term of office will continue after the meeting. However, if the solicitation is made on behalf of persons other than the management, the information required need be furnished only as to nominees of the persons making the soliciting.

Item 7. Remuneration of directors and executive officers.

(See Note C at the beginning of schedule 14A.)

Furnish the information called for by item 4 and instruction 4 to item 5 of regulation S-K, 17 CFR 229.20, if action is to be taken with regard to (i) the election of directors, (ii) any bonus, profit sharing or other remuneration plan, contract, or arrangement in which any director, nominee for election as a director, or officer of the issuer will participate, (iii) any pension or retirement plan in which any such person will participate or (iv) the granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders as such, on a pro rata basis. However, if the solicitation is made on behalf of persons other than the management, the information required need be furnished only as to nominees of the persons making the solicitation and associates of such nominees.

AUTHORITY

The amendments are adopted pursuant to authority in section 6, 7, 8, 10, and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, and 77s] of the Securities Act of 1933; sections 12, 13, 14, 15(d), 23(a) [15 U.S.C. 78l, 78m, 78o(d), and 78w] of the Securities Exchange Act of 1934.

The Commission finds that any changes in the amended rules and schedule adopted from those published in Securities Act Release No. 5758 have already been generally subject to comment and are either technical in nature or less burdensome than previous requirements so that further notice and rulemaking procedures pursuant to the Administrative Procedure Act (5 U.S.C. 553) are not necessary.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JULY 28, 1978.

[FR Doc. 78-21549 Filed 8-2-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 229]

[Release Nos. 33-5950, 34-15007, 35-20644, IC-10343; File No. S7-749]

UNIFORM AND INTEGRATED REPORTING REQUIREMENTS: MANAGEMENT REMUNERATION

Proposed Amendments To Disclosure Forms and Regulations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for public comment proposed amendments to certain disclosure forms, rules, and regulations to standardize and improve the Commission's disclosure requirements relating to management remuneration. The proposed amendments would revise the management remuneration disclosure provisions in certain registration statements, periodic reports, and proxy and information statements filed with the Commission under the Securities Act of 1933 and the Securities Exchange Act of 1934 to require disclosure of all remuneration for services during the fiscal year received by certain specified directors or officers or expensed for financial reporting purposes by the registrant or its subsidiaries for the account of such persons.

DATES: Comments should be submitted on or before September 29, 1978.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to file No. S7-749. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

J. Rowland Cook, 202-755-1750, or Steven Paggioli, 202-376-8090, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today proposed for comment amendments to the management remuneration disclosure requirements which, in a separte release issued today, were centralized to become new item 4 of regulation S-K.[1] If adopted, these amendments would substantially revise the existing disclosure requirements for management remuneration.

Background

On July 28, 1978, the Commission adopted amendments to regulation S-K, a regulation which sets forth certain disclosure requirements applicable to documents filed under the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)] and Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)].[2] These amendments to regulation S-K conformed the disclosure requirements of the designated Commission disclosure forms and required more meaningful disclosure to investors regarding the backgrounds of members of management of publicly held companies. These amendments to regulation S-K also included a new item relating to management remuneration, patterned after old item 7 (a), (b), and (c) of sechedule 14A under the Exchange Act.

Basis for the Proposed Amendments

Over the years, the Commission and its staff have observed that as management remuneration packages have become more diverse and complex, the format for remuneration disclosure in Commission filings has changed. As a result, many forms of remuneration are not presently being included in the table specified by item 7(a) of the proxy rules but instead are being disclosed through narrative discussions set forth in footnotes or paragraphs following the table.

Since this textual remuneration disclosure can obscure the total remuneration actually received by management, the amendments proposed herein are intended to require that the table reflect all remuneration which can be quantified and related to the services performed by individual members of management during the fiscal year. The broad approach taken in the proposed amendments is to require three remuneration columns in the table: one reflecting remuneration principally in the form of salaries, commissions and bonuses; one reflecting all other remuneration including that obtained through pension or retirement plans, insurance, perquisites, options, and stock appreciation or similar plans; and one reflecting the sum of the other two.

In situations in which the remuneration is in a form other than cash, the proposed amendments specify a variety of methods for determining the amount to be reflected in the table. For example, as to certain forms of remuneration, such as interests in performance plans or stock appreciation rights, the amount to be disclosed would be geared to the amount expensed by the registrant or its subsidiaries for financial reporting purposes for the year.

The Commission also notes that a recurring observation of persons testifying at the recent hearings on corporate governance was that shareholders should be more fully informed about their company's management, incluidng its remuneration.[3] An assessment of the performance of management necessitates the disclosure of more accurate management remuneration information.

Another basis for the proposed rulemaking stems from disclosure and enforcement issues which have arisen in connection with personal benefits extended to members of management. In Securities Act Release No. 5856 (August 18, 1977) (42 FR 43058), the Commission emphasized its view that the existing disclosure provisions require registrants to include within the aggregate remuneration reported in registration statements, annual reports, and proxy and information statements, all forms of remuneration received by management, including personal benefits sometimes referred to as perquisites. In an effort to resolve a number of interpretative questions presented by that release, the Commission later published a release, in question and answer form, reflecting the views of its Division of Corpo-

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[1] Securities Act Release No. 5949 (July 28, 1978) (See Release No. 5949 in this separate part). Item 4 of regulation S-K is in all material respects identical to what had been item 7 of schedule 14A. Regulation S-K is a disclosure provision which specifies information required to be disclosed in various registration statements, periodic reports and proxy and information statements filed with the Commission under the Securities Act of 1933 and the Securities Exchange Act of 1934. By proposing amendments to item 4 of regulation S-K, the Commission, in effect, is also proposing amendments to forms S-1, and S-11 under the Securities Act, and to forms 10 and 10-K and regulation 14A under the Exchange Act.

[2] Id. The amendments adopted in Release No. 33-5949 were proposed for comment in Securities Act Release No. 5758 (Nov. 2, 1976) (41 FR 49493). Among other things, that release requested comments on the need for and possible format of certain additional disclosure requirements relating to various categories of management remuneration such as perquisites, executive compensation plans, and management transactions with the registrant or its affiliates.

[3] See, Securities Exchange Act Releaae No. 13482 (Apr. 28, 1977) (42 FR 23901) announcing a re-examination of the Commission's rules relating to shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally; in connection with that inquiry, certain proposed amendments to the Commission's disclosure requirements were published for comment in Securities Exchange Act Release No. 14970 (July 18, 1978) (43 FR 3195).

ration Finance with respect to the disclosure of perquisites.[4] During the recent proxy season, it became apparent that certain fundamental issues relating to the disclosure of perquisites could be the subject of a rule. These issues include: (i) the basis for valuing the benefit; (ii) whether separate disclosure of perquisites should be required; and (iii) how to deal with expenses when it is unclear whether they are personal rather than business. The proposed amendments address these issues, and would require additional disclosure if the amount of perquisites exceeds certain levels; the proposals would also permit the exclusion of amounts relating to items not clearly perquisites, in limited circumstances.

The following discussion summarizes the proposed amendments and generally compares them with the present item 7 of the proxy rules.

ITEM 4(a)—REMUNERATION OF MANAGEMENT

Item 4(a) would be amended in a number of respects from the existing remuneration disclosure requirements in item 7(a) of schedule 14A of the proxy rules. One of the more significant amendments is that the information which would be required relates to "all remuneration * * * for services to the registrant * * *" in contrast to the disclosure presently required by item 7(a) which relates only to "direct remuneration paid by the issuer * * *"

This proposed amendment is intended to bring within the scope of the disclosure requirements not only amounts paid by the registrant and its subsidiaries to the specified persons or groups during the fiscal year, but also amounts which have been accrued on behalf of such individuals or groups. The amendment would require disclosure of all remuneration, the consideration for which was services of the specified person to the registrant and its subsidiaries during the past fiscal year, without regard to whether the remuneration was from the registrant or a third party, or was accrued or deferred rather than paid.

ITEM 4(a)(i)

Proposed item 4(a)(i) increases from three to five the minimum number of named persons for whom disclosure of remuneration would be required; deletes the $40,000 standard in item 7(a); and applies the requirement to "executive offices" rather than "officers." The increase to five named persons and the reference to "executive officers" should assure that the proposed requirements will cover persons who, in fact, function as key, policymaking members of management. It appears to the Commission that this proposal is appropriate since a number of companies have a chief executive office consisting of two or more persons and since the diverse and expanded operations of many companies cause the top management function to be distributed among more than three persons. The deletion of the $40,000 floor is proposed on the rationale that even with respect to smaller registrants, the salaries of a broader group of executives should be disclosed.

The Commission recognizes that the proposals concerning item 4(a)(i) would have an impact on virtually all reporting companies, and specifically invites comments as to the appropriateness of the proposed new standards and, in particular, on the desirability of removing the $40,000 floor and thereby requiring information as to at least five officers or directors, regardless of the amount of their remuneration.

ITEM 4(a)(ii)

Item 4(a)(ii) is new. It is intended to reach the five next most highly compensated executive officers or directors of the registrant, or executive officers or directors of wholly owned subsidiaries, other than those individuals named in response to item 4(a)(i). However, an individual would not be required to be named pursuant to this item unless such person's aggregate remuneration for the year exceeded $150,000.

The Commission anticipates that the proposed revision would provide shareholders with meaningful information relating to the remuneration of key management of the registrant. If the next five most highly compensated executive officers or directors serve with a wholly owned subsidiary of the registrant, remuneration information would be required about such persons, on the rationale that such highly paid individuals have close association, involvement and responsibility for major components of the registrant's operations.

Since the provisions of item 4(a)(ii) might require information concerning persons whose remuneration exceeds that of persons named in response to proposed item 4(a)(i), and since its scope is limited to persons serving as executive officers or directors of the registrant and its wholly owned subsidiaries, the Commission believes that the proposed provisions will reach persons appropriately within the scope of the registrant's management. The Commission expressly invites comment on this point, as well as on the issue of whether some other standard—such as executive officers or directors of majority-owned or significant subsidiaries—would be more appropriate.

ITEM 4(a)(iii)

This provision is unchanged from that which appeared in item 7(a) and would elicit information concerning aggregate management remuneration for the year. It should be noted that the provision would require disclosure about remuneration of "officers" of the registrant rather than "executive officers." The term "officers" would include a broader group of management persons than "executive officers."

REMUNERATION TABLE

The number of columns in the table would be increased from three to five, and the two new columns generally would provide a certain breakdown in aggregate remuneration. However, instruction 5 specifically would permit the inclusion of additional columns, if the registrant determined them appropriate.

COLUMNS A AND B AND INSTRUCTION 1

Columns A and B follow the approach in item 7(a) of the proxy rules and would call for the name of the individual or the number of persons in the group, and the capacities in which such persons served during the year.

Instruction 1 would be modified to incorporate the substance of note C of schedule 14A under the Exchange Act, to define the term "executive officer," and to insert references to wholly owned subsidiaries in accordance with the proposed revisions set forth in item 4(a)(ii). The definition of "executive officer" differs slightly from that recently included in regulation S-K in that it includes any vice president "in charge of a principal business unit, division or function (such as sales, administration or finance) * * *."[5] The proposed revision of the term is intended to clarify the category of persons included in the definition.

COLUMN C AND INSTRUCTION 2: REMUNERATION PAID—SALARIES, FEES, COMMISSIONS, BONUSES

Column C and instruction 2 would require disclosure under column C of all remuneration in the form of salaries, fees, directors' fees, commissions, and bonuses. In addition, the column would include the fair market value of any securities or other property distributed as remuneration during the fiscal year if services rendered by the specified person represent the only consideration for such property.

Primary as a transitional device between the existing disclosure pattern

[4] Securities Act Release No. 5904 (Feb. 6, 1978) (43 FR 6060).

[5] Based upon the comments received, the Commission will determine whether further rulemaking action is necessary to apply the revised definition of "executive officer" to other disclosure requirements relating to management.

and that contemplated by the proposed amendments, instruction 2 also would provide that amounts paid during the fiscal year for services rendered in prior periods should be included in column C, unless such amounts previously have been reported in the table. If previously earned amounts are included, a footnote to column C would be required to describe the arrangement pursuant to which such payments were made.

Instruction 2 would also provide that deferred remuneration is to be disclosed in column D. This instruction suggests a general approach and recognizes that column C generally would reflect remuneration paid while column D generally would include deferred forms of remuneration as well as remuneration paid under compensation arrangements specified in the instructions to column D. While the columns are intended to be general guides for the required remuneration disclosure, the Commission recognizes that some forms of remuneration might be reported under either column C or column D. The Commission would not object to reasonable and consistent allocation decisions so long as the aggregate remuneration in column E is accurate.

Column D and Instruction 3: Deferred and Other Remuneration

Proposed column D would call for disclosure of all remuneration of any kind, not otherwise specifically exempted, other than that disclosed pursuant to column C. The subparagraphs under instruction 3 describe the specific treatment to be accorded various forms of remuneration.

Instruction 3(a) Pension or Retirement Plans, Annuities, Employment Contracts and Deferred Compensation Plans

This instruction would require that column D include any contribution, payment or accrual for the account of the specified persons or groups under any pension or retirement plan, annuity, employment contract, deferred compensation plan or similar arrangement. Contributions to tax quaified plans would not be excluded, but a general exclusion is permitted if the amount of the contribution for specific individuals is not or cannot readily be separately or individually calculated by the regular actuaries for the plan. If amounts are excluded from the table pursuant to this provision, a footnote to the table would be required stating this fact and disclosing the percentage which the aggregate contributions to the plan bears to the covered compensation of plan participants; and briefly describing the covered compensation. It is intended that this proposal would result in footnote disclosure which would state, for example, that a given individual named in the table is a participant in a defined benefit plan in which the covered compensation is salaries and bonuses, and to which the registrant, in the prior fiscal year, contributed —— percent of the covered compensation of all plan participants. The Commission anticipates that this disclosure may give a reasonable indication of the approximate amount of remuneration not being reported in the table.

Instruction 3(b): Life Insurance

The amount of remuneration disclosed under column D would be required to include premiums paid by the registrant or its subsidiaries on life insurance policies insuring the specified persons or groups, unless the registrant or its subsidiaries are the sole beneficiaries under the policy.

Instruction 3(c): Health Insurance and Medical Reimbursement Plans

This proposed instruction would require the inclusion in column D of premiums or other costs of the registrant or its subsidiaries associated with health insurance or medical reimbursement plans for the benefit of the specified persons or groups. Nondiscriminatory group plans represent a relatively limited form of remuneration and historically have been excluded from item 7(a) of the proxy rules. Accordingly, an exclusion would be included in the proposals for such arrangements.

Instruction 3(d): Incentive and Compensation Plans and Arrangements

This proposed instruction is the most complicated provision in these proposals, primarily because it reaches a wide range of stock incentive and compensation plans which are themselves complicated. In broad terms, the proposed instruction would require inclusion in column D of any amount expensed by the registrant or its subsidiaries for financial reporting purposes for the year in connection with stock appreciation rights, phantom stock plans and any other incentive or compensation plan or arrangement pursuant to which the measure of benefits is based on objective standards or the value of securites. This proposed instruction would encompass not only those arrangements in which the measure of benefits is based on the market prices of securities, but also those in which benefits result, for example, from the registrant or a defined profit center having met predetermined earnings goals.

With respect to plans of this general type, the proposed instruction would provide that column D shall include either: (1) the amount expensed by the issuer or its subsidiaries for financial reporting purposes for the year; or (2) the amount of any cash received by such persons during the year in excess of the aggregate net amounts reported in the table for a prior year with respect to the plan or arrangement; or (3) the spread between the issue price, if any, and the fair market value of the securities acquired during the year.

Under many arrangements of this general nature, remuneration is expensed over the years the services are rendered. This item therefore would require current disclosure of remuneration earned during the year, despite the fact that actual receipt is deferred until some point in the future. For example, the Commission is aware that generally accepted accounting principles at present require the expensing for financial reporting purposes of the buildup in the value of interests under certain stock incentive plans.[6] If an executive has a stock appreciation right and the stock's price increases sharply during the fiscal year, generally accepted accounting normally requires that at least a part of that increase be expensed in that year. Under proposed instruction 3(d), any such expense would be reported as remuneration under column D. In the subsequent year, however, if the market price of the stock declines (and the stock appreciation right is not paid out), generally accepted accounting principles will dictate reversal of the expense item and a credit to the remuneration account for financial reporting purposes. Because disclosure in the proposed table is generally geared to financial reporting, instruction 3(d) permits a similar credit to be taken against the remuneration disclosed in column D. However, any such later year credit included in the table would be required to relate to an item actually reflected in the table for a prior year and to be specifically disclosed by footnote.

This approach, in what are believed to be rare instances, may result in a negative amount being disclosed in column D. The Commission invites comments on whether, in such instances, the tabular presentation should leave column E blank and thereby not reduce amounts shown in column C by any negative amounts shown in column D.

It is expected that the proposed method of calculating the remuneration derived from or attributed to the myriad of employee benefit plans will make the disclosure requirements more neutral so that companies will not be motivated by disclosure reasons

[6] See, Opinion of the Accounting Principles Board No. 25, "Accounting for Stock Issued to Employees." The Commission recognizes that similar treatment may also be accorded other employee benefit plans or arrangements.

to select one kind of compensation arrangement over another. Therefore, disclosure of management remuneration of different registrants will be more comparable that at present. In addition, this approach to remuneration disclosure would conform the disclosure to a registrant's accounting records and eliminate the anomaly of amounts being expensed as remuneration of an executive for financial reporting purposes but not disclosed as remuneration of that executive, earned in the fiscal year for current services.

INSTRUCTION 3(e): STOCK PURCHASE, PROFIT SHARING AND THRIFT PLANS

This proposed instruction would require disclosure of any contribution made under any stock purchase, profit sharing, thrift or similar plan whether or not the plan is qualified under the Internal Revenue Code. Some registrants follow the practice of disclosing such amounts apart from the table. The proposed instruction is intended to assure that contributions under such arrangements, whether or not tax qualified, are treated as remuneration.

INSTRUCTION 3(f): PERSONAL BENEFITS

The provisions of proposed instruction 3(f) specify that personal benefits which are not directly related to job performance, including those which indirectly benefit a specified person, such as payments by the registrant to friends or relatives of such person, would be included in column D. An exception would be provided for those benefits provided to a broad category of employees on a basis which does not discriminate in favor of officers or directors, or those which fall within a proposed limited exclusion.

The Commission proposes that the personal benefits be valued on the basis of the registrant's and its subsidiaries' actual incremental cost. However, if such incremental costs are significantly less that the amounts the recipient would have had to pay to obtain the benefits, appropriate disclosure would be required in a footnote to the table. This revision is intended to establish an appropriate valuation standard related to what the company is giving its officers and directors, while recognizing that if there is a significant disparity between the cost to the company and the value to the recipient, appropriate disclosure would be required, including disclosure of the value to the recipient.[7]

The instructions also would require that whenever the perquisites included in the table with respect to a named person represent 10 percent of such person's remuneration, or $25,000, whichever is less, information about the personal benefits must be included in a footnote disclosing the amount of such benefits and briefly describing them. The Commission believes such a breakout is appropriate because remuneration in the form of perquisites may involve a greater valuation problem than other forms of compensation. Thus, disclosure that a large portion of an executive's remuneration is in the form of perquisites may permit shareholders to make better judgments about remuneration data.

The Commission is also cognizant of the fact that the identification and valuation of certain personal benefits is, in many cases, very dificult. Therefore the proposed instruction provides that if the issuer cannot, without unreasonable effort or expense, determine the specific amount of personal benefits or the extent to which expenses represent personal benefits rather than business items, the amount of such personal benefits may be omitted provided certain conditions are met. These conditions are that: (1) The registrant has made a reasonable inquiry [8] and concluded that the aggregate amount of personal benefits which cannot be specifically or precisely ascertained does not exceed $10,000 as to each specified person or in the case of the group, $10,000 for each person in the group; and (2) the board of directors or any appropriate committee of the board, after reasonable inquiry, has concluded that the applicable conditions for exclusion are satisfied and that the information set forth in the table is not rendered materially misleading by virtue of the exclusion of such personal benefits. This proposal reflects the Commission's belief that it is not appropriate to insist that companies spend unreasonable sums to identify and quantify obviously minor amounts of personal benefits.

The Commission believes that instruction 3(f) would alleviate certain of the identification and valuation problems attendant to the existing disclosure provisions while providing at the same time that clearly personal benefits, regardless of amount, must be reflected in column D of the table.

INSTRUCTION 3(g): EXCLUSION PROVISION

Instruction 3(g) provides that repeated disclosure of the same amounts of remuneration is not required in the table. Thus, in no event would disclosure be required for an amount which has previously been reflected in the table, provided such amount, subsequent to its disclosure in the table, was not credited and reflected as a reduction of reported remuneration in a subsequent year. Although this provision would apply primarily to those arrangements discussed above in connection with instruction 3(d), the concept may have application to other forms of remuneration. Accordingly, it would apply to all forms of remuneration within the scope of column D.

INSTRUCTION 4: TRANSACTIONS WITH THIRD PARTIES

Proposed instruction 4 reflects the fact that a number of transactions between the issuer or its subsidiaries and third parties may, on the one hand, involve remuneration to management or, on the other, represent the type of transaction presently disclosed pursuant to requirements relating to interests of management and others in certain transactions. The proposed instruction specifies that such third party transactions should be incorporated into the remuneration disclosure if the primary purpose of such transactions is to remunerate the persons specified in item 4(a), but that otherwise the disclosure of such transactions would be governed by the "Certain Transactions" provisions. Moreover, to track existing instruction 3 of item 7(a), under the proxy rules, the proposed instruction also would provide that remuneration paid to a partnership in which any officer or director was a partner would not be required and should not be presented as part of the remuneration disclosure; instead, such transactions should be disclosed under "Certain Transactions."

INSTRUCTION 5: OTHER PERMITTED DISCLOSURE

The Commission recognizes that a number of diverse forms of remuneration would expressly be required to be included in the proposed table, and that the instructions concerning differing forms of remuneration allow

[7] Examples have arisen in which the registrant contends that its actual incremental cost in providing a significant benefit to a member of management is nominal or, in some cases, zero. While the Commission believes that the registrant's cost generally is the appropriate measure for disclosing personal benefits as management remuneration, it nonetheless is concerned that in some situations this approach may result in significant distortions in the disclosure. Commentators are invited to submit suggestions on any alternate requirement which may satisfy appropriate disclosure objectives.

[8] The Foreign Corrupt Practices Act of 1977 (Pub. L. No. 95-213) (Dec. 19, 1977) amended the Exchange Act, among other things, to require reporting companies to make and keep detailed books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the registrant. A registrant's inability to identify large amounts of benefits may raise questions under that act. Also, see Securities Exchange Act Release No. 14478 (Feb. 16, 1978) [43 FR 7752].

dissimilar treatment. Accordingly, proposed instruction 5 provides that the issuer may provide additional disclosure, through a footnote to the table, through additional tabular columns, or otherwise, if greater detail is appropriate. However, the objective sought by the Commission is to centralize remuneration disclosure in the proposed table. Accordingly, proposed instruction 5 should not be construed to allow amounts required to be included in the table to be presented solely in a footnote.

INSTRUCTION 6: DEFINITION OF "PLAN"

This instruction would not be changed from a provision which had appeared in item 7(b) and defines "plan" as including all plans, contracts, authorizations or arrangements whether or not set forth in any formal documents.

ITEM 4(b)

Proposed item 4(b) would require a narrative description of plans under which remuneration is proposed to be paid in the future. This requirement would reach plans for which amounts are included in the table specified by proposed item 4(a), as well as those defined benefit and actuarial plans as to which amounts are not included in the table. With respect to the latter type of plan, proposed item 4(b) also would require the presentation of a separate table showing the estimated annual benefits payable upon retirement to persons in specified remuneration and years of service classifications. A related provision in proposed Instruction 3(a) to item 4(a) would require a footnote to the item 4(a) table stating the percentage which the aggregate contributions to the plan bears to the covered compensation of plan participants. That percentage will indicate, in a general way, the amount of an executive's remuneration excluded from the table pursuant to instruction 3(a).

The disclosure required by propose item 4(b) is somewhat parallel to that which has been required by item 7(b) under the proxy rules. However, the current proposal does not specify the form for any tabular presentation, nor does it require data concerning the "amount set aside or accrued during the issuer's last fiscal year."

ITEM 4(c)

Item 4(c) proposes a new area of disclosure not previously required by the remuneration provisions. This subpart would require disclosure of any standard arrangements, including amounts, by which directors of the issuer are compensated for all services as a director including any additional amounts payable for committee participation or special assignments. Any amounts paid to a director in addition to or in lieu of any standard arrangement, together with identification of such directors, would also be required to be disclosed. Additional disclosure is required as to the aggregate remuneration paid to all directors of the registrant as a group, excluding any officer or director of the registrant or its subsidiaries.

The Commission notes that a number of companies have already disclosed this information on a voluntary basis and believes that this type of disclosure provides shareholders with important information.

ADDITIONAL RECOMMENDATIONS

The Commission has taken a very broad approach in the proposed revision to the remuneration table, including the aggregation of a number of various types of remuneration under just two columns. Several commentators have suggested that a more detailed breakdown of the components of remuneration should be required and that specific amounts should be disclosed for incentive plans, bonus arrangements, retirement plans, perquisites, and similar provisions. The Commission has chosen not to follow this approach, although the instructions to the proposed amendment would permit the inclusion of additional columns to the remuneration table at the option of the issuer.

Other commentators have suggested that the remuneration table also report as remuneration the spread between the fair market value of the issuer's common stock and the exercise price of any presently outstanding unexercised stock options. The Commission invites specific comment as to the appropriateness of requiring such disclosure in the remuneration table and any difficulties which may be encountered in satisfying such a requirement. As proposed, the table would include the spread between the issue price and the fair market price of all securities issued upon the exercise of any options during the year, less any amounts previously reported in the table in prior years.

The Commission has also given careful consideration to two additional proposals which may come within the scope of the management remuneration provisions. Senator John H. Chafee has suggested that the Commission adopt a rule which would require disclosure of the cost to the issuer and its subsidiaries of owning, maintaining and operating any property, facility, service, equipment, or similar item (including but not restricted to aircraft, apartments, lodges, resort facilities, automobiles, yachts, club or recreational memberships, etc.) if the personal use made of any such item during the fiscal year was predominantly by or for the benefit of officers, executive officers or directors of the registrant and its subsidiaries.[9] Disclosure would be required of the cost of a facility, used both for business and personally by executives, regardless of the extent of the personal use.

Several other persons have suggested that a provision be included in the proposed amendments which would require disclosure of the aggregate annual cost to the registrant and its subsidiaries of maintaining the office of the chief executive. The disclosure required by such a proposal would include not only the remuneration received by the chief executive officer but also all members of his staff or support personnel (such as assistants, secretaries, and receptionists) together with the cost of all business and personal items associated with that office, including business expenses, travel, entertainment, and special furnishings and appurtenances.

The Commission believes the proposals reflect very serious concerns on the part of thoughtful observers of the business community about the quality of the stewardship of managers. Although the Commission is not proposing amendments to reflect these suggestions at this time, it specifically invites comment on the appropriateness of adopting these types of disclosure requirements. In addition, the Commission emphasizes its belief that a registrant's compensation or other appropriate committee should have the details of expenses of this general nature so as to be able to evaluate their appropriateness. In some cases, compensation and audit committees may be unaware of the total expenses attributable to the business and personal activities of top management. The Commission urges greater attention by such committees to matters of this sort.

REQUEST FOR COMMENT

All interested persons are invited to submit their views and comments concerning the amendments proposed herein including whether implementation of such amendments would involve additional costs to the issuer and whether the actions would have any impact or burden on competition. All comments should be received no later than September 29, 1978. The Commission will endeavor to review the comments on these proposals and take such actions as may appear necessary to have the amended disclosure requirements adopted in time for compliance by registrants in the 1979 proxy season. Accordingly, the Com-

[9] See, letter dated July 25, 1977 from the Honorable John H. Chafee to Harold M. Williams included in the corporate governance hearing record (file No. S7-693) and available for public inspection at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

misssion would not wish to extend the comment period beyond the date orginally set.

TEXT OF THE PROPOSED AMENDMENTS

17 CFR 229.20 is proposed to be amended by inserting the following in lieu of item 4 (a), (b), and (c):

§ 229.20.4 Item 4. Management remuneration.

(a) Furnish the information required in the table below, in substantially the tabular form specified, concerning all remuneration of the following persons and groups for services in all capacities to the registrant and its subsidiaries during the registrant's last fiscal year:

(1) Each of the five most highly compensated executive officers or directors of the registrant, naming each such person;

(2) Each of the five most highly compensated executive officers or directors of the registrant or its wholly owned subsidiaries (other than those persons included in paragraph (1) above) whose aggregate remuneration, as required to be disclosed pursuant to column (E), exceeds $150,000, naming each such person; and

(3) All officers and directors of the registrant as a group, stating the number of persons in the group without naming them.

REMUNERATION TABLE

(A)	(B)	(C)	(D)	(E)
Name of individual or number of persons in group	Capacities in which persons served	Aggregate of salaries, fees, commissions and bonuses	Aggregate of all other remuneration	Aggregate remuneration (sum of columns (C) and (D))

INSTRUCTIONS

1. *Persons subject to this item.* This item applies to any person who was an executive officer, officer or director of the registrant, or wholly owned subsidiary at any time during the fiscal year. However, information need not be given for any portion of the period during which such person was not an executive officer, officer or director of the registrant, or wholly owned subsidiary, provided a statement to that effect is made. An "executive officer" of a person includes its president, secretary, treasurer, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), and any other person who performs similar policymaking functions.

2. *Remuneration paid—salaries, fees, commissions, bonuses, and property.* Column C should include: (i) all cash remuneration for services rendered during the fiscal year paid or accrued in the form of salaries, fees, director's fees, commissions, and bonuses; and (ii) the fair market value of any securities (or other property) distributed as remuneration during the fiscal year without any consideration other than services rendered (securities issued under the kinds of plans referred to in instruction 3 should be reflected under column D). Amounts paid during the fiscal year for services rendered in prior periods should be included in column C unless such amounts previously have been reported in the table; such amounts included in column C but representing payment for services in a prior year shall be described in a footnote to the table. Deferred remuneration for services performed during the fiscal year whall be disclosed in column D pursuant to instruction 3.

3. *Deferred and other remuneration.* Except as expressly provided in the following instructions, column D should include all other remuneration of any kind, not included in column C, of the specified persons and groups in whole or in part for services rendered during the fiscal year, including but limited to the forms of remuneration specifically described below:

a. *Pension or retirement plans; annuities; employment contracts; deferred compensation plans.* Include in column D as to each of the specified persons and groups the amount expensed for financial reporting purposes by the registrant and its subsidiaries for the year which represents the contribution, payment or accrual for the account of any person or group under any existing pension or retirement plans, annuity contracts, deferred compensation plans, or any other similar arrangements. Such amounts should be reflected in column D as remuneration earned during the fiscal year under all such plans or arrangements, including plans qualified under the Internal Revenue Code, unless, in the case of a defined benefit or actuarial plan, the amount of the contribution, payment or accrual in respect of a specified person is not, and cannot readily be, separately or individually calculated by the regular actuaries for the plan.

If amounts are excluded from the table pursuant to the previous provision, include a footnote to the table stating such fact; disclosing the percentage which the aggregate contributions to the plan bears to the total remuneration of plan participants covered by such plan; and briefly describing the remuneration covered by the plan.

b. *Life insurance.* The cost of premiums paid by the registrant or any of its subsidiaries on life insurance policies insuring any such person and groups shall be included in column D unless the sole beneficiary under the policy is the registrant or its subsidiaries.

c. *Health insurance and medical reimbursement plans.* The cost of any premiums for health insurance and the costs of any medical reimbursement plans (which may be the benefits paid under any such plans) for the benefit of the specified persons and groups shall be allocated to such persons and groups and reflected as remuneration in column D. Information need not be furnished under this item 4(a) as to any costs under group health, hospitalization, or medical reimbursement plans which do not discriminate in favor of officers or directors of the registrant or its subsidiaries and which are available generally to all salaried employees.

d. *Incentive and compensation plans and arrangements.* With respect to stock options, stock appreciation rights plans, phantom stock plans, and any other incentive or compensation plan or arrangement pursuant to which the measure of benefits is based on objective standards or on the value of securities of the registrant or others, granted, awarded, or entered into at any time in connection with services to the registrant or its subsidiaries, column D shall include as remuneration of each of the specified persons and groups the greater of:

(1) The amount expensed by the registrant and its subsidiaries for financial reporting purposes for the fiscal year as remuneration for any such specified person or group attributable to an interest in any such plan or arrangement; or

(2) The amount of any cash paid during the year to any such person and groups under any such plan or arrangement in excess of the aggregate amount previously reported in the table for a prior year with respect thereto; or

(3) The spread between the issue price, if any, and the fair market price for all securities issued under any such plan or arrangement during the year to any of the specified persons and groups including securities issued on exercise of options (less any amount previously reported in the table for a prior year with respect to such securities). The fair market price of any such shares shall be determined as of the date the right to receive the securities accures during the year, unless the securities are purchased for cash in which event the date of purchase shall be the date for such determination. If the registrant has expensed amounts for financial reporting purposes and reported such amounts in column D as remuneration and in a subsequent year, in connection with the same plan or arrangement, credits its remuneration expense for financial reporting purposes, for any proper reason, including a decline in the market price of the securities, such credit may be reflected as a reduction of the remuneration reported in column D. If amounts credited pursuant to this instruction are so reflected in the table, include a footnote stating the amount of such credit and briefly describing such treatment; see instruction 3(g).

The term "options" as used in this item includes all options, warrants, or rights, other than those issued to security holders as such on a pro rata basis.

e. *Stock purchase plans; profit sharing and thrift plans.* Include in column D the amount of any contribution, payment or accrual for the account of each of the specified persons and groups under any stock purchase, profit sharing, thrift, or similar plans which has been expensed during the fiscal year by the registrant and its subsidiaries for financial reporting purposes. Amounts reflecting contributions under plans qualified under the Internal Revenue Code may not be excluded.

f. *Personal benefits.* The value of personal benefits which are not directly related to job performance, other than those provided to broad categories of employees and which do not discriminate in favor of officers or directors, furnished by the registrant or its subsidiaries directly or through third parties to each of the specified persons and groups, or benefits furnished by the registrant or its subsidiaries to other persons which indirectly benefit the specified persons, shall be included in column D. Such benefits shall be valued on the basis of the registrant's and subsidiaries' actual incremental costs; however, if such costs are significantly less than the amounts the recipient would have had to pay to obtain the benefit, appropriate disclosure, including the value to the recipient, should be made in a footnote to the table.

If the registrant cannot determine, without unreasonable effort or expense: (i) The specific amount of certain personal benefits; or (ii) the extent to which benefits are personal rather than business; the amount of such personal benefits may be omitted from the table provided the following conditions are met:

(1) After reasonable inquiry, the registrant has concluded that the aggregate amounts of personal benefits which cannot be specifically or precisely ascertained does not in any event exceed $10,000 as to each such person or, in the case of a group, $10,000 for each person in the group; and

(2) The board of directors or any appropriate committee of the board, after reasonable inquiry, has concluded that the above condition is satisfied and that the information set forth in the table is not rendered materially misleading by virtue of the omission of the value of such personal benefits.

If as to a person named in the table an amount representing personal benefits included in column D exceeds 10 percent of the amount disclosed pursuant to column E or $25,000, whichever is less, include a footnote to the table stating the dollar amount or percentage of column E represented by such personal benefits and briefly describing the kinds of such beneffts.

g. *Exclusion provision.* Notwithstanding the foregoing provisions of this instruction 3, no amount need be reflected in the table if such amount was included in the table for a prior year and has not subsequently been credited and reflected as a reduction of the reported remuneration.

4. *Transactions with third parties.* Item 4(a), among aother things, includes transactions between the registrant and a third party when the primary purpose of the transaction is to furnish remuneration to the persons specified in item 4(a). Other transactions between the registrant and third parties in which persons specified in item 4(a) have an interest, or may realize a benefit, generally are addressed by other disclosure requirements concerning the interest of management and others in certain transactions. Item 4(a) does not require disclosure of remuneration paid to a partnership in which any officer or director was a partner; any such transactions should be disclosed pursuant to such other disclosure requirements, and not as a note to the remuneration table presented pursuant to item 4(a).

5. *Other permitted disclosure.* The registrant may provide additional disclosure through a footnote to the table, through additional columns, or otherwise, describing the components of aggregate remuneration in such greater detail as is appropriate.

6. *Definition of "plan".* The term "plan" as used in this item includes all plans, contracts, authorizations, or arrangements, whether or not set forth in any formal documents.

(b) Briefly describe all remuneration payments proposed to be made in the future, pursuant to any existing plan or arrangement to the persons and groups specified by item 4(a). As to defined benefit or actuarial plans with respect to which amounts are not included in the table pursuant to instruction 3a of item 4(a), include a separate table showing the estimated annual benefits payable upon retirement to persons in specified remuneration and years-of-service classifications.

(c)(1) Describe any standard arrangement, stating amounts, by which directors of the registrant are compensated for all services as a director, including any additional amounts payable for committee participation or special assignments. If a director of the registrant received remuneration for services as a director during the fiscal year in addition to or in lieu of that specified by any standard arrangement, state, the name of such directors and the amount of such remuneration earned by each; if this information is given as to a person named in the table required by item 4(a), a cross-reference may be used.

(2) State the aggregate remuneration for the last fiscal year for all directors of the registrant who are not also officers of the registrant or its subsidiaries, as a group, stating the number of persons in the group without naming them.

* * * * *

These amendments are being proposed pursuant to the authority in sections 6, 7, 8, 19, and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, and 77s] of the Securities Act of 1933; sections 12, 13, 14, 15(d), and 23(a) [15 U.S.C. 78l, 78m, 78o(d), and 78w] of the Securities Exchange Act of 1934.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JULY 28, 1978.

[FR Doc 78-21550 Filed 8-2-78; 8:45 am]

federal register

THURSDAY, AUGUST 3, 1978
PART VIII



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

■

COMMUNITY DEVELOPMENT BLOCK GRANTS (CDBG)

Grant Administration Requirements for Lump Sum Drawdown of CDBG Funds for Property Rehabilitation Financing

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[24 CFR Part 570]

[Docket No. R-78-562]

COMMUNITY DEVELOPMENT BLOCK GRANTS (CDBG)

Grant Administration Requirements for Lump Sum Drawdown of CDBG Funds for Property Rehabilitation Financing

AGENCY: Department of Housing and Urban Development.

ACTION: Proposed rulemaking.

SUMMARY: HUD is soliciting comments on proposed amendments of certain regulations governing the community block grant program. These proposed regulations are designed to incorporate the provisions of the Housing and Community Development Act of 1977. The proposed regulations would permit grant recipients to withdraw funds in a single lump sum to finance the rehabilitation of privately owned properties. Localities would be able to use the loan repayments for additional loans without securing further approval from the Department of Housing and Urban Development.

DATE: Comments must be received on or before September 5, 1978.

ADDRESS: Comments should be addressed to Office of Rules Docket Clerk, Office of the General Counsel, Room 5218, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Mr. Leonard Czarniecki, Relocation and Development Services Division, Department of Housing and Urban Development, Washington, D.C. 20410, 202-755-6300.

SUPPLEMENTARY INFORMATION:

Background

Legislative changes include amendment of the Housing and Community Development Act of 1974 by the addition to section 104 of a new subsection 104(i)(1) which authorizes the Secretary of the Department of Housing and Urban Development to permit CDBG grant recipients to draw in one payment amounts designated in the community development application and approved by the Secretary for the establishment in a private financial institution of a rehabilitation fund.

Localities will now be able to establish a rehabilitation fund with a lump sum drawdown. Localities will be able to use the loan repayments for additional loans without securing further approval from the Department of Housing and Urban Development.

Basic Requirements

Section 570.513 sets forth the requirements under which a recipient may draw funds from the letter of credit in a single lump sum to finance the rehabilitation of privately owned properties.

Section 570.513(a) defines "Rehabilitation Fund" and other key terms used in these regulations.

Section 570.513(b) sets forth the requirment that a written agreement for the deposit of block grant funds to establish a rehabilitation fund shall be executed by the block grant recipient and participating private financial institution(s). The agreement can cover a period up to 2 years and must specifically describe the obligations and responsibilities of the parties and the terms and conditions on which such funds are to be deposited and used consistent with the requirements of this section.

The eligible uses of rehabilitation funds drawn as a lump sum are set forth in § 570.513(c).

Section 570.513(d) requires that where the rehabilitation fund or other block grant assistance is used to subsidize or guarantee the payment of rehabilitation loans made with private funds, or is used to provide a supplemental loan or grant to the borrower of private funds, the rehabilitation loans made with such private funds shall be subject to the same requirements as are applicable to direct loan or grant assistance provided for the rehabilitation of private property under this part.

Section 570.513(e) sets forth the requirement that the use of the funds deposited for the rehabilitation financing activity must start within 45 days of the deposit.

Section 570.513(f) covers the requirements for the return of unused deposits between the applicant and the participating financial institution(s). In addition, this section requires that the block grant recipient shall reserve the right to withdraw from the rehabilitation fund any unobligated amounts required by HUD in the exercise of corrective or remedial actions authorized under § 570.910(b) of the regulations.

Section 570.513(g) requires that interest earned be used for the rehabilitation program.

The requirements for the timing and essential elements of a request for HUD review and approval of a lump sum drawdown are set forth in § 570.513(h).

HUD Area Office Approval

HUD area office review and approval is required prior to drawdown and will normally be carried out as part of the review and approval of the block grant application. Section 570.513(i) sets forth the criteria for HUD area office approval of a lump sum drawdown request. The HUD area office will approve the request for lump sum drawdown if the proposed lump sum drawdown agreement includes, at a minimum, one or more of the commitments set forth in § 570.513(i)(1), meets the benefit tests set forth in § 570.513(i)(2) and complies with the requirements for the basis of the level of drawdown as set forth in § 570.513(i)(3).

Review and Evaluation of Comments on Proposed Rules

With respect to all of the above, interested persons are invited to participate in the making of the final rule by submitting written comments or views on the proposed amendments. Comments should be addressed to the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. All relevant comments received on or before the date specified above will be considered before adoption of the final rule. Copies of comments will be available for examination during business hours at the above address.

Findings of inapplicability with respect to environmental impact have been prepared in accordance with HUD handbook 1390.1. Copies of the statement and findings are available for inspection and copying in the Office of the Rules Docket Clerk at the above address.

Accordingly, it is proposed to amend 24 CFR part 570 as follows:

1. Section 570.503 is revised to read as follows:

§ 570.503 Cash withdrawals.

(a) Except as provided in § 570.513, which covers lump sum drawdowns for financing the rehabilitation of privately owned properties, the timing and amount of cash withdrawals from the U.S. Treasury by the recipient for activities which are free from all conditions specified pursuant to §§ 570.311 or 570.433(b)(2) shall be in accordance with U.S. Department of the Treasury regulations on withdrawal of cash from the Treasury for advances under Federal programs (31 CFR part 205), as incorporated in HUD handbook 1900.23 Rev., Letter of Credit Procedures—Treasury Regional Dispursing Office System.

(b) To the maximum extent practicable, program income shall be disbursed prior to making additional draws from the letter of credit to finance approved community development activities (including local option activities) as follows:

(1) Program income in the form of repayments to a revolving fund, other than a fund to finance the rehabilitation of privately owned properties as provided for in § 570.513, established to carry out an approved activity, shall be substantially disbursed from such fund before additional draws are made from the letter of credit for the same activity.

(2) All other program income shall be substantially disbursed for any approved activity before additional draws are made from the letter of credit.

2. § 570.513 is added to read as follows:

§ 570.513 Lump sum drawdown for property rehabilitation financing.

Subject to the conditions prescribed in this section recipients of grants under this Part may draw funds from the letter of credit in a single lump sum to establish a rehabilitation fund in a private financial institution for the purpose of financing the rehabilitation of privately owned properties as a part of the recipient's community development program.

(a) *Definitions.* (1) "Rehabilitation fund" means a fund established with block grants drawn down in a lump sum from the recipient's letter of credit for use in a rehabilitation financing program under the terms of an agreement between the block grant recipient and the depository private financial institution pursuant to the requirements of this section. (2) "Private financial institution" means a depository which is a party to such an agreement. (3) "Private funds" means the funds of the private financial institution.

(b) *Requirement for agreement.* A written agreement for the deposit of block grant funds to establish a rehabilitation funds shall be executed by the block grant recipient and participating private financial institution(s). The agreement shall cover a period not to exceed two years and shall specifically describe the obligations and responsibilities of the parties and the terms and conditions on which such funds are to be deposited and used consistent with the requirements of this section. The description of the proposed use of deposited funds in the agreement shall include a statement on the intended use of loan repayments and interest earned. The agreement shall expressly provide that its terms and conditions are subject to the provisions governing lump sum drawdowns for property rehabilitation § 570.513 of the HUD regulations on community development block grants, 24 CFR Part 570.

(c) *Uses of rehabilitation fund.* The rehabilitation fund may be used for the following purposes:

(1) Make direct rehabilitation loans or grants to property owners;

(2) Pay interest subsidies, or establish and escrow account for payment of subsidies, on rehabilitation loans made to property owners by private financial institutions with private funds;

(3) Guarantee the repayment of rehabilitation loans made to property owners by private financial institutions with private funds; or

(4) Serve as collateral for financing actually extended to the applicant (or applicant's agency) where such financing is used to make rehabilitation loans or grants to property owners.

(5) Payment of reasonable administrative fees and charges of the private financial institution related to the provision of financing for the rehabilitation of private property.

(6) Other uses as may be approved by HUD consistent with the objectives of this section.

(d) *Rehabilitation loans made with private funds.* Where the rehabilitation fund or other block grant assistance is used to subsidize or guarantee the payment of rehabilitation loans made with private funds, or is used to provide a supplemental loan or grant to the borrower of the private funds, the rehabilitation loans made with such private funds shall be subject to the same requirements (excluding the treatment of loan repayments as program income) as are applicable to direct loan or grant assistance provided for the rehabilitation of private property under this Part.

(e) *Time limit on start of use of deposited funds.* Use of the deposited funds for rehabilitation financing assistance (e.g., first loan is made, subsidized or guaranteed) must start within 45 days of the deposit. Should use of deposited funds not start within within 45 days, the recipient may be required by HUD to return all or part of the deposited funds to the letter of credit.

(f) *Return of unused deposits.* At the termination of the period of the agreement, all unused funds then on deposit shall be returned to the recipient's letter of credit unless the block grant recipient has been or is being authorized by HUD to extend the agreement for an additional period. In addition, the block grant recipient shall reserve the right to withdraw from the rehabilitation fund any unobligated amounts required by HUD in the exercise of corrective or remedial actions authorized under § 570.910(b) of the regulations.

(g) *Interest earned on the rehabilitation fund.* Interest earned on the rehabilitation fund shall be used pursuant to the terms and conditions of the agreement consistent with the uses authorized under paragraph (c) of this section.

(h) *Request for HUD review and approval of lump sum drawdown.* HUD area office review and approval of a request for a lump sum drawdown is required prior to drawdown. HUD review shall be carried out as a part of the review and approval of a block grant application except for lump sum drawdown requests in connection with block grant applications submitted to HUD for review during the 90 day period prior to effective date of these regulations and lump sum drawdown requests for rehabilitation financing submitted in conjunction with grants made under the Secretary's fund for new communities. Although a request submitted in connection with the new communities fund is subject to the requirements of this section, it shall be reviewed and approved by the New Communities Development Corporation, which approves and administers grants under the new communities fund. The request for drawdown shall include:

(1) A copy of the written agreement described in paragraph (b);

(2) The reasons for the locality's belief that the agreement meets the HUD approval standards set forth in paragraph (i); and

(3) Certification, described in paragraph (i)(2)(i)(B); where the request proposes that the benefit to be derived from lump sum drawdown qualifies under paragraph (i)(2)(i).

(i) *HUD review criteria for approval of lump sum drawdown request.* The HUD area office shall approve a request for lump sum drawdown if it determines that the funds will be deposited in one or more private financial institutions under an agreement which includes, one or more of the commitments described in paragraph (i)(1) of this section; meets the benefit tests described in paragraph (i)(2) of this section; meets the tests concerning the amount of drawdown described in paragraph (i)(3) of this section; and otherwise meets the requirements of paragraph (b) of this section.

(1) *Commitments by private financial institutions.* (i) Commitment of private funds for the rehabilitation financing activities in amounts which are substantially in excess of the deposit of block grant funds;

(ii) Commitment of private funds for rehabilitation financing activities at below-market interest rates, or with longer repayment periods, or at higher risk than would normally be taken;

(iii) Provision of administrative services by the financial institutions in support of the rehabilitation financing activities at no cost or at reduced cost.

(2) *Benefit tests.* (i) *When market rate interest is payable on the rehabilitation fund*—When interest at the market rate for deposits of similar maturity and size is payable on the reha-

bilitation fund, the applicant must certify that the commitment under the agreement pursuant to paragraph (i)(1) provides a significant benefit meeting the needs of its rehabilitation objectives consistent with its block grant application. Such certification shall be accepted by the Area Office for the purpose of meeting the requirements of the benefits test of this paragraph in the absence of substantial evidence to the contrary.

(ii) *When market rate interest is not payable on the rehabilitation fund*—When less than the market rate interest is payable on the rehabilitation fund, the value of the benefits of the commitment under the agreement must be at least equal to the interest foregone. The comparison of the benefit and interest foregone shall be based on the following:

(A) *Estimate of foregone interest*—An estimate of the difference between the interest payable under the agreement and the amount of interest that would be earned on the estimated average monthly balance of the rehabilitation fund at the market rate for deposits of similar maturity and size.

(B) *Estimate of value of benefits*—A quantified estimate of the value of the benefits of the commitment under the agreement. For example, if as a result of the deposit the private financial institution provides free loan origination services, the benefit would be quantified as the amount of the direct fee that would otherwise have to be paid for such services.

(3) *Basis for amount of drawdown.* The amount of funds that a block grant recipient proposes to draw for deposit for a rehabilitation fund shall not exceed the amount of funds that the applicant reasonably expects will be required under the terms of the agreement during the program year based on either:

(i) Prior level of rehabilitation activity; or

(ii) Rehabilitation staffing and management plans of the locality for the period of the agreement.

* * * * *

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).)

Issued at Washington, D.C., July 27, 1978.

ROBERT C. EMBRY, Jr.,
Assistant Secretary for Community Planning and Development.

[FR Doc. 78-21541 Filed 8-2-78; 8:45 am]

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